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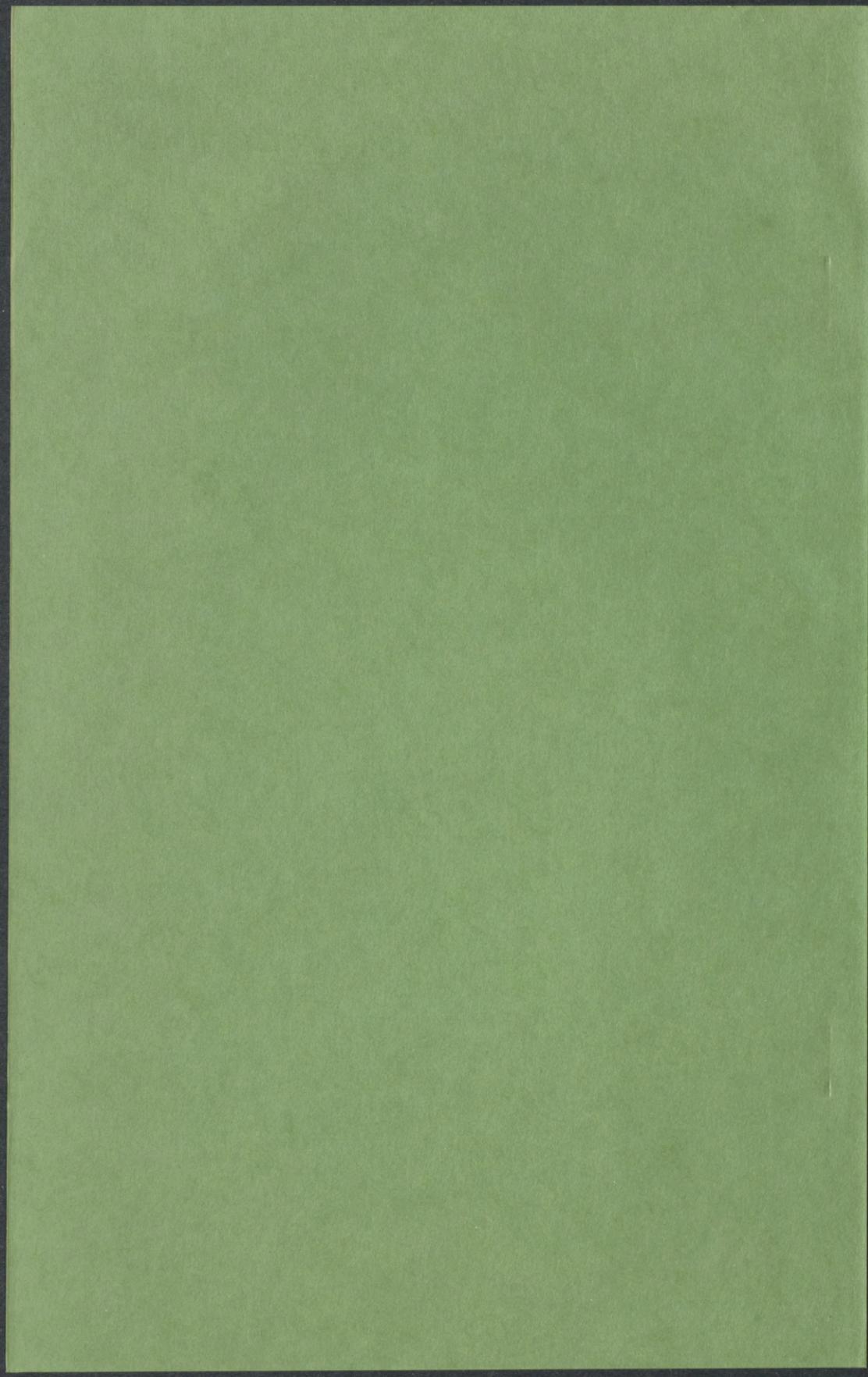
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Fiscal Year 1981

96th CONGRESS, SECOND SESSION

SPECIAL HEARING—Part 2

Department of the Treasury
Nondepartmental Witnesses



OVERSIGHT HEARINGS ON BUREAU OF
ALCOHOL, TOBACCO AND FIREARMS

HEARING

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE
NINETY-SIXTH CONGRESS
SECOND SESSION

SPECIAL HEARING—PART 2
Department of the Treasury
Nondepartmental Witnesses

Printed for the use of the Committee on Appropriations

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

64-664 O

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

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(II)

CONTENTS

	Page
Nondepartmental witnesses:	
Opening remarks of Senator DeConcini	1
Opening prepared statement of Senator DeConcini	3
Letter from G. R. Dickerson, Director, BATF	5
Remarks of:	
Senator Schmitt	12
Senator Domenici	12
Statement of:	
Paul A. Hayes	13
Mrs. Paul A. Hayes	14
Firearms transaction records	15
Memorandum from Herschel N. Stewart	27
Statement of Ron Koch	29
Letter and draft stipulation by R. E. Thompson, U.S. attorney	31
Letter from:	
Dr. William S. Lovekin	34
Mrs. Paul A. Hayes	36
Statement of:	
Donald Vingino, Tuscon, Ariz	38
Gene Lane	38
Patrick Mulcahey, Columbia, S.C.	44
Article from the Washingtonian, "The Fat Man and the Gun Collector"	51
Letter from:	
John G. Krogman, Acting Director, BATF	61
G. R. Dickerson	65
Information forms on firearms sales	66
Neal Knox, executive director, National Rifle Association	71
Erwin Grombacher	73
Judge Saul A. Epton (Retired)	73
Judge Edward D. Resenberg	75
Thomas P. Koeberle	76
Randall Callender	78
J. Curtis Earl	80
Richard T. Melcher	82
Patricia M. Koval	86
John M. Sando	87
Appellant's opening brief	90
Brief of appellee	113
Department of the Treasury:	
Bureau of Alcohol, Tobacco and Firearms:	
Statement of:	
G. R. Dickerson, Director, BATF	119
Richard J. Davis, Assistant Secretary for Enforcement and Operations, Department of the Treasury	119
Prepared statement of G. R. Dickerson	121
Firearms program document	133
Opinion on use of "Strawman" in firearms sales	153
Circular on "Strawman" transactions	162
Notice on sales of firearms at organized gunshows	163
Result of task force study	165
Order on return of confiscated firearms	167

Department of the Treasury—Continued

Bureau of Alcohol, Tobacco and Firearms—Continued

	Page
Directive on firearms administrative actions and criminal actions	171
Public affairs guidelines	176
Statement of:	
Marvin Dessler	190
Stephen Higgins	193
Philip McGuire	194
Questions submitted by Senator DeConcini	198
Letter from:	
David J. Anderson	204
Michael D. Hawkins and Virginia A. Mathis	205
Michael D. Hawkins and Linda A. Drake	207
David J. Anderson	209
Memorandums from William C. Lawrence	216
Summary of investigation relating to:	
Paul A. Hayes	217
Patrick M. Mulcahey	225
Donald Vingino	227
Letter from Neal Knox	236
Excerpt from Code of Federal Regulations	238
Letter from Bill Garrison	244

OVERSIGHT HEARINGS ON BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

THURSDAY, APRIL 17, 1980

U.S. SENATE,
SUBCOMMITTEE ON TREASURY, POSTAL SERVICE, AND
GENERAL GOVERNMENT,
Washington, D.C.

The subcommittee met at 2 p.m., in room S-146, the Capitol, Hon.
Dennis DeConcini presiding.

Present: Senators DeConcini, Schmitt, and Domenici.

NONDEPARTMENTAL WITNESSES

STATEMENTS OF:

PAUL HAYES
WILLIE HAYES

ACCOMPANIED BY RON KOCH

Senator DeConcini. The Appropriations Subcommittee on Treasury and Postal Services and General Government will come to order at this time. I would like the record to show my appreciation to Senator Lawton Chiles and the staff of the committee for their assistance in relation to these hearings. This hearing is a followup to hearings which I chaired in July of last year, during which the subcommittee heard testimony relating to allegations of civil liberties abuses by the Bureau of Alcohol, Tobacco and Firearms.

At that time we heard testimony from a number of citizens who maintained that they had been wronged by agents or supervisors of the Bureau of Alcohol, Tobacco and Firearms. We heard from David Moorhead, a disabled Vietnam veteran who had been VA-trained as a gunsmith. Mr. Moorhead described how he had been arrested, charged with felonious possession of a supposed machinegun, and forced out of business by agents of the Bureau. The subcommittee received for the record a transcript of his trial, wherein Federal District Judge Hughe Bownes dismissed all charges, found Mr. Moorhead innocent as a matter of law, and apologized to him on behalf of the United States.

We also heard testimony from Curtis Earl, a Phoenix, Ariz., firearms dealer. Mr. Earl established that he had been charged with no less than 21 counts of conspiracy and unlawful dealings in firearms, based on transactions which he had cleared with Bureau personnel beforehand. He testified that when the Bureau took the 21 charges before the grand

jury, the grand jury refused to issue an indictment on any of them. Notwithstanding this, the Bureau had continued to withhold firearms confiscated from him and was now seeking to revoke his dealer's licenses based upon those same charges.

We also heard from A. W. Phillips, a Virginia dealer, who was charged with a strawman sale in which a local BATF agent, acting undercover, purchased a firearm from him stating that he was going to transfer it to an out-of-State agent. Mr. Phillips was then charged as though he—rather than the first agent—had transferred the firearm to the nonresident. Like Mr. Moorhead, Mr. Phillips was acquitted when the Federal judge directed a verdict of not guilty. The Bureau then proceeded to attempt to revoke his license, eventually—and to its credit—giving up this attempt.

The subcommittee also heard the testimony of R. C. Lindsey of Florida. Mr. Lindsey established that agents of the Bureau had refused to renew his license as a firearms dealer, informing him that they would force him to hire an attorney to defend it. The license was denied following an administrative hearing before an administrative law judge. Mr. Lindsey testified that he then discovered that the supposed impartial administrative judge had, in fact, been previously involved in the effort to deny his license and had advised BATF agents in writing regard to the merits of his defense. We received court records showing that, after this discovery, the Bureau withdrew all attempts to deny his license and stipulated to an order compelling its issuance.

Finally, we heard testimony from Vernon Acree, a former Commissioner of Customs and veteran of over two decades of Federal law enforcement, who had undertaken a study of BATF activities in Virginia and Maryland. Mr. Acree concluded that 75 to 80 percent of BATF cases brought in those States involved defendants who had no criminal intent, but were enticed by Bureau agents into violating technical requirements which the defendants did not know existed. We also received into the record an extensive study of BATF activities which indicated, among other things, that BATF had been confiscating large numbers of collector's items under the guise that they were "intended to be used in" various technical offenses. Based on a study of BATF's records over a 2-year period, when the Bureau was publicly stating that guns used in crime were primarily handguns and disproportionately "Saturday Night Specials," it concluded that 60 percent of the Bureau gun confiscations were not handguns and 96 percent did not meet its own definition of "Saturday Night Special."

We then heard testimony from Richard Davis, Assistant Secretary of the Treasury of Criminal Enforcement and G. R. Dickerson, Director of the Bureau of Alcohol, Tobacco and Firearms. Mr. Dickerson, who had taken over as director of the Bureau in early 1979, assured the subcommittee that he would not tolerate abuses of civil liberties. He outlined various reforms which had been undertaken, beginning some months before. Among these were the establishment of an independent Office of Inspections, to supervise agents and conduct integrity checks; a requirement that all investigations of licensed dealers or of gun shows be cleared by Mr. Dickerson or his deputy; and plans to clearly inform

dealers of what the Bureau expected of them in relation to strawman sales. Mr. Dickerson further assured the subcommittee that he would not countenance the use of administrative proceedings—whether for license revocation or to confiscate firearms collections—as a punitive measure undertaken where criminal penalties are dismissed.

At the close of the testimony against BATF, I frankly stated that I was shocked. The problem appeared far more serious and widespread than I had thought possible. Indeed, the picture painted was one of an agency that had, for all intents and purposes, abandoned any attempt to respect the rights of our citizens. After hearing the assurances by the Bureau, I stated that I was encouraged by the willingness of Mr. Dickerson to move the Bureau in the right direction in the future. At the same time, I warned that he would examine the hearing record carefully and watch for the proposed reforms and their affect; in the event that changes did not appear to take place, I was willing to initiate what might be considered drastic action to protect, where necessary, the rights of our citizens.

The purpose of these hearings today is to determine whether the problems outlined in the July 1979 hearings have indeed been alleviated and whether the Bureau's reforms have had the effect of fundamentally changing its approach to legitimate firearms owners in this Nation. I will introduce, for the record at this point, a copy of my statement during the July 1979 hearings, together with a copy of a letter to myself from Director Dickerson, in which Mr. Dickerson outlines his reforms and restates the desire of BATF to move in the direction of efficient and professional law enforcement.

[The information follows:]

OPENING STATEMENT BY SENATOR DENNIS DeCONCINI

OVERSIGHT HEARINGS ON THE BUREAU OF ALCOHOL, TOBACCO AND
FIREARMS—JULY 12, 1979

Good morning ladies and gentlemen; the subcommittee will come to order.

This is the second day of hearings on allegations that the Bureau of Alcohol, Tobacco and Firearms has exceeded its mandate in enforcing the Gun Control Act of 1968, and has violated the civil rights of citizens through improper investigatory and arrest procedures.

Frankly, I was shocked by yesterday's testimony. The problem appears much greater in scope and more acute to intensity than I had imagined. It is a sobering experience to listen to average, law-abiding citizens present evidence of conduct by an official law enforcement agency of the Federal Government which borders on the criminal. If the behavior of BATF agents described yesterday is typical and accurate, it raises a fundamental question about the organization and operation of BATF.

Democracy is a fragile and delicate system; it does not take much to crush it. Every society must have order; every society must have law. However, the maintenance of law and order in a democracy must be balanced against the rights of individuals. Those rights are critical to the continued existence of a free and open society. Thus, the task of law enforcement officials is really a dual one. Not only are they charged by society with the task of enforcing the law, but just as important they must protect the rights of citizens. A law enforcement agency that tramples the rights of citizens is a danger to our system of government.

The testimony offered yesterday together with supporting documentary data is extremely disquieting. It paints the picture of a law enforcement agency that has, for all practical purposes, abandoned its obligation to protect the rights of American citizens. It suggests that, BATF officials have decided that the second amendment guarantee to

American citizens that they should be able to own and bear arms is either bad or irrelevant. The testimony indicates that BATF has moved against honest citizens and criminals with equal vigor simply because they have taken the view that individuals who are interested in firearms are either criminal or close to it.

* * * * *

If these allegations are true, BATF is an agency that needs to be saved from itself. If it continues down the road it has been following, I predict that congressional action of a dire sort will be forthcoming. We are reaching the point with BATF where the wrongs it perpetrates on innocent citizens is beginning to outweigh the good it does in other areas. The time has come for basic and dramatic changes within BATF. Also, the time has come to make some revisions in the Gun Control Act of 1968.

The purpose of these hearings today is to determine whether the problems outlined in the July 1979 hearings have indeed been alleviated and whether the Bureau's reforms have had the effect of fundamentally changing its approach to legitimate firearms owners in this nation. I will continue for the record at this point a copy of my statement during the July 1979 hearings together with a letter to myself from Director Dickerson in which Mr. Dickerson outlines his reasons and desires the desire of BATF to move in the direction of efficient and professional law enforcement.

[The information follows]

OPENING STATEMENT BY SENATOR OWENS

DISORDERLY HEARINGS ON THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS - JULY 13, 1979

Good morning ladies and gentlemen. The Subcommittee will come to order. This is the second day of hearings on allegations that the Bureau of Alcohol, Tobacco and Firearms has exceeded its mandate in enforcing the Gun Control Act of 1968 and has violated the civil rights of citizens through improper investigation and arrest procedures.

I would like to thank you for your testimony. The problem evident with the Bureau in scope and more serious than I had imagined is a serious erosion in faith in every citizen's right to own a handgun. It is a violation of the Federal Government's sworn promise to the people of this nation to protect their right to own a handgun. It is a violation of the Constitution of the United States and of the Bill of Rights.

Director, a private and public hearing. It does not take much to erode a citizen's faith in every citizen's right to own a handgun. The maintenance of law and order in a free society must have law. However, the maintenance of law and order in a free society must be maintained against the rights of individuals. These rights are critical to the continued existence of a free and open society. Thus, the law of law enforcement officials is really a dual one. Not only are they charged with the task of enforcing the law, but just as important they must protect the rights of citizens. Law enforcement agencies that neglect the rights of citizens are a threat to the system of government.

The testimony of Senator Kennedy regarding the reporting of data is an important distinction. It points the picture of a law enforcement agency that has for all practical purposes abandoned its obligation to protect the rights of American citizens. It suggests that BATF officials have decided that the second amendment guarantee to

LETTER FROM G. R. DICKERSON, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND
FIREARMS, DEPARTMENT OF THE TREASURY

September 7, 1979

Honorable Dennis DeConcini
United States Senate
Washington, D. C. 20510

Dear Senator DeConcini:

I want to thank you and your committee for the opportunity to participate in the oversight hearings on the Bureau of Alcohol, Tobacco and Firearms during the week of July 9, 1979. These hearings were conducted in a fair and impartial manner. I cannot say that listening to the charges, allegations, and accusations regarding this agency and our employees was a pleasant experience; it was not. However, every Federal agency, and particularly law enforcement agencies, must be subject to the scrutiny of the public and the oversight of Congress. The primary enforcement objective of ATF in the firearms area is to prevent the criminal misuse of firearms and illegal criminal trafficking in firearms. The combination of a firearm and a violent criminal or mental incompetent too often results in a crime of irreversible and tragic consequences.

These hearings have had a real effect. They have caused ATF to place even greater emphasis on the efforts underway over the last several years to reexamine our practices, policies, motivations and techniques. We are taking positive action to correct problems. On the other hand, in some areas we have found that the allegations present an incomplete or inaccurate account of events and in those cases, we are providing additional information to ensure the accuracy of the record.

My primary focus however will not be on the past. My emphasis will be on the steps ATF must take to prevent future problems and to ensure fair and equitable enforcement of the law. The following is a brief summary of the steps we are taking in this regard:

- We established a task force with the responsibility for developing a comprehensive national firearms policy. This policy will be consistent with the intent of Congress as stated in the preamble to the Gun Control Act. Upon completion, it will be disseminated to each ATF inspector, special agent, and manager, and will be available to the firearms industry and other interested organizations and individuals.

- We are reorganizing the Office of Inspection to ensure that every allegation and accusation of wrongdoing or abuse by ATF employees is investigated promptly and objectively. We are establishing a proactive integrity program. Strong disciplinary action will be taken in those cases in which it is warranted. At the same time, we have an equal responsibility to move expeditiously to exonerate those employees against whom accusations are determined to be unfounded.
- We are also reorganizing the Office of Criminal Enforcement to establish the position of Regional Director of Investigations (RDI) in four locations. The RDI's will be located in New York, Atlanta, Chicago, and San Francisco. The establishment of a strong management capability at the field level will ensure that personnel are operating within the constraints of policy guidelines and good law enforcement practices.
- As I testified at the hearings, investigations of licensed gun dealers or utilization of the "straw man" investigative technique is not permitted without the specific approval of the Director of ATF or his designee. We have developed an industry circular (see enclosure 1) which will be disseminated to Federal firearms licensees explaining the "straw man transaction" and the responsibilities of the licensees under the Gun Control Act. This should prevent inadvertent violations by gun dealers who are unaware of their responsibilities in regard to sales to prohibited persons. We will also reemphasize current strong ATF guidelines to ensure that such investigations are properly conducted.
- ATF has been criticized for past activities and policy regarding gun shows and sales at gun shows by licensed dealers. At the same time, gun shows have been a source of crime guns. For example, the weapon used by Sara Jane Moore in her assault on President Ford was purchased at a gun show. Significant changes in gun show policy were made 10 months ago to ensure that these investigations are limited and conducted only under appropriate circumstances. At the same time, it is possible that our efforts to control the movement of crime guns might be more successful if federally licensed firearms dealers were permitted to conduct business at gun shows provided recordkeeping functions are performed,

that the dealer is a resident of and maintains his business in the State of the gun show, and that all other provisions of the Act are met. We are now reviewing the law and regulations to determine if we can permit sales by dealers at gun shows within the existing law. While regulatory changes without a change in law may be difficult to accomplish, we nevertheless are actively pursuing this alternative. We will advise you of our progress in this matter and provide you a copy of our findings.

- We have also reviewed the requirements in regard to the seizure of destructive devices, machineguns, cannons, etc. Not all unregistered National Firearms Act weapons must be forfeited to the Government and disposed of pursuant to law. Under the NFA, certain firearms can be removed from the Act if the Director of ATF determines that the firearm is not likely to be used as a weapon or that it may be altered in such a way that it no longer meets the definition of "firearm." Weapons falling into these two categories may be lawfully retained by the owners and may not be subject to seizure. You may also be aware that ATF has, in the case of weapons that cannot be altered or otherwise removed from the Act, permitted the donation of unregistered weapons to governmental entities such as Federal, State, or local museums in lieu of abandonment or seizure. For those remaining items that cannot be handled in the manner described above, we plan to explore other alternatives. We will keep you advised of our progress in this matter.
- ATF has been criticized for careless handling of seized firearms. Along these lines, we are reemphasizing the requirement to handle and maintain all seized firearms in such a manner as to ensure their preservation in their original condition prior to seizure. Further, it is now our policy to seize only those firearms involved in criminal activity or criminal investigation as opposed to the seizure of the entire stock or collection.
- ATF has been criticized for failure to develop a definition of a dealer or "engaging in the business." Although the term "engaging in the business" is not defined by statute, the courts have had no difficulty construing the term and have generally held it to mean an activity which occupies one's time, attention, and labor for the purpose of livelihood or profit. While an

actual profit from the sales of firearms need not be proved, a willingness to deal, a profit motive, and a greater degree of activity than occasional sales by a hobbyist must be shown for purposes of a conviction.

Nevertheless, in order to ensure agreement and consistency as to what constitutes "engaging in the business", we are developing an advance notice of proposed rulemaking inviting comments from the public on how this term should be defined. Regulations would subsequently be developed if an acceptable definition can be agreed upon.

- A question arose at the hearings regarding the appropriateness of ATF taking civil action against an individual or licensee such as the seizure of firearms or revocation of a license after the criminal case has been dismissed. It was implied that this civil action might be taken as a punitive or retaliatory measure against innocent individuals or dealers. It was suggested that it may be more appropriate to take civil action first to be followed by the criminal action. This matter is not entirely within the discretion of ATF. The courts have taken varying positions on the timeliness of such actions. One position is that to proceed administratively against any individual who is also the subject of criminal action would jeopardize his rights by requiring him to divulge information in an administrative hearing that could possibly jeopardize his defense in a criminal prosecution. ATF is reviewing this matter with the objective of developing guidelines in this area. I will say now that it is not our policy to use administrative action as a punitive measure in cases in which criminal action fails.
- As a result of the hearings, we are making a thorough review of our guidelines and policy on publicity and public affairs. Many of our ATF orders on this subject date back to the early seventies. Of course, all publicity on investigative matters and cases in the prosecutive process are subject to the guidelines put forth by the Attorney General. These require that "public out-of-court comments regarding investigations, indictments, arrests, and ongoing litigation, should be minimal, consistent with the Department of Justice responsibility of keeping the public informed." As an interim measure, we have forwarded a copy (see enclosure 2) of the Department of Justice directive

to every ATF Special Agent in Charge. We plan to revise our policy and have recently reorganized our Office of Public Affairs.

- Throughout the hearings, there was discussion of various forms of entrapment of innocent, law-abiding citizens by ATF. ATF attempted to clarify the misunderstanding over the issue of entrapment in a recent letter to Senator Hayakawa. The following passage from our letter to Senator Hayakawa appears to be pertinent:

"We emphasize that it is not the practice of ATF to conduct an undercover investigation regarding unlawful sales by firearms licensees unless there is reason to believe that the licensee has previously made unlawful sales. If the firearms licensee is reluctant to deal with the undercover agent, ATF immediately terminates its investigation. Furthermore, it is the Bureau's practice to permit the firearms licensee himself to suggest the medium of a straw purchaser to consummate the sale.

Thus, it is strictly prohibited for ATF undercover agents to encourage, as opposed to merely provide the opportunity for, such unlawful sales of firearms. In all instances, ATF agents seek to comply with the rules laid down by the Supreme Court concerning entrapment. In United States v. Russell, 411 U.S. 433, 435-436 (1973), the United States Supreme Court ruled that the fact that officers or employees of the Government merely afford opportunities or facilities for the commission of the offense does not defeat the prosecution. It is only when the Government's deception actually implants the criminal design in the mind of the defendant that the defense of entrapment comes into play. Of course, any defendant having been unlawfully entrapped into commission of a crime has a valid defense to the prosecution."

I have provided a copy of this letter as enclosure 3.

A number of other useful suggestions, issues, and recommendations were raised at the hearings. The following is a summary of some of those recommendations and the status of ATF action on each:

"... BATF ought to take a clear and public stand on whether and at what point a strawman sale is illegal."

The courts have already established ample precedent regarding the use of the straw man investigative technique. Our industry circular regarding the straw man transaction should provide ample guidance to dealers and the public.

"... the destructive device statutes pertaining to devices readily restored to automatic fire and parts from which a destructive device can be constructed need clarification."

We will review the appropriate sections of the statute to determine if clarification is warranted.

"... restrict improper incentives to informants. Some of the more serious abuses relating to entrapment involve informants of questionable character who were given incentives to entrap individuals."

We have already discussed the issue of entrapment in some detail. It is now and always has been against the policy of this agency to use entrapment. It is legally and morally wrong. We know of no instance in which the courts have held that ATF illegally entrapped anyone. As stated previously, entrapment provides a valid defense against prosecution. It is strictly prohibited for ATF agents to encourage, as opposed to merely provide the opportunity for, unlawful sales of firearms. ATF, like every other law enforcement agency, uses informants. Some informants are not of high moral character. Some are convicted felons. However, these are frequently the very individuals who have firsthand knowledge of illicit gun traffic. Precautions are taken in the use of informants within an investigation. Backgrounds are reviewed and a criminal record check is made. If the informant's information appears questionable, ATF may request that the informant subject himself to a polygraph test. Informants are often paid; however, ATF does not set a "price" on any suspect or attempt to "buy" a conviction.

"... restrict forfeitures of property. Abuses of the forfeiture power are not limited to firearms laws, but occur generally throughout the field of tax law enforcement."

ATF policy restricts the use of the forfeiture power. It is not our policy, for example, to routinely seize a collector's entire collection or a licensed dealer's entire stock in trade.

"... restrict prosecution use of prejudicial publicity. The agency has been most obvious in providing by formal order encouragement to seek publicity which damages the individual's reputation and influences judges and juries."

As stated above, our guidelines on publicity are being reviewed. The purpose of this review is to ensure their fairness and consistency with Department of Justice guidelines.

"... grant additional protection to agents against reprisals for refusals to engage in illegal activities."

I believe the Civil Service Reform Act provides ample protection for employees. I know of no instance in which an ATF employee has been directed to commit an illegal act. There will be none under my direction. If there is any merit to allegations that employees of this Bureau have been directed to commit illegal acts, they should be brought to my attention or to the attention of the Department of Justice for prosecution.

"... expand civil remedies available to injured parties. A civil remedy for entrapment ought to be recognized. The Government should be prohibited from indemnifying an agent should a judgment be obtained against him."

Entrapment is prohibited in ATF in both criminal and civil proceedings. The scope of the remainder of this suggestion goes beyond the purview of ATF.

We hope that this information and the information provided for the record is useful to you in your continuing oversight of ATF operations. Without being defensive, we have tried to shed additional light on those actions that we have found to be defensible. In those instances where we have found our prior activities, practices, and policies not in keeping with good law enforcement practices or no longer appropriate, we have been or are in the process of developing new policies and procedures. We will continue to review our activities to ensure that they meet the highest standards of professionalism.

I believe that this review process, and the development of reasonable policy and guidelines, and the organizational changes I am making will ensure that ATF as an institution achieves those high standards. I have now been in ATF approximately 6 months. I have found the personnel to be capable and dedicated to the protection of society against criminals. I have found the programs to be generally sound. Where there are exceptions, I am taking remedial action. I believe that the best means to ensure

that abuses do not occur and that morale remains at a high level is to institute positive, affirmative programs. We have done this not only in firearms enforcement but also in explosives, arson, alcohol, and tobacco smuggling.

Please let me know if we can provide more information to complete the record or to assist in your review.

Sincerely yours,

A. R. DeBorom

Director

Senator DECONCINI. Since the transmission of these assurances, the subcommittee has received disquieting reports that the Bureau's ways may not have been changed, that it may have continued to expend public monies in attempts to damage law-abiding citizens, to confiscate firearms in excess of its lawful powers and to misuse administrative proceedings with the aim of punishing persons acquitted of wrongdoing. We will initially take the opportunity to hear from several persons who have come forward with evidence of continued behavior of this type and then hear from representatives of the Bureau in relation to their reforms and recent performance.

Senator Schmitt, we are very pleased to have you here. Do you have any opening statement?

Senator SCHMITT. I do not, Senator. I appreciate your opening statement. I think that you have outlined the problems we are faced with very well. The "strawman" type efforts seem to have gone astray. I am happy to know that one of your witnesses will be Mr. Paul Hayes. He and his wife have been subjected to these kind of activities and I think you will find their testimony in the New Mexico experience very enlightening. Senator Domenici, not a member of the committee, has joined us and may have a remark or two.

Senator DECONCINI. Do you have any opening remarks, Senator?

Senator DOMENICI. Mr. Chairman, I didn't if you intended to take Paul and Willie Hayes as witnesses earlier on, I was just going to introduce them to you. Senator Schmitt knows them well. I just have a few observations based upon their contentions and certainly I do not intend to participate. Before you do call them I want to indicate my personal appreciation to you and the subcommittee for your continual concern in this area and I do hope that the testimony of these two citizens, if what they have told Senator Schmitt and I is basically the fact, and I have no reason to believe that it is not, will be helpful in your continued effort to see that the employees of the Federal Government, even though they are in law enforcement and have a difficult job, behave in a normal and reasonable manner and have not been abusive or overreaching. So, if you intend to call them, I will introduce them.

Senator DECONCINI. We will call them at this time because of your presence, Senator Domenici, and Senator Schmitt. We will call Paul

and Willie Hayes—if you will please come forward—and with their attorney. Senator DOMENICI?

Senator DOMENICI. Mr. Chairman, might I first say that while I don't know Paul and Willie Hayes personally, I have known of them for a long time. They have known my family, including my father, for many years, but more importantly, the friends that they have in our State have contacted me on a number of occasions concerned about what was happening to them, and based upon their past lives that these friends know about they indicated a genuine concern about their well-being. Basically they have been, I think the right word is dragged through the wheels of justice by the Bureau of Alcohol, Tobacco and Firearms. Because of this ordeal this gentlemen's health is broken, he spent \$17,000 defending himself, and still is not rid of the problem.

As I understand it, the Bureau had such a wonderful case it took the jury 7 minutes to decide that they were innocent. That hasn't ended the matter. They thought it did, but apparently they are still involved. Much of their property has still not been returned to them, things that they need. They still can't conduct their business.

I tried in my own way—and I don't like to ever interfere in matters that are pending of a criminal nature—but I tried to find out what the case is about and to offer some moral support. I am confident that there is a better way to handle problems of this type, and I am sure they will be sincere in their testimony today. I don't believe they have lengthy prepared statements. I think they just want to tell you and Senator Schmitt, and the entire Appropriations Committee and the Senate—want to tell you what has happened to them and I appreciate your taking time to listen to them. Thank you very much, Mr. Chairman, and Senator Schmitt.

Senator SCHMITT. Just to thank Senator Domenici for his words and the Hayes for coming and sharing with the committee their problem. I think it is one which may have deeper roots than just the actions of individuals of the Department that they have had to deal with. There may be a pressure that comes just from the bureaucracy, itself, that forces these kind of things to happen more frequently than they ever should.

Also, a question of equity is raised. If under criminal statute persons are acquitted of an accusation, how do we insure that the bureaucracy does not continue to take this to lower and lower standards of proof until finally they win.

I have some questions about it. I don't have any answers but I certainly have some questions in my mind of whether this is an equitable way for the wheels of justice to turn.

Welcome, folks.

Senator DECONCINI. Thank you, Senator Schmitt and Senator Domenici for your interest in this area. We are pleased to have you, Mr. and Mrs. Hayes, with your attorney. Whoever would like to testify in behalf of the experience that you have had, please proceed.

Mr. HAYES. Both?

Senator DECONCINI. Yes; you may.

Mr. HAYES. We have been in business in rural New Mexico for 29 years.

Senator DECONCINI. Where is that?

Mr. HAYES. About 20 miles south of Albuquerque.

Senator DECONCINI. Is that where you live now?

Mr. HAYES. Yes; I have been a licensed gun dealer for more than 20 years and had no problems ever until April 1978. Since I had this open-heart surgery, I have a lapse of memory. So I may forget what I say. If I do, she can correct me. The doctor——

Senator SCHMITT. She has had a license to do that for a number of years. [Laughter.]

Mr. HAYES. The doctor said I may never be better, but I hope to become, better as far as memory is concerned.

In April 1968——

Mrs. HAYES. 1978.

Mr. HAYES. 1978, they used the "strawman" tactic on us. I am sure you are all familiar with what that is. They started with eight or nine counts of illegally selling of firearms. They contended that I knew that I was selling that gun to an out-of-State resident. I did no such thing. The man had a New Mexico license and signed it, and the purchaser was from New Mexico with a valid license. I have the forms here to prove it, where he signed.

[The information follows:]



DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS FIREARMS TRANSACTION RECORD PART I - INTRA-STATE OVER-THE-COUNTER			TRANSFEROR'S TRANSACTION NO. #110	
NOTE: Please read and carefully follow instructions on reverse. Prepare an original only. Please type or print in ink.				
SECTION A - MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER) (See Instruction 3)				
1. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle) (Mr., Mrs., Miss)		2. HEIGHT	3. WEIGHT	4. RACE
ALFORD TEDDY J.		6'1"	205	W
5. RESIDENCE ADDRESS (No., Street, City, State, Zip Code)		6. DATE OF BIRTH	7. PLACE OF BIRTH	
#339 HENRIX NE 87077 ALBUQUERQUE, NEW MEXICO		10/5/42	ATOKA OKLAHOMA	
8. CERTIFICATION OF TRANSFEREE (Buyer) - An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:				
a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year?	NO	d. Are you an unlawful user of, or addicted to, marijuana, or a depressant, stimulant, or narcotic drug?	NO	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: The actual sentence given by the judge does not matter - a yes answer is necessary if the judge could have given a sentence of more than one year. Also, a "yes" answer is required if a conviction has been discharged, set aside, or dismissed pursuant to an expungement or rehabilitation statute.)	NO	e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	NO	
c. Are you a fugitive from justice?	NO	f. Have you been discharged from the Armed Forces under dishonorable conditions?	NO	
		g. Are you an alien illegally in the United States?	NO	
		h. Are you a person who, having been a citizen of the United States, has renounced his citizenship?	NO	
I hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions in the affirmative is prohibited by Federal law from purchasing and/or possessing a firearm. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.				
TRANSFEREE'S (Buyer's) SIGNATURE			DATE	
<i>T. J. Alfred</i>			4/3/78	
SECTION B - TO BE COMPLETED BY TRANSFEROR (SELLER)				
THE PERSON DESCRIBED IN SECTION A: <input type="checkbox"/> IS KNOWN TO ME <input checked="" type="checkbox"/> HAS IDENTIFIED HIMSELF TO ME IN THE FOLLOWING MANNER				
9. TYPE OF IDENTIFICATION (Driver's License, etc. Positive identification is required. A Social Security card is not considered positive identification.)		10. NUMBER ON IDENTIFICATION		
<i>Dr. Lic</i>		XXXXXXXXXX		
On the basis of: (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver or otherwise dispose of the firearm described below to the person identified in Section A.				
11. TYPE (Pistol, rifle, etc.)	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	
<i>Pistol</i>	<i>F38</i>	<i>38 S&W</i>	<i>0843679</i>	
15. MANUFACTURER (and importer, if any)				
<i>Rem-um</i>				
16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used)			17. FEDERAL FIREARMS LICENSE NO.	
COLE'S MERCANTILE 2235 Bosque Farms Blvd. Bosque Farms, N. M. 87068			\$85-032-02-18-00233	
18. TRANSFEROR'S (Seller's) SIGNATURE		19. TRANSFEROR'S TITLE	20. TRANSACTION DATE	
<i>Walter Hayes</i>		<i>Owner</i>	4-3-78	



DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS			TRANSFEROR'S TRANS- ACTION NO.	
FIREARMS TRANSACTION RECORD			# 113	
PART I - INTRA-STATE OVER-THE-COUNTER				
NOTE: Please read and carefully follow instructions on reverse. Prepare an original only. Please type or print in ink.				
SECTION A - MUST BE COMPLETED PERSONALLY BY TRANSFEEE (BUYER) (See Instruction 3)				
1. TRANSFEEE'S (Buyer's) NAME (Last, First, Middle) (Mr., Mrs., Miss)		2. HEIGHT	3. WEIGHT	4. RACE
ALIFORD, Teddy J.		6'0"	200	W
5. RESIDENCE ADDRESS (No., Street, City, State, Zip Code)		6. DATE OF BIRTH		7. PLACE OF BIRTH
3319 HENORIX RD, ALBUQ. N.M. 87077		10/5/42		ATOKA OKLAHOMA
8. CERTIFICATION OF TRANSFEEE (Buyer) - An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:				
a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year?	No	d. Are you an unlawful user of, or addicted to, marijuana, or a depressant, stimulant, or narcotic drug?	No	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: The actual sentence given by the judge does not matter - a yes answer is necessary if the judge could have given a sentence of more than one year. Also, a "yes" answer is required if a conviction has been discharged, set aside, or dismissed pursuant to an expungement or rehabilitation statute.)	No	e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	No	
c. Are you a fugitive from justice?	No	f. Have you been discharged from the Armed Forces under dishonorable conditions?	No	
		g. Are you an alien illegally in the United States?	No	
		h. Are you a person who, having been a citizen of the United States, has renounced his citizenship?	No	
I hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions in the affirmative is prohibited by Federal law from purchasing and/or possessing a firearm. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.				
TRANSFEEE'S (Buyer's) SIGNATURE			DATE	
			4/5/78	
SECTION B - TO BE COMPLETED BY TRANSFEROR (SELLER)				
THE PERSON DESCRIBED IN SECTION A: <input type="checkbox"/> IS KNOWN TO ME <input checked="" type="checkbox"/> HAS IDENTIFIED HIMSELF TO ME IN THE FOLLOWING MANNER				
9. TYPE OF IDENTIFICATION (Driver's License, etc. Positive identification is required. A Social Security card is not considered positive identification.)			10. NUMBER ON IDENTIFICATION	
Dr. Lic			XXXXXXXXXX	
On the basis of: (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver or otherwise dispose of the firearm described below to the person identified in Section A.				
11. TYPE (Pistol, rifle, etc.)	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	
Pistol	14	22LR	L625390	
15. MANUFACTURER (and importer, if any)				
RG				
16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller; used stamp may be used)			17. FEDERAL FIREARMS LICENSE NO.	
COLE'S MERCANTILE 2235 Bosque Farms Blvd. Bosque Farms, N. M. 87068			585-032-02-LJ-00233	
18. TRANSFEROR'S (Seller's) SIGNATURE		19. TRANSFEROR'S TITLE		20. TRANSACTION DATE
		Owner		4-5-78

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS			TRANSFEROR'S TRANS- ACTION NO.	
FIREARMS TRANSACTION RECORD			#115	
PART I - INTRA-STATE OVER-THE-COUNTER				
NOTE: Please read and carefully follow instructions on reverse. Prepare an original only. Please type or print in ink.				
SECTION A - MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER) (See Instruction 3)				
1. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle) (Mr., Mrs., Miss)		2. HEIGHT	3. WEIGHT	4. RACE
McKINNEY KENNETH		5'-11"	200	C
5. RESIDENCE ADDRESS (No., Street, City, State, Zip Code)		6. DATE OF BIRTH	7. PLACE OF BIRTH	
1800 HAINES N.W. ALBUQU. N.M. 87107		11-28-44	ALBUQ. N.M.	
8. CERTIFICATION OF TRANSFEREE (Buyer) - An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:				
a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year?	NO	d. Are you an unlawful user of, or addicted to, marijuana, or a depressant, stimulant, or narcotic drug?	NO	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: The actual sentence given by the judge does not matter - a yes answer is necessary if the judge could have given a sentence of more than one year. Also, a "yes" answer is required if a conviction has been discharged, set aside, or dismissed pursuant to an expungement or rehabilitation statute.)	NO	e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	NO	
		f. Have you been discharged from the Armed Forces under dishonorable conditions?	NO	
		g. Are you an alien illegally in the United States?	NO	
c. Are you a fugitive from justice?	NO	h. Are you a person who, having been a citizen of the United States, has renounced his citizenship?	NO	
I hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions in the affirmative is prohibited by Federal law from purchasing and/or possessing a firearm. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.				
TRANSFEREE'S (Buyer's) SIGNATURE			DATE	
Kenneth McKinney			4-7-78	
SECTION B - TO BE COMPLETED BY TRANSFEROR (SELLER)				
THE PERSON DESCRIBED IN SECTION A: <input type="checkbox"/> IS KNOWN TO ME <input checked="" type="checkbox"/> HAS IDENTIFIED HIMSELF TO ME IN THE FOLLOWING MANNER				
9. TYPE OF IDENTIFICATION (Driver's License, etc. Positive identification is required. A Social Security card is not considered positive identification.)			10. NUMBER ON IDENTIFICATION	
C. J. ...			XXXXXXXXXX	
On the basis of: (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver or otherwise dispose of the firearm described below to the person identified in Section A.				
11. TYPE (Pistol, rifle, etc.)	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	
Revolver	14	22	L590168	
15. MANUFACTURER (and importer, if any)				
P. G.				
16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used)			17. FEDERAL FIREARMS LICENSE NO.	
COLL'S MERCANTILE 2235 Bosque Farms Blvd. Bosque Farms, N. M. 87068			585-032-02-L7-C0233	
18. TRANSFEROR'S (Seller's) SIGNATURE		19. TRANSFEROR'S TITLE		20. TRANSACTION DATE
C. J. ...		Owner		4-7-78

GOVERNMENT EXHIBIT
A

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS FIREARMS TRANSACTION RECORD PART I - INTRA-STATE OVER-THE-COUNTER	TRANSFEROR'S TRANSACTION NO. F130
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NOTE: Please read and carefully follow instructions on reverse. Prepare an original only. Please type or print in ink.

SECTION A - MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER) (See Instruction 3)

1. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle) (Mr., Mrs., Miss) <i>Carpenter, Danny L.</i>	2. HEIGHT <i>5'9"</i>	3. WEIGHT <i>195</i>	4. RACE <i>W</i>
5. RESIDENCE ADDRESS (No., Street, City, State, Zip Code) <i>6408 Montgomery NE Apt. 206 Albuquerque, New Mexico 87109</i>	6. DATE OF BIRTH <i>7/4/47</i>	7. PLACE OF BIRTH <i>Austin, Texas</i>	

8. CERTIFICATION OF TRANSFEREE (Buyer) - An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:

a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year?	<i>No</i>	d. Are you an unlawful user of, or addicted to, marihuana, or a depressant, stimulant, or narcotic drug?	<i>No</i>
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: The actual sentence given by the judge does not matter - a yes answer is necessary if the judge could have given a sentence of more than one year. Also, a "yes" answer is required if a conviction has been discharged, set aside, or dismissed pursuant to an expungement or rehabilitation statute.)	<i>No</i>	e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	<i>No</i>
c. Are you a fugitive from justice?	<i>No</i>	f. Have you been discharged from the Armed Forces under dishonorable conditions?	<i>No</i>
		g. Are you an alien illegally in the United States?	<i>No</i>
		h. Are you a person who, having been a citizen of the United States, has renounced his citizenship?	<i>No</i>

I hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions in the affirmative is prohibited by Federal law from purchasing and/or possessing a firearm. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S (Buyer's) SIGNATURE <i>Danny Carpenter</i>	DATE <i>4/18/78</i>
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SECTION B - TO BE COMPLETED BY TRANSFEROR (SELLER)

THE PERSON DESCRIBED IN SECTION A: IS KNOWN TO ME HAS IDENTIFIED HIMSELF TO ME IN THE FOLLOWING MANNER

9. TYPE OF IDENTIFICATION (Driver's License, etc. Positive identification is required. A Social Security card is not considered positive identification.) <i>DL</i>	10. NUMBER ON IDENTIFICATION XXXXXXXXXX
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On the basis of: (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver or otherwise dispose of the firearm described below to the person identified in Section A.

11. TYPE (Pistol, rifle, etc.) <i>Pistol</i>	12. MODEL <i>RG 66</i>	13. CALIBER OR GAUGE <i>22LR mag</i>	14. SERIAL NO. <i>1C288557</i>
15. MANUFACTURER (and importer, if any) <i>RG Ind</i>			
16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used) <i>COLE'S MERCANTILE</i> 2235 Bosque Farms Blvd. Bosque Farms, N. M. 87068		17. FEDERAL FIREARMS LICENSE NO. <i>585-032-02-L7-C0233</i>	

18. TRANSFEROR'S (Seller's) SIGNATURE <i>Paul A. Hay</i>	19. TRANSFEROR'S TITLE <i>Owner</i>	20. TRANSACTION DATE <i>4-18-78</i>
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DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS FIREARMS TRANSACTION RECORD PART I - INTRA-STATE OVER-THE-COUNTER	TRANSFEROR'S TRANS- ACTION NO. # 133
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NOTE: Please read and carefully follow instructions on reverse. Prepare an original only. Please type or print in ink.

SECTION A - MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER) (See Instruction 3)

1. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle) (Mr., Mrs., Miss) <i>Carpenter, Danny L.</i>	2. HEIGHT <i>5'9"</i>	3. WEIGHT <i>195</i>	4. RACE <i>W</i>
5. RESIDENCE ADDRESS (No., Street, City, State, Zip Code) <i>6408 Montgomery NE # 806 Albuquerque, New Mexico 87109</i>		6. DATE OF BIRTH <i>7/4/47</i>	7. PLACE OF BIRTH <i>Austin, Texas</i>

8. CERTIFICATION OF TRANSFEREE (Buyer) - An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:

a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year? No	d. Are you an unlawful user of, or addicted to, marihuana, or a depressant, stimulant, or narcotic drug? No
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: The actual sentence given by the judge does not matter - a yes answer is necessary if the judge could have given a sentence of more than one year. Also, a "yes" answer is required if a conviction has been discharged, set aside, or dismissed pursuant to an expungement or rehabilitation statute.) No	e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution? No
c. Are you a fugitive from justice? No	f. Have you been discharged from the Armed Forces under dishonorable conditions? No
	g. Are you an alien illegally in the United States? No
	h. Are you a person who, having been a citizen of the United States, has renounced his citizenship? No

I hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions in the affirmative is prohibited by Federal law from purchasing and/or possessing a firearm. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S (Buyer's) SIGNATURE <i>Danny Carpenter</i>	DATE <i>4/19/78</i>
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SECTION B - TO BE COMPLETED BY TRANSFEROR (SELLER)

THE PERSON DESCRIBED IN SECTION A: IS KNOWN TO ME HAS IDENTIFIED HIMSELF TO ME IN THE FOLLOWING MANNER

9. TYPE OF IDENTIFICATION (Driver's License, etc. Positive identification is required. A Social Security card is not considered positive identification.)
CD Lic 722

10. NUMBER ON IDENTIFICATION
XXXXXXXXXX

On the basis of: (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver or otherwise dispose of the firearm described below to the person identified in Section A.

11. TYPE (Pistol, Rifle, etc.) <i>Shotgun</i>	12. MODEL <i>14</i>	13. CALIBER OR GAUGE <i>22LR</i>	14. SERIAL NO. <i>L625399</i>
15. MANUFACTURER (and importer, if any) <i>P G</i>			
16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Handwritten name may be used) <i>COLE'S MERCANTILE 2235 Bosque Farms Blvd. Bosque Farms, N.M. 07068</i>		17. FEDERAL FIREARMS LICENSE NO. <i>385-032-02-17-0233</i>	

18. TRANSFEROR'S (Seller's) SIGNATURE <i>[Signature]</i>	19. TRANSFEROR'S TITLE <i>Clk</i>	20. TRANSACTION DATE <i>4-19-78</i>
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DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS FIREARMS TRANSACTION RECORD PART I - INTRA-STATE OVER-THE-COUNTER			TRANSFEROR'S TRANS- ACTION NO. #148	
NOTE: Please read and carefully follow instructions on reverse. Prepare an original only. Please type or print in ink.				
SECTION A - MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER) (See Instruction 3)				
1. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle) (Mr., Mrs., Miss) BENNETT JACK		2. HEIGHT 6-2	3. WEIGHT 235	4. RACE W
5. RESIDENCE ADDRESS (No., Street, City, State, Zip Code) 3315 HENDRIX NE ALBUQ. N.M. 87107		6. DATE OF BIRTH 11-26-43	7. PLACE OF BIRTH DENTON TX	
8. CERTIFICATION OF TRANSFEREE (Buyer) - An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:				
a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year?	NO	d. Are you an unlawful user of, or addicted to, marijuana, or a depressant, stimulant, or narcotic drug?	NO	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: The actual sentence given by the judge does not matter - a yes answer is necessary if the judge could have given a sentence of more than one year. Also, a "yes" answer is required if a conviction has been discharged, set aside, or dismissed pursuant to an expungement or rehabilitation statute.)	NO	e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	NO	
c. Are you a fugitive from justice?	NO	f. Have you been discharged from the Armed Forces under dishonorable conditions?	NO	
		g. Are you an alien illegally in the United States?	NO	
		h. Are you a person who, having been a citizen of the United States, has renounced his citizenship?	NO	
I hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions in the affirmative is prohibited by Federal law from purchasing and/or possessing a firearm. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.				
TRANSFEREE'S (Buyer's) SIGNATURE <i>Jack Bennett</i>			DATE APRIL 26, 1973	
SECTION B - TO BE COMPLETED BY TRANSFEROR (SELLER)				
THE PERSON DESCRIBED IN SECTION A: <input type="checkbox"/> IS KNOWN TO ME <input checked="" type="checkbox"/> HAS IDENTIFIED HIMSELF TO ME IN THE FOLLOWING MANNER				
9. TYPE OF IDENTIFICATION (Driver's License, etc. Positive identification is required. A Social Security card is not considered positive identification.) <i>Col's M.C. #</i>			10. NUMBER ON IDENTIFICATION XXXXXXXXXX	
On the basis of: (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver or otherwise dispose of the firearm described below to the person identified in Section A.				
11. TYPE (Pistol, rifle, etc.) <i>Revolver</i>	12. MODEL <i>F38</i>	13. CALIBER OR GAUGE <i>30cp</i>	14. SERIAL NO. <i>0843679</i>	
15. MANUFACTURER (and importer, if any) <i>Colt</i>				
16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Merchant, etc. (if used)) COLE'S MERCHANTILE 2235 Bosque Farms Blvd. Bosque Farms, N. M. 87068 (305) 860-2947			17. FEDERAL FIREARMS LICENSE NO. 88-00233	
18. TRANSFEROR'S (Seller's) SIGNATURE <i>J. F. ...</i>			19. TRANSFEROR'S TITLE <i>Owner</i>	
			20. TRANSACTION DATE <i>4-27-73</i>	

Mr. HAYES. So they sent 14 heavily armed Federal agents into our place of business.

Senator DeCONCINI. Was that Mr. Teddy Alford? There are several?

Mrs. HAYES. Yes.

Mr. HAYES. The man's name was Roy Hodges in charge of the operation, a real goon if I ever met one. And they came into our place of business. Mr. Hodges came in, put his arm around me and said, "Paul, you are under arrest."

Mrs. HAYES. Alford.

Mr. HAYES. I said, "You are kidding. What in the world for?" He said, "For violation of BATF regulations, of breaking firearm regulations" and I looked at the badge—they said that is who he was. All right. So they asked me if I would get up and get out of my place of business. We live right behind the place of business. It adjoins the store. So I told him that I would. They told me that they were going to pick up 170, all my firearms, which later only proved to be 170, plus all of the ammunition. And I said, "Well, I would like to at least witness the taking." I said, "I believe I am entitled to witness the taking of my property" and I worked almost 30 years, 20 years at that time, to buy and pay for it.

They informed me that I had no rights, none whatsoever. They said, "Your rights ended when we came in here to arrest you" and you have no rights. And, "You get the hell out of this store." So I said, "I won't. It is my property, it is paid for, it belongs to me and I will stay in here." So with that, Hodges shook his fist at me and he said, "If I have to tell you one more time to get out of this building it is going to go real bad with you."

Well, I had a slight heart problem prior to that time and I was experiencing some pretty bad chest pains and I told Mr. Alford that I was a little bit sick. He said, "Well, I will assign one of the agents," he said. "One of the agents can take you back to your bedroom and you can go to bed." I did. I took a couple of heart pills and later I felt better.

So we tried to contact our attorney and tell him what was happening but he was in court in Albuquerque and we couldn't get him. So they took us to Albuquerque. While there was no physical abuse, there was certainly plenty of their terrible talk, you know. They called me some names that I wouldn't care to repeat before this committee because there are ladies present. And I don't think that kind of talk is necessary. Anyway, that is what they did.

They took us to town, arrested us, booked us. I think that is the proper name for it, and mugged us, at least took our pictures.

Then we posted bail for ourselves and got out. And my wife had a heart attack while we were in the courthouse. And one of those agents from the goon squad by the name of Barnett, claimed to be named Barnett, I said to him, I said, "Man, I think she is dead." I said, "Look, she is blue as she can be." I said, "Can't you do something?" So he was chewing tobacco which is quite all right. He spit over toward the ash-tray and he said, "Not my fault. I can't do anything for her." I said, "What do you mean it is none of your fault? You caused it, if you hadn't come out there and picked us up and arrested us she wouldn't

be in this condition." Of course she was unconscious at that time. She didn't know what was going on.

So that was initially what happened during the arrest.

And then that was in April and in July, I had a massive heart attack and had to have emergency open-heart surgery which cost me \$26,300 and with no insurance. I had to pay that. I will back up a little bit.

We are not young, you know. We had intended to retire last year. We thought we could retire, quit work, and retire. Now, thanks to the Bureau of Alcohol, Tobacco and Firearms, I can never quit. I doubt that I will live long enough to pay my bills. I am so deep in debt, was just sued last week in U.S. District Court in Albuquerque for another \$4,300 attorney fees which I can't pay. I just cannot pay it. I don't have the money to pay it.

So then they pulled the administrative, something called administrative hearing.

Senator DECONCINI. Mr. Hayes, let me get the sequence correct now. The arrest was made in April 1978?

Mr. HAYES. That is right.

Mrs. HAYES. Twenty-sixth.

Senator DECONCINI. The arrest was made the same time as this "strawman"?

Mrs. HAYES. No, the "strawman"—

Senator DECONCINI. That occurred before that?

Mrs. HAYES. Right.

Senator DECONCINI. That occurred when, February?

Mrs. HAYES. It started in April.

Senator DECONCINI. That is represented by these sales here of firearms.

Mrs. HAYES. That is right.

Senator DECONCINI. The forms from Teddy Alford, Kenneth McKinney, and Danny Carpenter. Is that right?

Mrs. HAYES. Yes.

Senator DECONCINI. And one more, Jack Barnett?

Mrs. HAYES. Yes.

Senator DECONCINI. These were the people who came in?

Mrs. HAYES. Yes.

Senator DECONCINI. And supposedly bought firearms and you were arrested as supposedly violating the laws based on these cases?

Mrs. HAYES. That is right.

Senator DECONCINI. You are selling to out-of-State residents? How many counts were you charged with?

Mrs. HAYES. Something like eight.

Senator DECONCINI. The arrests occurred in April 1978.

Mrs. HAYES. 1978.

Senator DECONCINI. Then what happened afterward? Then you had your heart attack?

Mrs. HAYES. In July.

Senator DECONCINI. Then you went to trial?

Mrs. HAYES. We had to wait 6 months. The doctor wouldn't release Paul to go to trial until January, January 1979.

Senator DECONCINI. You had a trial in January 1979?

Mrs. HAYES. Yes, a week of trial.

Senator DECONCINI. That is where the 7-minute verdict was?

Mrs. HAYES. It was after that. The judge gave instructions, they went out, the jury went out and then they went out just a few minutes and they came back for more instructions and soon as they got the last instructions, 7 minutes later they acquitted on all charges.

Senator DECONCINI. Were you both charged?

Mr. HAYES. We both were.

Senator DECONCINI. Are you both on the license?

Mrs. HAYES. No; I was charged with aiding and abetting because I took the money.

Senator DECONCINI. You were both acquitted?

Mrs. HAYES. Yes.

Senator DECONCINI. After the acquittal, then can you tell us what the next procedure was or involvement you had?

Mrs. HAYES. They took our license.

Senator DECONCINI. How did they do that?

Mrs. HAYES. The judge asked, they took it the day of the arrest.

Senator DECONCINI. You are out of business from that day on?

Mr. HAYES. We had to, the judge asked me for my license.

Senator DECONCINI. At the time of the acquittal?

Mr. HAYES. At the time of the trial. Before that, after that, between the arrest and the trial we had a letter from the Bureau and they operated on that letter.

Senator DECONCINI. That was a conditional license or something along that line pending outcome of the trial?

Mr. HAYES. That is what it was. Yes.

Senator SCHMITT. Without the confiscated firearms. Is that correct?

