

GUN SHOWS IN AMERICA

Tupperware® Parties for Criminals

VIOLENCE POLICY CENTER
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Gun Shows in America: Tupperware® Parties for Criminals

*The First in a Series of Studies Examining the Effects
of the 1986 "Firearms Owners' Protection Act"*

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The Violence Policy Center is a national non-profit educational foundation that conducts research on violence in America and works to develop violence-reduction policies and proposals. The Center examines the role of firearms in America, conducts research on firearms violence, and explores new ways to decrease firearm-related death and injury.

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Past studies released by the Center include: June 1996's *NRA Family Values: The Extremism, Racism, Sexism, Legal Woes, and Gun Industry Ties of the National Rifle Association's Board of Directors*; April 1996's *The NRA After Oklahoma: A Year Older, Not Wiser*; March 1996's *Lawyers, Guns, and Money: The Impact of Tort Restrictions on Firearms Safety and Gun Control*; December 1995's *Firearms Production in America*; November 1995's *Concealed Carry: The Criminal's Companion*; December 1994's *Use the Schools: How Federal Tax Dollars are Spent to Market Guns to Kids and Female Persuasion: A Study of How the Firearms Industry Markets to Women and the Reality of Women and Guns*; February 1994's *Cease Fire: A Comprehensive Strategy to Reduce Firearms Violence*; and, December 1992's *More Gun Dealers Than Gas Stations: A Study of Federally Licensed Firearms Dealers in America*.

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This study was funded by grants from The Aaron Diamond Foundation, The Joyce Foundation, and The John D. and Catherine T. MacArthur Foundation.

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ISBN: 0-927291-08-8

McClure-Volkmer is a bad, dangerous, unconscionable, anti-police bill. It will increase the number of guns on the street, as well as increase the chances of cops—and citizens—getting killed. It's mainly a gun dealers' bill. And that's wrong.

Baltimore County Police Chief Cornelius Behan, February 1986

This is a gun show calendar, and to show you the problem that we have, not just in Maryland but in the United States, here is an example of Sooner Gun Shows, the Grand National Gun and Knife Show, on August 21 and 22, 1993, 2,200 tables at \$40 each. Now who is going to regulate that? I think that identifies the problem for you. What law enforcement agency is going to control 2,200 tables? So it is going on, and we need to resolve it.

Maryland State Police Sergeant Bernard Shaw, June 1993

Gun shows provide a natural recruiting environment. Many more are being held now than ever before, and many more people are attending them.

Turner Diaries author William Pierce, February 1994

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Introduction

The 1980s were the glory days of the National Rifle Association of America (NRA). The organization's golden era began in 1980 with the election of NRA Life Member Ronald Reagan as president. Reagan's victory was described by the *New York Times* as "one of the darkest hours for handgun control advocates." In Congress, after two decades of fighting—and often losing—a defensive battle over gun control,¹ the NRA was prepared to launch its first offensive effort in decades. And although gun control took a back seat to economic issues in 1981, the *Times* warned, "The New Right and its Congressional allies...will be demanding action [in 1982] on their priorities—including gun control."

And they got it. The NRA unveiled legislation that was nothing less than a pro-gun wish list: the "Firearms Owners' Protection Act." Commonly known as "McClure-Volkmer" for its congressional sponsors, then-Senator James McClure (R-ID) and Representative Harold Volkmer (D-MO), it was designed to roll back broad sections of the Gun Control Act of 1968 (GCA).² Early versions even removed restrictions on the mail-order sale of firearms. (Throughout this study the bill and law will be referred to as McClure-Volkmer.)

NRA direct mail heralded the bill as legislation "every American gun owner and hunter need [sic] passed into law." According to Congressman Volkmer, the importance of the bill to gun owners was surpassed only by the Second Amendment itself.³ The bill, said Volkmer, would:

¹ In 1968, Congress passed the Gun Control Act of 1968. In 1972, the U.S. Senate passed a bill that would have banned the domestic production and sale of Saturday Night Special handguns, inexpensive, poorly constructed pistols and revolvers lacking sporting purpose, but no action was taken in the House of Representatives.

² The Gun Control Act of 1968 is the primary federal law governing the manufacture, distribution, and sale of firearms and ammunition. The GCA generally prohibited the mail order and interstate sale of firearms, established standards for the licensing of firearm manufacturers, importers, and dealers, and banned the importation of both surplus military firearms and Saturday Night Special handguns.

³ Contrary to the assertions of Representative Volkmer and the NRA, the Second Amendment of the U.S. Constitution does not guarantee an individual right to keep and bear arms. No gun control law has ever been struck down as violative of the Second Amendment and the Supreme Court has ruled that restrictions on gun possession do not infringe on any fundamental right. Most recently, in 1996 the U.S. Court of Appeals for the Ninth Circuit held that an individual had no standing to raise a Second Amendment claim. The court held, "Because the Second Amendment guarantees the right of the states to maintain armed militia, the states alone stand in the position to show legal injury when this right is infringed." *Hickman v. Block*, No. 94-55836 (9th Cir. 1996).

protect you, the honest citizen, who might not know every single line and provision of the 23 pages of the Gun Control Act, the 20,000 firearms laws already on the books and thousands of pages of gun regulations. With the...bill as law, we will have taken away from the government bureaucrats the opportunity to punish, harass and entrap America's law-abiding firearms owners.⁴

The NRA and the bill's supporters portrayed McClure-Volkmer as a gun owners' relief act. In reality, the bill did much more to advance the interests of gun *sellers*—both Federal Firearms License (FFL)⁵ holders and unlicensed individuals—than those of the average gun owner.

After a long, bitter debate that pitted the NRA and the firearms industry against gun control advocates and national police organizations, McClure-Volkmer passed both houses of Congress and was signed into law by President Reagan on May 19, 1986. McClure-Volkmer—

- o Allowed Federal Firearms License holders to sell guns at gun shows located in their home state.
- o Allowed individuals not federally licensed as gun dealers to sell their personal firearms as a "hobby."
- o Restricted the ability of the Bureau of Alcohol, Tobacco and Firearms (ATF) to conduct inspections of the business premises of federally licensed firearms dealers.
- o Reduced the recordkeeping required of federally licensed firearms dealers, specifically eliminating recordkeeping of ammunition sales.
- o Raised the burden of proof for violations of federal gun laws.
- o Expanded a federal program that restored the ability of convicted felons to possess firearms.

