The NRA: A Criminal’s Best Friend
How the National Rifle Association Has Handcuffed Federal Gun Law Enforcement
Brady Center to Prevent Gun Violence
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A Project of
the Brady Center to Prevent Gun Violence

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The Brady Center to Prevent Gun Violence is a national non-profit organization working to reduce the tragic toll of gun violence in America through education, research, and legal advocacy. Through its project Gun Industry Watch, the Brady Center works to monitor and publicly expose gun industry practices that contribute to gun violence, with the goal of bringing about life-saving industry reform. The programs of the Brady Center complement the legislative and grassroots mobilization of its sister organization, the Brady Campaign to Prevent Gun Violence and its network of Million Mom March Chapters.

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If you have questions about any part of this report, or would like a copy, please write to Gun Industry Watch, Brady Center to Prevent Gun Violence, 1225 Eye Street, N.W., Washington D.C. 20005. The report is also available at www.bradycenter.org/gunindustrywatch and www.gunlawsuits.org.

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EXECUTIVE SUMMARY

“If I were to select a jack-booted group of fascists who were perhaps as large a danger to American society as I could pick today, I would pick [the Bureau of Alcohol, Tobacco, Firearms, and Explosives]. They are a shame and a disgrace to our country.”

NRA Executive Vice President Wayne LaPierre

The National Rifle Association has publicly claimed for years that we just need to “fully enforce existing federal gun laws,” rather than “[p]assing new gun laws.” Yet the NRA’s actions reveal this claim to be utter hypocrisy. For more than three decades, the NRA has consistently and systematically worked to undermine and hamstring the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and to weaken enforcement of federal gun laws.

The NRA has also ridiculed and chastised the law enforcement officers who enforce our gun laws. It has branded law enforcement officers as dangerous “agents wearing nazi bucket helmets and black storm trooper uniforms” who “harass, intimidate, even murder law-abiding citizens.” While blasting law enforcement, it has sought to protect gun law violators, even granting one rogue gun dealer – Sanford Abrams, whose Baltimore gun shop was caught committing 900 violations of federal gun laws – a seat on its Board of Directors.

After Congress enacted the Gun Control Act of 1968 – prohibiting gun sales to felons, the mentally ill, and children – hardliners succeeded in taking control of the NRA with the goal of opposing any form of “gun control.” Under its new leadership, the NRA worked tirelessly to roll back the vital Gun Control Act and restrict enforcement of federal gun laws. The NRA’s first major success in weakening the Gun Control Act occurred in 1986, when Congress repealed...
crucial elements of the Gun Control Act and enacted new restrictions that severely weakened the ability of ATF to crack down on illegal gun sales.

Through the late 1980’s and early 1990’s, law enforcement and gun violence prevention advocates worked to enact the Brady background check law, to provide a crucial tool to enforce the Gun Control Act by identifying illegal gun purchasers through background checks on purchasers at licensed gun dealerships. The NRA strongly opposed the Brady Law, and after enactment of this law in 1993, it launched a massive effort in the courts to strike it down. At the same time, the NRA attacked the Clinton Administration for its alleged failure to enforce the very same law the NRA was working to eliminate, stating: “It’s a moral crime for Bill Clinton, Al Gore, Janet Reno and a host of Federal officers and prosecutors to fail to enforce the law. It’s evil. And when innocent blood flows, it’s on their hands.” The NRA’s claims notwithstanding, the Brady Law has been a tremendous success, blocking over 1.2 million gun sales to felons, stalkers and other prohibited buyers.

Looking forward to the prospect of a Bush presidency, the NRA in 2000 bragged, “If we win we’ll have a president … where we work out of their [sic] office.” After President Bush’s election, numerous government and public interest group reports criticized the Administration’s failure to enforce gun laws, with Brady Law enforcement actions increasing by only a minuscule 0.1% over the Clinton administration and most other gun laws almost completely unenforced. Yet with its ally in the White House refusing to enforce most gun laws, what the NRA once claimed was a “moral crime” and a reprehensible “evil” was now not even worth mention. The NRA revealed its “enforce the laws” claim to be merely political rhetoric to be discarded with the changing political winds, abandoning such claims when it meant criticizing an administration working with the NRA to repeal and undermine the very laws the NRA had claimed should be enforced.

Indeed, the NRA has never criticized President Bush for his administration’s shocking failure to enforce nearly all of our federal gun laws. Rather, the NRA has worked with its allies in the Bush Administration to critically undermine gun law enforcement, through actions such as enacting a new law and regulations requiring the destruction of Brady background check records that had been used to retrieve illegal firearms from dangerous criminals and domestic violence abusers.

The NRA is now pushing for new federal legislation to make it virtually impossible to enforce federal gun laws against rogue gun dealers like its lawbreaking Board Member Sandy Abrams. The NRA is also backing a bill to restrict ATF’s ability to use its own records to solve gun crimes and legislation that would aid the spread of gun show sales to gun traffickers. Numerous law enforcement groups joined together to oppose the NRA-backed legislation. If enacted, this legislation would effect the most sweeping rollback of gun laws since the 1986 Firearm Owners’ Protection Act, crippling ATF’s ability to enforce gun laws against rogue gun dealers and traffickers.

This report exposes the hypocrisy of the NRA’s claims that we should “just enforce the laws” instead of “[p]assing new gun laws.” The NRA is no friend of law enforcement. To the contrary, it has time and again shown itself to be a criminal’s best friend.
Prior to 1968, there were only minimal federal controls to prevent the sale of firearms to criminals. In 1968, the historic Gun Control Act prohibited felons, juveniles and the mentally ill from purchasing firearms. It also required most persons who sold firearms to obtain a license, regardless of whether they operated a storefront gun dealership.

Following enactment of the Gun Control Act, hardliners led by Harlon Carter took control of the NRA in what is known as the “Cincinnati Revolt.” At its 1977 annual meeting in Cincinnati, Carter led members in a successful plan to throw out the NRA’s less extreme leadership and install him and his supporters in their place. The NRA, under its new leadership, devoted substantial resources to rolling back the Gun Control Act and fiercely opposing any form of “gun control.”

One early NRA achievement that has hampered ATF’s ability to trace crime guns occurred in 1978, when Congress put in place restrictions in an appropriations bill prohibiting ATF from obtaining sales records from gun dealers and centralizing them. These restrictions have persisted in every ATF appropriations bill thereafter. These restrictions prevent ATF from having direct access to gun sale records to trace guns recovered in crime, making ATF dependent on gun dealers’ records. If a dealer fails to keep proper records, a crime gun will be virtually untraceable. Irresponsible gun
dealers have frequently been cited for shoddy record keeping resulting in the failure to account for hundreds or thousands of firearms. The NRA finally achieved a significant measure of success in 1986, when it won passage of the deceptively named Firearm Owners’ Protection Act (FOPA). The FOPA has seriously undermined law enforcement’s ability to curb gun trafficking and crack down on rogue gun dealers who supply the criminal market. As the discussion and case studies below demonstrate, the FOPA’s constraints continue to severely hamper ATF’s ability to enforce federal gun laws.

**ATTACKING THE GUN CONTROL ACT: THE FIREARM OWNERS’ PROTECTION ACT OF 1986**

By the mid-1980’s, the NRA had gained the upper hand in Congress and launched an all-out assault on gun law enforcement, working to roll back many of the enforcement provisions of the Gun Control Act. Those efforts succeeded in 1986, when Congress enacted the Firearm Owners’ Protection Act. The FOPA dramatically weakened law enforcement’s ability to enforce federal gun laws.

In the Senate, NRA champion James McClure (R-Idaho) shepherded the FOPA through a Republican-controlled chamber. Opponents attempted to attach measures to strengthen gun laws, including a successful amendment banning the importation of gun parts for Saturday Night Specials. Other pro-gun control amendments failed, however, and with heavy NRA spending behind the legislation, the Senate voted 79-15 on July 9, 1985, in favor of the FOPA.

The FOPA then moved on to the Democratic-controlled House, where Judiciary Committee Chairman Peter Rodino (D-NJ) vowed that the bill would never pass his committee. To evade the normal committee approval process, the NRA lined up majority support for an extraordinary discharge petition that would require a vote on the House floor without committee approval. To gain support for this unusual move, the NRA claimed that the FOPA, which would weaken laws aimed at stopping gun trafficking, was really about protecting hunting rights. The NRA proclaimed:

> This is the litmus test on where your Congressman stands on gun and hunting rights — either he is for us or he is against us.

The tactic worked, as the NRA obtained enough support for the discharge petition to force a vote on the FOPA in the House. Although law enforcement groups stood in uniform outside the House chamber to signify their strong opposition to the bill, the FOPA passed 292-130. Law enforcement and gun violence prevention advocates did succeed, however, in attaching an amendment banning the manufacture and sale of new machine guns to civilians.

On May 19, 1986, President Reagan signed the Firearms Owners’ Protection Act into law. The FOPA repealed important components of federal gun laws, making it easier for criminals to buy weapons and more difficult for law enforcement to prosecute gun sellers who supply the criminal market. Three major changes severely handcuffed federal gun law enforcement. The FOPA:

1. Set an extraordinarily high burden of proof to prosecute violations of federal gun laws
and revoke federal firearm licenses, requiring the government to show that a defendant “willfully” violated federal law;

2. Severely restricted the ability of ATF to conduct inspections of the business premises of federally licensed firearms dealers; and

3. Allowed unlicensed individuals to sell their firearms as a “hobby” without a federal firearms license, thus avoiding meaningful regulations.27

The FOPA Created a High Burden of Proof That Aids Lawbreakers

The FOPA protects criminals and lawbreaking gun dealers by imposing a heightened “willfulness” burden of proof for most gun law violations.28 In criminal cases, this burden of proof requires that a prosecutor not only prove that a criminal engaged in illegal conduct, but also acted with a “bad purpose” and “with knowledge that his conduct was unlawful.”29 In a case of illegal dealing in firearms, these proof burdens are difficult to meet even if law enforcement catches a criminal red-handed in the act of buying and selling firearms on the street.30

In civil proceedings to revoke a gun dealer’s federal firearms license, ATF usually must show repeated violations of the law over many years to meet this heightened “willful” burden of proof.31 Frequently this has meant that rogue dealers – like Valley Gun, owned by NRA Board Member Sandy Abrams,32 and Trader Sports of San Leandro, California33 – have been allowed to continue funneling guns to the criminal market for many years before ATF shut them down.