Mr. HAYES. Yes; they still have our firearms.

Senator SCHMITT. They had those during the period?

Mrs. HAYES. They still have them. They are in Albuquerque at the U.S. Marshal's office. They are still there. Paul went out last July and looked at them. But they are damaged pretty bad.

Mr. HAYES. They took special pains to damage those guns. They took new guns, new Winchesters, new Remingtons, Marlins, deliberately, someone had deliberately destroyed my property.

Senator DECONCINI. Did they do that in your premises?

Mr. HAYES. Part of it in my presence.

Senator DECONCINI. In the process of packing or taking them out?

Mr. HAYES. They took them out of the boxes.

Senator DECONCINI. Are those photos that you took?

Mrs. HAYES. Yes; our son took a lot of photos. But the agents took all of the pictures except what you see here. They said that we were not allowed to take them, it was against the law for us to have pictures.

Senator DECONCINI. Will you describe, were you there as they supposedly packed?

Mrs. HAYES. Both of us were.

Senator DECONCINI. Will you describe the treatment of the weapons?

Mrs. HAYES. They took us to Albuquerque right away, and booked us. They came up and got us while we were, they made bond for us. Until he brought us back—

Senator SCHMITT. Senator Willie Chavez?

Mrs. HAYES. No, Tibo Chavez. They brought us back home and they were packing all of our guns and they had cameras and went all over the house. I don't know what they were looking for, but just all over the house with cameras and Paul had failed to make his bed. I was going to make his bed. They said they were going to tear the bed up and look under the beds I guess. I don't know what they were looking for.

Senator DECONCINI. Did they show you a warrant?

Mrs. HAYES. Yes; It was a blanket warrant. In fact, they could have searched the whole city with that warrant.

Senator DECONCINI. Did you witness them then pack or store the guns?

Mrs. HAYES. Yes; they wouldn't let us.

Senator DECONCINI. Did you watch them take the guns from your business and put them in boxes?

Mrs. HAYES. We tried to.

Mr. HAYES. I went back in there the second time and told them that I wanted to make an inventory of what they were taking.

Mrs. HAYES. They made an inventory.

Mr. HAYES. He said we will attend that. That does not concern you in the least.

Senator DECONCINI. Did you see them pack or mistreat any of those weapons?

Mr. HAYES. Yes, very definitely.

Senator DECONCINI. Finally they told you to leave?

Mr. HAYES. Three times they threw me out.

Senator DECONCINI. How many guns involved did they take?

Mr. HAYES. One hundred and seventy.

Senator DECONCINI. What kind of value would you estimate that at?

Mr. HAYES. They were worth today at least, today's market prices, the way guns have increased in the past 2 years, \$70,000.

Senator DECONCINI. What were they worth in 1978?

Mr. HAYES. I would say \$40,000.

Senator DECONCINI. After you then go to trial for 1 week, you are acquitted, then go ahead and what other—

Senator SCHMITT. Excuse me, Senator, would you yield? Is it your understanding that had there been an actual violation of the law, the confiscation is supposed to be limited to the weapons involved in the transaction and not to the total property?

Mrs. HAYES. That is correct.

Senator SCHMITT. That is your understanding?

Mrs. HAYES. Right. When they took all the guns, the guns weren't in violation. But nevertheless they did. They took everything. They took all my—we have a pawnshop. I had to close the pawnshop for 4 months because I had no records. They sent out copies but they were not complete copies, so I couldn't continue to do business. So I had to close the pawnshop until I could clear it out and start over. They still have my records, all of our records. They still have everything. We haven't gotten anything back.

Senator DECONCINI. What happened after the trial? The trial was in January 1979.

Mrs. HAYES. Right. Then in February we went back to get our—the lawyer filed a motion to get our guns back. And the judge in Albuquerque released the guns to us and then the Government arrested the guns. We have papers where it says U.S. Government versus 170 guns plus so much ammo. So then we couldn't get the guns back.

Senator DECONCINI. Do you know on what basis that was?

Mrs. HAYES. Same charges, exact same charges.

Mr. HAYES. They were there for possible illegal purposes.

Senator DECONCINI. You never were able to get the guns back?

Mr. HAYES. Not yet.

Mrs. HAYES. We have to go to trial May 6, next month.

Senator DECONCINI. You have brought an action?

Mrs. HAYES. No; they brought an action.

Senator DECONCINI. They brought an action to get title to the guns?

Mrs. HAYES. Yes.

Mr. HAYES. They want to keep my property.

Mrs. HAYES. We hired Mr. Koch here to try to get our property back from them. Then we had to go to a hearing, I did. Paul had had some trouble with his heart and the doctor wouldn't allow him to go. So in September we had an administrative hearing. I went alone with the lawyer and it was an all-day business. We had a 30-minute break for lunch. It was the same charges, the same witnesses, the same depositions, we went through the complete criminal trial that day.

Senator DECONCINI. This is for the license?

Mrs. HAYES. For the license. They did issue the license back to me.

Senator DECONCINI. You have the license now?

Mrs. HAYES. He does.

Mr. HAYES. The first day—it was blank, it wasn't signed by the regional director and we wouldn't accept it because I thought, well, since they have done so many dirty, low, underhanded tricks, no telling what they are trying to do this time. So they sent me an unsigned license. I wouldn't accept that thing. And I called Mr., I believe it was Mr. Justice, Justin, in Dallas, Tex., and he said don't operate on that unsigned license.

Senator DECONCINI. Who is he?

Mrs. HAYES. You didn't call him. Mr. Bernard I think you talked to. I would like to go back a few minutes. When we realized they were agents, we knew they were agents when we were selling the guns, but we didn't know we were doing anything wrong because they were New Mexico license plates. We called Mr. Justice in Dallas, regional director at that time before Mr. Bernard came in, and we asked Mr. Justice, Paul did, why, what was going on, what did they want from us? We told him exactly what we had done. He said, well, don't sell them any more guns if they come back. He said they are from the Enforcement Division, I believe that is what he told me, and don't sell them any more guns and he gave us his home phone and he said if you have any more trouble with them, call me night or day at home or in the office.

Well, then they came back and that is when, they didn't come back

any more to buy guns after we called Mr. Justice, but on April 26, they came back and arrested us in the afternoon. It was in the afternoon about 1:30. I was so scared, we were so petrified, because we came from a very secure background and being raised as a minister's daughter, I had been sheltered all my life. I could not believe that the U.S. Government would do this to anyone. I just, it was unreal to me.

So I sat on the couch and I said, I can't believe this. I don't believe this is happening. The Government is supposed to be for the people, not against the people. So anyway, when they started to put us in the car, my husband asked them not to handcuff me, he said please don't handcuff my wife, he said she isn't going to run away. So they didn't handcuff either one of us, but they took us up to the Federal building and I think it is on the 11th floor, wherever they are. That is when I passed out. I told Mr. Barnett, I said, "I am sick." We just came up the elevator, I said, "I am terribly sick." I said, "I have to go to the restroom." As we got almost to the door, I remember reaching for the knob, I don't remember anything else. Then when I woke up, there was a bearded man over me screaming, "Get the rescue squad." So I raised up, Paul helped me up off of the floor, they took me in to an office and they did call a nurse and then I started throwing up and I vomited for like 30 minutes before I could finally control myself.

Then they took us over to the, I believe it was the magistrate and booked us.

Senator SCHMITT. After the trial, as the chairman has asked, you then got your license back?

Mrs. HAYES. Not until September 1979. The hearing was——

Senator SCHMITT. And the present situation is that you——

Mrs. HAYES. We have a license.

Senator SCHMITT [continuing]. Are being sued for the ownership of the guns, title of the guns.

Mrs. HAYES. Right.

Senator SCHMITT. When is that trial?

Mrs. HAYES. May 6. So evidently it is the same charges all over again.

Mr. HAYES. This makes the third time they tried us. They can call any time the detective determines they want us because I don't know anything about those technical terms, don't know anything about the law.

I will say this, if this is law in the United States, then I am damned sorry I ever fought for this country.

Mrs. HAYES. Another thing, they haven't quit. We have had many undercover agents come in the store since that time. By this time we can spot them. One fellow, I think it was about 3 weeks ago, he came in with a tape recorder. That is what they do, they always have a tape recorder. He was looking at some of our pawn items, he bent over and his shirt came up and he had a tape recorder in the back of his pants.

Just a couple of weeks ago we had three of them come in and try to buy a gun, same thing. I don't understand how they think we can be so stupid to do that all over again. For \$36, which we made on the guns that we sold them, we would go through this? That isn't logical.

Senator DeCONCINI. You said—excuse me, Senator. You said that you knew they were undercover agents, you knew they were coming in?

Mrs. HAYES. Yes; we never had any trouble like this.
 Senator DECONCINI. In April 1978. How did you happen to know that?

Mrs. HAYES. One after another, the same time.
 Senator DECONCINI. Did you know them personally?

Mrs. HAYES. No.

Senator DECONCINI. How did you know they were undercover?

Mrs. HAYES. Because you can tell.

Mr. HAYES. I have been in law enforcement ever since, well about 28 years. I was constable for 10 years, and for almost 30 years now I have been a bonded special deputy sheriff and still am in our county. And after that many years, you can pretty well tell a law official when you see one. You can normally tell by their pattern of action.

Senator DECONCINI. You didn't attempt to ask them?

Mr. HAYES. I did.

Mrs. HAYES. They lied.

Mr. HAYES. They said no way, no, no, no.

Senator DECONCINI. Did you ask them if they were law enforcement or undercover agents?

Mr. HAYES. Yes.

Mrs. HAYES. Both of them.

Mr. HAYES. Carpenter and Alexander, they said, "No, what makes you think that?"

Mrs. HAYES. One of them told us, "I am staying with my brother-in-law here who lives here." But it was a nightmare. It was a complete nightmare.

Senator DECONCINI. For the record I would like to introduce at this time without objection a letter from the Department of Treasury, Mr. Stuart. It is a memo of October 17, 1979. The subject is from the hearing officer regarding the hearing on their license.

[The information follows:]

OCTOBER 17, 1979.

Memorandum to: Regional Regulatory Administrator.

Thru: F and E Advisor.

From: Hearing Officer.

Subject: Paul A. Hayes, Cole's Mercantile, 2235 Bosque Farms Blvd., Bosque Farms, N. Mex.

Pursuant to Amended Notice of Hearing, dated August 15, 1979, I held the hearing in the subject case as scheduled.

Basis for denial cited by ATF are willful violations listed in the Notice of Denial. However, applicant pleads that any errors were due to ignorance and to unclear instructions from ATF. In addition, applicant cited good faith efforts to correct errors brought to their attention in the two compliance inspections conducted (1975 and 1978) since license received in 1969. See exhibit A of Notice of Denial and applicants exhibits C and D.

A major portion of the hearing concerned the confusion regarding strawman transactions. Applicant claimed their understanding of Agent Gonzales was that as long as a resident signed forms 4473 the person actually receiving the gun was none of their concern. And they followed that advice to the letter. In the instant case, ATF used the strawman tactics to such an extent that the applicant became alarmed and called the Dallas area supervisor.

In view of the Director's position on strawman tactics, as stated to the Senate Oversight Committee, and the clarification provided by Industry Circular 79-10, I recommend that the applicant's license be issued.

HERSCHEL N. STEWART,
Hearing Officer.

Senator DECONCINI. Mr. Hayes, do you have any information to believe that they are still conducting "strawman" cases in New Mexico?

Mr. HAYES. I know they are because they were in the Albuquerque pawnshop on the corner of Fifth and Lomus just last week.

Senator DECONCINI. How do you know that?

Mr. HAYES. I know that because one of the men that is a very close friend of mine, a deacon in our church there, and he recognized the "strawman" tactics by what they had done to us and he told the lady that is running that pawnshop, he said, "Those two men are Federal agents," and they immediately left the premises. They were too close to the heat, to the stove, and they couldn't stand the heat.

Senator DECONCINI. Do you know of any arrests they made?

Mr. HAYES. Outside of me, none. In New Mexico, I am the only one that I know of.

Mrs. HAYES. We were so curious why would they pick on an elderly couple out in the country. We have no formal education. We just have high school and Paul doesn't even have that. He has tried school. But why would they pick on us? Is it because they thought we were ignorant?

Senator DECONCINI. I don't know. That is a good question. I intend to ask them.

Mrs. HAYES. We don't have a big operation at all.

Senator DECONCINI. Have you had experience since your incident with anyone else who is a gun dealer involving a "strawman" operation? Have you come across any or heard of any?

Mr. HAYES. I was in Ron Peterson's gun shop in Albuquerque, I would say 6 weeks ago. That same Danny Carpenter had some other idiot with him, I don't know who he was, he didn't identify themselves and I didn't ask, I was to infuriated at recognizing Carpenter as the man that set me up—

Senator DECONCINI. A week ago today?

Mr. HAYES. No, about 6 weeks ago. They were pulling the same stunt on a clerk in Ron Peterson's gun shop and asking how much is the price of this gun, how much is the price of that gun. I got so mad—

Senator DECONCINI. The same man you are sure?

Mr. HAYES. No question, Danny. He turned around to me and said, "Oh." Said, "There you are, how are you?" I said, "Little do you care." He said, "That is just a matter of speech." So I almost, that was almost the end of me I got so mad. I asked the clerk, I said, "Do you know who these people are?" He said no. I told him and they left.

Senator DECONCINI. Had you ever had any dealings with the BATF other than the licensing procedures before July 1978?

Mr. HAYES. Only a routine inspection.

Senator DECONCINI. Had you ever had violations?

Mrs. HAYES. We had written—

Senator DECONCINI. Called your attention?

Mrs. HAYES. Yes.

Senator DECONCINI. You had?

Mrs. HAYES. Yes.

Senator DECONCINI. You corrected it?

Mrs. HAYES. Yes.

Senator DECONCINI. In an expeditious manner or did they hound you?

Mrs. HAYES. No, they were very nice to us.

Senator DECONCINI. What kind of violation?

Mrs. HAYES. Like sometimes the customer had left off some information on the form. Then we contacted them and got it. They were all in order, our books were in order.

Senator DECONCINI. You never had any warnings?

Mrs. HAYES. Oh, no.

Senator DECONCINI. You never had any administrative hearings regarding your license?

Mrs. HAYES. No.

Mr. HAYES. No, nothing.

Mrs. HAYES. We were out in the country minding our own business, trying to make a living.

Senator DECONCINI. Was that your sole source of living?

Mrs. HAYES. We have a gas—

Mr. HAYES. We have an American Tile Business, we sell gasoline, propane, when I can I fix flats. I have to do anything now that I can to make a living.

Senator DECONCINI. Are you still in that business now?

Mr. HAYES. Yes.

Senator DECONCINI. Have you replaced your inventory?

Mr. HAYES. Partially.

Mrs. HAYES. We tried.

Mr. HAYES. They destroyed fully two-thirds of our business, the people that I sold guns to are afraid to come in the store. They are afraid an agent will be in there and they will be in violation of the law unknowingly.

Mr. KOCH. Mr. Chairman, Senator Schmitt, I didn't tell my clients I was going to speak for them, but I think the sequence is a little bit disjointed here and I think it is important for the committee to understand exactly what happened. I know you are not familiar with Mr. and Mrs. Hayes, but in Valencia County, N. Mex., they are very respected citizens, been there over 30 years, have been prominent members in that community. They live in a small rural community with some 3,000 people. It is a small incorporated village. These people run, they have two gas pumps out front, they have a very small tiny grocery store, and they have their pawnshop business where they sell a lot of turquoise jewelry and their guns. That is the type of business operation they had.

The ATF agents came in in April 1978 and began trying to, in my opinion, set these people up and trap them into trying to sell a gun to an out-of-State resident, even though they clearly—this is all documented on tapes and it is documented in the transcript of the trial which can be made available to the committee if the committee is ever interested, but in fact on numerous occasions Mr. Hayes would tell

these people I cannot sell a gun to a nonresident, but these people kept harassing. What would happen in these occasions was the gun would be sold to the New Mexico resident and then he would in turn give it to a nonresident. That is how the "strawman" action works.

They immediately seized all of their inventory, took these people out of business—you heard a little bit about the medical testimony. I have been in this case since the inception on and off and I am in it this day. What happened shortly thereafter, 2 days before trial because of the pressure and we got medical documentation for it, I have a letter here from Dr. Lofkin of the Cardiology Associates of New Mexico, a very respected cardiologist in New Mexico, that Mr. Hayes had a serious massive heart attack 2 days before we were to go to trial in July 1978. And that naturally postponed the trial. He had open-heart surgery and we had to wait until January the following year to go to trial again.

In the interim, I mean after they were acquitted at trial and this was a very, very short deliberation period, a matter of 7 minutes as the Hayes said, the minute they went in there, the jury knew this was bogus. It was a sham and it was an injustice to these two people.

Then they decided not to reissue their license. So we had to go through an administrative hearing. We won that administrative hearing and this committee has the document showing that their findings were essentially, well, the Hayes might not have understood the procedures, and in fact the document indicates the Hayes when they became concerned about what these agents were doing actually called ATF and asked them, "What are these people doing here in my shop?" Evidence is also prevalent that the Hayes, any time they had any question about procedures that weren't clear with ATF, they would call somebody. They would either call the Albuquerque office or the Dallas office and also try to find out what in fact was a proper procedure.

They won the administrative hearing, got back their license. Now there is a forfeiture proceeding coming to trial in the Federal district court in New Mexico where they are trying to confiscate and keep all the weapons that the Hayes had. This forfeiture proceeding is on the exact same things the people were acquitted of in the criminal proceeding.

Senator DECONCINI. That is the basis for the forfeiture?

Mr. KOCH. That is the basis of the forfeiture now. I have spoken with the U.S. attorney and we have indicated to them that the Hayes are considering filing suit against the Bureau of Alcohol, Tobacco and Firearms and the individual agents. They indicated, "We don't want a suit, don't sue us, if you don't sue us, we will give you your guns back." That is the sort of damper they are holding over these peoples' head at the time.

Senator DECONCINI. That has been said to you?

Mr. KOCH. By Mr. Rick Smith, Assistant U.S. attorney.

Senator DECONCINI. If you don't bring a lawsuit, they will drop this other suit?

Mr. KOCH. He says he has that on authority from ATF. I don't know if it is proper for him to be discussing Federal judicial procedures with an administrative agency.

Another concern I would like to stress to the committee on behalf of my clients, one reason they have been a little bit hesitant on filing this suit is they are afraid if they go after ATF that in fact they will be set up again with some bogus charges, criminal charges.

Senator DECONCINI. Is this the form of stipulation?

Mr. KOCH. Yes.

Senator DECONCINI. That has been submitted to you in the pending case?

Mr. KOCH. That is correct, Your Honor—I mean, Mr. Chairman.

Senator DECONCINI. The second to the last paragraph.

Senator SCHMITT. He likes "Your Honor."

[Laughter.]

Mr. KOCH. I am used to speaking to judges.

Senator DECONCINI. So am I.

Mrs. HAYES. The last paragraph is the one—

Senator DECONCINI. Says they will dismiss the case. Without objection, we will put this in the record at this point along with the, what are these forms called, 4473 forms.

[The information follows:]

U.S. DEPARTMENT OF JUSTICE,
U.S. ATTORNEY,
Albuquerque, N. Mex., December 19, 1979.

Re *USA v. One Hundred Seventy Firearms, et al.*

Mr. JAMES L. PORTER,
Attorney at Law,
Albuquerque, N. Mex.

DEAR JIM: Enclosed is a draft stipulation reflecting our conversation Monday. I'm reasonably sure that its complete, and accordingly, I've signed it.

Please let me know of your progress; I'll draft an order in the meantime, and as soon as the stipulation has been signed we can meet, review, and initial the order, and get this case closed out.

With best regards.

Very truly yours,

R. E. THOMPSON,
U.S. Attorney,
RICHARD J. SMITH,
Assistant U.S. Attorney.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 79-124 JB
)	
ONE HUNDRED SEVENTY FIREARMS)	
AND FIFTY-FOUR THOUSAND FIVE)	
HUNDRED TWENTY-EIGHT ROUNDS)	
OF AMMUNITION,)	
)	
Respondents.)	

S T I P U L A T I O N

IT IS STIPULATED AND AGREED by and between the Plaintiff and the Claimants herein, acting through and on advice of counsel, that this action may be disposed of on the following terms:

1. The United States renounces and withdraws its claim for the forfeiture of each and every firearm here in issue, and all quantities of ammunition here at issue, with the specific exception of Item 170, Exhibit A of the Complaint for Forfeiture, to-wit: one Harrington and Richardson "Handy Gun," .410 gauge, serial number 2987.

2. The Claimants herein expressly decline to assert any interest in the Harrington and Richardson "Handy Gun" described above, and expressly do not oppose the claim of forfeiture as to it on the part of the United States.

3. The United States agrees to return all firearms and ammunition to the place where they were seized on 26 April 1978. In accepting the return of the firearms and ammunition at the time and place of their delivery, the Claimants reserve the right to file, if appropriate, an administrative claim with the Bureau of Alcohol, Tobacco, and Firearms for any physical injuries to, or losses of, any of the seized items.

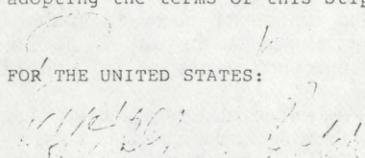
4. The United States waives and renounces any claims of violations of ATF Regulations by the Claimants at any time prior to the filing of this Stipulation. It is the intent of all parties to this Stipulation that the Claimants, having received

notice of ATF's decision to renew their firearms dealer's license, will begin the operation of their firearms business with a "clean slate." The Claimants will make a bona fide effort to comply strictly with applicable statutes and regulations, and the United States will not attempt to discover and prosecute violations of those statutes and regulations which may have occurred before the date of this Stipulation's filing.

5. The Claimants waive and renounce any and all claims, except as specifically set forth above in Paragraph 3, which may have arisen or may arise on their behalf against the United States, its officers, agents, or employees, or any agency or division of Government of the United States, as a result of the investigation and prosecution of ATF Investigation No. 3001-0178-0014F, filed in this Court as United States v. Hayes, et al., No. 78-112 Criminal, subsequent ATF administrative proceedings concerning the Claimants' firearms dealer's license, or this action for forfeiture.

IN SO STIPULATING, the parties hereto acknowledge and agree that judgment may be entered at any time, upon presentation to the Court of a final Order, initialled by counsel for the parties, adopting the terms of this Stipulation.

FOR THE UNITED STATES:



 RICHARD J. SMITH
 Assistant U. S. Attorney

FOR THE CLAIMANTS:

 PAUL A HAYES
 Claimant

 JAMES L. PORTER
 Attorney for Claimants

 WILLIE F. HAYES
 Claimant

Senator DeCONCINI. I have no further questions. I appreciate your being here, Mr. and Mrs. Hayes.

Mr. HAYES. I would like to make one more statement.

Senator SCHMITT. Mr. Chairman, it might pay to have the occupations of the individuals who signed those forms determined either by testimony from the Bureau or—

Senator DeCONCINI. I intend to ask them if they were in fact employees of the Bureau.

Senator SCHMITT. I have no questions.

Mr. KOCH. May I submit a letter from Dr. Lovekin stating since July of last year that he feels any further infraction by the U.S. Government against these people is going to result in the severe heart condition, aggravation of Mr. Hayes' heart condition but still nothing is solved.

Senator DeCONCINI. Without objection, we will put it in the record. [The information follows:]

LETTER FROM WILLIAM S. LOVEKIN, CARDIOLOGY ASSOCIATES OF
NEW MEXICO

July 8, 1979.

TO WHOM IT MAY CONCERN: Mr. Hayes has been under my care since December 22, 1975. He underwent coronary artery bypass surgery on July 11, 1978 for severe coronary artery disease. Postoperatively his course was complicated by mild central nervous system problems, chief of which was recent memory loss, not only of the operative and postoperative period, but of names and events and circumstances from the preoperative period. This has improved somewhat, but still exists and may well reflect changes in cerebral blood flow associated with the intraoperative period.

Important in the overall consideration of Mr. Hayes' cardiac illness has been the very significant stress caused by litigation on the part of the Federal Government concerning his alleged illegal sale of firearms in his place of business. When he was seen by me on January 23, 1979 he expressed great relief that he had been acquitted on all counts of criminal action in court and that the affair was over.

When I saw him again on May 30, 1979, he was having considerable recurrence of musculoskeletal chest pain and back pain, and considerably increased trouble from asthmatic wheezing. He admitted new legal proceedings on the part of the Government, this time no longer in the form of criminal proceedings but the civil actions which he interpreted as "harassment."

There is no doubt in my mind that Mr. Hayes' bronchial asthma and his musculoskeletal chest pain, which are easily confused with cardiac pain, are made worse by the stress of recurring legal actions against him. These problems and the symptoms of shortness of breath and chest pain brought on by the stress, make caring for his cardiac difficulties extremely difficult.

Any help that may be offered in relieving Mr. Hayes of situations that clearly are inimical to his health would be greatly appreciated, and if I can offer any further specific information, I would be happy to do so.

Sincerely,

W. S. LOVEKIN,
Medical Doctor,

Mr. HAYES. I would like to say if the Bureau of Alcohol, Tobacco and Firearms would do the job to which they have been assigned and do it properly and leave decent law-abiding citizens alone, and go after the criminal, America might be a little bit better place to live.

Senator DeCONCINI. Mr. Hayes, I can certainly sympathize with your feelings. I would be outraged also, but there has been a new director of that agency that went in in early 1979. That is what has prompted these hearings and I am most appreciative that you and your wife would come forward to give us some evidence. He was not there when this

case began. I know that from a point of reference. I am concerned and he will testify as to what action is being done now and in the future toward you and the other people.

It certainly indicates that at least they are talking about a dismissal, but I can understand your concern of what kind of action is going to be down the road if in fact you reject BATF's offer of settlement.

Mr. HAYES. I will not sign.

Senator DeCONCINI. I certainly thank you for coming forward.

Mrs. HAYES. Thank you.

Mr. HAYES. Thank you.

[The Hayes subsequently submitted for the hearing record the following statement:]

LETTER FROM MRS. PAUL A. HAYES

Bosque Farms, N. M.
April 23, 1980

Honorable Dennis DeConcini
United States Senate
Washington, D.C. 20510

Dear Senator DeConcini:

As you recall, my husband and I testified at the hearing held on April 17, 1980. We wish to express our sincere gratitude for your concern regarding our problem with the Bureau of Alcohol, Tobacco and Firearms.

We both were extremely nervous and we failed to include certain pertinent details as follows:

1. Due to our financial burden by lawyers and medical expenses, we have been unable to restock our business to any extent and also due to the reluctance of the general public to trade at our store after the B.A.T.F.'s raid, our business showed a loss of \$17,287.00 in 1978 and a profit of \$3,467.00 in 1979. It is evident the store is no longer supporting us. B.A.T.F. has literally taken away our livelihood.
2. We are curious to know why we were not given a simple warning by B.A.T.F. if they felt we were not complying with their regulations. We thought we were doing what we were told to do by Mr. Charles Gonzales who was the first B.A.T.F. inspector to come to our store. He pointed out our bookkeeping errors which I corrected immediately. At that time I ask Mr. Gonzales what we should do if a customer lied on the form 4473. Mr. Gonzales said, "if they lie on the form 4473, that is not your concern, that is our job."
3. After this happened to us, people in our area have called B.A.T.F., one from our telephone, reporting felons who had committed crimes with guns. B.A.T.F.'s stock answer was, "We do not handle this type of action." For instance, a Colorado exconvict, Kevin O'Brien, Rt. 5, Box 435, Los Lunas, N. M., bought four guns in Albuquerque and one gun from the Whites Auto in Bosque Farms, N. M. on December 26, 1978, recorded on page 34, transaction 10 of their Federal Firearms records. O'Brien lied on all five of the forms 4473, Section A, and paid for the five guns with bad checks. He is now serving time in New Mexico on the check charges only. Our local Bosque Farms Police was told by the B.A.T.F.'s Office that there would be no prosecution by the Government because, "they felt that Mr. O'Brien had suffered enough." I have obtained one copy of the Form 4473 from our local District Attorney's Office which I have attached.
4. I would like to add that we live from day to day in fear of B.A.T.F.'s lies and entrapment tactics. We have had so many visits in the last two years from B.A.T.F. informants and agents in their undercover capacity trying to get us to break regulations. The stress of this way of life is having untold effect upon my husband's heart condition.

We would appreciate it very much if the above could be submitted into the hearing transcript held before your subcommittee on April 17, 1980.

Thank you again.

Sincerely yours,

Mrs. Paul A. Hayes

Mrs. Paul A. Hayes

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS FIREARMS TRANSACTION RECORD PART I - INTRA-STATE OVER-THE-COUNTER			TRANSFEROR'S TRANSACTION NO. 2039	
NOTE: Prepare in original only. All entries other than signatures must be typed or clearly printed in ink. All signatures on this form must be in ink.				
SECTION A - MUST BE COMPLETED PERSONALLY BY TRANSFEEE (BUYER) (See Notice and Instructions on reverse.)				
1. TRANSFEEE'S (Buyer's) NAME (Last, First, Middle) (Mr., Mrs., Miss) O'BRIEN KEVIN MICHAEL		2. HEIGHT 5'11"	3. WEIGHT 170	4. RACE W
5. RESIDENCE ADDRESS (No., Street, City, State, Zip code) RTS Box 435 LOS HUNAS N.M.		6. DATE OF BIRTH 1-17-57	7. PLACE OF BIRTH N.M.	
8. CERTIFICATION OF TRANSFEEE (Buyer) - An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:				
a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year?		No	d. Are you an unlawful user of, or addicted to, marijuana, or a depressant, stimulant, or narcotic drug?	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: The actual sentence given by the judge does not matter - a yes answer is necessary if the judge could have given a sentence of more than one year. Also, a "yes" answer is required if a conviction has been discharged, set aside, or dismissed pursuant to an expungement or rehabilitation statute.)		No	e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	
c. Are you a fugitive from justice?		No	f. Have you been discharged from the Armed Forces under dishonorable conditions?	
			g. Are you an alien illegally in the United States?	
			h. Are you a person who, having been a citizen of the United States, has renounced his citizenship?	
			No	
I hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions in the affirmative is prohibited by Federal law from purchasing and/or possessing a firearm. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.				
TRANSFEREE'S (Buyer's) SIGNATURE Kevin M. O'Brien			DATE 1-26-79	
SECTION B - TO BE COMPLETED BY TRANSFEROR (SELLER) (See Notice and Instructions on reverse.)				
THE PERSON DESCRIBED IN SECTION A: <input type="checkbox"/> IS KNOWN TO ME <input checked="" type="checkbox"/> HAS IDENTIFIED HIMSELF TO ME IN THE FOLLOWING MANNER				
9. TYPE OF IDENTIFICATION (Driver's License, etc. Positive identification is required. A Social Security card is not considered positive identification.) Driver's License			10. NUMBER ON IDENTIFICATION XXXXXXXXXXXX	
On the basis of: (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver or otherwise dispose of the firearm described below to the person identified in Section A.				
11. TYPE (Pistol, Revolver, Rifle, Shotgun, etc.) Shotgun	12. MODEL 52411 Hogue	13. CALIBER OR GAUGE 12 ga	14. SERIAL NO. 07416R211	
15. MANUFACTURER (and importer, if any) Browning				
16. TRADE, CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used.) Sears 600 Coronado CTR Albuquerque, New Mexico 87111			17. FEDERAL FIREARMS LICENSE NO. G 902297	
18. TRANSFEROR'S (Seller's) SIGNATURE C. Ellison		19. TRANSFEROR'S TITLE Sales		20. TRANSACTION DATE 1-27-79

STATEMENT OF DONALD VINGINO

Senator DECONCINI. Our next witness will be Donald Vingino, Tucson, Ariz. Would you please come forward? Mr. Vingino, we are pleased to have you here today with your lawyer, Mr. Gene Lane. You may present any testimony that you have.

Give us the background, name, address, what business you are in.

Mr. VINGINO. My name is Donald Vingino. My store is located in Tucson, Ariz., 2128 South Sixth Avenue. Primarily we are in the jewelry business and essentially the gun business is probably 10 percent of our business. Although my case is not as tragic as Mr. Hayes, it is very similar in the "strawman" type scam.

It was orchestrated in February 1977. We were indicted in September 1977. We went to trial. The case was dismissed by a Federal judge by the name of Judge Frye.

Senator DECONCINI. When did you go to trial?

Mr. LANE. It would have to be November 1977.

Mr. VINGINO. 1977. The decision rendered by the judge was the case would be dismissed. Following that we received a letter that our license was to be revoked based on the allegation.

Senator DECONCINI. When did you receive that?

Mr. VINGINO. It was 2 weeks after the decision by Judge Frye.

Mr. LANE. November 1977.

Mr. VINGINO. After two administrative hearings we are still in limbo as to the revocation of the license. Again, it is a sad situation and there has been a lot of time spent, money spent on attorney fees, a lot of mental anguish, total turmoil as far as the business is concerned. As far as our business today, the gun business is totally ruined. There is no way to recover the business as far as guns, because of the adverse publicity. Through the television media, accusations made to myself and the other nine gentlemen in Tucson, that we were mixed up with organized crime, and et cetera. So it left a damper on behalf of a lot of our customers.

Senator DECONCINI. Do you have a license now?

Mr. VINGINO. Basically what I have is a letter to operate.

Senator DECONCINI. What happened in July this year?

Mr. VINGINO. I guess that is it.

Senator DECONCINI. Do you have another hearing or is that the decision?

Mr. LANE. We were advised that the license will be extended under this letter until July. And then if the proceedings still aren't over with, we could apply and ask for another extension. Whether or not they will grant it will depend upon who is making the decision for the Bureau at that time.

Senator DECONCINI. Can you give us a little background as to the procedures of a revocation hearing?

Mr. LANE. The way they usually, the way they conducted this particular hearing—

Senator DECONCINI. When was that?

Mr. LANE. I would like to give just a bit of background if I might. My name is Eugene Lane. I am an attorney in Tucson, have been

practicing over 20 years. Prior to that time I was a highway patrolman. I am also State commissioner, industrial commissioner for the State of Arizona. I got involved in this action representing the corporation which is XA Traders. Mr. Vingino was represented by another associate of mine by the name of Mr. Crane as an individual for he was charged criminally as the corporation is charged criminally. So the background to that, it was a "strawman" action which Mr. Vingino was charged with. Prior to the hearing we filed a motion to suppress evidence. The particular evidence that they want to suppress was the tapes. They had two tapes concerning the two transactions involved in this matter. That would be in September 1977.

Judge Frye, the Federal District Court of Arizona, heard those tapes, listened to both of them completely, and in his opinion he stated that they were of no probative value whatsoever. There were large gaps in the tape, unidentifiable sounds, persons being identified that were not speaking.

Senator DECONCINI. Excuse me. That was prior to the trial of November 1977?

Mr. LANE. Yes.

Senator DECONCINI. So they were ordered not to be admissible?

Mr. LANE. Right. The judge entered that they were not to be admissible.

Senator DECONCINI. Were they admissible in the hearing for revocation?

Mr. LANE. Well, they were and they weren't. This is the real touchy part of these administrative hearings. So when it came to trial, the State, I mean the Government stated that they cannot go to trial without those tapes even though they had all the witnesses there that could have testified as to what happened there.

They said they needed the tapes, they were not ready to go to trial, so they moved for dismissal, and it was granted. It was dismissed and then right the next day they filed a notice, appeal to the Ninth Circuit Court of Appeals saying they want those tapes admitted, that Frye was wrong. Just before that thing is ready to be heard or in the meantime, they come in and they dismiss the appeal. So this has put Vingino as well as the corporation in the position of defending two actions at the same time, incurring legal expenses along the way.

Immediately after they withdrew their appeal to the Ninth Circuit Court, 2 weeks later we got a notice that they are going to revoke the license of XA Traders, not Vingino personally, but against XA Traders for they are the licensed holders. So we are told we have a right to an administrative hearing. Administrative hearing is in the nature of a sham. They have a young man there that I presume tries to do a good job, but he says we are going to allow all the evidence in that you want.

I said, "Well supposing I want to put in the telephone directory of Tucson?" "You can put that in, you can put in anything you want. This is just informal. We just want to see if there is a possibility here that maybe you are not being charged properly or something of that nature." Volumes of evidence went in.

Two weeks later, he says, "Well, we are going to revoke but you are

entitled to a formal hearing now before an administrative law judge." So then we get that notice, we go through that hearing. At that hearing we raise our objections where they were trying to introduce these tapes again.

The same situation; the administrative law judge said, "I am not bound by what Federal judge held at this case, but I am going to do this for you people. I will not admit those tapes in for everything. I am just going to listen to a little bit of them to try to identify a voice here or two here. I am going to take them back to Washington with me," this is in the record, "and after I have listened to those tapes I will make my own transcript."

Well, I think the Bureau made about five or six transcripts what they called refining it. They refined it six times and then they are still refining it as of last week. But, anyway, after he came, the administrative law judge came back here to Washington. About 1 month later he said he got sophisticated equipment that he is able to listen to the tapes and read the Government's transcript and they are beautiful. He is going to admit it all in without giving us a chance to impeach the transcript at all, without giving us an opportunity to say that it is not the proper voices, whatever. He said, "I am letting it in."

With that tape alone, he said, "we are going to"—he wrote his decision that they are going to revoke the license, and it was subsequently affirmed by this director here that they are going to revoke his license.

We have gone for a petition for review. Now we are talking about 1978, 1979. The petition for review comes up and we are waiting for the certification of the record, supposed to be furnished by the Bureau. Two months go by, officially we get a certification of the record that is an abomination. You couldn't read it. It was disoriented. They didn't have all the evidence in there, they didn't have transcripts or anything that is supposed to be in there. So we objected to the record.

At the time of our objection the Attorney General admitted that this is a terrible record that they furnished us, but we will give you a new record. We are going to present a new one. So, about 6 months ago they presented us with a new record plus some new transcripts that the judge didn't even have at that time, but they presented some new transcripts of these old tapes. So I am going through that. Of course we object again.

So at the present posture of this case, is that it is before the court on our motion to—

Senator DECONCINI. Which court?

Mr. LANE. This in Federal District Court of Arizona. Mary Ann Richie is the presiding judge. Right now the case is pending as to whether or not our motion to dismiss the action will be granted because if they take the tapes out at the hearing that goes before the administrative law judge, there was no evidence that Mr. Vingino or anybody had any knowledge, any information that the fellow that purchased or was supposed to purchase this weapon was in fact a felon, nothing in it. The only place is somewhere in the tape is one sentence saying, "Oh, so you are a felon?" And they identified that person as being Mr. Vingino. We say it isn't. So that is where we are now.

If you will just bear with me, I was given a copy of the letter that was sent to you, Mr. DeConcini, September 7, 1979, where the director, the present director, indicated in his letter that his primary focus, I am reading from the first page, however, will not be on the past. However, his primary focus is still on the past, for they are still trying to revoke this man's license on the same evidence that they had before. So, although he says here they are not going to focus on it, they are focusing on it.

He wants an equitable enforcement of the law. Their case was thrown out before. How is this equitable? What is he talking about, equitable for whom? Where is equity being involved by constantly persisting in trying to revoke this man's license?

Then he indicates on another page here that they will not engage in these "strawman" activities unless there is prior evidence, prior evidence, of criminal conduct within this business. And therefore we may be willing to go in there, but it will be only upon my express consent.

This is interesting because, to me it is very interesting because at the hearing, at the initial trial of this matter, during the revocation trial, we received a document that was dated in 1972, indicating that XA Traders had maybe through some hearsay evidence that they had, may have sold the gun to a felon who wasn't named or anything. That document just came to us 2 days before the hearing.

Then I read in this record here that it will be the Bureau's attitude that they will not go after these things unless they have a prior indication that there has been criminal activity. Mr. Vingino and all persons connected with XA Traders never saw that document.

Senator DECONCINI. You are talking about the "strawman" reference he makes here? Is that right?

Mr. LANE. Yes.

Senator DECONCINI. That was in all fairness I believe, he makes reference to what the future is in store for BATF and he emphasizes that he is not going to pursue this without his personal knowledge, if my recollection is correct. But we are talking about a case that happened at least before the present director is there, not that that excuses it by any means, but it is only fair to point out that this director wasn't involved in the 1977 incident.

Do you have any evidence or information that would lead us to believe that since December, September 1979, that there has been "strawman" activity versus, directed toward your client or anyone else that you know of?

Mr. LANE. No; I have no definitive knowledge of that with the exception, is that it is very easy for one to say that we will not do this in the future. Our future conduct will be such. But where by their present conduct they are ratifying past bad acts by continuing to—

Senator DECONCINI. I think you raise a good point. I am going to ask that question, no doubt about it. I just wanted to make clear that his reference here, what I am interested in establishing is a number of things. One, since we received this assurance from the director in 1979, has there been "strawman" activity and if so or any other abuses. You have pointed out the case relating to Mr. Vingino as to continuation of

pressing the revocation when there was an acquittal there and you make a very good point. I intend to pursue that with them.

Let me ask you something, Mr. Vingino. Will you give us a summary of how you perceive the 1977 incident and arrest to occur?

Mr. VINGINO. What do you mean?

Senator DECONCINI. What happened?

Mr. VINGINO. It was a day when the agent, I will never forget that—

Senator DECONCINI. Agent who?

Mr. VINGINO. Gerrity.

Senator DECONCINI. Did you know him at the time?

Mr. VINGINO. No.

Senator DECONCINI. Never saw him before?

Mr. VINGINO. No; he came in and asked if I was alone. I said, "No, my stepfather is out in the backyard." He said, "Go get him." He says, "You are under arrest." I said, "For what?" He said—well, actually he didn't say anything. So I went out and called my dad to come in and take care of the store. So we got inside the store, he put the handcuffs on me, took me out in the car. I said, "What is all this all about?" The other guy was in the front seat. He had a recorder on, he said, "Well, if you testified that you sold a gun to this scam dealer we had orchestrated, we will let you go." I said, "Hell, I don't know what you are talking about." I said—anyway, he took me down, booked me, fingerprinted me, photographed, and had the news media there. Got out of the car down at the old post office, down at the marshal's building. They had there folks down there taking our picture when we were getting out of the car. That is how we got on the front page.

So, at any rate, I was scared to death because I didn't really know what was going on. I was put through the fingerprint process and all the other jazz. So nobody would say anything about what I was there for. I couldn't get anyone to answer it.

So, at any rate, they put me in a cell. So then I started seeing some of the other dealers coming in. I said oh, kind of seen what was happening because Simon Perri, Irving Goldstein, Jim Henry, Jim Sharra, Joe Coates, and some of the others involved in the same scam.

So at any rate, they all ended up in the cell together and then we had an opportunity to call our attorney. So that is when I called Mr. Lane's associate, Jim Crane, to come down.

He released us on recognizance of the attorney and that is when all the action started with the trial, and that is where we are today as far as the revocation.

Senator DECONCINI. How many were arrested during that time?

Mr. VINGINO. Ten.

Senator DECONCINI. You were one of the 10?

Mr. VINGINO. Yes.

Senator DECONCINI. Do you know offhand what the disposition of any of those 10 cases were?

Mr. VINGINO. Mr. Pucci, the General, the license was revoked, he was fined, he is totally out of the gun business today.

Senator DECONCINI. How about the arrests? How did they break down, any convictions, acquittals, any pleas?

Mr. VINGINO. There was a lot of plea bargaining. I don't really know the outcome totally of Mr. Pucci. Simon Perri, he pleaded no contest.

Senator DECONCINI. No contest to the charge, or to something else?

Mr. VINGINO. No contest to a lesser charge; misdemeanor, through the administrative hearings, Judge Richie has ruled against him, his license has been revoked, it is in appeals court at the particular time. Is that right?

Mr. VINGINO. Yes.

Senator DECONCINI. He pled to a nolo for a lesser charge? How about Mr. Pucci? You don't know? Who else?

Mr. VINGINO. I don't know what type of conviction or how that came about. All I know is his license has been revoked. He was fined, no longer in the gun business. As far as the points of law, I don't know.

Senator DECONCINI. Do you know any of the others?

Mr. VINGINO. Yes; Jim Sharra from Frontier Gun Shop also pleaded guilty to a misdemeanor, he accepted a fine. Interesting in this case, he never received a revocation of license. He led me to believe that these gentlemen are trying to justify their existence because also there is another gentleman, John's Gun Shop, I don't remember John's last name, but his case was identical to Jim Sharra's, whereby he again—

Senator DECONCINI. Pled misdemeanor?

Mr. VINGINO. Paid a fine and no more harassment. Also Irving Goldstein and Jim Henry were two gentlemen, actually the stores are owned by Irving Goldstein and Jim Henry works for him, so their scam is perpetuated at both stores, so therefore both of them were arrested. Goldstein went through a complete jury trial, the jury returned a verdict of not guilty in his case.

After the jury returned a verdict, he received a letter of revocation of license based on the same garbage again.

Fortunately for him, he passed the test in the first administrative hearing. So he is back in operation with his guns. That is kind of a rundown.

Senator DECONCINI. Thank you. Do you have any other statement you would care to make?

Mr. VINGINO. No, do you, Jim?

Mr. LANE. No, I do not.

Senator DECONCINI. Do you know the informants that were involved in this case? Do you know any of them? Did you have contact with them before?

Mr. LANE. No, sir.

Senator DECONCINI. They were strangers to you when they came in?

Mr. LANE. Yes, they were. They turned out not to be strangers afterward. We learned a lot about the character, especially the informant. We learned he was paid front money by the Bureau. He was offered a reward for each one of us gentlemen that they would convict to the tune of \$2,500. He took the \$1,500 front money that the gentleman gave him, he went out and started wheeling and dealing, buying guns, he ended up with 10 charges against him, which were basically more serious than ours.

Senator DECONCINI. By BATF?

Mr. LANE. BATF, Federal, and State government, each.

Senator DECONCINI. So, at any rate, how did he end up?

Mr. LANE. He ended up, Mr. DeConcini, as far as I know, they didn't want to bring any Federal charges, they brought him into the State court, in the State court they dismissed 9 of the 10 counts, convicted him on 1 of the counts by plea bargaining it out. He is out on probation. He is also a heroin addict and—

Senator DECONCINI. Are you still in business?

Mr. VINGINO. Yes.

Senator DECONCINI. Are you still in the gun dealing business?

Mr. VINGINO. The gun business, to be honest with you, it is kind of comical at this stage of the game because our gun business is totally dead.

Senator DECONCINI. As a result of this?

Mr. VINGINO. As a result of this, because it is very interesting—in fact, I was relating to some of the gentlemen today, one of the clubs I belong to, the Optimist Club, we have quite a large selection of law enforcement officers. We have three captains from the Tucson Police Department, two lieutenants, three sergeants, and the rest—at the time when this thing happened, I couldn't get the right time of day out those guys because of the publicity. As a matter of fact, a couple of months ago they said, "If you need any character witnesses, we would be glad to testify in your behalf." I am standing there in person now. Then I was really a bad guy. That is as far as the general public, the other folks—that is the way they believed, to get on television, with all the notoriety that we got, accusations made, we possibly might have been mixed up with organized crime, we were gun runners to Mexico and we were also dealing in firearms to people that were dealing in dope.

Senator DECONCINI. Have you been involved in other criminal incidences?

Mr. VINGINO. This is my first time ever to get arrested.

Senator DECONCINI. Of course you have no other felonies, obviously, if you have never been arrested.

I have no further questions.

I thank you very much for being with us today.

STATEMENT OF PATRICK MULCAHEY, SOUTH CAROLINA

Senator DECONCINI. Our next witness will be Patrick Mulcahey from South Carolina.

Thank you for being with us today.

If you would give us a summary of your statement.

First identify yourself, please, for the record.

Mr. MULCAHEY. I am Patrick Martin Mulcahey, 1407 Woodlawn Avenue, Columbia, S.C.

In the spring of 1976, I was operating a surplus business and I was approached at my home where my business is located by Mr. Williford, who later turned out to be a BATF informer. And over a period of the next month and a half, I think it was, I sold him three firearms from my personal collection.

On January 20, 1977, I was arrested by the BATF for dealing in firearms without a license. They came and presented me with a warrant

for my arrest and a search warrant and proceeded to ransack my house and take all my guns, as well as those that belonged to other members of my family, put these tags on them, throw them on the floor, and, anyway they threw them on the floor in piles and when the pile would get too big to walk over, they would kick the pile out of the way.

Then they loaded them all into the back of the car and took them down to the headquarters along with me.

Senator DeCONCINI. This is January 1977?

Mr. MULCAHEY. Yes, sir. This was part of a mass arrest that took place all over South Carolina. I think there were 12 or 13 other people arrested along with me for—most of them dealers, for a variety of charges.

That night and the next day the BATF entered into a big publicity campaign and had half page spreads in the paper and the head of the BATF in South Carolina got on the television. One of the things he said was that all the guns confiscated were illegal weapons. None of my guns were illegal. I don't know if they got any illegal weapons in this massive guns—

Senator DeCONCINI. You weren't arrested for possession of illegal weapons, you were arrested for making a sell?

Mr. MULCAHEY. Yes, dealing in firearms without a license.

Senator DeCONCINI. How many sales would you make, or did you make any actual sales?

Mr. MULCAHEY. Yes; I made three sales to this informer, Mr. Williford.

Senator DeCONCINI. Did you know what the law was? Did you have any reason to believe you were breaking the law?

Mr. MULCAHEY. No, sir.

Senator DeCONCINI. Were you selling from the standpoint of collectors items?

Mr. MULCAHEY. Yes; I have a large gun collection and I had had a Federal firearms license up until 1975 and on two separate occasions when agents would come out and inspect my books, they told me that I didn't really sell enough guns to need an FFL.

Senator DeCONCINI. Did they revoke your license?

Mr. MULCAHEY. Yes, sir. They revoked it—

Senator DeCONCINI. In 1975?

Mr. MULCAHEY. Yes, sir, on bookkeeping—

Senator DeCONCINI [continuing]. Error?

Mr. MULCAHEY. Yes, sir.

Senator DeCONCINI. At the time they told you you didn't need it, either, because you didn't sell enough?

Mr. MULCAHEY. No, sir, not at that time. On two previous occasions, back in the early part of the 1970's, the BATF was trying to take up as many licenses as they could. And they were trying to get the small dealers to give up their licenses.

Senator DeCONCINI. Going back to after the arrest, in 1977, what took place? What transpired after that?

Mr. MULCAHEY. After the publicity campaign, I went to a preliminary hearing and the—almost all of the people that were arrested were taking deals. They were offering some pretty good deals if you would

plead guilty. They offered me—they offered to reduce my charge to a misdemeanor and give me a \$200 fine, if I would plead guilty.

Senator DECONCINI. And return your guns?

Mr. MULCAHEY. They didn't say anything about the guns. That was the criminal thing.

So anyway, I refused their deal and 2 days later I was arrested by the city police five times for possession of stolen property. Five of these guns were evidently stolen. And the reason I know that the BATF was involved in that is because during my trial an agent, Harmon, who was helping the prosecutor, came up to Mr. Louthian, who is my attorney, and told my attorney that he would see that these charges were dropped if I would be cooperative.

Anyway, they were dropped anyway later at the preliminary hearing. But anyway, we went to trial.

So anyway, we had—we went to trial. I think it was on the 13th of March. And the trial lasted 3 days and there was a number of things that happened at the trial that I thought were—anyway, we had, there was—the ATF's contention was that I had, that Mr. Williford and another agent had come out to my house on four occasions and I had sold them guns on three of those occasions and on the other occasion offered all my guns for sale.

Well, during the course of the trial, the ATF agent admitted that I never said that, I never offered all my guns for sale.

Senator DECONCINI. You made three sales over what period of time to the BATF?

Mr. MULCAHEY. It is according to how you look at it because the informer came out to my house five or six times in about a month and a half, or 2 month period, and then he came back about 8 or 9 months later.

Senator DECONCINI. When did you make the first sale to the undercover agent or the BATF man?

Mr. MULCAHEY. The second time he came out, on the second visit.

Senator DECONCINI. How many did you sell that time?

Mr. MULCAHEY. I sold one.

Senator DECONCINI. When did you make the second sale, how long after that, 8 or 9 months later?

Mr. MULCAHEY. No, sir. He came out about 2 weeks later.

Senator DECONCINI. The third one?

Mr. MULCAHEY. He came out two more times, I think it was about 1 month later.

Senator DECONCINI. So over the 2 months you made three sales?

Mr. MULCAHEY. Yes, sir.

Senator DECONCINI. They were single items each time?

Mr. MULCAHEY. Yes, sir. There was all kinds of things happened at the trial. The first day of the trial, when the relatives and friends of the jurors were out in the hall, BATF agents, a friend of mine was one of the witnesses. This is how I know this, BATF agents were out in the hall circulating a rumor that I had been arrested with 17 stolen guns buried in tin cans in my backyard. They also were talking about the existence of tapes that they had made on their various visits, which we

had tried to get those tapes because, you know, to try to substantiate our story of what had happened. They had always denied the existence of these tapes, but one of the BATF agents said that there were tapes, but that the tapes weren't good enough to use in court; also, that there was photographs taken of this informer coming into my house, which evidently they had left the lens cover on the camera because none of them turned out.

The agent was telling this. The reason he told it was because he had put in some pictures, some vacation pictures—supposedly of me and this informer—and the only pictures that came out were the vacation pictures. GSA sent him back a nasty letter.

Anyway, I was found not guilty.

Senator DECONCINI. How long a trial?

Mr. MULCAHEY. I think it took 3 days.

Senator DECONCINI. When was the trial?

Mr. MULCAHEY. I think it was the 13th through the 16th of March.

Senator DECONCINI. 1977?

Mr. MULCAHEY. Yes.

Senator DECONCINI. Go ahead.

Mr. MULCAHEY. And after I was found not guilty, the Government sued me to keep my firearms. The BATF, the law that they arrested under is dealing in firearms without a license and has a criminal and a civil penalty. And after they lost on the criminal trial, they turned around and started the whole thing again on the civil penalty.

Their contention is that the burden of proof is different. So they can do that.

Senator DECONCINI. Where is that suit, or has that suit been determined?

Mr. MULCAHEY. No; it hasn't been determined yet.

Senator DECONCINI. No trial?

Mr. MULCAHEY. Nobody was sure whether I could get a trial or not. So what we did, through mutual agreement, is turn the transcript of the first trial over to the judge that sat at the first trial, and then entered briefs, and he is supposed to decide on it.

Senator DECONCINI. He is supposed to decide the second trial based on the transcript of the first one?

Mr. MULCAHEY. Yes.

Senator DECONCINI. Whether or not there was a civil violation and whether or not BATF can get title to your weapons?

Mr. MULCAHEY. Yes.

Senator DECONCINI. When is that due to come down?

Mr. MULCAHEY. I have no idea.

Senator DECONCINI. That was the joint stipulation that you and the Government entered into, the judge would decide this based on the transcript?

Mr. MULCAHEY. Yes; the informer that was the Government's chief witness died and so it was kind of—we thought it would make it go faster. As it turned out, it hasn't.

Senator DECONCINI. It hasn't?

Mr. MULCAHEY. It hasn't.

Senator DECONCINI. So that case is under advisement now?

Mr. MULCAHEY. Yes.

Senator DECONCINI. Awaiting the judge's determination? You have no idea when it is going to come down?

Mr. MULCAHEY. I have no idea at all.

Senator DECONCINI. What was the value of all of the firearms that were confiscated?

Mr. MULCAHEY. According to the Government, it was somewhere around \$5,000. The actual value was somewhere in excess of \$15,000.

Senator DECONCINI. That was in 1977, those were the values?

Mr. MULCAHEY. Yes.

Senator DECONCINI. What would you say they are today?

Mr. MULCAHEY. I would say it was probably in excess of \$20,000 now. Since then the Federal attorney has tried to offer us another deal. He said that since some of the firearms didn't belong to me, that were members of my family's, and everything, that he would let me come in and pick half of the fireares, if I would let the BATF have the other half.

Senator DECONCINI. Have you elected to do that?

Mr. MULCAHEY. No.

Senator DECONCINI. What were the type of guns that primarily were confiscated? How many were there?

Mr. MULCAHEY. There was right around 100 guns.

Senator DECONCINI. What were they composed of, mostly?

Mr. MULCAHEY. That would be hard to say, because some—

Senator DECONCINI. Do you consider them collectors items?

Mr. MULCAHEY. Yes; many of them were just junk left over from when I had a gun business, you know; even complete guns that would cost more money to fix than they were worth. Some of them were extremely valuable.

Senator DECONCINI. Were there any antiques, considered antiques?

Mr. MULCAHEY. No, sir. They didn't take the antiques. There were several antiques, and they didn't take them. One of the rifles is probably worth \$1,500.

Senator DECONCINI. Do you think the guns have been damaged since they have been out of your possession? Have you seen them?

Mr. MULCAHEY. Yes, sir. They brought them into court in a 55-gallon drum.

Senator DECONCINI. Just stacked on top of each other?

Mr. MULCAHEY. Thrown in the drum.

Senator DECONCINI. Did you get to examine them at all?

Mr. MULCAHEY. Yes, sir.

Senator DECONCINI. Did you observe any damage?

Mr. MULCAHEY. Yes; there was obvious damage on them. They had a great big table, it was about the size of this table, I guess, that they were putting guns out on, and they were taking them out of the drum and throwing them on the table. Mr. Louthian, my attorney, asked them to be more careful. They just threw them harder.

Senator DECONCINI. Do you know of any current operations, straw-man operations, or other activities of BATF in your State or in your area?

Mr. MULCAHEY. No, sir, not offhand.

Senator DECONCINI. How much money have you spent in your defense? Would you care to tell us?

Mr. MULCAHEY. When this case that is currently pending is over, it will be in excess of \$15,000.

Senator DECONCINI. Do you get a feeling from your attorney that is dealing with the U.S. attorney that they are trying to make some settlement of the case now, based on this offer?