⁴ NRA direct mail, October 18, 1985.

⁵ The Type 1 Federal Firearms License (FFL) is the basic license required to sell firearms in America and is issued by the federal Bureau of Alcohol, Tobacco and Firearms. FFL holders can ship and receive firearms and ammunition in interstate commerce via common carrier in quantity at wholesale prices. Most FFL activity can be conducted free of local and state regulations that apply to individual purchasers, e.g. waiting periods or background checks for handgun purchases.

Despite the controversy generated by McClure-Volkmer, little attention has been paid to its effect in the 10 years since the law's enactment. This study is the first in a series in which the Violence Policy Center (VPC) will analyze the real-world impact of the NRA's McClure-Volkmer legislation and gauge the law's effect on public safety.

One legacy of McClure-Volkmer is the uncontrolled proliferation of gun shows—events at which private citizens and federally licensed gun dealers congregate to buy and sell firearms and related paraphernalia. Although the federal Bureau of Alcohol, Tobacco and Firearms maintains no historical records as to the number of gun shows that occur annually and can only offer rough estimates as to the number that occur today, for this study the Violence Policy Center conducted interviews across the country with law enforcement personnel and gun show organizers to gauge the effect of the law on the volume of gun shows. The VPC's research reveals that the law has resulted in a dramatic increase in the number and size of shows, which occur in auditoriums, fairgrounds, and other outlets in almost every state on virtually every weekend of the year.⁶ The VPC's research also reveals that this dramatic increase is due largely to two little-noticed changes McClure-Volkmer made in the way that federally licensed firearms dealers are regulated—

- o The law made it legal for Federal Firearms License holders to sell at gun shows.
- o The law expanded the opportunities for private citizens to buy and sell firearms at gun shows by raising the threshold of what constituted being "engaged in the business" of selling firearms.

The result is a readily available source of weapons and ammunition for a wide variety of criminals—including street gangs, white supremacists, would-be presidential assassins, and domestic terrorists. This study has seven sections.

Section One: The History of McClure-Volkmer details the events leading to the passage of the McClure-Volkmer bill.

Section Two: McClure-Volkmer's Gun Show Legacy chronicles the debate over allowing Federal Firearms License holders to sell at gun shows and details the two changes contained in McClure-Volkmer that led to the proliferation of gun shows.

⁶ See Appendix One for a sampling of gun show advertisements.

Section Three: Changes Seen at Gun Shows as the Result of McClure-Volkmer describes the proliferation of gun shows that followed McClure-Volkmer's passage, the competition between licensed dealers and unlicensed hobbyists, the opportunities presented to Class 3 machine-gun dealers by gun shows, and the limitations of law enforcement in effectively policing gun shows.

Section Four: Illegal Trafficking at Gun Shows examines the most common ways in which illegal transactions are conducted at gun shows.

Section Five: Where the Famous and Infamous Shop details notable gun show participants, such as David Koresh and Timothy McVeigh, and the role gun shows play in the militia movement.

Section Six: "Truck Loads of Parts Are Readily Available" reveals how gun shows have become a ready market for stolen military parts.

Section Seven: Trends looks at three new developments that may have an effect on gun shows: increased civil litigation; the decrease in the number of Federal Firearms License holders; and, the first-time sponsorship of shows by the National Rifle Association.

Section Eight: Recommendations offers a set of federal and state policy recommendations based on the study's findings.

The study also has three appendices.

Appendix One is a sample of gun show ads.

Appendix Two is the June 1993 testimony of convicted firearms trafficker Edward Daily III before the U.S. House of Representatives Subcommittee on Crime and Criminal Justice.

Appendix Three is the June 1993 testimony of Bernard Shaw of the Maryland State Police Licensing Division before the U.S. House of Representatives Subcommittee on Crime and Criminal Justice.

Section One: The History of McClure-Volkmer

In 1986, the *National Journal* summarized the situation after McClure-Volkmer passed the U.S. Senate by a vote of 79 to 15:

S. 49...had been germinating for a half-dozen years. Enactment of such a bill had been the top legislative priority of the NRA and other pro-gun lobbying organizations....

The thrust of the legislation, according to its sponsors and advocates, is to amend positions of the 1968 Gun Control Act that, they say, have caused widespread harassment of law-abiding gun owners and gun dealers while doing virtually nothing to combat crime....

The Senate Judiciary Committee held hearings on earlier versions of the bill that were sponsored by Sen. James A. McClure, R-Idaho. In 1985, McClure arranged, with the help of Judiciary Committee chairman Strom Thurmond, R-S.C., and Majority Leader Robert Dole, R-Kan., to put the bill on the Senate floor without a new round of hearings....

At one point in the debate, McClure warned his colleagues of the political danger of supporting an NRA-opposed amendment to require a 15-day waiting period on handgun purchases....The amendment was tabled, 71 to 23. The legislation then passed handily, with McClure telling the Senate it was endorsed by mainline law enforcement organizations such as the National Sheriffs' Association and the Fraternal Order of Police. Those organizations had testified in the previous Congress in favor of McClure's bill, but not in 1985, by which time the bill had been rewritten and they had changed their minds.⁷ Several police groups arranged a hasty press conference the day before the Senate vote to declare their opposition to the

⁷ Former Senator and presumptive Republican presidential nominee Bob Dole (R-KS) made the same erroneous representations regarding the position of law enforcement organizations. In a statement on the floor of the Senate, Dole said, "These proposals have the endorsement of the Fraternal Order of Police and the National Sheriffs' Association...I urge speedy adoption of S. 49 by the Senate." Senator Dole had a long history of involvement in efforts to amend the 1968 Gun Control Act. At a 1980 hearing before the Subcommittee on the Constitution of the Senate Judiciary Committee, Dole described his own efforts to protect dealers and collectors he felt were victimized by "overzealous Federal agents." He complained of "law-abiding citizens who have run into 'technical' difficulties under the Gun Control Act, only to find themselves subjected to Federal felony charges." His remedy was authoring a provision in a predecessor to McClure-Volkmer which in his words would "have the effect of down-grading certain administrative and bookkeeping violations of the Gun Control Act from felonies to misdemeanors."

bill, but to no avail.⁸

When the Senate-passed bill arrived at the House, Judiciary Committee chairman Peter W. Rodino Jr., D-N.J., pronounced it 'dead on arrival.'

