

NLWJC - Kagan

DPC - Box 009 - Folder 008

**Crime - Brady Law Domestic
Violence Issues**

SCHEDULING PROPOSAL

TODAY'S DATE: 1/26/99

 ACCEPT PENDING REGRET

TO: Stephanie Streett
Assistant to the President
Director of Presidential Scheduling

FROM: Bruce Reed
Assistant to the President for Domestic Policy
Director of the Domestic Policy Council

REQUEST: Event to Receive Gun Shows Report from the
Department of Treasury and the Department of
Justice

PURPOSE: To respond to a directive issued by the President to
the Treasury Secretary and Attorney General to
recommend actions to close the gun show
loophole.

BACKGROUND: On November 7, 1998 the President directed Sec.
Rubin and Attorney General Reno to recommend actions to close the gun
show loophole that allows certain firearms sold at gun shows to be exempt
from Brady background checks. Treasury and Justice are now prepared to
report back with their findings and recommendations, which include:
-proposed legislation to provide for background
checks at gun shows; and
-additional resources for enforcement at gun
shows.

DATE & TIME: February 3, 1999

DURATION: 30 minute brief
45 minute event

LOCATION: The White House

PARTICIPANTS: The President
Secretary Rubin
Attorney General Reno

Sarah
Members of Congress
Gun Control Advocates, possibly including Jim &
Brady
Law enforcement officials

REMARKS REQUIRED: Yes.

MEDIA COVERAGE: Open Press.

RECOMMENDED BY: Bruce Reed
Jose Cerda

CONTACT: Karin Kullman
Domestic Policy Council
X61732



Jose Cerda III

01/21/99 04:33:53 PM

Record Type: Record

To: Karin Kullman/WHO/EOP

cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP

Subject: Event for next week

Karin:

Per our conversation today, here's a description of the gun shows event. I'm still unclear about what we want to do w/the drug strategy release (2/8) and crime gun tracing report (2/9) -- which may or may not be suitable for an event. I'll send you a note on these as soon as I know more.

Gun Shows Report (1/28) -- On November 7, 1998, the President directed the Treasury Secretary and Attorney General to recommend actions to close the gun show loophole that allows certain firearms sold at gun shows to be exempt from Brady background checks. Treasury and Justice are now prepared to report back to the President with their findings and recommendations, which include:

- a review of 314 recent investigations involving gun shows and more than 54,000 guns;
- comments from US Attorneys, law enforcement, gun dealers, firearms groups, etc;
- proposed legislation to provide for background checks at gun shows, broadly defined;
- further review of what it means to be "engaged in the business" of selling firearms;
- additional resources for enforcement at gun shows; and
- an education effort, with the gun industry, to keep guns from prohibited purchasers.

The report can be officially released next Thursday in a small Oval Office event with Secretary Rubin, Attorney General Reno, Senator Lautenberg, Rep. Blagoievich, and a small group of gun control advocates and law enforcement officials. Alternatively -- if we do not want to do a full blown event -- the President could do a quick Oval Office meeting with Rubin and Reno, and the report could be leaked for the Friday papers and as a set-up to the Mayors meeting that morning. The gun shows report will be strongly backed by the Mayors.

Crime - Brady law -
gun shows



Jose Cerda III

01/07/99 06:56:51 PM

Record Type: Record

To: Laura Emmett/WHO/EOP, Leanne A. Shimabukuro/OPD/EOP

cc:

Subject: Event/Leak Ideas

As requested...

Gun Shows -- As of next Wednesday (1/13), our report on gun shows should be ready and can be leaked. It includes cases and anecdotes of criminals illegally buying guns at gun shows, and recommends new legislation to close the gun show loophole by providing for Brady background checks for sales at most gun shows -- and requiring that sufficient records be kept so that guns sold at gun shows can be traced. Rep. Blagoievich and Senator Lautenberg have related legislation on this issue, and giving them notice of the leak can help carry the story. If we want, we can also leak the increased gun enforcement money (about \$25 million for ATF and DOJ) in the budget. If not, we can also leak this budget/guns item separately or, better yet, include it as part of a gun tracing event in early February.

Gun Research -- Our budget includes \$4 million for accelerated research into child-proof guns and gun detection technologies. While not a huge amount of money, this represents a substantial increase from what we've spent to date -- little more than half a million dollars. We could tip off some of the interested press folks (NYT, WSJ), and work with Colt Firearms, -- who is developing the only current prototype -- and the Handgun folks to get a positive story.



January 15, 1999

The President
The White House
Washington, DC 20500

Dear Mr. President:

Shortly before the Brady Act's national instant check system went into effect at the end of November 1998, you directed us to build on the Act's remarkable successes by recommending actions that the Administration could take to ensure that firearms sales at gun shows are not exempt from Brady background checks or other provisions of our Federal gun laws. Our report, "Gun Shows: Brady Checks and Crime Gun Traces," reflects a review of available data on the problem as well as possible solutions, and proposes a series of steps that are consistent with existing firearms regulations to close the gun show loophole.

More than 4,000 shows specializing in the sale of firearms are held annually in the United States. There are, in addition, countless other public markets, such as flea markets, where firearms are freely traded or sold. Under current law, many of the firearms at these public markets are sold anonymously; the seller has no idea-and is under no affirmative obligation to find out-whether he or she is selling a firearm to a felon or other prohibited person. Moreover, there is no way to trace many of the firearms sold at these public markets if they are later recovered at the scene of a crime.

While licensed firearms dealers are required to maintain careful records of their firearms sales and, under the Brady Act, to check the purchaser's background before transferring any firearm, nonlicensees have no such requirements under current law. Thus, felons-and other prohibited persons who want to avoid background checks-can buy firearms at gun shows and other public markets with ease, and later use the guns in drug crimes and crimes of violence, or pass them illegally to juveniles.

The recommendations in our report build both on the structure and effectiveness of the Brady Act as well as the work of the Bureau of Alcohol, Tobacco and Firearms, National Tracing Center. Since you signed it into law in 1994, the Brady Act has prevented well over 250,000 prohibited persons (primarily convicted felons) from purchasing firearms from Federal firearms

The President

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licensees (FFLs). In recent weeks, under the new instant check system, the FBI has denied sales of over 12,000 firearms to prohibited persons; a number of these denials resulted in the apprehension of wanted criminals who were seeking to purchase guns.

After a careful study of the problem, we make the following recommendations, a number of which will require legislation:

First, "gun show" would be defined to include not only traditional gun shows but also many flea markets and other similar venues where firearms are sold.

Second, the Bureau of Alcohol, Tobacco and Firearms (ATF) would register all persons who promote gun shows. Promoters would be required to notify ATF of the time and location of each gun show, provide ATF with a list of vendors at the show, indicate whether the vendors are FFLs, ensure that all vendors are provided with information about their legal obligations, and require that vendors acknowledge receipt of information on these obligations. If a registered promoter fails to fulfill these obligations, ATF would consider revoking or suspending the promoter's registration or imposing a civil monetary penalty. Criminal penalties would also be available in certain circumstances.

Third, if any part of a firearms transaction, including display of the weapon, occurs at a gun show, the firearm could be transferred only by, or with the assistance of, an FFL. Therefore, if a nonlicensee sought to transfer a firearm, an FFL would be responsible for positively identifying the purchaser, conducting a Brady Act check on the purchaser, and maintaining a record of the transaction. This is the same system that has been used successfully for many years when someone wishes to transfer a firearm to a nonlicensee in another State. Any seller at a gun show - FFL or nonlicensee - would be subject to a felony charge for failing to comply with the Brady Act's background check requirements.

Fourth, FFLs would be responsible for submitting strictly limited information concerning all firearms transferred at gun shows (e.g., manufacturer/importer, model, and serial number) to ATF's National Tracing Center (NTC). No information about either the seller or the purchaser would be given to the Government (with the exception of instances in which multiple sales reports are required). Instead, the licensees would maintain this information in their files, as is done with all firearms sold by FFLs today. The NTC would request this information from an FFL only in the event that the firearm subsequently became the subject of a law enforcement trace request.

Fifth, the Department of the Treasury and the Department of Justice will review the definition of "engaged in the business" and make recommendations for legislative or regulatory changes to better identify and prosecute, in all appropriate circumstances, illegal traffickers in firearms and suppliers of guns to criminals.

The President

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Sixth, the Federal Government should commit additional resources to combat the illegal trade of firearms at gun shows. Without a commitment to financially support this initiative, the effectiveness of this proposal would be limited.

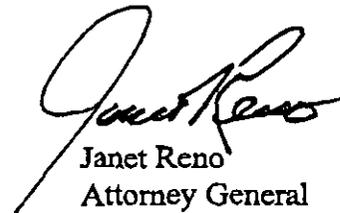
Seventh, in conjunction with the firearms industry, a campaign should be undertaken to encourage all firearms owners to take steps, when selling or otherwise disposing of their weapons, to ensure that they do not fall into the hands of criminals, unauthorized juveniles or other prohibited persons.

Taken together, our recommendations will close the gun show loophole. Whenever any part of a firearm transaction takes place at a gun show, the requirements of the Brady Act check will apply, and records will be kept to allow the firearm to be traced if it is later used in crime. If legitimate, unlicensed individuals wish to sell their personal collections of firearms at gun shows, they will now have the obligation-and the means-to ensure that they are not selling their guns to felons or other prohibited persons. Our recommended steps impose reasonable obligations in connection with firearms transactions at gun shows, while significantly enhancing law enforcement's ability both to prevent criminals from getting guns and to apprehend those who use firearms in the commission of crimes.

Respectfully,



Robert Rubin
Secretary of the Treasury



Janet Reno
Attorney General



GUN
SHOWS:
BRADY CHECKS
AND CRIME GUN
TRACES

JANUARY 1999

GUN SHOWS: BRADY CHECKS AND CRIME GUN TRACES

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Exhibit 1: President's Memorandum Concerning Preventing Firearms Sales to Prohibited Purchasers

Exhibit 2: Digest of Selected States with Laws Regulating Transfers of Firearms Between Unlicensed Persons or Gun Shows

Appendix

EXECUTIVE SUMMARY

More than 4,000 shows dedicated primarily to the sale or exchange of firearms are held annually in the United States. There are also countless other public markets at which firearms are freely sold or traded, such as flea markets. Under current law, large numbers of firearms at these public markets are sold anonymously; the seller has no idea and is under no obligation to find out whether he or she is selling a firearm to a felon or other prohibited person. If any of these firearms are later recovered at a crime scene, there is virtually no way to trace them back to the purchaser.

The Brady Handgun Violence Prevention Act (Brady Act) provides crucial information about firearms buyers to Federal firearms licensees (FFLs), but does not help nonlicensees to identify prohibited purchasers. Under the Brady Act, FFLs contact the Federal Bureau of Investigation's National Instant Criminal Background Check System (NICS) to ensure that a purchaser is not a felon or otherwise prohibited from possessing firearms. Until the Brady Act was passed, the only way an FFL could determine whether a purchaser was a felon or other person prohibited from possessing firearms was on the basis of the customer's self-certification. The Brady Act supplemented this "honor system" with one that allows licensees to transfer a firearm only after a records check that prevents the acquisition of firearms by persons not legally entitled to possess them. Since 1994, the Brady Act has prevented well over 250,000 prohibited persons from acquiring firearms from FFLs.

The Brady Act, however, does not apply to the sale of firearms by nonlicensees, who make up one-quarter or more of the sellers of firearms at gun shows. While FFLs are required to maintain careful records of their sales and, under the Brady Act, to check the purchaser's background with NICS before transferring any firearm, nonlicensees have no such requirements under current law. Thus, felons and other prohibited persons who want to avoid Brady Act checks and records of their purchase buy firearms at these shows. Indeed, a review of criminal investigations by the Bureau of Alcohol, Tobacco and Firearms (ATF) reveals 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.

On November 6, 1998, President Clinton determined that all gun show vendors should have access to the same information about firearms purchasers.¹ He directed the Secretary of the Treasury and the Attorney General to close the gun show loophole. President Clinton was particularly concerned that felons and illegal firearms traffickers could use gun shows to buy large quantities of weapons without ever disclosing their identities, having their backgrounds checked, or having any other records maintained on their purchases. He asked the Secretary of the Treasury and the Attorney General to provide him with recommendations to address this problem.

In developing recommendations for responding to the President's directive, the Department of the Treasury and the Department of Justice sought input from

¹ See exhibit I.

United States Attorneys, FFLs, law enforcement organizations, trade associations, and a wide range of other groups interested in firearms issues. The suggestions of these disparate groups ranged from doing nothing to establishing an outright ban on all sales of firearms at gun shows or by anyone other than an FFL. The United States Attorneys expressed particular concern with the complexity of the statutory definition of "engaged in the business" of dealing in firearms and noted that this made unlicensed firearms traffickers unusually difficult to prosecute.

The recommendations in this report build upon existing systems and expertise to achieve the President's goals of preventing sales to prohibited persons and better enabling law enforcement to trace crime guns.

First, "gun show" would be defined to include not only traditional gun shows but also flea markets and other similar venues where firearms are sold.

Second, ATF would register all persons who promote gun shows. Promoters would be required to notify ATF of the time and location of each gun show, provide ATF with a list of vendors at the show, indicate whether the vendors are FFLs, ensure that all vendors are provided with information about their legal obligations, and require that vendors acknowledge receipt of this information. If a registered promoter fails to fulfill these obligations, ATF would consider revoking or suspending the promoter's registration or imposing a civil monetary penalty. Criminal penalties would also be available in certain circumstances.

Third, if any part of a firearms transaction, including display of the weapon, occurs at a gun show, the firearm could be transferred only by, or with the assistance of, an FFL. Therefore, if a nonlicensee sought to transfer a firearm, an FFL would be responsible for positively identifying the purchaser, conducting a Brady Act check on the purchaser, and maintaining a record of the transaction. This is the same system that has been used successfully for many years when someone wishes to transfer a firearm to a nonlicensee in another State.

Fourth, FFLs would be responsible for submitting strictly limited information concerning all firearms transferred at gun shows (e.g., manufacturer/importer, model, and serial number) to ATF's National Tracing Center (NTC). No information about either the seller or the purchaser would be given to the Government (with the exception of instances in which multiple sales reports are required).² Instead, the licensees would maintain this information in their files, as is done with all firearms sold by FFLs today. The NTC would request this information from an FFL only in the event that the firearm subsequently became the subject of a law enforcement trace request.

Fifth, the Department of the Treasury and the Department of Justice will review the definition of "engaged in the business" and make recommendations for legislative or

² As required by the Gun Control Act, FFLs must complete multiple sales records whenever two or more handguns are sold to the same purchaser within 5 business days.

regulatory changes to better identify and prosecute, in all appropriate circumstances, illegal traffickers in firearms and suppliers of guns to criminals.

Sixth, the Federal Government should commit additional resources to combat the illegal trade of firearms at gun shows. Without a commitment to financially support this initiative, the effectiveness of this proposal would be limited.

Seventh, in conjunction with the firearms industry, a campaign should be undertaken to encourage all firearms owners to take steps when selling or otherwise disposing of their weapons to ensure that they do not fall into the hands of criminals, unauthorized juveniles, or other prohibited persons.