Mr. MULCAHEY. The offer was made, the offer was made about 1 year ago. I think the main reason that they made the offer is because they don't want to lose again. I feel like that, you see, this time they are not only going to have to prove that I was dealing without a license, but the civil part of the penalty says that "firearms used or intended to be used," and they have no proof at all that these weapons are intended to be used, so that they have two things to prove now.

Senator DECONCINI. Thank you, Mr. Mulcahey.

Do you have anything else you would care to say?

Mr. MULCAHEY. No.

Senator DECONCINI. Thank you very much.

We appreciate your being with us.

At this point I would like to submit for the record a number of cases upon which I have received written documentation since our July hearing. Most notable is that involving Richard Boulin, a Maryland gun collector, who also had a license as a Federal dealer. Agents allegedly bought firearms from his personal collection and then arrested him for failing to report them in the business records. I will introduce into the record an article from the December 1979 Washingtonian, which discusses Mr. Boulin's case. Mr. Boulin was convicted shortly after our 1979 hearings.

I will introduce at this point a letter from John Krogman, then Acting Director of BATF, to Senator S. I. Hayakawa. A copy of this letter was attached to the BATF's September correspondence. In it, Mr. Krogman advises that in essence, what Mr. Boulin did was completely legal:

ATF recognizes that a licensee may maintain a private collection of firearms independent of the business inventory and lawfully dispose of such firearms without entering the transaction in the license records. As stated in ATF's industry circular, 72-30, a licensee who uses the firearms license to obtain personal firearms must record in the business records the acquisition and disposition. Such firearms may be kept on the licensee's business premises for purposes of display or decoration and not for resale, as long as they are segregated in the business inventory by appropriate identification.

The licensee's subsequent sale of such personal firearms need not be recorded in the business records and a form 4473 executed by the purchaser would not be required.

Finally, I will introduce for the record a letter filed by BATF with the U.S. attorney in the Boulin case stating that they have reconsidered the advice given in the earlier letter. It would appear that Mr. Boulin is being prosecuted for an act which he and even BATF cannot decide is legal or illegal.

I also received correspondence relating to several other cases involving proceedings initiated or continued since our July 1978 hearing, which I will here introduce in the record. Among these is a letter from

Mr. Neal Knox, Executive Director of the NRA, and several cases which will speak for themselves. Without objection, for the record, we will submit that at this time.

[The information follows:]

[From the Washingtonian]

THE FAT MAN AND THE GUN COLLECTOR

HOW THE IDEALISTIC NEED FOR GUN CONTROL AND A BUREAUCRATIC PASSION FOR HEADLINES COMBINED TO MAKE A TARGET OF RICHARD BOULIN

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

Someone once asked him why. The Fat Man identified himself as a "horse farmer" from rural Westminster, Maryland, and said he bought pistols and rifles for resale to neighbors willing to pay \$50 to \$100 above the market price. Dealers found the story plausible. "Farmers in isolated areas don't know values, and they don't want to take the time to look around," says one of them. "They find it's easier to give an order to a regular and let him find it, at a profit."

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

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

Three times in the autumn of 1977 Richard Boulin sold weapons to the Fat Man—six pistols and a .22-caliber rifle. Each time he gave the Fat Man a careful explanation: Even though he had a federal firearms dealer's license, the weapons involved came from his private collection, not his business stock. He had

obtained each of them before taking out his federal license the previous year. As far as Boulin was concerned, he was making a private sale that did not require the federal paperwork.

Boulin was wrong. First about the Fat Man, who was not a bumpkin earning a few extra weekend dollars buying guns for his rustic friends. He was a government informant, desperately trying to avoid jail on a charge of owning an illegal machine gun. His "employer," the Treasury Department's Bureau of Alcohol, Tobacco and Firearms, charged with enforcing federal gun laws, had been chillingly blunt: Either the Fat Man helped agents "make cases" against other gun dealers, or he would go to the penitentiary. Not much of a choice. So the Fat Man let the BATF agents wire his overstuffed torso with a recording device, and he put the BATF money in his overalls pocket and made overtures to dealers and collectors at gun shows in such places as the Greenbelt Armory and the National Guard hall in Baltimore.

Boulin's second mistake was, innocent intentions notwithstanding, that he violated the law. The hoariest of dicta is that ignorance of the law is no excuse for violating it. In this instance, however, the law that the 26-year-old Boulin transgressed is legal flypaper that not even competent lawyers claim to understand. Further, its enforcing agency, BATF, has deliberately left interpretations vague as to what can and cannot be done under its terms.

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

Gun control is an emotional issue that has animated American politics for years, with neither proponents nor opponents getting any measure of satisfaction. Many citizens support the idea of gun control with the same fervor their hard-

drinking granddaddies had for Prohibition: When asked, they're all for keeping guns out of the hands of kooky criminals. In the meanwhile, however, they keep a shotgun in the hall closet and a loaded pistol in the nightstand, and damned be any politician who tries to make off with either. The gun lobby is well financed and organized; the National Rifle Association can kick the electoral stuffing out of unfriendly congressmen, a fact well known to all politicians. Further, given the estimated 100 million to 200 million firearms already loose in America, discerning solons recognize that any prohibitive legislation short of confiscating firearms would be about as effective as a law banning procreation among English sparrows.

Nonetheless, the assassinations of the 1960s did give impetus to the notion that walking-around nuts should not be able to buy a gun as casually as they do cigarettes, and so Congress bestirred itself to pass the Gun Control Act, the federal government's first serious foray into firearms regulation.

The act required anyone "in the business" of selling firearms to acquire a federal license. It banned most interstate sales of firearms between any persons but two licensed dealers; no longer could a Lee Harvey Oswald buy a mail-order rifle through a post-office box. It required all dealer sales to be recorded on a Treasury Department form, the 44-73. It forbade sales to convicted felons, mental incompetents, drug users, and residents of a state other than the seller's.

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

The National Rifle Association, realizing it was licked in this particular battle, tried to clear up what it considered to be deliberately fuzzy language in the statute. For instance, the act prohibits "engaging in the business without a license." The NRA's executive director, Neal Knox, aware of the brisk trading between collectors with no commercial motivation, wanted a precise definition

of what constitutes a "dealer." Recalls Knox, "I had nothing but trouble, nothing but opposition, from Treasury. They said they need vague wording in order to enforce the law, to have maximum discretion.

"As so often happens when an agency is given discretion, it uses that discretion with indiscretion."

Passage of the Gun Control Act came at an opportune time for the Bureau of Alcohol, Tobacco and Firearms, which was about to go out of business as a result of the demise of the moonshine industry. BATF had begun in 1920 as the Prohibition-enforcement arm of the Treasury Department, and over the years—as it shuttled from Treasury to Justice to Internal Revenue, before emerging in 1972 as a full-blown Treasury bureau—its responsibility expanded to include tobacco and then guns. Nonetheless, for most of this time BATF was what Pappy Yokum and other up-the-hollow folks knew as "them infernal revenooer fellers."

Unfortunately for BATF's bureaucratic health, the precipitate rise in sugar prices in the early 1970s did more to wipe out moonshining than any enforcement technique ever devised by a revenue agent. BATF knocked off 2,981 stills in 1972; in 1976, agents had to scratch all over the South to find 609; in 1978, the toll dropped to 361. Clearly BATF had to find other work for its idle hands, and tobacco was not the answer, for the cigarette industry is compact and easily regulated. BATF does spar with smugglers who bring low-tax cigarettes from the Carolinas to northern cities; this campaign has produced a new American word, "buttleggers," but few results. The Mafia is now said to sell one of every five packs of cigarettes smoked in New York City.

BATF found bureaucratic salvation in the Gun Control Act. By the hundreds, it shifted agents from the moonshine beat to guns. But the bureau had a peculiar view of its mission under the law, as a former director, Rex Davis, once revealed in congressional testimony. Davis noted that about 140,000 persons held gun dealer licenses. The bureau wanted to cut down the number to around 40,000, for easier policing. As one dis-

gruntled official of the NRA states, "BATF's enforcement priority is parallel to the way J. Edgar Hoover used to run the FBI. Agents chased teenaged car thieves rather than the Mafia, because they are easier to catch and convict. BATF goes after dealers for picayune technical violations rather than the IRA or domestic terrorist groups. Why? Easy. BATF runs up statistics that look good on paper but don't really reflect any real work."

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

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

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

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

Over the years Boulin accumulated more than five dozen of the commemoratives. "These represented my

savings," he says. "My wife and I never bought stocks or stuff like that. Firearms appreciate in value just like antiques. I had thousands of bucks on my walls and in my display cases."

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

Boulin did well as a police officer. He volunteers that his record bore two minor blemishes: for wrecking a squad car, and for napping on duty. But he had ambitions beyond a policeman's salary. So in early 1976 he obtained a federal firearms dealer's license, intending to open a part-time gunsmith shop in Damascus.

Initially, business was brisk and profitable. Many of his sales were to fellow Montgomery County policemen, secret-service agents, even an FBI man or two. "I dealt with quality stuff and quality people. The pistols I sold went for \$150, \$200 each. I wasn't selling Saturday-night specials to common criminals off the street."

But Boulin's dissatisfaction with police work mounted. It climaxed in mid-1976, when two officers working his shift were shot to death in a shopping center. He decided to leave the force and work for his father; an air-conditioning contractor. He also decided to get out of the gun business: The BATF paperwork was onerous, and he wanted to put full time into his new job.

And here Boulin made what even his lawyer, David H. Martin, former chief counsel for the Secret Service, admits was a mistake. As a private collector, Boulin over the years had acquired dozens of guns—pistols, rifles, and shotguns. These he did not enter into the formal bound registry book that federal law requires a dealer to maintain. He had obtained them before acquiring the license; he considered them his private collection, not his business stock.

"Unfortunately," attorney Martin says, "the way BATF applies the law, he is wrong. Once you acquire that federal piece of paper, BATF says you must put

everything in the books, and put through the paperwork when you sell it."

So in selling off the remnants of his business stock, several times Boulin let go of one of his collection guns as well. He claims the mistake was an honest one, that he had the "impression that I was allowed to sell to another Maryland resident items from my private collection without going through the mandatory federal firearms paperwork."

And seven of these sales were to the "collector" that Boulin and other dealers knew as the Fat Man.

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

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

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

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

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

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

During the ride to his home an agent said, "We have information you own

two trained killer dogs. If they make any moves toward us, we intend to kill them."

Boulin stifled a laugh. "One of the 'killer dogs' was a miniature German shepherd, sweet as pie," he says. "She'll bark, but I don't think she even knows how to bite." The other was a nine-year-old police dog the department had planned to destroy because of a hip ailment. "I liked the dog, I didn't want to see him put to sleep, so I took him in. He was about as vicious as a sparrow."

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

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

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

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

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

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

The agents next drove Boulin to a federal magistrate's office in Rockville for a hearing. During the drive he complained of feeling ill, so they released his

handcuffs. He says one of them dared him: "Go ahead and run; I'd like to take a shot at you."

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

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

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

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

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

"I told them I would not do the type of work they did to me—dirty work against an innocent dealer. I also told them, 'If you want me to go after machine guns

and the IRA, I will help you.' " So they signed an agreement: Boulin would work as an undercover officer under the direction of McMonagle.

McMonagle's first query stunned Boulin. The agent "knew" of a ring of police officers in both Montgomery and Prince George's counties who were selling illegal machine guns. What did Boulin know about the ring? "Nothing. I never heard of it. I offered to go on the box [take a lie detector test] because I had had no approaches or contacts about any such deals."

McMonagle next showed Boulin photographs, taken with a telephoto lens, of ten persons posing with machine guns at a well-known quarry in Prince George's County. He asked Boulin to identify the men. Boulin studied the photo carefully. One of the men he had seen around gun shows, and he vaguely remembered selling him ammunition. He told this to McMonagle. "You're lucky," the agent said. "We knew you had seen him, and sold him ammunition. So you didn't lie this time."

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

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

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

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

Boulin heard via the grapevine that BATF was going through his record as a

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

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

But Boulin's main support, financial and psychic, came from the National Rifle Association. His case arose just as the NRA was gearing up a campaign against BATF's enforcement procedures. NRA's membership includes dealers and collectors targeted by BATF, and NRA is not the sort of organization that turns the other cheek.

One thing NRA did was to hire as a consultant Mike Acree, who spent almost four decades in federal law enforcement, mostly with Treasury; he retired as United States commissioner of customs. Acree reviewed scores of gun cases brought by BATF in Maryland and Virginia. He states: "I would say that, conservatively, 75 to 80 percent of those cases were individuals that, in my judgment, would not have fallen into the hands of the law had they not been enticed, inveigled, encouraged to violate some provision of law with which they were totally unfamiliar." Most of these persons—blue-collar workers, truck drivers, farmers— "simply were not sophisticated enough to understand the technicalities of the Gun Control Act." Acree accused BATF of running a "statistical rat-race kind of operation" and using questionable investigative tactics in which agents effectively persuade dealers to break the law.

One such tactic is the "straw-man purchase." As noted, a licensed dealer may

sell only to residents of his own state. BATF sends an agent with out-of-state identification into a store to make a purchase. If the dealer refuses to sell to him, the agent then asks if he can have a local friend buy the gun for him and sign the transfer papers. If the dealer agrees, and makes the sale—click, out come the handcuffs.

A striking "straw man" case that got to court recently required the work of three BATF agents and an undercover officer off and on for the course of a month. The team used electronic surveillance devices—which produced unintelligible recordings—and considerable persuasion to entice Harrison W. Phillips, a Tidewater, Virginia, dealer, into a technical violation of the law. But a federal judge, after listening to BATF's case, threw the bureau out of court.

During a supposedly "routine" investigation of Tidewater-area dealers, BATF had targeted Phillips, who runs a place called Jaxon's in Parksley, Virginia. An out-of-state buyer is essential to straw-man cases, so BATF imported agent William J. Burgess from its office in Wilmington, Delaware. Two local agents fitted Burgess with a body transmitter and body recorder and sent him into Phillips's store with \$200 and orders to buy a pistol.

No luck the first day: Phillips wasn't there, and BATF obviously did not wish to bother making a case on a mere clerk. So BATF sent Burgess back the next day. Patricia Burgess (no relation), a Norfolk city police officer working undercover, went along to pose as the BATF man's girlfriend. This time agent Burgess talked with a clerk and offered to buy two pistols. But when he produced his Delaware driver's license the clerk said, "Whoops!" and told him: "We can't sell to you." Another clerk asked if Burgess had any relatives "from around here" who could do the paperwork for him. Burgess mentioned the "Norfolk girlfriend" and said he would return the next day.

On the third trip the BATF team finally managed to buy a pistol. Burgess wanted two; Phillips (rightly) told him the legal limit was one handgun per working week and refused. He also (rightly) refused to let Burgess buy the .25 automatic pistol

with his out-of-state license. But because his "girlfriend" stood alongside him at the counter, she was able to make the purchase, filling in the form with her name, Social Security number, and Norfolk address. Phillips wouldn't even take the money from Burgess. He insisted that the woman hand it to him, and in turn he handed her the pistol.

A week later Burgess returned and asked again if he could buy two pistols. Again Phillips refused. And, again, he insisted that Patricia Burgess handle the mechanics of the purchase. She's sitting outside in the car, ill; can't I take the forms out to her and let her sign them there? agent Burgess asked. No, replied Phillips, she must come in here. She did, and bought another pistol, a .32 revolver.

Still later in the month, Burgess obtained a Virginia driver's license—using as an address the post office of a fellow agent who lived in Norfolk—and returned to Phillips's store. He tried to buy more firearms, and showed Phillips the new license.

Phillips replied, "I know you're from Delaware. I can't sell you a firearm." He warned Burgess: "You might get sent to jail for what you are doing." Burgess left, empty-handed.

On October 4, 1977, two months after their investigation ended, BATF agents raided Phillips's shop and charged him on felony counts of selling firearms to a nonresident. They seized his entire stock—"Brownings and good guns," fifty to sixty of them—and stacked them in the trunk of a car.

Phillips's trial took less than a day, in federal court in Norfolk. Judge Dick Kellam, generally regarded as a law-and-order jurist, found his incredulity mounting as testimony proceeded. When the prosecution finished he asked, in astonishment, "That constitutes the evidence?" Yes, replied the assistant US attorney, Raymond A. Jackson.

"Tell me where there is any violation of the statute in all that went on here," pressed Kellam. Jackson had nothing further to say.

"All right, gentlemen," Kellam said. "I'm going to direct a verdict. Bring the jury in."

"You're going to do what, Your Honor?" asked Jackson.

"I'm going to direct the verdict, find the defendant not guilty."

But Phillips's troubles did not end here. He had to get another court order for the return of the seized firearms—many came back rusty and scratched—and then return for another order for the restoration of his dealer's license. "It was very costly," he says of the process. "It cost me over \$7,000."

In Senate testimony last summer, Richard J. Davis, the assistant Treasury secretary for enforcement and operations, tried to slough off BATF critics, and especially persons who claimed victimization at federal hands. "I think it is important to remember," intoned Davis, "that criminal investigations and enforcement are by nature conflict-oriented. Inevitably, any criminal investigation situation is bound to produce negative reaction from the subjects of investigations." Both Davis and BATF director G. R. Dickerson denied any systematic abuse of the agency's authority.

"Negative reaction" certainly describes the feelings of David A. Moorhead, wounded eight times during the Tet offensive in Vietnam. Moorhead, a tough New Hampshire native, was listed on Army records as a paraplegic. "But I told a full colonel I would be damned if I would stay in a wheelchair, and I walk today."

Moorhead returned to his home in Wentworth, New Hampshire, and at the urging of Veterans Administration counselors took a gunsmith course. "New Hampshire is a very big hunting and fishing area," he says, "and there are very few gunsmiths. It was a job I could do in my home, so I could lie down and rest when I needed to." Moorhead opened his shop, and began collecting firearms as well as selling and repairing them.

BATF inspectors tested him. One undercover agent—"we call them a snitch"—came in and tried to buy a pistol without doing the required federal paperwork. Moorhead double-talked him: when the man left, Moorhead reported him to the local BATF office.

Meanwhile, through what Moorhead calls "some good old Yankee trading,"

he acquired an Army surplus M-14 rifle, the weapon he had used in the military. The training and maintenance literature that Moorhead saw referred to the M-14 as a rifle. He made no secret of his ownership. He kept it in a display case, and state and local police were among the persons who saw and admired it. He even listed the M-14 among his collateral for a bank loan.

A BATF undercover man saw the M-14 in November of 1975 and talked about it with Ken Drickser, the agent assigned to Wentworth. Drickser is said to have told his colleagues, "If there is one [a machine gun] in Moorhead Sports Shop, it is because he doesn't know it is one. Leave it alone and I will take care of it when I get back from vacation." Drickser left town on his trip.

A few mornings later, Moorhead heard someone banging on the door of his shop. He unlocked the door, and in swooped a raiding party of BATF agents from Boston. They told him he was under arrest for "secretly possessing a machine gun."

Moorhead was puzzled: "It kind of confused me. I never knew I had a machine gun, and any guns I had I never knew I secretly possessed." When he realized what they wanted, he surrendered the M-14.

The agents commenced a search. They found a 37-millimeter flare gun, which is exempt from registration by BATF's own regulations. Moorhead recounts what happened next:

"I said, 'Why are you taking that?'"

"He said, 'Well, we are not sure.'"

"I said, 'What do you mean you are not sure?'"

"He said, 'Well, there are so many laws we can't be expected to know them all.'"

"I said, 'You expect me to know them all?'"

"He told me ignorance of the law is no excuse."

The BATF agents put Moorhead in handcuffs and took him to Concord. His wife wanted to go along "because I was subject to having muscle seizures." They refused but did permit him to take Valium. When she insisted on accompanying her husband, an agent told her she would be subject to a \$5,000 fine or

five years' imprisonment if she disregarded orders.

BATF agents seized thirteen other persons in four states in the same series of "raids," and the agent in charge of the Boston region said they were "significantly the largest in New England affecting licensed dealers since passage of the Gun Control Act of 1968." The headlines stood two inches tall throughout New England the next morning. The BATF release noted that "more than 100 unrecorded guns" in addition to the "machine gun" were seized from Moorhead's shop.

These, says Moorhead, were "weapons I was keeping in safe storage for local camp owners who didn't want to leave them unguarded in vacant cabins over the winter." He and his wife had listed them in a registry, which they couldn't immediately find during the confusion of the raid.

The BATF publicity was not accidental. The bureau's *Public Affairs Guidelines* manual says good public relations "is a method of overcoming the criminal defense for lack of knowledge of the law, and has a favorable impact on the attitudes of the court, jurors, and prosecutors. . . . And most important of all, it serves to establish and enhance the image and identity of the bureau with all levels of our society."

When Moorhead went on trial the following April, District Judge Hugh H. Bownes listened to testimony, then said, "I think this is a travesty. I am upset. I am really upset." He told the jury:

"I am going to do something that I haven't done since I have been a federal judge, or a state judge, for that matter. I am going to take a case away from the jury after the evidence is all closed. I don't do this because I don't have any confidence in you, but I do it because I think the circumstances require it and the law requires it."

He saw no evidence that the M-14 was a machine gun as defined by law, or that Moorhead knew it possibly could be converted. He said the BATF officers "should have used some common sense and a little compassion." Then he turned to Moorhead:

"I want to say to you, Mr. Moorhead, that, on behalf of the government, I

apologize. I don't think this case should have been brought. At most, we have here a technical violation." He told Moorhead to go home.

But no gun shop awaited Moorhead's return. BATF had seized all his business records and stocks. He had to visit the VA hospital frequently for nerve pills "because I just couldn't function; I was just totally—it was just a total daze." He couldn't pay his bills; creditors demanded money. "I finally had my business auctioned off to pay my debts, which didn't clear up everything. I have since cleared up my debts by selling my home and getting this taken care of."

BATF said not a word of apology for the misdirected raid. The agency did return the seized weapons—after the intervention of Moorhead's congressman, James Cleveland.

Federal Judge Herbert Murray, who heard Richard Boulin's case, didn't exactly apologize to him. But he did indicate strongly that he felt the federal government had made a mistake in bringing the young ex-cop into court.

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

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

Murray referred to Boulin's prized gun

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

"If there were any way that this court could enjoin imposition of those [civil forfeiture] penalties it would do so, for the court believes that the necessary deterrence can be achieved through the criminal penalties available. Further, the court has found Mr. Boulin to be an uncommonly cooperative defendant whose involvement in this case has been an isolated act of wrongdoing in an otherwise lawful and productive career." He urged that the government work out some arrangement whereby the guns could be sold and the proceeds given to Boulin. And he told Martin to bring his client in later for sentencing on the eleven felony counts.

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

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

Fantasies, scenarios, awesome schemes for revenge have tumbled through his tormented head: to put his hands on a gun, a big, mean automatic

gun, and go to the BATF offices in Baltimore and blast away his tormentors: to use a gun on himself; to disappear; to take what money he has saved against a jail term and simply not be Richard Boulin anymore. "But I'm past that now," he says. "There's no sense in compounding your troubles. What hasn't soaked in yet is that I am a convicted felon. A *felon*. How I'm going to live with that is something I've yet to face."

There are practical penalties to go along with the stigma. Boulin is a bonded employee. When the bond comes up for renewal, he can either admit his conviction—whereupon he loses the bond essential to his work—or he conceals it—whereupon he risks another felony charge for making a false statement. He cannot renew his Maryland state sales license, meaning he can't even sell used cars, much less have a managerial position in a first-line agency. Technically, the mortgage company could demand the full amount owed on his home. "This really worries me. BATF plays dirty; I wouldn't be surprised at all if some agent who has it in for me dropped a dime on me"—that is, notified the mortgage company of his conviction. And, of course, he cannot work as a law enforcement officer.

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

The Fat Man, meanwhile, is nowhere to be found on the Maryland gun scene. He has disappeared into the folds of the

federal government's program to protect informants.

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

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

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

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

I asked Boulin if he had a picture of the gun collection *The Washingtonian* could use to illustrate this article.

He laughed. "BATF took all the pictures," he said. "They called them 'contraband.' I've asked for them back, now that the trial is over, and they just laugh at me."

LETTER FROM JOHN G. KROGMAN, ACTING DIRECTOR, BUREAU OF ALCOHOL, TOBACCO
AND FIREARMS, DEPARTMENT OF THE TREASURY

30 JUL 1979

Honorable S. I. Hayakawa
United States Senate
Washington, D. C. 20510

Dear Senator Hayakawa:

This is in reference to your letter of May 10, 1979, wherein you requested our comments on the abuses referred to in the article attached to your letter entitled "BATF Entrapment Schemes" by David T. Hardy.

The first portion of Mr. Hardy's article discusses "straw man entrapment" or the straw purchase. We emphasize that it is not the practice of ATF to conduct an undercover investigation regarding unlawful sales by firearms licensees unless there is reason to believe that the licensee has previously made unlawful sales. If the firearms licensee is reluctant to deal with the undercover agent, ATF immediately terminates its investigation. Furthermore, it is the Bureau's practice to permit the firearms licensee himself to suggest the medium of a straw purchaser to consummate the sale.

Thus, it is strictly prohibited for ATF undercover agents to encourage, as opposed to merely provide the opportunity for, such unlawful sales of firearms. In all instances, ATF agents seek to comply with the rules laid down by the Supreme Court concerning entrapment. In United States v. Russell, 411 U.S. 433, 435-436 (1973), the United States Supreme Court ruled that the fact that officers or employees of the Government merely afford opportunities or facilities for the commission of the offense does not defeat the prosecution. It is only when the Government's deception actually implants the criminal design in the mind of the defendant that the defense of entrapment comes into play. Of course, any defendant having been unlawfully entrapped into commission of a crime has a valid defense to the prosecution.

The use of straw purchasers in acquiring firearms from licensees presents a serious law enforcement problem. These transactions thwart the intent of the Gun Control Act to keep firearms out of the hands of prohibited persons, as well as to regulate interstate commerce in firearms. Typically, the actual or ultimate purchaser is a felon or out-of-State resident to whom a licensee is prohibited from selling or delivering firearms. By utilizing a straw purchaser, who is himself eligible to obtain firearms, the prohibited person is able to acquire the firearm "off record" and conceal the transaction. Firearms acquired in this manner are frequently used in crime. For example, the firearm used by David Berkowitz, also known as "Son of Sam," in the murder of

several persons in New York was purchased from a licensed dealer in Texas by a Texas resident acting on Berkowitz's behalf.

While there is a continuing need to monitor straw purchase transactions, you may be interested in knowing that we have implemented internal controls to ensure that investigations of these cases are kept within proper limits and that only those cases warranting Federal prosecution are investigated. That is to say, any such investigation must be personally approved by the Director or the Deputy Director (the same is true with regard to investigations of firearms transactions at gun shows)..

Furthermore, we are seeking to impact upon the problem of straw purchases by informing all licensees how to avoid those transactions which are contrary to law. A publication serving this purpose will be issued within the next few days.

In his article, Mr. Hardy alleges a second form of entrapment entitled "implied dealership" which he claims is used against collectors and those displaying firearms at gun shows. Under Federal firearms laws, a nonlicensed resident of the State in which the show is being held may buy, sell or exchange personal firearms with another nonlicensee of the same State. The resident may also sell to or place an order to buy firearms with a licensed firearms dealer, provided the resident does not "engage in the business" of dealing in firearms which requires a license under the Gun Control Act of 1968. Although the term "engaged in business" is not defined by statute, the courts have had no difficulty construing the term and have generally held it to mean an activity which occupies one's time, attention and labor for the purpose of livelihood or profit. While an actual profit from the sales of firearms need not be proved, a willingness to deal, a profit motive and a greater degree of activity than occasional sales by a hobbyist must be shown for purposes of a conviction. Thus, a nonlicensed resident may make an occasional sale as a hobbyist at a gun show or an individual may dispose of a gun collection at a gun show. However, if the nonlicensed person is acquiring firearms for the purpose of resale and the activities otherwise constitute engaging in a firearms business as discussed above, a violation of law would result. In investigations of such activities, ATF adheres to the rules concerning entrapment.

As a third form of entrapment, Mr. Hardy alleges that ATF agents approach a Federally licensed dealer and persuade the dealer to sell some privately owned firearms without making a record of the transaction. ATF's efforts are directed at those licensees who, as a part of their business, at or away from their licensed premises sell firearms to ineligible purchasers and fail to record the transaction as a means of concealment. We

reiterate that ATF agents, in making such investigations are mindful of the law of entrapment.

ATF recognizes that a licensee may maintain a private collection of firearms independent of the business inventory and lawfully dispose of such firearms without entering the transaction in the licensee records. As stated in ATF Industry Circular 72-30, a licensee who uses the firearms license to obtain personal firearms must record in the business records the acquisition and disposition. Such firearms may be kept on the licensee's business premises for purposes of display or decoration and not for resale as long as they are segregated from the business inventory by appropriate identification. The licensee's subsequent sale of such personal firearms need not be recorded in the business records and a form 4473 executed by the purchaser would not be required.

With respect to Mr. Hardy's discussion of "Dewat Entrapment," the term "Dewat" technically denotes war trophy firearms that were deactivated under a program inaugurated in 1945 to permit returning servicemen to register their trophies under the National Firearms Act so that they could be retained. However, we construe Mr. Hardy's discussion as pertaining to any and all inoperable or unserviceable machineguns, including "Dewats."

The National Firearms Act (26 U.S.C., Chapter 53) requires, among other things, the registration of machineguns and the payment of taxes on transactions in such weapons. The term "machinegun" is defined by the Act to include any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term also includes a machinegun frame or receiver alone. It should also be noted that an unserviceable machinegun (one that cannot be readily restored to an operable condition) is still a machinegun within the scope of the Act. Consequently, Mr. Hardy's inference that inoperable or unserviceable machineguns should not be held to be National Firearms Act weapons is wholly without merit.

The 1968 amendments to the National Firearms Act provided a 30-day amnesty period during which previously unregistered weapons could be registered by their possessors with impunity. Thereafter, only those weapons already registered and those registered pursuant to being lawfully made could be legally possessed or transferred. In short, a person in possession of an unregistered machinegun today cannot legitimize his possession of the weapon. The unregistered weapon is contraband and subject to seizure or abandoned to the Government. We would add that where the possessor's violation is nonwillful, criminal prosecution is not undertaken.

Mr. Hardy's discussion of practice grenades relates to the category of National Firearms Act weapons termed "destructive devices." In part, this term includes explosive bombs, grenades or similar devices. He cites the ATF case reported as United States v. Kiliyan, 456 F.2d 555 (8th Cir. 1972), which, he infers, was erroneously decided. The court in Kiliyan held that certain M-21 practice grenades were destructive devices for purposes of the National Firearms Act. Subsequent to the decision in Kiliyan, other courts held that the M-21 practice grenade and other items designed by the military establishment for training or practice purposes did not constitute National Firearms Act weapons since devices which were neither designed nor redesigned for use as weapons were excluded from the term destructive device. Adhering to the weight of authority, ATF reversed its position and no longer considers such devices in their original configuration as National Firearms Act weapons.

In his heading entitled "Other Techniques," Mr. Hardy depicts a less than accurate situation regarding two-hand grip "silhouette" pistols. He states that ATF issued a "special" regulation under the National Firearms Act so as to bring such weapons within the scope of the Act for prosecution purposes. We disagree. This regulation defining "pistol" was added to the Code of Federal Regulations on August 3, 1971, or approximately six years before silhouette pistols came into the limelight. Some of these weapons now technically fall within the Act's definition of firearm; however, we know of no prosecution under the Act regarding a silhouette pistol. During the last 2 years, a number of manufacturers of silhouette pistols have sought and obtained ATF's advice and counsel regarding the proper design to be employed in manufacturing these firearms so that they would not be included within the coverage of the Act.

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

Sincerely yours,

(signed) John G. Krogman

Acting
Director

LETTER FROM G. R. DICKERSON

Lynn Battaglia
Assistant U.S. Attorney
101 W. Lomard Street
Baltimore, MD 21201

APR 07 1980

Dear Ms. Battaglia:

This refers to your inquiry as to the correctness of a letter from John G. Krogman, Acting Director, Bureau of ATF, to the Honorable S. I. Hayakawa, United States Senate, dated July 30, 1979. A copy of the letter is attached as Exhibit "B" to the Memorandum In Support of Petition for Writ of Error Coram Nobis in United States v. Richard Boulin, United States District Court For the District of Maryland, Criminal No. HM 77-0598.

You request our comments on statements made on page 3 of the letter to the effect that a Federal firearms licensee may lawfully dispose of firearms which are held by the licensee as a private collection, and not as business inventory, without entering the transactions in licensee records required to be kept.

On reconsideration, we have determined that these statements are not accurate and do not comport with the official position taken by ATF with respect to a firearms licensee's disposition of personal firearms. Rather, ATF has adhered to the decision in United States v. Scherer, 523 F.2d 371 (7th Cir. 1975), which held, among other things, that a licensee must record the disposition of such firearms in records required to be kept by Federal firearms laws. ATF's position on this matter is illustrated in ATF P 5300.15 (5/78), a copy of which is enclosed.

This publication is routinely forwarded to new licensees and was, shortly after its adoption, provided to all licensees. You will note that it contains a sample firearms acquisition and disposition record with sample entries showing how various firearms transactions should be recorded. Significantly, line 9 serves to inform the licensed dealer of the requirement to enter in his records the acquisition and disposition of his personal firearm and the manner in which it should be done.

At an appropriate time in the near future, we will again inform all Federal firearms licensees of the record-keeping requirements pertaining to the acquisition and disposition of their personal firearms, as well as seek to correct any inaccurate statements ATF has made about this subject matter.

Sincerely yours,



Director

THE FOLLOWING INFORMATION RELATES TO DEALING IN FIREARMS AND AMMUNITION. THERE IS ALSO A SECTION RELATING TO THE COLLECTION OF CURIO AND RELIC FIREARMS AND AMMUNITION. THE APPROPRIATE REFERENCES ARE TITLE 27, CODE OF FEDERAL REGULATIONS, PART 178, AND ALL PAGE REFERENCES ARE TO ATF PUBLICATION 5300.5, YOUR GUIDE TO FIREARMS REGULATION.

THESE ARE GENERAL GUIDELINES, INTENDED FOR QUICK REFERENCE AND DO NOT COVER ALL SITUATIONS THAT YOU, AS A LICENSEE, MAY ENCOUNTER. CONSULT THE LAW AND REGULATIONS OR CONTACT ATF FOR MORE DETAILED INFORMATION. ATF FIELD AND REGIONAL OFFICES ARE LISTED IN ATF P 5300.5, BEGINNING WITH PAGE 119.

A FEDERAL FIREARMS LICENSE DOES NOT ALLOW YOU TO CONDUCT BUSINESS IN A MANNER CONTRARY TO STATE OR LOCAL FIREARMS LAWS, SUCH AS THOSE THAT REQUIRE LICENSES OR RESTRICT FIREARMS TRANSFERS AND RECEIPTS.

Your License

It is in effect until the expiration date shown on the license (178.49) (page 39).

It covers operations only at the location shown on the license (178.50) (page 39). See special requirements for collectors elsewhere in this publication.

You should examine your license carefully to make sure the information shown is correct.

If you find an error, send the license back to your regional regulatory administrator for correction (178.48) (page 39).

You must keep your license (ATF Form 5 Part I) posted and ready for inspection by ATF officers.

Use the copy of the license (Part II) to make purchases. You may make copies, but each copy must have your original signature (178.94, 178.95) (page 43).

Renewal of Your License

ATF will send a renewal application to you about 60 days before the expiration date shown on your license.

If you have not received your renewal application 30 days before the license expiration date, and you want to stay in business, please notify the ATF regional office serving your State (see ATF P 5300.5, pages 119-120).

If you want to renew your license, you must complete and send the application, with the fee attached, to your Internal Revenue Service Center before the license expiration date.

If you file before the license expiration date, you may operate until you receive your new license. See questions and answers under the subheadings "Licensing" and "Conduct of Business - Licensees" in ATF P 5300.5 for more detailed information.

Records You Must Keep

Firearms

- Keep a separate permanent record (see definition of "bound book," page 82) of all firearms received and disposed of. This includes firearms received in pawn, curios and relics, and firearms received for overnight (or longer) repair.
 - Firearms are to be logged in when received and logged out as they are disposed of (178.125(c)) (page 52). This publication contains sample bound book entries showing some types of firearms transactions, including both acquisitions and dispositions.
 - Keep these records permanently.
- Prepare ATF Form 4473, Firearms Transaction Record, covering the transfer of each firearm to a nonlicensed person. Read the Form 4473 carefully as it is the most important record you will keep.
 - These completed Forms 4473 must also be kept permanently, in addition to the permanent record described above.
 - Forms 4473 may be kept alphabetically (by name of purchaser), chronologically (by date) of disposition, or numerically (by transaction serial number (178.124) (page 50)).
 - Use yellow Form 4473 (Part I) for over-the-counter sales; use green Form 4473 (Part II) for either contiguous (bordering) State sales or non-over-the-counter sales (178.124) (page 50).

Acquisition of Ammunition

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

Disposition of Ammunition

- You do not have to keep a record of the disposition of shotgun ammunition, ammunition used only in rifles, or component parts of these types of ammunition.
- You must, however, keep a separate, permanent record (see definition of "bound book," page 84) of the disposition of handgun ammunition or ammunition that is interchangeable between handguns and rifles, such as .22 caliber (178.125(c)) (page 51) (also page 91). This publication contains sample bound book entries showing several ammunition transactions.
 - Invoices may not be used for this permanent record.
 - Keep these records for 2 years.

Transfers Between Licensees

- Generally, licensees may freely buy and sell firearms and ammunition among themselves.
 - Licensees do not have to prepare Forms 4473 on transfers to other licensees.
 - Transactions between licensees must be recorded in the bound book record.
 - The licensee to receive the firearms or ammunition shall furnish a copy of his license (ATF Form 8 Part II, or copy) to the licensee selling or otherwise disposing of the firearms or ammunition, prior to making the transaction (178.94, 178.95) (page 43).
 - Licensees may ship interstate to other licensees.
 - As a firearms dealer, you may take orders for firearms and ammunition at any location, but THE ORDERS MUST BE FILLED ONLY AT YOUR LICENSED PREMISES (see questions and answers, page 83).
- Your particular license may limit your activity. (See heading for LICENSED COLLECTORS in this publication and questions and answers on page 83).

Know Your Customer

1. Identify the buyer by name, age and residence address before delivering any firearm or ammunition (178.124, 178.125) (pages 50-52) (also page 1).

Age Requirements

2. Under Federal law, the minimum age for purchasers of firearms and ammunition may be either 18 or 21 years, depending on the item being purchased.
 - a. You may not sell a handgun or handgun ammunition to persons under 21 years of age.
 - b. You may not sell shotguns or rifles, or shotgun and rifle ammunition to persons under 18 years of age.
 - c. You may sell ammunition that is interchangeable between rifles and handguns to a purchaser who is at least 18 years of age if you are satisfied that he or she will use the ammunition in a rifle (178.99, page 45, and questions and answers, page 83).

Residency Requirements for Nonlicensee Sales

1. If you sell or deliver a handgun to a nonlicensed person, that person must be a resident of the State in which your licensed premises is located (178.99) (page 45).
2. If you sell or deliver a rifle or shotgun to a nonlicensed person, that person must be:
 - a. a resident of the State in which your business premises is located; or
 - b. a resident of a contiguous (bordering) State, if:
 - (1) the buyer's State has enacted legislation allowing such sale or delivery (pages 126 and 127);
 - (2) the sale conforms to legal requirements in both States;
 - (3) the appropriate law enforcement officer in the buyer's home State has been notified as required; and
 - (4) the waiting period requirement has been satisfied (178.96-178.99) (pages 44 and 45).

Prohibited Sales

1. In addition to the requirements shown above, you may not lawfully sell or dispose of any firearm or ammunition to certain types of persons; e.g., convicted felons. See ATF F 4473, questions 8a through 8h.
2. If any of your customers would violate any State law or local ordinance that applies at the place where you sell or deliver, by purchasing or possessing any firearm or ammunition, then, under Federal law, you may not lawfully sell or deliver any firearms or ammunition to that customer (Federal law, (922(b)(2)) (page 5).

Lost or Stolen Firearms

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

Report Multiple Handgun Sales

1. The delivery of more than one handgun to the same individual (nonlicensee) within 5 consecutive business days must be reported to ATF on ATF F 3310.4, Report of Multiple Sale or Other Disposition of Pistols and Revolvers, (178.126a, page 53; see also page 1).
2. The original of Form 3310.4 must be mailed to the ATF Criminal Enforcement office for your area at the end of the business day that the sale occurs. A list of these offices and their addresses appears on page 123.

Licensed Collectors

(See "Collectors," page 83 and "Operations by Federally Licensed Collectors," page 95)

1. You may buy curios and relics from any source (178.50) (page 39).
2. You may dispose of curios and relics to another licensee anywhere or to nonlicensed residents in your State (178.50) (page 39).
3. You must maintain the same records as other licensees.
4. Your collector's license entitles you to conduct transactions in curios and relics only. A licensed collector has the same status as a nonlicensee in any transactions involving firearms and ammunition other than curios and relics.

Change of Address

You must notify your regional regulatory administrator at least 10 days before moving your firearms or ammunition business to a new address (178.52) (page 40).

Sale of Business or Going Out of Business

1. Within 30 days after you sell or discontinue your firearms or ammunition business, you must give written notice of this change in status to your regional regulatory administrator (178.57) (page 40).
2. If you sell or discontinue your firearms or ammunition business and are succeeded by a new licensee, your firearm dealer records should be marked to show this fact and shall be delivered to the successor (178.127) (page 53).
3. You must deliver all of your firearms records to your ATF regional regulatory administrator within 30 days of going completely out of the firearms or ammunition business (178.127) (page 53).

Questions

If you should have any questions regarding Federal laws or regulations and are unable to locate the answers in ATF P 5300.5 (see page 79), please contact your nearest ATF field office listed on pages 120-125, or your ATF regional office listed on pages 119-120.

AN ATF OFFICER WILL EXAMINE YOUR BUSINESS OPERATIONS PERIODICALLY.

COMPLIANCE WITH FEDERAL LAW AND REGULATIONS IS IMPORTANT—VIOLATIONS CAN RESULT IN THE LOSS OF YOUR LICENSE OR OTHER SERIOUS CONSEQUENCES.

Sales of Firearms to Law Enforcement Officers

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

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

The Bureau considers the following as persons having authority to make certifications that the law enforcement

officer purchasing the firearms will use the firearms in performance of his official duties.

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

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

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS				MUST BE RETAINED FOR 3 YEARS AFTER DATE OF LAST SALES ENTRY			
DISPOSITION RECORD OF INTERCHANGEABLE AMMUNITION AND HANDGUN AMMUNITION							
DATE	MANUFACTURER	CALIBER	OTHER		NAME	ADDRESS	DATE
			TYPE	QUANTITY			
12/21	Winchester	✓			Spencer Gatling	400 Wesley Drive Richards, Illinois	3/1/51
12/22	Remington		.25	3	Marlin Stevens	58 Sauer St. Bullard, Illinois	4/1/51 ✓
12/23	Winchester		.30-30	5	Guides Reservado	44 Shays Blvd Crestwood, Illinois	6/1/51
12/24	Smith and Wesson		.30	4	Maynard Trounds	45 Peabody St. Berkeley, Illinois	12/1/51
<p>SAMPLE COPY FOR USE OF COMMERCIAL PRINTERS</p>							
<p>For this entry, Mr. Trounds is 18 years old and the ammunition is intended for use in a rifle (18-22714)</p>							

You may obtain a copy of this form for reproduction by a commercial printer from the ATF Distribution Center, 807 S. Four Mile Run Drive, Arlington, VA 22206.

Handwritten: Same with the same column arrangement, same column headings, and the same language notations as this sample may be used.

FIREARMS ACQUISITION AND

DESCRIPTION OF FIREARM					RECEIPT	
MANUFACTURER and/or IMPORTER	MODEL	SERIAL NUMBER	TYPE OF ACTION	CALIBER OR GAUGE	DATE	FROM WHOM RECEIVED (Name and Address or Name and License Number)
1) Ithaca	1021004	66071386	Pump	20	8/2/75	John's Fine Guns I FFL # 42-987
2) Smith & Wesson	10	M60512	Revolver	.38	8/4/75	Swap Shop FFL # 86-3498
3) Western Field	10504	691467	Pump	20	8/4/75	John's Fine Guns In FFL # 42-987
4) Winchester	94	382906	Lever	.30-30	11/4/75	Al. Green for Ther 928 Forrest Hill Oak, Ill. 60605
5) Remington	870	4932	Pump	16	6/19/76	Tom Problem 605 E. Colonial Pine Bluffs, Ill. 60652
6) Remington	540X	312698V	Single	.22	1/2/76	Joan Reclator FFL # 91-3487
7) Browning	1200	38679	Auto	.45	8/24/76	John Doe 631 Pine St. E. lkton, Ill. 60605
8) Western Field	10504	691467	Pump	20	11/24/76	Jim Mich 3015 829 Columbia Terrace Springfield, Ill. 62803
9) Smith & Wesson	34-1	M60562	Auto	.22	12/1/76	Brian Smith (owner) 811 Wilder Cambridge, Ill. 6172
10) Remington	870	4932	Pump	16	12/2/76	Fix it or Melt it Inc. FFL # 46-3988

Explanation of Acquisitions

Line

- 1 Shows purchase of a firearm from a licensed dealer - you must record their license number. In order for Brian to obtain this firearm, he had to submit a current copy of his FFL to John's Fine Guns (178.94). When Brian received the firearm, he entered it into this book immediately. (For variation see 178.125(f).)
- 4 Purchase of firearm from an unlicensed person.
- 5 Gun is brought in for repair. If firearm can be fixed and returned to owner on same business day, no entry need be made. However, if firearm cannot be returned that day, it must be entered as an acquisition even though it is not a purchase. Gunsmithing transactions such as this may be recorded in a separate bound book.
- 7 John Doe has brought in a gun for sale on consignment. Make entry on date of receipt.
- 8 Michaels originally purchased the gun on 11/2/76 (line 3). He does not like it and returns it on 11/24/76. The firearm must be reentered showing date of receipt and from whom received. (It was received from Michaels on 11/24/76.) The original entry on line 3 remains unchanged.
- 9 Brian Smith, owner of the licensed business, has a personal firearm he wants to sell. Enter firearm in book and show acquisition date as the date it was put up for sale.
- 10 Firearm sent to Fix it or Melt It Inc. for repair on 6/20/76 is returned to Smith's shop and reentered on 12/2/76.

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

Line numbers are given for illustration purposes only.

DISPOSITION RECORD

DISPOSITION		
DATE	NAME	ADDRESS OR LICENSE NUMBER (if Licensee) OR FORM 4473 SERIAL NO. (if non-Licensee) [File Numerically]
2/9/76	James House	Form 4473 # 2
1/2/76	Jim Michaels	Form 4473 # 6P
2/1/76	Bill Bounce	Form 4473 # 50
1/20/76	Fix it or Melt it Inc.	FFL # 46-3988
1/14/76	Brian Smith	Form 4473 # 35
1/1/77	John Doe	Form 4473 # 36
2/2/76	Stolen - Reported to	Police on 12/2/76
2/12/76	Jake Jones, Metro Police	305 Wilkins Blvd. Atchison, Kansas 70519 See certification letter instead of F4473
2/2/76	Tom Problem	605 East Colonial Pine Bluff, Ill. 60651

Explanation of Dispositions

Line

- 1 Sale to an unlicensed person. The buyer's name is inserted directly across from the firearm purchased. Brian's Sport Shop files Form 4473 numerically (see 178.124(b) for options) and lists the form number in place of the address. Number "2" is the serial number of the Form 4473 that Mr. House filled out.
- 2 This firearm has not been traded, sold, loaned, stolen or transferred out. It should be on hand and available for inspection.
- 4 Bounce borrows a gun. It is not a sale but it is a disposition. Form 4473 must be filled out. (See 178.97 for loans and rentals by clubs). When Bounce returns the gun, it must be shown as an acquisition.
- 5 Brian is unable to fix the firearm brought in by Mr. Problem and sends it to a gunsmith for repair. Gunsmiths must be licensed and Brian's Sport Shop must obtain a current certified copy of Fix It or Melt It Inc. license prior to delivery of the firearm.
- 6 Brian Smith, owner of the store, takes a firearm from inventory for his own personal firearm. Since this will be a personal firearm, Smith must fill out Form 4473 for himself. When this happens, it must be either removed from the business premises, or, if kept on the business premises, must be identified as not being part of his business inventory. (Such as by a tag reading "NOT FOR SALE.")
- 7 Gun brought in by John Doe for sale on consignment was not sold. Form 4473 must be filled out by John Doe when the gun is returned to him.
- 8 The firearm is stolen - show disposition of firearm as "stolen" and show date the theft was reported to the local authorities. If the police case number is available, please report it here.
- 9 Firearms were sold to out-of-State policeman for official use, as evidenced by certification letter. See instructions on sale to law enforcement officers.
- 10 Mr. Problem gets his repaired gun back. He does not need to fill out Form 4473. The gun was returned to the same person who brought the gun in for repair. If someone picked the gun up for Mr. Problem a Form 4473 would then have to be filled out by that person (178.124(a)).

LETTER FROM NEAL KNOX, EXECUTIVE DIRECTOR, NATIONAL RIFLE ASSOCIATION
OF AMERICA

April 16, 1980

Honorable Dennis DeConcini
3230 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Senator DeConcini:

I am gratified to hear that you have undertaken to hold follow-up hearings into the conduct of the Bureau of Alcohol, Tobacco and Firearms and their enforcement of the Gun Control Act of 1968. The quality of cases brought by the Bureau since its proclamation of "reforms" in July 1979, has not in fact changed. At best, they have temporarily reduced the number of arrests based on the traditional form of entrapment. Even this temporary reduction of the worst abuses has massively reduced their arrest rate. At last year's appropriations hearings, they estimated arrests on firearms charges for the upcoming year at over 2,000. In fact, their reports this year indicate that the number dropped to 840. Thus, even this limitation on abuses has effectively cut their arrest figures by 60%. This is strongly supportive of the testimony heard in July to the effect that about 80% of BATF firearms cases involve entrapment of law-abiding citizens. It indicates quite clearly that the Bureau is inherently incapable of generating sufficient cases against real criminals to justify employment of even half of its existing agent force. This, in turn, established the motive for these abuses, and the reason why they will inevitably recur in the future, once it becomes apparent that without abusive practices agents are unable to justify their employment.

But even with this supposed reform, the Bureau has clung to its former ways. Even as it disavows entrapment of collectors based on "dealing without a license" charges, it still withholds expensive collections which it confiscated illegally in former years. In Colorado, agents are still withholding the collections of David Jewell and Royce Kerbow, despite dropping criminal charges against them nearly two years ago. In South Carolina, it still withholds the collection of Patrick Mulcahey, who I am told will testify before your subcommittee. In New Mexico, the entire inventory of Paul Hayes was confiscated and is still being withheld despite his acquittal by jury. It would be worthwhile to ascertain in precisely how many cases the Bureau is still putting innocent collectors and dealers to the burden of legal actions to attempt to regain their own property, and in how many of these cases the victim of the confiscation has been vindicated in court by judge or jury.

The Bureau has further undertaken to create a totally new form of entrapment with which it now victimizes dealers who are also collectors. A dealer is, under federal law, required to record all dispositions of firearms. A private citizen is not faced with these administrative requirements. In 1979 and 1980, I am informed, the Bureau has undertaken to induce dealers to sell guns from their private collection. Most dealers feel they are

acting in a private, not business capacity when they sell a personal firearm which was not attained with the aid of their license, has never been part of their inventory, never been stored on their premises, and never been treated as dealership assets.

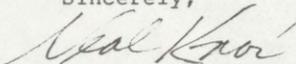
Indeed, in 1972 BATF issued its Industry Circular 72-30, which informed dealers that they might even keep privately owned firearms on the business premises without recording them as business inventory, provided they were tagged as private property.

Yet BATF has now undertaken to entrap such dealers, getting an undercover agent to purchase a gun from a dealer's private collection, and then charging the dealer with having sold a firearm without recording the sale. As the most shocking example of this tactic, I would draw your attention to the case of Richard Boulin. The story of Mr. Boulin, who was convicted after your July hearings, is told in the December issue of Washingtonian magazine. I attach a copy of the article as an exhibit to this letter. I am informed that in a letter to Senator Hayakawa, a copy of which was submitted as an exhibit to the BATF's letter which promised reforms, BATF solemnly stated that a dealer could sell privately owned firearms without recordation. Yet, even as this statement was being transmitted, Mr. Boulin was being prosecuted in Maryland for doing precisely that -- the BATF having the arrogance to argue that a mistake of law is no defense and no criminal intent need be proven under the Gun Control Act, even as their director was making the same "mistake" in correspondence to your subcommittee.

Finally, as further proof that BATF has not directed its energies toward criminals, I attach copies of two letters which have been forwarded to me, letters written by criminal judges in Illinois, in which they report (in 1980) that BATF will not bring cases against felons who illicitly possess firearms, even when requested to do so by a state judge. It is obvious that BATF is not directing its energies against genuine criminals. It is equally obvious where they are directing those energies, and where they will continue to do so once the need for artificially inflated arrest statistics resumes.

On behalf of the 1,750,000 members of the National Rifle Association, I request that a detailed review of the activities of BATF be conducted by an independent agency such as the Office of Management and Budget. It is our firm belief that such an analysis will show that the present manpower and budget of the agency cannot be justified, is the cause of abusive practices, and should be reduced to more appropriate levels.

Sincerely,



Neal Knox

LETTER FROM ERWIN GROMBACKER, ATTORNEY AT LAW

February 11, 1980

Mr. Neal Knox
National Rifle Association
1600 Rhode Island Avenue, N.W.
Washington, D.C. 20036

Dear Neal:

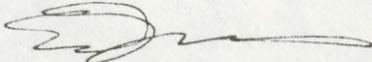
Enclosed are two letters which I feel should be brought to your attention. I have personally verified the contents of the letters with the authors.

These letters verify that the BATF is following a horns of the devil approach of harrassing our peaceful citizenry while intentionally ignoring known violence and crime. The result of such a policy, as you and Harlon well know, thank God, can only be further crime, violence, anarchy and the threatening of the viability of our free but threatened nation.

These letters raise a need and a question. The need is to change BATF's policy. The question is how did it arise and who caused it to arise? As a long time gardner, I like to get at the root of things. I know you do too.

I feel these letters are now in the proper hands. Good digging and if you need a hand, advise.

Very truly yours,



Erwin Grombacher

LETTER FROM JUDGE SAUL A. EPTON, RETIRED, EPTON, MULLIN,
SEGAL & DRUTH, LTD.

January 8, 1980

Honorable Edward D. Rosenberg
Judge, Circuit Court of Cook County
Richard J. Daley Center
Chicago, Illinois 60602

Dear Judge:

Thank you for sending me a copy of the letter forwarded to the Honorable Benjamin J. Civiletti, Attorney General of the United States.

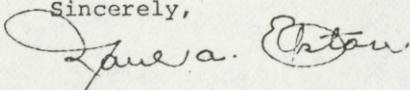
Before returning to the practice of law, I served for over eighteen years on the bench of the Circuit Court of Cook County.

From 1959 through 1969, I was the presiding Judge of Boy's (youth) Court (ages 17 to 21) reputed to be the busiest criminal court in the nation.

Hopefully, I am not oversimplifying a matter very close to my heart (and to my head) when I say, "you expressed my sentiments clearly and completely". It was during the sixties that I personally phoned Senator Dodd (committee chairman) and asked for some help from the "A.T.F." I wish you better success than I had.

Congratulations for your efforts, stay with it.

Sincerely,

A handwritten signature in cursive script that reads "Saul A. Epton". The signature is written in dark ink and is positioned below the word "Sincerely,".

Judge Saul A. Epton
Retired

LETTER FROM JUDGE EDWARD D. ROSENBERG, CIRCUIT COURT OF
COOK COUNTY, CHICAGO, ILL.

December 28, 1979

Honorable Benjamin J. Civiletti
United States Attorney General
The Justice Department
Washington, D.C.

Dear Mr. Civiletti:

Approximately thirty days ago I was assigned to a felony branch of this Court. During my tenure in that division I heard several cases that involved violations of various federal firearms laws. Some of these involved sawed-off weapons and some involved possession of weapons by convicted felons. I took note of these federal violations by instructing the police officers and/or prosecutor to notify the U.S. Alcohol Tobacco and Firearms Bureau so that these cases could be prosecuted or dealt with by the federal authorities.

Two days before I left that felony branch of the Court, I was advised by the assistant prosecutor that the federal authorities did not want to prosecute these violations. I then made telephone calls to "A.T.F." to verify this information. Much to my chagrin it was true.

For many years before being appointed to the bench I represented a law enforcement and scientific criminalistic laboratory association known as "A.F.T.E." (Association of Firearms and Toolmark Examiners). I have always been interested in proper law enforcement. In addition, I am interested in adequate laws concerning the misuse of fire arms.

Due to the present apparent epidemic of crime and violence, something should now be done. I believe that additional laws relating to guns and their misuse may be needed, however, instead of waiting for new legislation, some federal agency should vigorously enforce the laws we now have.

I might suggest that the U.S. Justice Department notify all the State Courts and the Judges who deal with criminal matters, in re: federal gun laws, to be aware of whom to refer these violations to at the federal level. If, in fact, these were followed upon, a great deal of progress would be made in the area of stopping violent crime and gun violations. This type of program I do not imagine would bring opposition from sportsmen, such as hunters, skeet and trap shooters, etc. In fact, this type of enforcement might even bring their support.

I remain available to assist you in every proper way.

Very truly yours,

Edward D. Rosenberg
Judge Edward D. Rosenberg

LETTER FROM THOMAS P. KOEBERLE, ATTORNEY, BOULDER, COLO.