Usually when a committee chairman refuses to schedule a bill for hearings or a committee vote, proponents have little chance of seeing the measure pass. The NRA, however, treated Chairman Rodino's statement as a call to arms. The organization's weapon of choice was a seldom-used and rarely successful procedural maneuver called a discharge petition. This mechanism allows a bill to bypass committee action and move directly to the House floor for a vote once 218 signatures are secured on the petition. The NRA moved quickly to have a discharge petition filed. Built into it was a rule designed to avoid differing House and Senate versions of the bill and the possibility of their being sent to a conference committee. According to the *National Journal*, "[T]he NRA wanted the rule written that way [because] in the event of a conference, House conferees would be named by Speaker Thomas P. O'Neill Jr., D-Mass., one of the NRA's longtime adversaries."

To stave off the discharge petition, pro-gun control members of the House Judiciary Committee—led by then-Chairman Peter Rodino (D-NJ) and former Representative William Hughes (D-NJ)—drafted a compromise bill that included a provision permitting the interstate sale of long guns, and requiring a background check, but no waiting period, for all firearm sales. The bill passed the House Judiciary Committee unanimously. According to the Associated Press, however, the NRA characterized it as "too restrictive for law-abiding gun owners and sportsmen" and continued to collect signatures for the discharge petition.

By March 1986, the discharge petition had garnered 197 signatures—only 21 short of the 218 needed. The signatories of the discharge petitions were kept secret, but one gun control organization was nevertheless able to identify 156 by name and found that 129—or 83 percent—had received contributions from the

⁸ McClure-Volkmer was vociferously opposed by the major national law enforcement organizations including the Fraternal Order of Police, the International Association of Chiefs of Police, the Federal Law Enforcement Officers Association, and the National Sheriffs' Association. One letter to President Reagan from the Law Enforcement Steering Committee Against S. 49, an ad-hoc coalition of 10 major police organizations opposing the legislation, argued that the legislation would "pose an immediate and unwarranted threat to the law enforcement community and to the citizens we are sworn to protect" because the bill would weaken federal law regarding gun sales, reduce inspections of gun dealers, and make it more difficult to convict criminal violators.

NRA since 1983.⁹

The 218th signature was secured on March 13, 1986, making it only the eighth successful discharge petition in more than 25 years.

The stage was set for a head-on collision on the floor of the House of Representatives between McClure-Volkmer and the Judiciary Committee compromise bill sponsored by Congressman Hughes.

Members of the House arriving on the floor the day of the vote in April 1986 were met by rows of police in dress uniform standing silently by the doors of the chamber in demonstration of their opposition to McClure-Volkmer. In spite of this, the NRA had no trouble finding the votes necessary to substitute McClure-Volkmer for the Hughes compromise and to pass it. Law enforcement and gun control organizations did have the votes, however, to pass amendments retaining the prohibition on the interstate sale of handguns and banning the manufacture and sale of new machine guns. This insured a second vote in the Senate on the slightly altered bill.

The next month the Senate took up the House-passed version with controversy erupting over continued police opposition to the bill. Senator Strom Thurmond (R-SC) ironed out a set of amendments designed to quell some of the concerns of law enforcement. According to the *Washington Post*, "After backstage negotiations that tied up the Senate for hours, it was agreed that McClure, Volkmer and the three-million-member NRA would not oppose the strengthening amendments...."

On May 19, 1986 President Reagan signed into law the "Firearms Owners' Protection Act." Prior to the signing, the *Washington Post* reported that "the outcome gave the National Rifle Association and bill's main sponsors, Sen. James A. McClure (R-Idaho) and Rep. Harold L. Volkmer (D-Mo.), most of what they wanted in their 18-year effort to ease federal restrictions on gun owners and gun dealers."¹⁰

⁹ According to Federal Election Commission data, some of the biggest beneficiaries of NRA largesse between 1983 and 1986 were: Representative Jim Lightfoot (R-IA) at \$21,657; Representative Robert Smith (R-NH) at \$20,022; and, Representative John Kasich (R-OH) at \$10,944. Lightfoot is now the chairman of the subcommittee overseeing appropriations for the Bureau of Alcohol, Tobacco and Firearms. Smith is now a senator and the leader of efforts to cut funding for the Centers for Disease Control's National Center for Injury Prevention and Control in order to halt the agency's ongoing firearms violence and injury prevention research.

¹⁰ Ten years later, at its 1996 annual meeting, the NRA presented former Senator McClure and Representative Volkmer with awards in honor of their work "to maintain and safeguard our rights." Tanya Metaksa, executive director of the NRA Institute for Legislative Action, presented the award on

behalf of the NRA board of directors, stating: "Resolved: That the board of directors of the National Rifle Association of America at its meeting in Arlington, Virginia on January 27th, 28th, 1996, hereby commends Senator James McClure and Congressman Harold L. Volkmer for their strong support of the right to keep and bear arms, other constitutional guarantees, and for their courage, leadership, deep personal convictions, and outstanding performance in shepherding the enactment of the Firearms Owners' Protection Act 10 years ago."

Section Two: McClure-Volkmer's Gun Show Legacy

McClure-Volkmer made two significant changes in federal law that led to an increase in the number of gun shows and allowed illegal sales to flourish.

The first change made it legal for Federal Firearms License (FFL) holders to operate at gun shows. The second expanded opportunities for private citizens to buy and sell firearms at gun shows by raising the threshold of what constituted being "engaged in the business" of selling guns.