Taken together, these recommendations will address the President's goals of preventing firearms sales to prohibited persons at gun shows and better enabling law enforcement to trace crime guns. Whenever any part of a firearms transaction takes place at a gun show, the requirements of the Brady Act will apply, and records will be kept to allow the firearm to be traced if it is later used in crime. If unlicensed individuals wish to sell their personal collections of firearms at gun shows, they will now have the obligation—and the means—to ensure that they are not selling their guns to felons or other prohibited persons. The recommended steps impose reasonable obligations in connection with firearms transactions at gun shows while significantly enhancing law enforcement's ability to prevent criminals from getting guns and to apprehend those who use firearms in the commission of crimes.

I. DESCRIPTION OF GUN SHOWS

Sponsorship and Operation of Gun Shows

Shows that specialize primarily in the sale and exchange of all types of firearms are frequent and popular events.³ According to the periodical "Gun Show Calendar" (Krause Publications), 4,442 such shows were advertised for calendar year 1998. The following are the 10 States where shows were conducted most frequently in 1998:

<u>State</u>	<u>Number of Shows</u>
Texas	472
Pennsylvania	250
Florida	224
Illinois	203
California	188
Indiana	180
North Carolina	170
Oregon	160
Ohio	148
Nevada	129

Most of the shows were promoted by approximately 175 organizations and individuals. Most promoters are State and local firearms collector organizations with large memberships, including one group that has 28,000 members. The remainder of the gun shows were promoted by individual collectors and businesspeople. Ordinarily, gun shows are held in public arenas, civic centers, fairgrounds, and armories, and the vendor rents a table from the promoter for a fee ranging from \$5 to \$50. The number of tables at shows varies from as few as 50 to as many as 2,000.

Most of the shows are open to the public, and individuals generally pay an admission price of \$5 or more to the promoter. In rare instances, public access is limited by invitation only. Most gun shows occur over a 2-day period, generally on weekends, and draw an average of 2,500-5,000 people per show.⁴

Both FFLs and nonlicensees sell firearms at these shows. FFLs make up 50 to 75 percent of the vendors at most gun shows. The majority of vendors who attend shows sell firearms and associated accessories and other paraphernalia. Examples of accessories and paraphernalia include holsters, tactical gear, knives, ammunition, clothing, food,

³ ATF interviewed promoters, made field observations, and reviewed data obtained over a 5-year period to provide information for this report.

⁴ This information was provided by officials from the National Association of Arms Shows, which represents many of the gun show promoters.

military artifacts, books, and other literature. Some of the vendors offer accessories and paraphernalia only and do not sell firearms.

Public markets for the sale of firearms are not limited to the specialized firearms shows. Large quantities of firearms are also sold by nonlicensees at flea markets and other organized events. At some flea markets, FFLs have established permanent premises from which they conduct their business.

Both the specialized firearms shows and the broader commercial venues such as flea markets are collectively referred to as "gun shows" in the remainder of this report.

Types of Firearms Sold

The types and variety of firearms offered for sale at gun shows include new and used handguns, semiautomatic assault weapons,⁵ shotguns, rifles, and curio or relic firearms.⁶ In addition, vendors offer large capacity magazines⁷ and machinegun parts⁸ for sale.

The "high-end" collector and antique shows and the sporting recreational shows are generally produced by the sporting organizations or avid collectors and enthusiasts. The overall knowledge of the Federal firearms laws and regulations by these promoters is

⁵ Semiautomatic assault weapons may be legally transferred in unrestricted commercial sales if they were manufactured on or before September 13, 1994. Weapons manufactured after that date may be transferred to or possessed by law enforcement agencies, law enforcement officers employed by such agencies for official use, security guards employed by nuclear power plants, and retired law enforcement officers who are presented the weapons by their agencies upon retirement. (See 18 U.S.C. § 922(v).)

⁶ Curios or relics are firearms of special interest to collectors by reason of some quality other than those associated with firearms intended for sporting use or as offensive or defensive weapons. Curios or relics include firearms that are at least 50 years old, are certified by the curator of a Government museum to be of museum interest, or are other firearms that derive a substantial part of their value from the fact that they are novel, rare, or bizarre or because of their association with some historical figure, period, or event. (See 27 C.F.R. § 178.11.)

⁷ Magazines with a capacity of more than 10 rounds may be transferred or possessed without restriction if they were manufactured on or before September 13, 1994. Large capacity magazines manufactured after that date may be transferred to or possessed by law enforcement agencies, law enforcement officers employed by such agencies for official use, security guards employed by nuclear power plants, and retired law enforcement officers who are presented the magazines by their agencies upon retirement. (See 18 U.S.C. § 922(w).)

⁸ The National Firearms Act (NFA), 26 U.S.C. Chapter 53, regulates machineguns, which are defined as any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term also includes the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person. (See 26 U.S.C. § 5845.) Machineguns must be registered with the Secretary of the Treasury, and those manufactured on or after May 19, 1986, are generally unlawful to possess. (See 18 U.S.C. § 922(o).) Parts for machineguns that do not fall within the statutory definition of machinegun (e.g., they are not conversion kits or frames or receivers) may be legally sold without restriction.

good, and the weapons offered for sale are mostly curios or relics or higher quality modern weapons. At other shows, vendors may be less knowledgeable about the Federal firearms laws, and many of the guns sold are of lower quality and less expensive.

Atmosphere

The casual atmosphere in which firearms are sold at gun shows provides an opportunity for individual buyers and sellers to exchange firearms without the expense of renting a table, and it is not uncommon to see people walking around a show attempting to sell a firearm. They may sell their firearms to a vendor who has rented a table or simply to someone they meet at the show. Many nonlicensees entice potential customers to their tables with comments such as, "No background checks required; we need only to know where you live and how old you are." Many of these unlicensed vendors actively acquire firearms from other vendors to satisfy a buyer's request for a specific firearm that the vendor does not currently possess. Some unlicensed vendors replenish and subsequently dispose of their inventories within a matter of days, often at the same show. Although the majority of people who visit gun shows are law-abiding citizens, too often the shows provide a ready supply of firearms to prohibited persons, gangs, violent criminals, and illegal firearms traffickers.

Many Federal firearms licensees have complained to ATF about the conduct of nonlicensees at gun shows.⁹ These licensees are understandably concerned that the casual atmosphere of gun shows, combined with the absence of any requirement that an unlicensed vendor check the background of a firearms purchaser, provides an opportunity for felons and other prohibited persons to acquire firearms. Because Federal law neither requires the creation of any record of these unlicensed sales nor places any obligations upon gun show promoters, information is rarely available about the firearms sold should they be recovered in a crime.

Gun Shows and Crime

It is hardly surprising, therefore, that a review of ATF's recent investigations indicates that gun shows provide a forum for illegal firearms sales and trafficking. In preparing this report, the Department of the Treasury, the Department of Justice, ATF, and outside researchers¹⁰ reviewed 314 recent investigations that involved guns shows in some capacity.¹¹ The investigative reports came from each of ATF's 23 field divisions

⁹ When appropriate, ATF investigated these complaints and took action ranging from warning letters explaining the need for a license to engage in the business of dealing in firearms, to referring a case to the United States Attorney for prosecution.

¹⁰ David M. Kennedy and Anthony Braga, both of the John F. Kennedy School of Government, Harvard University.

¹¹ See Appendix, table 1. The large majority of the investigations reviewed for this report were from 1997 and 1998. The remainder of the investigations was from the years 1994 through 1996, with one investigation each from 1991 and 1992. Forty-one investigations involved what may be described as flea markets, and three investigations involved firearms sales at auctions. The methodology of the review and a more detailed analysis of the results are set forth in the appendix.

throughout the country¹² and involved a wide range of criminal activity by FFLs, unlicensed vendors, and felons conspiring with FFLs.¹³ The investigations also involved a wide variety of firearms, including handguns, semiautomatic assault rifles, and machineguns.

Together, the ATF investigations paint a disturbing picture of gun shows as a venue for criminal activity and a source of firearms used in crimes. Felons, although prohibited from acquiring firearms, have been able to purchase firearms at gun shows. In fact, felons buying or selling firearms were involved in more than 46 percent of the investigations involving gun shows.¹⁴ In more than a third of the investigations, the firearms involved were known to have been used in subsequent crimes.¹⁵ These crimes included drug offenses, felons in possession of a firearm, assault, robbery, burglary, and homicide.¹⁶

Firearms involved in the 314 reviewed investigations numbered more than 54,000.¹⁷ A large number of these firearms were sold or purchased at gun shows. More than one-third of the investigations involved more than 50 firearms, and nearly one-tenth of the investigations involved more than 250 firearms. The two largest investigations were reported to have involved up to 7,000 and 10,000 firearms, respectively. These numbers include both new and used firearms.¹⁸

The investigations reveal a diversity of Federal firearms violations associated with gun shows.¹⁹ Examples of these violations include straw purchases,²⁰ out-of-State sales by

¹² See Appendix, table 2.

¹³ See Appendix, table 3. Current and former FFLs were the subject of a significant number of investigations.

¹⁴ See Appendix, table 3.

¹⁵ See Appendix, table 4.

¹⁶ See Appendix, table 4.

¹⁷ See Appendix, table 5.

¹⁸ See Appendix, table 6. Because tracing a firearm generally requires an unbroken chain of dispositions from manufacturer to first retail purchaser, used guns—including those sold at gun shows—have rarely been traceable.

¹⁹ See Appendix, table 7.

²⁰ A "straw purchase" occurs when the actual buyer of a firearm uses another person, the "straw purchaser," to execute the paperwork necessary to purchase a firearm from an FFL. Specifically, the actual buyer uses the straw purchaser to execute the firearms transaction record, purporting to show that the straw purchaser is the actual purchaser of the firearm. Often, a straw purchaser is used because the actual purchaser is prohibited from acquiring the firearm because of a felony conviction or another disability.

FFLs, transactions by FFLs without Brady Act checks, and the sale of kits that modify semiautomatic firearms into automatic firearms. Engaging in the business without a license was involved in more than half of all the investigations. Nearly 20 percent involved FFLs who were selling firearms "off-the-book."²¹ The central violation in approximately 15 percent of the investigations was the transfer of firearms to prohibited persons such as felons or juveniles not authorized to possess firearms. Nearly 20 percent of the investigations involved violations of the National Firearms Act (NFA), which regulates the possession of certain firearms such as machineguns.²²

An examination of individual cases illustrates how gun shows are connected to criminal activity.

- In 1993, ATF uncovered a Tennessee FFL who purchased more than 7,000 firearms, altered the serial numbers, and resold them to two unlicensed dealers who subsequently transported and sold the firearms at gun shows and flea markets in North Carolina. The scheme involved primarily new and used handguns. All three pled guilty to Federal firearms violations. The FFL was sentenced to 15 months' imprisonment; the unlicensed dealers were sentenced to 21 and 25 months' imprisonment, respectively.
- In 1994, ATF recovered two 9mm firearms and the NTC traced them to an FFL in Whittier, California. The FFL had sold over 1,700 firearms to unlicensed purchasers over a 4-year period without maintaining any records. Many of the sales occurred at swap meets in California. The firearms were then sold to gang members in Santa Ana and Long Beach, California. Many of the firearms were recovered in crimes of violence, including homicide. Of the five defendants charged, two were convicted--the FFL and one of his unlicensed purchasers. Each was sentenced to 24 months' imprisonment.
- In 1995, an ATF inspector in Pontiac, Michigan, discovered a convicted felon who used a false police identification to buy handguns at gun shows and resold them for profit. Among the firearms purchased were sixteen new and inexpensive 9mm and .380 caliber handguns. Detroit police recovered several of the firearms while investigating a domestic disturbance. The defendant pled guilty to numerous Federal firearms violations and was sentenced to 27 months' imprisonment.

In addition to analyzing the ATF investigations, ATF supplemented the information with data from the NTC. Approximately 254 individuals identified in the ATF gun show-related investigations were checked against data in the Firearms Tracing System and related data bases. Of these, 44 appeared in the multiple purchase records with an

²¹ "Off-the-book" sales are those made by FFLs without conducting Brady Act background checks and without recording the sale as required by the law and regulations.

²² Under the NFA, certain firearms and other weapons must be registered. (See 26 U.S.C. chapter 53.) Table 8 shows the types of weapons involved in the investigations involving NFA violations. For example, more than half of the NFA investigations involved machineguns, while 11 percent involved grenade launchers.

average of 59 firearms per person. Of the 44 individuals, 15 were associated with 50 or more multiple sale firearms; these individuals had a total of 188 crime guns traced to them, an average of approximately 13 firearms each. The largest number of multiple sales firearms associated with one individual was 472; this individual had 53 crime guns traced to him. These patterns are not in and of themselves proof of trafficking. Rather, they are indicators investigators use to assist in trafficking investigations.

It is difficult to determine the precise extent of criminal activities at gun shows, partly because of the lack of obligations upon unlicensed vendors to keep any records. Nevertheless, the information obtained from the ATF investigations demonstrates that criminals are able to obtain firearms with no background check and that crime guns are transferred at gun shows with no records kept of the transaction.

2. CURRENT LAW AND REGULATION OF GUN SHOWS

The gun show loophole results both from the existing legal framework governing firearms transactions and the limits on the application of existing laws to gun shows. Gun shows themselves are not subject to Federal regulation. Instead, only transfers by FFLs at gun shows are regulated. Few limitations apply to sales by nonlicensees at gun shows or elsewhere. The Federal legal framework governing gun shows and firearms vendors, as well as the State legal framework governing gun shows, is summarized below.

The Federal Framework

Federal Regulation of Firearms Vendors

Licensed Firearms Dealers

The GCA requires that those seeking to "engage in the business" of importing, manufacturing, or dealing in firearms must obtain a Federal firearms license from the Secretary of the Treasury.²³ The Federal firearms license entitles the holder to ship, transport, and receive firearms in interstate or foreign commerce.²⁴ The bearer of that license, the FFL, must comply with the obligations that accompany the license. In particular, FFLs must maintain records of all acquisitions and dispositions of firearms and comply with all State and local laws in transferring any firearms.²⁵ They must positively identify the purchaser by inspecting a Government-issued photographic identification, such as a driver's license. FFLs must also complete a multiple sales report if they sell two or more handguns to the same purchaser within 5 business days. FFLs may not transfer firearms to felons, persons who have been committed to mental institutions, illegal aliens, or other prohibited persons.²⁶ FFLs also may not knowingly transfer firearms to underage persons or handguns to persons who do not reside in the State where they are licensed.²⁷

FFLs must also comply with the provisions of the Brady Act prior to transferring any firearm to a nonlicensee. The Brady Act requires licensees to contact NICS prior to transferring a firearm to any nonlicensed person in order to determine whether receipt of

²³ 18 U.S.C. §§ 922(a)(1) and 923(a).

²⁴ See *id.*

²⁵ See 18 U.S.C. §§ 922(a)(1), (a)(3), (a)(5), (b)(2), and 923(g).

²⁶ See 18 U.S.C. § 922(d). The 1986 amendments to the GCA also made it unlawful for any person to transfer any firearm to any person knowing or having reasonable cause to believe that such person is a prohibited person.

