



Violence Policy Center

1140 19th Street, NW
Suite 600
Washington, DC 20036

202.822.8200 voice
202.822.8205 fax
www.vpc.org web

GUN INDUSTRY TRADE ASSOCIATION RESORTS TO DECEIT AFTER CBS NEWS *60 MINUTES* DOCUMENTS DANGER OF FIFTY CALIBER ANTI-ARMOR RIFLES

National Shooting Sports Foundation Seeks to Fend Off Oversight Of Ideal Terror Tool By Lying About Federal Records of Firearms Sales

Stung by a CBS News *60 Minutes* documentary that reported the looming danger of terrorist use of powerful 50 caliber anti-armor sniper rifles that are freely sold to civilians, the National Shooting Sports Foundation (NSSF), a gun industry trade association, has posted an egregiously dishonest misrepresentation regarding the lack of federal records kept on the sale of such firearms.

The *60 Minutes* report on January 9, 2005, accurately reported that no one in the federal government—much less the federal anti-terrorism establishment—knows who has these powerful long range anti-materiel sniping rifles.¹ The 50 caliber anti-armor rifle can blast through armor, set bulk fuel stores on fire, breach chemical storage tanks, shoot down helicopters in flight, and destroy fully-loaded jet airliners on the ground—all from more than a mile away.

The NSSF, desperate to fend off a growing state-led grassroots movement to regulate these weapons of war in the wake of indifference by the Bush administration and inaction by the majority leadership of the U.S. Congress, has taken out of context four words spoken by Violence Policy Center (VPC) Senior Policy Analyst Tom Diaz, and attempted by innuendo, half-truth, and outright lie to twist them into a “boldly false assertion.” This desperate smear withers under close examination.

In the passage NSSF seeks to distort, *60 Minutes* first correctly notes that the VPC’s objective, as articulated by Diaz, is to bring the anti-armor rifles under the existing federal National Firearms Act, under which similar weapons of war—such as machine guns, rockets, and grenades—are individually registered and all transfers recorded by the federal government. Diaz is then quoted as saying, “The real question here is we do not know who has these terribly destructive rifles. No one in the United States government knows who has these guns.”²

60 Minutes’ Ed Bradley then asks Diaz, “Aren’t records kept when a gun is sold?” Diaz replies, “The answer is no.” The report then points out that at the request of former Attorney General John Ashcroft, Congress reduced—from 90 days to 24 hours—the period of time under which records are kept of the so-called Brady check made by federal gun dealers.³ The program did not add that Ashcroft barred

use of the records by the FBI and other law enforcement agencies to screen sales to suspected terrorists—notwithstanding that several “hits” linking sales to terror suspects had been made before his ruling.⁴

NSSF claims, in a virtual torrent of innuendo, that Diaz’s answer was a “boldly false assertion.” To support its claim it offers the fact that individual licensed federal firearms dealers keep in their files a piece of paper (known as a Form 4473) for each sale. It then lies by making the demonstrably false statement that “law enforcement routinely tracks gun ownership” through this system of records.⁵

The millions of individual pieces of paper—of which an unknown number reflect 50 caliber sales—tucked away in the drawers and cabinets of tens of thousands of separate gun shops across the country do not make a “record” of who owns these anti-armor sniper rifles. As NSSF must surely know, law enforcement agencies do not “routinely track gun ownership” through these forms. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) agents use these records only as a means of tracing *specific* firearms involved in *specific* crimes from the point of manufacturer or import through their sale by a federally licensed dealer. In order to create a federal record of the sales of 50 caliber anti-armor sniper rifles, the ATF would have to send an agent to every single gun dealer in the gun country and make a copy of each Form 4473 relating to sale of such rifles. But, as NSSF knows, the agency is specifically forbidden by law from centralizing or compiling any such central register of gun ownership, like that which is kept under the National Firearms Act for machine guns and other weapons of war. The Form 4473 is an invisible document except in the limited case when it is pulled out of the dealer’s files in the course of an investigation of a crime involving the specific gun to which it relates.

Finally, as the NSSF must also know, no federal record is required to be kept of sales of firearms through private hands—even though these represent 30 to 40 percent of the annual market in civilian gun sales in the United States.⁶

In short, no government record is kept of the sale of 50 caliber anti-armor rifles. No one knows who owns or possesses thousands of these powerful threats to national security.