Allowing Federal Firearms License Holders to Conduct Business at Gun Shows

From the late 1960s until the mid-1980s, the policy of the Treasury Department and the Bureau of Alcohol, Tobacco and Firearms (ATF) on the issue of where Federal Firearms License holders could conduct sales was consonant with the Gun Control Act of 1968: i.e., that licensing applied only to the premises where the applicant regularly engaged in the business of selling firearms—*not* temporary locations such as gun shows.¹¹ Dealers were allowed to exhibit at gun shows, but actual sales had to be consummated at their place of business.

In a memorandum dated August 9, 1983, ATF Chief Counsel Marvin Dessler stated emphatically:

¹¹ This policy was set forth in Revenue Ruling 69-59. The Ruling read, "Advice has been requested whether a person who is licensed under 18 U.S.C. Chapter 44 (which superseded the Federal Firearms Act (15 U.S.C. Chapter 18)) or who is continuing operations under a license issued to him under the Federal Firearms Act, as a manufacturer, importer or dealer in firearms or ammunition may sell firearms or ammunition at a gun show held on premises other than those covered by his outstanding license. Under 18 U.S.C. 923 (a), 'a separate fee' is required to be paid for each place at which business as a licensee is to be conducted. Further, each applicant for a license is required to have in a State 'premises from which he conducts business' (18 U.S.C. 923(d)(1)(E)) and to specify such premises in the license application. In addition, records are required to be maintained at the business premises covered by the license (18 U.S.C. 923(g)). Therefore, a person holding a valid license may engage in the business covered by the license only at the specific business premises for which his license has been obtained. Thus, a licensee may not sell firearms or ammunition at a gun show held on premises other than those covered by his license. He may, however, have a booth or table at such a gun show at which he displays his wares and takes orders for them, provided that the sale and delivery of the firearms or ammunition are to be lawfully effected from his licensed business premises only and his records properly reflect such transactions. There are no provisions in the law for the issuance of temporary licenses to cover sales at gun shows and licenses will be issued only for premises where the applicant regularly intends to engage in the business to be covered by the license."

Since enactment of the Gun Control Act of 1968 [citation omitted], the Bureau, its predecessor agency and the Department have consistently taken the position that Federal firearms licenses are issued only for permanent premises where business will be regularly conducted and that the law does not authorize the issuance of licenses to cover the conduct of business at temporary locations. Thus, Rev. Rul. 69-59, 1969-1 C.B. 360 was issued and sets forth the position that a licensee may not engage in business at a gun show away from his licensed premises.

The memo cited the specific provisions within the statute supporting this interpretation. Furthermore, Dessler pointed out, "The Bureau's position as expressed in the ruling is supported by the legislative history of the Act clearly reflecting the desire of the Congress that firearms businesses be conducted only from a permanent, licensed premises." One purpose of licensing only permanent business premises, according to the chief counsel, was to make information available to state and local law enforcement regarding gun sales in their own localities. This purpose "would hardly be served where a licensed dealer is conducting business from one place to another for short periods of time," Dessler concluded.

Other ATF communications during this period, however, seemed to endorse the idea of allowing dealers to sell at gun shows. Evidence of this internal schizophrenia—most likely the result of political pressure from Capitol Hill and the agency's historic role as a lightning rod for gun lobby attacks—can be seen in a September 1979 letter from ATF Director G.R. Dickerson to Senator Dennis DeConcini (D-AZ). The correspondence stated, "ATF has been criticized for past activities and policy regarding gun shows and sales at gun shows by licensed dealers....[W]e are now reviewing the law and regulations to determine if we can permit sales by dealers at gun shows within the existing law. While regulatory changes without a change in law may be difficult to accomplish, we nevertheless are actively pursuing this alternative."

In spite of concerns that such a move would test the limits of its administrative discretion, in 1984 ATF proposed a new regulation that would permit licensees to "conduct business temporarily" at gun shows. (The change was apparently in response to complaints from licensed dealers that they were losing sales to non-licensees operating at gun shows.) This turnabout in dealer regulation moved ahead despite apprehensions expressed by ATF Director Dickerson before a Senate Judiciary subcommittee. Dickerson cautioned:

I would again state to this committee that extreme care must be used in this regard [allowing sales by dealers at gun shows] since gun shows have repeatedly proved to be a preferred source of weapons for the criminal element. This is primarily because recordkeeping is often nonexistent by many of the persons making sales. It is documented that the Symbionese Liberation Army, the Black Panthers, the Hells Angels motorcycle gangs, and individuals such as Sara Jane Moore [who attempted to assassinate President Gerald Ford] all obtained crime guns at various gun shows.

Despite the law enforcement problems inherent in gun shows,¹² on November 29, 1984, in a 180-degree reversal of previous policy, ATF promulgated a regulation permitting Federal Firearms License holders to conduct business temporarily at gun shows¹³ held in the same state as the licensee's business.¹⁴

Because the agency had made an abrupt policy change the rule was vulnerable to a legal challenge as being beyond the administrative authority of ATF. However, its codification in 1986 as part of McClure-Volkmer protected ATF's gun show rule from legal challenge.

In the 10 years since McClure-Volkmer's passage, gun merchants have taken advantage of an extensive network of gun shows, flea markets, and swap meets where they can "conduct business temporarily at a location other than the location specified on the license."¹⁵

¹² The problems at gun shows, and specifically their role in providing access to guns for criminals, was already being reported in the national media. A September 3, 1978 *Washington Post* article, "Celebration of Gun Lovers," described an annual gun show in Hillsville, Virginia. In it, ATF officials complained about the number of illegal sales by dealers: "Last year three men were arrested for selling guns illegally, according to ATF officials. 'The problem with shows like these is that recordkeeping is so minimal,' an ATF official said. 'Even though there isn't supposed to be any selling of guns, there is. And because the recordkeeping is so bad, they're very hard to trace. It simply provides another source for people who shouldn't acquire guns to try and acquire them.'" Less than a year earlier the *Post* had reported that in 1976 three out-of-state dealers were charged with illegally selling handguns at two shows in Baltimore. The dealers also failed to report the purchasers' names and the guns' serial numbers. Another *Post* story reported that in December 1977, federal agents seized more than 700 weapons—including submachine guns, sawed-off shotguns, and bazookas—and an estimated 60,000 rounds of ammunition in a crackdown on illegal firearm sales in Maryland and Virginia. Of the five persons arrested, two were gun dealers. A spokesperson for ATF in Baltimore said that many of the sales were taking place at gun shows and in parking lots.