²⁷ See 18 U.S.C. §§ 922(b)(1), 922(b)(3), and 922(x).

a firearm by the prospective purchaser would be in violation of Federal or State law.²⁸ FFLs must maintain a record but need not contact NICS when they sell from their personal collection of firearms. Federal law requires licensees to respond to requests for firearms tracing information within 24 hours.²⁹ Moreover, ATF has a statutory right to conduct warrantless inspections of the records and inventory of Federal firearms licensees.³⁰ An FFL who willfully violates any of the licensing requirements may have his or her license revoked and is subject to imprisonment for not more than 5 years, a fine of not more than \$250,000, or both.³¹

The obligations imposed upon FFLs serve to implement the crime-reduction goals of the GCA. For example, the recordkeeping requirements, interstate controls, and other requirements imposed on licensees are designed to allow the tracing of crime guns through the records of FFLs and to give States the opportunity to enforce their firearms laws.³²

Licensed Firearms Collectors

The GCA also requires persons to obtain a license as a collector of firearms³³ if they wish to ship, transport, and receive firearms classified as "curios or relics" in interstate or foreign commerce.³⁴ For transactions involving firearms other than curios or relics, the licensed collector has the same status as a nonlicensee. "Curio or relic" firearms generally are firearms that are of special interest to collectors and are at least 50 years old or derive their value from association with a historical figure, period, or event.³⁵ A licensed collector may buy and sell curio or relic firearms for the purpose of enhancing

²⁸ See 18 U.S.C. § 922(t). A NICS check is not required if the buyer presents to the FFL a valid permit to possess or acquire a firearm that was issued not more than 5 years earlier by the State in which the transfer is to take place, and the law of the State provides that the permit is to be issued only after a Government official verifies that the information available to the official, including a NICS check, does not indicate that the possession of the firearm by the person would violate the law.

²⁹ See 18 U.S.C. § 923(g)(7).

³⁰ See 18 U.S.C. § 923(g)(1)(B). Warrantless inspections are limited to those conducted (1) in the course of a criminal investigation of a person other than the licensee, (2) during an annual compliance inspection, and (3) for purposes of firearms tracing. *Id.* Inspections may also be conducted pursuant to a warrant issued by a Federal magistrate upon demonstration that there is reasonable cause to believe that a violation of the GCA has occurred and that evidence of such violation may be found on the licensee's premises. See 18 U.S.C. § 923(g)(1)(A).

³¹ See 18 U.S.C. § 923(c) and 924(a)(1)(D). Under current law, an FFL's failure to perform a NICS check is a misdemeanor.

³² S. Rep. No. 1501, 22, 25 (1968).

³³ See 18 U.S.C. § 923(b).

³⁴ See 18 U.S.C. §§ 922(a)(2), (a)(3).

³⁵ See 27 C.F.R. § 178.11.

his or her personal collection, but may not lawfully engage in a firearms business in curio or relic firearms without obtaining a dealer's license.³⁶ Recordkeeping requirements are imposed on licensed collectors, and ATF has a statutory right to conduct warrantless inspections of the records and inventory of such licensees.³⁷ Licensed collectors, like other licensees, are required to respond to requests for firearms trace information within 24 hours.³⁸ However, licensed collectors are not subject to the requirements of the Brady Act.³⁹

Nonlicensed Firearms Sellers

In contrast to licensed dealers, nonlicensees can sell firearms without inquiring into the identity of the person to whom they are selling, making any record of the transaction, or conducting NICS checks.⁴⁰ Because nonlicensed gun show vendors are not subject to the Brady Act and indeed cannot now conduct a NICS check under Federal law, they often have no way of knowing whether they are selling a firearm to a felon or other prohibited person. The GCA does, however, prohibit nonlicensed persons from acquiring firearms from out-of-State dealers and prohibits nonlicensees from shipping or transporting firearms in interstate or foreign commerce.⁴¹ Nonlicensees are also prohibited from transferring a firearm to a nonlicensed person who the transferor knows or has reasonable cause to believe does not reside in the State in which the transferor resides.⁴² A nonlicensee also may not transfer a firearm to any person knowing or having reasonable cause to believe that the transferee is a felon or other prohibited person.⁴³ Finally, nonlicensed persons may not transfer handguns to persons under the age of 18.⁴⁴ Of

³⁶ See 18 U.S.C. §§ 922(a)(1), and 923(a).

³⁷ See 18 U.S.C. §§ 923(g)(2), (g)(1)(C).

³⁸ See 18 U.S.C. § 923(g)(7).

³⁹ See 18 U.S.C. § 922(t)(1).

⁴⁰ See 18 U.S.C. §§ 922(t), and 923(g)(1)(A).

⁴¹ See 18 U.S.C. § 922(a)(3). An exception to this rule is provided for sales of rifles or shotguns by licensed dealers to nonlicensed persons if the purchaser appears in person at the dealer's licensed premises and the sale, delivery, and receipt comply with the legal conditions of sale in both the seller's State and the buyer's State. See 18 U.S.C. § 922(b)(3).

⁴² See 18 U.S.C. § 922(a)(5). Exceptions to this prohibition are provided for transfers of firearms made to carry out a bequest or intestate succession of a firearm and for the loan or rental of a firearm for temporary use for lawful sporting purposes. *Id.*

⁴³ See 18 U.S.C. § 922(d).

⁴⁴ See 18 U.S.C. § 922(x). A number of exceptions apply to this prohibition, including temporary transfers in the course of employment, for ranching or farming, for target practice, for hunting, or for firearms safety instruction. These exceptions all require that the juvenile to whom the handgun is transferred obtain prior written consent from a parent or guardian and that the written consent be in the juvenile's possession at the time the juvenile possesses the handgun. *Id.*

course, because nonlicensees are not required to inspect the buyer's driver's license or other identification, they may never know that the buyer is underage.

"Engaged in the Business"

Whether an individual seeking to sell a firearm will be regulated as an FFL or nonlicensee depends on whether that individual is "engaged in the business" of importing, manufacturing, or dealing in firearms. When Congress enacted the GCA in 1968, it did not provide a definition of the term "engaged in the business." Courts interpreting the term supplied various definitions,⁴⁵ and upheld convictions for engaging in the business without a license under a variety of factual circumstances.⁴⁶

In 1986, the law was amended to provide the following definition:

(21) The term "engaged in the business" means--

* * *

(C) as applied to a dealer in firearms, . . . a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a 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. . . .⁴⁷

The 1986 amendments to the GCA also defined the term "with the principal objective of livelihood and profit" to read as follows:

(22) The term "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as

⁴⁵ Compare United States v. Gross, 451 F.2d 1355, 1357 (7th Cir. 1971) (one engages in a firearms business where one devotes time, attention and labor for the purpose of livelihood or profit) with United States v. Shirling, 572 F.2d 532, 534 (5th Cir. 1978) (profit motive not determinative where one has firearms on hand or ready to procure them for purpose of sale).

⁴⁶ See United States v. Hernandez, 662 F.2d 289 (5th Cir. 1981) (30 firearms bought and sold over a 4-month period); United States v. Perkins, 633 F.2d 856 (8th Cir. 1981) (three transactions involving eight firearms over 3 months); United States v. Huffman, 518 F.2d 80 (4th Cir. 1975) (more than 12 firearms transactions over "a few months"); United States v. Ruisi, 460 F.2d 153 (2d Cir. 1972) (codefendants sold 11 firearms at a single gun show); United States v. Gross, 451 F.2d 1355 (7th Cir. 1971) (11 firearms sold over 6 weeks); United States v. Zeidman, 444 F.2d 1051 (7th Cir. 1971) (six firearms sold over 2 weeks).

⁴⁷ 18 U.S.C. § 921(a)(21)(C).

improving or liquidating a personal firearms collection; Provided, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. . . .⁴⁸

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.

Federal Regulation of Gun Shows

Current Federal law does not regulate gun shows. The GCA does regulate the conduct of FFLs who offer firearms for sale at gun shows. Although the GCA generally limits licensees to conduct business only from their licensed premises,⁴⁹ in 1984, ATF issued a regulation allowing licensees to conduct business temporarily at certain gun shows located in the same State as their licensed premises.⁵⁰ The regulatory provision was codified into the law as part of the 1986 amendments to the GCA. To qualify for the exception, the gun show or event must be sponsored by a national, State, or local organization devoted to the collection, competitive use, or other sporting use of firearms; and the gun show or event must be held in the State where the licensee's premises is located.

As a result, an FFL may buy and sell firearms at a gun show provided he or she otherwise complies with all the GCA requirements governing licensee transfers. Nonlicensees, however, may freely transfer firearms at a gun show without observing the recordkeeping and background check requirements imposed upon licensees.

State Statutory and Regulatory Framework

More than half of the States impose no prohibition on the private transfer of firearms among nonlicensed persons and do not regulate the operation of gun shows. In some States, the only restrictions imposed on the private sales or transfers of firearms are similar to certain prohibitions set forth by the GCA. For example, Arkansas, Oklahoma, Texas, Louisiana, and Mississippi prohibit the transfer of certain firearms to felons; minors (or minors without parental consent); or persons who are intoxicated, mentally disturbed, or under the influence of drugs. Some States require permits to obtain a firearm and impose a waiting period before the permit is issued (e.g., 14 days in Hawaii). Other States impose additional requirements (such as completion of a firearms safety course in California) to obtain a license or permit. Some impose a waiting period for all firearms (e.g., Massachusetts), others only for handguns (e.g., Connecticut). Maryland directly regulates the sale of firearms by nonlicensees at gun shows, requiring

⁴⁸ 18 U.S.C. § 921(a)(22).

⁴⁹ 18 U.S.C. § 923(a).

⁵⁰ T.D. ATF-191, 49 Fed. Reg. 46,889 (November 29, 1984).

nonlicensees selling handguns or assault weapons at a gun show to undergo a background check to obtain a temporary transfer permit, and limits individuals to five such permits per year.

Exhibit 2 provides an overview of the laws of those States that regulate the transfer of some or all firearms by persons not licensed as a dealer, and of those States that directly regulate gun shows. None of the solutions proposed in this report will affect any State law or regulation that is more restrictive than the Federal law.

3. EARLIER LEGISLATIVE PROPOSALS AND COMMENTS FROM INTERESTED PARTIES

In developing the recommendations of this report, prior legislative proposals addressing gun shows were considered along with results of surveys of United States Attorneys, interest groups, and individuals concerned with firearms issues. Comments from FFLs and law enforcement officials were also considered.

Legislative Proposals

In the 105th Congress, Representative Rod Blagojevich introduced legislation addressing gun shows, H.R. 3853. Senator Frank Lautenberg introduced a similar bill, S. 2527. The proposed bills generally required any person wishing to operate a "gun show" to obtain a license from the Secretary of the Treasury and to provide 30 days' advance notice of the date and location of each gun show held. The gun show licensee would be required to comply with the provisions applicable to dealers under the Brady Act, the general recordkeeping provisions of the GCA, and the multiple sales reporting requirements. These requirements would apply only to transfers of firearms at the gun show by unlicensed persons. Unlicensed vendors would be required to provide the gun show licensee with written notice prior to transferring a firearm at the gun show. The gun show licensee would also be required to deliver to the Secretary of the Treasury all records of firearms transfers collected during the show within 30 days after the show.

Responses to Surveys

United States Attorneys

The Department of Justice requested information from United States Attorneys regarding their experience prosecuting cases involving illegal activities at gun shows or in the "secondary market."⁵¹ Those United States Attorneys who reported cases were asked to describe any particular problems of proof that arose in the cases and whether the existing levels of prosecutorial and investigative resources are adequate to address the violations that are identified. Finally, they were asked for their proposals on how to curtail illegal activity at gun shows.

Some United States Attorneys' offices have had significant experience investigating and prosecuting cases involving illegal activities at gun shows, while others reported no experience with these cases at all. Several common themes emerge from the responses.

There was widespread agreement among United States Attorneys that it can be difficult to prove that a nonlicensed person is "engaging in the business" of firearms dealing without a license under current law. The definitions create substantial investigative and

⁵¹ The "secondary market" refers to the sale and purchase of firearms after FFLs sell them at retail.

proof problems.⁵² Significant undercover work and follow-up by ATF are required to prepare a case against someone for "engaging in the business."

The United States Attorneys were virtually unanimous in their call for additional resources. The number of ATF agents available to investigate cases in many judicial districts falls far below the number required to mount effective enforcement activities at gun shows. United States Attorneys also noted that it will be difficult to devote scarce prosecutorial resources to gun show cases, so long as a number of the offenses remain misdemeanors.

United States Attorneys offered a wide range of proposals to address the gun show loophole. These include the following: (1) allowing only FFLs to sell guns at gun shows so that a background check and a firearms transaction record accompany every transaction; (2) strengthening the definition of "engaged in the business" by defining the terms with more precision, narrowing the exception for "hobbyists," and lowering the intent requirement; (3) limiting the number of private sales permitted by an individual to a specified number per year; (4) requiring persons who sell guns in the secondary market to comply with the recordkeeping requirements that are applicable to FFLs; (5) requiring all transfers in the secondary market to go through an FFL; (6) establishing procedures for the orderly liquidation of inventory belonging to FFLs who surrender their license; (7) requiring registration of nonlicensed persons who sell guns; (8) increasing the punishment for transferring a firearm without a background check as required by the Brady Act; (9) requiring the gun show promoters to be licensed and maintain an inventory of all the firearms that are sold by FFLs and non-FFLs at a gun show; (10) requiring that one or more ATF agents be present at every gun show; and (11) insulating unlicensed vendors from criminal liability if they agree to have purchasers complete a firearms transaction form.

A small number of United States Attorneys suggested that existing laws are adequate even though the resources available to enforce these laws are not. While gun shows do not appear to be a problem in every jurisdiction, the majority of United States Attorneys agreed that gun shows are part of a larger, pervasive problem of firearms transfers in the secondary market.

⁵² A recent case of an unlicensed individual who bought and sold numerous firearms illustrates the difficulty involved with prosecuting defendants charged with engaging in the business of dealing in firearms without a license. ATF agents discovered that an unlicensed person had purchased 124 handguns and 27 long guns from an FFL, as well as additional firearms from flea markets and garage sales. When questioned, the defendant admitted that he intended to resell them. At trial, the defendant contended that buying and selling guns was his hobby. The court, relying on the statutory definition, instructed the jury that a person engages in the business of dealing in firearms when it occupies time, attention, and labor for the purpose of livelihood and profit, as opposed to as a pastime, hobby, or being a collector. When the jury asked for a definition of "livelihood," the court explained that the term was not defined in the law and that the jury needed to rely on its common understanding of the term. The jury acquitted the defendant for engaging in the firearms dealing business. However, the jury convicted the defendant for falsely stating on the firearms transaction record executed at the time of purchase that he was the actual buyer, when in fact, he had intended to resell them.