Before enactment of the FOPA, courts interpreted federal gun laws to require the government to show that a criminal defendant “knowingly” violated federal gun laws.34 Under this standard, prosecutors must prove that a criminal had “knowledge of the facts that constitute the offense.”35 This standard protected defendants against criminal culpability for mere inadvertent violations of the law. For example, in a case charging a dealer with knowingly violating the law by illegally selling firearms at a gun show, the government must prove that the dealer knew that he was selling firearms at a gun show without a license to do so.36 It would not be necessary to prove that he was selling the guns with a “bad purpose” or that he knew that his conduct was illegal.37

In ATF license revocation proceedings under a “knowing” burden of proof, ATF also would not have to wait for repeated violations of the law over many years. Rather, a dealer who posed a threat to public safety could be shut down if ATF could prove that it broke the law, rather than having to allow the dealer to continue selling guns through years of inspections and violations before it could be closed down.

It is critical that ATF have stronger enforcement authority in this area because corrupt gun dealers have been found by ATF to be the source of the largest number of firearms diverted to the illegal market.38 As the discussion of Trader Sports below shows, delaying the revocation of rogue gun dealers’ licenses can mean hundreds, if not thousands of additional guns flowing into the illegal market where they are used to cause mayhem, havoc and death on America’s streets.39
The FOPA Limited ATF Inspections and Weakened Penalties

Prior to adoption of the FOPA, ATF was permitted to conduct random inspections of licensed gun dealers to ensure compliance with federal gun laws.\(^4^1\) The Gun Control Act of 1968 established ATF’s federal firearm licensee inspection program “for ensuring compliance with the record keeping requirements” of the Act.\(^4^2\)

Faced with the possibility of random audits by ATF, gun dealers were on notice that any failure to comply with the law could be caught by ATF at any time, subjecting the dealers to sanctions, loss of their license, or criminal penalties.

Compliance inspections are crucial to verify that gun dealers are maintaining proper records concerning the firearms they buy and sell. These records are kept in “acquisition and disposition” books that record all guns acquired and sold by the dealer, and federal firearm transaction records (Form 4473) that contain gun purchaser information.\(^4^3\) If a gun is recovered after use in crime, ATF may trace the gun to the dealer that sold it to a consumer. Identification of
the first retail purchaser of the gun can provide a critical investigative lead in solving the crime.

If a dealer fails to keep proper records of firearms sales, ATF will not be able to complete a crime gun trace, greatly interfering with ATF’s and local law enforcement’s ability to solve gun crimes.\textsuperscript{44} ATF has explained the importance of crime gun tracing:

Tracing enables law enforcement to solve individual crimes by linking suspects to weapons and to identify broader trafficking patterns. Trace information can indicate, for instance, that a purchaser – possibly a straw purchaser or other unlicensed seller – is repeatedly buying firearms from a dealer, or that crime guns from a particular area are repeatedly originating from a particular licensed dealer.\textsuperscript{45}

Thus, accurate and complete gun dealer records of firearm transactions are crucial law enforcement tools. A gun dealer’s failure to keep proper records means that crime gun traces cannot be completed, and a gun that could be linked to a specific buyer becomes virtually untraceable. Furthermore, corrupt dealers who fail to keep proper paperwork frequently sell guns “off the books” and have high numbers of guns disappear from their shops without any record of sale.\textsuperscript{46}

The FOPA, however, created new limits on ATF’s inspection powers by limiting ATF to a single, unannounced inspection of a gun dealer in any 12-month period.\textsuperscript{47} Under the FOPA, if ATF conducts a random inspection at a gun dealership to insure that it is complying with the law, the dealer is assured that ATF cannot conduct another such inspection for the next year. This is true even for dealers found to be violating federal firearms laws – ATF can warn a dealer not to violate the law again, but cannot conduct random inspections of that dealer until one year later. In 1993, the Director of ATF testified before Congress that this limitation “enables unscrupulous licensees to conceal violations of the law and is an impediment to ensuring compliance with the provisions of the Gun Control Act.”\textsuperscript{48}

The FOPA also weakened ATF and aided lawbreakers by reclassifying violations of federal firearms recordkeeping laws as misdemeanors rather than felonies.\textsuperscript{49} This means that even if an ATF inspection catches a dealer violating federal law with hundreds of firearms “missing” from its shop with no record of sale – and therefore untraceable if recovered in crime – the dealer would face only misdemeanor charges.\textsuperscript{50} Corrupt dealers frequently have firearms disappear from their shops with no record of sale due to off-the-book sales to prohibited buyers and gun traffickers. Since federal prosecutors generally do not expend their limited resources prosecuting misdemeanors, most dealers caught violating federal law by ATF inspectors usually escape criminal prosecution.\textsuperscript{51} ATF explained the difficulty in prosecuting lawbreaking gun dealers (federal firearms licensees, or FFLs) after the FOPA, stating:

[T]he penalties available for many corrupt FFLs who traffic\textsuperscript{\[\]} hundreds of firearms, may be limited to misdemeanor recordkeeping violations. In addition, a trafficker who traffic\textsuperscript{\[\]}s 100 guns is subject to the same penalty as the straw purchaser who transfers 5 guns. … Failure to keep required records was found in
almost half of the trafficking investigations involving FFLs, and the FFL making false entries in the records was found in just under a fifth of these investigations. These violations are primarily misdemeanors, despite being associated with investigations involving a high volume of trafficked firearms.\footnote{52}

**The FOPA Led To A Dangerous Increase In Gun Shows**

There are more than 4,000 gun shows every year in this country – largely unregulated arms bazaars held in communities around the nation where the public is able to purchase firearms from both licensed and unlicensed sellers.\footnote{53}

The Department of Justice has identified gun shows as “a forum for illegal firearms sales and trafficking” and has warned that law enforcement investigations “paint a disturbing picture of gun shows as a venue for criminal activity and a source of firearms used in crimes.”\footnote{54} It further found “a wide variety of violations occurring at gun shows and substantial numbers of firearms associated with gun shows being used in drug crimes and crimes of violence, as well as being passed illegally to juveniles.”\footnote{55} A 1999 ATF review of 314 investigations at gun shows found more than 54,000 firearms diverted to criminals. A shocking 20% of these investigations involved violations of the National Firearms Act, which regulates highly dangerous weapons including fully automatic machine guns and silencers.\footnote{56}

The problem of criminal activity at gun shows is twofold, and is largely a creation of the FOPA. Originally, the Gun Control Act required that gun dealers have federal firearms licenses for each location at which they sold guns. This prevented dealers from selling guns at gun shows in addition to the place of business listed on their license. The FOPA rolled back this provision of the Gun Control Act, leading to the dangerous spread of gun shows and sales by licensed gun dealers to criminals outside their place of business at these largely unregulated arms bazaars. The FOPA also allowed many gun sellers to operate without a license if they sell their so-called “personal collection” of firearms. As explained below, this created a cadre of unlicensed gun sellers operating at gun shows who are not subject to even basic recordkeeping requirements such as obtaining the name of the person purchasing the gun. Such gun sales are virtually untraceable.

First, concerning licensed gun sellers, the FOPA allowed all licensed dealers to sell firearms at a gun show anywhere in the state in which they are based. ATF found that this has led to “a wide range of criminal activity by [federal firearms licensees] … and felons conspiring with [gun dealers]” at gun shows.\footnote{57} For example, in 1994, ATF caught a California dealer who had sold over 1,700 firearms to buyers over a 4-year period without maintaining any records.\footnote{58} Sales often occurred at “swap meets,” and the guns were then sold to gang members in Santa Ana and Long Beach, California.\footnote{59} Law enforcement recovered many of these firearms in violent crimes, including homicides.\footnote{60}

Second, concerning unlicensed gun sellers, the Gun Control Act had strictly regulated firearm sellers, requiring anyone “engaged in the business” of selling firearms to obtain a federal firearms license for their place of business.\footnote{61} ATF and the courts interpreted this requirement broadly, allowing ATF to regulate most gun sales...
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Gun Show Case Study – Dealer Charlie Brown and Trafficker James Bostic Use Ohio Gun Shows to Flood the Criminal Market With Firearms

Gun dealer Charles “Charlie” Brown, President of Dayton, Ohio-based gun distributor MKS Supply, sold hundreds of guns to gun traffickers at Columbus, Ohio gun shows.62

One of Charlie Brown’s best customers was gun trafficker James Nigel Bostic, who brought female accomplices with him to Ohio gun shows to illegally purchase guns.63 Between May and October 2000, Bostic trafficked 250 guns, worth about $50,000, from Ohio gun shows to Buffalo-area criminals.64 Bostic bought Hi-Point Saturday Night Special pistols for under $100 each from Brown at gun shows in Ohio and sold them for two to three times that price on the streets of Buffalo.65 Brown obtained the Hi-Points from the company over which he presides, MKS Supply, which is the sole distributor of Hi-Point guns.66

Bostic paid thousands of dollars in cash for about 190 guns from Charlie Brown, using his female accomplices to fill out the paperwork.67 In September 2000, Bostic and his accomplices bought 48 guns at Ohio gun shows.68 On October 8, 2000, Bostic bought 87 more guns from Brown in one purchase and, a week later, one of Bostic’s female accomplices bought another 45 guns from him.69 Most of these purchases were of consecutively-numbered Hi-Point 9 mm pistols – ideal street weapons for Buffalo gang members.

Hundreds of Charlie Brown’s guns have been traced to crime.70 But, despite Brown’s record of supplying gun traffickers, the U.S. Department of Justice did not file any charges against Brown and ATF has not revoked his firearms license.71 Prosecutors expressed frustration at being hamstrung by weak federal gun laws – “To prosecute a dealer, you’d have to show they were knowingly making illegal sales. That forces you to look into the mind of the dealer as they were selling the gun.”72

In July 2005, the Brady Center’s Legal Action Project filed a civil lawsuit against Brown and Bostic to hold them accountable for illegal gun sales and gun trafficking that led to the shooting of 16-year-old Daniel Williams, in Buffalo, New York.73

and allowing law enforcement to crack down on sellers illegally hawking firearms at gun shows without a license.74

The FOPA created a new definition of “engaged in the business” that allowed unlicensed sellers to sell a “personal collection” of firearms, no matter how large, without obtaining a federal firearms license.75 To successfully prosecute an individual for illegal gun dealing, ATF must now show that the unlicensed person engaged in “a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms…. ” The definition of “engaged in the business” also expressly excludes any “person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms,” regardless
of its size. Thus, a person who buys and sells hundreds of firearms at gun shows can claim that the sales are merely “for the enhancement of a personal collection,” avoiding the need to obtain a license or keep any record of their gun sales.