¹³ Dealers were allowed to sell at "gun shows" and "events" which were "sponsored by any national, State, or local organization, or any affiliate of such organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors events devoted to the collection, competitive use, or other sporting use of firearms in the community."

¹⁴ 49 Fed. Reg. 46891 (Nov. 29, 1984).

¹⁵ This is the language of 18 U.S.C. § 923(j) allowing dealers to sell at intrastate gun shows.

"Engaged in the Business"

The second key provision in McClure-Volkmer was deceptively bland language requiring that in order to be eligible to be licensed as a firearms dealer, an individual must "engage in the business" of buying and selling firearms. The term "engaged in the business" was defined by the legislation as "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." Specifically *excluded* from the definition was a person who made "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."¹⁶

The intent of the new "engaged in the business" requirement was to raise the level of activity in which an individual must engage before being required to obtain a Federal Firearms License. The specific exclusion of "occasional" sales and sales made in pursuit of a "hobby" gave a green light to weekend gun peddlers to sell firearms at gun shows, flea markets, and swap meets without fear of prosecution for dealing without a license.

Together, these two seemingly small changes in federal law allowed licensed dealers and unlicensed hobbyists to peddle their wares side-by-side and opened the floodgates to a new wave of gun shows.¹⁷

¹⁶ 18 U.S.C. § 921(a)(21)(C).

¹⁷ This trend was exacerbated by the Reagan and Bush administration's lax Federal Firearms License issuance policies. In 1980 the total of Type 1 Federal Firearms License holders numbered 155,690. By 1992 this number had jumped to 248,155. During these years virtually anyone willing to pay the \$10 per year licensing fee could obtain an FFL, enabling them to buy any quantity of firearms at wholesale prices and have it delivered to their doorstep by common carrier. The ease with which a license could be obtained quickly became an open secret among criminal traffickers. A detailed analysis of the federal firearms licensing system is contained in the 1992 Violence Policy Center study *More Gun Dealers Than Gas Stations*.

Section Three: Changes Seen at Gun Shows as the Result of McClure-Volkmer

The Floodgates Open

ATF Director Dickerson's reservations about loosening the restrictions on dealer sales at gun shows turned out to be well-founded. With ATF policy made law by McClure-Volkmer, hundreds of thousands of federally licensed dealers previously prohibited from selling at gun shows could now do so. And "hobbyists"—those without Federal Firearms Licenses—selling from their "personal collections" could operate at gun shows with little fear of prosecution for dealing firearms without a license.

The Bureau of Alcohol, Tobacco and Firearms maintains no historical records as to the number of gun shows that occur annually and can only offer rough estimates as to the number today. ATF estimates that there are now 2,000 gun shows held in the United States each year.¹⁸ Yet, in contrast, the National Association of Arms Shows estimates there are more than 100 gun shows every weekend—for an annual total of 5,200 shows. The National Association of Arms Shows also estimates that more than five million people attend such shows each year and that they generate billions of dollars in sales.

To gauge the increase in the number of gun shows and the role of McClure-Volkmer, the Violence Policy Center conducted interviews across the country with federal, state, and local law enforcement officials as well as with gun show promoters. The VPC surveyed a total of 25 individuals in 16 states regarding their experience with gun shows and similar events, such as flea markets. Of those surveyed, 14 offered opinions on whether the number of gun shows in their area had increased or decreased. Ten of the 14—or 71 percent—stated that there had been an increase in the number of gun shows over the past 10 years. Three believed the number of shows had remained constant, and only one said the number had decreased.¹⁹ One regional ATF official queried additional supervisors regarding the number of gun shows in states under the office's jurisdiction and reported that "several out of my eight supervisors said we definitely had an increase of more than 50 percent in the last 10 years."

¹⁸ ATF says this figure is based on a review of advertisements in the publication *Gun Show Calendar* for July 1994 through June 1995.

¹⁹ The one respondent who said that the number of gun shows in his area had decreased was in California. In addition to its strict over-the-counter sales criteria, California also regulates who may sell firearms at gun shows as well as the type and number of weapons that may be sold. The state also requires that all secondary transfers go through a firearms dealer.

The survey found significant evidence that the changes resulting from McClure-Volkmer were a key factor in the increase in the number of gun shows and that this expansion presented federal, state, and local law enforcement officials with an array of new problems related to illegal firearms trafficking. While the exact number of shows remains uncertain, extensive evidence does exist that they are virtually unregulated, are a key tool for criminal gun traffickers, and function as a common meeting place for criminals.²⁰

Gun Shows Multiply: "It's a Fad, Just Like *Friends*"

A sample of the comments from law enforcement personnel and gun show promoters attest to dramatic increases in the number of gun shows during the past 10 years—

There's a big increase in the number of gun shows. [T]here are many more than 10 years ago. Dealers can now legally sell at gun shows. Most of them, before it was legal, did not sell at shows. They're [gun shows] popular because they can increase their business. *Howard Wolfe, Area Supervisor, ATF North Atlantic District Office, Pittsburgh, PA.*