Law Enforcement Officials

Of the 18 State law enforcement officials who responded to the survey, only 1 opposed new restrictions on gun shows. Seventeen officials share the President's concern with the sale of firearms at gun shows without a background check or other recordkeeping requirements and support changes to make these requirements for all gun show transfers. The majority of respondents urged that any changes apply not only to gun shows but to flea markets, swap meets, and other venues where firearms are bought and sold. Several respondents suggested limits on the number of gun shows or caps on the quantities of guns sold by nonlicensees. Others urged increased cooperation with the United States Attorneys to assist in the prosecution of those individuals who violate Federal firearms laws. Finally, the National Sheriffs Association suggested that gun show operators be required to obtain a permit and notify ATF of any gun show.

FFLs

FFLs submitted 219 responses, of which approximately 30 percent requested additional regulations to prevent unlawful activities at gun shows. Many of these FFLs supported a ban on firearms sales by unlicensed persons or, if permitted, urged that Brady checks be required to prevent prohibited persons from acquiring firearms. Other FFLs expressed frustration that unlicensed persons were able to sell to buyers without any paperwork (and advertise this fact), leaving the FFL at a competitive disadvantage. Others suggested that all vendors, licensed or not, should follow the same requirements whether at gun shows, flea markets, or other places where guns are sold. Many of the FFLs recommending additional regulations provided suggestions, some quite detailed, for closing the gun show loophole. These suggestions included registering all firearms owners, licensing promoters, restricting attendance at gun shows, conducting surprise raids at gun shows, requiring that all transfers go through an FFL, and requiring a booth for law enforcement to conduct background checks for all firearms purchases.

A number of the FFLs who responded believed that the problems at gun shows could be solved if current laws were more strictly enforced. Several of these respondents noted that ATF is already "spread too thin" to enforce additional laws. Others suggested that courts need to do a better job of enforcing the existing laws. Many others preferred stiffer sentences for violators of existing law. More than half, however, stated that new laws or restrictions are not the answer. Of this group, many stated that they do not see any illegal activity at gun shows and concluded that no new laws are necessary. Others expressed their belief that sales of private property should not be federally regulated, or they expressed distrust of the Government in general. Also included in this group were FFLs who reported that they do not sell at gun shows for a variety of reasons but oppose new regulations nonetheless.

Interest Groups, Trade Groups, and Other Responses

Eight responses were received from firearms interest or trade groups. The National Rifle Association (NRA) opposes any changes to existing laws, contending that only 2 percent of firearms used by criminals come from gun shows. The NRA suggested that regulating

the private sale of firearms would create a vast bureaucratic infrastructure and that ATF should instead continue to prosecute those who illegally trade in firearms. The NRA also suggested that many of the current unlicensed dealers would be under ATF scrutiny had they not been discouraged from holding a firearms license. The NRA expressed willingness to publicize the licensing requirements for those who deal in firearms. Similarly, Gun Owners of America recommended no changes to existing law, but suggested a "stop to this insidious ongoing Federal government assault on American citizenry and to return to the rule of law."

By contrast, the National Alliance of Stocking Gun Dealers (NASGD), a trade association consisting of firearms dealers, suggested that every firearm sale at a gun show be regulated and that the purchaser undergo a NICS check. In addition, NASGD suggested: (1) licensing all gun show promoters, auctioneers, and exhibitors; (2) limiting the number of times an FFL may sell at gun shows in a given year; (3) having nonlicensees comply with the same standards as FFLs; (4) requiring promoters to provide ATF and other authorities with the list of vendors at a gun show; and (5) having promoters maintain firearms transaction records and NICS transaction records for all firearms sold at a gun show.

Handgun Control, Inc. (HCI), suggested that gun show promoters be licensed and that they be authorized to conduct a NICS check on every firearms transfer by an unlicensed dealer. HCI also suggested that a 30-day temporary license be issued (limited to one per year) to any individual wishing to sell at a gun show. The proposed license would permit the sale of no more than 20 handguns, the serial numbers of which would be included in the license application. HCI suggested that "engaged in the business" be defined to limit the number of handguns sold from a "personal collection" to no more than 3 in a 30-day period. This restriction would not apply to sales to licensees or within one's immediate family. The Coalition to Stop Handgun Violence suggested licensing promoters, requiring a background check on all gun purchases, additional recordkeeping, a limit on the number of firearms purchased by any one person at a gun show, and increased enforcement resources and penalties.

The Trauma Foundation of San Francisco recommended requiring a background check for all firearms sales, licensing promoters, permitting only FFLs to sell at gun shows, and limiting the number of firearms purchased at a gun show. The United States Conference of Mayors supported one-gun-a-month legislation, background checks on all purchases, and increased funding for law enforcement.

Finally, in reply to open letters posted on the Internet, ATF received 274 responses. The vast majority of these responses either opposed any new restrictions on gun shows or favored enforcement of existing law. Approximately 5 percent favored new laws, usually suggesting a background check for firearms purchasers.

4. RECOMMENDATIONS

Summary of the Recommendations

These recommendations close the gun show loophole by adding reasonable restrictions and conditions on firearms transfers at gun shows.⁵³ The recommendations also ensure that there are adequate resources to enforce the law and that all would-be sellers of firearms at gun shows understand the law and the consequences of illegally disposing of guns. Each recommendation will be discussed in detail, but they may be summarized as follows:

1. Define "gun show" to include specialized gun events, as well as flea markets and other markets outside of licensed firearms shops at which 50 or more firearms, in total, are offered for sale by 2 or more persons.
2. Require gun show promoters to register and to notify ATF of all gun shows, maintain and report a list of vendors at the show, and ensure that all vendors acknowledge receipt of information about their legal obligations.
3. Require that all firearms transactions at a gun show be completed through an FFL. The FFL would be responsible for conducting a NICS check on the purchaser and maintaining records of the transactions. The failure to conduct a NICS check would be a felony for licensees and nonlicensees.
4. Require FFLs to submit information necessary to trace all firearms transferred at gun shows to ATF's National Tracing Center. This information would include the manufacturer/importer, model, and serial number of the firearms. No information about either an unlicensed seller or the purchaser would be given to the Government. Instead, as today with all firearms sold by licensees, the FFLs would maintain this information in their files.
5. Review the definition of "engaged in the business" and make recommendations within 90 days for legislative or regulatory changes to better identify and prosecute, in all appropriate circumstances, illegal traffickers in firearms and suppliers of guns to criminals.
6. Provide additional resources to combat the illegal trade of firearms at gun shows.
7. In conjunction with the firearms industry, educate gun owners that, should they sell or otherwise dispose of their firearms, they need to do so responsibly to ensure that they do not fall into the hands of felons, unauthorized juveniles, or other prohibited persons.

⁵³ All of the recommendations except number 7 and part of number 5 would require legislation.

Explanation of the Recommendations

Definition of Gun Show

There would be a new statutory definition of "gun show."⁵⁴ The definition would read as follows:

Gun Show. Any event (1) at which 50 or more firearms, 1 or more of which has been shipped or transported in interstate or foreign commerce, are offered or exhibited for sale, transfer or exchange; and (2) at which 2 or more persons are offering or exhibiting firearms for sale, transfer, or exchange.

This definition encompasses not only events at which the primary commodities displayed and sold are firearms but qualifying flea markets, swap meets, and other secondary markets where guns are sold as well. Requiring there to be two or more persons offering firearms exempts from the definition FFLs selling guns at their business location, as well as the individual selling a personal gun collection at a garage or yard sale. In addition, the legislation requires a minimum of 50 firearms to be offered for sale in order for an event to become a gun show that is subject to the other new requirements. This minimum quantity ensures that private sales of a small number of firearms can continue to take place without being subject to the new requirements.

Gun Show Promoters

Any person who organizes, plans, promotes or operates a gun show, as newly defined, would be required to register with ATF. Gun show promoters would complete a simple form which entitles the promoter to operate a gun show. The registration requirement would go into effect 6 months after the enactment of the legislation to allow time for gun show promoters to comply.

Thirty days before any gun show, a promoter would be required to inform ATF of the dates, duration, and estimated number of vendors who are expected to participate. This information serves four purposes: First, it advises ATF that a gun show will be taking place. If ATF is in the process of investigating individuals who are violating the law at gun shows in a particular field division, the advance notice will assist ATF in determining whether the target of the investigation might appear at the gun show. Second, the information gives ATF a good idea about the scope and scale of the gun show to enable the agency to make the determination whether ATF should allocate resources to the show for the purpose of investigating possible crimes there. Third, it allows ATF to notify State and local law enforcement about the show, as suggested by

⁵⁴ Although the GCA does not define "gun show," the GCA does refer to "gun shows" in 18 U.S.C. § 923(j), the exception that permits FFLs to sell firearms away from their business premises under certain circumstances, including "gun shows."

the National Sheriffs Association. Finally, the notice involves the promoter at an early stage in identifying who is participating at the gun show.

Next, by no later than 72 hours before the gun show, the promoter would provide a second notice to ATF identifying all the vendors who plan to participate at the show. The promoter's notice would include the names and licensing status, if any, of all those who have signed up to exhibit firearms. The primary benefits of this notification are twofold. First, the notice gives ATF specific information about vendors who plan to participate at the gun show, along with their status as an FFL or nonlicensee. For any open investigations, this information would prove extremely useful in ATF's enforcement activities. Second, promoters will learn the identities of the vendors so that they can plan for the show. For example, the promoter can determine which of the FFLs will conduct background checks for nonlicensees and, if a significant number of nonlicensees plan to participate in the show, the promoter can plan to have enough "transfer" FFLs⁵³ present to meet the demand for NICS checks.

Although vendors who do not sign up for the gun show by the time that the promoter submits the 72-hour notice may still sign up to participate at the show, they will be required to sign the promoter's ledger acknowledging their legal obligations before they may transact business. The promoter will be required to submit the ledger to ATF within 5 business days of the end of the show. All vendors will also be required to present to the promoter a valid driver's license or other Government-issued photographic identification.

A gun show promoter who fails to register or comply with any of these requirements would be subject to having his or her registration denied, suspended, or revoked, as well as being subject to other civil or administrative penalties. Certain violations would be subject to criminal penalties. Vendors who sell at gun shows without signing the promoter's ledger would be similarly subject to civil and criminal penalties. In addition, if the vendor provides false information to the promoter in the ledger, the vendor would be liable for making a false statement.

Imposing these requirements on gun show promoters will make them more accountable for controlling their shows and ensuring that only vendors who comply with the law participate at gun shows. Although promoters will not be directly responsible for the performance of NICS background checks at gun shows, it will be in the promoter's interest to make sure that background checks are being performed in connection with each and every firearms transfer that takes place in whole or in part at the gun show. Gun show promoters profit greatly from the gun sales that take place at gun shows. However, until now, the Federal Government has not imposed any obligations on the promoter to encourage compliance with the law by all of the participants at the gun show. Placing an affirmative obligation on gun show promoters to notify vendors of their legal obligations will go a long way toward ensuring that only lawful transactions take place at gun shows.

⁵³ The transfer FFL does not act as the seller, but rather acts voluntarily in connection with a transfer by a nonlicensee or licensed collector.

Requiring vendors to sign the ledger and acknowledge that they have received information about and understand their legal obligations will prevent vendors from claiming that they did not know that they were required to complete all firearms transactions at a gun show through an FFL.

NICS Checks

No gun would be sold, transferred, or exchanged at a gun show before a NICS background check is performed on the transferee. The Brady Act permit exception would apply to firearms sales at gun shows. FFLs who participate in the gun show would be required to request NICS checks for all buyers, whether the FFL sells firearms out of the FFL's inventory or the FFL's personal collection. Nonlicensed sellers at the gun show must arrange for all purchasers to go to a transfer FFL to request a NICS check. Any FFL attending a gun show may act as a transfer FFL to facilitate nonlicensee sales of firearms. However, FFLs will not be required to perform this service; they will do so only voluntarily. FFLs may choose to charge a fee for providing this service. By having the FFL request the background check, the proposal takes full advantage of the existing licensing scheme for FFLs, the FFLs' knowledge of firearms, and the FFLs' access to NICS.

The unlicensed seller may not transfer the firearm to the purchaser until the seller receives verification that the transfer FFL has performed a NICS background check on the purchaser and learned that there is no disqualifying information. The FFL's role is limited to facilitating the transfer by performing the NICS check and keeping the required records. Any FFL or non-FFL who transfers a firearm in whole or in part at a gun show without completing a NICS check on the purchaser to determine that the transferee is not prohibited could be charged with a felony.⁵⁶

Prohibiting any firearms from being sold, transferred, or exchanged in whole or in part at a gun show until the transferee has been cleared by a background check establishes parameters that encompass all vendors, regardless of whether they are licensed. No FFL may claim that a background check is not required because the firearm is being sold out of the FFL's personal collection, nor will the distinction between FFLs and non-licensed dealers make any difference for NICS checks. When any part of the transaction takes place at a gun show,⁵⁷ each and every vendor at a gun show will require a transferee to undergo a background check before the firearm can be transferred.⁵⁸

⁵⁶ The legislative proposal would elevate the gravity of the offense of not conducting a NICS check for FFLs from a misdemeanor—which is presently contained in the Brady Act—to a felony regardless of the venue of the transaction.

⁵⁷ Requiring a NICS check when "any part of the transaction takes place at a gun show" ensures that buyers and sellers do not attempt to avoid the requirement by completing only a part of the sale, exchange, or transfer at the gun show. For example, if a nonlicensed vendor displays a gun at a gun show but the actual transfer occurs outside the gun show in the parking lot, the vendor is prohibited from transferring the gun without a NICS check on the purchaser.

⁵⁸ The recommendations made in this report would be in addition to any requirements imposed under State or local law.

Records for Tracing Crime Guns

Before clearing a transfer of any firearm by a nonlicensee, the transfer FFL would complete a form similar to the firearms transaction record currently used by FFLs. This firearms transaction record would be maintained in the FFL's records, along with the other records of firearms transferred directly by the FFL.

In addition, FFLs would be responsible for submitting to the NTC strictly limited information concerning firearms transferred at gun shows, whether the FFL is the seller or merely the transfer FFL. The information would consist of the manufacturer/importer, model, and serial number of the firearm. No personal information about either the seller or the purchaser would be given to the Government. Instead, as today with all firearms sold by FFLs, the licensees would maintain this information in their files. The NTC would request this information from an FFL only in the event that the firearm subsequently becomes the subject of a law enforcement trace request. In addition, FFLs would complete a multiple sale form if they record the sale by a nonlicensee of two or more handguns to the same purchaser within 5 business days, as is currently required for transactions by FFLs.

This requirement provides a simple and easy-to-administer means of reestablishing the chain of ownership for guns that are transferred at gun shows. If the firearm appears at a crime scene and there is a legitimate law enforcement need to trace the firearm, ATF will be able to match the serial number of the crime gun to the record and identify the FFL who is maintaining the firearms transaction form. ATF can then go to the FFL who submitted the information on the firearm and review the record that is on file with the FFL. This form will contain information about the transferor and transferee, and ATF can trace the firearm using that information. It is important to emphasize that ATF traces guns according to specific protocols and requirements, ensuring that the firearms information will not be used to identify purchasers of a particular firearm except as required for a legitimate law enforcement purpose.