These changes to the definition of someone who is “engaged in the business” of gun sales have created a new class of unlicensed gun sellers. These sellers are free to sell hundreds of firearms without a license, as long as they can claim that those firearms are part of their “personal collection.” Because only licensed dealers are subject to federal record keeping requirements, these unlicensed sellers have been able to sell their firearms at gun shows without keeping records, making their gun sales virtually untraceable.\(^7\)

Furthermore, under the Brady Law, only licensed gun sellers are required to conduct background checks.\(^7\) Unlicensed sellers are exempt from this requirement.\(^7\) The Department of Justice has found that some unlicensed sellers even advertise this fact, proclaiming, “No background checks required” to would-be gun show buyers.\(^7\)

Not surprisingly, unlicensed sellers who sell guns to buyers at gun shows without keeping any records or conducting background checks are a significant source of crime gun diversion. Indeed, ATF has found that the FOPA’s changes to the definition of “engaged in the business” have harmed law enforcement’s ability to stop gun trafficking by unlicensed gun sellers:

Unfortunately, the effect of the 1986 amendments has often been to frustrate the prosecution of unlicensed dealers masquerading as collectors or hobbyists but who

are really trafficking firearms to felons or other prohibited persons.\(^8\)

Clearly, the FOPA’s rollback of the Gun Control Act to encourage firearm sales at gun shows has created a major threat to public safety and fomented the spread of firearms to criminals and gun traffickers.

**Cutting ATF Funding and Limiting ATF Inspectors**

ATF has faced severe funding restrictions that have sharply limited the number of inspectors it has available to inspect gun dealers. In the mid-1970s, the House Report on the Federal Firearms Act of 1976 identified severe shortages in the number of agents ATF would need to carry out its enforcement duties. For example, the report stated:

The existing high level of licensed dealers in 1968, most of whom renew yearly, and the steadily-increasing number of new applications annually since then strain the Bureau’s limited resources to the breaking point.\(^8\)

The report added bluntly: “ATF is presently unable to do justice to all of its tasks. Its attempts at firearms regulation, the most significant of these, are far from meeting the intent of the authorizing legislation.”\(^8\) When asked by Congress what resources it would require to fully implement the Gun Control Act, ATF estimated it would need $278 million and 9,506 agents. Instead, ATF was forced to make do with $52 million and 2,003 agents – less than a fifth of the necessary funding and a quarter of the agents.\(^8\)
Gun Show Case Study – Columbine High School Killers Obtain Their Firearms From Colorado Gun Shows

In April 1999, Eric Harris and Dylan Klebold shot and killed 12 students, a teacher and themselves, and wounded 23 other students, in a shooting rampage at their school, Columbine High School, in Littleton, Colorado. They were armed with semiautomatic assault weapons and sawed off shotguns and fired 188 shots at fellow students and teachers, shooting many of their victims multiple times.

Harris and Klebold were both under age 18, the minimum age under federal law to buy a rifle or shotgun from a licensed gun dealer. They recruited Robyn Anderson, an 18-year-old Columbine High senior, to help them buy their firearms. She first tried to buy a firearm from a licensed dealer, but when she was told she would have to fill out a form for a background check she refused. She later said, “I would not have bought a gun for Eric or Dylan if I had had to give any personal information or submit to any kind of check at all.”

The three then went to the Tanner Gun Show in Adams County, Colorado. A federal investigator reported:

Anderson stated that Klebold and Harris had been searching the gun show for private dealers so that they would not have to complete any paperwork. According to Anderson, after entering the gun show, Klebold and Harris went directly to a private dealer. The dealer asked Klebold and Harris if they brought someone 18 years old this time. Klebold and Harris stated that they had.

They went from private dealer to private dealer, and bought a semiautomatic assault rifle and two shotguns with cash. Klebold and Harris also bought an assault pistol from a private seller who had also purchased it at the Tanner Gun Show.

Authorities later found that Harris had described his plan to purchase firearms in his journal, writing, “If we can save up about 200$ real quick and find someone who is 21+ we can go to the next gun show and find a private dealer and buy ourselves some bad-ass AB-10 machine pistols. [C]lips for those things can get really f***ing big too.”

Following the Columbine shootings, Congress considered legislation to require extending the Brady background check requirement to all sales at gun shows. The NRA strongly opposed the legislation. The Senate passed the legislation in 1999 when Vice President Al Gore cast a tie-breaking vote, but NRA allies successfully prevented passage of the legislation in the House of Representatives. The following year, Colorado voters passed a ballot initiative requiring background checks at gun shows in their state.
This problem grew worse in the 1980s, when the NRA was pushing for enactment of the FOPA. Between 1980 and 1987, for example, the number of ATF agents was slashed from 1,502 to 1,180, a drop of 21.5%, and the number of inspectors dropped from 655 to 626 even as the number of licensed firearms dealers exploded. By 1995, the NRA had launched a full assault to abolish ATF altogether, bragging to its members that it would seek “congressional hearings on gun rights abuses and brutal misconduct by the renegade [ATF]. We plan to challenge its existence.”

Comparing ATF to another federal law enforcement agency – the Drug Enforcement Agency (DEA) – dramatically illustrates just how crippled ATF has been over the years. For example, in 1973, ATF and the DEA had comparable numbers of agents and enjoyed nearly equal funding. By 1998, however, the number of DEA agents had almost tripled, from 1,470 to 4,261, while the number of ATF agents remained static: 1,631 ATF agents were on payroll in 1998, only 9 more than were employed in 1973. ATF explained the lack of additional inspectors despite a dramatic rise in the number of gun dealers to be inspected:

The size of the inspection workforce has not changed significantly since ATF was established as a bureau of the Department of the Treasury in 1972. The number of licensees, on the other hand, grew from about 161,000 in 1975, to about 284,117 in 1992.

Additionally, ATF agents assigned to gun violations are required by law to spend at least 25% of their time investigating the misuse of explosive devices and illegal tobacco sales. Virtually no other federal law enforcement agency’s resources are stretched so thin.

In July 2004, the U.S. Department of Justice Inspector General’s Office examined ATF’s inspections of licensed gun dealers and found that “most [licensed gun dealers] are inspected infrequently or not at all.” This was “due in part to resource shortfalls” that severely limited the number of ATF inspectors available to inspect gun dealers. Indeed, the Inspector General concluded, with ATF’s limited manpower, “it would take the ATF more than 22 years to inspect all [federal firearms licensees].” The Inspector General added: “A consistent and timely inspection process is essential for identifying and addressing scofflaw dealers and reducing the availability of illegal firearms to criminals.” Yet the combination of insufficient funding and restraints on inspections imposed by the FOPA has made it virtually impossible for ATF to properly inspect gun dealers to stem the flow of firearms from dealer to criminals.

**OPPOSING, ATTACKING, AND WEAKENING THE BRADY LAW**

“When Bill Clinton signed the Brady bill into law on November 30, [1993] a drop of blood dripped from the finger of the sovereign American citizen.”

NRA statement in its *American Rifleman* magazine

Although the Gun Control Act prohibited gun sales to felons, the mentally ill and children, it had no mechanism for a background check to determine if a buyer was prohibited under the law from buying firearms. Without a background check, for example, gun dealers could only be prosecuted for selling guns to felons if ATF could
prove the dealer somehow knew that the buyer was a felon. Criminals would acquire firearms by “lying and buying,” i.e., they would falsely state on the Federal Firearms Transaction Record (Form 4473) that they had no disqualifying record.

The Brady Handgun Violence Prevention Act (Brady Law) filled this crucial enforcement gap, by allowing law enforcement nationwide to run a background check on gun buyers at licensed dealers to ensure that they are not prohibited from purchasing guns. The Brady Law thus strengthened enforcement of the preexisting law barring gun sales to categories of prohibited purchasers. ATF has described the importance of the Brady Law for gun law enforcement:

The Brady Act for the first time empowered [gun dealers] and law enforcement to combat the practice of “lying and buying.” Although the [Gun Control Act] made it illegal for felons and other prohibited persons to possess or acquire firearms, [gun dealers] had no way to know whether a customer was lying about his background in order to get a gun. … [T]he Brady Act eliminated the “honor system” in firearms purchases [from licensed gun dealers], requiring verification of statements made by prospective purchasers that they are legally entitled to obtain a firearm.\(^{104}\)

President Clinton signed the Brady Law in 1993,\(^ {105}\) after years of intense opposition from the NRA.\(^ {106}\) The groundbreaking law – named for President Reagan’s Press Secretary James Brady, who was shot and severely wounded in a 1981 assassination attempt on the President – took effect in 1994 and for the first time required background checks on gun sales by licensed gun dealers in every state in the nation.\(^ {107}\) It was strongly supported by gun violence prevention and law enforcement organizations.\(^ {108}\) By any measure, the Brady Law has enhanced enforcement of the federal prohibitions on gun sales to felons and other high-risk purchasers. Through 2004, it had blocked over 1,225,000 criminals, juveniles and other prohibited buyers from purchasing firearms from licensed gun dealers.\(^ {109}\)

The Brady Bill was originally proposed in 1987.\(^ {110}\) The NRA mobilized to defeat the bill, spending millions of dollars in its unsuccessful attempt to kill the legislation.\(^ {111}\) After failing in Congress, the NRA turned to the courts, arguing before the United States Supreme Court that the Brady Law was unconstitutional.\(^ {112}\) Although the NRA had publicly claimed that it would support background checks if they were “instant checks,” it unsuccessfully urged the Supreme Court to strike down the entire Brady Law, along with its instant check provisions, stating that “the whole Statute must be voided.”\(^ {113}\) The NRA has also worked to weaken the Brady Law through subsequent riders added to appropriation bills.

Opposing the Brady Bill

From 1987 to 1992, intense NRA lobbying was able to delay passage of the Brady Law, allowing thousands of dangerous individuals to buy guns over-the-counter.\(^ {114}\)
The bill, H.R. 7, mandated that handgun purchasers at licensed gun dealers provide identification and information to enable law enforcement to conduct a background check on the buyer. Licensed dealers were not permitted to sell a handgun until they either received clearance from law enforcement that the buyer was not prohibited from purchasing a firearm or seven days had elapsed. In other words, law enforcement agencies had seven days to search their records and alert a dealer that it must refuse the sale.

The Brady Bill was supported by an array of law enforcement organizations allied together in the Law Enforcement Steering Committee. Former President Ronald Reagan wrote in an op-ed in the New York Times that the Brady Bill would provide a crucial “enforcement mechanism” to end the “honor system” of the Gun Control Act, and “can’t help but stop thousands of illegal handgun purchases.” The NRA strongly opposed the Brady Bill, but realized that broad popular support would make it difficult to defeat outright. Accordingly, the NRA supported a substitute “killer amendment” to replace the Brady Bill with a requirement that mimicked the Brady background check, but in the years after enactment would actually allow most sales to proceed without background checks.

The NRA-supported amendment, offered by Representative Harley O. Staggers (D-WV), called for the immediate use of a nationwide “instant” criminal background check hotline. At the time it was offered in 1991, few states had computerized or centralized criminal records. Nonetheless, the Staggers Amendment would have given law enforcement only 24 hours after dealers called an instant check hotline to determine whether a sale could proceed. If law enforcement was unable to determine within this time that a purchaser was prohibited, the sale could be completed.