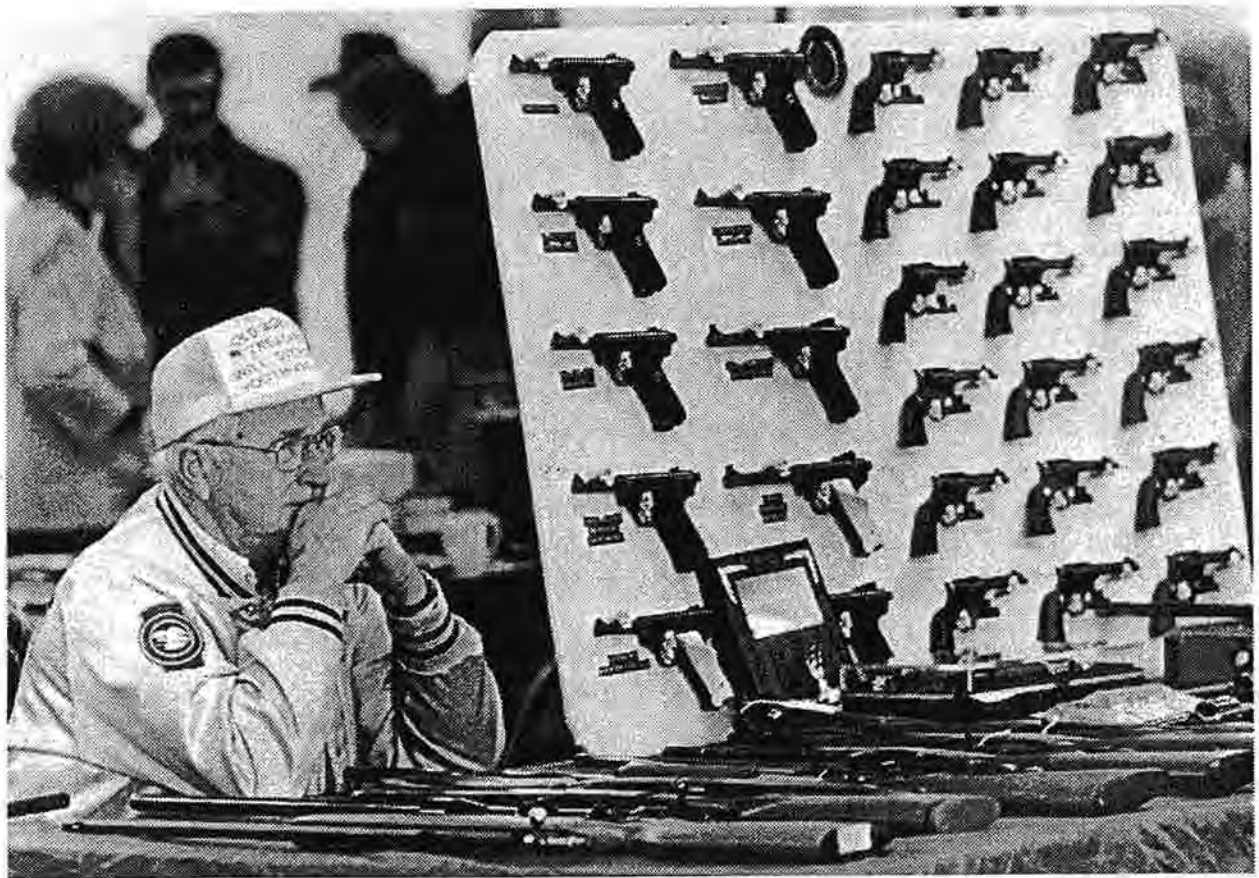
I'm sure they have been on the increase—you just see more and more of them. *Tom Conley, Indianapolis Gun and Knife Show, Indianapolis, IN.*

There's more and more people with licenses becoming involved....There seems to be more shows than ever before....It's a fad, just like *Friends*. *Albert Ross, Spokesperson, Dallas Arms Collectors Association, Arlington, TX.*

They've [gun shows] become more popular. I remember the days when there was a show only once every three months. Now you can go to one just about every weekend....Show size ranges from 150 to 1,500 tables....Attendance at a good show will run seven to eight people per table at the show. I heard about a show a couple a weeks ago that had 18,000 people come. That's a lot of folks in two days. *David Cook, Show Organizer, North Texas Gun Club, Dallas, TX.*

Gun shows appear to be so popular and such a huge revenue generator that in some states, dealers can't afford to not participate. The *St. Petersburg Times* reported in September 1993 that five of the 10 highest volume dealers in Florida regularly sold at gun shows and that one—Weapons Unlimited—sold exclusively at gun shows.

²⁰ Furthermore, it is impossible to know exactly how many guns traced to crime by ATF were acquired at gun shows. Federal Firearms License holders are not required to record on sales forms that a particular gun was transferred at a gun show rather than at the license holder's regular place of business. In addition, in most states no records are kept of sales at gun shows by private citizens.



And while there is general agreement that the number of shows nationally has increased, the jump is not uniform. Interviews with law enforcement in a few states or localities with more restrictive guns laws report a lower number of shows. In states such as California and New York, strict firearms control laws may combine with negative public attitudes to make gun shows less common.

"No One Wants To Wait" — Storefront Dealers Versus Kitchen-Table Dealers and Hobbyists

Problems arose almost immediately when Federal Firearms License holders were allowed to sell at gun shows in direct competition with unlicensed "hobbyists" and "collectors." Licensed dealers are required to follow sales criteria under federal law: e.g., federal sales forms, age restrictions, and more recently background checks and waiting periods. Unlicensed sellers—who as private citizens did not have to meet these requirements—made a more appealing sales outlet to both the law-abiding (who, like most Americans, prefer not to wait) and the criminal purchaser seeking to avoid a paper trail.

Gun show promoters, who had previously only dealt with part-time, unlicensed hobbyists, were sometimes not swift enough in familiarizing themselves with the applicable federal, state, and local laws. Dick Van Loan, an area supervisor of regulatory enforcement in the Detroit, Michigan ATF field office, notes, "When licensed dealers were allowed...there was a large expansion of gun shows and the gun show promoters weren't very familiar with the laws. They had both licensed and unlicensed...[sellers]...sitting table to table. The legitimate dealers were paying the state sales tax and complying with state laws and the others guys weren't."

Tension also grew among license holders, who are themselves divided into two groups: "storefront" or "stocking" dealers who sell from traditional retail outlets open during standard business hours, and "kitchen-table" dealers who operate out of their homes or at gun shows.