Definition of "Engaged in the Business"

Not surprisingly, significant illegal dealing in firearms by unlicensed persons occurs at gun shows. More than 50 percent of recent ATF investigations of illegal activity at gun shows focused on persons allegedly engaged in the business of dealing without a license. Unfortunately, the current definition of "engaged in the business" often frustrates the prosecution of people who supply guns to felons and other prohibited persons. Although illegal activities by unlicensed traffickers often become evident to investigators quickly, months of undercover work and surveillance are frequently necessary to prove each of the elements in the current definition and to disprove the applicability of any of the several statutory exceptions.

To draw a more distinct line between those who are engaged in the business of firearms dealing and those who are not, and to facilitate the prosecution of those who are illegally trafficking in guns to felons and other prohibited persons--at gun shows and elsewhere--

the GCA should be amended. Accordingly, the Department of the Treasury and the Department of Justice will review the definition of "engaged in the business" and make recommendations within 90 days for legislative or regulatory changes to better identify and prosecute, in all appropriate circumstances, illegal traffickers in firearms and suppliers of guns to criminals.

Need for Additional Resources

To adequately enforce existing law as well as the foregoing proposals, more resources are needed. There are more than 4,000 specialized gun shows per year, and enforcement and regulatory activity must also occur at the other public venues where firearms are sold.

All of the previous recommendations will help close the existing gun show loophole, but they will not completely eradicate criminal activity at gun shows and in the rest of the secondary market. As the review of ATF investigations and United States Attorney prosecutions revealed, a substantial number of the crimes associated with gun shows are committed by FFLs who deal off the book and ignore their legal obligations. While a requirement that all gun show transactions be recorded and NICS checks completed will make it somewhat easier to identify off-the-book dealers, a markedly increased enforcement effort will be required to shut down these illegal markets. Further, ATF will need to focus on preventive educational initiatives, as described below. To accomplish all of these goals, significant resources will be required for more criminal and regulatory enforcement personnel, as well as prosecutors.

Without a commitment to financially support this initiative, its effectiveness will be limited. The Departments of Justice and the Treasury will submit budget proposals to fund this initiative at an appropriate level.

Educational Campaign

Finally, a campaign should be undertaken in conjunction with the firearms industry to educate firearms owners that, should they sell or otherwise dispose of their firearms, they need to do so responsibly to ensure that the weapons do not fall into the hands of felons, unauthorized juveniles or other prohibited persons. The vast majority of firearms owners are law-abiding and certainly do not want their firearms to be used for crime but, under the current system, they can unwittingly sell firearms to prohibited persons.

The educational campaign could involve setting up booths at gun shows to explain the law, encouraging unlicensed sellers to "know their buyer" by asking for identification and keeping a record of those to whom they sell their firearms; developing videos and news articles for promoters, dealers, trade groups, and groups of firearms owners describing legal obligations and liability and the need to exercise personal responsibility; and distributing posters and handouts with tips for identifying and reporting suspicious activity.

5. CONCLUSION

Although Brady Act background checks have been successful in preventing felons and other prohibited persons from buying firearms from FFLs, gun shows leave a major loophole in the regulation of firearms sales. Gun shows provide a large market where criminals can shop for firearms anonymously. Unlicensed sellers have no way of knowing whether they are selling to a violent felon or someone who intends to illegally traffic guns on the streets to juveniles or gangs. Further, unscrupulous gun dealers can use these free-flowing markets to hide their off-the-book sales. While most gun show sellers are honest and law-abiding, it only takes a few to transfer large numbers of firearms into dangerous hands.

The proposals in this report strike a balance between the interests of law-abiding citizens and the needs of law enforcement. Specifically, the proposals will allow gun shows to continue to provide a legal forum for the sale and exchange of firearms and will not prevent the sale or acquisition of firearms by sportsmen and firearms enthusiasts. At the same time, this initiative will ensure background checks of all firearms purchasers at gun shows and assist law enforcement in preventing firearms sales to felons and other prohibited persons, as well as inhibiting illegal firearms trafficking. The proposals also ensure that gun show promoters run their shows responsibly, that all firearms purchases at gun shows are subject to NICS checks, and that all firearms sold at the shows can be traced if they are used in crime. Further, these recommendations will guarantee that everyone selling at gun shows understands the legal obligations and the risks of disposing of firearms irresponsibly and that law enforcement has the resources necessary to investigate and prosecute those who violate the law. In short, as requested by President Clinton, the proposals will close the gun show loophole.

Exhibit 1

THE WHITE HOUSE

Office of the Press Secretary
(Highfill, Arkansas)

For Immediate Release

November 6, 1998

November 6, 1998

MEMORANDUM FOR THE SECRETARY OF THE TREASURY
THE ATTORNEY GENERALSUBJECT: Preventing Firearms Sales to Prohibited
Purchasers

Since 1993, my Administration has worked hand-in-hand with State and local law enforcement agencies and the communities they serve to rid our neighborhoods of gangs, guns, and drugs -- and by doing so to reduce crime and the fear of crime throughout the country. Our strategy is working. Through the historic Violent Crime Control and Law Enforcement Act of 1994, we have given communities the tools and resources they need to help drive down the crime rate to its lowest point in a generation. Keeping guns out of the hands of criminals through the Brady Handgun Violence Prevention Act's background checks has also been a key part of this strategy. Over the past 5 years, Brady background checks have helped prevent a quarter of a million handgun sales to felons, fugitives, domestic violence abusers, and other prohibited purchasers -- saving countless lives and preventing needless injuries.

On November 10, 1998, the permanent provisions of the Brady Law will take effect, and the Department of Justice will implement the National Instant Criminal Background Check System (NICS). The NICS will allow law enforcement officials access to a more inclusive set of records than is now available and will -- for the first time -- extend the Brady Law's background check requirement to long guns and firearms transfers at pawnshops. Under the NICS, the overall number of background checks conducted before the purchase of a firearm will increase from an estimated 6 million annually to as many as 12 million.

We can, however, take additional steps to strengthen the Brady Law and help keep our streets safe from gun-carrying criminals. Under current law, firearms can be -- and an untold number are -- bought and sold entirely without background checks, at the estimated 5,000 private gun shows that take place across the country. This loophole takes gun shows prime targets for criminals and gun traffickers, and we have good reason to believe that firearms sold in this way have been used in serious crimes. In addition, the failure to maintain records at gun shows often thwarts needed law enforcement efforts to trace firearms. Just days ago, Florida voters overwhelmingly passed a ballot initiative designed to facilitate background checks at gun shows. It is now time for the Federal Government to take appropriate action, on a national basis, to close this loophole in the law.

Therefore, I request that, within 60 days, you recommend to me what actions our Administration can take -- including proposed legislation -- to ensure that firearms sales at gun shows are not exempt from Brady background checks or other provisions of our Federal gun laws.

WILLIAM J. CLINTON

#

Exhibit 2

**DIGEST OF SELECTED STATES WITH LAWS REGULATING TRANSFERS OF FIREARMS
BETWEEN UNLICENSED PERSONS OR GUN SHOWS (12/21/98)**

STATE	Regulation of Gun Shows?	Regulation of All Firearms Transfers?
PENNSYLVANIA 18 Pa. Stat. Ann. § 6111; § 6113.	NO.	YES. Nonlicensee wishing to transfer firearm to nonlicensee must do so through licensee or at county sheriff's office. The licensee must conduct background check as if he or she were the seller. Exclusions apply for certain firearms, family member transfers, law enforcement, or where local authority certifies that transferee's life is threatened.
CALIFORNIA Cal. Penal Code § 12071.1; § 12082.	YES. Must receive state certificate of eligibility to operate gun show.	YES. All transfers for firearms must be through a licensed dealer who must conduct a background check.
ILLINOIS 430 Ill. Comp. Stat. Ann. §§ 65/2(a)(1), 65/3.	NO.	YES. No one may lawfully possess any firearm without possessing a Firearms Owner's Identification Card (FOIC) issued by the State police. Each transferee of any firearm must possess a valid FOIC. Transferor must keep record of transaction for 10 years.
VIRGINIA Va. Code Ann. §§ 52-8.4:1, 54.1-4200, 54.1-4201.1.	YES. Promoter of firearm show must provide 30 days' notice, and provide pre- and post-show list of each vendor's name and business address.	NO.
DISTRICT OF COLUMBIA D.C. Code Ann. § 6- 2311.	NO.	YES. It is unlawful to possess any firearm that is not registered.
VIRGIN ISLANDS V.I. Code tit. 23, § 461.	NO.	YES. No transfer of a firearm is lawful without prior approval by Commissioner of Licensing and Consumer Affairs.
FLORIDA	NO.	Under Art. VIII, Sec. 5 of Florida Constitution, counties are now free to impose waiting periods and background checks for all firearm sales in places where public has the right of access; "sale" requires consideration.
PUERTO RICO P.R. Laws Ann., tit. 25, §§ 429, 438, 439	NO.	YES. All firearms must be registered and transfers must be through a licensed dealer.
NORTH CAROLINA N.C. Gen. Stat. § 14- 402.	NO.	NO. However, no transfer of a pistol is lawful without the transferee first obtaining a license from the county sheriff.
HAWAII Haw. Rev. Stat. §§ 134-2, 134-3, 134-4.	NO.	YES. No person may acquire ownership of a firearm until the person first obtains a permit from the local police chief. A separate permit is required for each handgun or pistol; a shotgun or rifle allows multiple acquisitions up to one year.

STATE	Regulation of Gun Shows?	Regulation of All Firearms Transfers?
IOWA Iowa Code Ann. § 724.16.	NO.	NO. However, it is unlawful to transfer a pistol or revolver without an annual permit to acquire pistols and revolvers.
MINNESOTA Minn. Stat. Ann. §§ 624.7131, 624.7132.	NO.	NO. However, it is unlawful to transfer a pistol or semiautomatic assault weapon without executing a transfer report, signed by transferor and transferee and presented to the local police chief of the transferee, who shall conduct a background check.
MARYLAND 27 Md. Code Ann. §§ 442, 443A(a).	YES. Nonlicensed persons selling a handgun or assault weapon at a gun show must obtain a transfer permit; a background check is conducted on the applicant. An individual is limited to five permits per year.	NO.
MISSOURI Mo. Rev. Stat. Ann. § 571.080.	NO.	YES. It is unlawful to buy, sell, exchange, loan, or borrow a firearm without first receiving a valid permit authorizing the acquisition of the firearm.
SOUTH DAKOTA S.D. Codified Laws §§ 23-7-9, 7-10.	NO.	NO. However, it is unlawful to transfer a pistol to a person who has purchased a pistol until after 48 hours of the sale. Exceptions apply for holders of concealed pistol permit.
NEW YORK NY Penal Law § 400.00(16) and §§ 265.11-13.	NO.	YES. As a general matter, no person may possess, receive, or sell a firearm without first obtaining a permit or license from the State. Thus, all lawful firearms transfers in New York, including those at gun shows, would be between licensees or permittees.
NEW JERSEY N.J. Stat. Ann. § 2C: 39-3; 58-3.	NO.	YES. It is unlawful to sell a firearm unless licensed or registered to do so. No unlicensed person may acquire a firearm without a purchase permit or firearms purchaser identification card.
NEW HAMPSHIRE N.H. Rev. Stat. Ann. § 159.	NO.	NO. However, it is unlawful for a nonlicensee not engaged in the business to transfer a pistol to a person who is not personally known to the transferor.
CONNECTICUT Connecticut General Statute §§ 29-28 through 29-37.	NO.	YES. Anyone who sells 10 or more handguns in a calendar year must have a FFL or a State permit. Nonlicensees wishing to transfer a firearm must receive from the prospective purchaser an application which is then submitted to local and State authorities. Exceptions are for licensed hunters purchasing long guns and members of the Armed Forces.
MASSACHUSETTS Mass. Gen. Laws Ann. Ch. 140 § 129C; § 128A; § 128B.	NO.	NO. However, State law provides that any person may transfer up to four firearms to any nonlicensed person per calendar year without obtaining a State license, provided seller forwards name of seller, purchaser, and information about the firearm to State authorities.

STATE	Regulation of Gun Shows?	Regulation of All Firearms Transfers?
RHODE ISLAND R.I. Gen. Laws §§ 11-47-35, 36, 40.	NO.	YES. No person may sell a firearm without purchaser completing application which is submitted to State police for background check. Seller obligated to maintain register recording information about the transaction, such as date, name, age and residence of purchaser.
MICHIGAN Mich. Comp. Laws §§ 750.223, 750.422	NO.	NO. However, no transfer of a pistol is lawful without the transferee first obtaining a handgun purchase permit from the local CLEO.
NEVADA Nev. Rev. Stat. Ann. § 202.254.	NO.	NO. However, a private person wishing to transfer a firearm <u>may</u> request a State background check on the prospective transferee.

APPENDIX

Methodology

The following analyses are based on a survey of ATF special agents reporting information about recent investigations associated with gun shows. The investigations reflect what ATF has encountered and investigated; they do not necessarily reflect typical criminal diversions of firearms at gun shows or the typical acquisition of firearms by criminals through gun shows. Furthermore, they do not provide information about the significance of diversion associated with gun shows with respect to other sources of diversion. Nevertheless, they suggest that the criminal diversion of firearms at and through gun shows is an important crime and public safety problem.

The analyses use data from investigations referred for prosecution and adjudicated, and investigations that have not yet been referred for prosecution. Thus, not all violations described will necessarily be charged as crimes or result in convictions. As a consequence, the exact number of offenders in the investigation, the numbers and types of firearms involved, and the types of crimes associated with recovered firearms may not have been fully known to the case agents at the time of the request, and some information may be underreported. For example, it is likely that the number of firearms involved in the investigations could increase, as could as the number and types of violations, as more information is uncovered by the agents working the investigations.

Information generated as part of a criminal investigation also does not necessarily capture data on the dimensions ideally suited to a more basic inquiry about trafficking and trafficking patterns. For example, investigative information necessary to build a strong case worthy of prosecution may provide very detailed descriptions of firearms used as evidence in the case but may not even estimate, much less describe in detail, all the firearms involved in the trafficking enterprise.

Information was not provided with enough consistency and specificity to determine the number of handguns, rifles, and shotguns trafficked in a particular investigation. Likewise, special agents may not have information on trafficked firearms subsequently used in crime. Such information is not always available. Comprehensive tracing of crime guns does not exist nationwide and, until the very recent Youth Crime Gun Interdiction Initiative, most major cities did not trace all recovered crime guns. The figures on new, used, and stolen firearms reflect the number of investigations in which the traffickers were known to deal in these kinds of weapons. The figures on stolen firearms are subject to the usual problems associated with determining whether a firearm has been stolen. Many stolen firearms are not reported to the police. Such limitations apply to much of the data collected in this research.

Finally, except where noted, the unit of analysis in the review of investigations is the investigation itself. The data show, for example, the proportion of investigations that were known by agents to involve new, used, and stolen firearms, but these figures do not represent a proportion or count of the number of new, used, or stolen firearms being

-2-

trafficked at gun shows. The data show what proportion of investigations were known to involve a firearm subsequently used in a homicide, but not how many homicides were committed by firearms trafficked through gun shows. It was not possible to gather more specific information within the short timeframe of the study.