April 18, 1980

Senator Dennis DeConcini
3230 Dirksen
Senate Office Building
Washington, D.C.

Attention: Jane Green

Dear Senator DeConcini:

I am writing this letter as the Attorney for David Jewell, to additionally show that the Bureau of Alcohol, Tobacco and Firearms has not modified its behavior since July of 1979 although as I understand from the hearings they promised faithfully that they would. In April of 1978, my client, an enthusiastic collector of Webleys and other British guns, participated in the Currigan Antique Gun Show in Denver, Colorado. The Currigan Show is the most prestigious gun show in the Rocky Mountain Region, and his fine collection of guns was admired by many thousands of people.

At the end of the show, on a Sunday afternoon, he carefully cased all of his fine show pieces and was in the process of driving home to Boulder when he was stopped by BATF agents on the exit ramp to Interstate 25. He was immediately arrested and his guns confiscated although he attempted to assure the officers that as an authorized British citizen who resided in Boulder with a wife and baby daughter he would certainly appear at any hearing that might be necessary.

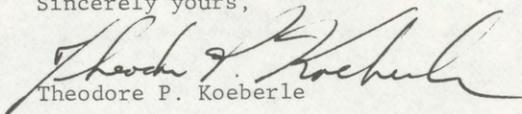
These pleas were disregarded and his collection was taken to the Federal Building at which time it was uncased and the make, caliber or gauge and serial number of each gun was recorded before it was thrown in a pile. One of these weapons was a Winchester Model 21 in fine condition with an appraised value of \$7,000. After he was booked and charged with "strawman sales", he was then released and his guns were removed to a point never to be seen again. I prepared to defend the charge against him and suddenly the U.S. Attorney offered a diversionary treatment for one year after which time the case would be dismissed. I promptly filed my request for return of the guns with the \$250 bond which was required and these papers were all returned to me with the statement "the guns are being returned forthwith". I have repeatedly requested the return of the weapons and have been advised that the case is in Washington, D.C. "on review by the chief".

Although it has been two years this month since Mr. Jewell's guns were seized, and all charges were dropped in July of 1979, we have yet to hear anything from the review in Washington and everyone claims no knowledge of Mr. Jewell's collection.

Mr. Jewell is known, respected, and liked by the marksmen and collectors in our community, and everyone feels that this behavior has been an ultimate abuse of the confiscatory powers of the BATF. We would like to have the opportunity to testify at any future hearings which you might schedule.

If there is any further information which you need, please feel free to contact me at the above address or Mr. Jewell directly at 2525 28th Street, Apartment 10, Boulder, Colorado, 80302.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'Theodore P. Koeberle', written in dark ink. The signature is fluid and somewhat stylized, with a prominent loop at the end of the last name.

Theodore P. Koeberle

LETTER FROM RANDALL CALLENDER, ATTORNEY, PHOENIX, ARIZ.

April 11, 1980

The Hon. Dennis DeConcini
3230 Dirksen Senate Office Building
Washington, D.C.

Attention: Ms. Jane Green

Dear Senator DeConcini:

It has come to my attention that you are currently conducting oversight hearings with regards to the policies and practices of the ATF and that you would therefore be interested in any information pertaining thereto.

In that regard, this office presently represents one Herbert Van Buren. Mr. Van Buren has been convicted of "dealing in firearms" without a license and this office is currently representing Mr. Van Buren in a civil forfeiture action filed by the U.S. Attorney seeking forfeiture of those of Mr. Van Buren's firearms that were seized upon his arrest at a gun show in 1977 in Phoenix.

To make a long story short, Mr. Van Buren, prior to his arrest, had been an avid collector of firearms and was and is quite knowledgeable about same. He displayed different parts of his collection at numerous gun shows in Arizona during the 1970's. At these gun shows firearms of all varieties were, and still are, displayed for other collectors and gun enthusiasts in general to see. Collectors also conduct trades at these shows in order to improve their collections. If a collector is offered cash for a particular firearm, and if he feels he can improve his collection thereby, he will often sell a particular gun in order to purchase more desirable firearms. Transactions of various permutations occur but the underlying theme is always the improvement of an individual's collection through the acquisition of guns that fit better into his collection or have particular collector's value to that individual. This is precisely the activity our client was involved in.

Nonetheless, allegedly based upon information supplied by a "confidential informant," the ATF proceeded to investigate Mr. Van Buren's activities. That investigation culminated on March 12, 1977, in Phoenix, Arizona, when ATF agents arrested Mr. Van Buren at a gun show at a local high school and confiscated thirty-one firearms he had there for display.

Based upon evidence consisting primarily of five (5) cash sales to undercover agents with ATF and a couple of trades with other individuals over a period in excess of a year, Mr. Van Buren was convicted in Federal District Court in Phoenix of "dealing in firearms" without a license. The case was appealed unsuccessfully to the United States Circuit Court of Appeal, 9th Circuit. Mr. Van Buren is thus tagged a convicted felon.

As stated earlier, this office now represents Mr. Van Buren in a civil forfeiture action seeking forfeiture of the thirty-one (31) guns. The government's position is that the subject guns were all offered for sale by Mr. Van Buren. This, of course, is ludicrous. As with collectors of anything, virtually all gun collectors are constantly interested in upgrading their collection. There is certainly not a profit motive involved, yet the very nature of collecting makes it enjoyable for a collector to improve his collection partially through either selling a particular weapon for more than he paid for it and reinvesting the proceeds or trading a particular weapon for another one of greater value than that which he had to originally give for the gun he's trading. At any rate, gun collectors such as Mr. Van Buren certainly don't make their living selling guns. The crime of which our client was convicted must certainly not have been meant to apply to individuals such as Mr. Van Buren, yet it is sufficiently vague to have allowed his conviction. And, based upon the conviction, the government is now seeking the forfeiture of Mr. Van Buren's personal property worth in excess of \$10,000.00.

As I stated at the beginning of this letter, the purpose hereof is just to inform you of one particular American citizen's involvement with the policies and practices of the ATF. Those policies and practices of the ATF (i.e. their determination as to who to investigate regarding gun control laws, the methods of their investigations, and their determinations of which individuals they ask the U.S. attorney to prosecute) have worked, and are working, to the extreme detriment of our client through the selective enforcement of a very ambiguous statute.

I hope this proves to be of some assistance and I would be happy to provide any further information you might desire regarding Mr. Van Buren's case.

Very truly yours,

Randall Callender

Randall Callender

LETTER FROM J. CURTIS EARL, PHOENIX, ARIZ.

April 11, 1980

Senator Dennis DeConcini
3230 Dirksen Senate Office Building
Washington, D.C. 20515

Dear Senator DeConcini:

I remember that at the hearings in July BATF stated that it was not their policy to use administrative remedies such as license revocations as punitive measures, to punish someone against whom a criminal case could not be proven. The fact is that this is their policy, at least in my case, and remains their policy to this day.

As I pointed out at the hearings in July, BATF initially brought a specious criminal case against me. This case was based on allegations that I had falsely designated a police department as the prospective possessor of Title II firearms to be shipped, when in fact I was the recipient. As I pointed out, the truth was that I had first informed BATF of the transfer to the police department and secured their approval in writing for the transfer to that department, all in accordance with statute.

I then separately requested approval, in writing, for the police department to transfer the firearms to me, and the BATF issued its approval for this second transfer. Only after receiving this approval was the second transfer made. At all times BATF knew of the recipient and present possessor of the firearms. At all times it was BATF itself who approved the transfers before they were made. The charges that I had misled them were obviously trumped-up. Their motive was clear, and it was not to fight crime. In July, I supplied for the record an investigative report, made by one of their agents about seven months before their raid on me, in which the agents informed his superiors that he had contacted me in an undercover capacity, asked about buying guns illegally, and I had told him I would sell no firearms except in the legal manner, and would not sell a firearm illegally even if I could get \$10,000 for it that way.

At any rate, BATF raided my premises with a large team of agents, at least one flown in from Washington, assisted by a communication van and, I am told, one or two aircraft. The "raid was obviously a media event, for I had in the past often been inspected by BATF and invariably welcomed their inspectors, often splitting a few beers from my refrigerator with them. They audited several hundred firearms in my inventory and, after I produced my records, which were far better than theirs, concluded that every one examined was legally registered and recorded--every one.

BATF took their charges to a grand jury. Of course, the grand jury only decides if there is "probable cause" to believe there may be a violation of law; they hear only the prosecutor, not the defense attorney. Yet on the twenty-one counts BATF presented to them, they returned "no true bill" on every one. Every single one.

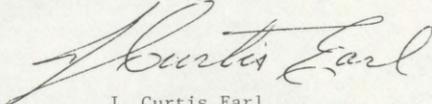
Notwithstanding this vindication, and proof that there was not even "probable cause", BATF has proceeded to confiscate and forfeit the firearms involved, splitting them into two lots and two cases to double my legal expenses. They have also filed an action to revoke my license, running those expenses still higher. These charges are based on precisely the same claims that the grand jury acquitted me of. I cannot see where they can be considered anything but harassment of myself, after vindication by my peers. Even if BATF loses, they know their legal expenses are paid by taxpayers--including myself--whereas I must pay my own. To date my legal expenses total around \$25,000; I just received my latest bill, for last month

alone, for \$1865. They are still withholding everything confiscated from me, even my typewriter and records.

Although BATF claimed during the July hearings that they would abandon their ways, they certainly have not done so in my case. All actions are still being pushed to their fullest. Indeed, a little over a week ago my attorney and I were served with a motion for summary judgement in the confiscation cases, which we are told was drafted in BATF's Washington headquarters. How much money BATF has wasted on this case I cannot say; but the license revocation preliminary hearings alone involved a Bureau "judge" hearing officer flown in and put up here from San Francisco, a BATF counsel from San Francisco, a BATF agent flown in from Tucson, plus local agents and a recording crew, which I believe came from Texas. The initial raid apparently involved use of aircraft, communications van, a records "expert" flown in from Washington and a number of agents. I would not be suprised if the cost to the public has exceeded \$350,000, counting agent time--all on a case where they couldn't even prove probable cause, against a man whom their own undercover agents say wouldn't sell an illegal gun at any price. (Prior to the July hearings, some friendly agents estimated the Bureaus' costs at a quarter of a million dollars!) They have not changed their ways in the least, but are continuing to this day to waste public monies and my money and liberties in a vindictive pursuit of an honest dealer. Even my private life is affected. David "Kelly", Sanderson, an FBI agent and my closest friend, has been instructed, apparently on BATF instigation, not to have social contacts with me.

It might be interesting to find out just 1. how many agents have worked on this case, and how many administrative personnel have worked on it; 2. how many airline tickets, hotel rooms, etc., have been used in its pursuit; 3. how many vehicles, including aircraft, have been employed; 4. how much attorney time has been devoted to it; and 5. how much the above has cost. I am told an agent was flown to Washington to hand carry my typewriter to headquarters--despite the fact that they could have sent typed samples, or shipped the typewriter alone. Why the waste of hundreds of dollars of taxpayers money? It might also be interesting to see if my guns have been defaced or injured. The guns taken from police chief Lane, which BATF did return, were marked with an electric pencil, destroying collector's value. I can only assume that the agents, administrative officers, and legal talent at the Bureau have nothing better to do with their time and taxpayers' money, than engage in useless, wasteful, vindictive conduct of this type. They certainly don't seem to have any time for the gun-using criminals in this region, or any other.

Sincerely,



J. Curtis Earl

LETTER FROM RICHARD T. MELCHER, SUPERIOR, WISC.

APR 16 1978

Senator Dennis Deconci
 3032 Dirksen
 Senate Office Building
 Washington D.C.

Dear Senator,

I am writing to you upon request of David Hardy of the NRA. He asked that I write you of my contact with the BATF.

I am living in Superior Wisc. with my wife of ten years and two sons age 4 & 6. I was born and have lived all my life in Superior. I am now 33 yrs. old, own my own business (rental property and an insulation company) and also work for Arrowhead Plumbing and Heating. My wife is an RN now employed at a local hospital. I have always owned guns and enjoyed many outdoor sports including hunting and trap shooting. Prior to this incident I have had no trouble with the law. I am a deputy sherriff with a gun permit. I am well established in the community and with a good reputation.

Five to six years ago I seriously became interested in collecting handguns. I started collecting, almost excluavely, Smith & Wesson models particularly collector's pieces, discontinued models, and current models.

Two and a half years ago I considered opening a gunshop in Superior dealing in firearms, ammunition, and compoents. I had purchased handguns through local dealers, and through Shot Gun News. These were shipped to Superior Shooter's Supply, paid for and registered to me. I had tentative approval for financing through Superior National Bank. I had sent for PFL forms. Due to circumstances, including financial and my doubt in the economic feasibility of the store I then decided against the store.

I then decided to sell the guns I had purchased for the store. I needed the money I had invested and I did not want all these guns in my home.

During August of '78 I, along with Shooter's Supply displayed guns at the Duluth Gun Show. I displayed S&W hand guns. "Don" who later proved to be with the BATF, inquired about handguns. I provided him with my name address and phone number. He stated he wanted to contact me at a later date, at my home, and possibly purchase a gun.

Two weeks later Don called. He came to my home with another agent whom he identified as his brother Steve. During the next ten months Don contacted me 8 to 10 times inquiring about guns. They purchased about five handguns and a 22 cal. single shot. During their visits they always remained in the rec room. They stated they wanted to see all my guns including collector's items not for sale. At one time Don asked if I were worried about

breaking the law. I stated I was a collector and not a dealer. I now needed the money I had invested in the guns. As far as I knew I was breaking no law in selling my collection. At that time I was unaware it was unlawful to sell a gun to a non-resident. Approximately one prior and two weeks prior, Don called ^{with the name} inquiring about guns for sale. I then informed him "I do not have any more guns for sale now nor will I have in the future, do not call again." I had sold the guns I no longer wanted, financially I was more stable. I had saved the best guns for my collection.

The visits and telephone calls by the agents were recorded and transcripts have been provided to me. These are very inaccurate and incomplete. There are many things that occurred that are not in the transcripts. Twice the agents asked if I knew I was committing a crime. Both times I replied no I was selling a collection. At one time Don asked me to cut the barrel of a shot gun he wanted to purchase. I had refused. This does not appear in the transcripts and this he denies. I do have a witness to this.

During one of these visits Don brought in a briefcase of silver and turquoise jewelry. He was selling these at a ridiculously low price. I told him "I was not interested in that sort of thing". He asked if I knew of any "good deals" particularly in diamonds and motors.

On June 6, 1979 at approximately 4:30 P.M. BATF agents arrived at my home with a search warrant. They stated they were from the BATF and displayed their identification. Four agents entered my home and started down the stairs toward the rec room. Steve called "search behind the bar". They found no guns there.

While agents were searching the bar and other parts of the house one agent read me my rights. During the search I was ordered to give them a written statement that I had sold guns.

There were four agents present during the initial part of the search. The search lasted about 2-2½ hrs. One agent took pictures of the entire house and grounds and items that were confiscated. An agent opened the gun cabinet and broke the key in the lock. He removed the shot guns and rifles and took the serial numbers.

An agent asked if I had any loaded guns in the house to which I replied no. They asked where my guns were kept. I replied in the safes. I have two. I was told to open these. They removed 3 guns from my small safe, a colt 22 cal. Woodsman (which was given to me by my father) an old model S&W 29 44 mag. cal which I purchased some years ago and use for target shooting, and a S&W Texas Ranger with a knife in a presentation case. This is one of 10,000 produced and is a collector's item. After removing the guns they rummaged through my personal belongings. I was then ordered to open the large safe in my garage. They removed a S&W model 66 U.S. Border patrol, one of 2800 produced honoring the 50th anniversary of the Border Patrol complete with patches, letter, and retired border patrol badge encased in lucite. This is one of six known matching sets and a highly desired collector's piece.

The agents also removed a 125th anniversary S&W one of 10,000 produced a collector's item, a S&W model 53 22 cal. jet which went out of production in 1974. These were all collector items (with the exception of my target gun) and were unfired. All of these guns ~~which~~ were my legal property, none were stolen. Most were registered to me.

We then went back into the house, the agents twisted wire tags through the trigger guards of my most desired collector's guns. I asked that the guns be kept in the boxes. The guns were placed in plastic bags and tossed in a pile on the floor.

~~xt5x~~:

At 5:30-6:00 two Superior police officials, one in uniform and a detective walked into my home and came downstairs. They identified themselves and stated they were going to assist in the search. They searched the house spending a great deal of time in the garage. My wife went into the kitchen with the detective, he looked through the kitchen cupboards and remarked "no machine guns here". During the raid 2-3 BATF agents arrived at different times. One of these was Don.

I was then ordered to open my office which was then searched. They confiscated two receipt books, and 6 months of cancelled checks, three empty hand gun boxes, and a partially completed FFL form. Later I heard agents talking "we didn't find anything here" and "we have to be careful this isn't a misinterpretation of the law".

They left boxes lying around, things misplaced, and guns and boxes scattered around. A box of cleaning equipment was thrown around. They took the cover off the boat motor in the garage, took a tent apart, scattered items in the garage, and littered cigarette butts on the floor.

They interrogated my wife and myself about gun dealings, our coin collection, and stolen property. A BATF agent implied my wife had stolen my diamond ring. They were told where the ring was purchased. The Superior Police questioned us about stolen motors and diamonds.

The BATF packed things up, gave me receipt for confiscated items (the serial numbers for two of the guns were wrong) and left. My two children were present during the entire raid.

While I was being searched four other individuals in Superior were also being searched. Jerry Bolin and Pat Koval of Superior Shooter's Supply, Mike Jesberg, and Bill Beckwell. Superior Shooter's Supply was searched. Mike and Bill were apprehended and had guns taken from them. Their homes were not searched. In Duluth Minn. four other individuals were undergoing similar experiences that day.

During July I along with the others in Superior were notified of a Grand Jury inquiry. We were now all grouped together under a conspiracy charge, which was later dropped. We were informed of the date. Apparently our case was not brought up at that time. We learned of the indictment weeks later on the local TV and radio stations. A few days later we received letters outlining the charges.

Pat, Jerry, Bill, Mike, and I are all friends who have hunted together, shot trap together and traded a few guns. ~~xxxxxxnever~~
~~xxxxxxx~~ I never had a financial arrangement to sell guns for Superior Shooter's Supply.

By this time we had all gotten attorneys. A trial date was then set for the first week of December '79. Through plea bargaining I decided to plead guilty to the charge of dealing without a license. The conspiracy charge was dropped but we had been refused separate trials. I was faced with so many counts and the costs of trial. I felt I could take no other course of action. I had given my lawyer \$5,000. He wanted a \$1,000 per day plus expenses to go to trial. He did not feel he could clear me of all charges. I could not afford this expense particularly after having \$5,000 worth of guns confiscated. I had incurred many charges now by flying down to Madison. We were denied having the trial closer to home.

Pat Koval had decided to go to trial and was found guilty on four counts.

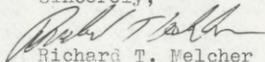
My wife has since gone back to work to help meet expenses and I have started work for Arrowhead Plumbing and Heating in addition to running our own business. I am now awaiting sentencing which is scheduled for May 2. I face a possible five year prison term. None of us had been given any type of warning. I was unaware it is unlawful to sell a collection or for a private individual to sell to a non-resident. Had I known this I would certainly have acted in a different way.

There has been a great deal of publicity which has proven quite devastating. There was TV and radio publicity, and we were front page news not only here but also Madison and Chicago. I have since learned this investigation cost the BATF \$200,000. The individuals searched in Duluth have had no indictments brought against them and will not be prosecuted. One individual was selling to the agents for 1½ yrs. He had 19 guns confiscated.

During this whole ordeal I have felt at a loss in how best to handle the situation. The costs are very high and there seems no way out. Everything I felt would help has turned out to be useless. I have contacted the NRA, the Second Amendment Foundation and others. They are all polite and listen. Their only response is a follow up letter asking for donations.

I hope I have given you some information you can use in your hearings concerning the BATF.

Sincerely,



Richard T. Melcher

10 Quechee St. Superior, Wisc.

phone 715 392-8486

54880

LETTER FROM PATRICIA M. KOVAL, SUPERIOR, WISC.

My name is Patricia Koval. I am 30 years old, married recently, graduated from UMS*Superior in 1973. I am currently involved in a partnership business with Gerald C. Belin. I own 25% of the business and my duties are mainly clerical. We sell components for reloading shotshell, rifle and pistol shells, ammunition and trap-shooting accessories. We also sell guns. Gerry began the business in 1969, when he drove down to Faribault, Minn. to pick up supplies for himself and his friends. He is an avid trap-shooter and in order to shoot trap you must reload your own shells to cut the expense. I became acquainted with Gerry at the store where we both worked for his brother. I became interested in shooting trap and helped Gerry reload. Since I had a garage we would store components in there. During this time Gerry applied for a Federal Firearms License. An agent came from Minneapolis to interview Gerry; however, as he was out of town that day the agent interviewed me instead as I was down on the form as a responsible person. The agent stressed the fact that the most important thing to remember was to get the customer's driver license as a form of I.D. for buying a gun. He gave me a copy of the city firearms laws and that was it.

Gerry rented a store downtown and on February 1977 we opened the doors. We formed the partnership in 1978. We both worked our regular jobs and the shop until 1978. Business was slim at first but picked up gradually. In the fall of 1979, on one of the few occasions I was behind the gun counter I was approached by a man who requested to buy a firearm that he wouldn't have to sign for. I told him we didn't have any. He approached me on two other occasions and I told him the same thing. He also called me. One occasion I told him that the only way he could buy a gun without signing for it was to purchase it from a private individual. He asked me if I knew anyone. I said sure, a couple of my friends had a couple guns that they may want to get rid of and I gave him the name of Richard Melcher and Michael Jessberg. I found out later that he was a federal agent and by giving him the names of my friends I was conspiring to violate the Federal gun laws, a felony.

In December 1979 I kept my own handgun at the shop. It was marked as my own according to law and was not in the book. I had been approached several times by people who knew I owned the gun who wanted to buy it, but I had turned them down. On that day in December I was not in the shop. Gerry called me at home and asked if I wished to sell the gun. He said he had a buyer for it. As I was going to Florida soon and needed money I told him to go ahead and thought little about it.

This man, who called himself Don Foreman came back frequently to the shop and struck up a friendship with Gerry and Bill Beckwell, a mutual friend of ours who was an avid trap-shooter and gun collector. Bill was out of work at the time, consequently he spent a lot of time at the shop. As I was in Florida for three weeks visiting my prospective in-laws I did not meet Don until February. Gerry and Bill had apparently sold him a few of their private guns and were very friendly with him. He said he sold Amway products and was involved in a pistol club. He said he could not buy any target guns where he was from and was happy to be able to get some here for his friends. He expressed a desire to purchase some target 22 pistols for his son and brother-in-law. He expressed a desire to buy guns that were in our showcase. I repeatedly said he could not as I now learned he was from Minnesota. We could not sell directly or book a gun out to a Minnesota resident. However, he suggested that Bill sign the gun out for him. The first sale was made by Gerry to Bill who gave the gun to Don. I completed the bottom of the form as I always did and filed it. I found out later that was two felonies. Don and Bill repeated this procedure with two more guns. Total of six felonies.

One June 6, 1979 our shop was raided by about 10 BFTF agents, including "Don" and the agent who had approached me earlier. They had a search warrant for "un-booked" guns. They found no un-booked guns. They literally tore the shop apart and escorted customers out of the shop. They told us we would be arrested in July and "Don" said that he would talk to the judge to make sure we didn't get a prison sentence. They also said they would be back in two weeks. They did return seeking information on anyone who was dealing illegally in firearms. We said we didn't have any information like that.

We were informed that there was to be an indictment in July. Time passed, we hear nothing. One night in August, on the 10 o'clock local news it was announced

that Gerry, I, Bill Beckwell, Dick Melcher and Mike Jedsterc were indicted on 48 counts of violating the federal gun laws. There were also raids made on four Minnesota residents at the same time. (To date, these men have not been indicted, although guns were confiscated from them)

We had to wait until the papers came out to see what we were charged with. We were arraigned September 23, 1979 with 8 counts against myself. Everyone but me took deals of one or two felonies. I went to trial December 2, 1979. The government dropped the conspiracy charge and another sale charge. I was convicted of four charges, one sale and the agreement on paperwork on the three sales.

The amount of publicity surrounding the trials was enormous. It made all the papers from Chicago to northern Wisconsin and all the state radio stations and local T.V. We are awaiting sentencing on May 2, 1980 and I intend to appeal.

I understand that the BATF are now issuing warnings instead of arrests. This is my major bone of contention. Since the sale was felonious, why was I allowed to continue committing it? Why was I induced to commit it again and yet again?

We have heard from reliable sources that over \$200,000 was spent on our case. Why not put this money into an educating system for dealers with agents spelling out those laws that are so vague and yet are a felony.

I've never had even a traffic ticket and now I have four felonies and a \$6,000 lawyer bill with more bills pending. If only I had been warned that I was committing a felony. **DO IT AGAIN AND YOU WILL BE CONVICTED.** If only the laws were written clearly and explained thoroughly by people who who wanted to prevent crime, not create it.

Perhaps it is too late for me. I certainly hope not. I intend to go to the Supreme Court. I believe I was tricked and enticed into committing crimes and my only crime was ignorance.

Patricia M. Kopf

LETTER FROM JOHN M. SANDO, ATTORNEY, TUCSON, ARIZ.

April 14, 1980

Senator Dennis DeConcini
3230 Dirksen Senate Office Building
Washington, D.C.

Dear Senator DeConcini:

This office represents Simon Perri, a small businessman and licensed firearms dealer, who resides in Tucson, Arizona. Mr. Perri has done business in Tucson for a number of years, handling firearms as a sideline, but one which produces about 15% of his income. Being located near the courthouse, he does a considerable amount of trade with police and the sheriff's department.

A number of years ago, BATF undertook to "raid" a number of gun dealers here in Tucson, based on "straw man" charges. The motivation for the raids was questionable; a friend with informal connections with the local BATF office later informed me that it was done to "let headquarters know they were still alive down here." The raid was accompanied by the usual BATF publicity. One article in the Phoenix papers claimed that the defendants were "the type of people who would sell guns to anyone," quoting an unnamed BATF source. BATF structured the actual arrests for maximum publicity. Although none of the nine persons arrested had any criminal record or propensities for law violation, a large number of agents were mustered for the arrests. (noticeably, when this squad discovered that one defendant was out of town, they just left word at his shop that he ought to turn himself

in when he got back. Hardly the occasion for wasting time and money on groups of officers and agents to make the arrests, unless the motive was publicity).

When the cases came for trial, the story was somewhat different. Of the nine persons charged, BATF was unable to convict a single one on felony charges. A number, I believe about half, either had their charges dismissed or were acquitted by jury. BATF became so desperate that they offered almost any plea to the remainder. Our client, Simon Perri, was offered a deal whereby they would drop the four felony charges if he would plead to a single misdemeanor, with a small fine. He rejected this. Faced with the costs of trial, he finally allowed that he would plead to the misdemeanor, only if he could plead *nolo contendere* rather than guilty, for he did not feel guilty of any offense. The BATF agreed--the only time I have ever heard of an agency agreeing to a federal *nolo* misdemeanor plea.

BATF got precisely one felony conviction out of the case--the conviction of their own informant. Just after the indictments, it developed that their informant, a convicted felon, was buying and selling guns "on the side," I suspect using the BATF sustenance payments for this. They were forced to prosecute, but dropped the ten federal felony counts against him in return for a plea to one count in state court, for which he received probation. Note that he was the only intentional lawbreaker in the entire case, but BATF showed no interest in pressing the case beyond a favorable state plea bargain. BATF has, on the other hand, pressed its case against Mr. Perri with abandon.

To give you the fairest documentation of the facts of the Perri case, I enclose copies of the statement of facts from Mr. Perri's briefs dealing with the entrapment issue. Among the most interesting, and perhaps startling, features of this case:

1. The government's informant, an unemployed ex-addict with a theft record, was offered a reward by BATF, which reward would be in the region of \$1,000-\$2,000. This was to be paid only after the case was terminated -- after trial, apparently, in the cases that went to trial. The amount would then be determined by BATF officials.

This is little but a concealed version of a contingency fee for a witness--which in any jurisdiction is grounds for disbaring any attorney who offers or acquiesces in its payment. BATF fixes the amount of payment only after it had heard the testimony and seen whether it was good enough to convict the citizen charged. Query--what would be the government's reaction if the defense were to offer a "reward" to its witnesses, payable only after the trial, the amount then to be fixed by the defense?

2. The informant, in an attempt to induce Perri to sell him a gun, apparently first tried to buy from Mrs. Perri and was unsuccessful. He then returned seeking Mr. Perri. He did not tell Mr. Perri he was a convicted felon, by his own admission. He said only that he could not sign the forms--implying that he simply did not care to have his name down. (Many gunowners fear confiscation by the government, and do not care to have their names listed for that reason). He then returned with an agent, his supposed brother, who offered to "sign" for him. Perri clearly refused this arrangement, and said he would sell to the "brother" only if the brother stated he was the buyer and was buying it for himself. Only after the "brother" three times assured Perri that he was buying and was willing to buy on these terms did Perri permit the transaction. The agents were obviously out to pursue, with whatever statements were necessary, a scrupulous businessman.

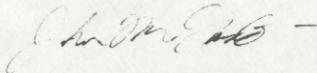
3. All of the above raise the question of why BATF is so diligently pursuing this dealer. The costs of the action to date must be great. BATF has three times flown one of its regional counsel in from San Francisco, presumably travelling and lodging here at public expense. It has once flown in John Krogman, the regional director of criminal enforcement, for a deposition. It has at least once flown in a hearing officer, with recording equipment, for an administrative hearing. Combined with all the investigative work, witness fees, and continuing expenses, this has required a good deal of financing.

At the same time, cases involving genuine gun using criminals in this area have been neglected. Not too long ago I spoke with a county attorney here, who was lamenting that he had been unable to secure a speck of BATF help in a case involving a convicted felon, an "outlaw biker", who had used a sawed off shotgun in a homicide. (It was ruled self-defense, hence no state charges could be filed on the killing itself; but the firearm and its possession were both federal felonies). It is as if BATF prefers to pursue persons without criminal intent and to ignore those with it.

4. The claims that BATF has "turned over a new leaf" are spurious. They are to this day pursuing this case with the same vigor they exhibited back in 1977. Two months ago this office spoke with a local reporter who was working on a BATF story. He had called the local office of BATF and spoke with the Special Agent in Charge. The agent defended use of the straw man case, and went on to state that they were still using that technique. This would be about five months after your earlier hearings.

I hope that the above information is of assistance to you and your Committee in its deliberations. The judiciary has, most regrettably, virtually abdicated its responsibility to protect the rights of citizens in this area, by making the entrapment defense virtually impossible to establish, by contruing criminal laws broadly rather than strictly, and by upholding vague statutory commands the breach of which is punishable whether or not inspired by illicit intent. Hopefully, by appropriate and flexible oversight, Congress can remedy these defects and protect the citizens of this nation.

Very truly yours,



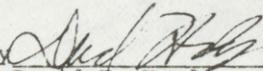
John M. Sando

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SIMON PERRI, JR., etc.,)	
)	
Petitioner/Appellant,)	
)	
v.)	NO. 80-5036
)	
DEPARTMENT OF THE TREASURY;)	DC # CIV 79-80 TUC MAR
BUREAU OF ALCOHOL, TOBACCO)	
AND FIREARMS,)	
)	
Respondent/Appellee.)	
)	
)	

APPELLANT'S OPENING BRIEF

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STATEMENT OF FACTS

1. This appeal centers upon a revocation of the federal firearms license (FFL) authorizing Appellant to deal in firearms. The revocation is based on claims that the dealer permitted two "straw man" sales to agent-informant teams, whereby the agent (a lawful buyer) purchased a firearm "for" the informant (who had been convicted of an offense punishable by more than one year). A brief discussion of the concept of "straw man" sales is therefore in order, both for analysis of the substantive claim and also because Appellant asserts, as an affirmative defense, that the formulation of this doctrine and the

Respondent's failure to publish the same constitute a bar to this action under the Freedom of Information Act.

2. During testimony before the Senate Subcommittee to Investigate Juvenile Delinquency, on April 23, 1975, a Senator confronted the director of Respondent Bureau of Alcohol, Tobacco and Firearms (BATF) with a hypothetical in which a private citizen, a lawful purchaser of firearms, buys a firearm from a licensed dealer and turns it over to a convicted felon. Since dealers are prohibited from selling to felons but not to lawful buyers, and since private persons are not precluded from selling to felons (at least under federal law), the Senator maintained that a sale of this type was "one of the biggest loopholes under the law." The director of the BATF, Rex Davis, agreed "there is no question that this law represents a gap in the law. We frequently run into cases of that kind where a proscribed individual will give another individual \$5 to go in and purchase a handgun."

(Exhibit A, Cross-Motion for Summary Judgment; Appendix p. 67). The Senator continued to question BATF witnesses about how they could deal with this gap in the law. They replied that perhaps the proscribed recipient could be prosecuted, and perhaps the person who actually transferred it to him (that is, the private, lawful purchaser) as an aidor and abettor to his possession. BATF later submitted a list of "possible statutory amendments" which would change the law so that these transactions might be outlawed: the primary suggestion was that all secondary firearm transfers be required to go through licensed dealers, so that the dealer would have to record transfers subsequent to the initial sale. (id.)

3. A few months later David MacDonald, Assistant Secretary of the Treasury for enforcement informed the House Subcommittee on Crime that his department (which includes BATF) was proposing "that it be made unlawful for any person to purchase a handgun with the intent of reselling or transferring such handgun to a person who is prohibited . . . from purchasing or possessing a handgun. This provision is aimed at the 'straw purchases' Under existing law, such persons can only be prosecuted for aiding and abetting the receipt of such firearm by the proscribed person." (Exhibit C to Cross-Motion for Summary Judgment; Appendix p. 65).

4. Apparently on this urging, the House Judiciary Committee reported a bill, H.R.11193, in early 1976. As the House Judiciary Committee explained some of the bill's requirements:

"The prospective buyer, moreover, would have to affirm not only that he is not among the disqualified classes of individuals listed in current law, but that he does not intend to transfer the handgun to a person barred by any law from possessing the weapon. This provision is designed to provide a provable charge against 'strawmen' who purchase firearms with intent to sell or transfer them to third parties whose possession would be unlawful."

(Exhibit B to Cross-Motion for Summary Judgment; Appendix p. 62).

5. Notwithstanding such testimony, BATF had apparently begun prosecuting gun dealers in 1975 and early 1976 based upon the concept that a sale to one person, legally entitled to buy, would constitute a violation if

the dealer knew that that person would transfer to a second person not eligible to buy under federal law. (See Exhibit I, Cross-Motion for Summary Judgment: Order Setting Aside Conviction Entered in January 1976, on undercover sales made September 30, 1975; Appendix P. 86).

6. In the course of the District Court proceeding, a deposition was taken of John Krogman, who was acting director of the BATF at the time administrative proceedings were initiated in this case. Mr. Krogman appeared as BATF's designated witness on the issue of its "straw man" doctrine. Mr. Krogman indicated that:

- a. "straw man" is used by the Bureau to designate a sale to a person who acts as a conduit to another person. (Krogman depos., 4).
- b. that the Bureau takes the position that a sale of this type is not always a violation of the law. It is a violation, for example, if the sale is for the benefit of a felon; it is not a violation if it is for the benefit of a juvenile, even though a juvenile is precluded from buying from the dealer. (id., 4-6).
- c. that the basis for the Bureau's drawing of this distinction is that the 1968 Gun Control Act prohibits a juvenile from buying from the dealer, but not from possessing a firearm; whereas it prohibits a felon both from buying from a dealer and from possessing. (id., 6).
- d. that this distinction extends also to the

- records which the dealer is required to keep of the sale. E.g., if the sale is to a lawful purchaser for benefit of a juvenile, the dealer should record the name of the initial lawful buyer as that of the "transferee"; if it is to a lawful purchaser for benefit of a felon, the dealer should record the name of the ultimate recipient, the felon, as the "transferee". (id., 28-30).
- e. that this distinction has been drawn by the BATF since around 1969 (id., 9).
 - f. that he did not recall the Bureau ever having published this doctrine in the Federal Register, for guidance of dealers and the public. (id., 12). The only guides issued to dealers indicated that the sale to a lawful purchaser for a juvenile who could not buy from the dealer were permissible. (id., 10-11). No instructions were issued to dealers informing them of the other side of BATF's doctrine -- that similar sales for benefit of other types of prohibited persons might be considered illegal. (The first such indication was an industry circular, id. 11, which was first disseminated in August, 1979. (See Exhibit H to Cross-Motion for Summary Judgment; Appendix p. 84).
7. The "straw man" doctrine continued to evolve while this case was in litigation. In June, 1977, for example, BATF agent John Spurgeon filed an "employee suggestion" form proposing that a warning be added to the Form 4473,

warning that "it is unlawful for a buyer to purchase a firearm for the purpose of giving it to another who is a prohibited person. . . ." He suggested that "the addition of this information will help the honest or unsuspecting citizen from violating the law and special agents in perfecting cases against those who violate the law." (Exhibit F to Cross-Motion for Summary Judgment; Appendix p. 78). BATF declined to give dealers this warning, instead informing the agent that "we cannot adopt your suggestion because no foundation in law exists which fully supports it", and someone had already proposed the measure. Instead, BATF would print a warning on the back of Form 4473 (id.) among the fine print, where neither seller nor buyer would likely read while filling in the blanks (all of which are on the front) (Exhibit G to Cross-Motion for Summary Judgment; Appendix p. 82).

8. On January 23, 1979, counsel for Appellant submitted a Freedom of Information Act request to BATF, seeking all documents (including memoranda, final opinions, statements of policy, etc., which are required by the F.O.I.A. to be published in the Federal Register) relating to "straw man" sales. On March 1, 1979, the Bureau responded that "there are no retrievable records" of this type in their possession, except for preparatory documents on the upcoming Industry Circular, which would not be disclosed to the public. (Exhibits D, E, Cross-Motion for Summary Judgment; Appendix p. 69). Even upon request, information as to the dealer's sale and record-keeping responsibilities under BATF's "straw man" doctrine were not available to dealers or their counsel.

9. Petitioner Simon Perri is a 52 year old federally

licensed firearms dealer, doing business in Tucson, Arizona, under the name of Perri's Jewelers. (Transcript of administrative hearing, July 12, 1978; hereinafter cited as "Tr.", at p.179). He has been licensed as a firearms dealer since approximately 1962, with the most recent renewal of his license coming on April, 1977 (id., 182). His primary occupation is jewelry and engraving (id., 179), with some sales of camping and hunting equipment (id., 180). Firearms sales account for about 15% of his gross business income (id., 181); in this field he does a substantial trade with law enforcement officers (id.).

10. During February, 1977, Respondent Bureau of Alcohol, Tobacco and Firearms employed one Antony Demara as an informant for the purpose of generating criminal charges against licensed firearms dealers in Southern Arizona. Demara was a twice-convicted felon (Tr. 123-24) who was then on methadone treatment for previous heroin addiction. (Tr. 126). He undertook the work because he was unemployed and needed the money (Tr.125). BATF paid him a small daily sum as sustenance and held out the promise of a substantial "reward" "at the end of all this", which "might be \$1,000 or even \$2,000." (Tr. 119-21). The amount of this reward would be determined by Respondent Bureau of Alcohol, Tobacco and Firearms' headquarters only after all cases generated by Demara were disposed of (i.e., after Demara had testified against the resulting defendants and the trial results or pleas were known). "We told him we wouldn't even be able to put him in for it until all of the cases were disposed of." (Deposi-

tion of BATF agent Thomas Gerrity, p.18; hereinafter "Gerrity Depos.").

11. Demara approached a number of federally licensed dealers in the area of Tucson, Arizona, and generated a number of arrests. Subsequent to such arrests, it was discovered that Demara had been engaged in a number of illegal firearm transactions without BATF approval. He was charged with ten felony violations of the Gun Control Act. BATF then dismissed these in consideration of his continued "cooperation" and his pleading guilty to a single count of State gun law violations, for which he received probation (Deposition of Antony Demara, pp.16-18; hereinafter "Demara Depos."). He was informed that BATF had the right to refile all ten federal felony charges if they felt his testimony was untrue, "and they still do." (Id.,19).

12. Demara first approached Perri Jewelers at a date prior to February 8, but upon this occasion was unable to purchase a firearm. (Demara Depos.8-9; Tr.110). Demara does not recall whether he tried to buy a gun on this occasion. (Demara Depos.9).

13. On February 8, he returned again. When asked to reconcile this with his claim that he was to leave if the dealer refused to sell him a gun, Demara responded that he "wasn't persistent about it." (Demara Depos., p.8). On this second occasion he was accompanied by undercover agent Morris Reyna, using the undercover name of Jose Martinez.

14. On the February 8 visit, Mr. Demara indicated that he desired to purchase a firearm. Mr. Perri ascertained that Demara was a local resident and could produce valid

local identification. He explained the Form 4473, which the buyer of a firearm must fill out and sign. He then indicated that he would not sell to any individual who answered any of the questions on the Form with a "yes". (TR. 113).

15. A BATF transcript of the tape recordings of this encounter (filed as Exhibits 24 and 25 to the administrative record) shows Demara initially claiming that he did not have his local identification, apparently to see if Perri would sell without seeing proper identification. Mr. Perri responded "you gotta have your Arizona driver's license to buy it." (Ex.24, p.2). He then apparently presented Demara with a Form 4473, telling him "You have to answer all this, you know, they all gotta be no's; if there is a yes then I can't sell you the gun." (Id., 3).

16. The transcript shows Demara saying "I can't sign that." (Id.). He does not state that he would answer the questions with a "no", nor that he has a felony record, nor give any explanation as to why he will not sign. (Id.). (The Form 4473 itself does not contain a statement that the signer is not underage, felon, etc., but merely asks questions, answerable yes or no, followed by signature blank).

17. Perri responded to the indication that Demara could not sign with the response "well, if you didn't, see, you can't buy it." (id.). The government transcript's translation (Perri and Demara were conversing partly in Spanish) shows Perri further explaining that "another person can, yes, but not you." Perri then added that he would not even sell to another person if that person

stated that the sale was for Demara's benefit: "if he says it is for you he can't buy it," and when Demara suggested his brother, Perri added "he can buy it for himself, for his own use." Demara responded "But I want it", and Perri allowed that "if he wants to give it to you, well, that's another matter." (id., 4). Perri later stated that he imposed these requirements based on his own surmise as to what the law might be; BATF had never given him guidance in this area.

(Affidavit attached to Opposition to Motion for Summary Judgment and to Cross-Motion for Summary Judgment).

18. Demara then went outside the shop and returned at a later time with his "brother", agent Morris Reyna. The transcript begins with a discussion between Reyna and Demara regarding a Smith&Wesson revolver. After the conversation, Demara attracts Perri's attention by asking "Isn't that a nineteen down there?" (i.e., a Smith&Wesson Model 19). Perri responded with "como?" (rough translation: what's that you say?). Demara and Perri discuss the firearm. At this point agent Reyna, confusing the matter of who is going to have the firearm, breaks in with "I don't like that one, Tony." (Ex. 24 p.6A).

19. Demara then stated that he had been wanting one and tells Reyna "you gotta sign for me." Perri declined the gambit, responding "You can't sign for nobody. You can't sign for another guy. He has to buy it for his own use." (id.).

20. Notwithstanding this refusal, the agent and informant continued. After a garbled section, the transcripts show them jointly discussing Perri's inventory. (Reyna:

"is that a used one?"; Perri: "no, it's new." Reyna: "Oh, it's new. It's got some gold stuff in there."; Perri: ". . . someone was playing around there and put the gold in it." Demara: "huh". Reyna: "how much is it?" Demara: "it's . . . For a gun like that I don't think it costs that much, really, because I've seen others that cost over two hundred dollars . . . I appreciate it man. I've been looking for one of those babies for a long time." Reyna: "they're both automatic." Demara: "Thirty eighty" (sic-- .380). (id. pp.6A-6B). Perri then asks the prospective buyers "You want a three eighty or a thirty two?" and it is Reyna who responds "No, I want a thirty two just like this other gun." (id., 63).

21. At this point a deputy, one of Perri's customers, entered. Fearful of his identity being disclosed, for he knew the deputy by sight, Reyna tells Demara "you, ah, come on back, huh?" and they leave. (id., 7). Some minutes later they return. Demara and Reyna discuss firearms, holsters and ammunition. Reyna finally asks Perri "How much is the tax on that?" and Perri answers. (id., 10).

22. At last Reyna returns to the purchase, telling Perri "Tony wants the gun, and uh, I'll make up that form or whatever." Perri for the third time refuses the gambit, "I can't. You can't buy it for him." (id., 11). Perri further informed him that "you have to buy it for yourself." At this point, the BATF informant Demara (who has a \$1,000 reward awaiting him) prompts Reyna, "buy for yourself." Perri responds that if Reyna can legally purchase, he will sell to him. (id., 11). Reyna indicates his willingness to so purchase. (Perri: "you can buy it?" ; Reyna: "yes". Perri: "well, if you buy

it, you say it's going to be for your use, I'll sell it to you. . . ." Reyna: "Yeah, yeah." (id. at 12; ellipses in original). Perri ascertains that Reyna has no criminal record (Reyna: "Yeah, like the only thing I got was a traffic ticket", id., 12) and has local identification. He makes one last attempt to be sure: "you want to buy it?" to which Reyna once more responds "Yeah". (id., 13).

23. The transcript then shows Perri obtaining Reyna's driver's license (in his undercover name of Martinez) and filling out the forms. Demara apparently whispers a warning to Reyna that Perri will bill Reyna for the gun and that Reyna should stand back: "You better. . . You better be cack. . . eh, he bills you for it, so I. . ." Id., 13; ellipses denote spaces in transcript). He then states "I want the nineteen, man."

24. Reyna then begins discussing the Form 4473 with Perri. Perri indicates that the form which Reyna would sign "stays here", that the authorities have access to it "In case they ever want it, tho. . . they can take a photostat and use it against you." (id., 14, ellipses in original). Reyna asks whether "they can come in and ask you for it" and Perri continues "if you didn't done no crime or nothing, they can't do nothing. It's just the idea that if you have ever something happened (unintelligible portions) but if you commit a crime after something else. . . ." Reyna responds with a mumble and Perri goes on "if these are answered wrong, they could uh hold it against you for your conviction. See that's why it's no good for you to buy it, 'cause if they ever, you know, check you for something else then they come up and pick up this

thing and hold it against you in court because you falsify it, you are mixing the words, it makes a real crime. You got them ah you got the message?" Reyna answers "yes". (id., 14).

25. Perri then ascertained the information--place of birth, residence, race, etc. He is called aside to take care of another customer (id., 16). Perri presented Reyna with the Form 4473: "you have to sign this ah answer here." Reyna signed his undercover name to the blank labelled "Transferee's(Buyer's)Signature" (exhibit 28, administrative record). He filled out a receipt, showing Reyna's undercover name (ex. 30).

26. At this point, in still another try to generate a suitable case, Demara offered Perri the money for the firearm. Perri declined, turning to Reyna and telling him that he would accept payment only from Reyna, who had signed as purchaser. (ex. 24, p.19:"You pay me. I'll take it from you."). Reyna then took the money from Demara and paid it to Perri, asking why Perri would take it only from him, and Perri replied "I'm selling you the gun." (id., 19). Perri then placed the firearm on the counter, intending to transfer it to Reyna. Reyna, however, had stepped backward and Demara stepped in and picked up the firearm. (Tr.54). Perri was attending to the recording of the transaction and did not see this last development. (affidavit attached to Opposition to Motion for Summary Judgment and Cross-Motion for Summary Judgment). Reyna discussed (whether before or after the firearm was picked up is not shown) ammunition for the firearm, asking "how much do those bullets cost?" Upon being informed, he responded "Ten dollars? Wow!" but

Demara instructed Reyna how to reduce the cost of shooting the firearm: "get some reloads, man." (id., 21).

Perri discussed ammunition prices and then Demara added "I'll get some reloads. . . ." (id., 22).

27. A week later, BATF informant Demara returned, this time accompanied by local agent Michael Click. Perri had been busy in the meantime and did not recognize Demara from the previous purchase (affidavit).

28. On this occasion, Demara began by stating that he was buying the firearm, not for himself, but for his wife: "Ah, I want to get a gun for my wife, can you show me a, you got any twenty-fives?" (administrative hearing exhibit 27, p.1; the reference is to a .25 automatic, a firearm of very low recoil. See also Tr.90). He continued that "she can't handle the other. . . too damn. . . power for her." (id. -- ellipses denote blank spaces in the transcript). Perri mentions that he is taking inventory and unintelligible conversation follows. An unidentified female asks Demara if she can help him and he indicates he wants a .25 automatic. Mr. Perri returns and discusses prices, adding they are "going to take inventory, that's why we're a little bit confused." (id., p.3). They discuss prices again and Demara eventually volunteers "Oh, for her money is no big thing, you know. She really wants it for her protection." (id., 6). After more discussion (large parts of which are unintelligible) Perri asks Demara "You gonna buy it?" and Demara responds, "I can't, I can't." Here, according to Click, Perri was called aside to deal with another customer. (Tr.91). Perri then apparently begins discussing inventory matters with an unidentified person. More semi-intelligible

conversation follows, with Demara finally indicating that "she goes nuts over that little cheapie", apparently the .25 (ex. 27, p.9), and with Click giving his personal data for the Form 4473 (id., 9-10). Demara then asks for a box of ammunition. (id., 13). The 4473 showed the purchaser as Wayne Micheals, which was Michael Click's undercover name, and Click signed this name as "Transferee(Buyer)".(ex. 31). The receipt was likewise made out in the name of Micheals (ex. 32), as did the ammunition sale records (ex. 33). Payment was made by Demara (Tr.94), and a woman he believed to be Mrs. Perri placed the gun on the counter, from which Demara picked it up (Tr. 94). At no time during this transaction did Demara inform Perri that he was a convicted felon, nor explain why he did not want to sign the Form 4473.

29. Several months later, Mr. Perri was charged with four federal felony counts -- two of sale to a convicted felon, two of keeping false records. Ultimately, the government agreed to reduce these to one misdemeanor count and to permit Mr. Perri to plead nolo contendere to this count. Mr. Perri accepted this offer and the felony charges were dismissed. (A plea of nolo contendere is inadmissible as a matter of hornbook law; this stage of the proceedings is set forth here only because the Respondent, during litigation, began asserting incorrectly that Mr. Perri entered a "guilty plea." (Motion for Protective Order, dated 6 July 1979, at p.8 l.11).

30. Following such disposition of the charges, Respondent began these proceedings to revoke Mr. Perri's license.

C. PERRI JEWELERS Has No Entrapment Defense To The Revocation Qf Its License.

The defense of entrapment is not available in a civil proceeding to revoke a federal firearms license. See, Mayesh v. Schultz, 58 F.R.D. 537 (S.D. Ill. 1973). Even if it were available, PERRI has waived it by pleading nolo contendere to criminal charges arising from the firearms sales to Demara. See, United States v. 57 Miscellaneous Firearms, 422 F.Supp. 1066 (W.D. Mo. 1976).

Assuming arguendo that the defense of entrapment were available, there would be no basis for such a defense. Demara, Reyna and Click offered no special inducements to PERRI and merely presented a situation in which PERRI had the opportunity violate the law. A government agent's merely affording an individual an opportunity for the commission of a crime does not constitute entrapment. United States v. Russell, 411 U.S. 423, 435 (1973); United States v. Valenzuela, 596 F.2d 824 (9th Cir. 1979). When Demara told SIMON PERRI that Demara could not sign the Form 4473, PERRI showed his predisposition to commit the crime by suggesting that another person could buy the firearm. Since PERRI was predisposed to commit the crime, he was not entrapped. United States v. Russell, supra, at 429, 433-34. To establish an entrapment defense, the defendant must show that government agents implanted in the mind of an innocent person the disposition to commit the alleged offense and induced its commission. United States v. Russell, supra, at 435. There is nothing in the record to support the contention that PERRI was an innocent person, or that government agents implanted in his mind the disposition to sell the firearms or induced him to sell the firearms. Therefore, there is no basis for a defense of entrapment.

PERRI argues that he was entrapped because he did not know that the firearms sales he engaged in were illegal. PERRI cites United States v. Healy, 202 F. 349 (D. Mont. 1913) for the proposition that a defendant who believes his conduct is legal and is solicited to engage in that conduct by government agents cannot be convicted of a crime. In Healy, the court overturned a conviction for selling liquor to an Indian where the Indian did not speak, dress or act like an Indian and the dealer did not know or have any reason to believe he was an Indian. In contrast, SIMON PERRI knew Demara could not lawfully buy firearms and knew his sales of firearms to Demara were illegal. Therefore, PERRI's reliance on Healy is misplaced.

III

ANY VIOLATIONS OF THE GUN CONTROL ACT OF 1968 HERE ALLEGED BY THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS WERE THE RESULTS OF ENTRAPMENT BY GOVERNMENT AGENTS, WHICH ENTRAPMENT IS A VALID DEFENSE TO A LICENSE REVOCATION PROCEEDING.

At the outset, the obvious question is whether the defense of entrapment applies to civil rather than criminal proceedings. As the Trial Court recognized, there are valid reasons for applying it to civil proceedings. The entrapment defense does not arise as a constitutional requirement, so that it is not applicable solely to "all criminal proceedings" as is true of some constitutional provisions. Rather, the courts have treated it as a matter of statutory construction, or more properly statutory implication. Absent an express statement, the legislature cannot be assumed to penalize acts which are committed only because agents of the Executive Branch persuaded a

person to undertake them. Moreover there is also a valid policy reason to discourage such conduct on the part of agents. If an agent is faced with producing a certain number of arrests or proceedings, he naturally inclines toward "setting up" a law abiding individual who is more easily led into violation and is less dangerous. Cases manufactured by the agents are more easily solved and thus more easily prosecuted. The same policy and statutory considerations are applicable to civil proceedings. These considerations should be especially strong where the civil proceeding involves revocation of a governmental license based upon activities by governmental agents, and in particular where the proceedings are brought under the Gun Control Act of 1968. As pointed out above, that Act demonstrates a Congressional concern toward sharply limiting the revocation of dealer's licenses.

Courts faced with the question of administrative proceedings have generally held that the entrapment defense is available in a license revocation hearing. See, e.g., Patty v. Board of Medical Examiners, 9 Cal. 3d 356, 508 P.2d 1121(1973); Jones v. Dental Commission of Connecticut, 109 Conn.73,145 A.570(1929); Peters v. Brown, 55 So.2d 334(Fla.Supp.Ct.1951); In re Horowitz, 360 Ill.313, 196 N.E.209(1935); In re Davidson, 64 Nev. 514,186 P.2d 354(1947); Langdon v. Board of Liquor Control, 98 Ohio App.535,130 N.E.2d 430(1954). A very limited number of cases have refused to apply the defense of entrapment. See Kerns v. Aragon, 65 N.M.119, 333 P.2d 607(1958). These cases virtually all involve liquor licensing under statutes allowing revocation

for violations not accompanied by criminal intent. Under such statutes, of course, whether the criminal intent originated with the dealer or the agent would be unimportant. Under the Gun Control Act of 1968, of course, any violation must be "willful", clearly distinguishing these cases. The sole authority which has dealt with this point in the context of the Gun Control Act of 1968 is Mayesh v. Schultz, 58 F.R.D. 535(S.D.Ill.1973) in which the District Court, in passing, remarked that the entrapment defense was not available since the case was not a criminal one. The opinion does not indicate, however, that this issue was seriously raised nor that the court was made aware of the authority on the subject nor policies underlying the entrapment defense.

The District Court declined to reach the legal question based on the government's argument that it did not implant a criminal motive in the mind of Mr. Perri. This argument has two serious weaknesses. First, this is not the limit of the test in this context. The traditional entrapment test, most recently construed by the Supreme Court in United States v. Russell, 411 U.S.423(1973) and by this Court in United States v. Valenzuela, 596 F.2d 824(9th Cir. 1979) was first recognized by the Supreme Court in Sorrells v. United States, 287 U.S.435(1932). This test is applied in the vast bulk of criminal cases, simply because in the vast bulk of criminal cases there is no question but that the defendant knew that his conduct (under virtually any relevant circumstances) was illegal. Few persons would contend

that they believed dealing in narcotics, illegal liquor, and similar items to be legal. This case is distinguishable in that it involves a claim by Appellant that he believed (and Appellant in this brief will argue, correctly believed) that his conduct was legal under the circumstances of the sale and the contract negotiated between himself and the agents.

In fact, entrapment of this type antedates Sorrells and its progeny. In Sorrells, the Supreme Court cited as authoritative an older case on entrapment, noting that the scope of the entrapment rule would no longer be limited to the situation present in that case. The earlier case, United States v. Healy, 202 F.349 (D.Mont.1913) had dealt with a prosecution for selling liquor to an Indian under the statutes then existing. The agents claimed that they suspected the defendant was selling to Indians and therefore sent an individual who was legally an Indian, but who did not speak, dress, or act like one. The defendant was convicted on the charges. The Court refused to permit the conviction, noting that "decoys are permissible to entrap criminals, but not to create them; to present opportunity to those having intent to or willing to commit crime, but not to ensnare the law-abiding in unconscious offending." It concluded that while the act in question may be "a crime regardless of the actor's intent or knowledge," so that "ignorance of fact is no excuse if the act be done voluntarily", the Court would take the view that "when done upon solicitation by the government's instrument to that end

ignorance of fact stamps the act as involuntary, and excuses, or at least estops the government from a conviction." It concluded that this defense would not be applicable if the decoy's appearance conveyed knowledge of his disability or was sufficient to put the seller on inquiry.