Bill Bridgewater, executive director of the National Alliance of Stocking Gun Dealers, expressed the sentiments of many stocking dealers in a May 1993 letter to the House of Representatives Crime and Criminal Justice Subcommittee:

The BATF has established rules and regulations for these things they call 'gun shows.' The opportunity for the black marketeers is that the BATF doesn't enforce those regulations and there isn't anyone else to do so. Consequently, there are literally hundreds of 'gun shows' scattered around the country where you may rent tables, display your wares, sell what you please to whomever you please and once again the sale that is made with no records, no questions and no papers, earns the highest sales price....There are wide open 'gun shows' the length and breadth of the

Federal Law Regulating Firearm Sales by Federal Firearms License (FFL) Holders and Non-Licensed Sellers

Federal Firearms License (FFL) Holders	Non-Licensed Sellers
<i>Selling In-State</i>	<i>Selling In-State</i>
Federal Firearms License (FFL) holders doing business in their home state must comply with all federal recordkeeping requirements (record of sales, multiple sales reports, etc.).	Non-licensed individuals selling in their home state are not required to comply with federal recordkeeping requirements.
Federal Firearms License (FFL) holders doing business in their home state must ensure that buyers abide by all federal sales criteria (waiting period, background check, etc.) as well as any state or local requirements.	Non-licensed individuals selling in their home state are not required to meet federal sales criteria (waiting period, background check, etc.). Non-licensed individuals must meet state or local criteria only if specifically stated in state or local law.
Federal Firearms License (FFL) holders doing business in their home state may sell handguns to residents of their state of licensure only.	Non-licensed individuals selling in their home state may sell handguns to residents of their home state only.
Federal Firearms License (FFL) holders doing business in their home state may sell long guns to resident of any state as long as all laws of both states are complied with.	Non-licensed individuals selling in their home state may sell long guns to residents of their home state only.
Federal Firearms License (FFL) holders doing business in their home state may dispose of firearms to any Federal Firearms License (FFL) holder.	Non-licensed individuals may dispose of firearms to any Federal Firearms License (FFL) holder.
<i>Selling Out-of-State</i>	<i>Selling Out-of-State</i>
Federal Firearms License (FFL) holders doing business in their home state cannot sell handguns to out-of-state residents.	Non-licensed individuals may not sell firearms to non-licensed out-of-state residents.
Federal Firearms License (FFL) holders doing business in a state in which they are not licensed can only display and take orders.	Non-licensed individuals may sell firearms outside of their state of residence only to Federal Firearms License (FFL) holders.
Federal Firearms License (FFL) holders doing business in a state in which they are not licensed can acquire firearms from any FFL licensed in that state and from any non-licensed individual.	Non-licensed individuals may acquire long guns out-of-state from Federal Firearms License (FFL) holders if 1) the FFL is licensed in that state, and, 2) the laws of both states are complied with.

United States, wherein anyone may do as he chooses, including buy firearms for children.

The competition between hobbyists, kitchen-table dealers, and stocking dealers helped create an atmosphere that invited illegal conduct. The result of this competition was detailed in a July 1993 investigative report by Florida's *St. Petersburg Times*. In the article Harvey Eberg, a licensed dealer at a Tampa gun show, explained why several unlicensed sellers would not provide their names to the *Times* reporter:

'The reason most of them won't give you their names is because they're breaking the law,' he said loudly. 'I fight it all the time. At every gun show people walk up and ask, 'Are you a dealer?'' Eberg said. If you are, 'they won't deal with you,' he said, and if not, 'There are no receipts, no anything. Just the money changes hands. It's kind of frustrating....[Y]ou lose out. No one wants to deal with the \$5 [Florida background check] charge. No one wants to deal with the paperwork. No one wants to wait.'

The Violence Policy Center's survey of law enforcement personnel confirms that such situations are not unique to Florida. In the survey, Charles Tocci, press secretary for the Pennsylvania State Police, detailed the results of a year-long investigation that ended in December 1994:

About a year ago there was a state police undercover [operation] at several gun shows in Pennsylvania that ultimately led to the arrest of about 50 individuals that were selling illegal weapons ranging from switchblade knives to fully automatic firearms. Some were [licensed] and some were not. The shows ranged from central Pennsylvania near Harrisburg to gun shows in the eastern part of the state—some even sold at flea markets, made the contact at the gun show and met the purchaser later.

In a December 1994 press release on the above arrests, then-State Police Commissioner Glen A. Walp stated that "the most 'alarming' aspect of the investigation was that most of the illegal weapons were openly sold at gun shows and flea markets, some by federally licensed dealers." The state police provided a list of 21 Pennsylvania gun shows and flea markets at which undercover officers were able to purchase unregistered firearms without being required to show any identification or complete the necessary transfer documents. Walp said that "such transactions leave police agencies with little ability to trace weapons used in criminal acts." Walp's concerns are echoed by ATF personnel—

They [gun shows] are a source of easily picking up weapons—not necessarily from dealers but from private people. You may have a private individual selling guns right next to a private dealer. The dealer is regulated under California law. For example, if I have a gun and want to sell it under the California law I have to go to a licensed dealer. The dealer then submits a DROS—dealer record of sale. They wait the 15-day period then the individual goes to a gun store and picks up the firearm. But

being realistic, if I have a firearm and you have the money, they're not always going to wait. That's what we find happening quite a bit at gun shows and flea markets. *Ed Gleba, Public Information Officer, ATF Field Division, San Francisco, CA.*

The biggest problem we've seen is that many dealers don't post their licenses. It's hard to tell who's a dealer and who's not. I've heard from purchasers that some dealers feel the rules they have to follow in their shops don't apply to gun shows. I talked to one guy buying at a show who bought his gun and asked the dealer didn't he have to fill out some form, and the dealer said, 'Since we're at a gun show you don't have to do that.' *Howard Wolfe, Area Supervisor, ATF North Atlantic District Office, Pittsburgh, PA.*

The frustration felt by storefront dealers toward kitchen-table dealers who sell primarily at gun shows is often expressed in firearms industry publications. In the May 1996 issue of *Shooting Industry*, a gun store owner from Virginia offered some pointed commentary: "[H]ave you noticed the cost of insurance? What about matching social security for your employees? It's an easy thing to set up at a gun show every weekend and blow out products at 10 percent over cost....If a person wants to become a firearms dealer, fine, let him open a business and operate it on Saturday like we do, instead of going off to the gun show and prostituting the business." He also relayed some facts regarding the level of regulation at gun shows, stating that "even the concessions at gun shows have to abide by more rules than the gun dealers...."