It was, for the most part, not possible to review and verify all of the information provided in the survey responses. However, ATF Headquarters personnel took a random sample of 15 cases each from the 31 investigations reported to have involved 101-250 firearms and from the 30 investigations reported to have involved 251 or more firearms, and reviewed with ATF field personnel the information leading to those reports. A breakdown of the results of this review showing the basis for reporting the firearms volume is provided below. Based on this review, ATF concludes that the numbers of firearms reported in connection with the investigations have a reasonable basis.

<u>N = 32*</u>		
Procedure	Number	Percent
Firearms seized/purchased/recovered and reconstruction of dealer records	10	31.2%
Reconstruction of dealer records	9	28.1%
Firearms seized/purchased/recovered	6	18.8%
Reconstruction of dealer records and confidential information	3	9.4%
Firearms seizure and admission by defendant(s)	2	6.2%
ATF NTC compilation and confidential information	1	3.1%
Unknown	1	3.1%

* This breakdown includes, in addition to the basis for the numbers of firearms reported in the randomly selected cases, the basis for the numbers of firearms reported in the two investigations involving the largest volumes of firearms, 10,000 and 7,000 firearms respectively. The case involving 7,000 firearms used a combination of an audit of firearms seized and the reconstruction of dealer records, while the case involving 10,000 firearms used a combination of NTC records and information from confidential informants.

Table 1

Initiation of Investigation

N= 314

<u>Reason</u>	<u>N</u>	<u>Percent</u>
Confidential informant	74	23.6%
Referred from another Federal, State, or local investigation	60	19.1%
ATF investigation at gun show (e.g., gun show task force)	44	14.0%
Trace analysis after firearms recovery	37	11.8%
Review of multiple sales forms	34	10.8%
Licensed dealers at gun shows reported suspicious activity	26	8.3%
Tip or anonymous information	18	5.7%
Field interrogation after firearm recovery	4	1.3%
Gun show promoter reported suspicious activity	2	0.6%
Analysis of out-of-business records	1	0.3%
Unknown	14	4.4%

Table 2

Investigations Submitted by Field Divisions

N= 314

<u>Field Division</u>	<u>Number of Investigations</u>	<u>Percent</u>
Dallas	43	13.7%
Houston	42	13.1%
Detroit	41	13.1%
Philadelphia	34	10.8%
Miami/Tampa	20	6.3%
Kansas City	19	6.1%
Nashville	16	5.1%
Columbus	15	4.8%
Seattle	11	3.5%
St. Paul	10	3.2%
Louisville	9	2.9%
New Orleans	9	2.9%
Phoenix	8	2.5%
Washington, DC	8	2.5%
Charlotte	8	2.5%
Los Angeles	6	1.9%
Atlanta	6	1.9%
Chicago	5	1.6%
San Francisco	1	0.3%
Baltimore	1	0.3%
Boston	1	0.3%
New York	1	0.3%

Table 3

Main Subject of Investigation

N=314

<u>Subject</u>	<u>Number of Investigations</u>	<u>Percent</u>
Unlicensed dealer	170	54.1%
Unlicensed dealer (never FFL)	118	37.6%
Former FFL	37	11.8%
Current FFL and former FFL	8	2.5%
Unlicensed dealer and former FFL	2	0.6%
Current FFL and Unlicensed dealer	4	1.3%
Current FFL/Former FFL /unlicensed	1	0.3%
Current FFL	73	23.2%
Felon purchasing firearms at gun show	33	10.5%
Straw purchasers at gun show	20	6.4%
Unknown gun show source	18	5.7%

Overall, 46.2 percent of the investigations involved a felon associated with selling or purchasing firearms. This percentage was derived from aggregate investigations in which trafficked firearms were recovered from felons; unlicensed dealers' criminal histories included felony convictions; felons had purchased firearms at gun shows, and a licensed dealer had a convicted felon as an associate. When only a licensed dealer was the main subject of the investigation, a convicted felon was involved in 6.8 percent (5 of 73) of the investigations as an associate in the trafficking of firearms. When the investigation involved an unlicensed dealer or a former FFL, 25.3 percent (43 of 170) of the investigations revealed that he/she had at least one prior felony conviction.

Table 4

**Firearms Associated With Gun Show Investigations Known to Have Been Involved
in Subsequent Crimes**

34.4 percent of the investigations (108 of 314) had at least one firearm recovered in crime.

N=108

Note: Since firearms recovered in an investigation may be used in many different types of crime, an investigation can be included in more than one category.

<u>Crime</u>	<u>Number of investigations with at least one</u>	<u>Percent</u>
Drug offense	48	44.4%
Felon in possession	33	30.6%
Crime of violence	47	43.5%
Homicide	26	24.1%
Assault	30	27.8%
Robbery	20	18.5%
Property crime (burglary, B&E)	16	14.8%
Criminal possession (not felon in poss.)	15	13.9%
Juvenile possession	13	12.0%

Table 5

Number of Firearms Recorded in Gun Show Investigations

N=314

<u>Number of Firearms</u>	<u>Number of Investigations</u>	<u>Percent</u>
Less than 5	70	22.3%
5 - 10	37	11.8%
11 - 20	22	7.0%
21 - 50	47	15.0%
51 - 100	47	15.0%
101 - 250	31	9.9%
251 or greater	30	9.6%
Unknown	30	9.6%

For further details about this information, see the Methodology section of this report.

Table 6

New, Used, and Stolen Guns Known to be Involved in Gun Show Investigations

<u>Type of firearm</u>	<u>Number of Investigations</u>	<u>Percent</u>
Used firearms	167	53.2%
New firearms	156	49.7%
Stolen firearms	35	11.1%
Unknown	75	23.9%

Note: Since more than one type of firearm can be recovered in an investigation, an investigation can be included in more than one category

Mutually exclusive categories

New firearms and used firearms	80	25.5%
Used firearms only	62	19.7%
New firearms only	61	19.4%
Used firearms and stolen firearms	13	4.1%
New firearms, used firearms, and stolen firearms	12	3.8%
Stolen firearms only	7	2.2%
New firearms and stolen firearms	3	0.9%
Unknown	75	23.9%

Table 7

Violations in the Main Investigations

Note: Since an investigation may involve multiple violations, an investigation can be included in more than one category.

<u>Violation</u>	<u>Number of Investigations</u>	<u>Percent</u>
Engaging in the business of dealing without license	169	53.8%
Possession and receipt of firearm by convicted felon	76	24.2%
Illegal sales and/or possession of NFA weapons	62	19.7%
Licensee failure to keep required records	60	19.1%
Providing false information to receive firearms	54	17.2%
Transfer of firearm to prohibited person	46	14.6%
Straw purchasing	36	11.5%
False entries/fraudulent statements in licensee records	27	8.6%
Illegal transfer of firearms to resident of another State by nonlicensee	27	8.6%
Illegal transfer of firearms to resident of another State by licensee	21	6.7%
Receipt and sale of stolen firearms	15	5.8%
Obliterating firearms serial numbers	14	4.5%
Drug trafficking	11	3.5%
Trafficking of firearms by licensee (unspecified violation)	9	2.9%
Transfer of firearm in violation of 5-day waiting period	7	2.2%
Illegal out of state sales by nonlicensee	7	2.2%
Licensee doing business away from business premises	5	1.6%
Illegal manufacture and transfer of assault weapon	3	1.0%
Sales by a prohibited person	2	0.6%
Forgery or check fraud to obtain firearms	2	0.6%

Table 8

Weapons Associated with NFA Violations In Gun Show Investigations

N= 62

Note: Since investigations may involve different types of NFA violations, an investigation can be included in more than one category. However, "converted guns" have not been included in the "machinegun" count.

<u>NFA violation</u>	<u>Number of NFA investigations with at least one</u>	<u>Percent</u>
Machine guns	33	53.2%
Converted guns	19	30.6%
Silencers	9	14.5%
Explosives (e.g., grenades)	8	12.9%
Grenade launchers	7	11.3%
Conversion kits/ parts	7	11.3%
Other (short barrel)	5	8.1 %



Jeffrey A. Shesol
02/04/99 02:50:15 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Joshua S. Gottheimer/WHO/EOP, mawaldman @ aol.com @ inet

Subject: radio address on gun shows -- draft 2/4 2:30pm -- comments to Jeff Shesol 6-2796 by 5:30pm

Draft 02/04/99 2:30pm

Jeff Shesol

**PRESIDENT WILLIAM J. CLINTON
RADIO ADDRESS ON GUN SHOWS
THE WHITE HOUSE
February 6, 1999**

Good morning. Six years ago, I determined that Washington had to get off the sidelines and join the frontlines in the fight against crime. I committed my administration to recovering our streets from violence, to reclaiming our neighborhoods as safe havens for families. Since then, we have pursued a new strategy of law enforcement based not on tough talk but on tougher penalties, better prevention, and the substantial, visible presence of community police.

Our strategy is showing remarkable results. Since 1993, crime rates in America have fallen to the lowest point in a quarter century. Property crime is down; violent crime has dropped 20 percent in the last six years; and the murder rate is the lowest in 30 years. Americans can take pride in streets that are safer; but, mostly, they can take comfort in lives that are more secure.

There are many reasons that crime is on a sharp decline. Chief among them is our ability to keep guns out of the hands of criminals. Gun trafficking and gun-related crime are on the wane; and it is no wonder: according to a recent report by the Justice Department, the background checks we required in the Brady law have put a stop to [nearly a quarter million] handgun purchases. Thanks to Brady, we turn away [118] felons a day, sending them home empty-handed instead of well armed. And the Insta-Check system that took effect last November is allowing us to conduct even more checks -- in even less time.

Retail gun stores, sporting goods stores, licensed gun dealers -- they are all working to keep guns out of the hands of felons and fugitives. But there is a loophole in the law, and criminals know how to exploit it: They go to gun shows. Last year, there were more than 4,400 gun shows across America. I come from a state where these shows are very popular. I have visited and enjoyed them over the years. I know they are the first place where many parents teach their children how to handle firearms safely.

But at the same time, and at too many gun shows, criminals are buying guns with no questions asked. That's because the law permits some dealers -- one quarter to one half of the vendors at a typical gun show -- to skip the background checks required by Brady. That is a dangerous loophole. It is wide enough that criminals reach right through it, grabbing, collectively, thousands of firearms that disappear without a trace.

Last fall, I asked the Attorney General and the Secretary of the Treasury -- who join me here today -- to report on the problem and to come up with solutions. I now have their report. It is sensible -- and sobering. It shows conclusively that gun shows are a forum for gun traffickers -- a cash-and-carry convenience store for weapons used to maim and to kill.

We must close this loophole. America cannot allow its gun shows to become illegal arms bazaars, where law-breakers shop side-by-side with the law-abiding. That is why I strongly support the recommendations of Attorney General Reno and Secretary Rubin. We should extend Brady checks and gun tracing records to any and all open markets where large numbers of firearms are sold. And we should vigorously and fairly enforce the rules.

To toughen enforcement of the existing law, my balanced budget includes new funds to hire new agents of the Bureau of Alcohol, Tobacco and Firearms. These agents will help arrest violent criminals and gun traffickers, and will shut down illegal purchases of firearms. My budget also increases the funding for firearms prosecutions, and expands our successful efforts to keep guns out of the hands of violent youth. In these efforts, I am thankful for the leadership of Senator Lautenberg and Congressman Blagojevich [bla-GOYA-vitch], men of great dedication who also join me here today. They are working hard to make this the law of the land: No background check, no gun, no exceptions.

I look forward to working with members of both parties in the coming months. Together, we can strengthen the laws that serve us so well, and, in doing so, build a stronger America for the 21st Century. Thanks for listening.

Message Sent To:

Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Laura Emmett/WHO/EOP
Cathy R. Mays/OPD/EOP
Jose Cerda III/OPD/EOP
Leanne A. Shimabukuro/OPD/EOP
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Ann F. Lewis/WHO/EOP
Ruby Shamir/WHO/EOP
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Dominique L. Cano/WHO/EOP

**Gun Shows Radio Address
Questions and Answers
February 6, 1999**

Q: If there are over 4,000 gun shows each year, and only 314 ATF investigations in the last few years, are you overstating the gun show problem?

A: No, we are not. Today's report demonstrates that gun shows have provided a forum for illegal gun sales and firearms trafficking. The 314 gun show investigations reviewed in the report involved tens of thousands of firearms and led to very serious crimes, including homicide. Specifically, in just these 314 cases, we uncovered:

- more than 54,000 firearms of all sorts, with the largest case involving up to 10,000 firearms and a third of the cases involving at least 50 guns each;
- felons buying and selling firearms;
- guns bought and sold at gun shows being used in serious crimes;
- persons selling firearms without a license;
- gun dealers selling firearms "off the books" -- that is, without conducting a background check or keeping a record; and
- the transfer of firearms to juveniles, felons and other persons prohibited by law from buying a gun.

Q: Doesn't the report essentially recommend regulating every private and secondary sale of a firearm?

A: No, it does not. The report does recommend defining gun shows broadly and including any place -- such as a flea market -- where 50 or more guns are sold by at least 2 people, and this will cover many previously unregulated gun sales. But the report does not put any restrictions on the private sale of individual firearms by unlicensed persons, though it educates these gun owners about their responsibilities under the law.

Q: Instead of new legislation, why doesn't the Administration simply enforce existing laws more effectively?

A: Although we intend to enforce existing laws vigorously, and the President's FY 2000 budget includes nearly \$30 million in new funds for that purpose, current federal law only regulates federally licensed gun dealers (FFLs). Non-licensees and private collectors --

who are not formally engaged in the business of selling firearms -- are generally allowed to transfer firearms at a gun show without conducting a background check or keeping records. The legislative recommendations presented in today's report will close this loophole.

Q: Isn't this really a problem for the States? What are the States doing about gun shows?

A: Gun shows are a problem for the federal government and the states. More than half of the states impose no prohibition whatsoever on the private transfer of firearms among unlicensed persons and do not regulate the operation of gun shows. Other states only impose restrictions on the private sales or transfers of firearms similar to the federal law, such as prohibiting the transfer of firearms to felons, juveniles, the mentally disturbed, etc. Thus, today's recommendations will make a big difference in the many areas where there are currently almost no restrictions on the sale of firearms at gun shows.

Brady/NICS

Q: How many Brady background checks have been performed since the National Instant Criminal Background System (NICS) took effect on November 30, 1998?

A: Since its implementation on November 30, 1998, the NICS has handled over 1.5 million Brady background checks. Of these, about 790,000 of these were handled by the FBI and resulted in the denial of over 16,200 illegal gun sales to felons, fugitives, and other prohibited purchasers. The remaining 700,000 were processed by states that have agreed to serve as NICS points-of-contact. We do not, at this time, have information on the number of denials at the state level.

Crime - Brady -
gun shows

President Clinton: Closing the Loophole on Gun Shows February 6, 1999

Today, President Clinton will release a report from Treasury Secretary Rubin and Attorney General Reno, recommending actions the Administration can take to ensure that firearms sold at gun shows are not exempt from federal firearms laws, including the law requiring background checks. The President will accept their recommendations and also announce an increase of nearly \$30 million in his FY 2000 budget to increase investigations and prosecutions of gun law violations, including those occurring at gun shows.