In the instant case, the record below adequately demonstrates that the government formulated a "straw man doctrine". It carefully avoided disseminating the doctrine or otherwise informing dealers of its requirements. Under the doctrine, certain types of sales to one person "for" another might be permissible, whereas other similar sales were impermissible; the recording requirements likewise differed radically depending upon the precise nature of the "prohibited person" for whom the sale was allegedly consummated. (This topic will be gone into more extensively under the following Argument). Perri was one of a class of persons whom Respondent Bureau of Alcohol, Tobacco and Firearms carefully chose to keep ignorant of the requirements both of law and of fact. It kept him and all dealers ignorant of the law, by refusing to disseminate the requirements of the doctrine. In fact, when it was suggested that dealers should be informed of the "straw man doctrine" in order that inadvertent violations might be prevented, Respondent Bureau of Alcohol, Tobacco and Firearms chose to place that warning in fine print on the back of the forms which were to be filled out by the dealer in making a sale, carefully neglecting to inform dealers that the form had been changed in any way. Perri was also among a narrow

class of individuals who were kept ignorant as to the fact of a sale. As documented in the Statement of Facts, and discussed more fully below, Respondent Bureau of Alcohol, Tobacco and Firearms took the position that sales to one person "for" another who was a "prohibited purchaser" were illegal only if the "prohibited purchaser" was prohibited from possessing, as well as purchasing, the firearm. Mr. Demara carefully neglected to inform Appellant Perri that he was a felon, or any other class of persons who are prohibited both from purchasing and from possessing the firearm. (Indeed, Demara neglected to inform Perri that he was a prohibited person of any type but merely refused to sign the form and indicated that he would obtain someone else to purchase "for" him, which offer Perri refused). Thus Respondent Bureau of Alcohol, Tobacco and Firearms effectively lured Perri into making what it alleges is an illegal transaction by keeping him ignorant both of the law which they contended applied and of the fact which was pivotal to compliance with the requirements of the law.

Additionally, it is apparent that the offense in this case was literally "manufactured" by government agents. As Mr. Perri's Affidavit documents, he negotiated a contract to sell a firearm to lawful purchasers, who provided identification, signed as buyers, indicated that they would purchase, and were given the receipt for the firearm. The firearms were picked up off the counter by the informant when Mr. Perri was not observing the transaction. It may safely be assumed that the government would not contend

that Mr. Perri had committed a violation were the lawful purchasers to have picked up the firearm. The alleged transfer to a prohibited purchaser occurred in contradiction of Mr. Perri's intent and his agreement, and was committed by virtue of a pre-arranged routine. The lawful purchaser who had agreed to buy the firearm from Perri stepped back, and the informant stepped forward and picked up the firearm, all at a time when Mr. Perri was not observing the transaction. Thus, in addition to keeping Mr. Perri ignorant of various requirements, the agent-informant team effectively manufactured the offense themselves and now seek to charge Mr. Perri with having committed it.

In the end the entire question becomes a simple one: would Congress, which restricted the classes of prohibited persons, provided that even some of these might possess a firearm although not purchase it, and which narrowly restricted revocation of dealer's licenses to "willful" violations, have intended to permit revocation of a dealer who could only be led to commit an alleged violation after repeated visits, who repeatedly informed agents that he would not make a transfer which he felt was illegal, and who transferred a firearm to the agent-informant team only after the lawful purchaser had negotiated with him, inquired regarding the price and suitability of different types of firearms, confused the nature of the transaction as to who would be the purchaser, agreed three times that he would be the purchaser, provided his local identification and signed the blank as "transferee(buyer)." Appellant respectfully suggests no.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SIMON PERRI, JR., etc.,)	
)	
Petitioner/Appellant,)	C.A. No. 80-5036
)	
v.)	DC # CIV 79-80 TUC MAR
)	
DEPARTMENT OF THE TREASURY;)	
BUREAU OF ALCOHOL, TOBACCO)	
AND FIREARMS,)	
)	
Respondent/Appellee)	

ON APPEAL FROM THE JUDGMENT OF
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BRIEF OF APPELLEE

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C. Statement of Facts

On February 8, 1977, Antony Demara, a convicted felon, entered PERRI JEWELERS alone and selected a Smith & Wesson Model 19 revolver and discussed the purchase price with SIMON PERRI (RT-AH, pp. 45, 112-114, 116; A.R., GX-8, -9, -24, and -26, pp. 1-2). PERRI advised Demara that he had to answer "no" to all questions on the Form 4473 prior

to purchase and that if he answered "yes," PERRI could not sell him the gun (A.R., GX-24 and -26, p. 3; RT-AH 113-114). After telling Demara to read the Form 4473, PERRI asked Demara if he had ever been convicted of a felony (A.R., GX-24 and -26, p. 3). When Demara replied that he could not sign the form, PERRI told him that he could not buy the firearm (A.R., GX-24 and -26, pp. 3, 4; RT-AH 51, 113, 114).

PERRI started speaking in Spanish for the first time during the conversation stating, "Another person can buy it." (A.R., GX-24 and -26, p. 4; RT-AH 113-114). PERRI responded: "Well if you don't tell me that it is." (A.R., GX-24 and -26, p. 4; RT-AH 113-114). Both Demara and PERRI laughed (A.R., GX-24 and -26, p. 4; RT-AH 114). PERRI then stated: "IF he says it is for you, he can't buy it." (A.R., GX-24 and -26, p. 4). Demara replied: "But I want it." (A.R., GX-24 and -26, p. 4). PERRI then told Demara: "But if he wants to give it to you, that's another matter. . . ." (A.R., GX-24 and -26, p. 4).

Demara then left the store and returned with Morris Reyna, a state law enforcement officer who was using the undercover name Jose Martinez (A.R., GX-24 and -26; RT-AH 42). A short time later a Pima County law enforcement officer entered the store. PERRI put the Smith & Wesson revolver away and gestured for Demara and Reyna to leave the store (A.R., GX-24 and -26, p. 7; RT-AH 49).

After the officer left, Demara and Reyna re-entered the store and Reyna again told PERRI he was buying the gun for Demara, stating: "Tony [Demara] wants the gun, and . . . I'll make up that form or whatever." (A.R., GX-24 and -26, p. 11; RT-AH 50). PERRI replied: "You can't buy it for him

. . . . You have to buy it for yourself . . . you can't buy it for him. It's illegal, it's against the law But if you buy it for another guy you tell me, I, I, don't want no part of it Have you got it?" (A.R., GX-24 and -26, p. 11, RT-AH 63).

PERRI, addressing Reyna, explained how the transaction worked: "You say it's going to be for your use, I'll sell it to you." (A.R., GX-24 and -26, p. 12; RT-AH 63-64). Reyna filled out Section 8 of the Form 4473 and he signed using the undercover name Jose Martinez (A.R., GX-28 and -29; RT-AH 50-54).

PERRI explained to Demara the advantages of Reyna's filling out the forms and appearing to be the buyer of the gun. "See that's why it's no good for you to buy it, cause if they ever . . . pick up this thing [the Form 4473] and then they hold this against you in court because you falsify it . . . you got the message?" (A.R., GX-24 and -26, p. 14; RT-AH 53).

When Demara took the money out of his wallet to pay for the gun, PERRI told him "keep your money" and addressing Reyna stated, "[I'll] take it from you." (A.R., GX-24 and -26, p. 19; RT-AH 46, 67, 116). PERRI picked up the money (RT-AH 67). Demara was given the change, picked up the bag containing the firearm and carried the firearm out of the store (A.T., GX-24 and -26, p. 22; RT-AH 54, 116). PERRI JEWELERS recorded the firearm in its disposition records as being sold to Jose Martinez (A.R., GX-29).

One week later, on February 15, 1977, Antony Demara returned to PERRI JEWELERS accompanied by Michael Click, a state law enforcement officer (RT-AH 89-90, 118). PERRI

showed Demara several guns; they discussed these firearms and PERRI quoted prices on them (A.R., GX-25 and -27, pp. 1-7). Demara selected an RG revolver, serial number T538100 (A.R., GX-25 and -27, pp. 6, 7; GX-31-33; RT-AH 90, 118). PERRI and Demara agreed on a purchase price of \$39.95 (A.R., GX-25 and -27, p. 6; GX-32). Mr. Click took no part in the selection of the firearm or the negotiation for its purchase (A.R., GX-25 and -27; RT-AH 92, 107).

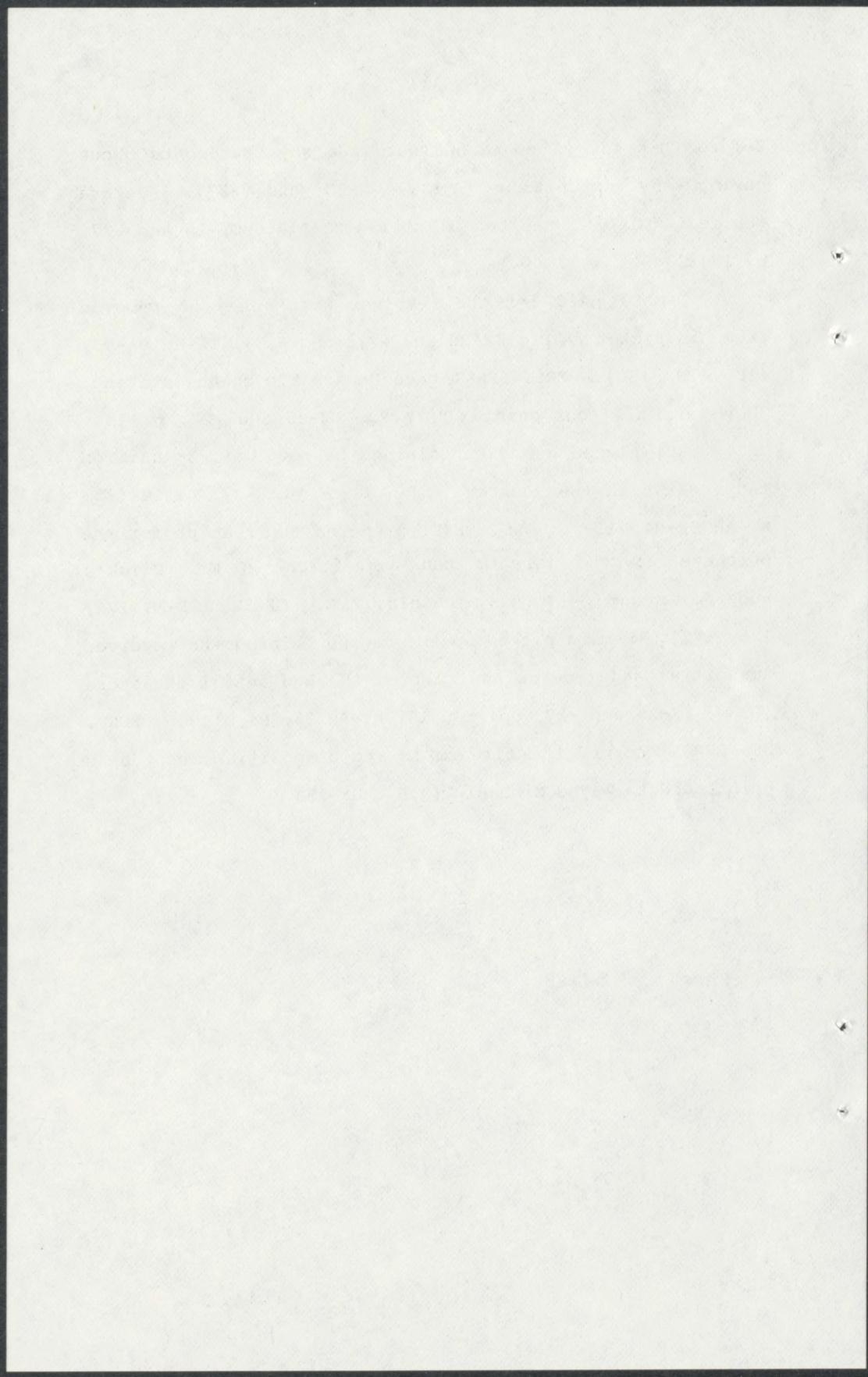
When PERRI asked Demara if he was going to buy the revolver, Demara replied: "I can't, I can't." (A.R., GX-25 and -27, p. 8; RT-AH 91, 107).

Click came to the counter and produced a driver's license in his undercover name of Wayne P. Michaels (RT-AH 95). PERRI filled out the Form 4473 with Click in his undercover name of Wayne Michaels. PERRI asked him about his current address and his place of birth and told him to sign the form (A.R., GX-25 and -27, pp. 9, 10, 13; RT-AH 95, 103, 104, 118, 186).

At this point, MRS. PERRI became involved in the transaction. PERRI told his wife she could list the firearm in the book. MRS. PERRI replied: "538100" [the serial number of the revolver Demara purchased] (A.R., GX-25 and -27, p. 12; GX-31-33). Demara asked if the tax was 6 percent. MRS. PERRI replied: "Mm Hmmm." Demara then stated he thought the tax was 4 percent. PERRI responded: "Yeah. Four for the state and two for the city." PERRI then told Click: "Gotta answer the questions with a yes or no and you have to sign that." (A.R., GX-25 and -27, p. 13). MRS. PERRI asked Demara -- rather than Mr. Click -- if he wanted some shells for the revolver (A.R., GX-25 and -27, p. 13).

Before this time, Demara had not made any statements about buying any ammunition (A.R., GX-25 and -27). Demara replied: "Give me one box of shells." (A.R., GX-25 and -27, p. 13).

Demara paid for the revolver with money he removed from his picket (A.R., GX-25 and -27, pp. 6, 7; TR-AH 91-93, 118, 119, 136). MRS. PERRI gave Demara his change stating: "Here are all your pennies." (A.R., GX-25 and -27, p. 14). MRS. PERRI placed a bag containing the revolver, ammunition and receipt on the counter (A.R., GX-25 and -27, p. 14, 15; RT-AH 92-94, 119). MRS. PERRI prepared the receipt for the purchase of the firearm and ammunition in Mr. Click's undercover name -- Wayne Michaels (A.R., GX-32; RT-AH 174, 175, 177). Demara picked up the bag containing the revolver, ammunition and receipt and carried the bag out of the store (A.R., GX-25 and -27, pp. 14, 15; RT-AH 93, 94, 119). PERRI JEWELERS recorded the firearm in its disposition records as being sold to Wayne Michaels (A.R., GX-33).



DEPARTMENT OF THE TREASURY

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

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

ACCOMPANIED BY:

PHILIP McGUIRE, CHIEF, INVESTIGATION DIVISION
STEPHEN HIGGINS, DEPUTY DIRECTOR, ATF
MILES KEATHLEY, ASSISTANT DIRECTOR, CRIMINAL ENFORCEMENT
RICHARD J. DAVIS, ASSISTANT SECRETARY FOR ENFORCEMENT AND
OPERATIONS, DEPARTMENT OF THE TREASURY
MARVIN DESSLER, CHIEF COUNSEL

Senator DeCONCINI. We will now hear from the Bureau of Alcohol, Tobacco and Firearms, represented by Mr. Richard J. Davis and Mr. Dickerson.

Thank you for being with us today, and anyone else you care to have at the table—

Do you have a prepared statement?

Please proceed, or however you care to proceed.

I have a few questions I will ask you. But if you would care to go ahead.

Mr. DAVIS. Thank you, Mr. Chairman.

With me today is Director Dickerson, Deputy Director Higgins, Assistant Director Keathley, and Chief Counsel Marvin Dessler.

I am not going to present a prepared statement. I would ask, however, that Director Dickerson make his statement, after which I would like to make a few remarks.

Senator DeCONCINI. Mr. Dickerson.

Mr. DICKERSON. Thank you, Senator.

I do have a prepared statement, and I would like to take the time to read most of it, if I could, because I am responding and will file documents to show that I have complied with the previous promises that I made.

Senator DeCONCINI. Please proceed.

Mr. DICKERSON. I am genuinely pleased to have this opportunity to again address this committee on the subject of ATF's efforts to control the criminal misuse of firearms. During my appearance before you last July, several areas of controversy and concern were raised by various witnesses and by the committee. We had an opportunity to discuss those allegations both from the viewpoint of the witnesses and from ATF's position.

I assured the committee of my desire to resolve any area of concern which ATF legally could address, and established in writing what I believed those areas were in a lengthy letter to you. I will review with

you once again those actions which were promised at that time, and will inform you fully as to positive steps and commitments undertaken by ATF since that time.

I feel strongly, and I hope you will agree, that we have acted in good faith on all fronts. In several areas ATF, upon close examination of an issue, has gone beyond its initial commitment to you and has taken additional steps to assure evenhanded application of the laws and regulations which we enforce.

As an agency, ATF has no position on the merits of increased or decreased gun control. We strive, and will continue to strive, for impartial enforcement which is directed toward the criminal misuse of firearms. That is an objective to which all parties can subscribe.

I wish now to review with you the individual areas contained in my letter. I will discuss each one and report on our current position for each.

The first item we agreed to review was development of a comprehensive national firearms policy. The task force I referred to in my letter consisted of ATF field and management personnel from all parts of the country. Their mission was to develop a policy statement which would be consistent both with the letter and spirit of Federal law while directing ATF resources to those areas having greatest impact upon the criminal misuse of firearms.

In order to increase the effectiveness of the firearms programs and in response to the legitimate concerns expressed at the hearings last July, we have also reviewed and modified our firearms program, strategy, and policy. At this time I wish to submit to you the new statement of the ATF firearms program which I believe will insure an effective firearms enforcement and regulatory effort which protects the legitimate users of firearms.

We have reviewed and modified our firearms program, strategy, and policy. At this time, Senator, I would like to submit to you for the record the statement of the ATF firearms program—

Senator DeCONCINI. For the record, is this the comprehensive national firearms policy that you make reference to?

Mr. DICKERSON. Yes, sir.

Senator DeCONCINI. Thank you.

[The information follows:]

STATEMENT OF G. R. DICKERSON

I am genuinely pleased to have this opportunity to again address this committee on the subject of ATF's efforts to control the criminal misuse of firearms. During my appearance before you last July, several areas of controversy and concern were raised by various witnesses and by the committee. We had an opportunity to discuss those allegations both from the viewpoint of the witnesses and from ATF's position. While we were not able to answer every question at the time of the hearing, we subsequently responded to the Committee in writing with complete and, hopefully, comprehensive answers.

I assured the Committee of my desire to resolve any area of concern which ATF legally could address, and established in writing what I believed those areas were in a lengthy letter to you. I will review with you once again those actions which were promised at that time, and will inform you fully as to positive steps and commitments undertaken by ATF since that time.

I feel strongly, and I hope you will agree, that we have acted in good faith on all fronts. In several areas ATF, upon close examination of an issue, has gone beyond its initial commitment to you and has taken additional steps to assure even handed application of the laws and regulations which we enforce. I am grateful for the open attitude of this Committee and for your willingness to discuss enforcement of the Gun Control Act in a constructive atmosphere.

The emotionalism surrounding the general issue of gun control often unfortunately tends to result in an indictment of the agency responsible for gun law enforcement. As an agency, ATF has no position on the merits of increased or decreased gun control. We strive, and will continue to strive, for impartial enforcement which is directed toward the criminal misuse of firearms. True improvement in the policies and operations of ATF will increase our ability to prevent the criminal misuse of weapons. That is an objective to which all parties can subscribe.

I wish now to review with you the individual areas contained in

my letter. I will discuss each one and report on our current position for each.

NATIONAL FIREARMS POLICY

The first item we agreed to review was development of a comprehensive national firearms policy. The task force I referred to in my letter consisted of ATF field and management personnel from all parts of the country. Their mission was to develop a policy statement which would be consistent both with the letter and spirit of Federal law while directing ATF resources to those areas having greatest impact upon the criminal misuse of firearms.

In order to increase the effectiveness of the firearms program and in response to the legitimate concerns expressed at the hearings last July, we have also reviewed and modified our firearms program, strategy, and policy. At this time I wish to submit to you the new statement of the ATF firearms program which I believe will insure an effective firearms enforcement and regulatory effort which protects the legitimate uses of firearms.

REORGANIZATION OF OFFICE OF INTERNAL AFFAIRS

The second commitment dealt with reorganization of the Office of Inspection to insure prompt and professional handling of allegations of wrongdoing or abuse by ATF employees. This reorganization, which had been started prior to my appearance before you last July, has now been completed. The Office of Internal Affairs has been completely reorganized, both organizationally and philosophically. In an organizational sense, we have decentralized the former Inspection activity to include four Regional Inspector offices in New York, Atlanta, Chicago and San Francisco with an additional post of duty in Dallas.

We have revamped the Headquarters structure to separate, and thereby better assure, the functional integrity of internal investigations, internal audits and operational reviews. We have installed new leadership and have recruited experienced internal affairs personnel from other agencies to complement the existing staff.

Philosophically, the Office of Internal Affairs is moving from a purely reactive organization, responding to integrity breeches after the fact of their occurrence, to a proactive investigative entity with priority emphasis being placed on the pre-identification and foreclosure of potential integrity hazards. To that end, the Office of Internal Affairs is also developing a series of integrity awareness presentations and messages designed to sensitize Bureau employees to their responsibility to maintain the highest standards of official conduct.

REORGANIZATION OF OFFICE OF CRIMINAL ENFORCEMENT

My third commitment dealt with reorganization of the office of Criminal Enforcement of ATF. This reorganization has also been completed. The Office of Criminal Enforcement was reorganized, effective October 1, 1979, into a regional structure. The new structure is intended to provide closer supervision over the Criminal Enforcement operations of the Bureau's district offices. Four Regional Directors (Investigations) were selected through the merit promotion process, and offices opened in New York, Atlanta, Chicago, and San Francisco. All have line authority under the Assistant Director, Criminal Enforcement.

"STRAW MAN" INVESTIGATIVE TECHNIQUE

My fourth commitment dealt with utilization of the "straw man" investigative technique during investigations of licensed firearms dealers. As I stated during my last appearance before you, this technique has been upheld by the courts as legal and proper, but is employed by ATF only with my personal approval or the approval of my deputy. Since my last appearance, the Court of Appeals for the Fifth Circuit affirmed the conviction of a firearms dealer who used a "straw man" to make illegal firearms sales. I have attached a copy of the opinion to my statement. Since a major criticism of this technique was that many dealers did not understand the legal ramifications of dealing with third parties in the sale of firearms to otherwise prohibited persons, ATF distributed to every Federal firearms licensee an industry circular explaining what is and what is not permissible

under the law. I wish to submit a copy of that document at this time.

I might add that since last July I have authorized only one "straw man" investigation, a case which involved gun smuggling along the Mexican border. I would be happy to meet privately with the Committee to discuss the circumstances surrounding that ongoing investigation.

SALES AT GUN SHOWS

My fifth commitment dealt with sales of firearms at gun shows by Federally licensed individuals. Currently, licensed dealers are permitted to sell firearms only at the place of business specified on their license. A licensed dealer may attend gun shows for the purpose of displaying his wares and taking orders for firearms, but must return to his place of business to actually consummate the sale.

After considerable legal consultation and regulatory review, a draft advance notice of proposed rulemaking soliciting comments as to whether we can and should propose a rule to allow licensed dealers to make sales at gun shows located in their home states has been approved by the Treasury Department. I have just received authorization to publish this advance notice. I wish to submit a copy of the notice at this time. Of primary concern to ATF is that proper recordkeeping be insured so that we can more successfully trace firearms used in crime.

I would again state to this committee that extreme care must be used in this regard since gun shows have repeatedly proved to be a preferred source of weapons for the criminal element. This is primarily because recordkeeping is often nonexistent by many of the persons making sales. It is documented that the Symbionese Liberation Army, the Black Panthers, the Hells Angels motor cycle gangs, and individuals such as Sara Jane Moore all obtained crime guns at various gun shows.

DEFINITION OF DESTRUCTIVE DEVICES

Our sixth commitment to the subcommittee involved the definition of destructive devices under the National Firearms Act. While this cate-

gory includes weapons of extraordinary destructive potential, such as rocket launchers, hand grenades and mines, and certain explosive and incendiary devices which would serve only criminal purposes, it also includes other large bore weapons which are not so likely to be used in crime. While most weapons classified as destructive devices have little or no utility to the hunter or sportsman, some of them are sought by collectors. A delicate trade-off between a weapon or device's potential misuse and its legitimate value as a collectors item can be explored. To the extent that the public safety will not be threatened, an examination will be made of the classification of certain of these devices with a view toward liberalizing their removal from this restricted category of weaponry. We are exploring the possibility of removing those weapons which have collector appeal and are not likely to be used as weapons. In addition, we will continue to permit the removal of those weapons which are altered so that they no longer meet the destructive device definition.

I wish to submit the findings of our task force at this time.

HANDLING OF SEIZED FIREARMS

My seventh commitment to the committee dealt with handling of seized firearms and discretion in determining which firearms of a dealer should be seized. An extensive study of the Bureau's procedures which apply to taking property into Federal custody was completed in December. The applicable Bureau order was modified on December 3, 1979 to better assure proper handling of seized firearms. In addition, the Bureau has engaged in a contract to purchase heavy gauge plastic bags into which all seized firearms will be sealed. We are presently procuring both the bags and sealing devices which will be issued to every post of duty. I have a sample here for your inspection.

Guidelines concerning which items should be seized during an investigation have been issued. Generally speaking, agents are instructed to seize only those firearms which are clearly involved in the violation. In addition, instructions designed to insure prompt

return of seized firearms in those cases where a defendant may be found not guilty have also been issued. Our policy is to return such property unless instructed otherwise by the court, unless the individual is a prohibited person, the weapon is contraband, or where the return of the firearm would be contrary to public safety. I wish to submit a copy of the approved order at this time.

"ENGAGING IN THE BUSINESS"

My eighth commitment deals specifically with an issue which was discussed at some length during my last appearance, the definition of "engaging in the business" as a dealer in firearms. During my appearance last July there was extensive criticism concerning the absence of a regulatory definition of the term, as well as the interpretation of the term by the Federal courts. Various witnesses found the term or existing definition of the term to be too vague to be applied in all situations. As my letter indicated, the Bureau developed an advance notice of proposed rulemaking inviting comments from the public on how this term should be defined. The notice was drafted in the weeks following the hearing and was formally published on December 19, 1979. The comment period, which was extended 30 days and, in fact, closes today, resulted in 931 comments being received. The Bureau is presently engaged in evaluating these comments.

It is interesting to note that some critics of ATF, who insisted that the Bureau was remiss in not previously defining the term, are now criticizing the Bureau for attempting to define the term. They have stated publicly that responsibility for a definition of "engaging in the business" rests exclusively with the United States Congress. It is interesting that they would criticize ATF for not defining the term and then, when the Bureau acts on a Senate request which was based on their testimony, criticize the fruits of their own labors. I asked counsel to review the legality and propriety of the Bureau engaging in this effort. Their response was that we are clearly within our proper boundaries in so doing.

CRIMINAL VS CIVIL ACTION

My ninth commitment dealt with developing guidelines with regard to ATF taking civil action against an individual or a licensee after dismissal or acquittal of criminal charges. This, again, is an interesting situation. Last July you heard testimony from a Mr. Phillips, a Federally licensed dealer doing business in Parksley, Virginia. In the discussion which followed Mr. Phillip's testimony both you, Mr. Chairman, and Senator McClure were extremely critical of what had been presented as a typical ATF operation. An exhaustive search of our files has indicated that, in fiscal year 1979, ATF brought administrative charges against a dealer who had been acquitted of criminal charges on only two occasions. The Phillips case was one of them. In both cases an administrative decision was reached in favor of reissuing the license.

In any event, I have recently signed directives to the field which set stringent standards for cases in which administrative actions might be brought following failure of criminal prosecution. I wish to submit a copy of the directive at this time.

I wish to point out two additional facts. First, the number of dealers investigated by ATF has been significantly reduced in the past year. In FY 1978 there were 671 investigations; in FY 1979 there were only 257; and in FY 1980 we are projecting a further reduction to 106 licensed dealer investigations. We are attempting to concentrate upon only the most significant sources of weapons to the criminal community. At the same time any licensee who flagrantly violates the law cannot expect or receive immunity from investigation and, if warranted, prosecution.

There has been considerable criticism of ATF for conducting routine compliance inspections of licensed dealers, with allegations that these inspections were conducted in order to find insignificant recordkeeping violations and to put dealers out of business. This is not true. In FY 1979, ATF inspectors conducted 14,744 compliance investigations of existing licensees of which 4,159 were found to be

in violation. As a result of these investigations, 217 renewal or original applications were denied and 12 were revoked through the administrative hearing process. In addition, 234 admonitory letters were issued to licensees found to be in serious violation of the law and regulations.

I believe that the record speaks for itself. ATF would prefer to help a dealer correct technical deficiencies rather than to take criminal or administrative action against him. Only in the most severe cases do we act against the dealers license.

Nor do we conduct "raids" to examine a dealers records. ATF policy for the past two years has, in most instances, been to telephone the dealer in advance to make an appointment to inspect his records. We do, of course, reserve the right to occasionally make unannounced inspections, but our policy is to create the least amount of disruption possible to the business involved.

Under current regulations, in the event a dealer must be acted against, ATF has no recourse other than a warning or the extremely severe action of license revocation or denial. We are contemplating amending the regulations to permit suspension of a dealer for those cases in which the violations involved, while serious, might not justify the drastic action of revocation. This action would result in even a lesser number of revocations.

ATF PUBLICITY GUIDELINES

My tenth and final commitment dealt with ATF publicity guidelines which dictated the extent to which information could be released following any ATF criminal operation. The former guidelines were criticized as appearing to sanction prejudicial pre-trial publicity. Our Public Affairs guidelines were reissued on February 15, 1980 and the questioned policies have been amended. I would reemphasize to the committee that ATF is, and always has been, subject to the guidelines put forth by the Attorney General. Those guidelines require that "public out-of-court comments regarding investigations, indictments, arrests,

and on-going litigation, should be minimal, consistent with the Department of Justice responsibility of keeping the public informed." I wish to submit a copy of the new guidelines at this time.

Mr. Chairman, as I indicated to you personally following the July hearings, ATF is seriously committed to providing professional and effective law enforcement for the benefit of the American public. I believe that the actions which I have just outlined for you will go far toward assuring that any action taken by ATF will be able to stand the honest scrutiny of the public and the Congress. No agency of government, and certainly no law enforcement agency, could ever come before this committee and claim perfection in all aspects of its operations and policies. I will again commit, however, to my intent to strive toward that goal. These hearings have had a positive and lasting impact on the agency and should assist us toward that end.

Mr. Chairman, last July I stated to you that I was determined to see that the Gun Control Act was brought to bear forcefully upon the criminal element in this country in order to curtail the criminal misuse of firearms. I would like to take this opportunity to review for the committee several recent cases made by ATF which I believe illustrate this commitment.

In January, 1980, ATF agents in the Washington, DC area initiated an investigation based on the recovery of a firearm in New York City which had been purchased from a licensed firearms dealer in this area. The investigation eventually documented the use of fictitious identification to illegally purchase firearms for delivery to an identified narcotics trafficker in New York City.

As a result of this investigation the narcotics trafficker was arrested and charged with violation of the Gun Control Act.

In a second case, a firearm was traced which had been used to murder one New York City police officer and wound a second. The weapon was traced to Florida where it was determined that it had been purchased by a New York resident using fraudulent identification. Six other weapons were purchased at the same time, taken to New York and

sold. The defendant was arrested for violations of the Gun Control Act on August 27, 1979 and was subsequently indicted. At the time of his arrest the defendant had been charged with burglary in Nassau County, New York. He was subsequently convicted of burglary and also entered a plea of guilty to the firearms violations and was sentenced to 3 years in prison on the firearms charge.

ATF has also used the Gun Control Act to impact on international criminals. For example, in September 1978 Columbian authorities arrested three terrorists after they attempted to kidnap the former Columbian Ambassador to France. Weapons used during that kidnap attempt were identified to us and were traced to a resident of Miami as part of a purchase of 100 such weapons. A routine compliance inspection at the store where they had been purchased had already detected that sale as well as suspicious multiple sales of over 300 firearms. An individual was identified who had conspired with the firearms dealer in the illegal diversion of firearms through the falsification of records. The owner of the gun shop was arrested pursuant to a Federal arrest warrant on August 27, 1979 and was indicted on 15 counts of violation of the Gun Control Act. In February, 1980, he pled guilty to 2-counts pursuant to a plea bargain agreement, was sentenced to serve 10 years in prison and was fined \$10,000 by the judge who characterized his behavior as "disgusting." The judge, in passing sentence, cited the delivery of firearms for use by terrorists as a most serious offense.

We are particularly satisfied with our ability to assist the Drug Enforcement Administration in arresting major narcotics traffickers on charges of violating the Gun Control Act. For example, on March 26, 1980, ATF special agents executed a Federal Search Warrant on the residence of a Class 1 narcotics violator in the Southwest. A large quantity of firearms, all of which were loaded, were seized along with a quantity of ingredients used in the manufacture of methamphetamines. A large quantity of other hard drugs were also found. The defendant is a convicted felon with an extensive criminal

history. He has been arrested on 37 occasions on charges ranging from homicide to narcotics to gambling.

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

In a similar case, ATF agents in Florida began an investigation of a suspect alleged to be selling large quantities of firearms at gun shows throughout the South Florida area. The suspect had been observed in possession of some 100 to 150 handguns at gun shows and claimed to be disposing of from 40 to 50 guns per show for a profit of \$4,000 per show. A series of purchases were made from the suspect including one purchase of four firearms stolen in a residential burglary. In February 1979, the suspect sold a stolen firearm to the undercover agent and agreed to deliver 80 additional firearms to the agent for \$7,000. In February, 1979, agents seized 30 handguns, 4 long guns and 2 prohibited weapons.

Working with local officers, ATF assisted in the identification of the suspect's source of supply for stolen firearms, who was subsequently prosecuted in State court. A total of six stolen firearms were purchased or seized during the investigation. Firearms were also recovered in connection with narcotics arrests in adjoining States which were traced to the defendant and are believed to have been sold at gun shows. In May, 1979, 4 additional suspects were arrested by local officers when found in possession of a machine gun, fragmentation grenades, and 4 handguns, one of which was traced directly to the defendant. One suspect was a known narcotics trafficker from Miami and was in possession of \$50,000 cash. In June, 1979, authorities arrested 16 persons in connection with their attempt to smuggle 16,000 pounds of marijuana into the United States by aircraft. Ten firearms were recovered incident to the arrests and two have been traced back to the defendant in the original ATF investigation. Prosecution of this individual is pending before the Federal courts.

With regard to our impact on organized crime, in April 1978, ATF

and DEA initiated an investigation into the firearms and narcotics trafficking activities of a prominent South Florida organized crime figure who was identified as a significant member of the Giancana family in Chicago. The undercover investigation was centered in Miami and Chicago. Undercover ATF agents purchased 4 machine guns and 4 silencers as well as a quantity of narcotics from the defendant. On November 28, 1978 the principal suspect and 4 associates in the Miami area as well as a fifth suspect in Chicago were arrested. Agents recovered 5 handguns, 2 machine guns, and 51 silencers incident to the arrests. On May 25, 1979 the principal suspect was sentenced to 26 years in prison on 21 counts of violation of the Federal firearms and narcotics laws. His associates received commensurate sentences.

Mr. Chairman, while I am deeply concerned about allegations of past improprieties on the part of ATF, I am equally concerned that cases such as these which I have just described should also be brought to the attention of the committee. I hope that you will all be assured that this agency intends to bring the Gun Control Act to bear on criminals such as these who make such a violent impact on our society. I believe that the resources of ATF are being focused deliberately and forcefully upon such criminals.

I will be happy to respond to any questions which you might have.

FIREARMS PROGRAM

PURPOSE

The purpose of this document is to:

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

INTRODUCTION

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

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

one area of the supply system will be ineffective. The program described in this paper addresses those areas of the firearms supply system which have the greatest potential for criminal misuse and on which ATF can have the most significant impact.

BACKGROUND

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

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

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

Critics of the FFA cited the following deficiencies:

- easy accessibility to firearms licenses given the nominal licensing fee of \$1.00

- lack of regulatory controls over the issuance of firearms licenses
- failure to provide a mechanism to ensure compliance with the recordkeeping requirements
- failure to regulate the interstate movement of firearms through mail-order sales, purchases by nonresidents, etc.

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

THE GUN CONTROL ACT OF 1968

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

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

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

Title I of the Gun Control Act replaces the Federal Firearms Act. This Title addresses itself to the movement of all firearms in interstate and foreign commerce both within the firearms industry and by private individuals. It outlaws mail-order sales of firearms and greatly restricts the sale of firearms to out-of-state residents. The Act also significantly broadens the classification of persons prohibited

from purchasing and transporting firearms in interstate commerce to include all classes of convicted felons, adjudicated mental incompetents, and narcotic addicts. Sales of firearms to minors are also restricted.

Title I further provides for a licensing system with standards to assure that licenses will be issued only to qualified persons. The Act and its implementing regulations provide sufficient authority to ensure compliance with the recordkeeping provisions, thus enabling law enforcement authorities to trace firearms used in crimes.

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

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

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

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

FIREARMS PROGRAM OBJECTIVE

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

FIREARMS SUPPLY AND DEMAND

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

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

The following sections describe each of the four sectors.

Supply Sector

Data is available on the domestic manufacture of firearms and the number of importations and exportations. Estimates have been made of the number currently held in the United States. The firearms supply is also fueled by thefts of military guns and illicit manufacture; however, these numbers are thought to be negligible at this time. While illicit manufacture and military sources are now believed to

be relatively insignificant when compared to the total number of firearms, these sources could become significant in the event that action is taken to alter the supply system. Just as guns move into the supply system, there is a movement out of the system. Exportation, law enforcement seizures, buy-back or turn-in programs, and aging and deterioration account for the means by which firearms move out of the supply.

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

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

A cursory analysis of Figure 1 suggests the following:

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

Strategies for dealing with the supply system range from the conservative to the radical: status quo, public awareness, security programs, registration, licensing, importation and/or manufacturing controls, waiting periods, buy-back or turn-in programs, or seizures. The significance of these steps will vary according to individual perceptions regarding the firearms issue. ATF is not urging that any one of

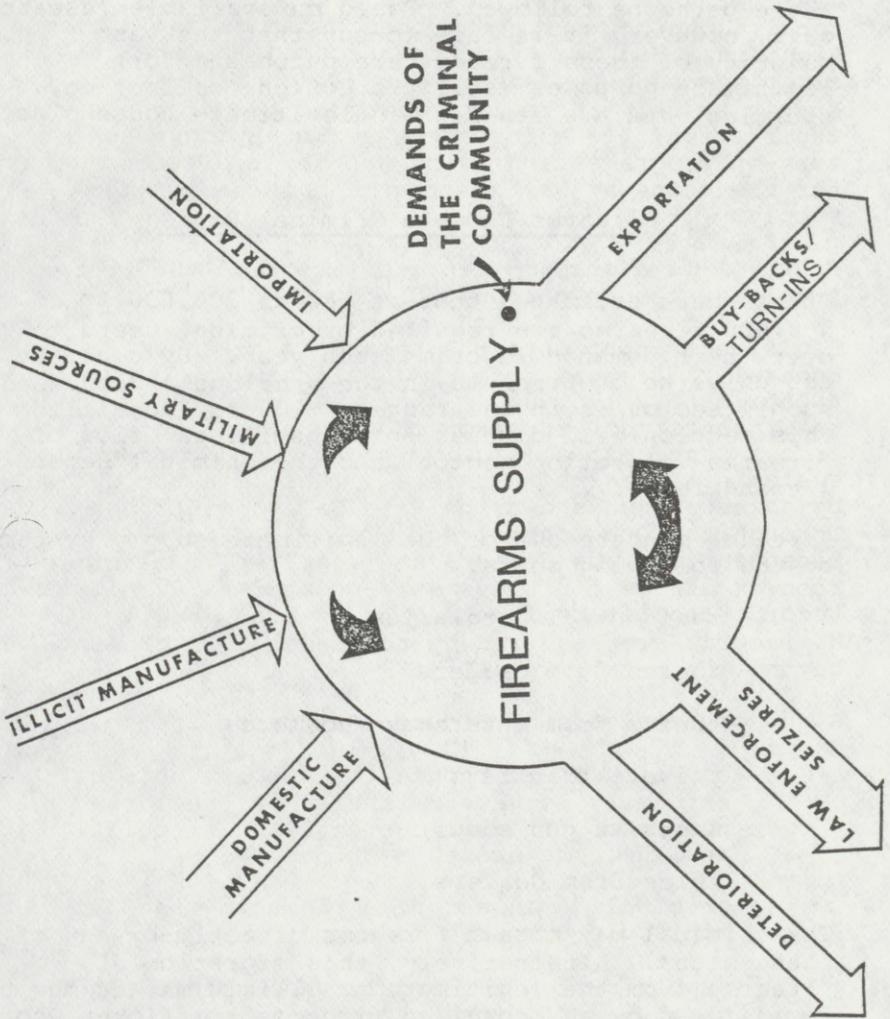


Figure 1

these paths be followed. Based on available research data, however, it is safe to say that the vast majority of these firearms are purchased for legitimate purposes (self protection, collection, sporting) and are resident in legitimate households.

Firearms Flow to Criminal Hands

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

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

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

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

These transfers of guns to criminals are of two types. The first type is a transfer to a person prohibited under the GCA. The second type is to non-prohibited purchasers with criminal intent but with no disabling factors. The latter category presents a particular problem to law enforcement and the firearms industry.

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

We can make the following observations based on Figure 2:

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

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

Impact Sector

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

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

The following observations can be made on Figure 3:

- crimes in the impact sector are malum in se

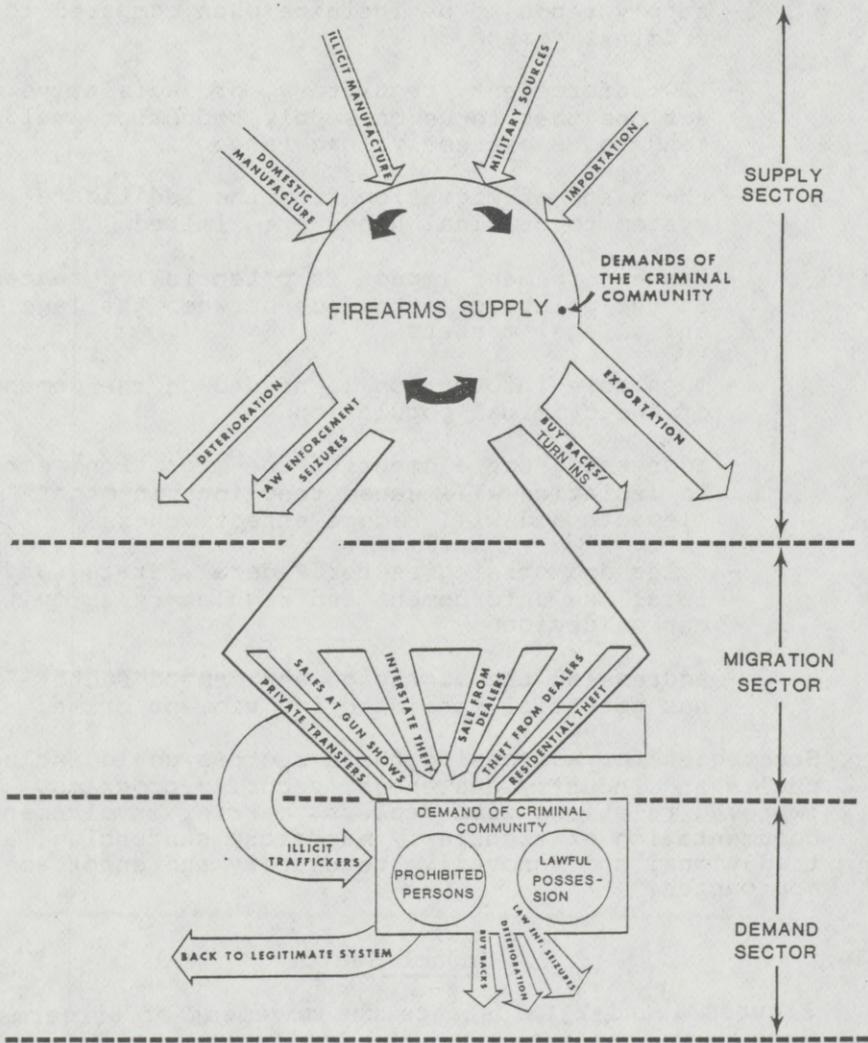


Figure 2

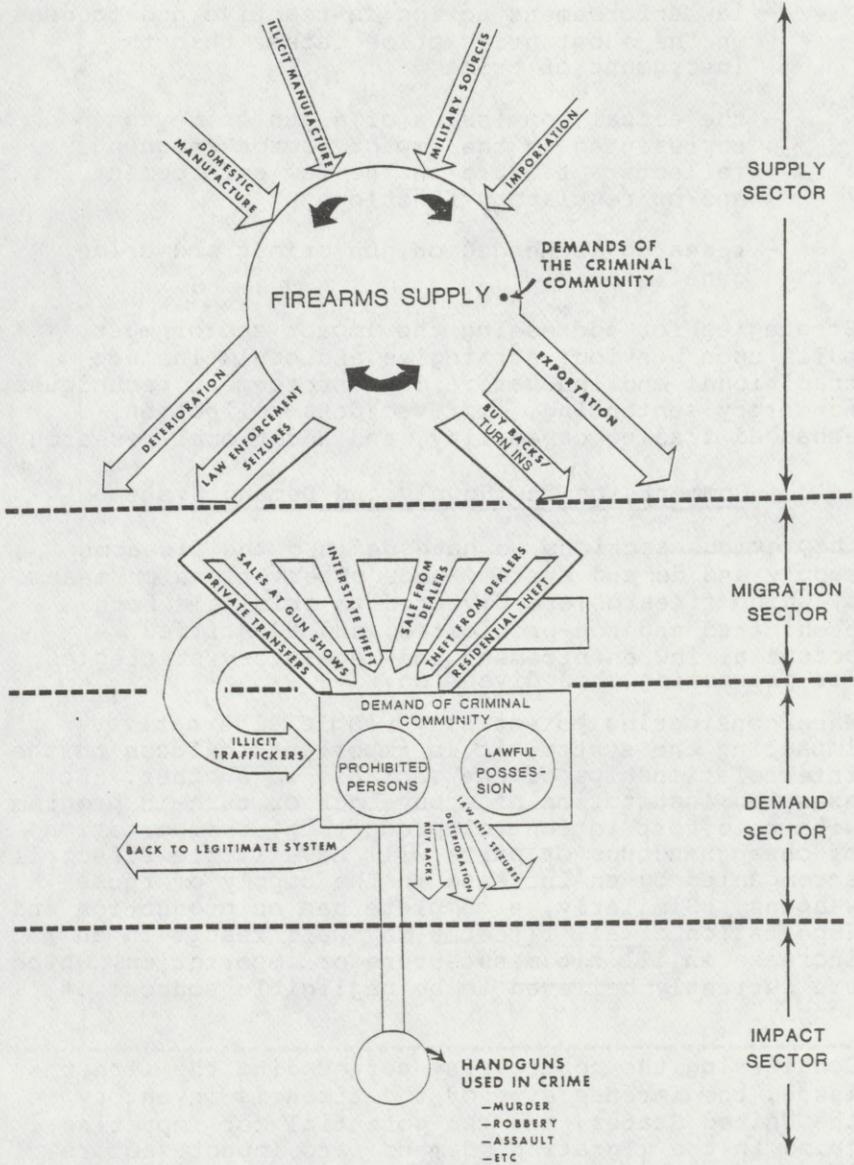


Figure 3

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

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

Comments on the Supply and Demand System

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

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

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

FIREARMS STRATEGY

Based upon the analysis of the firearms supply system discussed above and on the program objective outlined earlier, ATF has developed the following strategy for its firearms program which is designed to maximize

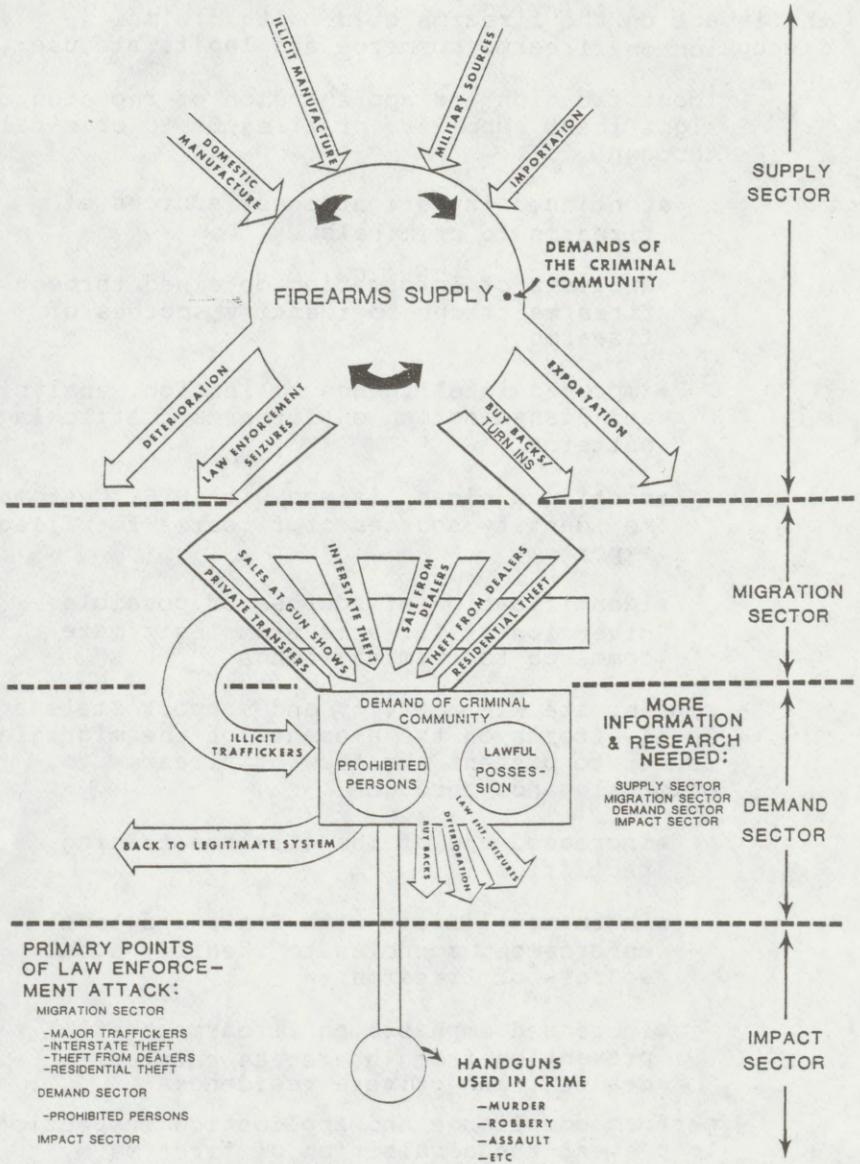


Figure 4

the impact on the firearms crime with minimal disruption on firearms commerce and legitimate use:

- identification and apprehension of repeated or significant suppliers of firearms to criminals through
 - continued investigation of sources of firearms to criminals
 - analysis of information obtained through firearms traces to identify sources of firearms
 - improved intelligence collection, analysis, and dissemination on firearms trafficking patterns
 - continued close liaison with U.S. Customs to identify sources of firearms for illegal export
 - identification of sources of possible diversion of firearms from legitimate commerce to criminal hands
- concentrate ATF activity and support State and local efforts on the elements of the migration sector to prevent the flow of firearms to criminal hands through
 - increased use of the firearms tracing facilities
 - increased liaison with State and local enforcement agencies to identify local sources of firearms
 - increased emphasis on firearms theft prevention from interstate carriers, dealers, and private residences
- perform compliance and application inspections to prevent the acquisition of firearms by criminals and to ensure the integrity of recordkeeping for firearms traces through
 - screening firearms license applications to prevent prohibited persons from gaining entry into the legitimate firearms industry
 - increased compliance inspections on a selected basis of firearms manufacturers, importers, NFA dealers, pawnbrokers, problem dealers, and major volume firearms

dealers, identify and prevent potential areas of diversion

- develop seminars for dealers to ensure the integrity of the recordkeeping system
- assist in the apprehension of major criminals identified by other Federal, State, and local law enforcement agencies who may also be in violation of firearms laws through
 - continued liaison with other Federal agencies, such as the Drug Enforcement Administration, for target identification and investigation
- cooperate with the U.S. Customs Service and Department of State to prevent the illicit export of firearms through
 - continued and improved liaison with Federal agencies to identify and interdict illicit firearms traffickers
 - increased utilization of foreign seizure information to identify firearms smuggling and illegal export patterns and methods
- cooperate with the firearms industry and representatives of other organizations in efforts to develop public awareness and firearms security programs to promote the safeguarding of firearms through
 - seminars for dealers and interstate carriers
- improve the institutional capabilities of State and local law enforcement to combat firearms crime through
 - increased tracing, training, and laboratory support
 - continued liaison with organizations such as the Internal Association of Chiefs of Police (IACP)
 - continued support to State and local firearms enforcement programs and experiments such as the Rochester, New York project
- develop a comprehensive firearms data base and intelligence system on gun crimes and crime guns using information from

- tracing requests
- investigative case reporting
- national intelligence sources
- State and local intelligence sources
- National Crime Information Center (NCIC) stolen firearms data.

ATF FIREARMS POLICY

Purpose

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

Policy

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

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

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

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

Regulation Policy

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

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

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

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

Enforcement Policy

ATF authority for firearms enforcement is derived from

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

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

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

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

FEDERAL, STATE, AND LOCAL COOPERATION POLICY

Effective firearms enforcement and regulation cannot be accomplished by ATF alone. In fact, the primary

responsibility for the reduction of violent street crime, the enforcement of local gun control statutes, and illegal intrastate trafficking in firearms is with State and local authorities. At the Federal level responsibility for firearms enforcement is also shared among agencies such as the FBI, Customs, and the Department of State. Good management, common sense, and good law enforcement practices demand the cooperation of all law enforcement organizations at every level to curb illegal trafficking in firearms and minimize the availability of firearms to the criminal element.

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

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

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

Firearms Seizure Policy

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

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

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

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

- voluntary abandonment of the firearm to ATF for disposition
- allow request for modification of the firearm to remove it from the NFA classification; such modification done with prior approval of ATF but at the individual's expense, machineguns are excluded from this provision
- donation of the firearm to a Federal, State, or local government agency, museum or historical society for display purposes providing the museum or historical society is an instrument of a Federal, State, or political subdivision, and the Federal, State, or local government agency referred to above must be involved in criminal investigations, this is also done at the expense of the organization
- if the person refuses to comply with one of the options listed above, ATF has no recourse but to seize the firearm.

Conclusion

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

Mr. DICKERSON. The second commitment dealt with reorganization of the Office of Inspection to insure prompt and professional handling of allegations of wrongdoing or abuse by ATF employees. This reorganization, which had been started prior to my appearance before you last July, has now been completed.

The Office of Internal Affairs has been completely reorganized, both organizationally and philosophically. In an organizational sense, we have decentralized the former inspection activity to include four regional inspector offices in New York, Atlanta, Chicago, and San Francisco.

We have revamped the headquarters structure to separate, and thereby better assure, the functional integrity of internal investigations, internal audits, and operational reviews. We have installed new leadership and have recruited experienced internal affairs personnel from other agencies to complement the existing staff.

Philosophically, the Office of Internal Affairs is moving from a purely reactive organization, responding to integrity breeches after the fact of their occurrence, to a proactive investigative entity with priority emphasis being placed on the preidentification and foreclosure of potential integrity hazards.

My third commitment dealt with reorganization of the Office of Criminal Enforcement of ATF. This reorganization has also been completed.

The Office of Criminal Enforcement was reorganized, effective October 1, 1979, into a regional structure. The new structure is intended to provide closer supervision over the criminal enforcement operations of the Bureau's district offices. This new structure will provide me the opportunity to more closely supervise and monitor the activities of our offices.

My fourth commitment deals with the utilization of the "strawman" investigative technique during investigations of licensed firearms dealers. As I stated during my last appearance before you, this technique has been upheld by the courts as legal and proper, but is employed by ATF only with my personal approval or the approval of my deputy. Since my last appearance, the Court of Appeals for the Fifth Circuit affirmed the conviction of a firearms dealer who used a "strawman" to make illegal firearms sales.

I have attached a copy of the opinion to my statement.

Senator DECONCINI. Thank you. Without objection, it will appear in the record.

[The information follows:]

FEB 14 1980
 UNITED STATES of America,
 Plaintiff-Appellee,
 ORLANDO v.

Fred K. BROOKS,
 Defendant-Appellant.

No. 79-5050.

United States Court of Appeals,
 Fifth Circuit.

Feb. 11, 1980.

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

Affirmed.

1. Weapons ⇐3

Phrase "sell or deliver," within statute making it unlawful for a firearms dealer to sell or deliver any firearm to any person whom the licensee knows or has reasonable cause to believe does not reside in the state, has a well-settled, common-law meaning, and thus conveys

sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. 18 U.S.C.A. § 922(b)(3), (m).

2. Weapons ⇐3

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

3. Weapons ⇐17(2)

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

4. Weapons ⇐3

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

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The Synopses, Syllabi and Key Number Classification constitute no part of the opinion of the court.

5. Weapons ⇌4

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

6. Weapons ⇌4

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

7. Criminal Law ⇌37(1)

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

8. Weapons ⇌17(5)

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

9. Criminal Law ⇌814(1)

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

10. Criminal Law ⇌822(1)

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

11. Weapons ⇌17(6)

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

Appeal from the United States District Court for the Middle District of Florida.

Before GODBOLD, GEE and RUBIN, Circuit Judges.