Here is a *complete* description of the system of records embodied in the Form 4473 and of ATF’s meager oversight:

- Federal law requires that federally licensed firearms dealers have purchasers fill out a Form 4473. This paper form is used to conduct the Brady background check. However, federal law explicitly states that such forms are to be retained by the dealer. No copy goes to the federal

government, except under very limited circumstances:

“Each licensed importer, licensed manufacturer, and licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may by regulations prescribe. Such importers, manufacturers, and dealers shall not be required to submit to the Attorney General reports and information with respect to such records and the contents thereof, except as expressly required by this section....” (Title 18 United States Code section 923(g)(1)(A)).

- Dealers by law may not be required to submit records to the U.S. Department of Justice (DOJ) except in the limited instances where a firearms business is discontinued, the Attorney General requests specific information related to a crime gun trace, when dealers report the sale of two or more handguns within five consecutive business days, or in very special circumstances where a dealer is identified as “uncooperative” and is therefore subject to a demand letter program in which they are required to submit Form 4473s to ATF. However, according to a July 2004 report by the DOJ Inspector General, as of April 2004, no federal firearms license holders were designated as “uncooperative.”⁷
- Moreover, federal law explicitly prohibits the federal government from compiling and maintaining centralized records of gun sales. Thus, 18 United States Code section 926 states:

“(a) The Attorney General may prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter, including—(1) regulations providing that a person licensed under this chapter, when dealing with another person so licensed, shall provide such other licensed person a certified copy of this license; (2) regulations providing for the issuance, at a reasonable cost, to a person licensed under this chapter, of certified copies of his license for use as provided under regulations issued under paragraph (1) of this subsection; and (3) regulations providing for effective receipt and secure

storage of firearms relinquished by or seized from persons described in subsection (d)(8) or (g)(8) of section 922. **No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established [bold added].** Nothing in this section expands or restricts the Attorney General's authority to inquire into the disposition of any firearm in the course of a criminal investigation."

- This provision is reinforced by a "rider" in ATF's annual appropriations bill (most recently enacted for fiscal year 2005 in H.R. 2673, the omnibus appropriations legislation) that reads:

"Provided, That no funds appropriated herein shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees."

- Finally, according to a July 2004 report by the DOJ Inspector General, in FY 2002 ATF conducted routine inspections of only about 4.5 percent of the nation's approximately 104,000 federally licensed firearms dealers. "At that rate, it would take the ATF more than 22 years to inspect all FFLs," observed the Inspector General.⁸

In short, not only is there no federal record of who is buying the thousands of powerful, long-range, 50 caliber anti-armor rifles sold on the U.S. civilian market every year, the dealers who sell them are subject to virtually no oversight.

ENDNOTES

1. "The Big Gun; Controversy over the .50-caliber rifle," CBS News Transcripts: 60 Minutes, January 9, 2005.
2. Quotes throughout from "The Big Gun; Controversy over the .50-caliber rifle," CBS News Transcripts: 60 Minutes, January 9, 2005.
3. For background on the reduction in the time period and the Attorney General's role, see "Tiahrt provision requires destruction of gun purchase records," The Associated Press State & Local Wire, January 26, 2004; "Bill limits gun-buyer database; Requires destruction of all records after 24 hours," *The Washington Times*, December 31, 2003; "Ashcroft defends proposal to destroy gun records immediately," The Associated Press, July 25, 2002; "Appendix I: Retention of National Instant Criminal Background Check Records," in U.S. General Accounting Office, *Gun Control: Potential Effects of Next-Day Destruction of NICS Background Check Records*, July 2002.
4. See, "Ashcroft defends proposal to destroy gun records immediately," The Associated Press, July 25, 2002; "Ashcroft Blocks FBI Access to Gun Records," *The Washington Post* (December 7, 2001); "Justice Department Bars Use of Gun Checks in Terror Inquiry," *The New York Times* (December 6, 2001).
5. Quotes attributed to NSSF throughout are from "Major Errors in 60 Minutes Reporting," National Shooting Sports Foundation, *Bullet Points* (Vol. 6, No. 2, January 10, 2005), downloaded February 1, 2005 from http://www.tsra.com/BP01_10.htm.
6. Philip J. Cook and Jens Ludwig, *Guns in America: Results of a Comprehensive National Survey on Firearms Ownership and Use* (Washington, DC: Police Foundation, 1996), 27.
7. *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* (Washington, DC: U.S. Department of Justice, Office of the Inspector General, July 2004), 10.
8. *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* (Washington, DC: U.S. Department of Justice, Office of the Inspector General, July 2004), iii.