An analysis by Congress’s Office of Technology Assessment (OTA) exposed numerous problems with the Staggers Amendment. First, its “instant” check “would require substantially automated, complete and up-to-date files of persons convicted of felony offenses,” but State and FBI criminal history files had “major gaps in automation and record completion.” Second, OTA estimated that the development of such a nationwide system would take several years and cost $200 to $300 million. Political science professor Robert Spitzer summed up the true purpose of the Staggers Amendment:

The political strategy behind the Staggers proposal was based on the principle that a motion is easier to defeat if the opposition has something to offer in its place. By proposing an alternative of little or no feasibility, the NRA and its allies were offering a plan that seemed to offer a meaningful reform yet posed no actual change in gun purchasing procedures for many years to come.

On May 8, 1991, the House of Representatives concluded debate on the Brady
Bill and the Staggers Amendment. Despite heavy NRA lobbying, the NRA-supported Staggers Amendment was defeated 234 – 193. The Brady Bill passed the House 239 – 186.

The Brady Bill was then considered in the Senate. The NRA again opposed the Brady Bill, instead urging Senators to support Senator Ted Stevens’ (R-Alaska) instant check “killer amendment,” similar to the Staggers Amendment offered in the House. The Stevens Amendment was defeated 54-44. Senators George Mitchell (D-Me.), Bob Dole (R-Kan.), Al Gore (D-Tenn.) and others then announced a compromise amendment which combined a five working-day period in which to conduct a background check, later to be replaced with an instant background check system, contingent on the development of an accurate national database. It passed by a wide margin: 67 – 32.

The House and Senate versions of the Brady Bill were then merged into a “conference report.” The House approved the conference report, but a filibuster by NRA supporters prevented a vote in the Senate. Despite Senator Mitchell’s numerous attempts to end the filibuster, the conference report remained stalled, ending any chance that the Brady Bill would be passed in the 102nd Congress. Throughout this fight, the NRA had the threat of a veto by President George H.W. Bush to hold over lawmakers.

**The 103rd Congress Overcomes NRA Opposition and Passes the Brady Bill**

Congressman Charles Schumer (D-NY) and Senator Howard Metzenbaum (D-OH) reintroduced the Brady Bill in the 103rd Congress. On November 10, 1993, the House debated and voted on the bill. It adopted an NRA-backed amendment offered by Representative George Gekas (R-Pa.), requiring that the bill’s five-day period to conduct a background check sunset in five years whether or not an instant check system was operational. On November 20, 1993, the Senate voted on a compromise Brady Bill with Rep. Gekas’ five-year sunset provision. NRA ally Senator Dole led a last attempt to block the Senate from voting on the bill, but the Senate overcame his attempt and the bill passed the Senate, 63 – 36. President Clinton signed the bill into law on November 30, 1993.

The Brady Law gave law enforcement up to five days to conduct background checks for handgun purchases from licensed gun dealers and authorized $200 million per year to help states upgrade their computerization of criminal records. The Brady Law further provided that, in 1998, the five-day background check period for handgun sales would be replaced by the FBI’s National Instant Criminal Background Check System (NICS). This instant check system applied to all firearms bought from licensed dealers, not just handguns, and gave law enforcement a maximum of three days to conduct a search to determine if a buyer is prohibited from purchasing firearms. Today, nearly all Brady background checks take seconds to complete.

The NRA reacted with its characteristic hyperbole to enactment of the Brady Law, telling its members that “the Brady Law has become one more tool that government agents are using to deny the Constitutional rights of law abiding citizens.” The NRA blamed its defeats in Congress on “the anti-gun media” and a “new wave of brainwashing propaganda aimed at further destroying our Constitutional freedoms.”
Attacking the Brady Law in Court

“The executioner’s tool is the Brady bill – now the Brady law. … [T]hey’ll go house to house, kicking in the law-abiding gun owners’ doors....”

NRA statement in its American Rifleman magazine

Having failed to prevent enactment of the Brady Law, the NRA funded a nationwide assault on the law in the courts. Despite the NRA’s claims to support an “instant check,” it sought to have the entire law struck down, including the national instant check provisions of the law. If the NRA had succeeded in striking down the Brady Law, it would have been a deadly blow to gun law enforcement. If the law had been invalidated, over one million felons, mentally ill persons, children and other prohibited buyers would have been able to buy guns from licensed dealers.

Forum shopping for courts it thought would be more favorable to its claims, the NRA funded lawsuits in Arizona, Louisiana, Mississippi, Montana, New Mexico, North Carolina, Texas, Vermont and Wyoming seeking to strike down the law as unconstitutional. The lawsuits were opposed by a coalition of gun violence prevention and law enforcement groups who filed briefs opposing the NRA’s efforts to strike down the Brady Law. The law enforcement organizations supporting the Brady Law in court included the International Association of Chiefs of Police, Major Cities Chiefs of Police, National Association of Police Organizations, Fraternal Order of Police, Police Foundation, Federal Law Enforcement Officers Association, Police Executive Research Forum, National Troopers Coalition, National Organization of Black Law Enforcement Executives, and International Brotherhood of Police Organizations. These cases wound their way through the courts, ultimately leading to U.S. Supreme Court review of the law in the case of Printz v. United States.

In Printz, the NRA argued to the Supreme Court that the Brady Law was unconstitutional because its provisions requiring local law enforcement officers to conduct background checks was a violation of the 10th Amendment to the Constitution. Rather than simply seeking to strike down this provision and leaving it up to local law enforcement to decide whether to conduct background checks during the five day search period, the NRA instead asked the Court to strike down the entire Brady Law, stating that “the whole Statute must be voided.”

The NRA’s statement to the Supreme Court that the entire Brady Law should be struck down – including the requirement for an “instant” background check system that the NRA had claimed to support – rebuts its repeated claim that the NRA in fact supported “instant” background checks to enforce the law on sales of guns to felons and other prohibited buyers.

In 1997, the Supreme Court struck down the portion of the Brady Law requiring local police to conduct background checks as an unconstitutional mandate to local officials under the Tenth Amendment. The Court, however, rejected the NRA’s argument that “the whole Statute must be voided.” The decision allowed local law enforcement to continue voluntarily conducting checks until the FBI implemented the national instant check system in 1998.

Weakening the Brady Law

After failing to defeat enactment of the Brady Law or persuade the courts strike it down, the NRA turned to the 2000 Presidential election
for new hope in its assault on the Brady Law. It bragged that in supporting George W. Bush for the presidency, “If we win we’ll have a president … where we work out of their [sic] office.”

Once the NICS system became operational in 1998, the Justice Department maintained background check records on approved purchasers for six months to ensure that felons and other prohibited buyers were not mistakenly approved. As part of its continuing campaign to roll back the Brady Law, the NRA sued the Attorney General seeking the destruction of these records in the NICS Audit Log immediately upon completion of each background check, even though the Justice Department explained that the record retention was “vital to ensuring that the system (including its software) is working properly from a technical standpoint.” The court rejected the NRA’s challenge, explaining the critical importance of this record retention for the enforcement of federal gun laws:

[T]he Attorney General uses the Audit Log to accomplish the very purpose of the Gun Control and Brady Acts, i.e., to ensure that individuals not authorized to possess firearms are unable to purchase them.

In 2001, the Justice Department issued regulations shortening this record retention period to 90 days, the amount of time needed after several years of implementation of NICS to ensure proper audits of the system.

After President Bush took office, his Administration quickly began working with the NRA to weaken the Brady Law by requiring approved purchasers’ background check records to be quickly destroyed. Just days after this 90-day record retention period went into affect, in July 2001, Attorney General John Ashcroft issued new proposed regulations to require approved purchaser records to be destroyed within 24 hours.

The General Accounting Office (GAO) analyzed this 24-hour Brady background check record destruction plan in 2002, concluding that destroying records this quickly would prevent the government from auditing the NICS system to ensure its accuracy and “would have public safety implications.” For example, the GAO determined that the 24-hour record destruction would prevent the FBI from discovering whether criminals or other prohibited persons were improperly approved to buy firearms. Without the records, the FBI could not retrieve firearms that should not have been sold to these dangerous buyers.

The GAO examined six months of background check records and found that there were 235 cases where prohibited buyers were incorrectly approved through a background check. Prior to the 24-hour record destruction policy, the FBI discovered these errors and retrieved the firearms. Had the 24-hour destruction policy been in effect, GAO found that an astonishing 97% of the criminals and other prohibited buyers who were improperly granted approval to buy a gun could have evaded detection. GAO found that keeping records for at least 90 days was crucial.

The Justice Department’s Inspector General also found that the 24-hour record destruction would aid lawbreaking gun dealers. The Inspector General warned that gun dealers could provide the FBI with a different name.
The NRA Opposes Background Checks to Keep Terrorists From Buying Guns

The NRA's opposition to the Brady Law has even extended to opposing measures to use the Brady background check to block terror suspects from buying guns. In 2005, the Government Accountability Office (GAO) published a report revealing that numerous suspected terrorists had purchased firearms in 2004. Federal law does not preclude known terrorists from buying firearms unless they have already been convicted of a felony or are otherwise prohibited, and the NRA has opposed closing this loophole. Indeed, if a person is not otherwise prohibited from buying a firearm, “a known or suspected terrorist can legally purchase firearms.” From February to June 2004, GAO found that:

a total of 44 firearm-related background checks handled by the FBI and applicable state agencies resulted in valid matches with terrorist watch list records. Of this total, 35 transactions were allowed to proceed because the background checks found no prohibiting information, such as felony convictions, illegal immigrant status, or other disqualifying factors.

After the government released this report, the NRA rejected calls to strengthen the Brady Law to prevent those on the terror watch list from purchasing firearms. Chris Cox, NRA-ILA Executive Director, even tried to deny the problem existed:

The gun-ban crowd is actually trying to scare Americans into believing that “known” terrorists are buying guns in America, and that the FBI is unable to stop them. Nothing could be further from the truth.

NRA Executive Vice-President Wayne LaPierre similarly urged caution against putting limits on the ability of suspects on our nation’s terrorist watch list to purchase firearms, broadly declaring, “Every citizen is entitled to Constitutional freedoms.”

than that of the actual buyer in order to get approval for the name of the false purchaser, and then proceed with the sale to the actual prohibited buyer. With background check records destroyed within 24 hours, such a scheme would be nearly impossible to detect.

After the GAO report determined that 24 hour record destruction would endanger public safety, NRA Congressional allies attached a “rider” to an appropriations bill requiring the destruction of approved purchaser background check records within 24 hours. The Justice Department then implemented its 24-hour record-destruction regulation, effective as of July 20, 2004.