ALVIN B. RUBIN, Circuit Judge:

A dealer charged with selling firearms to a person he knew or should have known to be a nonresident in violation of 18 U.S.C. § 922(b)(3) and with falsifying records of the transactions in violation of 18 U.S.C. § 922(m) seeks reversal of his conviction. Finding the attacks on the constitutionality of the charge and the

validity of the indictment to be without merit, we consider alleged error in the jury instructions. We hold that, while the charge might have been more complete, it was sufficient to put the real issues to the jury and that, in addition, if it was incorrect, the error was harmless in the light of the evidence and the issues at the trial, and, therefore, we affirm the conviction.

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

The government introduced evidence that on November 12, 1975, Chamberland, a Greyhound bus driver who lived in Massachusetts and who worked as an agent or informer for the Bureau of Alcohol, Tobacco and Firearms, went to Brooks' store, asked to see a Bayard pistol and said he wanted to buy it. Brooks requested a driver's license, Chamberland handed him a Massachusetts license and Brooks stated he could not accept it. Chamberland testified that Brooks sug-

gested he get a friend who had a Florida driver's license. Chamberland testified that he said his tour guide had a Florida license, and that Brooks replied, "Fine. Bring him in and you can get the pistol." Chamberland asked Brooks to hold the pistol for him saying he would be back in three or four days to buy it.

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

The gist of the government's case is that the purported sales to Crow and the entries made on the records showing Crow as transferee were sham transactions; the sales were in fact made to Chamberland who was known by Brooks to be a non-resident. The defense set forth in opening argument was that Brooks was a victim of entrapment. After the government had put in its evi-

1. Counts one and three charged sales to Chamberland on November 15, 1977, of two different pistols. Brooks was also charged in

six counts with violation of the statute on other occasions. He was found not guilty of those charges.

dence on direct, Brooks' counsel renewed an earlier motion to dismiss the indictment on the ground that the statute was unconstitutionally vague. After this was overruled, Brooks took the stand and testified that he thought the only purpose of the gun control law was to make it possible to trace the gun to the dealer who sold it. Brooks also testified that he did not always make sure that the person who produced a driver's license took physical possession of the gun or that the Florida resident actually paid for the gun, that some people buy guns as gifts for someone else and that it's not uncommon for one person to pay for another person's gun.

After both sides had rested, Brooks' counsel requested that the judge give the same charge concerning identification of the real purchaser of a firearm that another judge had given in the previously tried case of *United States v. Scannapieco*, slip op. 3092, — F.2d — (5th Cir. 1979) decided by us this date. The trial judge refused, but gave an abbreviated charge set forth below. In the charge conference, Brooks' counsel said, however, after discussing the evidence, "That's really my entire defense, is that it's entrapment. You have no predisposition to commit the crime when you don't even realize there is a crime being committed." He requested an entrapment charge, saying, "Obviously I've got nothing to argue without the entrapment charge." The closing argument was not transcribed, so we do not have before us what was actually said to the jury.

Brooks asks us to hold that § 922(b)(3) is unconstitutional (and therefore § 922(m) is unconstitutional as well), because it does not give a dealer fair notice that his contemplated conduct is forbidden by the statute. See *United States v.*

Harriss, 347 U.S. 612, 74 S.Ct. 808, 92 L.Ed. 989 (1954). His argument seems to be that, as applied to him, the statute makes a dealer responsible if an individual produces information that purports to identify him as a resident and forms are completed showing that person as the transferee unless the dealer insures that the person is the "ultimate recipient" of the gun, and that it does not give fair notice of this application.

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

[2.3] The statute is equally clear with respect to the requisite mental state of the seller; it reaches only one who "knows or has reasonable cause to believe [that the purchaser] does not reside in the state." The law need not spell out the means that a dealer may employ to negate any inference that he either knows or has reason to know that the person is a nonresident. Indeed, disproof is unnecessary. It is the burden of the government to prove beyond reasonable doubt the state of mind that is an essential element of the case.

[4] Nor is the statute unconstitutionally void as applied to Brooks. He was not charged with selling to Craw know-

ing or having reason to know that Craw was acting as agent for Chamberland or would retransfer the gun to Chamberland. He was charged with selling to Chamberland, a person he knew to be a nonresident, and the jury was instructed on this, i. e., in terms of a sham transaction with Craw. The consequence of a bona fide sale to A, who is acting as agent for B, an unrevealed principal, or who intends to later give or sell the gun to C, a nonresident, is not presented by this case.

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

We turn now to the alleged error in the jury charges. The key issue in the case as framed to the court was whether Brooks was entrapped. Counsel raised as a secondary issue whether Brooks knowingly sold the guns to Chamberland, who had negotiated for them and

to whom they were delivered, or whether he thought he was making the sale to Craw who produced the Florida driver's license, was shown on the records of the transferee and who, Brooks contended, was the real purchaser buying the guns for a friend.

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

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

The trial court charged over objection:

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

The court also instructed the jury on the meaning of the word "knowingly" and on entrapment. Obviously, the instruction concerning who is the purchaser of a firearm affected both the sale and

false entry counts. However, neither in his stated defense nor in his testimony did Brooks deny the substance of any of the testimony of Chamberland and Craw. Instead he asserted his notion of the purpose of the law, to facilitate gun tracing and his claim that it was not unusual for one person to buy a firearm for someone else. To him the person who produced a resident license was ipso facto the buyer.

There was no substantial dispute in the evidence about the facts leading up to the delivery of the guns. Although Brooks testified that he didn't remember some details and his version of others was slightly different from that given by Chamberlain and Craw, all of the testimony is substantially the same; Chamberland negotiated for the weapons, paid for them, received possession of them and presented himself as the person who desired to purchase them. Under other circumstances whether, when two people were present, the sale was made to one or the other might depend upon a number of surrounding circumstances and not only upon who put the cash on the counter or picked up the bag containing the guns. The instruction given in *United States v. Scannapieco*, slip op. 3092, — F.2d — (5th Cir. 1979) was obviously more complete in this respect. However, in the present case Brooks defense was not that Craw was the real buyer nor that he believed Craw to be the real buyer. He contends that he was entrapped, and, alternatively that he had no intention to violate the law because he did what was customary and what was, in his opinion, permissible. Apparently accepting this defense as to the other transactions for which Brooks was indicted, the jury acquitted him of the charges based on them.

[8] Both sides overstate the issues that are central in considering whether

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

[9-11] However in the present case only a few issues were disputed. It is not necessary for the judge to charge the jury on issues not presented by the facts, *United States v. Malatesta*, 583 F.2d 748, 759 (5th Cir. 1978), rehearing en banc, 590 F.2d 1379, cert. denied, 440 U.S. 962, 99 S.Ct. 1503, 59 L.Ed.2d 777 (1979); *United States v. Boswell*, 565 F.2d 1338, 1343 (5th Cir.), cert. denied, 439 U.S. 819, 99 S.Ct. 81, 58 L.Ed.2d 110 (1978). Moreover, in reviewing the adequacy of an instruction, the appellate court must view the charge in its entirety. *Cupp v. Naughten*, 414 U.S. 141, 146-47, 94 S.Ct. 396, 400, 38 L.Ed.2d 368 (1973); *United States v. Green*, 433 F.2d 946 (5th Cir. 1970). The instruction here covered fully the real issue raised in the case. Even if it did not, the evidence as to the Chamberland-Craw charge was overwhelming. See *United States v. Vines*, 580 F.2d 850 (5th Cir.), cert. denied, 439 U.S. 991, 99 S.Ct. 591, 58 L.Ed.2d 665 (1978); *Washington v. Maggio*, 540 F.2d 1256 (5th Cir. 1976).

For these reasons, the conviction is AFFIRMED.

UNITED STATES v. SCANNAPIECO

301

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UNITED STATES of America,
Plaintiff-Appellee,

v.

Charles J. SCANNAPIECO,
Defendant-Appellant.

No. 79-5009.

United States Court of Appeals,
Fifth Circuit.

Feb. 11, 1980.

Defendant, a salesman in firearms dealer's store, was convicted before the United States District Court for the Middle District of Florida, at Orlando, George C. Young, Chief Judge, on two counts of aiding, abetting and causing the dealer to sell and deliver firearm to a nonresident, knowing and having reasonable cause to believe that the buyer did not reside in the state, and defendant appealed. The Court of Appeals, Godbold, Circuit Judge, held, inter alia, that the trial court's instruction "If the seller licensee at the time of sale knows or has reasonable cause to believe that the real buyer is a nonresident of the state and the purchase by the resident intermediary is just a subterfuge, then the seller would be violating the law" was properly limited to the "real buyer" who is a nonresident and to a purchase made as a subterfuge by a resident intermediary.

Affirmed.

1. Weapons ⇐ 3

Statute making it unlawful for a dealer to sell or deliver any firearm to any person whom the licensee knows or has reasonable cause to believe does not

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U. S. ATTORNEY
MIDDLE DISTRICT OF FLORIDA

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ORLANDO

reside in the state was not unconstitutionally vague as applied to salesman in dealer's store, notwithstanding salesman's argument that the statute does not give notice that an employee of a licensee can be an aider and abettor. 18 U.S.C.A. § 922(b)(3).

2. Weapons ⇐ 17(6)

In prosecution of firearms dealer's salesman on two counts of aiding, abetting and causing the dealer to sell and deliver a firearm to a buyer, knowing and having reasonable cause to believe that the buyer did not reside in the state, the trial court's instruction "if the seller licensee at the time of sale knows or has reasonable cause to believe that the real buyer is a nonresident of the state and the purchase by the resident intermediary is just a subterfuge, then the seller would be violating the law" was properly limited to the "real buyer" who is a nonresident and to a purchase made as a subterfuge by a resident intermediary. 18 U.S.C.A. § 922(b)(3).

3. Criminal Law ⇐ 59(5)

An accused may be convicted as a "causer" even though not himself legally capable of personally committing the act forbidden by federal statute. 18 U.S.C.A. § 2(b).

Appeal from the United States District Court for the Middle District of Florida.

Before GODBOLD, GEE and RUBIN,
Circuit Judges.

GODBOLD, Circuit Judge:

This is a companion case to *U. S. v. Brooks*, No. 79-5050, slip op. 3086, — F.2d —, decided the same date.

Scannapieco was a salesman in Brooks' store. Under Count One he was charged with aiding, abetting and causing Brooks to sell and deliver a firearm to Robert Chamberland on December 7, 1977, knowing and having reasonable cause to believe that Chamberland did not reside in the State of Florida, in violation of 18 U.S.C. § 922(b)(3). Count Three is a similar count charging aiding and abetting and causing Brooks to sell to Michael Zezima a firearm on December 7, 1977, knowing and having reasonable cause to believe that Zezima did not reside in Florida.

[1] In *Brooks* we have covered contentions, repeated here, that § 922(b)(3) is unconstitutionally vague. Scannapieco makes an additional argument that the statute is vague as applied to him because it does not give notice that an employee of a licensee can be an aider and abettor. There is no merit to this.

There is no merit to the argument that government documents showing that Brooks was a licensee were improperly authenticated.

[2] The court gave the following instruction over objection:

If the seller licensee at the time of sale knows or has reasonable cause to believe that the real buyer is a nonresident of the state and the purchase by the resident intermediary is just a subterfuge, then the seller would be violating the law.

Scannapieco insists that this instruction requires a dealer to verify in every sale that the purchaser is not a resident intermediary for an out of state resident, and even forbids his selling a firearm to a resident who intends to make a gift of it to a nonresident. We have rejected substantially the same argument in *Brooks*. The instruction was properly limited to the "real buyer" who is a nonresident and to a purchase made as a subterfuge by a resident intermediary. There was no error in this instruction. Also the instructions given in answer to questions by the jury were not erroneous.

[3] Scannapieco moved for judgment of acquittal, contending that he could not be found guilty as an aider and abettor because there was no principal who was guilty of the offense, since licensee, Brooks, who operated as an individual proprietorship, was not present in the store when the December 7 sales were made, took no part in them, and was not convicted of them. But Scannapieco was also charged with "causing" Brooks to sell. At least since the 1951 amendment to 18 U.S.C. § 2(b), an accused may be convicted as a causer even though not himself legally capable of personally committing the act forbidden by federal statute. *U. S. v. Lester*, 363 F.2d 68 (6 Cir. 1966), *cert. denied*, 385 U.S. 1002, 87 S.Ct. 705, 17 L.Ed.2d 542 (1967).

AFFIRMED.

Mr. DICKERSON. Since a major criticism of this technique was that many dealers did not understand the legal ramifications of dealing with third parties in the sale of firearms to otherwise prohibited persons, ATF distributed to every Federal firearms licensee an industry circular explaining what is and what is not permissible under the law.

I wish to submit a copy of that document at this time.

Senator DeCONCINI. Without objection, that will appear in the record.
[The circular follows:]

DEPARTMENT OF THE TREASURY,
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,
Washington, D.C., August 3, 1979.

Re clarification of "strawman" transactions—All Federal Firearms Licensees. No. 79-10.

The term "strawman transactions" may be familiar to you. If not, we believe it would be helpful to you to explain what "strawman transactions" are and offer some guidance concerning this type of transaction.

"Strawman transactions" are of two basic types, each of which involves a "third party" sale. In the first type, the dealer may have reason to believe that the person who executes the form 4473 is being used as a conduit to make an illegal sale to a person prohibited by the Gun Control Act from purchasing a firearm. For instance, a dealer may be approached by a potential purchaser who, when asked to identify himself, produces out-of-State identification or identifies himself as a felon. When the dealer informs the individual that he cannot sell to him because he is an out-of-State resident or a felon, the individual produces a friend who is eligible to purchase. The friend ("strawman") is then used as the purchaser of record when it is obvious that the actual recipient is a prohibited person.

The second type of "strawman transaction" is similar to the first. However, in this instance, it is the dealer himself who suggests to the potential purchaser that a third party be used to effect the sale and such a sale is completed.

The Gun Control Act of 1968 does not necessarily prohibit a dealer from making a sale to a person who is actually purchasing the firearm for another person. It makes no difference that the dealer knows that the purchaser will later transfer the firearm to another person, so long as the ultimate recipient is not prohibited from receiving or possessing a firearm. A dealer may lawfully sell a firearm to a parent or guardian who is purchasing it for a minor child. The minor's subsequent receipt or possession of the firearm would not violate Federal law, even though the law does prohibit a dealer's direct sale to the underaged person.

What the Act forbids is the sale or delivery of a firearm to a person the licensee knows or has reason to believe is a person to whom a firearm may not be sold (for example, a nonresident or a felon) or to a person the licensee knows will transfer the firearm to a person prohibited from receiving or possessing it.

A firearms licensee runs the risk of violating the law when he becomes involved in a transaction where it is apparent that the purchaser of record is merely being used to disguise the actual sale to another person, who could not personally make the purchase or is prohibited from receiving or possessing a firearm.

Where the dealer knowingly utilizes this technique to sell a firearm to a prohibited person, both he and the "third person" or "strawman" are placed in a position of unlawfully aiding the prohibited person's own violation.

We realize that this circular is quite general in tone. The best advice we can give is that the dealer should be sure to have form 4473 completed by the person to whom the dealer is actually selling the firearm; and if the dealer has any reason to believe the firearm is being acquired for a prohibited person, he should avoid the transaction.

If you need further advice, do not hesitate to contact the Bureau of Alcohol, Tobacco and Firearms at the Office of the local Special Agent in Charge, or the Regional Regulatory Administrator.

G. R. DICKERSON,
Director.

Mr. DICKERSON. I might add that since last July I have authorized

only one "strawman" investigation, a case which involved gun smuggling along the Mexican border. It is still under investigation, but I would be happy privately to inform you of the type of case that it is.

My fifth commitment dealt with sales of firearms at gun shows by federally licensed individuals. Currently, licensed dealers are permitted to sell firearms only at the place of business specified on their license. A licensed dealer may attend gun shows for the purpose of displaying his wares and taking orders for firearms, but must return to his place of business to actually consummate the sale.

After considerable legal consultation and regulatory review, a draft advance notice of proposed rulemaking soliciting comments as to whether we can and should propose a rule to allow licensed dealers to make sales at gun shows located in their home States has been approved by the Treasury Department. I have just received authorization to publish this advance notice. I wish to submit a copy of the notice at this time.

Of primary concern to ATF is that proper recordkeeping be insured so that we can more successfully trace firearms used in crime.

Senator DeCONCINI. Without objection.

[The information follows:]

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
[27 CFR Part 178—Notice No. —]

Sales of Firearms By Licensees at Organized Gun Shows

Agency: Bureau of Alcohol, Tobacco and Firearms (ATF).

Action: Advance notice of proposed rulemaking.

Summary: ATF is considering amending regulations in 27 CFR Part 178 to allow sales of firearms by licensees at organized gun shows. Licenses are now issued only for the premises where an applicant regularly intends to engage in the business to be covered by the license. ATF wishes to gather information by inviting comments from the public and industry on the desirability and feasibility of allowing sales of firearms at organized gun shows.

Dates: Comments must be received on or before (90 days from the date of publication in the Federal Register).

Address: Send comments to: Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044, (Attn: Chief, Regulations and Procedures Division).

For further information contact: James A. Hunt, Research and Regulations Branch, 202-566-7626, or Phil Titus, Special Operations Branch, 202-566-7591.

Supplementary information: The Bureau has taken a position since enactment of the Gun Control Act of 1968 that firearms licenses are not issued to engage in the business at gun shows. This policy is reflected in Revenue Ruling 69-59 which stated the opinion that the law contemplates licensing of premises where the applicant regularly intends to engage in the business to be covered by the license rather than temporary locations.

ATF is considering a change in gun show policy and a change in regulations to allow Federal firearms licensees to sell firearms at organized gun shows held in the same State as the licensee's premises. However, before issuing proposed regulations, we ask that interested persons submit pertinent comments, opinions, or other data so we can determine:

One. Is there sufficient interest by firearms licensees in making sales at organized gun shows to warrant issuing proposed regulations?

Two. If regulations provided for sales of firearms at gun shows by licensees, what, if any, would be the impact on firearms commerce, organizations which sponsor gun shows, State and local laws and ordinances, and local law enforcement?

Three. Would allowing licensees to make sales of firearms at gun shows reduce or increase opportunities for criminals obtaining firearms?

Four. If licensees are allowed to sell firearms at gun shows, what licensing procedures would be recommended—a separate license, an extension of the dealer's license, or some other method?

Five. Are there other considerations which should be taken into account before proposing regulations to allow licensees to sell firearms at gun shows?

DISCLOSURE OF COMMENTS

Comments on this notice may be inspected in the ATF reading room, Office of Public Affairs, room 4408, Benjamin Franklin Post Office Building, 12th and Pennsylvania Avenue, NW., Washington, D.C. during normal business hours.

DRAFTING INFORMATION

The principal author of this document is James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

AUTHORITY

This advance notice of proposed rulemaking is issued under the authority of 18 U.S.C. 926, as amended (82 Stat. 1226).

Signed:

G. R. DICKERSON,
Director.

Mr. DICKERSON. I think our primary concern is that permitting sales by licensed dealers at gun shows will accomplish two things: It will cut down on the sales now made by unlicensed dealers, but more importantly, provide proper recordkeeping of gun sales so that we can more successfully trace firearms used in crime.

I would state again to this committee that extreme care must be used in this regard since gun shows have repeatedly proved to be a preferred source of weapons for the criminal element. This is primarily because recordkeeping is often nonexistent by many of the persons making sales. It is documented that the Symbionese Liberation Army, the Black Panthers, the Hells Angels motorcycle gang, and individuals such as Sara Jane Moore all obtained crime guns at various gun shows.

Our sixth commitment to the subcommittee involved the definition of destructive devices under the National Firearms Act. While this category includes weapons of extraordinary destructive potential, such as rocket launchers, hand grenades and mines, and certain explosive and incendiary devices which would serve only criminal purposes, it also includes other large bore weapons which are not so likely to be used in crime.

While most weapons classified as destructive devices have little or no utility to the hunter or sportsman, some of them are sought by collectors. A delicate trade-off between a weapon or device's potential misuse and its legitimate value as a collectors item can be explored.

To the extent that the public safety will not be threatened, an examination will be made of the classification of certain of these devices with a view toward liberalizing their removal from this restricted category of weaponry. We are exploring the possibility of removing those weapons which have collector appeal and are not likely to be used as weapons.

In addition, we will continue to permit the removal of those weapons which are altered so that they no longer meet the destructive device definition.

I would like also to attach to my record a finding of the task force that I had study this matter.

Senator DeCONCINI. Without objection, that will appear in the record. [The information follows:]

DESTRUCTIVE DEVICES

Testimony at the July 1979 oversight hearings was critical of ATF's policy and practices regarding the classification and seizure of destructive devices. Our letter to you of September 7, 1979, stated in relation to destructive devices:

We have also reviewed the requirements in regard to the seizure of destructive devices, machineguns, cannons, et cetera. Not all unregistered National Firearms Act weapons must be forfeited to the Government and disposed of pursuant to law. Under the NFA, certain firearms can be removed from the act if the Director of ATF determines that the firearm is not likely to be used as a weapon or that it may be altered in such a way that it no longer meets the definition of "firearm." Weapons falling into these two categories may be lawfully retained by the owners and may not be subject to seizure. You may also be aware that ATF has, in the case of weapons that cannot be altered or otherwise removed from the act, permitted the donation of unregistered weapons to governmental entities such as Federal, State, or local museums in lieu of abandonment or seizure. For those remaining items that cannot be handled in the manner described above, we plan to explore other alternatives. We will keep you advised of our progress in this matter.

As a result of this commitment, a special task force was established with representatives of the Offices of Regulatory Enforcement, Criminal Enforcement, Chief Counsel, and the Director's staff. This task force has as its purpose to:

* * * examine the existing definition of destructive devices as stated in title 26, U.S.C. Chapter 53 Section 5845(F) (Gun Control Act) in order to identify possible problem areas. When identified, these problems will be analyzed to provide viable options and alternatives which will be proposed.

The task force reviewed Bureau policy and procedure as well as the body of reports of judicial proceedings related to destructive devices. The task force separated destructive devices into two major categories for its review: firearms type destructive devices and explosive/incendiary type destructive devices. The latter type of device presents particular problems of definition since materials are available in almost every household which could be used to construct a destructive device.

The task force recommended that there be no change in the current definition of a destructive device as it applied to explosive/incendiary type devices. The task force did recommend the following related to explosive/incendiary devices:

Existing ATF Criminal Enforcement orders and other avenues of internal communications should be utilized to reemphasize the necessity of providing evidence that the "combination of parts" was designed and/or intended for use as a destructive device and no recommendation for criminal prosecution shall be made unless the evidence clearly reflects such design and/or intent.

The intent of this recommendation is to stress once again that one must prove design and intent for prosecution. Redefining an explosive or incendiary device through statutory change would have an adverse impact on enforcement efforts.

After a thorough review, the task force made several recommendations concerning firearms type destructive devices. The recommendations are:

1. Establish and implement procedures for determining classes of destructive devices not likely to be used as weapons in order to remove them from the purview of the National Firearms Act (NFA).

(a) The Firearms Technology Branch will be responsible for identifying these classes of firearms and presenting appropriate technical data to the Firearms Classification Panel for a determination to be made as to whether or not the classes of destructive devices should be removed from the purview of the NFA.

(1) Such removal from the NFA would not exclude them from title I of the Gun Control Act of 1968 (GCA).

(2) The criteria for consideration for removal from the purview of NFA would be (1) the age of the weapon, (2) whether or not it is currently in use, (3) the mobility of the weapon, (4) the value of the weapon, (5) the availability of ammunition, (6) authenticity of the weapon, and (7) any other factors bearing on the likelihood of that class of destructive device being used as a weapon.

(3) Ammunition for such classes of destructive device would not be considered for removal from the Act since, in most instances, these projectiles are in and of themselves destructive devices. In those instances where the ammunition for these destructive devices is not in and of itself, a destructive device, the propellant charges, usually smokeless powder, comes within the purview of title 18, U.S.C., Chapter 40, Section 841, the Explosive Control Act.

2. Continue the consideration of applications on a case by case basis for destructive devices not exempted on a class basis.

(a) Include in existing ATF Orders procedures for advising concerned individuals that this alternative to have the destructive device exempted from the Act is available if it can be established that it is not likely to be used as a weapon.

These recommendations will be implemented as stated by the task force. The recommendations more clearly define AFT authorities will be utilized. The result will have no adverse enforcement impact but will better serve law abiding citizens in possession of destructive devices which are not likely to be utilized as a weapon.

Mr. DICKERSON. My seventh commitment to the committee dealt with handling of seized firearms and discretion in determining which firearms of a dealer should be seized. An extensive study of the Bureau's procedures which apply to taking property into Federal custody was completed in December. The applicable Bureau order was modified on December 3, 1979, to better assure proper handling of seized firearms. In addition, the Bureau has engaged in a contract to purchase heavy gage plastic bags into which all seized firearms will be sealed.

It is, incidentally, the type of device that is used by a number of organizations to insure the protection of the weapons. It is heavy-duty vinyl. It can be sealed.

Senator DECONCINI. Is every gun that is—single guns put into one of these?

Mr. DICKERSON. Every single gun. They come in various sizes. You can handle a rifle in them.

Senator DECONCINI. This was not in effect before?

Mr. DICKERSON. This was not in effect before. It is, as I mentioned, used by other agencies and we think it is a very good practice.

I have also just issued guidelines concerning which items should be seized during an investigation. Generally speaking, agents are instructed to seize only those firearms which are clearly involved in the violation. In addition, instructions designed to insure prompt return of seized firearms in those cases where a defendant may be found not guilty have also been issued.

Our policy is to return such property unless instructed otherwise by the court, unless the individual is a prohibited person, the weapon is contraband, or where the return of the firearm would be contrary to public safety. I wish to submit a copy of the approved order at this time.

These instructions are included in this notice which is also submitted for the record.

Senator DECONCINI. Without objection, it will be admitted.

[The notice follows:]

Subject: FIREARMS TAKEN INTO BUREAU CUSTODY

1. PURPOSE. This notice sets forth the seizure policy concerning firearms taken into Bureau custody as a result of Criminal Enforcement investigations involving licensed firearms dealers, unlicensed firearms dealers, or prohibited persons. Appropriate portions of ATF O 1850.3B, Property Taken Into Bureau Custody, will be revised accordingly during the next semiannual review.
2. SCOPE. This notice applies to all ATF personnel.
3. BACKGROUND. The Gun Control Act of 1968 provides for both criminal and civil penalties for violations of its provisions. The authority to seize and forfeit firearms and ammunition involved in; used or intended to be used in, violation of its provisions is found in 18 U.S.C., § 924(d) and 26 U.S.C., § 5872(a).
4. DISCUSSION. Firearms found in violation of the Gun Control Act of 1968 are subject to seizure and forfeiture to the Government. Such violations and seizures may involve licensed firearms dealers, unlicensed firearms dealers, or prohibited persons. However, the Bureau will exercise discretion as to the firearms it will seize.
5. POLICY. The Bureau's discretionary seizure policy is directed at the following three specific areas of concern:
 - a. Licensed Firearms Dealers. Only those firearms needed as evidence, contraband firearms, or firearms carried during the commission of a felony will be seized. Firearms discovered on a licensee's business premises, which are not recorded in the dealer's records, will not be seized if the dealer agrees to take immediate steps to record those firearms in the records (unless the firearms have previously been specifically offered for illicit sale to a special agent or individual acting on behalf of the Government). Regulatory Enforcement will be notified of the circumstances involved in all investigations of licensed dealers.
 - b. Unlicensed Firearms Dealers. Only those firearms specifically offered for sale by the unlicensed dealer, contraband firearms, or firearms carried during the commission of a felony will be seized.
 - c. Prohibited Persons. All firearms found to be in the possession or control of a prohibited person under the Act, are subject to seizure. However, special agents should exercise discretion in determining the need to detain, retain, or seize for forfeiture. Lack of criminal intent, nature of previous conviction, and length of time since last conviction may be considerations. If determined appropriate, individuals may be allowed to divest themselves of firearms while applying for relief of disabilities.
6. OTHER EVIDENCE. Nothing contained in this notice precludes special agents from taking into custody, or documenting other evidence relative to violations of the law (i.e., ATF F 4473, Firearms Transaction Record; business receipts, firearms disposition records; contraband).
7. CONTROLS. Exceptions to the above seizure policy must have the prior approval of the Assistant Director (Criminal Enforcement). This authority has been delegated to the Chief, Investigations Division.
8. FIREARMS DISPOSITION GUIDELINES. Firearms taken into custody by the Bureau from individuals or dealers, who are not prosecuted or subsequently found not guilty of a criminal offense, will be returned except in unusual circumstances (i.e., the return would be prohibited by law, contrary to the public interest, or contrary to directions from the court). In order to effectuate this policy, the signing of the declaration of forfeiture, with respect to administratively advertised firearms, should

not be accomplished until final disposition of the criminal case. Authority for the Bureau to maintain custody in those circumstances is vested in the Assistant Director (Criminal Enforcement), and approval must be obtained from his delegate, Chief, Investigations Division.

9. EFFECTIVE DATE. The provisions of this notice are effective with respect to seizures occurring on and after April 15, 1980.

G. R. Quinn

Director

To all firearms licensees and others concerned:

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178
[Notice No. 331]

Definition of the Phrase "Engaged in the Business"

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering amending the regulations in 27 CFR Part 178 to include a definition of the phrase "engaged in the business" when referring to a dealer of firearms or ammunition. Persons engaged in the business of dealing in firearms or ammunition are required to have Federal firearms licenses. ATF wishes to gather information by inviting comments from the public and industry on how the phrase "engaged in the business" should be defined. ATF also desires public comment on the feasibility and desirability of defining the phrase.

DATE: Comments must be received on or before ~~March 16, 1980~~ ^{April 17, 1980}.

ADDRESS: Comments must be submitted in duplicate to Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044 (Attn: Chief, Regulations and Procedures Division).

FOR FURTHER INFORMATION CONTACT: Thomas L. Minton, Research and Regulations Branch, 202-566-7826.

SUPPLEMENTARY INFORMATION:

Background

Title I of the Gun Control Act of 1968 established procedures for the licensing of persons who intended to engage in the business of dealing in firearms or ammunition. Specifically, it is unlawful for anyone except a licensed dealer to

engage in the business of dealing in firearms or ammunition (18 U.S.C.

922(a)(1) and 923(a)). The term "dealer" is defined in 18 U.S.C. 921(a)(11) and 27 CFR 178.11 to mean, among others, any person engaged in the business of selling firearms or ammunition at wholesale or retail. The law does not prohibit an unlicensed person from disposing of personal firearms as long as he or she is not engaging in the business of dealing in firearms.

The definition of the phrase "engaged in the business" is not defined in the law or the regulations. In fact, the courts have stated that the phrase does not seem susceptible to a rigid definition but turns on the facts and circumstances of each case. The phrase clearly connotes an element of continual or habitual practice. It implies an activity involving more than occasional participation or more than a single act. On the other hand, a single firearms transaction, under certain circumstances, has been held to be engaging in the business of dealing in firearms. For example, a person who makes a single sale and represents that he is ready, willing and able to procure firearms for future sales has been held to be engaging in the business.¹ Some United States courts of appeals have defined the term as that which occupies the time, attention and labor of men for the purpose of livelihood or profit.²

On the other hand, certain courts of appeals have taken the position that expectations of profit are not determinative of whether one is engaged in the business of selling firearms.³ In lieu of a profit motive, they have looked to factors such as the continuing or repeated nature of the sales or representations made to prospective buyers as sufficient to prove engagement in the business.⁴ In another case⁵ the court stated that persons are engaged in the business of dealing in firearms if they have guns on hand or are ready and able to procure them for the purpose of selling some or all of them to such persons as they might from time to time decide to accept as customers.

For a comprehensive discussion of how the term has been interpreted by the courts, see 32 A.L.R. Fed. 946 (1977).

Public Participation

ATF is studying the problem associated with the issue of "engaged in the business." While courts have continually found that the current situation is adequate for enforcement purposes, if possible, we would like to develop a workable, commonly understood definition of the phrase. At the same time we recognize that an analysis of the comments may indicate that a regulatory definition is not possible or not desirable. Therefore, we ask that interested persons submit pertinent comments, opinions, or data on the issue. We specifically request information from the public and the industry on the feasibility and the desirability of defining the phrase. We also request comments on how the phrase "engaged in the business" should be defined.

All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for further ATF action. Copies of this notice and of the comments will be available for public inspection during normal business hours at the following location:

Public Reading Room, Room 4408, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, DC.

Drafting Information

The principal author of this document is Thomas Minton, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

This advance notice of proposed rulemaking is issued under the authority of 18 U.S.C. 926, as amended (82 Stat. 1226).

Mr. DICKERSON. My eighth commitment deals specifically with an issue which was discussed at some length during my last appearance, the definition of "engaging in the business" as a dealer in firearms. During my appearance last July there was extensive criticism concerning the absence of a regulatory definition of the term, as well as the interpretation of the term by the Federal courts.

Various witnesses found the term or existing definition of the term to be too vague to be applied in all situations. As my letter indicated, the Bureau developed an advance notice of proposed rulemaking inviting comments from the public on how this term should be defined. The notice was drafted in the weeks following the hearing and was formally published on December 19, 1979. The comment period, which was extended 30 days and, in fact, closes today, resulted in 931 comments being received. The Bureau is presently engaged in evaluating these comments.

It is interesting to note that some critics of ATF, who insisted that the Bureau was remiss in not previously defining the term, are now criticizing the Bureau for attempting to define the term. They have stated publicly that responsibility for a definition of "engaging in the business" rests exclusively with the U.S. Congress.

While I don't challenge the right of Congress to further define the term, and hope it will help, it is interesting that some critics would criticize ATF for not defining the term, and when the Bureau acts on a specific Senate request, criticize the fruits of their own labors. I asked counsel to review the legality and propriety of the Bureau engaging in this effort. Their response was that we are clearly within our proper boundaries in so doing.

My ninth commitment dealt with developing guidelines with regard to ATF taking civil action against an individual or a licensee after dismissal or acquittal of criminal charges. This, again, is an interesting situation.

Last July you heard testimony from a Mr. Phillips, a federally licensed dealer doing business in Parksley, Va. In the discussion which followed Mr. Phillips' testimony, both you, Mr. Chairman, and Senator McClure were extremely critical of what had been presented as a typical ATF operation.

An exhaustive search of our files has indicated that, in fiscal year 1979, ATF brought administrative charges against a dealer who had been acquitted of criminal charges on only two occasions. The Phillips' case was one of them. In both cases an administrative decision was reached in favor of reissuing the license.

In any event, while the problem did not seem to be that significant, I have recently signed directives to the field which set stringent standards for cases in which administrative actions might be brought following failure of criminal prosecution. I wish to submit a copy of the directive at this time.

Senator DECONCINI. Without objection, that will appear in the record.
[The information follows:]

Subject: FIREARMS ADMINISTRATIVE ACTIONS AND CRIMINAL ACTIONS

1. PURPOSE. This order establishes general guidelines that form the basis of the Bureau's firearms policy regarding administrative actions and criminal actions taken against Federal firearms licensees. This order presents the framework in which the Bureau's administrative and criminal sanctions will be used to achieve goals consistent with the intent of the firearms laws and regulations. For the purposes of this order, an administrative action is any formal internal license proceeding.
2. SCOPE. All Regulatory Enforcement and Criminal Enforcement personnel.
3. BACKGROUND.
 - a. The Gun Control Act of 1968 (18 U.S.C., Chapter 44), provides both criminal and civil penalties for violations of its provisions. The criminal penalties for violations of the act are contained in 18 U.S.C. 924. The act also provides for administrative actions to deny the renewal of a license or revoke any license issued under the act. (18 U.S.C. 923)
 - b. If a licensee is indicted for a crime punishable by imprisonment for a term exceeding 1 year he may continue operations pursuant to 18 U.S.C. 925(b) (provided he files a timely renewal application) until any conviction pursuant to the indictment becomes final.
 - c. Under the applicable regulations, the regional regulatory administrator may issue a notice of denial to any applicant who he has reason to believe is not eligible to receive a license (27 CFR 178.71). In addition, 27 CFR 178.73 provides that whenever the regional regulatory administrator has reason to believe that a licensee has violated any provisions of the act or its implementing regulations, he may issue a notice of contemplated revocation of the license.
4. CRIMINAL PROSECUTIVE CRITERIA. Criminal prosecutions of firearms licensees should focus on those areas of primary Federal interest (see ATF O 3210.7A, Investigative Priorities, Procedures, and Techniques, exhibit 1) which reflect Bureau policy to pursue only the more serious criminal violations. Areas of primary Federal interest include, but are not limited to, illegal firearms trafficking, illegal shipment, transportation or receipt of stolen firearms, and theft of firearms from interstate commerce. When a case which originates in Regulatory Enforcement appears to meet the criteria for criminal prosecution, a referral will be made to criminal enforcement as outlined in paragraph 11.
5. LICENSING ACTION. When a criminal case is not contemplated an administrative case should be considered when violations of Federal firearms laws are of a willful nature. Things to consider:
 - a. Licensee's past history.

- b. Licensee's attitude towards corrective measures.
 - c. Available evidence to prove willfulness of violations.
 - d. Type of violations (i.e., recordkeeping violations; sales to prohibited persons).
 - e. Frequency of violations.
6. LICENSING ACTIONS WHILE LICENSEE IS UNDER INDICTMENT. In no case should a license be issued regarding a pending renewal application where the licensee is under indictment for a crime punishable by imprisonment for a term exceeding 1 year. Letters of authorization will be issued to those renewal applicants who are seeking renewal of their license during the term of such indictment.
7. LICENSING ACTIONS PRIOR TO CRIMINAL INDICTMENT. As a general rule, administrative actions will no longer be initiated while a licensee is under criminal enforcement investigation. In these cases, administrative actions may be initiated only after a criminal course of action has been rejected. In those instances where a criminal case report has been referred to the United States attorney for prosecution, a renewal license will only be issued after consultation with the U.S. attorney. In addition, a new license will not be issued to those licensees who are prohibited by law from shipping or receiving firearms (18 U.S.C. 922(g) and (h)).
8. REVIEW BOARD ESTABLISHED. A review board is hereby established to recommend whether licensing actions are necessary in the following instances:
- a. U.S. attorney declines prosecution. The U.S. attorney may decline criminal prosecution and return the matter to the Bureau for administrative action. The decision not to prosecute may be made for a number of reasons, including the availability of prosecutorial and judicial resources. A decision must be made whether to proceed administratively in light of the reasons offered by the U.S. attorney's office for their declination.
 - b. Acquittal of a licensee. A license proceeding after a criminal acquittal has been the focus of much of the criticism directed at ATF by persons who argue that such action is tantamount to double punishment.
 - c. No indictment returned by grand jury.
9. REVIEW BOARD MEMBERS AND RESPONSIBILITIES.
- a. In each region the review board will consist of the Regional Operations Officer in the Office of the Regional Director of Investigations, the Chief, Analyst in the Office of Regulatory Enforcement, and an attorney in the Office of Regional Counsel who has not been involved in the case. The review board will be responsible for the following activities:
 - (1) To recommend a course of action (i.e., revocation) to the regional regulatory administrator.

The review board members do not necessarily have to present a common recommendation. Decisions to take or not to take a licensing action should be based on the following guidelines. These guidelines are general and are not intended to be all-inclusive.

- (a) The seriousness of the alleged violations.
 - (b) The strength of the Bureau's case.
 - (c) The recommendation of the U.S. attorney, if any.
- (2) To maintain a file on each case that is reviewed. The file will contain, or reference a file that does contain, all background information, recommendations, and records of any actions taken during and after each case that is reviewed. The firearms and explosives coordinator will be responsible for keeping the file current.
- b. Regarding those cases as outlined in paragraph 8, if the regional regulatory administrator decides to proceed with an administrative action, send a 1 page summary of the case to Bureau Headquarters (R:T:S).

10. LICENSE REVOCATION VS. APPLICATION DENIAL.

- a. When an administrative action is justified, and no criminal course of action is contemplated a notice of contemplated revocation will be issued. A denial action will be taken in lieu of revocation only when such denial action would be within 2 months of renewal time. In this case, issue a notice of denial when the application for renewal is received.
- b. For any administrative action, send a copy of all notices, including contemplated notices to deny applications or revoke licenses to Bureau Headquarters (R:T:S). See ATF O 5300.2A, Technical Services Procedures - Firearms and Explosives, paragraph 54c.

11. REFERRALS.

- a. Referrals between Criminal Enforcement and Regulatory Enforcement will be made on the new ATF F 5000.21, Referral of Information. In the case of a referral by an inspector, the area supervisor will be the approving official. In the case of referral by a special agent, the RAC or SAC will be the approving official. Attach any pertinent information to the referral form.
- b. Inspections that originate in Regulatory Enforcement will be referred to Criminal Enforcement if there is reason to believe that the violations found meet the criteria for criminal prosecution. (See paragraph 4.) Other examples of items to be referred to Criminal Enforcement are:
 - (1) False statements on applications.

- (2) Any act or threat of violence.
 - (3) Willful operations without a license.
 - (4) Access denial to licensed premises.
- c. Investigations that originate in Criminal Enforcement will be referred to Regulatory Enforcement for possible administrative action if the prosecutive criteria is not met. This would also hold true where the ATF prosecutive criteria is met but prosecution has either been declined by the U.S. attorney or a grand jury has failed to return an indictment.
- d. For each referral, send a copy of the referral form to the appropriate CFO or SAC.

A. R. Dickerson
Director

Mr. DICKERSON. I wish to point out two additional facts. First, the number of dealers investigated by ATF under the policies that I set out has been significantly reduced in the past year. In fiscal year 1978 there were 671 investigations; in fiscal year 1979 there were only 257; and in fiscal year 1980 we are projecting a further reduction to 106 licensed dealer investigations.

We are attempting to concentrate upon only the most significant sources of weapons to the criminal community. At the same time, any licensee who flagrantly violates the law cannot expect or receive immunity from investigation and, if warranted, prosecution.

There has been considerable criticism of ATF for conducting routine compliance inspections of licensed dealers, with allegations that these inspections were conducted in order to find insignificant recordkeeping violations and to put dealers out of business. This is not true. In fiscal year 1979, ATF inspectors conducted 14,744 compliance investigations of existing licensees of which 4,159 were found to be in violation. As a result of these investigations, only 93 renewal applications were denied and only 12 licenses were revoked through the administrative hearing process.

In addition, 234 admonitory letters were issued to licensees found to be in serious violation of the law and regulations.

I believe that the record speaks for itself. ATF would prefer to help a dealer correct technical deficiencies rather than to take criminal or administrative action against him. Only in the most severe cases do we act against the dealer's license.

Nor do we conduct "raids" to examine a dealer's records. ATF policy for the past 2 years has, in most instances, been to telephone the dealer in advance to make an appointment to inspect his records. We do, of course, reserve the right to occasionally make unannounced inspections, but our policy is to create the least amount of disruption possible to the business involved.

Under current regulations, in the event a dealer must be acted

against, ATF has no recourse other than a warning or the extremely severe action of license revocation or denial. We are contemplating amending the regulations to permit suspension of a dealer for those cases in which the violations involved, while serious, might not justify the drastic action of revocation. This action would result in even a lesser number of revocations, and permit us to take lesser action in many instances.

I intend to publish a notice requesting comments on that proposal in the very near future.

My tenth and final commitment dealt with ATF publicity guidelines which dictate the extent to which information could be released following any ATF criminal operation. The former guidelines were criticized as appearing to sanction prejudicial pretrial publicity. Our Public Affairs guidelines were reissued on February 15, 1980, and the questioned policies have been amended. I would reemphasize to the committee that ATF is, and always has been, subject to the guidelines put forth by the Attorney General. Those guidelines require that "public out-of-court comments regarding investigations, indictments, arrests, and ongoing litigation should be minimal, consistent with the Department of Justice responsibility of keeping the public informed."

I wish to submit a copy of the new guidelines at this time, which in essence require compliance with the Attorney General's guidelines and of the U.S. attorney's requests in those instances.

[The information follows:]

Subject: PUBLIC AFFAIRS GUIDELINES

1. PURPOSE. This order revises the general guidelines and procedures to be followed in implementing the Bureau's public affairs program.
2. SCOPE. The provisions of this order apply to Headquarters and field.
3. CANCELLATION. ATF O 1200.2, dated 11/11/74, is canceled.
4. DISCUSSION.
 - a. An effective public affairs program has two key elements essential to Bureau activities. One of those is to act in an advisory capacity to the Director and other Bureau management officials concerning the impact of Bureau programs and actions. The second element is to inform the public of its rights and responsibilities under the Federal laws which the Bureau administers and enforces. It is a means of identifying the jurisdictional responsibility of ATF and describing the areas in which ATF can be of assistance to Federal, State and local law enforcement organizations. It provides appropriate release of information about Bureau actions and programs.
 - b. The public affairs program is designed to supplement and support the Bureau's operational functions. Its objective is to secure the timely release of appropriate information to the public through the use of all types of communication. The key to any successful public affairs program is the transmission of information to the proper level as soon as possible, and, for it to be effective, all Bureau personnel must be sensitive to the public affairs impact of their activities.
5. PUBLIC AFFAIRS ROLE.
 - a. Primary Role. A primary role of the Office of Public Affairs is to advise the Director and his staff concerning the effect and impact of policy decisions and actions by Bureau personnel. This advisory role extends to ATF field operations. The office also is the focal point for dealing with media and public inquiries and as such informs the public of initiatives, programs, policies, activities and other matters involving the Bureau.
 - b. Scope. The responsibilities of the Office of Public Affairs include internal and external activities.
 - (1) External. The office maintains contacts with the media and is the focal point for responding to all inquiries concerning Bureau activities. All public affairs campaigns are coordinated through the office. The Public Affairs Office is responsible in general for the broad scope of public affairs activities including, but not limited to, the use of films, video and written materials; dealing with the media; public affairs campaigns, educational or otherwise; providing news releases and magazine stories concerning Bureau activities; coordinating contacts in the public affairs

areas; responding to public inquiries; providing support to field offices, particularly in dealing with the media; and coordinating the approval of written documents, speeches, manuscripts and other material intended for public consumption, but not originating in the Public Affairs Office.

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

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

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

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

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

INFORMATION WHICH MAY BE RELEASED TO NEWS MEDIA CONCERNING CRIMINAL CASES

- a. General Information. The defendant's name, age, address,

- employment, marital status, and similar background information may be released. If the defendant is a minor, no information will be released other than to acknowledge that the subject is a minor.
- b. Charge. The substance or text of the charge, such as a complaint, indictment or information filed may be released.
 - c. Penalties. Penalties provided by law for successful prosecution of such a charge may be released.
 - d. Investigating Agency. The identity of investigating or arresting agencies, and the length or scope of the investigation may be released.
 - e. Arrest. The circumstances immediately surrounding an arrest, including the time, location, possession and use of weapons and complete description of items seized may be released.
 - f. Offer in Compromise, Revocation or Suspension. In the case of an offer in compromise, revocation of license or suspension of operations, the name of the person or firm subjected to such action, the facts surrounding the action as contained in the abstract on the case and details of all allegations to which the person or firm has admitted may be released.
8. INFORMATION NOT RELEASED TO THE PUBLIC. Under NO CIRCUMSTANCES will Bureau personnel release the following information to the public:
- a. Record. Defendant's prior criminal record.
 - b. Character. Observations about a defendant's character.
 - c. Statement. Statements, admissions, confessions or alibis attributed to a defendant, or the refusal or failure of the accused to make a statement.
 - d. Investigative Procedures. References to investigative procedures, such as fingerprints, polygraph examinations, ballistics tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations.
 - e. Witnesses. Statements concerning the identity, credibility, or testimony of prospective witnesses.
 - f. Evidence. Statements concerning evidence or argument in a case, whether or not it is anticipated that such evidence or argument will be used at trial.
 - g. Opinions. Any opinion, such as the guilt or innocence of the accused, or the possibility of a plea of guilty to the charge, or the possibility of a plea to a lesser crime.
 - h. Court System. Any statements concerning the effectiveness, or lack of same, of the courts, judges, prosecutors, etc.
9. CIVIL ACTIONS. The guidelines listed above will also apply to civil proceedings with the Government involving Bureau personnel.
10. COORDINATION WITH OTHER AGENCIES. Generally, any release should

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

11. RESPONSIBILITIES

a. Special Agents, Inspectors, Officers in Charge.

- (1) Bureau personnel filling these positions will be sensors of public reaction to Bureau objectives, policy, programs and accomplishments, as directed.
- (2) Inspectors located at posts of duty away from area offices will have minimal public affairs responsibilities. Generally, an inspector so located will forward all local public and media inquiries, requests for speakers and exhibits, other related inquiries and sensitive matters to his/her area supervisor. On occasion, an inspector may be requested by his/her area supervisor to disseminate prepared information to the public through the media or exhibits. As a result, these officials should maintain contacts with the media in their areas.

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

- (1) Bureau personnel filling these positions will, under the direction of their immediate supervisor, respond to local public and media inquiries, receive requests for speakers and exhibits, report necessary information for the Bureau to maintain a responsive, factual public affairs effort and, generally, be viewed locally as the spokesperson for the Bureau.
- (2) Coordination of speakers and exhibits will require the resident agent in charge, group supervisor, or area supervisor to be responsive to requests, under the direction of the special agent in charge or regional regulatory administrator, so that they may take advantage of materials provided by the Bureau and there will be a distinct uniformity in response.
- (3) The resident agent in charge, group supervisor or area supervisor may be requested to disseminate information prepared at a higher level of supervision to the public through the news media. As a result, these officials should maintain contacts with the media in their areas.
- (4) The Bureau will be served best if speakers and those who man exhibits are local agents or inspectors. Accordingly, field personnel frequently will be provided prepared speeches, news releases and exhibits, reflecting Bureau policy and activities.

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

- (1) Bureau personnel in these positions are responsible for developing and maintaining an effective public affairs program for their geographic areas of responsibility. To provide the required public affairs support and to increase communication between the field and the Office of Public Affairs in Headquarters, each special agent in charge, regional regulatory administrator and regional director of investigations will designate a staff person to coordinate public affairs within the limits of the geographical area assigned to that office. However, the special agent in charge, the regional regulatory administrator and regional director for investigations will ensure that he/she is fully apprised by his/her designated representative of all matters having public impact and that he/she approves of all action taken by his/her appointed representative. The special agent in charge or the regional director of investigations and the regional regulatory administrator are responsible for notifying the Office of Public Affairs, by direct communication, of all pending field activities that are newsworthy in nature and/or may have the potential of becoming a sensitive issue. Such direct notification to the Office of Public Affairs will be in addition to any other required communication with Headquarters that may be required by the Assistant Director (Criminal Enforcement) and the Assistant Director (Regulatory Enforcement). Field activities that require Headquarters notification will be reported to the Office of Public Affairs as soon as they are brought to the attention of the special agent in charge, the regional director of investigations or the regional regulatory administrator, so that the Office of Public Affairs has sufficient time to assess the impact of the activity being reported and advise the reporting official of the public affairs action to be taken.
- (2) The public affairs program will include writing news releases, clearing news releases, answering media inquiries, disseminating prepared information, media inquiries, determining programs necessary for regional or Headquarters public affairs, arranging news conferences and reporting all sensitive enforcement actions. It will also include the coordinating of speaking engagements and placing of Bureau exhibits, as the occasion requires, throughout respective areas of responsibility. All field public affairs activities, including the writing of speeches, news releases, or providing exhibits with local appeal, will be closely coordinated and cleared with the Office of Public Affairs.
- (3) When it is necessary to present the Bureau in total, as opposed to specializing in criminal or regulatory enforcement, the special agent in charge and the chief, field operations, will be expected to make any presentations a joint effort, calling upon the Office of Public Affairs for equipment and/or advice if necessary.
- (4) Special agents in charge and chiefs, field operations,

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

- (5) Because there is a continuing need for photographs for use with newspaper and magazine articles, the district and field operations offices will furnish appropriate, current photographs (including motion pictures where taken) and negatives which relate to significant activities (raids, arrests, seizures, etc.) to the Office of Public Affairs. All photographs are to be accompanied with an explanation of where, what and when. It is recommended that these photographs be "action" oriented as opposed to the evidence-type photographs needed for case work.
 - (6) The special agent in charge will coordinate all media events through the regional director of investigations as necessary. All contact by Criminal Enforcement field personnel with the Office of Public Affairs will be coordinated through the RDI.
12. INFORMATION DEFINED. There are two categories of information created by Bureau activities which generate most public affairs inquiries and responses.
- a. Operational Information. The first is informational or operational matters which may create public reaction and therefore deserve consideration from the public affairs viewpoint. It is important that all necessary steps be taken to ensure that the Office of Public Affairs is informed ON A TIMELY BASIS of every major event and work in which the Bureau is involved. This will include, but is not limited to, new or unusual investigatory or regulatory techniques, distinct changes in operational approaches, and proposed field actions which may cause public reaction.
 - b. Sensitive Information. The second is information of a sensitive nature, and while ATF O 3210.7A, Investigative Priorities, Procedures, and Techniques, gives a complete explanation of sensitive situations, it is generally a case, investigation or involvement, which, if it becomes known, would be of considerable public interest subjecting Bureau officials or those of the Department of the Treasury to premature inquiries. While most sensitive incidents stem from Criminal Enforcement work, these instructions are equally applicable for Regulatory Enforcement, and should be followed. It is important that sensitive situations be reported immediately by telephone, day or night, to the Office of Public Affairs.
13. NEWSPWORTHINESS AND PROCEDURES FOR RELEASE.
- a. General Criteria For Decisions.
 - (1) Possible Releases. Each arrest, seizure, indictment, and sentencing, in addition to offers in compromise, suspension, revocation or recall of products, and major changes to Bureau policy and decisions as they relate to possible release as a news item.

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

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

b. Notification.

- (1) Advance Notice. It is extremely important that special agents and inspectors notify supervisors before the release of information to the news media, as far in advance as possible, as to an expected action. When the Office of Public Affairs has advance notice, it is better able to recommend what should be contained in a release, at whatever level, and which release technique should be used. For example, in some cases where the significance of the Bureau action deserves the best release of information possible, it may be well to arrange news conferences, set up interviews, and provide displays of such items as seized weapons, all of which take time. Where there is a desire to have a press release on trial results, advance knowledge on the identity of the defendants, the contents of the indictment and similar information is vital in order that the release can be prepared for delivery to the news media the moment the court reaches its decision.
- (2) Interagency Cooperation. It is the responsibility of the special agent or inspector initiating the action subject to release to determine if the United States attorney or other prosecutor or cooperating agency intends to make a separate release on the case, wants to make a joint release, or wants to let ATF handle the release alone.
- (3) Notification of Headquarters Personnel. Once the information has been reported by the special agent it will be the responsibility of the special agent in charge to forward that information to the regional director of investigations. As appropriate, the RDI will be responsible for forwarding information to the Office of Public Affairs. Information from Regulatory field personnel should be routed through the chief, field operations, to

the regional regulatory administrator who will notify the Office of Public Affairs.

- (4) Release Process. Once notified, the Assistant to the Director (Public Affairs) will brief the Director, if the situation warrants. If a determination is made that the release will be nationwide, the originating field office will be asked to gather the necessary information. For Criminal Enforcement, the appropriate FBI will be the contact point between field offices and the Assistant Director (Criminal Enforcement).
- (5) Timely Notification. It shall be the responsibility of the appropriate Headquarters directorate to ensure that the Office of Public Affairs is notified in a timely manner of newsworthy events in their areas; and, that adequate information for release to media is provided the Office of Public Affairs.
- (6) Afterhours Contacts: After office hours, contact with Public Affairs personnel can be made through the Communications Center.

c. Long-Range Information Programs.

- (1) Types. Although much of public affairs work will concern the timely release of spot news, the value of long-range information programs cannot be overlooked. These will include radio-TV spot announcements for a specific part of the Bureau's mission, as well as exhibits, magazine articles and motion pictures designed to inform the public about the Bureau and its work.
- (2) Staff Suggestions. It is hoped that the Bureau can capitalize on the manpower resources of all of its employees to the benefit of its public affairs program. When field personnel conceive new information programs or add to existing programs, they should submit these concepts to the Office of Public Affairs for review and evaluation. If the suggestions are in accord with the public affairs program at a local level, the local offices will be so advised and assistance will be given in implementing the program for that locality.
- (3) Acceptance of Suggestions. If the new concept is considered worthy of use throughout the region or on a national basis, action on the program will be held in abeyance until it is decided to make the program regional in concept or approval is given for a nationwide program. If the program is local or regional, the Office of Public Affairs will stand ready to advise and assist. If the program is nationwide, Headquarters will coordinate all of the activity so that all field offices are acting in concert.

d. Reporters and Photographers.

- (1) Presence. Reporters and/or photographers arriving at the scene of a crime after a raid and/or arrest should be afforded every courtesy and permitted to cover the story

as long as such coverage does not interfere with the officers in the performance of their duties or present a dangerous situation to the members of the press or bystanders. However, ATF personnel should take no action to encourage or assist news media in photographing or televising a defendant or accused person being held or transported in Federal custody.

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

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

A. R. Dickerson

Director

Mr. DICKERSON. These hearings have had a positive, lasting impact on this agency and should assist us toward improving our operations.

Mr. Chairman, last July I stated to you that I was determined to see that the Gun Control Act was brought to bear forcefully upon the criminal element in this country in order to curtail the criminal misuse of firearms.

I have included in my statement a number of very recent cases in which actions taken by ATF agents have contributed materially in my opinion to this. I have cited a recent disruption of an organized group who, through the purchase from licensed firearms dealers in this area, and the use of fictitious identification, took a significant number of weapons to New York City, which resulted in the arrest of a major narcotic trafficker who was also involved in this type of activity.

A firearm trace was initiated following the murder of a New York city police officer June 2. The weapon was traced to Florida where it was determined that it had been purchased by a New York resident using fraudulent identification.