Findings of the Report. In response to a directive by the President last November, the Treasury and Justice Departments reviewed 314 gun show-related investigations conducted by the Bureau of Alcohol, Tobacco, and Firearms (ATF), mostly between 1997 and 1998. The investigations involved more than 54,000 firearms and spanned a wide range of federal firearms violations. The review found the following:

Number of gun shows. In 1998, there were an estimated 4,442 gun shows. Most gun shows were sponsored by state and local firearms collectors organizations, though some shows were promoted by individual collectors and business people. Ten states sponsored the most gun shows: TX (472); PA (250); FL (224); IL (203); CA (188); IN (180); NC (170); OR (160); OH (148); and NV (129).

Typical gun show. The typical gun show costs about \$5 to attend and draws an average of between 2,500 and 5,000 people. Vendors rent tables for a fee ranging from \$5 to \$50, and the number of tables varies from as few as 50 to as many as 2,000. Federally-licensed firearms dealers (FFLs) make up about 50 to 75 percent of vendors, with unlicensed gun sellers representing the remaining 25 to 50 percent. Unlicensed gun sellers -- who are assumed to be selling from their personal collections -- are not required to conduct background checks or keep records of gun sales. Large quantities of firearms are also sold in less formal and smaller public markets, such as flea markets.

Guns sold. The firearms sold at gun shows include new and used handguns, semiautomatic assault weapons, shotguns, rifles, and curio and relic firearms (novel and older firearms). Additionally, vendors often sell large capacity magazines, machine gun parts, and a wide variety of other paraphernalia (knives, ammunition, military artifacts, and books).

Forum for illegal sales and trafficking. Gun shows provide a forum for illegal firearms sales and gun trafficking. Of the 314 gun show investigations reviewed, 46 percent involved the purchase or sale of firearms by felons, and 34 percent involved the sale of firearms later used in serious crimes, including homicides. Other gun law violations observed at gun shows included: the sale of firearms without a federal gun license (more than 50 percent of the cases reviewed); the sale of firearms "off the books" -- without conducting a background check or keeping a record (about 20 percent of cases); and the sale or transfer of machine guns in violation of federal law (20 percent of cases). More than a third of the investigations involved more than 50 firearms, and at least one investigation involved up to 10,000 firearms.

The Report's Recommendations. To close the gun-show loophole that allows countless firearms to be sold on a "no questions asked" basis, the President will endorse all of the report's recommendations and support legislation, to be introduced by Senator Frank Lautenberg and Representative Rod Blagojevich, that will make them the law of the land. These recommendations include:

(1) Requiring Brady background checks on all firearms transferred at gun shows, with the assistance of federally-licensed dealers. Currently, an estimated 25-50 percent of all firearms sold at gun shows are not subject to background checks, because they are sold by an unlicensed seller. The new legislation will require the participation of licensed dealers in all sales at gun shows, so that all sales will be subject to the Brady background check requirement.

(2) Requiring vendors to report information on firearms sold at gun shows to the ATF. Gun dealers would submit certain information (e.g., manufacturer, model, serial number) on firearms transferred at gun shows to ATF's National Tracing Center and maintain additional information on file to assist in future firearms tracing requests by law enforcement. These requirements would ensure that firearms sold at gun shows cannot (as they so often do now) disappear without a trace.

(3) Requiring gun show promoters to register with the ATF and notify it of all gun shows. Promoters would have to provide the time and location of gun shows and a list of vendors; provide vendors with information about their legal obligations; and require vendors to acknowledge receipt of this information.

(4) Defining gun shows broadly. These requirements would apply to any place where 50 or more firearms are offered for sale by at least two vendors.

(5) Increasing resources to combat the illegal trade of firearms at gun shows.

New Resources for Firearms Enforcement. Consistent with the report's findings and recommendations, the President's FY 2000 budget includes over \$28 million in new funds to enhance the enforcement of federal firearms laws, including:

\$23.8 million for more than 120 new ATF agents to support firearms investigations, arrest violent criminals and gun traffickers, and crack down on illegal gun sales.

\$5 million for more than 40 additional federal prosecutors to conduct intensive firearms prosecution projects targeting violent felons who possess guns, armed drug traffickers, and illegal gun markets.



Crime - Brady - gun shows

'99 FEB 5 PM 2:17

February 5, 1999

The President
The White House
Washington, DC 20500

Dear Mr. President:

Shortly before the Brady Act's national instant check system went into effect at the end of November 1998, you directed us to build on the Act's remarkable successes by recommending actions that the Administration could take to ensure that firearms sales at gun shows are not exempt from Brady background checks or other provisions of our Federal gun laws. Our report, "Gun Shows: Brady Checks and Crime Gun Traces," reflects a review of available data on the problem as well as possible solutions, and proposes a series of steps that are consistent with existing firearms regulations to close the gun show loophole.

More than 4,000 shows specializing in the sale of firearms are held annually in the United States. There are, in addition, countless other public markets, such as flea markets, where firearms are freely traded or sold. Under current law, many of the firearms at these public markets are sold anonymously; the seller has no idea-and is under no affirmative obligation to find out-whether he or she is selling a firearm to a felon or other prohibited person. Moreover, there is no way to trace many of the firearms sold at these public markets if they are later recovered at the scene of a crime.

While licensed firearms dealers are required to maintain careful records of their firearms sales and, under the Brady Act, to check the purchaser's background before transferring any firearm, nonlicensees have no such requirements under current law. Thus, felons-and other prohibited persons who want to avoid background checks-can buy firearms at gun shows and other public markets with ease, and later use the guns in drug crimes and crimes of violence, or pass them illegally to juveniles.

The recommendations in our report build both on the structure and effectiveness of the Brady Act as well as the work of the Bureau of Alcohol, Tobacco and Firearms, National Tracing Center. Since you signed it into law in 1994, the Brady Act has prevented well over 250, 000 prohibited persons (primarily convicted felons) from purchasing firearms from Federal firearms

The President

Page 2

licensees (FFLs). In recent weeks, under the new instant check system, the FBI has denied sales of over 12,000 firearms to prohibited persons; a number of these denials resulted in the apprehension of wanted criminals who were seeking to purchase guns.

After a careful study of the problem, we make the following recommendations, a number of which will require legislation:

First, "gun show" would be defined to include not only traditional gun shows but also many flea markets and other similar venues where firearms are sold.

Second, the Bureau of Alcohol, Tobacco and Firearms (ATF) would register all persons who promote gun shows. Promoters would be required to notify ATF of the time and location of each gun show, provide ATF with a list of vendors at the show, indicate whether the vendors are FFLs, ensure that all vendors are provided with information about their legal obligations, and require that vendors acknowledge receipt of information on these obligations. If a registered promoter fails to fulfill these obligations, ATF would consider revoking or suspending the promoter's registration or imposing a civil monetary penalty. Criminal penalties would also be available in certain circumstances.

Third, if any part of a firearms transaction, including display of the weapon, occurs at a gun show, the firearm could be transferred only by, or with the assistance of, an FFL. Therefore, if a nonlicensee sought to transfer a firearm, an FFL would be responsible for positively identifying the purchaser, conducting a Brady Act check on the purchaser, and maintaining a record of the transaction. This is the same system that has been used successfully for many years when someone wishes to transfer a firearm to a nonlicensee in another State. Any seller at a gun show - FFL or nonlicensee - would be subject to a felony charge for failing to comply with the Brady Act's background check requirements.

Fourth, FFLs would be responsible for submitting strictly limited information concerning all firearms transferred at gun shows (e.g., manufacturer/importer, model, and serial number) to ATF's National Tracing Center (NTC). No information about either the seller or the purchaser would be given to the Government (with the exception of instances in which multiple sales reports are required). Instead, the licensees would maintain this information in their files, as is done with all firearms sold by FFLs today. The NTC would request this information from an FFL only in the event that the firearm subsequently became the subject of a law enforcement trace request.

Fifth, the Department of the Treasury and the Department of Justice will review the definition of "engaged in the business" and make recommendations for legislative or regulatory changes to better identify and prosecute, in all appropriate circumstances, illegal traffickers in firearms and suppliers of guns to criminals.

The President
Page 3

Sixth, the Federal Government should commit additional resources to combat the illegal trade of firearms at gun shows. Without a commitment to financially support this initiative, the effectiveness of this proposal would be limited.

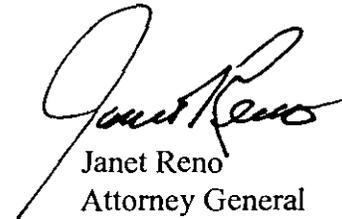
Seventh, in conjunction with the firearms industry, a campaign should be undertaken to encourage all firearms owners to take steps, when selling or otherwise disposing of their weapons, to ensure that they do not fall into the hands of criminals, unauthorized juveniles or other prohibited persons.

Taken together, our recommendations will close the gun show loophole. Whenever any part of a firearm transaction takes place at a gun show, the requirements of the Brady Act check will apply, and records will be kept to allow the firearm to be traced if it is later used in crime. If legitimate, unlicensed individuals wish to sell their personal collections of firearms at gun shows, they will now have the obligation-and the means-to ensure that they are not selling their guns to felons or other prohibited persons. Our recommended steps impose reasonable obligations in connection with firearms transactions at gun shows, while significantly enhancing law enforcement's ability both to prevent criminals from getting guns and to apprehend those who use firearms in the commission of crimes.

Respectfully,



Robert Rubin
Secretary of the Treasury



Janet Reno
Attorney General

I N T E R
O F F I C E

MEMO

To: JIM JOHNSON, LIS BRESEE, CLAIRE WELLINGTON, KAREN WEHNER,
DAVID MEDINA, SUSAN GINSBURG, TINO CUELLAR
From: DEBRA N. DIENER *DM*
Subject: ATF SUMMARY OF FOP V. UNITED STATES
Date: September 2, 1998

I have attached a copy of the ATF summary of the holding in this case. The memorandum also includes Chief Counsel's recommendation to the Director concerning the manner in which ATF should respond to inquiries concerning the effect of the decision (i.e., that the appeal process hasn't been exhausted; the Government is considering its options; and that the Gun Control Act remains in full force and effect --- that it was only the amendment to section 925(a)(1) which was held unconstitutional).

I will be forwarding an appeal recommendation in this case to Ed Knight and Neal Wolin very shortly and will simultaneously provide you with a copy of that memorandum. The Government's petition for rehearing with a suggestion for rehearing en banc will be due October 14th.

Attachment

cc: Dave Hamill

*ELENA -
FYI - THIS IS A RECENT
DECISION ON THE FOP'S
CHALLENGE TO THE LAURENBERG
PROVING BANNING DOMESTIC
ABUSERS (INCLUDING POLICE)
FROM OWNING HANDGUNS.
WE HAVE UNTIL 10/14
TO ~~DECIDE~~ FILE A BRIEF
ON THIS CONTROVERSIAL
MATTER.
Joe*



CHIEF
COUNSEL

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, DC 20226

SEP - 1 1998

CC-47,784 L:MMV

MEMORANDUM TO: Director

FROM: Chief Counsel

SUBJECT: Fraternal Order of Police v. United States,
No. 97-5304 (D.C. Cir. August 28, 1998)

This is to advise you of an adverse decision issued by the United States Court of Appeals for the District of Columbia Circuit in this action brought by the Fraternal Order of Police (FOP) challenging the Lautenberg Amendment. A copy of the Court of Appeals decision is attached.

As you know, the Gun Control Act (GCA) was amended in 1996 to make it unlawful for any person convicted of a misdemeanor crime of domestic violence to ship, transport, receive, or possess firearms in or affecting commerce. 18 U.S.C. § 922(g)(9). The prohibition applies across-the-board to all affected misdemeanants, including law enforcement officers and other government employees. See 18 U.S.C. § 925(a)(1). The FOP contended, among other claims, that the Lautenberg Amendment violated its member police officers' due process and equal protection rights and that the statute should be declared unconstitutional.

The Court of Appeals held that Congress' amendment to 18 U.S.C. § 925(a)(1)--the "public interest" exception to the GCA--violates the Equal Protection Clause since it prohibits the possession of firearms in an official capacity by police officers convicted of misdemeanor crimes of domestic violence, yet would allow police officers with felony convictions to continue to possess firearms in their official capacities. The Court concluded that there was no rational basis for imposing such a harsh result upon police officers with less culpable misdemeanor convictions.

Director

Thus, the Court struck down the Lautenberg Amendment insofar as it applies to the official possession of firearms by police officers with misdemeanor convictions.

We must emphasize that the Court of Appeals has not declared the entire statute unconstitutional, only the amendment to section 925(a)(1). Consequently, this decision does not affect the prohibition in section 922(g)(9) against the private or personal possession of a firearm by any person convicted of a misdemeanor crime of domestic violence.

Moreover, the D.C. Circuit's decision is not final until such time as the appeal process has been exhausted. The United States has until October 14, 1998 to file a petition for rehearing or a suggestion for rehearing en banc with the D.C. Circuit. This office is working with the Department of Justice and the Department of the Treasury to determine an appropriate course of action.

In response to inquiries concerning this matter, ATF should advise that (1) the appeal process has not yet been exhausted; (2) the United States is considering its options; and (3) the statute remains in full force and effect. Any further questions concerning the application of the D.C. Circuit's decision in a particular case should be referred to ATF counsel.



Stephen J. McHale

Attachment

cc: Assistant Director (Field Operations)
Assistant Director (Firearms, Explosives and Arson)
Assistant Director (Liaison and Public Information)
Assistant Director (Office of Inspection)
Executive Assistant Legislative Affairs
Acting Assistant General Counsel (Enforcement)
Assistant Chief Counsels and Field Division Counsels

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued May 15, 1998 Decided August 28, 1998

No. 97-5304

Fraternal Order of Police, Appellant

v.

United States of America, Appellee

Appeal from the United States District Court
for the District of Columbia

(No. 97cv00145)

William J. Friedman, IV argued the cause and filed the briefs for appellant.

Robert M. Loeb, Attorney, U.S. Department of Justice, argued the cause for appellee. With him on the brief were Frank W. Hunger, Assistant Attorney General, Wilma A. Lewis, U.S. Attorney, and Mark B. Stern, Attorney, U.S. Department of Justice.

Before: Williams, Ginsburg and Randolph, Circuit Judges.

Opinion for the Court filed by Circuit Judge Williams.

Williams, Circuit Judge: The Fraternal Order of Police, an association of law enforcement officers, brought suit challenging certain provisions of the 1996 amendments to the Gun Control Act of 1968, 18 U.S.C. § 921 et seq. The Order alleged that these provisions exceeded Congress's power under the Commerce Clause, and also that they ran afoul of the Second, Fifth, and Tenth Amendments. The district court granted summary judgment for the government. Finding that the Order has standing to raise its claim under the equal protection component of Fifth Amendment due process, see *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954), and finding merit in that claim, we reverse.

* * *

As relevant here, the essence of the 1996 amendments was to (1) extend a pre-existing criminalization of firearms possession by persons convicted of domestic violence felonies to persons convicted of domestic violence misdemeanors; and (2) to withhold from the misdemeanants--but not the felons--an exception for firearms issued for the use of any state or locality (the so-called "public interest exception"). The Gun Control Act, now as before, also applies to anyone who supplies a person with a firearm in the face of this and related

proscriptions.