Pushing the Bush Administration to Reinterpret the Second Amendment to the Benefit of Criminal Defendants

After President Bush took office in 2001, his Administration quickly moved to reinterpret the federal government's longstanding policy on the meaning of the Second Amendment to the U.S. Constitution. Attorney General John Ashcroft announced the new policy in a letter to the NRA, stating that the government...
would, for the first time, interpret the Second Amendment to grant a constitutional “right of individuals to keep and bear firearms.” The NRA has argued that if the Amendment is interpreted to grant an individual right to own and possess firearms, many federal laws that restrict criminals’ access to guns would be unconstitutional.

Attorney General Ashcroft’s policy pronouncement ran counter to overwhelming federal court precedent. The U.S. Supreme Court, in a 1939 ruling, held that the Second Amendment does not grant individuals a constitutional right to “bear arms,” but instead the Amendment’s “obvious purpose” is “to assure the continuation and render possible the effectiveness” of state militias, and “[i]t must be interpreted and applied with that end in view.” Based on this ruling and numerous subsequent rulings by federal appellate courts, the federal government for decades held to a consistent policy that the Second Amendment does not provide an individual right to own or use firearms. When criminal defendants challenged indictments for violations of federal gun laws by claiming that those laws were unconstitutional, federal prosecutors made the straightforward argument that federal gun laws could not infringe on anyone’s “right” to possess a firearm because no such “right” existed, apart from militia service. Based on these arguments, no one in our Nation’s history had ever succeeded in striking down a federal gun law as a violation of a Second Amendment “right” to possess firearms.

Attorney General Ashcroft announced the government’s reinterpretation of the Second Amendment in a letter to the NRA sent on May 17, 2001. The letter was apparently timed so that it could be read two days later at the NRA’s annual meeting. While the timing of the letter fit the NRA’s convention calendar, it caused great difficulty for prosecutors seeking to enforce federal gun laws, as it appeared to run counter to the government’s argument in a pending case in the Fifth Circuit Court of Appeals. In that case, a court was considering a challenge by a Texas man, Timothy Joe Emerson, to the federal law prohibiting domestic abusers from possessing firearms.

Ashcroft’s letter appeared to embrace the same arguments raised by Timothy Joe Emerson, who was challenging his indictment for violating federal law after threatening his wife and child with a firearm. Prosecutors in that case faced the dilemma of attempting to defend their indictment of Timothy Joe Emerson when Ashcroft and Emerson now both similarly argued that individuals have an individual right to possess firearms. The NRA had filed an amicus (friend of the court) brief on behalf of Timothy Joe Emerson, while a brief by law enforcement organizations and gun violence prevention advocates supported the government’s ability to prosecute domestic abusers who illegally possess firearms. The court ultimately ruled against
Timothy Joe Emerson and found that the law prohibiting domestic abusers from possessing firearms was constitutional, although two of the three judges deciding the case embraced the NRA’s view of the Second Amendment.185

Following Attorney General Ashcroft’s pronouncement, the courts were flooded with motions by criminal defendants challenging their indictments for violating federal gun laws as unconstitutional infringements of their individual right to possess guns. John Walker Lindh, an American charged with fighting alongside Taliban forces in Afghanistan, cited the Attorney General’s Second Amendment pronouncement as a reason for the dismissal of firearms charges against him.186 The Federal Public Defenders Office in Washington, D.C. posted sample briefs for criminal defendants to use, citing the federal government’s change in position as a reason to strike down the Gun Control Act of 1968.187 Attorney General Ashcroft wrote all federal prosecutors around the country, telling them that his office must be informed about any criminal challenge to federal gun laws so that he could “coordinate all briefing in those cases” to insure that the government did not defend federal gun laws as it had done successfully for decades, by arguing that the Second Amendment did not provide an individual “right” to possess firearms.188

Although the Bush Administration’s reinterpretation of the Second Amendment has created great difficulties for prosecutors in defending federal gun laws, the courts so far have refused to follow Attorney General Ashcroft’s new policy. Following the Emerson ruling, every other court to consider arguments that the Second Amendment provides an individual right to possess firearms have rejected such claims.189
Although the NRA has repeatedly claimed that we just need to “fully enforce existing federal gun laws” instead of passing “new laws,” when successful ATF enforcement actions implicate gun sellers, it shows its true colors – attacking ATF and the law enforcement officers who enforce our nation’s gun laws. These constant efforts to intimidate ATF and its enforcement agents send a clear message to ATF – steer clear of enforcing gun laws against gun dealers or face the wrath of the NRA.

The NRA Compares Law Enforcement to Nazis and Murderers

The NRA launched its broadest assault on law enforcement during the Clinton Administration, in a desperate attempt to draw attention away from efforts to enact sensible gun violence prevention laws such as the 1993 Brady background check law and 1994 Federal Assault Weapons Ban.

On February 28, 1993, federal law enforcement agents executed search and arrest warrants at the Waco, Texas, compound of rabid anti-government radical David Koresh and his Branch Davidians. Agents acted after Koresh illegally amassed dozens of fully automatic machine guns, unlawfully converted from semi-automatic weapons. When agents entered Koresh’s compound, his
followers opened fire, killing four federal agents. Agents later found 48 illegal machine guns in the compound, along with an arsenal of 61 AK-47 assault rifles, 13 12-gauge shotguns, 11 Belgian assault rifles, two .50-caliber rifles and "millions of rounds of ammunition." 192

Following the tragic Waco raid, NRA Executive Vice President Wayne LaPierre attacked ATF agents as people who "behave like street thugs" and repeated an oft-quoted NRA refrain:

If I were to select a jack-booted group of fascists who were perhaps as large a danger to American society as I could pick today, I would pick [ATF]. They are a shame and a disgrace to our country. 193

Early the following year, the NRA publicly denounced ATF, calling it an “unchecked, renegade federal power.” 194 The NRA warned the public that federal “agents clad in ninja black” were launching “[h]eavy-handed raids against law-abiding citizens,” 195 utilizing “reckless, storm-trooper tactics.” 196 It told its members that ATF agents were engaging in “brutal misconduct” and threatened ATF to back off or be destroyed – “We plan to challenge its existence.” 197

The NRA also spent its members’ funds to blast ATF agents in newspaper ads around the country. In full page ads in the Washington Post and U.S.A. Today, the NRA stated that ATF was a “rogue agency,” a “threat to civil liberties” and had a “tyrannical record of misconduct and abuse of power.” 198 The Clinton Administration responded:

While the NRA spends lavishly on ads to fight ATF, ATF agents put their lives on the line to fight crime and to protect our communities…. Rather than casting about for villains, the NRA should join the American public and a vast majority of your members in recognizing and praising the men and women who risk their lives to protect public safety. 199
The NRA’s attacks on ATF in 1994 and early 1995 worked its supporters into “a frenzy.”\textsuperscript{200} On NRA electronic bulletin boards, its members lashed out at ATF. Harry Thomas, an NRA board member, sent a message aimed at Attorney General Janet Reno, stating, “If you send your jackbooted, baby-burning bushwhackers to confiscate guns, pack them a lunch. The Branch Davidians were amateurs. I’m a professional.”\textsuperscript{201} Another post on the NRA’s electronic bulletin board stated, “If the Republicans will not disband the ATF or demand the head of [Attorney General Janet] Reno, it might be time for armed conflict over the desecration of the Bill of Rights.”\textsuperscript{202} The electronic bulletin board “even ran a recipe for building a homemade bomb with baby food containers and shotgun shells.”\textsuperscript{203}

The NRA capitalized on this building rage against ATF to raise funds, with Wayne LaPierre sending an inflammatory fundraising letter on April 13, 1995, just six days before the anniversary of the end of the siege of David Koresh’s compound in Waco, Texas. In its letter, the NRA warned its members to beware of law enforcement, comparing them to Nazis and murderers:

\begin{quote}
[\textit{J}ack-booted government thugs have] more power to take away our Constitutional rights, break in our doors, seize our guns, destroy our property, and even injure or kill us. … [I]f you have a badge, you have the government’s go-ahead to harass, intimidate, \textit{even murder} law-abiding citizens. … Not too long ago, it was unthinkable for Federal agents wearing nazi bucket helmets and black storm trooper uniforms to attack law-abiding citizens. Not today, not with Clinton.\textsuperscript{204}
\end{quote}

Six days later, on April 19, 1995, Timothy McVeigh launched a horrific attack on the Alfred P. Murrah Federal Building in Oklahoma City, which contained the offices of ATF agents and other federal government offices, as well as a day care center. Until September 11, 2001, it was the worst act of terrorism on U.S. soil in the Nation’s history. McVeigh parked a rented truck full of explosives next to the federal building and detonated it, killing a total of 168 people, including 19 infants and young children.\textsuperscript{205} McVeigh, “an avid target shooter and gun collector,”\textsuperscript{206} had previously written his Congressman complaining about “[f]irearms restrictions,” in a letter stamped with an “I’m the NRA” logo.\textsuperscript{207} On his way to the Murrah Building, he carried a semiautomatic pistol and pamphlets critical of ATF.\textsuperscript{208} As evidence emerged of McVeigh’s rabid opposition to gun laws, and hatred of ATF, public attention began to focus on the NRA’s incendiary attacks on federal law enforcement.

President George H.W. Bush resigned his life membership in the NRA, calling the NRA’s statements, a “vicious slander on good people,” and a broadside against federal agents [that] deeply offends my own sense of decency and honor; and
it offends my concept of service to country. It indirectly slanders a wide array of government law enforcement officials, who are out there, day and night, laying their lives on the line for all of us.209

Senate Majority Leader Robert Dole (R-Kan.) commented that the NRA needs to “get a little image repair job.”210 Even Wayne LaPierre, the NRA’s Executive Vice President, conceded that the NRA’s “rhetoric is strong and overblown sometimes,” and acknowledged “paranoia that’s sweeping the country, especially in the gun ranks.”211

The NRA Continues Its Attacks on Law Enforcement After Oklahoma City Bombing

Undeterred by the Oklahoma City attack, however, the NRA continued its verbal attacks on federal agents and its efforts to weaken gun law enforcement in the years that followed. Refusing to scale back its “overblown” rhetoric, the NRA castigated law enforcement and government officials on the front line of our Nation’s war on gun crime as “evil” for allegedly failing to enforce the Brady Law:

It’s a moral crime for Bill Clinton, Al Gore, Janet Reno and a host of Federal officers and prosecutors to fail to enforce the law. It’s evil. And when innocent blood flows, it’s on their hands.”212

In yet another display of hypocrisy, at the same time the NRA expressed outrage that the Clinton Administration allegedly was not enforcing the Brady Law, it was funding its massive, nationwide campaign to strike down the Brady Law in the courts.213 The NRA claimed that the Clinton Administration should be prosecuting more people who were blocked from buying guns by the Brady Law. Such purchasers would have committed a federal crime by falsely denying on the federal firearms purchase forms (Form 4473) that they had a disqualifying record.214 However, successful prosecutions are hindered by what the Bush Administration later acknowledged was a great “difficulty in obtaining convictions in NICS cases” because it can be “difficult to prove that the prohibited person was aware of the prohibition and intentionally lied to the [dealer].”215 Moreover, the NRA ignored the fact that the Brady Law was preventing thousands of criminals from obtaining firearms and that gun crimes dropped dramatically after enactment of the Brady Law.216

Perhaps following the advice of Senator Bob Dole after the Oklahoma City bombing to “get a little image repair job,” the NRA eventually embraced a Clinton Administration law enforcement program called Project Exile. Launched by the Richmond, Virginia U.S. Attorney’s Office and state and local officials in 1997, it called for the federal government to prosecute cases of illegal gun possession, which previously had been handled largely by state and local prosecutors.217 It was supported by a wide coalition of gun violence prevention advocates and law enforcement organizations. Project Exile was limited in scope, however, as it did not address the source of crime guns or crack down on gun dealers who supplied firearms to criminals.