Six other weapons were purchased at the same time, taken to New York and sold. The defendant was arrested for violations of the Gun Control Act on August 27, 1979 and was subsequently indicted. At the time of his arrest, the defendant had been charged with burglary in Nassau County, New York. He was subsequently convicted of burglary and also entered a plea of guilty to the firearms violations. He was sentenced to 3 years in prison on the firearms charge.

ATF has also used the Gun Control Act to impact on international criminals. For example, in September 1978 Colombian authorities ar-

rested three terrorists after they attempted to kidnap the former Colombian Ambassador to France. Weapons used during that kidnap attempt were identified to us and were traced to a resident of Miami as part of a purchase of 100 such weapons. We have used the authorities we have to support the activity of the Drug Enforcement Administration in a number of joint cases and cases in which we have been able to target and take action against narcotic violators who were involved also in illegal weapons activities.

I won't read all of these. They are here for those who would like to read them.

I would end my statement by saying I believe that I have complied with the commitments I made to this committee and I have submitted documentation. I feel we have not, since I have been in the organization, continued activities which sometimes are questionable. I feel that we have taken administrative action to insure that we will operate as a professional, valuable enforcement agency, and to insure that a major impact is brought against the illegal use of weapons.

I would make only one other point. A number of witnesses have testified here this morning, and I know that you have other documentation that you want to ask questions on. But I would point out on each of the instances, as I heard them, these are actions that took place prior to the time I was appointed Director. Nevertheless, to the extent we can, we will be very happy to try and answer questions relative to those instances.

Thank you, Mr. Chairman.

Mr. DAVIS. Senator, if I might comment briefly. I also want to share the Director's appreciation for these hearings because I think they have been helpful and constructive and you have made them so.

Second, I wanted to voice the support of the Department for the steps that the Director has articulated in his opening statement. We think they are important steps to try and bring structure to the program and as a necessary part, to have clear stated policies. I think the Director has made admirable steps in that direction.

Third, I wanted to voice something of the problem that I think exists in this kind of hearing. During the earlier part of the afternoon, one of the witnesses referred to you as "Your Honor," and I could understand that because in a sense we are here retrying cases in front of you, sitting as Senator, and in the role of judge along with the committee. And I heard one lawyer give almost a defense summation. I know because I was a lawyer, a trial lawyer and I have given summations, too. I just want to use it as an example to show the kind of a problem that exists.

Mr. Vingino's lawyer said, "Well, there was only something on the tape which said, 'Oh, you, you are a felon,'" and then said it was his contention that his client didn't say it. One can presume, however, that the Government's contention in the trial was either that his client said that or that it was said in front of his client, and that therefore what was involved in the course of the trial was the question not only of out-of-State sales, but also whether somebody was prepared to sell guns to convicted felons, one of the key prohibitions in the act.

Also, when Mr. Mulcahey testified, there was the discussion of all of his weapons that were seized. According to the number I have here, it turned out that of the 106 weapons seized, 21 had previously been reported stolen.

I only say that because it is very difficult in these hearings to retry old cases. There are always many unknown facts because none of us were there to hear and listen.

The Director, his colleagues, and I will try to answer any of your questions, and those of the committee. I just thought that having listened to those witnesses, very effective witnesses who made some very good prints, I wanted to make these comments.

Senator DECONCINI. Thank you, Mr. Davis. Let me comment that this is not a trial.

Mr. DAVIS. I didn't mean that in the negative sense.

Senator DECONCINI. I understand. I want to put you at ease, and BATF. I didn't consider the remarks as a statement relating to the merits of the case. What is important is, I think, the attitude, to me, at least, the acting chairman, the attitude of the Department now versus then, and I think these cases only point out how deplorable the attitude of the BATF was by the fact that there is continued—what I consider overenforcement—once acquittal is achieved.

I do agree with you, Mr. Dickerson, that the cases brought before us, as far as the arrests were made, and the violations were all prior to your being appointed, and your representation, and your efforts to make the corrective changes, and that is not intended here on any of the cases. However, let me ask this: Relating to the cases that were here, and then I will get to your response to a few questions, is there a policy now in the BATF that when a matter has been resolved criminally in favor of the defendant, that you proceed with administrative revocation of a licensee?

Mr. DICKERSON. No, Mr. Chairman. I think as I point out in my statement, there have only been two instances in the last year that took place. There has never been a policy to automatically do that. Certainly in the past those actions were taken sometimes when it was felt the civil action could be sustained even though criminal action was not sustained.

However, it would be, as compared to the policy statement that I have issued, even more difficult to follow that course.

Senator DECONCINI. Second, when you took office, if you feel that it was incumbent upon yourself to review any of the pending revocation matters that related to acquittal of prior criminal cases—have you looked at any of those cases?

Mr. DICKERSON. I did not go back and try to review cases that took place prior to my coming in. I have seen only those cases which normally would come before me.

Senator DECONCINI. Do you think it is inappropriate to review cases that are under revocation hearing now that stemmed from acquittal of the criminal case?

Mr. DICKERSON. I am not sure there were any cases.

Senator DECONCINI. We heard of some here today where the person was—the case was dismissed and yet there is still revocation.

Mr. DICKERSON. I think there is a real problem here, Senator DeConcini, in that most of these situations that have come up are in the judicial process now.

Senator DECONCINI. You are talking about the administrative judicial process, for the most part?

Mr. DICKERSON. The administrative.

Mr. DAVIS. I think the *Vingino* case is in court.

Senator DECONCINI. But even if it is in court, my question is not will you change, I am asking you will you reassess it based on the fact that there was an acquittal? I don't think it is my prerogative to make any suggestions to you regarding the outcome of the case, but based on the testimony here, the first two witnesses, it seems to me, merit your consideration, to look at those cases because they both resulted in acquittals and why have you proceeded with the administrative efforts?

Mr. DICKERSON. Unfortunately, on the *Hayes* case, there were two actions, one was the review of the license in which the license was restored, second is the administrative forfeiture within the judicial, and there are negotiations going on between the U.S. attorney and the Hayeses on this case. In fact, the U.S. attorney asked us not to discuss those since we are not processing forfeiture action, and have done nothing more than comply with the wishes of the U.S. attorney to supply factual information as requested.

Senator DECONCINI. Mr. Dickerson, can you tell me if the people listed here were, or would you inform me, are undercover agents or informants for the ATF case in the *Hayes* case?

Mr. DICKERSON. In the *Hayes* case, the record would reflect that they were undercover agents.

Senator DECONCINI. Those are law enforcement agents?

Mr. DICKERSON. Law enforcement agents.

Senator DECONCINI. And were in your employ?

Mr. DICKERSON. One was a State agent.

Senator DECONCINI. So there was a State case in addition to yours?

Mr. DICKERSON. I do not know whether there actually turned out to be a State case or not, but I know one person was a State agent.

Senator DECONCINI. Can you tell me why you would continue to pursue, in light of the evidence to date, revocation?

Mr. DICKERSON. The revocation is not being pursued in the *Hayes* case. I believe they were issued their license as of October 1, 1979.

Senator DECONCINI. The only pending thing is the suit against guns?

Mr. DICKERSON. Yes, against guns themselves, and that is in the courts.

Senator DECONCINI. Divorcing the *Hayes* case for a moment, what is the general justification to pursue a case for the weapons after a license has been reinstated and after a person has been acquitted of a criminal offense? What would justify that?

Mr. DICKERSON. Under the policy that I have, it would not be justified. We would promptly return the weapons, unless, of course, the person is precluded from having them.

Senator DECONCINI. You are telling the committee, Mr. Dickerson, that what has happened as far as you are concerned is in the courts and

the judicial process, but you don't anticipate another incident similar to the one brought to us before on the Hayeses, where you have acquittal, where you have the recent statement of a revoked license, you don't anticipate assuming, based on your policy of trying to keep control of the weapons, the firearms?

Mr. DICKERSON. With regard to seizure, there would be a greatly reduced number of weapons that will be seized. It will not be our policy to seize. That is set out.

Second, it will be our policy, once there is an acquittal or dismissal, to return the weapons unless there is some mitigating circumstance.

Senator DECONCINI. Let me say this for the record. That is a relief for the future. I realize you are not responsible for the past. I think it is a black spot on BATF's record in the past, and some of that, there isn't much going to be done except the people who will be injured will have their resource. But it is encouraging if in fact your policy sets out clearly what weapons will be taken and what weapons will be returned, based on certain actions that are taken either criminally or civilly, or under revocation. This is something that I compliment you for doing, and indeed, if this bears out your testimony, and I have no reason to believe it won't, you have indeed come forward with the response as you mentioned in your letter of September 7.

My question to your fine responses here, why has it taken so long? Has it been an internal struggle to put it together, and can you explain the process of coming up with this? I would like to know why the time lapse. And did these hearings prompt this action?

Mr. DICKERSON. Certainly it prompted this, but all of these things have been started and are in process or implemented.

I think the only answer I have, and I have asked myself that question often, is that in many of these things it is necessary to go back and set up a group to study, and to come up with some well-thought actions to take. I just wouldn't go back and say: You shall do this, you shall do that. I had them studied. I wanted them to come up with something that would be logical and would be included in the law enforcement responsibilities. That took some time.

The actual implementation did not commence immediately. The review of the documents had taken some time, and I might say that there has been a competition with a number of other priority things that are going on in the Bureau at this time. Mr. Davis is well aware of the total deregulation program we have; the new regulatory system for distilled spirits plants, new regulations for wineries, on and on. So it has been in competition with that. I have given it a priority. I have tried to move as fast as I could on these things, but certainly the fact that the date of this hearing was set did provide an incentive for people to move a little faster.

Mr. DAVIS. At the Department as well. The first document, which is the Firearms Policy, is something that I think does take a long time, if you want to put together a document that you hope you can hand out not only to the congressional committees, but to the agents to give them a better sense of direction. ATF has a difficult responsibility. A law enforcement agency obviously can never know ahead of time, of

those it investigates, who is going to turn out to be guilty or not guilty. On the other hand, it does have the responsibility to make sure that it is protecting the right of the people who turn out not to be guilty. At the same time, there is a responsibility to try to do something with the very difficult gun problem in terms of guns used in crimes, and try to stop that. When you talk about a firearms policy, to try to come up with the best approach, it takes a lot of work, a lot of debate and a lot of discussion and even that document must be viewed as an evolving one. Certainly the Bureau has to look at situations as they change. They have to go into individual localities, to work with local authorities to view the local situation.

But I think in terms of time, it is a reflection of the seriousness of the endeavor that the Department and BATF have been trying to attend to.

Senator DECONCINI. Mr. Dickerson, in the process of putting together your policy and the other supporting documents here of compliance with your letter of September, did you encounter resistance within the Treasury Department?

Mr. DICKERSON. No, sir.

Senator DECONCINI. You had total cooperation?

Mr. DICKERSON. From Mr. Davis' office and from the Department.

Certainly there might be little points where we disagree, but not resistance.

Senator DECONCINI. The matter of pending cases kind of disturbs me. Being a former prosecutor, I can certainly understand the admonishments or advice you have from the Justice Department not to discuss pending cases and I won't infringe upon that, and I would expect you to exercise that if we go into executive session, if I feel I need further testimony. However, once a case is in the Justice Department for prosecution, are you involved with the plea bargaining, or is that totally within the prosecutor's—

Mr. DICKERSON. We would not be involved in plea bargaining. They might, as a courtesy, ask us.

Senator DECONCINI. But generally you are not taken into that process?

Mr. DICKERSON. No.

Mr. DAVIS. I would like to caveat that in terms of plea bargaining. It sometimes involves discussions with agencies regarding future cooperation of individuals.

Senator DECONCINI. But as a policy, you are not part of that?

Mr. DAVIS. Not the decisionmaking.

Senator DECONCINI. What about the process where specialists on your staff would be brought in to do further investigation? Do you ever initiate that, or is that always done by the prosecutor, once it is turned over to the Justice Department?

Mr. DICKERSON. There are two things that could happen on a case. We could, or the U.S. attorney could take action on administrative forfeiture. If we did it, of course, obviously we would initiate the investigating mechanism in deriving the information.

If the Justice Department did it, they probably would request us to do this. So we would be involved in supplying additional information.

Senator DECONCINI. In a pending revocation case in Tucson, Ariz., you have, since you have been in office, flown in Mr. Galbraith on several occasions to participate in that case. That is the *Simon Perri* case. Is that on your initiation, or is that based on the prosecutor's request? Do you know? I think Mr. Galbraith is from your regional counsel's office.

You don't have a Mr. Galbraith?

Mr. DICKERSON. We have the *Simon Perri* case. He has appealed to the Ninth Circuit Court of Appeals.

Mr. DESSLER. Mr. Galbraith is an attorney in the regional counsel's office who was assisting in the preparation of this case.

Senator DECONCINI. For the U.S. attorney?

Mr. DESSLER. For the U.S. attorney.

Senator DECONCINI. My question really goes to how does someone from your general regional counsel's office get involved? Is that at the request of the U.S. attorney?

Mr. DICKERSON. We revoked his license; he then had the option of appealing further within the organization to our administrative law judge, or taking an appeal through the U.S. Justice Department judicial system. He chose to go into district court and appeal our administrative action. The court upheld our action. He then chose to file an appeal in the Ninth Circuit Court of Appeals. We would not then initiate action, but obviously part of the appeal record would be what has happened in the past.

Senator DECONCINI. So you were requested by the U.S. attorney—

Mr. DESSLER [continuing]. Asked our office to assist them in the preparation.

Senator DECONCINI. That is how Mr. Galbraith got into it?

Mr. DESSLER. Yes, sir, that is correct.

Senator DECONCINI. He was also brought in before the appeal down in Tucson?

Mr. DESSLER. That is correct.

Senator DECONCINI. Was that at the same procedure where the U.S. attorney asked that?

Mr. DESSLER. That is correct.

Senator DECONCINI. Is that done by a formal written request, or just a telephone call?

Mr. DESSLER. Normally we would accept a telephone request.

Mr. DICKERSON. Would this appeal be an action in which we are involved, and he represents us?

Mr. DESSLER. No; this is a situation where the individual has appealed to the court.

Mr. DICKERSON. The court reviews the record.

Mr. DESSLER. The U.S. attorney has called us and asked us for assistance in helping him to prepare the case for the court.

Senator DECONCINI. So the point I am really trying to get to is in the course of these appeals, or in the course of the criminal prosecution, when the U.S. attorney is involved, he then directs the case?

Mr. DESSLER. That is correct.

Senator DECONCINI. He then asks for your assistance and of course you respond if you can.

Mr. DESSLER. That is correct.

Senator DECONCINI. You have washed your hands from the standpoint of the strategy of attempting to conduct the criminal part of the case, or the revocation appeal; is that correct?

Mr. DESSLER. That is absolutely right.

Senator DECONCINI. Is that set out in the policy any place or not as to your general counsel?

Mr. DESSLER. No; it is not set out in the policy. It is just normal procedure for us to respond to any request from the Justice Department for assistance.

Senator DECONCINI. What kind of a procedure do you have to insure that your agents or your regional counsels are not actually sitting there with the district attorney telling them what to do?

Mr. DESSLER. I don't have any actual control of that. They are not instructed to actually run the trial. In fact, they are not permitted to do that. Any assistance that they give is purely at the request and insistence of the U.S. attorney.

Mr. DAVIS. I wouldn't want to leave that impression—I was in a U.S. attorney's office, albeit 7 or 8 years ago—and there are always conversations back and forth with agents, and the people from the agencies about what do you think about this, what do you think about that? It was not, when I was a prosecutor, giving up the decisionmaking responsibility. Those were my decisions, but certainly when you are asking a law enforcement agency for information to help you have more facts and you are asking somebody frequently who has been working in the criminal area for 20 years, you want to draw on that experience. I would be surprised if there isn't some informal conversation back and forth about opinions.

Senator DECONCINI. I can appreciate that, Mr. Davis. My concern is that these cases that have been brought out vary, I know, and they all occurred, in the actual arrests, and even the acquittals prior to Mr. Dickerson taking over. I am interested in knowing just how much pressure, if any, is coming from BATF toward the district attorneys now to continue pressing these cases. I get a feeling that, you know, if you had been there in 1977, in the *Hayes* case, and this had been in operation, the *Hayes* case would not have proceeded near as far as it has. I also get the feeling that you don't feel it is proper for you to go back and reassess and pull back on that case because you weren't there, and it is in the hands of the U.S. attorney, or the *Perri* case, or some of these other cases.

My concern is, What assurance can the committee have that this is going to be followed, and in fact is not being subverted by your regional counsel, or your agents, who want to pursue the case once it gets to the prosecutor? Having been a prosecutor, I know that a lot of police officers do take a very, very deep interest in seeing that case and they will camp out at the doorstep of the prosecutor and hound them a little bit to be sure that case is given everything.

Do you have any policy or procedures to attempt to prevent that?

Mr. DICKERSON. The policy with regard to the forfeiture and the policy with regard to the administrative action clearly sets out to prevent just that happening. I can't say sometimes this doesn't happen. But basically we live by the judicial system and we live by the policies set out by ATF.

I would certainly have strong feelings against one of our personnel who took action on his own, which was contrary to policy that we set out. But again, I would put forth the caveat that Mr. Davis brought out. There is a close working relationship between the members of our counsel in the field and the U.S. attorneys. They do ask for advice. There may be times when that advice, after it is asked—

Senator DECONCINI. Do you know of any—maybe it is too soon to come across it—but do you know of any times where your counsel or agents have called the U.S. attorney and have indicated this is, whatever prosecution they are proceeding, is not your policy?

Mr. DICKERSON. I am not sure.

Senator DECONCINI. Prior to this being actually published, I guess there has been some policy and compliance with this.

Mr. DICKERSON. Of course the initial process is that the agent does the investigation, the findings of his investigation are presented to the U.S. attorney, who makes the decision to prosecute.

Senator DECONCINI. What would you do, Mr. Dickerson, if you found out that there was prosecution by the U.S. attorney that was contrary to your policy? Would you feel obligated to call that to the attention of the U.S. attorney through your regional counsel?

Mr. DICKERSON. Yes; I think we would point out—I think we would, as a matter of course, point out it is contrary to our policy, but I should also stress that this would not necessarily be binding on the U.S. attorney.

Senator DECONCINI. I understand that. I think that is a good point to bring out. You have no reluctance to call clearly to the attention of the Justice Department your policy?

Mr. DICKERSON. No, sir.

Senator DECONCINI. And will you do that through a formal process with this, to this, the prosecuting attorney, through the district attorney?

Mr. DAVIS. I have also discussed with the Deputy Attorney General our preparation of a new firearms policy. We will send that over to him so that the Justice Department will have a better understanding of the Bureau's position.

Mr. DICKERSON. Unfortunately, it is sort of, as you also know, a bargaining process. Each is trying to set up his own prosecuting guidelines and all of these policy steps that we have taken are in compliance with many of the guidelines that I have seen published in the U.S. attorney's office. Some are not as strict as ours. We will certainly let the Justice Department know what our policy is because they now are reviewing and trying to standardize some of these prosecution guidelines. We will let them know.

Senator DECONCINI. Would the Justice Department have, assuming you were in a case, a criminal case, an acquittal was given back by the jury or dismissed by the judge, you still would have control of the weapons that were confiscated; is that right?

Mr. HIGGINS. Not necessarily, sir, if it was a judicial forfeiture, the court has it.

Senator DECONCINI. If it is not a judicial forfeiture, does the U.S. attorney have anything to say about the return of those weapons?

Mr. HIGGINS. It falls within the control of the Bureau.

Senator DECONCINI. Totally. Thank you.

Your policy as set forth here, I presume, are effective today, on the date of this, April 1980, is that correct?

Mr. DICKERSON. Yes, sir.

Actually, insofar as it pertains to the firearm strategy policy, we have been living more or less with that policy for the past several months.

Senator DECONCINI. And the supporting documents that you place here also represent some of the exhibits in reference to your policy—those are all in effect now?

Mr. DICKERSON. All of the documents I submitted to you, yes, sir; many in effect very recently, but they are in effect now.

Senator DECONCINI. Can you tell us, Mr. Dickerson, how many inspectors serve within your Office of Inspector?

Mr. DICKERSON. Within our Office of Internal Affairs?

Senator DECONCINI. No, within the agents who do inspecting of the licensed dealers.

Mr. DICKERSON. We have approximately 700 inspectors who are involved in inspecting licensed dealers, but also involved in wineries and distilled spirits plants. About 100, I guess, would be in terms of man years. It wouldn't be individuals, but in terms of man-years, about 100 man-years devoted to the firearms program, inspection.

Senator DECONCINI. Is this the last year, 1979?

Mr. DICKERSON. We can provide that. That is just an estimate at this point. We have the exact figures.

Senator DECONCINI. Based upon your licensed dealers cases, you obviously are going to have less; is that right?

Mr. DICKERSON. No; that is different. There are two different aspects to this. We are providing manpower through the Regulatory Enforcement Division and the Criminal Enforcement Division. We have 700 inspectors, about 100 man-years, going out looking in the records, trying to make sure the records are right. They may take compliance action, which could lead to revocation, letter of admonition, and in the future through a possible change of regulation, possibly suspension. A good bit of their effort, however, as has been set out by the policy, is to educate the dealers, work with them, try to be cooperative with them, try to get their cooperation. We also have a Criminal Enforcement Branch which has 1,500 criminal enforcement investigators. They would only undertake an investigation if there was indication of criminal activity.

Senator DECONCINI. How many investigators now?

Mr. DICKERSON. 1,500. But actually dealer investigations are an extremely small part of the criminal enforcement program.

Mr. DAVIS. The 1,500 is for the entire operation.

Senator DECONCINI. You make some reference, and I didn't follow quite all of it, regarding the gun shows. Please correct me if I am over-

stating it a bit. This seemed to be the problem area of a great deal of gun trafficking, and you were moving more in that direction. Have you since you have taken office improved investigating relating to gun shows?

Mr. DICKERSON. Yes; we have individuals at gun shows.

Senator DECONCINI. When you do that, do you have a suspect list or do you have someone that you are in some sort of criminal investigation that leads you to the Tucson, Ariz., gun show, and thereby you are going to go into that show?

Mr. DICKERSON. Normally it would come about from a number of ways. It might come about from a request by the local law enforcement agencies.

This is probably the most common way it would be brought to our attention, that Mr. X was dealing in this and would give us a problem.

Senator DECONCINI. What percentage in your opinion, if you have it, of the crime involved in guns come from gun shows? Did you ever make any assessment?

Mr. DICKERSON. This would be very hard to tell. There are very significant criminal acts that have been committed by guns so obtained, but it would be very difficult to assess. The very fact that guns are sold through the gun shows by nonlicensed dealers means there is no record.

Senator DECONCINI. How many cases have you had since you became Director of arrests as they relate from gun shows, individuals from gun shows?

Mr. MCGUIRE. Where the individual himself participated in the gun show? Mr. Dickerson has approved somewhere in the neighborhood of four or five since he became the Director. Those are ongoing.

Senator DECONCINI. Those are ongoing cases now?

Mr. MCGUIRE. Yes. I think there is one.

Senator DECONCINI. Do you find from your involvement in this activity that these swap meets are common places for licensed gun sales?

Mr. HIGGINS. Yes, flea markets.

Senator DECONCINI. Is that an area that you are involved in?

Mr. HIGGINS. We are involved on a permission basis. We do have to have supporting evidence from local officers, rely on informers, or something of that type. We don't go into any of the type of activity you might say "cold turkey," not knowing something is wrong. We just don't do it. But we do think that allowing licensed dealers to sell within their home States will alleviate a lot of this problem.

Mr. DICKERSON. Mr. Chairman, you made a statement that you interpreted my remarks to mean that we were paying more attention to gun shows. This isn't true. There are a number of cases that will be initiated at gun shows, which will also decline, probably not as much as the decline we see in the dealers, because sales at gun shows continue to be a serious problem. The comment I made, that I thought one of the ways we would try to deal with this problem is to legalize sales at gun shows by dealers, in other words, permit an authorized dealer to go and make sales.

We believe this will discourage this type of illegal sales and it will also provide a record.

Senator DECONCINI. Going back to gun shows, you made a reference there seems to be a flow of guns through gun shows. Can you explain or expound on that a little bit for the committee? Is this an organized effort to use gun shows to sell?

Mr. DICKERSON. No, sir. It doesn't mean that at all. I think a legitimate recreational purpose for gun shows—

Senator DECONCINI. I mean individuals who are using gun shows.

Mr. DICKERSON. No doubt there are individuals who do use gun shows and acquire a sizable amount of weapons and do use gun shows as a basis for sales primarily because we don't permit the dealers there. That means he could sell probably at a higher price. I could document it.

Senator DECONCINI. I am just interested in how the legitimate gun show, how it is used to sell the illegitimate weapons.

Mr. DICKERSON. I will cite one case, if I can remember it, in which we surveilled an individual who would go from dealer, to dealer, to dealer, and he would make a purchase from each dealer until he accumulated a stock of guns. He would then immediately go to the gun show, and sell those at the gun show. That is the type of illegal activity that concerns us.

Senator DECONCINI. In your policy published here, is that part of your policy of how your agents are to treat gun shows, and any involvement of suspected nonlicensed sales?

Mr. DICKERSON. In the past, what happened, sometimes there would be random attempts to make purchases at gun shows. Now we would only investigate an individual if we had pretty reasonable suspicion from other sources that he was engaging in this, not as a collector, but attempting it as a livelihood and had knowledge that what he was doing, was contrary to the law, and doing it in such volume that in most likelihood it would contribute to the flow of guns in the criminal activity.

One of the things that I think we will certainly dwell on is if this person is knowledgeable, knows he is breaking the law, indicates that, and in most cases we will do this with electronic surveillance.

Mr. DAVIS. The policy in relation to gun shows, to focus on what Mr. Dickerson said, is not to investigate at random but where there is some indication somebody is knowingly dealing illegally. This was put into effect in October 1978, to try to deal with problems at that time.

Senator DECONCINI. I have other questions, Mr. Dickerson, and I will submit them to you for answers. It is getting late. You folks probably have other things you would like to do, too. Let me go back to this Hayes case. It bothers me.

I realize it occurred, most all of it, before you became Director, and before you implemented some of these policies.

Do you know who proposed a settlement in the Hayes case to return the guns in return for releasing the agents from liability? Was that the Justice Department's or you?

Mr. DICKERSON. It would have to be the Justice Department. Certainly we would not.

Senator DECONCINI. You cannot make such a recommendation?

Mr. DICKERSON. Unfortunately in that case, that is one the U.S. attorney asked me specifically not to discuss. I would be happy to go into it in detail if he would release me. I will supply the information to you.

Senator DECONCINI. I would like to know that, if you would advise the U.S. attorney. I would like to do it in executive session, or off the record. That case bothers me. And what I am interested in knowing is what involvement, if any, BATF has in that settlement offer.

Mr. DICKERSON. In fact, I am really not knowledgeable, but I will try to find out.

Mr. DESSLER. I might mention, Senator, that the procedure apparently is in line with the Department of Justice regulations in which they specifically provide for and approve of obtaining these harmless agreements in connection with all seized properties. The citation to the Justice Department regulations is 28 CFR 9.7(b). So apparently it is a standard procedure that the Justice Department encourages in all seized property cases.

Senator DECONCINI. Mr. Davis, just from the standpoint of personal observation, when you hear the testimony of these witnesses without trying a case, does it strike you that they ought to be reviewed by Justice or somebody, even though they are emotional, and they have lawyers, and I understand the setting here.

Mr. DAVIS. I would like to draw a distinction. I clearly agree with you that the Hayes case certainly seems to warrant some review at the Justice Department. I don't know all of the facts. My response is based on the paper and what I have heard here.

Senator DECONCINI. I am just asking you personally.

Mr. DAVIS. I think certainly the Hayes case does appear to warrant some further consideration. Maybe there are some other facts that have not come out here and somebody can make that judgment, but I would concur with you on that.

On the other two cases, based on the information that I have learned, I think probably there is nothing wrong at all with them being looked at to make sure, but I would draw a distinction from the Hayes case.

Senator DECONCINI. How about the Vingino case?

Mr. DAVIS. Listening here to the discussion—if those tapes, or if there was evidence, that suggested that he was knowingly, willingly selling guns to a felon; and that case ultimately did not go forward because of the suppression of the tapes because of the lack of quality of the tapes—I am not sure I would not proceed. I wouldn't want to voice an opinion here which would suggest that I am encouraging the Justice Department in that case to really not proceed because the prohibition on selling guns to felons is a very important part of the restriction.

Senator DECONCINI. I agree.

Mr. DAVIS. That is why that one disturbs me, if that turns out to be accurate.

Senator DECONCINI. The *Vingino* case is a revocation and that case is on appeal.

Mr. DESSLER. It is pending in the U.S. district court.

Senator DECONCINI. So you are out of that case from the standpoint of processing?

Mr. DESSLER. That is right.

Senator DECONCINI. I just have to comment that those cases certainly point out that there has been a need for what you have attempted to do here and I think properly have, and I hope, Mr. Dickerson, you can implement all that you have brought before this committee, that the BATF ought to be a viable, strong enforcement arm of the Federal Government, one that is cognizant of our civil liberties and one that follows the mandate of Congress not to regulate the ownership and possession of guns beyond what is mandated, and I am pleased with what you have submitted here.

The staff and myself will review it and may have some questions regarding it. But I take it as a step forward from the standpoint of the responsiveness of the Treasury Department and the BATF that you have indeed come forward with substantial changes, with a policy regarding the number of areas that I think have been flagrantly abused by BATF in the past, and I hope that these hearings will be construed as a constructive effort on the part of the oversight of the Appropriations Committee to assist you to implement these policies.

I think it may take many years to overcome some of the abuses and some of the problems that BATF has been involved in, but I don't think that that has to keep us from attempting to improve it and make it the quality law enforcement agency that I think you want it to be.

With that, I want to thank you, Mr. Davis, Mr. Dickerson, and gentlemen, for your time, for your patience, for the thoroughness in what you have brought before the committee. I want to also indicate that we would like to review this information and perhaps discuss it with you either in a committee session or in private, depending on the nature of the information.

Do you have any further statements?

Mr. DAVIS. Thank you, Senator. We welcome these hearings because I think they have been constructive. We also welcome your comments on what has been done and your further suggestions because there is no notion that further suggestions are impossible. They certainly are possible.

Senator DECONCINI. We will submit further questions.

Thank you.

[The information follows:]

QUESTIONS SUBMITTED BY SENATOR DENNIS DECONCINI

Question 1A: With respect to the Donald Vingino case, please explain why BATF initiated its investigation.

Answer: In late 1976 and early 1977, the Tucson Police Department advised ATF that it had received information that the Arizona Traders Company, of which Donald Vingino was one of the officers, was engaged in the sale of firearms without completion of the required Federal records. This information was essentially word of mouth and did not involve any specific evidence of wrongdoing.

This information was partially corroborated by a prior investigation conducted by the Tucson Post of Duty in 1972 in which ATF received similar information. During the investigation, a convicted felon informant purchased a handgun from Arizona Traders without completion of any paperwork after advising the salesman that he was a convicted felon. Following this purchase, a compliance inspection was conducted at the Arizona Traders and confirmed that there was no record of the sale to the convicted felon informant. The inspection also found 15 other firearms on the premises which were not recorded in the firearms records of the Arizona Traders. Arizona Traders was cited for failure to comply with the Federal record keeping requirements and a followup inspection in September, 1973 showed that the recordkeeping deficiencies had been corrected. The investigation was discussed with the United States Attorney's Office in Tucson, and a decision was made not to prosecute the case based on the purchase of only one firearm.

Based on the prior investigation and the information that the Arizona Traders was again involved in the sale of firearms without completion of proper paperwork, the investigation was initiated which led to criminal and administrative action against Donald Vingino and Arizona Traders.

QUESTION 1A: With respect to the Paul A. Hayes case, please explain why ATF initiated its investigation?

ANSWER: On January 30, 1978, ATF was contacted by Captain Larry Standard of the Valencia County, New Mexico Sheriff's Department. At that time they had a subject named Juan Jose Sosa in custody. Sosa had just been arrested by a game warden while rustling cattle in Valencia County. When he was approached by the game warden he had attempted to throw away a .22 caliber revolver; however, the firearm was retrieved by the game warden and Sosa was brought to the sheriff's office.

Sosa, through an interpreter, gave a sworn statement as to how he had acquired the firearm. He stated he was an illegal alien and when he had tried to purchase the firearm at Cole's Mercantile in Bosque Farms, New Mexico, he was told he could not purchase the firearm for that reason. He stated that Hayes told his employer, Max Perea, that he could buy the firearm and give it to Sosa. Perea then signed the paper (ATF Form 4473) and he, Sosa, paid Hayes the money and Hayes gave him the gun. Perea, who is a resident of New Mexico, also gave a sworn statement.

Because of the incident involving Sosa, and in light of additional reports which ATF and local law enforcement officers had received concerning questionable disposition

of firearms by Hayes, it was decided to initiate this investigation. Hayes' fencing of stolen firearms was subsequently corroborated in a conversation between Mrs. Hayes and the undercover ATF special agents on April 5, 1978. She told them that they sometimes bought "stolen" firearms that were not in their books. She said they sold the "stolen" guns to their friends and didn't have to log them in the record. This conversation was electronically monitored.

QUESTION 1A

With respect to the Patrick Mulcahey case, please explain why BATF initiated its investigation?

ANSWER

In July 1974, ATF agents in Columbia, South Carolina, responded to a request to assist local officers in the service of a search warrant for stolen property. Approximately \$60,000 worth of stolen firearms and explosives were recovered during this search. In an effort to cooperate, the subject of this investigation identified Patrick M. Mulcahey, a licensed firearms dealer, as his outlet for many stolen firearms in the past, including several firearms from the same thefts which were the sources of the firearms recovered in this investigation.

ATF and local enforcement authorities had received information on numerous occasions regarding Mr. Mulcahey's activities as a fence of stolen property particularly military firearms and explosives stolen from nearby Fort Jackson. In addition, Mulcahey and a friend who worked at Fort Jackson, in the armament department, were known to conduct a large scale firearms business at local gun shows. Based on these criminal activities, Mulcahey was identified by ATF as a significant criminal.

Based on this information and the new probable cause, a Federal search warrant was executed on Mr. Mulcahey's premises. ATF recovered a quantity of stolen U.S. Government hand grenades and artillery simulators and discovered that his firearms records were nearly non-existent. In a plea bargaining process, Mr. Mulcahey elected to surrender his firearms license in order to avoid prosecution.

In May 1976, ATF was in the midst of a major statewide undercover investigation in South Carolina when additional allegations surfaced, indicating Mulcahey's active dealing in firearms and fencing of stolen guns. The undercover agents visited Mulcahey at his residence, and with no prior introduction, purchased three firearms and ammunition out of many offered for sale, over a 2-week period.

QUESTION I

B. Please answer with respect to the Simon Perri and Donald Vingino cases.

1. How many times have BATF personnel flown to Tucson to participate in the license revocation proceeding?

- a. How much has this cost?

- b. Do you have any letters or memoranda which reflect requests by the U.S. Attorney that the regional counsel or anyone from his office participate in the case or from the regional counsel to the U.S. Attorney suggesting such participation?
- (1) If such letters or memoranda exist, will you please produce these for the Subcommittee?

ANSWER

- B. Chief Counsel has been delegated authority from the General Counsel of the Treasury Department to cooperate with the Department of Justice and the United States Attorneys in assisting in the conduct of litigation in the courts, both civil and criminal, and in preparing briefs and arguments with respect thereto. (Legal Division Order No. 6, 40 F.R. 3479 (1975)).

Simon Perri

1. An attorney from the regional counsel's office flew to Tucson four times in connection with the litigation filed by Mr. Perri seeking judicial review of the revocation of his firearms license.
- a. The cost of these trips was \$1,110.57.
- b. Yes (see attached).
- (1) Telephone call from Assistant U.S. Attorney to regional counsel, on or about April 5, 1979, discussing case and requesting assistance.

Letter dated June 26, 1979, from Department of Justice requesting litigation report including issues, defenses, suggested motions, affidavits, and legal authorities. (Ex. 1)

Letter from Assistant U.S. Attorney dated September 25, 1979, to regional counsel requesting Mr. Galbraith's assistance at hearing on cross motions for summary judgment. (Ex. 2)

Handwritten letter from Assistant U.S. Attorney dated October 2, 1979, to Attorney Vince Galbraith forwarding copy of application for limited admission to district court to handle proceeding. (Ex. 3)

Letter from regional counsel dated October 5, 1979, making Mr. Galbraith available to assist in the litigation. (Ex. 4)

Letters dated March 7, 1980 and April 7, 1980, requesting assistance in the preparation of the Government's brief on the appeal of the case to the 9th Circuit. (Exs. 5 and 6)

Donald Vingino

1. There were no trips to Tucson with respect to the litigation filed by Mr. Vingino seeking judicial review of the revocation of his corporation's firearms license.
 - a. Not applicable.
 - b. Yes.
 - (1) Telephone request from Assistant U.S. Attorney to regional counsel on or about March 27, 1979, advising of filing of litigation and requesting assistance.

Letter dated April 19, 1979, from Department of Justice requesting a litigation report including issues, defenses, suggested motions, affidavits, and legal authorities. (Ex. 7)

Handwritten letter from Assistant U.S. Attorney to regional counsel attorney Galbraith, received January 4, 1980, forwarding copy of petitioner's Motion to Dismiss and asking for his views. (Ex. 8)

QUESTION I

C. Other cases

1. Has your Washington headquarters, or any regional office, been responsible for drafting pleadings, briefs, or memoranda, in Simon Perri, Donald Vingino, or Curtis Earl cases?
 - a. If so, please list each document so drafted and the date on which it was drafted.

ANSWERC. Simon Perri

1. Yes.
 - a. Litigation report for U.S. Attorney dated May 25, 1979, prepared by headquarters Chief Counsel's Office outlining facts and legal issues.

Regional counsel attorney forwarded to U.S. Attorney on June 6, 1979, a proposed Notice and Motion for Summary Judgment.

Regional attorney prepared a proposed Brief on Appeal of the case to the 9th Circuit which was sent April 1, 1980.

Donald Vingino

1. Yes.

- a. Litigation report sent to U.S. Attorney on May 17, 1979, outlining facts and legal issues.

J. Curtis Earl, U.S.D.C. D. Ariz., Civil Action No. 79-189 - Mandamus Action

1. Yes.

- A. Litigation report for U.S. Attorney prepared by Chief Counsel attorney dated September 4, 1979.

Letter from regional counsel to Assistant U.S. Attorney dated September 12, 1979, with respect to case.

Proposed Motion for Summary Judgment and memorandum of legal authorities, with four supporting affidavits, prepared by Chief Counsel attorney were sent to U.S. Attorney on January 29, 1980.

At request of Assistant U.S. Attorney, regional attorneys prepared a proposed pleading in opposition to consolidation of forfeiture and mandamus cases. Sent to Assistant U.S. Attorney on March 3, 1980.

U.S. v. 13 Machine Guns and One Silencer, U.S.D.C. D. Ariz., Civil Action No. 79-250 WEC - Forfeiture Action

1. Yes.

- a. Regional attorney prepared proposed forfeiture complaint which was sent to U.S. Attorney on August 30, 1977.

J. Curtis Earl v. United States, et al., U.S.D.C. D. Ariz., Civil Action No. 79-958 - Suit against the United States, officials and employees of the Bureau alleging various torts and Fourth and Fifth Amendment violations.

1. Yes.

- a. Letter dated April 1, 1980, to United States Attorney prepared by Chief Counsel attorney suggesting answers to complaint.

Litigation report for U.S. Attorney dated April 22, 1980.

J. Curtis Earl v. Bureau of Alcohol, Tobacco and Firearms, et al., U.S.D.C. D. Ariz., Civil Action No. 80-18 PHX - Freedom of Information Suit

1. Yes.
 - a. Letter prepared by Chief Counsel attorney dated March 28, 1980, suggesting answers to complaint.
2. How many man-hours and money have been expended by the Bureau in relation to the Hayes and Curtis Earl cases, since the July 1979 hearings?

ANSWER

- C. 2. Hayes. Approximately 40 hours of regional attorney time. Approximate cost of \$876.
- Approximately 43 1/2 hours of special agent time. Approximate cost of \$677.
- Regulatory Enforcement has spent a total of 53 hours, all related to the administrative hearing. Approximate cost of \$393.
- Earl. Approximately 165 hours of attorney time (majority of time spent reviewing documents in relation to FOIA suit). Approximate cost of \$2,134.
3. At the July 1979 hearings, you indicated you could not discuss the Frank Chismar case, involving an alleged beating of Mr. Chismar by agents, since it was then in litigation. Please describe what litigation was then pending.
 - a. Was the Bureau, or the government of the United States, a party to this litigation?
 - b. Was the Bureau or United States involved in, or lending any assistance to, this litigation?

ANSWER

- C. Other cases
3. In July 1979 three claims were pending under the Federal Tort Claims Act which were filed by Frank Chismar and the other individuals involved in the incident in the total amount of 3 million dollars. The claims were denied in February 1980, and the claimants have now filed suit in the amount of 3.3 million dollars against the United States. There was also pending a civil suit by ATF special agents against Frank Chismar and others, charging false, libelous, and defamatory statements concerning the incident.
 - a. No. However, the tort claims were against ATF and when denied resulted in litigation against the United States.

- b. Neither the Bureau nor the United States was involved in or lent any assistance to the civil litigation brought by the ATF agents against Frank Chismar and others.

The defendants' attorney requested the agents be made available for examination in the pending suit for slander brought by them. Such authorization for examination before trial was given by ATF on August 9, 1979.

Exhibit 1

26 - 1 - 79

Mr. Robert H. Mundheim
General Counsel
Department of the Treasury
Washington, D. C. 20220

Re: Simon Perri, Jr. d/b/a Perri Jewelers
CIV 79-80 TUC-MAR

Dear Mr. Mundheim:

A copy of the complaint in this new suit is enclosed. Responsibility for this case is delegated to the United States Attorney named below for direct handling.

Accordingly, please prepare a litigation report for this case at your earliest convenience, and send it directly to the United States Attorney so that he may be able to respond within the time provided by the Federal Rules. Do not send a copy to this office. If there is unavoidable delay in making the report available, please inform the United States Attorney. The report should include a suggested answer to the complaint, a summary of the facts, issues, defenses, suggested motions, supporting affidavits where applicable, and legal authorities, as well as four sets of relevant documents, one of which should be certified.

All further communications between your agency and the Department of Justice should pass directly between your office and the United States Attorney without copies to this office. Your office will be advised directly by the United States Attorney of any developments in the case as well as the final disposition. Copies of all final orders or judgments, favorable or adverse, will be forwarded by the United States Attorney to the Federal Programs Branch, Civil Division. Additionally, any appealable order or judgment adverse to the United States will be forwarded by the United States Attorney to the Appellate Staff of the Civil Division for review.

If it appears that this case presents novel or important questions of law or policy which might make involvement by this office appropriate, prepare the litigation report in duplicate, and send this office a copy. In your letter of transmittal, please point out the reasons which justify this office retaining responsibility for the case.

Very truly yours,

David J. Anderson
 DAVID J. ANDERSON
 Director
 Federal Programs Branch
 Civil Division

Exhibit 2

September 25, 1979

Tim Tuerck
 Regional Counsel
 Alcohol, Tobacco & Firearms
 Department of the Treasury
 525 Market Street, 34th Floor
 San Francisco, California 94105

Re: Simon Perri, Jr., dba Perri Jewelers
 CIV 79-80 TUC-MAR

Dear Mr. Tuerck:

As you know Vince Galbraith of your office has done considerable work on the Simon Perri case; he is now finishing an opposition to Mr. Perri's cross-motion for summary judgment. Vince was also responsible for putting together our motion for summary judgment.

These motions are set for hearing on October 29, 1979. Vince and I have discussed the possibility of his coming to Tucson for the hearing and both of us agree that this would be helpful to our case. Therefore, if it is possible I would like to have Vince here on October 29, 1979 to assist me with the Perri hearing.

I appreciate your help and the work Vince has done on this case. Thank you.

Very truly yours,

MICHAEL D. HAWKINS
 United States Attorney
 District of Arizona

Virginia

Virginia A. Mathis
 Assistant U.S. Attorney

10/2/79

Vince,

The attached Application for Limited Admission must be filled out, filed and signed by the Judge prior to my appearance in District Ct.

If you will be here for the hearing, please fill out the form, designate me as co-counsel and return for my signature & filing.

If you have any questions, please call.

Thanks,
Virginia

5 OCT 1979

Honorable Michael G. Hawkins
United States Attorney
412 U.S. and Federal Building
Scott and Broadway
Tucson, Arizona 85702

Attn: Virginia Mathis
Assistant U.S. Attorney

Re: Perri Jewelers

Dear Mr. Hawkins:

I am glad that this office could be of assistance in preparing the motion documents in the Perri Jewelers' matter and I want to offer the continued assistance of our office in any MFL cases where you feel we could benefit your office.

In regard to your request that Vince Galbraith be allowed to argue the motion for summary judgment, and any other related matters, this office, and Chief Counsel, will be happy to offer Mr. Galbraith's services. Mr. Galbraith will fill out and return the Application and Order for Limited Admission form you sent, as soon as possible.

In any matters in which ATF is involved, this office is always anxious to render any assistance you may desire. In this vein, pursuant to our discussions, Chief Counsel would also be pleased to offer the assistance of Senior Attorney David Brule and Attorney Michael Hince, from Washington, D.C., to assist in preparation and argument of the J. Curtis Earl matter, if you so desire.

Sincerely yours,

Exhibit 5

March 7, 1980

Vince Galbraith
Office of Regional Counsel
Bureau of Alcohol, Tobacco, and Firearms
Department of the Treasury
525 Market Street, 31th Floor
San Francisco, California 94105

Re: Simon Perri, Jr., dba Perri Jewelers
CIV 79-80 TUC-MAR
Your Reference: W:RC:VG 9078

Dear Vince:

Handling of the above-referenced action is being transferred from Virginia Mathis to myself, and I expect to assume responsibility for preparing our answering brief on appeal.

We have just received the appellant's opening brief, a copy of which is enclosed for your review. Virginia tells me you have given her invaluable assistance in the past, and I would welcome any thoughts or suggestions you might have after reviewing Mr. Hardy's prodigious effort.

By my calculation, our answering brief is due on April 7, 1980. I hope to begin working on our brief within the next two weeks and will look forward to hearing from you.

Thanks for your assistance.

Very truly yours,

MICHAEL D. HAWKINS
United States Attorney
District of Arizona

Linda Drake

Linda A. Drake
Assistant U.S. Attorney

April 7, 1980

Vince Galbraith
Office of Regional Counsel
Bureau of Alcohol, Tobacco and Firearms
Department of the Treasury
525 Market Street, 34th Floor
San Francisco, California 94105

Re: Simon Perri, Jr., dba Perri Jewelers v.
Bureau of A.T.F., CCA # 80-5036
Your reference: W:RC:CG 9078

Dear Vince:

Please find enclosed 5 copies of the brief we mailed to the Ninth Circuit on Friday. Also enclosed is a copy of a letter from the Ninth Circuit Clerk's Office in a case in which we recently wrote an appellate brief. Despite its reference to that particular case, the letter contains a variety of general information concerning the appellate process. More importantly, attached to that letter is an 11-page "Memorandum to Members of the Bar of the Ninth Circuit" which contains information sufficiently important that it should, I think, appear in the rules themselves. Unfortunately, it was this memorandum that I had not seen and did not know about at the time of your original call asking how to cite the various documents in the record.

I am assuming that you have a current copy of the Ninth Circuit's Local Rules. If not, however, I would be happy to send you a copy. Together, the Local Rules and the Memorandum provide a great deal more instruction and assistance in preparing an appellate brief than do the federal rules themselves.

Again, many thanks for both your assistance and your graciousness in our last-minute revision of the Perri brief.

Sincerely,

MICHAEL D. HAWKINS
United States Attorney
District of Arizona

Linda

Linda A. Drake
Assistant U.S. Attorney

April 19, 1979

Mr. Robert H. Mandheim
General Counsel
Department of Treasury
Washington, D. C. 20220

Re: X. A. Traders, Inc., d/b/a Arizona Traders
v. USA, et al., USDC D Arizona, Civil
Action No. CIV 79-69 TUC MAR

Dear Mr. Mandheim:

A copy of the complaint in this new suit is enclosed. The United States Attorney named below is responsible for direct handling of this case.

Accordingly, please prepare a litigation report for this case at your earliest convenience, and send it directly to the United States Attorney so that he may be able to respond within the time provided by the Federal Rules. Do not send a copy to this office. If there is unavoidable delay in making the report available, please inform the United States Attorney. The report should include a suggested answer to the complaint, a summary of the facts, issues, defenses, suggested motions, supporting affidavits where applicable, and legal authorities, as well as four sets of relevant documents, one of which should be certified.

All further communications between your agency and the Department of Justice should pass directly between your office and the United States Attorney. Your office will be advised directly by the United States Attorney of any developments in the case as well as the final disposition. Copies of all final orders or judgments, favorable or adverse, will be forwarded by the United States Attorney to the Federal Programs Branch, Civil Division. Additionally, any appealable order or judgment adverse to the United States will be forwarded by the United States Attorney to the Appellate Staff of the Civil Division for review.

If it appears that this case presents novel or important questions of law or policy which might make involvement by this office appropriate, prepare the litigation report in duplicate, and send this office a copy. In your letter of transmittal, please point out the reasons which justify this office retaining responsibility for the case.

Very truly yours,

David J. Anderson
David J. Anderson *DW*
Director

Federal Programs Branch
Civil Division

Vince,

I have enclosed a
copy of a Motion to
Dismiss in X.A. Traders.
(A strange motion for pl
to file!) Our answer is due
Jan. 10, 1980.

Let me know what you
think.

TKS.

Vigginis

Question 4

At that time you stated that internal affairs investigations were ongoing with reference to the Chismar matter. Have these investigations been completed?

Answer

In January of 1979, the Civil Rights Division, United States Department of Justice advised ATF that they had completed their investigation of the Chismar matter and based on this investigation no further action by the Justice Department was contemplated.

This matter was also investigated by the Office of the District Attorney, Westchester County, New York, and on July 13, 1979, that office determined that there was insufficient evidence to warrant presentation to the Grand Jury.

ATF's Office of Internal Affairs completed their investigation of the Chismar matter and a final report was issued on November 11, 1979. Presently there are two civil actions pending in connection with this matter, the first being Chismar, et al. vs. the United States of America, Department of the Treasury, and the Bureau of Alcohol, Tobacco and Firearms, and the second being the Agents vs. Chismar, et al.

Question 4a.

Will you make them available to the Subcommittee?

Answer

ATF did not receive the investigative reports of either the Department of Justice or the Westchester County District Attorney's office. It is suggested that the Subcommittee may wish to contact those departments directly for copies of their respective reports.

In that two civil actions are currently pending with respect to the Chismar incident, ATF Legal Counsel has advised that to release the investigative reports at this time might adversely affect the pending litigation.

Question 4b.

Have any agents been disciplined in connection with the Chismar matter?

Answer

The ATF special agents involved in this incident were placed on administrative duties pending the outcome of the various investigations. Due to the lack of evidence of any misconduct on their part no disciplinary action was taken.

Question b.(1)

Please state the nature of disciplinary actions taken, if any.

Answer

The discussion of any information at this time would be improper and could possibly prejudice the civil actions which are currently pending.

Questions regarding general ATF policy and enforcement of Federal firearms laws.

A. Arrests.

QUESTION 1

How many firearms law arrests has the Bureau made since the July 1979, hearings?

ANSWER

Between July 1, 1979, and March 31, 1980, the Bureau made 531 arrests for violations of Federal firearms laws.

QUESTION 1a.

How many of these were for felon-in-possession?

ANSWER

52 of the 531 arrests were for felon-in-possession.

QUESTION 1b.

How many for transportation of stolen arms? How many for sale to felons?

ANSWER

28 of the 531 arrests were for interstate transportation of stolen firearms.

One of the 531 arrests was for sale to felons by a licensee.

QUESTION 1c.

How many for dealing without a license?

ANSWER

125 of the arrests were for dealing without a license.

Question regarding general ATF policy and enforcement of Federal firearms laws.

B. Firearms seizuresQuestion 1

How many firearms were seized by the Bureau since the July 1979 hearings?

Answer

Between July 1, 1979, and March 31, 1980, the Bureau seized 3,740 firearms.

Question 1a.

Please break down this number to show the basis of the seizure (dealing without a license, etc.).

Answer

1,348 firearms (36.0 percent) were seized for possession of unregistered firearms; 784 firearms (21.0 percent) were seized for dealing without a license; 720 firearms (19.3 percent) were seized for felon in possession; 274 firearms (7.3 percent) were seized for falsification of form 4473; and 134 firearms (3.6 percent) were seized for interstate transportation by a felon. The remaining 480 firearms (12.8 percent) were divided among 16 other proscribed categories, each of which composed less than 3 percent of the total.

Question 1b.

How many were rifles? Shotguns? Pistols?

Answer

670 of the 3,740 firearms seized were rifles.
440 of the 3,740 firearms seized were shotguns.
1,282 of the 3,740 firearms seized were pistols.
The remaining 1,348 firearms were unregistered machine guns, silencers, "sawed-off" shotguns, etc.

Question 1c.

What was the average value of these firearms?

Answer

The average value of the 3,740 firearms seized by the Bureau between July 1, 1979, and March 31, 1980, was \$115.97.

QUESTION 1d.

How do the percentages of arrests falling into each of these categories compare with the percentages prevailing during the fiscal year preceding the July 1979, hearings.

ANSWER

The comparison between these results and those prevailing during the 12-month period preceding the July 1979, hearings is depicted in the following table:

	Percent of Total <u>7/1/79 - 3/31/80</u>	Percent of total <u>7/1/78 - 6/30/79</u>
Felon-in-Possession	9.8%	14.5%
Transportation of Stolen Arms	5.3%	3.5%
Sale to Felons	0.2%	0.2%
Dealing without a License	23.5%	22.1%

QUESTION II(c)(1)

How many investigations of gun shows have you authorized since the July, 1979, hearings?

- a. How many have resulted in arrests?
- b. How many have resulted in convictions?

ANSWER

Since the July, 1979, hearings there have been nine authorizations granted to conduct investigations of gun show subjects. Of this total, there has subsequently been one arrest and one conviction.

QUESTION II(c)(2)

How many investigations of licensed dealers have you authorized over this time?

- a. How many have resulted in arrests?
- b. How many have resulted in convictions?

ANSWER

Since the July 1979 hearings, there have been authorizations granted to conduct investigations of 108 Federally licensed firearms dealers. In these investigations there have subsequently been five arrests and two convictions. Others are still in the investigative stages, awaiting prosecutive action by the United States Attorney's office, or currently under indictment.

QUESTION II(c)(3)

How many investigations of licensed gun dealers are now ongoing?

ANSWER

As of May 13, 1980, there were 143 open investigations nationwide involving Federally licensed firearms dealers.

II. Questions regarding general BATF policy and enforcement of Federal firearms laws.

C. Investigations since the July 1979 hearings.

QUESTION 4

How many agents do you presently have working on criminal enforcement of the Federal firearms laws?

ANSWER

In the current budget, the Bureau has 1,013 authorized positions for firearms enforcement. However, as a practical matter, field agents expend a portion of their time on all Bureau enforcement programs, including the firearms enforcement program (a portion of which deals with licensees). As of April 1, 1980, the Bureau had 1,483 field special agents. Our management information system indicates that 62.2% of the staff years expended by these special agents have been in the firearms program.

QUESTION 5

If a case is brought contrary to your guidelines, or under conditions which do not meet the requirements of them, what measures will you take to terminate the case or otherwise affect the prosecution or continued investigation of that case?

ANSWER

As outlined below, we believe sufficient controls exist to insure internal compliance with our investigative guidelines. At the conclusion of an investigation, if it meets established enforcement priorities and sufficient evidence exists, the case agent prepares a formal, written criminal case report. This case report and the accompanying evidence is subjected to a careful review at the first supervisory level. If the case report is sufficient as to evidentiary content, the report is forwarded to the special agent in charge recommending prosecution only after these very critical reviews. ATF case reports are in letter form and are addressed to the respective U.S. attorney.

Likewise, if the evidence contained in the report is inconclusive, does not meet enforcement priorities, or has obvious weaknesses, the special agent in charge has the option to return the report for additional investigation or to sign and transmit the report recommending no prosecution.

The current guideline relating to firearms licensees, strictly prohibit the initiation of criminal investigations without the prior approval of the Director. Before approval is granted, the known facts, allegations, and suspicious activity is scrutinized, particularly for willful intent, as opposed to nonwillful, or mere technical or inadvertent violations. Even after approval is granted, the investigation is monitored, not only at the Headquarters level, but also by the respective special agent in charge and

first-level supervisor. Should the initial information prove inaccurate, the investigation is immediately closed.

Also, as a matter of routine practice, our special agents in charge and regional directors of investigations meet with the U.S. attorneys and explain the Bureau's policy concerning investigations and prosecutions.

Question II.2.C.6.: Under the Industry Circular relating to "straw man" sales, can one adult purchase a firearm for another adult, if both are lawful purchasers not prohibited from possessing the firearm?

Answer: If one adult purchases for another adult and both are lawful purchasers and both are lawful possessors, the "straw man" situation does not exist. The "straw man" is, by definition, the conduit for a firearm to a person who is either an unlawful purchaser or possessor.

Question II.C.7.: Can one adult buy for another adult if the other is prohibited from buying a firearm from a dealer, but not from possessing it?

Answer: The only category of persons (other than minors) that would be prohibited from purchasing a firearm from a dealer but not be prohibited from possessing that firearm would be the citizen of one State attempting to purchase a firearm in another State. In general, 18 U.S.C. 922 (a) (5) prohibits any person from transferring, selling... etc., any firearm to any person who the transferor knows or has reasonable cause to believe resides in any State other than that in which the transferor resides. The adult making the purchase for the out-of-state resident would violate Sec. 922(a) (5).