The amendments bringing about this change are as follows:

Section 922(d)(9) of Title 18 makes it illegal to provide a firearm to any person "convicted in any court of a misdemeanor crime of domestic violence"; § 922(g)(9) prohibits such misdemeanants from possessing or receiving firearms. Section 922(g)(9) limits its scope to possession in or affecting interstate commerce, or firearms transported in interstate commerce; § 922(d)(9) contains no similar limitation. Relief from the disability thus imposed is governed in part by § 925(a)(1), which provides that the prohibitions of § 922 generally do not apply to firearms issued for the use of "any State or any department, agency, or political subdivision thereof." Section 925(a)(1) explicitly excludes §§922(d)(9) and 922(g)(9) from this public interest exception.

Sections 922(d)(9) and (g)(9) thus forbid the states to arm those members of their police forces, militias, or National Guards who possess disabling misdemeanor convictions; they criminalize both the officers' acceptance of the states' firearms and the provision of the firearms by any person, including (presumably) any state's representative. The disability operates regardless of the date of the conviction. So the new bans can be expected to affect a significant number of current police officers. The Joint Appendix contains several newspaper articles recounting instances in which officers were required to turn in their guns, and it was in view of this prospect--though not solely on behalf of members directly threatened with the firearm disability--that the Order brought suit.

* * *

The threshold question on appeal is whether the Order has standing to pursue its claims. We find it necessary to address only the standing claim based on the interests of members who are chief law enforcement officers ("CLEOs"). Although the Order's briefs make vague allusions to some legal theories that would entail broader relief than is suitable for the Equal Protection claim brought by the Order on behalf of the CLEOs, they fail to develop such theories. So there is no need to assess the standing possibly underlying such inchoate claims.

For a party to establish the sort of "case" or "controversy" over which Article III creates federal jurisdiction, it must satisfy the now familiar tripartite requirements of "(1) an injury in fact, (2) a causal relationship between the injury and the challenged conduct, and (3) a likelihood that the injury will be redressed by a favorable decision." *United Food and Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 551 (1996). An association such as the Order, which alleges no injury to itself as an organization, may, according to *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977), sue on behalf of its members if it can show that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Id.* at 343. The first of these elements ensures the presence of a case or controversy and is constitutional in nature. See *Warth v. Seldin*, 422 U.S. 490, 511 (1975). It is the only one the government contests and the only one with respect to which we can see any difficulty.

Several CLEOs allege that enforcement of the 1996 amendments conflicts with their obligations under state law. Although there is no indication that this is true in the hard core sense of federal law requiring any CLEO to do something state law forbids (or vice versa), it seems true in the broader practical sense that if a CLEO complies with the domestic violence misdemeanor provisions, he will find himself, in any enforcement activity requiring firearms, unable to use officers who fall under the federal ban, even where in his judgment it is highly desirable or even critical to use such officers. The government presents no reason to think that this interference should not qualify as an Article III injury, and we can see none.

There remains the issue of whether the CLEOs would have "prudential standing," i.e., whether the interests they seek to advance are "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Ass'n of Data Processing Service Orgs. v. Camp*, 397 U.S. 150, 153 (1970).¹ As to the equal protection

¹ Whether a prudential defect in a member's standing translates to a constitutional defect in the association's is a nice question. Superficially, one might conclude that it would, since the cases treat the first element of the Washington Apple test as (entirely) constitutional. See, e.g., *United Food and Commercial Workers*, 517 U.S. at 554-55. But since this constitutional character stems from the case or controversy requirement, see *id.*, and prudential defects

claim (the only claim it is necessary to reach), of course, the CLEOs are not members of the class that the statute is said to illegally disadvantage--law officers convicted of domestic violence misdemeanors, who are barred from the benefits of the public interest exception (as opposed to law officers convicted of domestic violence felonies, who are not). But where a person is effectively used by the government to implement a discriminatory scheme, he may, as we held in *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344, 350 (D.C. Cir. 1998), "attack that scheme by raising a third party's constitutional rights." There we followed *Barrows v. Jackson*, 346 U.S. 249, 259 (1953), which allowed a white homeowner to invoke the equal protection rights of non-Caucasian third parties in resisting the petitioner's effort to enforce a racially restrictive covenant, and *Craig v. Boren*, 429 U.S. 190, 194-97 (1976), which allowed a licensed beer vendor to invoke the equal protection claims of males aged 18 to 21 who were barred from beer purchase by a statute that allowed purchases by females of that age.

Although neither *Barrows* nor *Craig* is crystal clear as to just when a person whose injury qualifies under Article III may invoke the interests of a third party, the Court in *Craig* seemed to embrace the proposition asserted in a student law review note, namely, that he should be able to assert those third-party rights that would be infringed by his compliance. See 429 U.S. at 195, citing Note, *Standing to Assert Constitutional Jus Tertii*, 88 Harv. L. Rev. 423, 432 (1974). As any CLEO who gave a firearm to a law enforcement officer who had been convicted of a domestic violence misdemeanor would be liable himself under §922(d)(9), his compliance (i.e., not supplying the officer with the gun) would indeed defeat the right-holder's interest. Thus CLEOs have standing to assert the equal protection rights of police officers--members or

not--threatened with deprivation of their firearms; the pres-

[footnote continued]

do not affect the existence of a case or controversy, it seems more likely that a member's lack of prudential standing translates to a similar prudential failing for the association.

ence of CLEOs as members gives the Order standing to makes these claims as well.

* * *

Equal protection analysis is substantially identical under the Fifth Amendment and the Fourteenth. See *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). Usually the outcome turns largely on the level of scrutiny to be applied. If a law neither burdens a fundamental right nor targets a suspect class, courts must uphold the legislative classification so long as it bears a rational relation to some legitimate end. See, e.g., *Heller v. Doe*, 509 U.S. 312, 319 (1993). Laws that fall into either of the above categories, however, are subjected to strict scrutiny. See, e.g., *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439-40 (1985) (discussing tiers of scrutiny). The Order concedes that persons convicted of domestic violence misdemeanors are not a suspect class but asserts that the 1996 amendments impinge on a fundamental right--the right to bear arms guaranteed by the Second Amendment. The government responds that the Second Amendment right does not belong to individuals, but exists only in relation to "the preservation or efficiency of a well regulated militia," *United States v. Miller*, 307 U.S. 174, 178 (1939), and that the 1996 amendments do not restrict state militias.

Analysis of the character of the Second Amendment right has recently burgeoned. See, e.g., Akhil Reed Amar, *The Bill of Rights 257-67* (1998); David C. Williams, *Civic Republicanism and the Citizen Militia: The Terrifying Second Amendment*, 101 *Yale L.J.* 551, 572-86 (1991); compare *Hickman v. Block*, 81 F.3d 98, 101-03 (9th Cir. 1996), with *United States v. Gomez*, 92 F.3d 770, 774 n.7 (9th Cir. 1996). Despite the intriguing questions raised, we will not attempt to resolve the status of the Second Amendment right, for we find that the 1996 amendments fall into the narrow class of provisions that fail even the most permissive, "rational basis," review. See, e.g., *City of Cleburne*, 473 U.S. 432.

Section 925 extends the "public interest" exception to all sources of the firearm disability except domestic violence misdemeanors. It thus allows the states to arm police officers convicted of violent felonies, and even crimes of domestic violence so long as those crimes are felonies, while withholding this privilege with respect to domestic violence misdemeanors. No reason is offered for imposing the heavier disability on the lighter offense. The government's brief argues that a special focus on domestic violence as compared to other misdemeanors is rational, and we agree. The defect is the neglect of more severe crimes of domestic violence, about which the government says nothing.

A conceivable justification comes to mind. As a law survives rational basis review if it is rational under any "reasonably conceivable state of facts," *Heller v. Doe*, 509 U.S. 312, 320

(1993) (citation omitted), we address this despite the government's having failed to mention it. Most states appear to bar convicted felons from possessing guns. See, e.g., Cal. Penal Code § 12021(a)(1) (felon's possession of firearm is felony); North Carolina Stat. § 14-415.1 (same); Oklahoma Stat. Title 21 § 1283 (same); Rhode Island Gen. Laws § 11-47-5 (same); Texas Penal Code § 46.04 (same); Wisconsin Stat. § 941.29 (same); Wyoming Stat. § 6-8-102 (same). Few--perhaps only New York--provide any public interest exception. See N.Y. Penal L. § 265.20 (exempting New York military, police officers, and peace officers). The government might therefore argue that federal law has stepped in merely to fill a practical gap: concluding that all persons guilty of domestic violence should be barred from possession of firearms, without regard to public interest, but noting that the states have satisfactorily addressed the issue except for the misdemeanor offender, Congress has taken care of this neglected problem. But this analysis would allow a rougher notion of justice than even "rational basis" review allows.

The problem is that the states' laws are neither sufficiently consistent, nor sufficiently severe, to make this a rational approach. New Hampshire, for example, requires three felonies for the prohibition to attach. See N.H. Stat. Title XII § 159:3-a. Vermont does not prohibit gun possession by felons who are convicted but never incarcerated. *McGrath v. United States*, 60 F.3d 1005, 1007 (2d Cir. 1995). As we have noted, at least New York seems to offer a public interest exception. And while the laws of most states do bar felons from possessing firearms even in the public interest, many states have disabilities of limited duration, and the duration varies from state to state. See, e.g., Maine Rev. Stat. Title 15 § 393 (application for permit allowed after five years); North Dakota Stat. § 62.1-02-01 (ten years); South Dakota Stat. § 22-14-15 (fifteen years). Once these periods have expired, firearm rights are restored. The resulting anomalies flow well beyond those normally arising from federalism. The worse offenders may enjoy some restoration of lost rights under state law, while the lesser face an implacable bar.

The government notes, following up its point that Congress may distinguish between crimes of domestic and violence and other crimes, that a legislature does not violate the equal protection clause merely because it approaches an issue "one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489 (1955). But this aspect of equal protection law is of little help for Congress's decision to impose a more severe regime on domestic violence misdemeanants than on domestic violence felons. Whatever precise elements may influence a state's classification of offenses between those two categories, what is uniform and undisputed is that the presence of some aggravating circumstance (or perhaps the absence of a mitigating one) is necessary to establish a felony. Of course Congress may take "one step at a time." But here, while incorporating state law (and judgments thereunder) into its scheme, it has stepped most harshly on those persons the states have systematically deemed less culpable.

We note, finally, that the treatment of domestic violence misdemeanants intersects with certain anomalies in Congress's provision for deferring to state law on restoration of civil rights. For the purposes of the firearm disability generally, 18 U.S.C. § 921(a)(20) provides that convictions for which civil rights have been restored do not trigger the disability. See *United States v. Bost*, 87

F.3d 1333, 1335 (D.C. Cir. 1996) (discussing state restoration of rights). An equivalent provision, § 921(a)(33)(B)(ii), allows state restoration of civil rights to lift the federal disability from domestic violence misdemeanants. But few states (if any) deprive such misdemeanants of civil rights. With no deprivation, there can be no "restoration" in the ordinary sense of the term. See McGrath, 60 F.3d at 1007-10 (holding that felon whose civil rights were not revoked could not argue that they had been restored). Thus the plain text of the statute seems to put misdemeanants who have never lost their rights in a worse situation than felons whose rights are restored, often by automatic operation of state law. See, e.g., *United States v. Caron*, 77 F.3d 1, 2-4 (1st Cir. 1996) (holding that individual-ized restoration of civil rights is not required to lift firearm disability).

This anomalous consequence of the "civil rights restored" provision is not confined to domestic violence misdemeanors. Any conviction that triggers the disability but does not deprive the convict of civil rights will produce a similar result. Thus misdemeanors carrying a sentence of more than two years (which count as qualifying convictions under § 921(a)(20)), or felonies not accompanied by revocation of civil rights, will also activate the federal disability with no prospect of relief via restoration of civil rights.

The First Circuit has responded to this discrepancy by holding that the "civil rights restored" provision of § 921(a)(20) protects those who have never been deprived of civil rights. See *United States v. Indelicato*, 97 F.3d 627, 630-31 (1st Cir. 1996). That case involved a person convicted of a misdemeanor for which state law provided a maximum term of two and a half years, i.e., a felony for purposes of § 921(a)(20). But its reasoning applies to § 921(a)(33)(B)(ii) equally, and in that context cuts much more deeply. So far as we know, no state responds to a domestic violence misdemeanor conviction by revoking the right to vote, hold office, or serve on a jury. (These are the civil rights on which the statute focuses. See *Bost*, 87 F.3d at 1335.) If failure to revoke is treated as restoration, then §§ 922(g)(9) and (d)(9) become entirely without effect: no conviction for a domestic violence misdemeanor would trigger the federal disability, since no such misdemeanor would qualify under § 921(a)(33). On the other hand, if the absence of any initial deprivation renders the restoration provisions inapplicable, then § 921(a)(33)(B)(ii), expressly inserted to provide for restoration in the case of domestic violence misdemeanors, is itself without effect. Because we find §§ 922(g)(9) and (d)(9) in violation of equal protection requirements independently, we need not address the interpretive and other issues posed by the "restoration" provisions.

* * *

This brings us to the question of remedy. The Order makes various alternative requests, one of which is that we hold § 925 inoperative. Section 928 of the Gun Control Act explicitly provides that the invalidation of one provision shall not affect the remainder of the Act. We think the most appropriate remedy is consequently to hold that § 925 is unconstitutional insofar as it purports to withhold the public interest exception from those convicted of domestic violence misdemeanors. The government may not bar such people from possessing firearms in the public interest while it imposes a lesser restriction on those convicted of crimes that differ only in being more serious. Of course we do not decide whether a broader revocation of the public interest

exception--for example, from all those convicted of any crime of domestic violence--would be constitutional.

So ordered.

Crime - Brady law - domestic
violence issue



Jose Cerda III

06/30/97 04:54:50 PM

Record Type: Non-Record

To: Bruce N. Reed/OPD/EOP
cc: Elena Kagan/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP
bcc:
Subject: Re: brady/usa today 

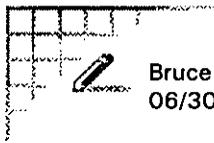
Bruce:

I saw the article. I suspect this is campaigning for the national FOP election in August. The current Pres. -- Gil Gallegos, who's been a BC supporter -- needs to show he's working for the membership on bread and butter, rank-and-file cop issues. Perhaps the most positive thing we can do to get FOP off of this and other problematic issues, is to resolve the SS collective bargaining issue.

Also, I'll get a copy of their brief, but I'm not sure the domestic abuse ban is any more (in fact, probably less) vulnerable than the other parts of Brady. Unless I'm mistaken, it amends the '68 Gun Act by adding another prohibited category of gun purchasers -- not the waiting period or background check provisions of the law.

CoP hAcK oNe

Bruce N. Reed



Bruce N. Reed
06/30/97 03:18:43 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Jose Cerda III/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP
cc:
Subject: brady/usa today

The cops are saying the Brady decision will lead courts to shut down the ban on gun purchases by domestic abusers (which they never liked anyway). See today's USA Today