While Project Exile was meant to be one element of a larger law enforcement strategy, the NRA tried to sell it as a panacea for gun violence that would, if implemented nationally, make additional gun laws unnecessary. Project Exile quickly became a centerpiece of the NRA’s “enforce existing laws, don’t pass new ones”
message. The NRA claimed that because of Project Exile “drug dealers are reportedly disarming themselves” and that if the “law were enforced in a widely publicized, wide-ranging effort, criminals would cease to use and possess firearms.” Project Exile has been one important tool in fighting gun crime, but it has not been the cure-all the NRA predicted. Richmond is still one of the most dangerous cities in the country. And when ATF teamed up with state and local law enforcement to crack down on illegal gun sales at gun shows in the Richmond area in 2004-2005 to address the continuing gun violence that Project Exile has failed to stop, the NRA’s anti-law enforcement instincts surfaced again, leading to new attacks on law enforcement, described below.

After President Bush took office, prosecutions of corrupt gun dealers declined and most federal gun laws went unenforced. Federal prosecutions of Brady Law violators who lied on firearms purchase forms (Form 4473) increased by a scant 0.1% from 2000 to 2003. During these years, only 2,126 gun buyers were charged by federal prosecutors for lying on the federal gun purchase form, out of 536,000 potential buyers who were blocked from buying a gun by the Brady law. Meanwhile, federal prosecutions of corrupt gun dealers declined 11% from 2000 to 2003. Similarly, in 2003, the number of gun trafficking cases “decreased by almost 5% from 2002 levels.”

What was the NRA’s reaction to the decline in federal prosecutions of corrupt gun dealers under the Bush Administration? Did the Bush Administration’s failure to prosecute 99.6% of Brady Law violators (up 0.1% from the Clinton Administration’s prosecution of 0.3% of violators) also make it “evil”? Apparently not. During the Bush Administration, the NRA has abandoned its criticism of the White House for failing to enforce gun laws. What was once a “moral crime” has not even been worthy of mention. Instead, the NRA enthusiastically endorsed President Bush for re-election in 2004.

The NRA Attacks ATF’s Successful Operations to Disrupt Gun Trafficking at Richmond Gun Shows

Although the NRA has refused to criticize President Bush for his failure to enforce most of the Nation’s gun laws, the NRA has continued its verbal assaults on law enforcement. In one telling example, the NRA denounced as “heavy-handed” ATF action at Richmond, Virginia, gun shows between May 2004 and August 2005 to stop massive gun trafficking and gang operations that had been occurring there. The successful operation netted dozens of illegal purchases of firearms, including weapons such as an AK-47 assault rifle.

The law enforcement action infuriated the NRA, which has long claimed that there is no need for even background checks at gun shows because “gun shows are not a source of crime guns.” Although courts had upheld every prosecution resulting from this gun show operation, the NRA nonetheless criticized ATF agents’ actions as “heavy-handed” and “arguably illegal.” Moreover, the crackdown on illegal gun sales occurred when law enforcement tried to stem continuing high levels of violent crime in Richmond, which the NRA had previously touted as the prime example of a city embracing the NRA’s agenda to simply enforce gun laws. Yet Richmond ranks as the 5th most dangerous city in the country.

ATF began investigating Richmond gun shows after crime gun data revealed that,
“[b]etween 2002 and 2005, more than 400 firearms sold by federally licensed firearms dealers at Richmond area gun shows were recovered in connection with criminal activity.”\textsuperscript{229} One gun dealer who operated at Richmond gun shows admitted that “prior to the strong ATF presence there was a large gang presence at the shows in Richmond.”\textsuperscript{230} Based on this strong connection between Richmond gun shows and hundreds of gun crimes, ATF worked with local police to investigate illegal gun show purchases.

ATF’s operations at these Richmond gun shows resulted in 25 cases of illegal activity being recommended for prosecution and prevented at least 48 unlawful purchases.\textsuperscript{231} Every one of those cases that were prosecuted was successful, with 19 convictions for federal gun law violations.\textsuperscript{232}

Despite the success of ATF’s action, the NRA’s attacks on ATF led to “oversight” hearings to investigate ATF. The Subcommittee on Crime, Terrorism and Homeland Security of the House Judiciary Committee held hearings in March 2006. Although the hearings revealed that ATF’s actions had been successful in stopping crime at gun shows, the NRA claimed that the hearings proved the need for new bills to roll back ATF’s ability to enforce federal gun laws. The fact is that these bills, H.R. 5092 and H.R. 5005, were aimed at protecting rogue gun dealers like NRA Board Member Sandy Abrams, as described below, and had virtually nothing to do with gun shows.

Moreover, although ATF’s action had reduced the presence of gangs at Richmond gun shows,\textsuperscript{233} ATF apparently got the message from the Congressional hearing that it should not continue to operate at Richmond gun shows. One Richmond gun show promoter announced that “harassing activities engaged in by [ATF], Virginia State Police and Henrico County police will not be tolerated.”\textsuperscript{234} And to anyone who may have been scared off by ATF, the promoter proclaimed:

TO OUR RICHMOND GUN SHOW PATRONS
Regarding the [ATF] activities at Richmond. [ATF] WILL NOT BE BACK!\textsuperscript{235}
The NRA Yet Again Seeks To Roll Back Gun Law Enforcement

Using the successful Richmond gun show stings as a bait and switch rallying cry to stop what the NRA called “blatant [ATF] abuses,” the NRA urged Congress to respond to this crackdown on gun trafficking by punishing ATF. The result was a package of NRA-backed bills introduced in the 109th Congress in 2006 that had virtually nothing to do with gun show stings, and instead would enact the most sweeping rollbacks of federal gun laws since the 1986 Firearm Owners’ Protection Act.

One bill, H.R. 5092, would make it virtually impossible to revoke the licenses of gun dealers who violate federal law. It would reclassify violations of most federal gun laws as “minor,” prohibiting license revocation for these violations. It would also redefine the meaning of a “willful” violation to require that ATF prove that a lawbreaker not only knew of the requirements of the law and broke the law, but also specifically intended to violate the law. This would far exceed even the heavy burden of proof imposed by the 1986 Firearm Owners’ Protection Act, which at least allowed gun dealers’ licenses to be revoked after they were caught repeatedly violating federal law. H.R. 5092’s requirement that ATF prove a lawbreaker’s specific mental state and purpose would present a nearly insurmountable burden. This dangerous provision is contrary to courts’ construction of current law and would cripple ATF’s ability to enforce firearms laws.236
Law enforcement organizations vigorously opposed H.R. 5092. The Major Cities Chiefs cautioned that the bill “would have a devastating effect on the ability of law enforcement to stem the flow of firearms from lawbreaking gun dealers to violent criminals.” The International Brotherhood of Police Officers wrote that the “senseless legislation would serve only to cripple law enforcement’s ability to track and prevent the flow of illegal guns across the country,” and that a vote for the bill would be “a vote against police officers….” Numerous other local, state and federal agents spoke out against the bill as well, with President Reagan’s Former ATF Director, Stephen Higgins, joining other former ATF agents in warning that the bill would “further jeopardize ATF’s ability to enforce the law….” Despite this strong opposition, the NRA lobbied Congress

**Protecting Its Own — The NRA Supports Legislation to Keep Rogue Gun Dealers Like NRA Board Member Sandy Abrams in Business**

Sandy Abrams sits on the NRA’s Board of Directors. Yet, as owner of Valley Gun shop in Baltimore, Maryland, he has been found by the U.S. Department of Justice to be a “serial violator” of federal gun laws, with “over nine hundred” violations of the Gun Control Act, who “endangered the public by failing to account for hundreds of weapons.” Nearly 500 of the guns sold by Valley Gun were traced to crime from 1996 to 2000 alone. This ranks the store 37th worst out of nearly 80,000 gun dealers nationwide in numbers of traced crime guns sold.

In 1999, Abrams was first elected to the NRA Board despite having been cited by ATF in 1997 for failing to record the sale of at least 45 firearms as required by federal law. Even though Abrams received a warning from ATF in 1997, his track record at Valley Gun grew much worse. An ATF inspection in 1999 uncovered additional violations of federal law, and in September 2001, a follow-up inspection revealed 133 firearms missing from store inventory without proper records of sale, along with other violations of federal law. Nevertheless, in April 2002, despite Valley Gun’s repeated violations of federal gun laws, Abrams was re-nominated and reelected to the NRA Board.

In May 2003, ATF held another inspection and found massive violations of federal law. **A total of 422 guns were missing from the shop — more than 27% of the store’s inventory** — without required records of sale. ATF issued Abrams a Notice of Revocation of Valley Gun’s federal firearms license, citing more than 900 violations of federal law. Despite this lawless history, in 2005, Abrams was re-nominated and reelected to the NRA Board.

The NRA vigorously sought to protect Abrams. Christopher Conte, the NRA’s Legislative Counsel and Richard E. Gardiner, former director of state and local affairs for the NRA, represented Abrams in a lawsuit against ATF seeking to reinstate the license for his shop. In March 2006, just days after a federal district court rejected Abrams’ request to continue operating as a gun dealer, Gardiner testified in Congress in support of a bill, H.R. 5092, which would make it virtually impossible to revoke the licenses of lawbreaking gun shops like Valley Gun.
to pass H.R. 5092 to curb so-called “abuses” by ATF. The bill passed the House of Representatives under a “suspension of the rules,” allowing for no amendments and with virtually no debate, on September 26, 2006, by a vote of 277 – 131.

Another bill backed by the NRA, H.R. 5005, would impede criminal investigations and prosecutions of criminal activity that crosses jurisdictional lines by making it a crime for law enforcement to share crime gun trace data with each other. This would stifle the development of effective law enforcement strategies to combat gun violence and could even jeopardize officer safety and prosecutions of criminal activity.