May 8, 1980

MEMORANDUM TO: Chief Counsel

FROM: Assistant to the Director
(Congressional Affairs)

SUBJECT: Question Posed During Hearings Before
the Senate Subcommittee on Treasury,
Postal Service and General Government

During the course of his testimony on April 17, 1980, Senator DeConcini asked the Director what involvement BATF has had, if any, in the settlement offer in the Hayes case.

Please respond with an answer to this office no later than close of business May 13, 1980.

(signed) William G. Lawrence
William G. Lawrence

QUESTION

What involvement does BATF have, if any, in the settlement offer in the Hayes case?

ANSWER

None.

May 8, 1980

MEMORANDUM TO: Assistant Director
(Regulatory Enforcement)

FROM: Assistant to the Director
(Congressional Affairs)

SUBJECT: Question Posed During Hearings Before
the Senate Subcommittee on Treasury,
Postal Service and General Government

During the course of his testimony on April 17, 1980, Senator DeConcini asked the Director how many man-years were devoted to firearms inspections in 1979.

Please respond with an answer to this office no later than close of business May 13, 1980.

(signed) William G. Lawrence

William G. Lawrence

Question: How many staff years were devoted to firearms inspections in 1979?

Answer: During FY-1979, 48.7 staff years devoted to completed firearms inspections; 3.2 staff years to qualification inspections and 45.5 staff years to compliance inspections.

SUMMARY OF EVENTS OF ATF INVESTIGATION
RELATING TO PAUL A. HAYES, ET AL - UI 3001 0178 0014 F

This investigation related to the prosecution of Paul A. Hayes and Willie F. Hayes of Bosque Farms, New Mexico, on charges of violating the Gun Control Act of 1968. A total of 170 firearms, 54,528 rounds of ammunition, and an unregistered Title II firearm were seized during the course of this investigation.

On January 30, 1978, ATF was contacted by Captain Larry Standard of the Valencia County, New Mexico, Sheriff's Department. At that time, they had a subject named Juan Jose Sosa in custody. Sosa had just been arrested by a game warden while rustling cattle in Valencia County. When he was approached by the game warden he had attempted to throw away a .22 caliber revolver; however, the firearm was retrieved by the game warden and Sosa was brought to the sheriff's office.

Sosa, through an interpreter, gave a sworn statement as to how he had acquired the firearm. He stated he was an illegal alien and when he had tried to purchase the firearm at Cole's Mercantile in Bosque Farms, New Mexico, he was told he could not purchase the firearm for that reason. He stated that Hayes told his employer, Max Perea, that he could buy the firearm and give it to Sosa. Perea then signed the paper (ATF Form 4473) and he, Sosa, paid Hayes the money and Hayes gave him the gun. Perea, who is a resident of New Mexico, also gave a sworn statement.

Local law enforcement officers and ATF had previously received reports that Hayes was a "fence" for stolen firearms. Because of the incident involving Sosa and the

reports regarding Hayes activities as a "fence" for stolen firearms, it was decided to initiate this investigation. Hayes' fencing of stolen firearms was subsequently corroborated in a conversation between Mrs. Hayes and the undercover ATF special agent on April 5, 1978. She told them that they sometimes bought "stolen" firearms that were not recorded in their books. She said they sold the "stolen" guns to their friends and didn't have to log them in the record. This conversation was electronically monitored.

On February 28, 1978, Regulatory Enforcement, at the request of Criminal Enforcement, contacted Hayes and his wife, Willie, and advised them of the requirements of the law, particularly with regard to "straw" purchase transactions.

On April 3, 1978, Hayes was contacted by a nonresident undercover ATF special agent and when he attempted to purchase a firearm, he was advised by Hayes to get a resident of New Mexico to purchase it for him. Shortly thereafter he returned to the store with another undercover ATF agent. This agent, who was a resident of New Mexico, completed ATF Form 4473 for the purchase of the firearm. Hayes was fully aware of the "straw purchase." The agent purchased an F.I.E. Armenius, .38 cal. revolver and 30 rounds of ammunition. The same two agents made another "straw" purchase of an RG 14, .22 cal. revolver and 66 rounds of ammunition on April 5, 1978. On April 7, 1978, two other special agents, acting in an undercover capacity, went to Hayes and purchased an RG 14, .22 caliber revolver and 50 rounds of ammunition in the same manner. Two other undercover agents went to Hayes on April 18 and 19, 1978, and on each occasion purchased .22 caliber revolvers and ammunition in the same manner.

On April 26, 1978, at 1:00 p.m., Federal arrest warrants and search warrants were executed on the business premises

and the residence of Paul A. and Willie F. Hayes. The residence and the business were in the same building and were connected. A search warrant was obtained for the residence because several of the five firearms purchased by the undercover agents were obtained from the residence. Prior to the execution of the warrant, a raid plan was drawn up assigning responsibilities to the participating officers who were from ATF and the Bernalillo County, New Mexico Sheriffs Department.

On that date two of the ATF undercover special agents, Jack Barnett and Teddy Alford, entered the premises at 12:50 p.m., in an undercover capacity prior to the raid team. They engaged Hayes and several other people in a conversation. Several of the people present had loaded firearms. On the pretext of examining these firearms the undercover agents got control of them. This was done for the safety of the raiding team. Special Agents Barnett and Alford then identified themselves with their badges and pocket commissions. At 1:00 p.m., Special Agents Royce Hodges, Danny Carpenter, Charles R. Gonzales, and Deputy Sheriff Ken Northcutt entered the store simultaneously. They had been electronically monitoring the conversation between the agents, Hayes and the others. Special Agent Hodges executed the search warrants and arrest warrants on Paul A. and Willie F. Hayes. Special Agent Charles Gonzales then took pictures of the business premises and the residence prior to the commencement of the search. He also took pictures at the conclusion of the search. This is standard law enforcement operating procedures to preclude charges of destruction of property and for the preservation of evidence. Mr. and Mrs. Hayes were advised of their rights in regard to any statements they might make. They stated that they understood their rights and executed ATF Form 3200.4 to indicate

that they did. At no time did anyone tell Mr. and Mrs. Hayes that they had no rights after the agents came into the building.

Immediately following their arrest, Mr. and Mrs. Hayes were transported to the Federal Building in Albuquerque by Special Agents Barnett and Carpenter. After entering the building, Mrs. Hayes collapsed. The special agents and Mr. Hayes asked her to go to the hospital to be checked. She adamantly refused. The special agents then offered to call an ambulance for her and she refused. One of the special agents then asked a female employee from one of the offices in the building to accompany Mrs. Hayes to the women's rest room. It has been stated that the special agents showed a disregard for Mrs. Hayes' health. Quite to the contrary, the special agents were quite concerned for Mrs. Hayes' welfare and attempted to assist her. Mrs. Hayes returned from the rest room in approximately 5 minutes and then both defendants were processed for identification. Mr. and Mrs. Hayes were then brought before the United States Magistrate whose office was located across the street from the ATF office. They were released on their own recognizance pending grand jury action.

ability as to said case on the general bond or stipulation shall cease. The parties may stipulate the amount of the bond or stipulation for the release of a vessel or other property to be not more than the amount claimed in the libel, with interest, plus an allowance for libellant's costs. In the event of the inability or refusal of the parties to so stipulate, the court shall fix the amount, but if not so fixed then a bond shall be required in the amount prescribed in this section.

(June 25, 1948, ch. 646, 62 Stat. 974.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 754 (R.S. § 941; Mar. 3, 1899, ch. 441, 30 Stat. 1354; Aug. 3, 1935, ch. 431, § 3, 49 Stat. 513).

Changes were made in phraseology.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1, of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 sections 916k, 956, 959, 971f, 990, 1031, 1100a-1.

§ 2165. Return of property to claimant; certificate of reasonable cause; liability for wrongful seizure

Upon the entry of judgment for the claimant in any proceeding to condemn or forfeit property seized under any Act of Congress, such property shall be returned forthwith to the claimant or his agent; but if it appears that there was reasonable cause for the seizure, the court shall cause a proper certificate thereof to be entered and the claimant shall not, in such case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution.

(June 25, 1948, ch. 646, 62 Stat. 975.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 818, 827 (R.S. §§ 970, 979).

Section consolidates sections 818 and 827 of title 28, U.S.C., 1940 ed., with changes of phraseology necessary to effect the consolidation.

The words "in any proceeding to condemn or forfeit property" were inserted in conformity with the uniform course of judicial decisions. See *Hammel v. Little*, App.D.C. 1936, 87 F.2d 907, and cases there cited.

The qualifying language of section 827 of title 28, U.S.C., 1940 ed., requiring the claimant to pay his own costs before the return of his property was omitted as unnecessary and involving a matter more properly for regulation by rule of court. (See sections 1913, 1914, and 1925 of this title.)

(See also section 2006 of this title with respect to actions against internal revenue officers and their liability for acts in the performance of official duties.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26, section 7323.

CHAPTER 165—COURT OF CLAIMS PROCEDURE

Sec.

- 2501. Time for filing suit.
- 2502. Aliens' privilege to sue.
- 2503. Proceedings before commissioners generally.
- 2504. Plaintiff's testimony.
- 2505. Trial before judges.
- 2506. Interest of witness.
- 2507. Calls and discovery.
- 2508. Counterclaim or set-off.¹
- 2509. Congressional reference cases.
- 2510. Referral of cases by Comptroller General.
- 2511. Accounts of officers, agents or contractors.
- 2512. Disbursing officers; relief.
- 2513. Unjust conviction and imprisonment.
- 2514. Forfeiture of fraudulent claims.
- 2515. New trial, stay of judgment.
- 2516. Interest on claims and judgments.
- 2517. Payment of judgments.
- 2518. Certification of judgments for appropriation.
- 2519. Conclusiveness of judgment.
- 2520. Fees; cost of printing record.
- 2521. Subpoenas.

AMENDMENTS

1954—Act Sept. 3, 1954, ch. 1263, §§ 46, 54(c), 55(d), 59(b), 68 Stat. 1243, 1247, 1248, substituted "Trial before judges" for "Place of taking evidence" in item 2505 and "Calls and discovery;" for "Calls on departments for information" in item 2507, rephrased item 2510, and added item 2521.

§ 2501. Time for filing suit

Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

Every claim under section 1497 of this title shall be barred unless the petition thereon is filed within two years after the termination of the river and harbor improvements operations on which the claim is based.

A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases.

A suit for the fees of an officer of the United States shall not be filed until his account for such fees has been finally acted upon, unless the General Accounting Office fails to act within six months after receiving the account.

(June 25, 1948, ch. 646, 62 Stat. 976; Sept. 3, 1954, ch. 1263, § 52, 68 Stat. 1246.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 250(2), 250a, and 262 (Mar. 3, 1911, ch. 231, §§ 145, 156, 36 Stat. 1136, 1139; June 10, 1921, ch. 18, § 304, 42 Stat. 24; Aug. 30, 1935, ch. 831, § 13, 49 Stat. 1049; July 13, 1943, ch. 231, 57 Stat. 553).

Section consolidates limitation provisions of sections 250(2), 250a, and 262 of title 28, U.S.C., 1940 ed.

Words "a person under legal disability or beyond the seas at the time the claim accrues" were substituted for "married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued; entitled to the claim." The revised language will cover all legal disabilities actually barring suit. For example, the particular reference to married

¹ So in original. Does not conform to section catchline.

Mr. and Mrs. Hayes then returned to their residence at Bosque Farms, where the search was still in progress. Mr. Hayes' son had stayed on the premises while he was gone. Mr. Hayes was joined by his attorney, Tibo Chaves. He and Mr. Chaves then told Special Agent Hodges they wanted to talk to him about the charges. Special Agent Hodges advised them that he was in the process of searching the premises and could not talk to them at that time but he would later and for them to go into the residence and discuss it amongst themselves. They returned on two more occasions insisting on talking to Special Agent Hodges. Mr. Hodges was counting loose ammunition and again told them they would have to wait. When they became persistent he advised them they would have to leave the store if they did not stop interrupting the special agents. Upon completing his business, Special Agent Hodges went to Mr. Hayes and found that Mr. Chavez had left. He advised Mr. Hayes that it would be inappropriate for him to discuss the charges without his attorney present.

Mr. Hayes told his son that he wanted him to take pictures of the firearms that the agents were seizing. The son then obtained a Polaroid camera. Mr. Hayes asked Special Agent Hodges if it would be all right and he told him he could take the pictures of whatever was seized. However, the son then started taking pictures of the ATF special agents and their vehicles, including the surveillance vehicles. Special Agent Hodges seized five pictures of the agents and the vehicles. He did not seize the camera.

During the course of the search of the premises a large number of firearms were seized from the closet in the bedroom as well as from the business premises. When they were removed from the closet they were temporarily laid on the bed. The utmost care was taken not to disturb

the premises unnecessarily. None of the officers threatened to "tear up the bed".

While he was present on the premises, Mr. Hayes had free access to all parts of the residence and business premises. He was in a position to observe all of the packing of the firearms and the subsequent loading onto the ATF vehicle. All of the firearms that were in boxes were left in the boxes after they were opened to verify the serial numbers. Measures were taken to protect those firearms that were not in boxes while they were being transported and stored. A total of 170 firearms and 54,528 rounds of ammunition were seized from the business premises and the bedroom. One of the firearms was an unregistered H & R .410 gauge Handi-gun (shortbarrel shotgun). The property was appraised by independent appraisers and valued at \$14,620. It was moved to Albuquerque and stored at the ATF office there. On about February 6, 1979, the U.S. Marshal took custody of these firearms and this ammunition pending judicial forfeiture. The property was in the same condition on that date as it was on the date of seizure.

During the course of the events that occurred relating to this arrest and search there was no indication of any hostility or misconduct on the part of the special agents present. All ATF business was conducted in a professional manner. The search was concluded at approximately 6:00 p.m.

No ATF special agent has been to Mr. Hayes's premises since that date except approximately two days later after the seizure when an amended inventory of the seized property was delivered to him indicating a corrected count of the ammunition. No one has attempted any additional "straw" purchases from Mr. Hayes.

On May 1, 1978, the Hayes were indicted by a Federal Grand Jury on Title I and Title II charges.

Mr. and Mrs. Hayes were brought to trial on this matter on January 19, 1979, in Albuquerque, New Mexico. At the conclusion of the trial, the jury returned a verdict of acquittal on all counts as to both defendants. At that time, the Assistant United States Attorney requested that the court stay its order returning the seized firearms to the Hayes in order for him to institute judicial forfeiture.

ATF was considering not renewing Mr. Hayes' firearms license and a hearing was held on that matter on September 19, 1979. The hearing officer ruled that, effective October 1, 1979, Mr. and Mrs Hayes could have their firearms license renewed.

Based on this decision by the hearing officer, and considering their acquittal in the criminal matter, the Assistant United States Attorney decided not to proceed with the judicial forfeiture of the 170 firearms and the ammunition and to return them to Mr.Hayes. When the firearms were to be returned to Mr. Hayes, he was requested to sign a waiver of any further claims against the Government. Mr Hayes refused to sign the waiver. The Assistant U.S. Attorney then decided to proceed with the judicial forfeiture of the firearms and ammunition. The decision to proceed at this point was a unilateral one on the part of the Assistant U.S. Attorney and ATF did not attempt to influence him in any way.

On March 3, 1980, The Assistant U.S. Attorney sent a "Request for Admissions" as provided under Rule 36 of the Federal Rules of Criminal Procedure, to Mr. Hayes. He stated that under the rules, Mr. Hayes is asked to either admit or deny the facts in the case and the rule allows 30 days for a response. This 30 day period expired on April 3, 1980. The Assistant U.S. Attorney says that this is a tacit admission of the facts.

The Assistant U.S. Attorney has received affidavits from all of the ATF special agents involved in the investigation and since he received no response from Mr. Hayes within the 30 days, he filed a motion with the U.S. District Court in Albuquerque, New Mexico, on April 8, 1980, requesting a summary judgement awarding the firearms to the United States. ATF did not request that the U.S. Attorney file this motion nor were we consulted before it was filed.

Approximately six weeks ago, Special Agent Danny Carpenter had the occasion to call on Ron Peterson's Gun Shop in Albuquerque in another investigation. He was attempting to determine if some suspects in another matter were purchasing large quantities of handguns. Mr. Peterson was not a suspect in the investigation. Mr. Hayes was present while the agents were in the store and was very belligerent when he attempted to engage in a conversation with Special Agent Carpenter. Special Agent Carpenter told him that he would not talk to him and that ended the conversation.

SUMMARY OF EVENTS OF ATF INVESTIGATION
RELATING TO PATRICK M. MULCAHEY

The purpose of this paper is to outline the facts which led to the investigation, indictment, and subsequent administrative action involving Patrick M. Mulcahey.

In July 1974, ATF agents in Columbia, South Carolina, responded to a request to assist local officers, in the service of search warrant for stolen property.

Approximately \$60,000 worth of stolen firearms and explosives were recovered during this search. In an effort to cooperate, the subject of this investigation identified Patrick M. Mulcahey, a licensed firearms dealer, as his outlet for many stolen firearms in the past, including several firearms from the same thefts

which were the sources of the firearms recovered in this investigation.

Mr. Mulcahey, at this time, had already gained a reputation with the local authorities and ATF as a fence of stolen property particularly firearms and explosives stolen from nearby Fort Jackson. In addition, Mulcahey and a friend who worked at Fort Jackson, in the armament department, were known to conduct a large scale firearms business at local gun shows. Based on these criminal activities, Mulcahey was identified by ATF as a significant criminal.

Based on this reputation and the new probable cause, a Federal search warrant was executed on Mr. Mulcahey's premises. ATF recovered a quantity of stolen U.S. Government handgrenade and artillery simulators and discovered that his firearms records were nearly nonexistent. In a plea bargaining process, Mr. Mulcahey elected to surrender his firearms license in order to avoid prosecution.

In May 1976, ATF was in the midst of a major State-wide undercover investigation in South Carolina when additional allegations surfaced, indicating Mulcahey's active dealing in firearms and fencing of stolen guns. The undercover agents visited Mulcahey, at his residence, and with no prior introduction, purchased three firearms and ammunition out of many offered for sale, over a two week period. Due to limited available funds, the undercover contacts were terminated after three successful buys.

On January 19, 1977, a Federal Grand Jury indicted Mulcahey, charging him with dealing in firearms without a Federal license.

On January 20, 1977, Mulcahey was arrested by a Deputy United States Marshal while ATF agents executed a Federal search warrant on his residence. This search resulted in the seizure 106 firearms valued at \$6,432. Twenty-one

of these firearms had been previously reported stolen by various police departments. Mulcahey was arrested on February 12, 1977, by the Charleston, South Carolina, Police Department and indicted in State court for receiving stolen property. At the time of this arrest, Columbia police seized an additional 17 handguns which they found buried in his back yard.

On March 16, 1977, Mulcahey was acquitted in Federal court as a result of a jury trial. The jury felt that the purchase of only three firearms out of the large quantity available for sale was insufficient to substantiate a conviction for dealing in firearms. Steps were immediately initiated to return the stolen firearms to their rightful owners. Local charges regarding the stolen firearms have been dismissed.

On March 31, 1977, the United States Attorney filed a complaint for forfeiture of Mr. Mulcahey's firearms and on April 14, 1977, the United States Marshal's Office executed a warrant of arrest against the firearms. This action removed Mr. Mulcahey's firearms from ATF control and since that date they have been in the custody of the court. Final briefs have been filed by both the Government and the defense, and both parties are currently awaiting the decision of the United States District Judge Charles E. Simons, Jr., in this matter.

SUMMARY OF EVENTS OF ATF INVESTIGATION
RELATING TO DONALD VINGINO

The purpose of this paper is to outline the facts which led to the investigation, indictment, trial, and subsequent administrative action involving Donald Vingino and Arizona Traders.

Donald Vingino is the Secretary-Treasurer of the X.A. Traders Inc., an Arizona Corporation doing business as Arizona Traders, 37 West 33rd Street, Tucson, Arizona. The only other officer of the corporation is Wiley Morris, who is a close relative of Vingino's. The business is a pawn shop operation specializing in the sale of jewelry as well as firearms and firearms accessories. The business is a small operation with Morris and Vingino being the principal employees.

The company received its initial firearms license in 1971. An application investigation was conducted prior to the issuance of the license, and the Gun Control Act and its regulations were explained to Wiley Morris by the investigating agent.

In August 1972, the Tucson Post of Duty received information from an undisclosed source that Arizona Traders was engaged in the sale of firearms without the completion of the requisite paper work. On August 17, 1972, a convicted felon informant purchased a handgun from Arizona Traders without the completion of any paperwork. The informant advised the salesman of his prohibited status prior to the purchase. On August 20, 1972, a compliance inspection was conducted at Arizona Traders by agents from the Tucson POD. They found no record of receipt or disposition of the firearm purchased by the informant. In addition, they found 15 other firearms on the premises which had not been recorded in the required firearms records. On August 21, 1972, a Notice of Violations (Form 1880) was served on Donald Vingino who signed to acknowledge its receipt.

The investigation was discussed with the United States Attorney's Office and a decision was made not to prosecute the case based on the illegal sale of only one firearm.

In September 1973, a follow-up compliance inspection found that the recordkeeping deficiencies had been corrected.

In late 1976 and early 1977, the Tucson Police Department, advised ATF that it had received information that Arizona Traders was again engaged in the sale of firearms without the requisite paperwork. This information was essentially word of mouth and did not involve any specific evidence of wrongdoing.

The Tucson POD had previously received information of criminal misconduct by several firearms dealers in Tucson and Nogales, Arizona, and had also been advised by the United States Attorney's Office that District Court Judge William C. Frey was becoming increasingly alarmed at allegations by firearms defendants that they had been induced by firearms dealers to violate the Gun Control Act in purchasing weapons. An investigation involving 15 licensed firearms dealers was then conducted between January and June 1977. Arizona Traders was one of the firearms dealers investigated. Prosecution was recommended against seven licensees, two employees, and one corporation.

A convicted felon informant, Anthony Jacome Demara, was recruited. Demara had two prior felony convictions for burglary in 1967 in California. Demara had no arrests since 1973.

On January 17, 1977, Demara had gone to Arizona Traders to discuss the purchase of a firearm with Vingino.

Demara was subsequently instructed not to go to any of the suspected firearms dealers without prior ATF authorization. Demara stated that his conversations with Vingino involved sales prices and his firearms inventory. He did not

attempt to purchase a weapon or advise Vingino of his felony convictions.

On February 4, 1977, Demara was provided with Government funds and equipped with a Nagra tape recorder. He entered Arizona Traders where he met with Donald Vingino. Demara selected a Targa Model GT, .380 caliber pistol which he agreed to purchase. In selecting the weapon, Demara implied that the weapon was for his wife's use. Vingino produced the ATF Form 4473, and Demara advised Vingino that he couldn't sign it. Vingino then asked if Demara's wife could come in and sign for it. Demara advised Vingino that he had a friend who could sign for him. Vingino agreed to this and a special agent from the Arizona Drug Control District who had accompanied Demara to the store agreed to sign the form for Demara. Demara advised the undercover agent in Vingino's presence that he could not sign the ATF Form although he did not say that he was a convicted felon. Vingino then stated he couldn't complete the sale as a gun dealer but that the undercover agent could sell the gun to Demara as an individual. Prior to completion of the sale, Vingino asked Demara if he was a convicted felon and Demara replied that he was. Demara then paid for the weapon which he received directly from Vingino along with the receipt. The State agent signed the Form 4473 using his undercover name and drivers license.

On February 8, 1977, Demara was again equipped with a Nagra recorder and returned to Arizona Traders with the State agent. He asked Vingino to sell him a Smith and Wesson Model 19-2, .357 magnum revolver which he had seen on his first visit. Vingino recalled Demara from the previous sale. Vingino told Demara that he would again have to have his friend sign for the weapon. He also wanted to delay the sale for three days so that he wouldn't have

to submit a multiple sales form to ATF. Vingino agreed to go through with the sale that day after the agent and Demara stated they wanted to complete the transaction, and the undercover agent assured Vingino that he had no record and didn't care if his name was listed on the multiple sale form.

After the State agent completed the 4473, Demara paid for the weapon which he received from Vingino along with the receipt. He also ordered a holster for the weapon which he agreed to pick up at a later time.

Demara made no comment during the February 8 transaction regarding giving the firearm to his wife.

On February 15, 1977, Demara returned to Arizona Traders with a second State undercover agent and bought a holster for the Smith and Wessen revolver he had purchased on February 8.

A criminal case report was prepared recommending prosecution of Vingino and X.A. Traders Inc. for delivery of a firearm to a convicted felon (18 U.S.C., Section 922(d)(1)) and falsification of the firearms records (18 U.S.C., Section 922 (m)). On September 14, 1977, the Federal Grand Jury in Tucson returned an indictment charging both Vingino and the corporation with two counts of violation of both sections of the Gun Control Act. Vingino was arrested on September 21, 1977, and released on his own recognizance by the United States Magistrate.

Incident to Vingino's arrest, a compliance inspection was conducted of Arizona Traders. Agents and inspectors recovered two short barreled rifles on the premises. One was a Hamilton .22 caliber rifle with a 5 1/2 inch barrel and an overall length of 11 inches. The second was a Winchester .22 caliber rifle with 6 inch barrel

and an overall length of 13 inches. No criminal action was taken against Vingino or Morris due to the age and condition of the weapons.

On November 4, 1977, Judge William C. Frey granted a defense motion to suppress the tape recordings of conversations between Demara, Vingino, and the State agents. The conversations had been recorded on a Nagra reel to reel tape which had then been copied onto cassette tapes and erased for reuse as was standard procedure at that time. Frey ruled that the defense was entitled to the original recordings, but also found that the Government had not shown "bad faith" in erasing the original Nagra tapes. Following the suppression of the tapes, AUSA Dan Knauss advised the court on November 5, that he was not ready to proceed, and Frey dismissed the indictment.

As has already been noted, the Vingino case was one of eight similar ATF investigations indicted at the same time in Tucson. In two of the cases (U.S. vs. Joe Puchi, 3913 0177 1007 S and U.S. vs. Irving Goldstein, 3913 0177 1011 W) the issue of the tapes was also raised and two other judges admitted them into evidence.

On January 3, 1978, the Regional Regulatory Administrator (RRA) for the Western Region issued a Notice of Contemplated Action against X.A. Traders Inc. A hearing was held on March 15, 1978, in Tucson and a Notice of Revocation was issued April 26, 1978.

On July 12, 1978, a hearing was held before the ATF Administrative Law Judge Kenneth Travis in Tucson. Judge Travis admitted the previously suppressed tape recordings into evidence during the proceeding. On October 20, 1978, Judge Travis issued his findings upholding the decision to revoke the license. On January 5, 1979, Acting Director John Krogman concurred with the decision

and a Final Notice of Revocation was issued by the RRA, Western Region.

On March 16, 1979, Vingino filed a motion for review of the revocation decision by the United States District Court in Tucson. That petition is still pending as of May 6, 1980. It should be noted that in one of the other cases (U.S. vs. Simon Perri, 3913 0177 1006 G) which was very similar to this investigation, ATF's decision to revoke was upheld by the District Court in Tucson on December 11, 1979, and has been appealed to the Ninth Circuit Court of Appeals where it is still pending.

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

**WAIVER OF RIGHT TO REMAIN SILENT AND OF
RIGHT TO ADVICE OF COUNSEL**

STATEMENT OF RIGHTS

Before we ask you any questions, it is my duty to advise you of your rights. *J.H.*

You have the right to remain silent. *J.H.*

Anything you say can be used against you in court, or other proceedings. *J.H.*

You have the right to consult an attorney before making any statement or answering any question, and you may have him present with you during questioning. *J.H.*

You may have an attorney appointed by the U.S. Magistrate or the court to represent you if you cannot afford or otherwise obtain one. *J.H.*

If you decide to answer questions now with or without a lawyer, you still have the right to stop the questioning at any time, or to stop the questioning for the purpose of consulting a lawyer. *J.H.*

HOWEVER -

You may waive the right to advice of counsel and your right to remain silent, and you may answer questions or make a statement without consulting a lawyer if you so desire. *J.H.*

WAIVER

I have had the above statements of my rights read and explained to me and full understand these rights I waive them freely and voluntarily, without threat or intimidation and without any promise of reward or immunity. I was taken into

custody at 6:00 PM (time), on 4/26/78 (date), and have signed this document at 1:00 PM (time), on 4/26/78 (date).

Kevin J. Taylor

(Name)

Witnesses

[Signature]

(Name)

[Signature]

(Name)

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIRE ARMS

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custody at 1:00pm (time), on 4/24/78 (date), and have signed this document at 1:00pm (time);
on 4/24/78 (date).

Paul A. Hoyer
(Name)

Witnesses

[Signature]
(Name)
[Signature]
(Name)

SUPPLEMENTARY INFORMATION

LETTER FROM NEAL KNOX

April 24, 1980

The Honorable Dennis DeConcini
United States Senate
3230 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator DeConcini:

Reference is made to the testimony received by your Subcommittee on Appropriations on April 17, 1980, concerning abuse of citizens by the Bureau of Alcohol, Tobacco and Firearms. At that time, Mr. and Mrs. Paul Hayes of New Mexico testified before you that an offer had been made by the United States Attorney for the District of New Mexico to remit the forfeiture of the firearms seized from them. This offer was on condition that they execute an agreement waiving all claims (except for damage to their firearms) against the United States, its officers, agents or employees arising out of the investigation and prosecution of the criminal case against them, the subsequent administrative proceeding involving their federal firearms license and the proceeding to forfeit their firearms. A copy of the agreement proposed by the Department of Justice is enclosed.

Both Mr. and Mrs. Hayes have been acquitted of all criminal charges and have also prevailed in the license proceeding. Only the forfeiture proceeding, based on the same charges they have twice proven to be false, still hangs over them. As you can appreciate, Mr. and Mrs. Hayes have suffered physically, mentally and financially as a result of the excesses and overreaching of the BATF and have expressed an intention to bring an action against that agency and perhaps others.

At the April 17 hearing, Marvin Dessler, Chief Counsel of the BATF volunteered that the agreement proposed was of the type encouraged by the Department of Justice and provided for in 28 CFR 9.7(b). Enclosed for your information is a copy of the subsection of the Code of Federal Regulations specifically cited by the Chief Counsel. You will observe that it states that when a forfeiture is remitted or mitigated, a lienholder shall furnish the U.S. Attorney with (1) an instrument executed by the registered owner and any known claimant to property releasing their interest in such property or (2) if the registered owner or any known claimant is in default, an agreement to save the Government and its agents and employees harmless from claims resulting from the grant of remission.

The purpose of this letter is to call your attention to the fact that you have been misled. Mr. and Mrs. Hayes have unencumbered title to the seized firearms. As you can see, subsection (b) deals with remissions allowed to lienholders, which the Hayes are not, and requires that these lienholders provide the government with documents saving it harmless against claims resulting from the grant of remission only. This subsection can in no way be construed as requiring Mr. and Mrs. Hayes to waive claims against the United States and its agents and employees resulting from the investigation

and prosecution of the criminal case, the administrative proceeding concerning their firearms license and the forfeiture proceeding.

As I recall, Mr. Hayes testified that the seized firearms were now worth between \$60,000 to \$70,000. Obviously the government is aware that Mr. and Mrs. Hayes desperately need their stock in trade since their ordeal of the past two years has made them virtually penniless. This attempt to extort a release from them is therefore reprehensible. It becomes more so when passed off as routine compliance with federal regulations which do not have a scintilla of application to their situation. The attitude of the United States Attorney toward Mr. and Mrs. Hayes is at this point perhaps vindictive. It also suggests that his office has little of note to accomplish if he can devote such time and attention to harassing those who have committed no criminal acts, and, but for the initiation of a scheme by the government, would never have been forced to defend themselves. Moreover, the charges which the Government failed to prove amounted to merely technical violations of malum prohibitum statutes. The United States Attorney should have called to his attention the following admonition from Berger v. United States, 295 U.S. 78 (1935):

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor--indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

Sincerely,



Neal Knox
Executive Director

EXCERPT FROM 28 C.F.R., SECTION 8.2

risks, etc., will be considered in determining the appropriate amount of reward.

§ 7.3 Eligibility for reward.

A reward may be paid to any person, except an official or employee of the Department of Justice or a law-enforcement officer of the United States Government, who personally captures and surrenders an escaped Federal prisoner to proper officials, or who assists in the capture, of an escaped Federal prisoner.

§ 7.4 Procedure for claiming reward.

A person claiming a reward under this part shall present his claim, within six months from the date of the capture, in the form of a letter to the Warden or United States Marshal concerned. The letter shall state fully the facts and circumstances on which the claim is based, and shall include the name of each escapee captured and the time and place of the capture, and details as to how the arrest was made by the claimant or as to how assistance was rendered to others who made the arrest.

§ 7.5 Certification.

The claim letter required under § 7.4 shall contain the following certification immediately preceding the signature of the claimant:

I am not an officer or employee of the Department of Justice or a law-enforcement officer of the United States Government.

PART 8—CONFISCATION OF WIRE OR ORAL COMMUNICATION INTERCEPTING DEVICES

Sec.

- 8.1 Seizure of intercepting devices.
- 8.2 Seized intercepting devices.

§ 8.1 Seizure of intercepting devices.

The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors and agents of the Federal Bureau of Investigation are authorized to exercise the power and authority vested in the Attorney General by section 2513 of title 18, United States Code to make seizures of wire or oral communication intercepting devices.

(28 U.S.C. 509, 510; 5 U.S.C. 301; 18 U.S.C. 2513)

[Order 409-69, 34 FR 1557, Jan. 31, 1969]

§ 8.2 Seized intercepting devices.

All wire or oral communication intercepting devices seized pursuant to section 2513 of Title 18, United States Code shall be held for or turned over to the U.S. Marshal for the district in which the seizure was made. Except for the power and authority conferred by § 8.1 and the powers described in the last sentence of this section, U.S. Marshals are, in accordance with section 2513 of Title 18, United States Code, authorized and designated as the officers to perform the various duties with respect to seizures and forfeitures of wire and oral communication intercepting devices under section 2513 of Title 18, United States Code which are comparable to the duties performed by collectors of customs or other persons with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws. The Assistant Attorney General in charge of the Criminal Division is designated as the officer authorized to take final action under section 2513 of Title 18, United States Code on claims for remission or mitigation of forfeitures, offers of payment for release of property, claims for award of compensation to an informer, offers in compromise and matters relating to bonds or other security.

(28 U.S.C. 509, 510; 5 U.S.C. 301; 18 U.S.C. 2513)

[Order 409-69, 34 FR 1557, Jan. 31, 1969]

PART 9—REMISSION OR MITIGATION OF CIVIL FORFEITURES

Sec.

- 9.1 Purpose and scope.
- 9.2 Definitions.
- 9.3 Procedure relating to judicial forfeitures.
- 9.4 Procedure relating to administrative narcotic forfeitures.
- 9.5 General administrative procedures.
- 9.6 Provisions applicable to particular situations.
- 9.7 Terms and conditions of remission.

AUTHORITY: 28 U.S.C. 509, 510; 5 U.S.C. 501, Reorganization Plan No. 1 of 1968.

§ 9.1 Purpose and scope.

The following definitions, regulations and criteria are designed to reflect the intent of Congress relative to the remission or mitigation of forfeiture of certain property as set out in section 1618 of Title 19, United States Code, and are applicable only to those civil forfeitures which arise under the Contraband Transportation Act, Comprehensive Drug Abuse Prevention and Control Act of 1970, customs laws, Federal Alcohol Administration Act and other laws relating to gambling, firearms, and liquor (except the Indian Liquor Laws), and which are assigned to the supervision of the Criminal Division or the Drug Enforcement Administration by the Attorney General or his duly authorized delegate (§§ 0.55(d), 0.100 of this chapter).

[Order No. 477-72, 37 FR 2768, Feb. 5, 1972, as amended by Order 520-73, 38 FR 18381, July 10, 1973]

§ 9.2 Definitions.

As used in this part:

(a) The term "Attorney General" means the Attorney General of the United States or his delegate.

(b) The term "related crime" means any crime similar in nature to that which gives rise to the seizure of property for forfeiture, for example, where property is seized for a violation of the Federal laws relating to liquor, a "related crime" would be any previous offense involving a violation of the Federal laws relating to liquor or the laws of any State or political subdivision thereof relating to liquor.

(c) The term "determining official" means the official who has the authority to grant or deny petitions for remission or mitigation of forfeitures of property incurred under the laws referred to in § 9.1.

(d) The terms "net equity," "net lien," and "net interest" mean the actual interest a petitioner has in property seized for forfeiture at the time a petition for remission or mitigation of forfeiture is granted by the determining official: *Provided, however*, That in computing a petitioner's actual interest the determining official shall make no allowances for unearned interest, finance charges, dealer's re-

serve, attorney's fees or other similar charges.

(e) The term "owner" means the person who holds primary and direct title to the property seized for forfeiture.

(f) The term "person" means an individual, partnership, corporation, joint business enterprise, or other entity capable of owning property.

(g) The term "petition" means the petition for remission or mitigation of forfeiture.

(h) The term "petitioner" means the person applying for remission or mitigation of the forfeiture of seized property.

(i) The term "property" means property of any kind capable of being owned or possessed.

(j) The term "record" means an arrest followed by a conviction, except that a single arrest and conviction and the expiration of any sentence imposed as a result of such conviction, all of which occurred more than 10 years prior to the date the petitioner acquired its interest in the seized property, shall not be considered a record: *Provided, however*, That two convictions shall always be considered a record regardless of when the convictions occurred: *And provided further*, That the determining official may, in his discretion, consider as constituting a record, an arrest or series of arrests to which the charge or charges were subsequently dismissed for reasons other than acquittal or lack of evidence.

(k) The term "reputation" means repute with a law enforcement agency or among law enforcement officers or in the community generally, including any pertinent neighborhood or other area.

(l) The term "violation" means the person whose use of the property in violation of the law subjected such property to seizure for forfeiture.

[Order No. 430-70, 35 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 2768, Feb. 5, 1972]

§ 9.3 Procedure relating to judicial forfeitures.

(a) A petition for remission or mitigation of forfeiture shall be addressed to the Attorney General, and shall be

sworn to by the petitioner, or by his counsel upon information and belief, and shall be submitted in triplicate to the U.S. attorney for the judicial district in which the property is seized.

(b) Upon receipt of a petition, the U.S. attorney shall direct the seizing agency to investigate the merits of the petition and to submit a report thereon to him. Upon receipt of such report, the U.S. attorney shall forward a copy thereof together with the petition and his recommendation as to allowance or denial of the petition to the Assistant Attorney General, Criminal Division.

(c) Upon receipt of a petition and report thereon, the Assistant Attorney General shall assign it to the appropriate section of the Criminal Division which shall prepare a report based upon the allegations of the petition and the report of the seizing agency. No hearing shall be held. Upon the basis of the report prepared in this section, the Chief of the section shall either grant the petition by remission or mitigation of the forfeiture or shall deny it.

(d) If the Chief of the section grants a petition or otherwise mitigates the forfeiture, he shall cause appropriate notices of such action to be mailed to the petitioner or his attorney and to the appropriate U.S. attorney. The U.S. attorney shall be advised of the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures to be followed in order for the petitioner to obtain a release of the property, or, in the case of a chattel mortgagee and at the petitioner's option, to obtain his net equity in said property. The Chief of the section shall advise the petitioner or his attorney to confer with the U.S. attorney as to such terms and conditions.

(e) If the Chief of the section denies a petition, he shall cause appropriate notices of such action to be mailed to the petitioner or his attorney and to the appropriate U.S. attorney. Such notice shall specify the reason the petition was denied. The notice also shall advise the petitioner or his attorney that a request for reconsideration of the denial of the petition may be submitted to the Assistant Attorney Gen-

eral, Criminal Division, in accordance with paragraphs (j) through (m) of this section.

(f) A petition for restoration of the proceeds of sale or for value of forfeited property, if retained or delivered for official use of a Government agency, may be submitted in cases in which the petitioner: (1) Did not know of the seizure prior to the declaration or condemnation of forfeiture; and (2) was in such circumstances as prevented him from knowing thereof. Such a petition shall be submitted pursuant to paragraph (a) of this section and within 3 months from the date the property is sold or otherwise disposed of.

(g) The Assistant Attorney General shall not accept a petition in any case in which a similar petition has been administratively denied by the seizing agency prior to the referral of the case to the U.S. attorney for the institution of forfeiture proceedings.

(h) The Assistant Attorney General shall accept and the Chief of the section shall consider petitions submitted in judicial forfeiture proceedings under the Internal Revenue liquor laws only prior to the time a decree of forfeiture is entered. Thereafter, District Courts have exclusive jurisdiction over the rest.

(i) In all other forfeiture cases, the Assistant Attorney General shall accept and the Chief of the section shall consider petitions until the property is sold or placed in official use or otherwise disposed of according to law.

(j) Within 20 days from the date of the notice of the denial of a petition for remission or mitigation, a request for reconsideration of the denial, based on evidence recently developed or not previously considered, may be submitted to the Assistant Attorney General, Criminal Division, for referral to the appropriate Section Chief. The applicant shall simultaneously submit a copy to the appropriate U.S. attorney.

(k) Upon receipt of a copy of a request for reconsideration of the denial of a petition the U.S. attorney shall withhold further action in the case pending advice from the Assistant Attorney General, Criminal Division, of

the action taken on the request by the appropriate Section Chief.

(l) If the U.S. attorney does not receive a copy of a request for reconsideration within the prescribed period he shall proceed with the forfeiture.

(m) Only one request for reconsideration of a denial of a petition shall be considered.

[Order 409-69, 34 FR 1557, Jan. 31, 1969]

§ 9.4 Procedure relating to administrative narcotic forfeitures.

(a) A petition for remission or mitigation of forfeiture of property seized for narcotic violations that is subject to administrative forfeiture (appraised value of \$2,500 or less) shall be addressed to the Administrator of the Drug Enforcement Administration (DEA). Such a petition shall be filed in triplicate with the regional administrator of DEA for the judicial district in which the seizure occurred.

(b) Upon receipt of a petition for property subject to administrative forfeiture the regional administrator of DEA shall have an investigation of the petition conducted. The completed petition investigation and the recommendation of the regional director on the petition will be forwarded to the Administrator of DEA.

(c) Upon the receipt of a petition and a report thereon by the Administrator of DEA, he shall assign it to the Office of Chief Counsel where a ruling shall be made, based on the petition and the report of investigation. No hearing shall be held. The ruling on the petition shall be made by the Chief Counsel or Deputy Chief Counsel of DEA.

(d) Notice of the granting or the denial of a petition for property subject to administrative forfeiture shall be mailed to the petitioner or his attorney. If the petition is granted, the conditions of relief and the procedure to be followed in order to obtain the release of the property shall be set forth. If the petition is denied, the petitioner shall be advised of the reasons for such denial.

(e) A request for consideration of the denial may be submitted within 10 days from the date of the letter denying the petition. Such request shall be addressed to the Administrator of

DEA for referral to the Office of the Chief Counsel and shall be based on evidence recently developed or not previously considered.

(f) Additional information concerning property subject to seizure for narcotic violations is contained in 21 CFR 316.71-316.81.

[Order No. 430-70, 35 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 2768, Feb. 5, 1972; Order No. 520-73, 38 FR 18381, July 10, 1973]

§ 9.5 General administrative procedures.

(a) Petitions shall be sworn and shall include the following information in clear and concise terms:

(1) A complete description of the property, including serial numbers, if any, and the date and place of seizure.

(2) The interest of the petitioner in the property, as owner, mortgagee or otherwise, to be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence.

(3) The facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify remission or mitigation.

(b) The Determining Official shall not consider whether the evidence is sufficient to support the forfeiture since the filing of a petition presumes a valid forfeiture. The determining official shall consider only whether the petitioner has satisfactorily established his good faith and his innocence and lack of knowledge of the violation which subjected the property to seizure and forfeiture, and whether there has been compliance with the standards hereinafter set forth.

(c) The determining official shall not remit or mitigate a forfeiture unless the petitioner:

(1) Establishes a valid, good faith interest in the seized property as owner or otherwise; and

(2) Establishes that he at no time had any knowledge or reason to believe that the property in which he claims an interest was being or would be used in a violation of the law.

(3) Establishes that he at no time had any knowledge or reason to believe that the owner had any record or reputation for violating laws of the United States or of any State for related crime.

EXCERPT FROM 28 C.F.R., SECTION 9.7

[Order No. 430-70, 35 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 2768, Feb. 5, 1972]

§ 9.6 Provisions applicable to particular situations.

(a) Mitigation: In addition to his discretionary authority to grant relief by way of complete remission of forfeiture, the determining official may, in the exercise of his discretion, mitigate forfeitures of seized property. This authority may be exercised in those cases where the petitioner has not met the minimum conditions precedent to remission but where there are present other extenuating circumstances indicating that some relief should be granted to avoid extreme hardship. Mitigation may also be granted where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the determining official, complete relief is not warranted. Mitigation shall take the form of a money penalty imposed upon the petitioner in addition to any other sums chargeable as a condition to remission. This penalty is considered as an item of cost payable by the petitioner.

(b) Rival claimants: If the beneficial owner of property and the owner of a security interest in the same property each files a petition, and if both petitions are found to be meritorious, relief from a forfeiture shall be granted to the beneficial owner and the petition of the owner of the security interest shall be denied.

(c) Leasing agreements: (1) A person engaged in the business of renting property shall not be excused from establishing compliance with the requirements of § 9.5.

(2) A lessor who leases property on a long term basis with the right to sublease shall not be entitled to remission or mitigation of a forfeiture of such property unless his lessee would be entitled to such relief.

(d) Voluntary bailments: A petitioner who allows another to use his property without cost and who is not in the business of lending money secured by property or of renting property for profit, shall be granted remission or mitigation of forfeiture upon meeting the requirements of § 9.5.

(e) Straw purchase transactions: If a person purchases in his own name property for another who has a record or reputation for related crimes, and if a lienholder knows or has reason to believe that the purchaser of record is not the real purchaser, a petition filed by such a lienholder shall be denied unless the petitioner establishes compliance with the requirements of § 9.5 as to both the purchaser of record and the real purchaser. This rule shall also apply where money is borrowed on the security of property held in the name of the purchaser of record for the real purchaser.

(f) Notwithstanding the fact that a petitioner has satisfactorily established compliance with the administrative conditions applicable to his particular situation, the Determining Official may deny relief if there are unusual circumstances present which in his judgment provide reasonable grounds for concluding that remission or mitigation of the forfeiture would be inimical to the interests of justice.

[Order No. 430-70, 35 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 2768, Feb. 5, 1972]

§ 9.7 Terms and conditions of remission.

(a) The terms and conditions of remission or mitigation of forfeitures in cases subject to judicial forfeiture proceedings (property appraised over \$2,500 when seized or a claim and cost bond filed) shall, at a minimum, require that a petitioner pay the costs and expenses incident to the seizure of the property including any court costs and accrued storage charges. However, if the petitioner's interest in the property is derived from a lien thereon, the petitioner shall pay an amount equal to all costs and expenses incident to the seizure including any court costs and accrued storage charges or the amount by which the appraised value of the property exceeds the petitioner's net interest therein, whichever is greater. The appraised value at the time of seizure is used for the purposes of these rules.

(b) Where a complaint for forfeiture has been filed with the District Court, a lienholder shall also be required to furnish the U.S. attorney with: (1) An instrument executed by the registered

owner and any other known claimant of an interest in the property, if they are not in default, releasing their interest in such property, or (2) if the registered owner or any other known claimant is in default, an agreement to save the Government, its agents and employees harmless from any and all claims which might result from the grant of remission.

(c) Alternatively, a lienholder may elect to permit the litigation to proceed to judgment. In that event, the court shall be advised that the Department has allowed the petition for remission of the forfeiture and shall be requested to order the property sold by the U.S. Marshal at public sale and the proceeds thereof to be distributed as follows:

(1) Payment to the petitioner of an amount equal to his net equity if the proceeds are sufficient or the net proceeds otherwise, after deducting from the petitioner's interest an amount equal to the Government's costs and expenses incident to the seizure, forfeiture and sale, including court costs and storage charges, if any;

(2) Payment of such costs and expenses;

(3) Payment of the balance remaining, if any, to the Government.

(d) If a complaint for forfeiture has not been filed, the petitioner, if he is a lienholder, in addition to paying an amount equal to all costs and expenses incident to the seizure, including any court costs and accrued storage charges, or an amount by which the appraised value of the property exceeds his net interest therein, whichever is greater, shall:

(1) Furnish an instrument executed by the registered owner and any other known claimant of an interest in the property releasing their interest in such property, or

(2) Furnish an agreement to hold the Government, its agents and employees harmless from any and all claims which might result from the grant of remission.

(e) The determining official may impose such other terms and conditions as may be appropriate.

(f) Upon compliance with the terms and conditions of remission or mitigation in cases subject to judicial forfeit-

ure proceedings, the U.S. attorney shall take appropriate action to effect the release to the petitioner of the property involved and to dismiss the complaint if one has been filed or otherwise dispose of the matter by forfeiture, sale and distribution of the proceeds therefrom as set forth herein.

(g) In any case, if the owner of record or any other claimant wishes to contest the forfeiture, judicial condemnation of the property shall be consummated, the court shall be apprised of the granting and terms of the remission or mitigation by the Attorney General, and the court shall be requested to frame its decree of forfeiture accordingly.

(h) Where the owner of property elects not to comply with the conditions imposed upon the release of such property to said owner by way of relief, the custodian of such property may be authorized to sell it. From the proceeds of the sale the custodian shall deduct and retain for the account of the Government all costs incident to the seizure and forfeiture plus the costs of sale, and shall pay said owner the balance, if any.

(i) Where remission or mitigation is allowed to a person holding a security interest who is thereby eligible to have the property released to such person upon compliance with the terms and conditions of remission or mitigation, the property may nevertheless be retained by the Government for official use by an appropriately designated Department or Agency thereof upon payment by it to such person of an amount equal to such person's net equity, less an amount equal to the Government's costs and expenses incident to the seizure and forfeiture including court costs and storage charges, if any, and upon payment by it to the U.S. Marshal of an amount equal to such costs and expenses.

[Order No. 430-70, 35 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 2769, Feb. 5, 1972]

LETTER FROM BILL GARRISON, RESEARCH DIRECTOR,
SECOND AMENDMENT FOUNDATION

18 April 1980

Senator Dennis DeConcini
3230 Dirksen Bldg.
Washington, DC 20510

Dear Senator DeConcini:

I recently learned of your oversight hearings investigating into BATF abusive practices. Therefore I thought you would be interested in a research project in which we investigated how effective is the BATF in responding to questions from those who wish to comply with BATF guidelines in selling firearms. Our study revealed that the BATF responses varied in virtually every region. That study is attached for your reading.

Should you need additional information about the study, please feel free to call or write me.

Sincerely yours,


Bill Garrison

Defining "Dealer"

Volley 4, Round 48

December 3, 1979

Dear Subscriber:

Last week we mentioned the apparently common practice of the BATF of misinforming law-abiding citizens about the requirements of the law, and then arresting them for following the BATF's advice. In no area is this more common than in the so-called "implied dealership" entrapment -- a collector or shooter who sells a small number of guns, and is arrested for dealing without a license. In this issue of TWB, we have a special report on BATF implied-dealership entrapments, and what the average citizen can expect if he ever makes the mistake of calling the local BATF office for advice. We are indebted to Second Amendment Foundation Research Director Bill Garrison, who did the leg-work for this issue.

"ENGAGED IN THE BUSINESS"

Publications of the Bureau of Alcohol, Tobacco and Firearms (BATF) state that persons "not engaged in the business" of selling firearms, but who sell four to six a year, do not need a license to do so. This is the Bureau's official position. Their quasi-official position is that persons selling such a small number of guns may not obtain licenses to sell, even if they want to. Licensed dealers are required to operate out of a bonafide shop, and be open regular hours. Dealers who have made too few sales have had their licenses revoked. The BATF position is that small numbers of sales do not need licenses, and may not obtain them.

This was also the policy set forth in the BATF pamphlet, Gun Control Act: Questions and Answers, which states that "a non-licensed resident of a state may make an occasional sale to another non-licensee residing in his state (as long as he is not 'engaged in the business')."

During 1975 Senate hearings into juvenile crime, a letter from former BATF director Rex Davis was produced which stated in part that: "We have long held that the occasional sale of a personally owned firearm by an unlicensed individual is not construed as being 'engaged in the business.'"

More important to TWB readers than Rex Davis' glib assurances, however, was a memo to the director from the BATF's legal division, which advised against the Bureau establishing a formal definition of "dealing", as such definition might unduly limit possible BATF prosecutions.

There have definitely been prosecutions. In the course of writing The BATF's War on Civil Liberties: The Assault on Gun Owners (available from the Second Amendment Foundation for \$4.00), David Hardy discovered that the BATF often used their assumed role as gun law experts to advise innocent non-dealer gun owners that a certain sale was legal. When the official advice was followed, the seller found himself the subject of a felony prosecution for dealing without a license.

Although we have no difficulty believing Hardy's charges, we thought it desirable to specifically investigate the "dealing without a license" entrapment scheme. The method of investigation became clear through a conversation between Bill Garrison, SAF research director, and a former BATF special agent. The agent gave Garrison a sobering account of the agent's "service" in the Montana BATF regional office":

It was a standard operating procedure -- a common joke -- that whenever a gun owner telephoned our office inquiring about the legality of selling off several of his firearms, or how he could comply with BATF regulations, such phone inquiries would be circulated around our office with different agents giving different, pre-arranged answers. Sometimes, agents would provide false answers to the inquiries, ask who they were, and then set them up in entrapment situations to arrest them for illegal selling of firearms. At the time I agreed with such entrapment practices, but I now disapprove of them.

A Common Pattern

To test the truth of this and other allegations, we sent an identical letter to each of the seven BATF regional offices. In the responses, we looked first for any obvious misstatements of the law, and second, for consistency (or lack of same) in the responses.

Our letter of inquiry read:

I have three handguns that I would like to sell. I am planning to advertise these handguns in the local newspaper.

Please inform me if I need to first obtain a Federal Firearms Dealers License (FFL) from your office before I can sell the handguns.

If I do need a FFL, please send to me the FFL-dealer application form. If I do not need to obtain a FFL, please cite for me a BATF regulation stating I don't need the FFL.

The replies received from each region follow:

Region 1: Central

"In reply to your letter...enclosed is a copy of ATF publication 'Federal Regulation of Firearms and Ammunition.' I believe that the section regarding unlicensed persons, page 10, of the publication answers your questions regarding the sale of your handguns.

"A license to deal in firearms is issued to engage in the business of dealing in firearms as explained in the enclosed publication. The sale of a personal firearm has certain restrictions which are also explained."

Question 27 of the pamphlet reads:

- Q. Can someone who isn't in the gun business sell a firearm to another person who resides in the same State as the seller?
- A. Yes. There is nothing in the Gun Control Act which prohibits such a sale between residents of the same State... In general, a single sale, unattended by other circumstances, does not require a person to be licensed.

Region 2: Mid-Atlantic

This office simply provided a copy of ATF Form 7, an application for a dealer's license. There was no letter of explanation.

Region 3: North Atlantic

This office sent the same pamphlet as did Region 1, but again there was no letter of explanation.

Region 4: Southeast

The Southeast Region office sent the BATF pamphlet, "Gun Control Act: Questions and Answers", which is an older version (by three years) of the pamphlet sent by Region 1. The question listed above had been underlined by someone in the office, and the following letter was included:

"A license is not needed to sell your personal gun, as long as the guns were not purchased for the purpose of making a profit. When you sell the guns, you must make sure that the purchaser is not prohibited from buying the guns."

Region 5: Southwest

Despite two inquiries, no response was ever received from this office.

Region 6: Midwest

Two inquiries were also made to this office. The answer to the first was a letter:

"You do not need an FFL to sell your personal firearms. However, I would like to suggest that you sell your firearms to a dealer, rather than advertise, in a newspaper."

However, the second inquiry produced a very different response: the office sent only the above-mentioned question-and-answer booklet, and a form to apply for the dealer's license.

So, not only did responses differ from region to region, they even differed within the same regional office.

Region 7: Western

No responses were received from this office.

The bottom line: four different responses from five offices. Like the IRS, the sister-organization of the BATF in the Treasury Department, the advice given a citizen is no defense against criminal charges.

The same is true of advice given in person. An Ohio man who attended a January, 1976 gun show to swap and sell several firearms had a table near a BATF information booth. He told the agents what he was doing and received their assurances that his activities were proper. He carried on his business there for two days. Soon after, his home was raided and \$4,000 worth of firearms were confiscated. Two years later, no charges had been filed, but neither had his collection been returned.

While we will let TWB readers come to their own conclusions as to whether the complicated definition of dealer is maintained for entrapment purposes, or is just another example of bureaucratic confusion. Whatever the reason, these cases underscore the need for a fair and comprehensive definition of the term, "engaged in the business...."

As we reported in the last Round, the BATF has assured us that they will soon be publishing a "notice of proposed rulemaking" which will allow the public to suggest definitions.

David Hardy, in The BATF's War on Civil Liberties, suggested that:

The definition of "dealer" in firearms needs a consistent and more definite statement, so that individuals may determine with greater certainty whether they are in fact dealers and should obtain -- and are entitled to -- a license. Clarification might be undertaken by presumptions based on number of sales -- sale of a certain number of firearms a year might create a presumption of dealer status, and fewer than that a presumption of non-dealership. At a minimum, a list of criteria for dealers (number of sales, replenishment of supply after sale, short time-lapse between purchase and resale) should be publicly stated.

CONCLUSION OF HEARING

Senator DECONCINI. The subcommittee will stand in recess upon the call of the Chair.

[Whereupon, at 4:45 p.m., Thursday, April 17, the hearing was concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]