H.R. 5005 would also bar ATF from electronically searching records retrieved from out of business gun dealers for a specific suspect identified by law enforcement. When gun dealers go out of business, they must forward their records to ATF. Since 1996, however, NRA-backed yearly appropriations “riders” have prohibited ATF from organizing these records in an easily accessible manner. Under H.R. 5005, ATF would be permanently prohibited from electronically searching these records for the name of a criminal suspect to determine if he or she had purchased firearms. For example, if local law enforcement determined that a suspect was wanted in connection with a murder, ATF would be barred from aiding local law enforcement by electronically searching ATF files of out of business dealer records to determine if that suspect had purchased firearms and what types of guns the suspect bought.

Lastly, another bill, H.R. 1384, would repeal the federal prohibition on interstate retail sales of handguns. Also, building on the loopholes created by the FOPA, which led to a greatly increased flow of guns from gun shows to criminals, this bill would allow gun dealers to sell handguns at gun shows to residents of any state in the country, instead of just the dealer’s home state. This would increase the potential for handgun trafficking by allowing traffickers to travel to states with weak gun laws to purchase firearms and make it even easier for buyers to evade state with laws regulating gun show sales.
The NRA’s use of extremist rhetoric, comparing ATF agents to Nazis and murderers, as well as its actions on legislation, has proven time and again that it is no friend of law enforcement. Indeed, the NRA has consistently sought to portray federal agents as dangerous thugs using “storm-trooper tactics” and warned its members that ATF was launching “[h]eavy-handed raids against law-abiding citizens…”

In a display of shameless hypocrisy, the NRA has channeled its resources into preventing law enforcement from doing its job and warning that ATF agents seeking to enforce federal gun laws are intent on “murder[ing] law-abiding citizens,” while at the same time claiming outrage that federal gun laws are inadequately enforced.

In the 1980’s the NRA succeeded in a dramatic rollback of the Gun Control Act through enactment of the so-called Firearm Owners’ Protection Act, leading to the spread of gun shows supplying the criminal market and severely curtailing ATF’s ability to crackdown on rogue gun dealers. In the 1990’s the NRA launched a failed nationwide campaign to strike down the Brady Law in the courts, yet at the same time claimed that anyone who did not enforce the Brady Law was “evil.”

The NRA’s rhetoric shifted after the election of President Bush. The Bush Administration made virtually the same progress as President Clinton in Brady Law enforcement, similarly hamstrung by the NRA-backed restrictions on ATF’s ability to do its job. A Clinton-era Brady Law prosecution rate of 0.3% was a “moral crime,” yet a Bush-era prosecution rate of 0.4% became worthy of enthusiastic election endorsement. Indeed, the NRA worked hand in hand with the Bush Administration to roll back Brady Law enforcement by destroying crucial background check records that allowed criminals, domestic violence abusers, and even terror suspects to obtain firearms.

In the latest demonstration of its anti-enforcement agenda, the NRA is pushing Congress to enact new laws to further curtail ATF’s ability to enforce the law. It is seeking to protect rogue gun dealers like its own Board Member, Sandy Abrams, who had his license revoked for 900 violations of federal gun laws. If the NRA succeeds, ATF will have its authority to revoke the licenses of rogue gun dealers virtually eliminated. The NRA’s record proves that its “enforce the laws” mantra is merely a ruse to distract attention from its efforts to handcuff and demonize federal law enforcement. The NRA has shown itself to be an enemy of enforcement, and a criminal’s best friend.
The NRA:
A Criminal’s Best Friend


5 For more details on the NRA’s efforts to protect its Board Member, Sanford Abrams, from having his gun shop’s federal firearms license revoked for 900 violations of federal gun laws, see the Brady Center to Prevent Gun Violence report *Death Valley – Profile of a Rogue Gun Dealer* (2006), available at http://www.bradycenter.org/gunindustrywatch.


11 In 1934, Congress enacted the first major federal firearms law, the National Firearms Act. 26 U.S.C.
§ 5801, et seq. This Act regulated fully automatic machine guns, sawed-off and other short-barreled long guns, and silencers, requiring that these firearms and devices be registered with the government and subject to a special federal tax. Shortly thereafter, in 1938, Congress enacted the Federal Firearms Act, which required gun manufacturers and dealers to be federally licensed and made it unlawful for fugitives and violent criminals to possess firearms. Federal Firearms Act of 1938, 52 Stat. 1251. 12


13 See United States v. Gross, 451 F.2d 1355, 1357 (7th Cir. 1971) (interpreting Gun Control Act to require a federal firearms license for anyone “engaged in any business of selling firearms, and that ‘business’ is that which occupies time, attention and labor for the purpose of livelihood or profit.”).

14 Under Fire, supra note 6, at 30-36.


16 In ATF actions to revoke the licenses of lawbreaking gun dealers, the government has noted that, because ATF must rely on gun dealers to keep proper records in order to complete a crime gun trace, “failure to maintain acquisitions and disposition information on firearms purchased and disposed of … defeats the ability of ATF to provide trace information in regard to who acquired such firearms to law enforcement personnel.” Brief of the United States in Support of Motion for Summary Judgment, at 19, (internal citations omitted), Vaughn v. ATF, No. 1:04MC3-D, 2005 U.S. Dist. LEXIS 41563 (N.D. Miss., Apr. 15, 2005). For additional cases of dealer record keeping violations resulting in untraceable firearms, see Brady Center to Prevent Gun Violence, Trivial Violations? The Myth of Overzealous Federal Enforcement Actions Against Licensed Gun Dealers (Sept. 2006); Brady Center, Lethal Lou’s: Profile of a Rogue Gun Dealer, Lou’s Loans, Upper Darby, Pennsylvania (Sept. 2006); Brady Center, Death Valley, Profile of a Rogue Gun Dealer: Valley Gun, Baltimore Maryland (June 2006); Brady Center, Trading in Death: Profile of a Rogue Gun Dealer, Trader Sports, San Leandro, California (May 2006), all available at http://www.bradycenter.org/gunindustrywatch.


18 Id.


20 See The Politics of Gun Control, supra note 17, at 118.

21 See id.

22 See Under Fire, supra note 6, at 67.

23 See The Politics of Gun Control, supra note 17, at 118.

24 See id.


27 See ATF, Commerce in Firearms C-3-4 (Feb. 2000) (providing synopsis of the FOPA provisions).
30 Id.
31 See, e.g., Willingham Sports, Inc. v. ATF, 415 F.3d 1274, 1276 (11th Cir. 2005).
32 See Death Valley, supra note 16.
33 See Trading In Death, supra note 16.
35 Bryan, 524 U.S. at 193.
36 See, e.g., United States v. Angelini, 607 F.2d 1305 (9th Cir. 1979) (upholding conviction for illegal gun dealing at a gun show with proof that the gun seller “regularly attended gun shows and displayed firearms for sale” without a license to do so, after being “warned that his activities required a license”).
37 Bryan, 524 U.S. at 190, 193.
38 ATF, Following The Gun: Enforcing Federal Law Against Firearms Traffickers x (June 2000).
39 See Trading In Death, supra note 16. See also Death Valley, supra note 16 (discussing sordid history of Valley Gun of Baltimore, Maryland).
40 For more details on Trader Sports, see Trading in Death, supra note 16.
41 Compare 18 U.S.C. § 923(g) (repealed 1986) (dealers “shall make such records available for inspection at all reasonable times” during “business hours”) with 18 U.S.C. § 923(g)(1)(B)(ii) (ATF generally may only conduct random inspections of dealer records “not more than once during any 12-month period”).
43 27 C.F.R. § 478.125(e).
45 Commerce in Firearms, supra note 27, at 1-2.
46 In 2005, ATF examined 3,083 gun dealers and found 12,274 “missing” firearms. ATF, 2005 Annual Report (2006), at 17, available at http://www.atf.gov/pub/gen_pub/2005annual_report.pdf. Yet 95% of these “missing” guns came from just 97 dealers. Id. Dealers with many “missing” guns frequently also have an extraordinarily high number of guns traced to crime. For example, one such dealer, Valley Gun of Baltimore, Maryland, frequently sold firearms at gun shows, had hundreds of guns “missing” from its inventory, and has been one of the top 40 retail sources of crime guns in the nation. See Death Valley, supra note 16.
Federal Firearms Licensing: Hearing Before the Subcomm. on Crime and Criminal Justice of the H. Comm. on the Judiciary 46, 103d Cong. (1993) (“1993 House Hearings”). Any other inspection can only be conducted with a search warrant. To obtain a search warrant, ATF would be placed in the catch-22 of being required to already have information that a dealer is violating recordkeeping laws, when ATF generally can only discover that the dealer is violating the law in the first place by conducting an inspection.


Following The Gun, supra note 38, at 43 (“Moreover, the penalties available for many corrupt [federal firearms licensees] who traffic[] hundreds of firearms, may be limited to misdemeanor recordkeeping violations.”). In 1993, ATF Director Steve Higgins testified in Congress that this “loophole” needed to be closed, so that licensees who keep no records or falsify records to conceal unlawful sales to the criminal element can be prosecuted as felons. See 1993 House Hearings, supra note 47, at 46.

See Following The Gun, supra note 38, at 43 (“Systematic review of ATF’s investigative experience led to some startling findings…. [P]ersons who traffic[] in firearms are often not being prosecuted for that conduct.”). For example, none of the rogue dealers discussed in detail in this report – Sanford Abrams of Valley Gun, Tony Cucchiara of Trader Sports, or Brian Borgelt of Bull’s Eye Shooter Supply – have been prosecuted under the Gun Control Act, despite each having been cited for several hundred serious record keeping violations, each of which were once chargeable as felonies.

Id.


Id. at 6, 7.

Id. at 1.

Id. at 7-8.

Id. at 7.

Id. at 8.

Id.

Id.


Id.


Id.

67 *Id.*

68 *Id.*

69 *Id.*

70 *Id.*

71 *Id.*

72 *Id.*, quoting Assistant U.S. Attorney Joel L. Violanti.


74 See, e.g., *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 355-56 (1984) (discussing knowing burden of proof for illegal gun dealing); *United States v. Wilkening*, 485 F.2d 234, 235 (8th Cir. 1973) (“Appellant cites no case and we have found none holding that dealing in firearms must be a defendant’s primary business or that he must make a certain amount of profit from it.”).


76 *Gun Shows: Brady Checks and Crime Gun Traces*, *supra* note 52, at 2.

77 18 U.S.C. § 922(s), (t).

78 *Id.*

79 *Id.* at 6.

80 *Id.* at 14.


83 *Id.* at 40.


85 *Id.*

86 18 U.S.C. § 921(b)(1). Federal law prohibits licensed gun dealers from selling rifles and shotguns to anyone under 18 and handguns to anyone under 21. *Id.* Federal law prohibits unlicensed sellers from selling handguns to anyone they know or have “reasonable cause to believe” is under age 18, although they are not required to conduct a background check or even ask the age of the buyer. 18 U.S.C. § 922(x)(1). Federal law does not prohibit unlicensed sellers from selling rifles and shotguns, including semiautomatic assault rifles, to anyone under 18.


89 *Id.*


95 *Under Fire*, supra note 6, at 51-53.

96 In the 1993 report *Operation Snapshot*, ATF stated that it did not have sufficient resources to inspect all gun licensees in 1968, “nor do we today.” ATF, *Operation Snapshot* 1 (June 1993). During testimony before Congress that year, ATF Director Steve Higgins estimated it would take 750 staff years to do a background check on every new federal firearms license applicant. *1993 House Hearings*, supra note 47, at 34.


98 *See Commerce in Firearms*, supra note 27, at 17.

99 *Id.*

100 Inspector General, U.S. Department of Justice, *Inspections of Firearms Dealers By the Bureau of Alcohol, Tobacco, Firearms and Explosives* iii (July 2004).

101 *Id.* at 20 (emphasis added).

102 *Id.* at 55.


104 *Commerce in Firearms*, supra note 27, at 18.

105 18 U.S.C. § 922(s),(t).


107 *Id.*

108 *Id.*


110 *The Politics of Gun Control*, supra note 17, at 126.

111 *Id.* at 127.

End Notes

113 Id.
114 The Politics of Gun Control, supra note 17, at 126-27.
115 The prospective buyers would have been required to present identification for verification and verify that they were not in any prohibited categories, such as felons, mentally ill or illegal aliens. H.R. 7, 102nd Cong. (1991).
117 See The Politics of Gun Control, supra note 17, at 126-27.
120 NRA, Survey Finds Strong Instant Check Support, American Rifleman 55 (June 1991).
123 Automated Record Checks, supra note 122, at 2; see also The Politics of Gun Control, supra note 17, at 127. Further, Lawrence York, Assistant Director of the FBI ID Division, testified before the House Subcommittee on Crime that it would take “8,000 work years” to automate the 8.8 million manual records maintained at the FBI. Testimony before the House Subcommittee on Crime, Jan. 25, 1990.
124 The Politics of Gun Control, supra note 17, at 127
125 The bill was considered as part of Senator Joseph Biden’s (D-Del.) Omnibus Anti-Crime Bill, S. 1241, 102nd Cong. (1991).
126 See Under Fire, supra note 6, at 267.
127 See id. at 268.
128 See id. at 269. The compromise provided that when the Attorney General certified that 80% of all state criminal records were computerized, this five-day period would be automatically repealed and the instant background check would be instituted. Any State that did not achieve an 80% accuracy rate by the end of the five-year period would have to leave the waiting period in place until its records were up-to-date. It also authorized $100 million per year to states to update their computerized criminal records over the following five years. See id. See also Allen R. Hodgkins, III, Senate Anti-Gun Measures Move to House, American Rifleman 53 (Aug. 1991).
129 See Under Fire, supra note 6, at 270.
130 See The Politics of Gun Control, supra note 17, at 127.
131 See id.
See id.


See The Politics of Gun Control, supra note 17, at 127.

Id.

Id.


See The Politics of Gun Control, supra note 17, at 130.

See FBI, National Instant Criminal Background Check System (NICS) Operational Report 2003-2004 13-14 (Jan. 2005) (stating that as of 2004, 91.64% of NICS checks were completed “within seconds of the initial call” from the gun dealer).


Robert K. Corbin, The President’s Column, American Rifleman 61 (May 1994).


Brief Amicus Curiae of the National Rifle Association of America in Support of Petitioners, Printz v. United States, 521 U.S. 898 (1997) (Nos. 95-1478, 95-1503). Tellingly, the NRA never asserted that the Brady Law violated the Second Amendment to the U.S. Constitution.

Id.

Printz, supra note 146.

NRA Brief Amicus Curiae, supra note 147.


See Laura Meckler, Gore Highlights NRA Tape; Bush Downplays It, Phila. Inquirer, May 5, 2000, at A30 (quoting Kayne Robinson, NRA First Vice President).


155 *Id.*


157 National Instant Criminal Background Check System, 66 Fed. Reg. 35,567 (July 6, 2001). The Ashcroft Justice Department also did the NRA’s bidding by moving quickly to alter a policy adhered to by the Department since the 1930s that the Second Amendment to the U.S. Constitution did not confer an individual right to own firearms. *See* Letter from Attorney General John Ashcroft to James Jay Baker, NRA Executive Director (May 17, 2001). This change in policy had the effect of weakening federal prosecution of persons accused of violating federal gun laws.

158 GAO was later renamed the Government Accountability Office.


160 *Id.*

161 *Id.*

162 *Id.*

163 *Id.*

164 *Id.*

165 *Id.* at 4-5.


167 *Id.* at 2.

168 *Id.* at summary page.


170 ABC World News Tonight, Mar. 8, 2005.


172 For example, if a felon named Joe Smith attempted to purchase a firearm, the gun dealer could call in a background check on a different person that he knew would pass the check, such as someone to whom he previously sold a gun, rather than Joe Smith. Once the dealer received approval for the false name, he could then illegally sell the gun to Smith. Any record of this background check would be destroyed 24 hours later, preventing law enforcement from auditing the dealer’s records to detect his illegal sale.

173 Riders are provisions that are generally slipped into lengthy, must-pass appropriations bills that change existing law without any hearings or public debate.
The Second Amendment states, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”


See, e.g., David S. Cloud, Justice Department Is Shifting Stance On Gun Rights, The Wall Street Journal, July 11, 2001, at A3 (quoting NRA lobbyist James Baker, stating, “‘I would argue that there are some’ existing gun-control laws that aren’t consistent with the Second Amendment, … ‘and we would certainly make that case at some point.’”).


See, e.g., Thomas v. City Council of Portland, 730 F.2d 41 (1st Cir. 1984); United States v. Toner, 728 F.2d 115, 128 (2d Cir. 1984); U.S. v. Rybar, 103 F.3d 273, 286 (3d Cir. 1996); Love v. Pepar, 47 F.3d 120, 124 (4th Cir. 1995); U.S. v. Napier, 233 F.3d 394, 404 (6th Cir. 2000); Gillespie v. City of Indianapolis, 185 F.3d 693, 710 (7th Cir. 1999); U.S. v. Pfeifer, 371 F.3d 430 (8th Cir. 2004); Silveira v. Lockyer, 312 F.3d 1052 (9th Cir. 2002); U.S. v. Wright, 117 F.3d 1265 (11th Cir. 1997).

See David S. Cloud, supra note 177 (quoting Nixon Administration statement that, “[i]n light of the constitutional history, it must be considered as settled that there is no personal constitutional right, under the Second Amendment, to own or use a gun.”).


United States v. Emerson, 270 F.3d 203 (5th Cir. 2001).


Emerson, 270 F.3d 203.


189 See, e.g., U.S. v. Parker, 362 F.3d 1279, 1284 (10th Cir. 2004) (“the Fifth Circuit stands alone in its interpretation of the Second Amendment as conferring an individual right to bear arms”); Silveira v. Lockyer, 312 F.3d 1052 (9th Cir. 2002) (rejecting Emerson ruling); King v. Wyoming Div. of Criminal Investigation, 89 P.3d 341, 351 n.5 (Wyo. 2004) (noting that no other federal circuit courts have followed Emerson, because “the Second Amendment does not confer an absolute individual right to bear arms, but a ‘collective right’, of states to arm their militias.”).


192 Cult Had Illegal Arms, Expert Says, N.Y. Times, Jan. 15, 1994. The raid led to a 51-day siege of the compound, ending in tragedy when Koresh and dozens of his followers were killed in a fire that burned down the compound. See Sam Howe Verhovek, Death In Waco: The Overview, N.Y. Times, April 21, 1993, at A1.


194 NRA, Time For Congress To Rein In BATF, American Rifleman 39 (Apr. 1995).

195 Id.

196 Wayne LaPierre, Standing Guard, American Rifleman 7 (Jan./Feb. 1995).

197 Wayne LaPierre, Standing Guard, American Rifleman 7 (Apr. 1995).

198 Letter from Ronald K. Noble, Department of the Treasury Under Secretary (Enforcement) to Tanya K. Metaska, Executive Director, NRA Institute for Legislative Action (Mar. 3, 1995); Guy Gugliotta, NRA, Backers Have Focused Ire on ATF, The Washington Post, April 26, 1995, at A16.

199 Letter from Ronald K. Noble, Department of the Treasury Under Secretary (Enforcement) to Tanya K. Metaska, Executive Director, NRA Institute for Legislative Action (Mar. 3, 1995).


213 See Opposing, Attacking, and Weakening the Brady Law, supra.

214 “In NICS cases, prospective firearm purchasers are normally charged with intentionally lying on ATF Form 4473 by not indicating their prohibited status. NICS cases are generally prosecuted under two statutes: Title 18 U.S.C. 922(a)(6) and Title 18 U.S.C. 924(a)(1)(A).” U.S. Department of Justice, Office of the Inspector General, *Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives’ Enforcement of Brady Act Violations Identified Through the National Instant Criminal Background Check System* viii (July 2004).

215 Id. at 12.


219 Commentary, *Where Richmond Ranks: Our Place In The Nation According To Recent Research*, Richmond Times Dispatch, June 18, 2006, at E6 (listing Richmond as 5th most dangerous city in the country).


221 Id.

222 Id. at 17.
end notes

223 Id. at 30.
224 NRA Fact Sheet, S. 890: Much More Than Background Checks, available at http://www.nraila.org/issues/factsheets/read.aspx?id=132 (April 11, 2002). But see Following the Gun, supra note 38, at 17 (“In the ATF trafficking investigations reviewed here, gun shows were associated with the diversion of approximately 26,000 firearms.”).
228 Commentary, Where Richmond Ranks: Our Place In The Nation According To Recent Research, Richmond Times Dispatch, June 18, 2006, at E6.
232 Id. at 15-16.
233 Testimony of John White, The Gun Smith, before the House Judiciary Committee’s Subcommittee on Crime, Terrorism, and Homeland Security on the Operations of the Bureau of Alcohol, Tobacco and Firearms at the Richmond Area Gun Shows, Feb. 15, 2006 (“open displays of gang activity have largely ceased as word has gotten out of the strong ATF presence at the Richmond Gun Shows.”).
235 Id.
236 H.R. 5092, 109th Cong. (2006); see Willingham Sports, Inc. v. ATF, 415 F.3d 1274, 1276 (11th Cir. 2005).
237 Letter from Howard L. Hurtt, Major Cities Chiefs President, to the U.S. House of Representatives (Sept. 18, 2006).
238 Letter from Steve Lenkart, International Brotherhood of Police Officers Director of Legislative Affairs, to the U.S. House of Representatives (Sept. 20, 2006).
239 Letter from Stephen Higgins, Former ATF Director, and other former ATF officers, to the U.S. House of Representatives (Sept. 22, 2006).