A New Market for Machine Gun Dealers

McClure-Volkmer also opened up extensive new sales opportunities for so-called Class 3 dealers—those who deal in weapons regulated under the National Firearms Act of 1934 (NFA), including machine guns, sawed-off rifles and shotguns, and silencers.²¹

According to Dan Shea's *Machine Gun Dealer's Bible*, a how-to guide for novice NFA merchants, "For the Class 3 dealer who is looking to make sales to individuals, gun shows are the key." Gun shows provide a forum where there are "thousands of interested people browsing through your table, with impulse buying almost the whole purpose in being there." The shows also give the customer a chance to "see the things that he's been watching in the movies firsthand."

²¹ Pursuant to the National Firearms Act, citizens may possess these types of weapons under certain restrictions. Purchasers must undergo a registration and background check procedure and pay a \$200 "transfer tax." The manufacture and sale of new machine guns was banned in 1986, but machine guns manufactured before May 19, 1986 are transferrable.

Gun shows, however, do provide some risks for Class 3 dealers. Author Shea warns fellow Class 3 dealers not to put business cards out on the display table:

You may end up with the Bloods and Crips taking a pile of your cards and informing you that they are going to 'make you rich.' They won't—they'll make you dead or in jail. It happened to me once....I had to drop a stun bag into my M79 and point the barrel down the leader's nose to get him to put my cards back.

Shea also instructs Class 3 dealers to "make sure that a copy of your FFL is on display," since "gun shows are a primary place for BATF 'sting' operations."

Law enforcement officials interviewed by the VPC note that failure by dealers to display their licenses is not uncommon. Howard Wolfe, an ATF area supervisor in Pittsburgh, says that a concern of dealers is that if they post their license it is apt to be stolen: "One guy told me about someone who was wandering around his table. The dealer had his license taped up against a glass display, and the next time he turned around the guy was using his fingernails to try and scrape the license off the glass."

Machine gun shoots—organized events where full-auto enthusiasts gather to shoot at targets ranging from old refrigerators to cars—almost always include a gun show. This offers the advantage, according to Shea, of allowing potential buyers to try the gun out.²²

Law Enforcement Limitations: "Too Many Gun Shows and Not Enough Agents"

The Violence Policy Center survey revealed widespread frustration by law enforcement personnel over their inability to regulate gun shows and ensure compliance with federal and state law. The most often cited impediment to enforcement is the sheer number of shows coupled with budget and manpower limitations. As San Francisco ATF Public Information Officer Ed Gleba lamented, "There are just too many gun shows and not enough agents."

This is compounded by ATF policies restricting the agency's regulation of gun shows. In 1979, ATF's policy regarding gun shows and flea markets limited the agency's investigations to "situations where there are specific allegations that

²² Shea cautions, however, that advertisement of such events should be limited to gun-related publications such as *Machine Gun News*, *Shotgun News*, and *Gun Week*, or flyers placed at gun shops, VFW halls, and legion halls. Advertising in mass media outlets, he warns, will only result in "professional whiners at town hall crying about how can they allow this kind of activity, and there will be some of the local weak-minded droolers painting their faces white and wandering about the entrance to the shoot, screeching about war mongers and end-of-the-world scenarios."

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October 11, 12, 13, 1996

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significant violations have occurred and where there is reliable information that guns sold at the specific gun show or flea market have shown up in crimes of violence with some degree of regularity." As illustrated by the comments below, in the nearly two decades since then little has changed:

We don't get that much involved as far as gun shows are concerned. As far as enforcement, if it's a gun show or a store we don't go in just to enforce. If there's a violation or a potential violation that's when we would go. We don't go into gun shows in the same way we don't go into stores. We investigate specific violations and persons not the whole store or show. There's no regular inspections. The persons who go into gun shows are FFL holders who get inspected at their place of business. Or you get other people who sell without an FFL out of their collection and they're allowed to do so. *Orlando Blanco, Public Information Officer, ATF Field Division, Miami, FL.*

We just can't go in—we're precluded...from doing such. We can't just go out and target or focus on gun shows. *Joe Green, Public Information Officer, ATF Field Division, New York, NY.*

We don't walk through carte blanche looking for violations. If we have a specific violation to investigate we will. I've had complaints from licensed dealers about unlicensed dealers selling at gun shows but in some cases they have been unwilling to provide us with a name. We don't have unlimited resources and we cannot attend every gun show in the state of Georgia. *Robert Browning, Public Information Officer, ATF Field Division, Atlanta, GA.*

ATF's passive policy on gun show regulation was recently reiterated in a 1996 memorandum responding to an inquiry from Senator Richard Shelby (R-AL) obtained by the Violence Policy Center under the Freedom of Information Act. In a document titled "Firearms Licensees' Conduct of Business at Unlicensed Locations," the agency informed the senator, "ATF initiates criminal investigations of licensees who willfully violate the law and are believed to be involved in criminal activity such as providing firearms for use in crime. These investigations are initiated with the approval of the appropriate ATF Special Agent in Charge." Or as Richard Garner, special agent in charge of the ATF Nashville Field Division, told the VPC, "Although we do have some very effective proactive programs, the bulk of our activity is reactive. If we are informed that gun runners are operating in the black market then we will initiate a criminal investigation."

That gun shows often degenerate into criminal swap meets is no surprise. In response to questions submitted by the Violence Policy Center for its 1992 study *More Gun Dealers Than Gas Stations*, ATF noted, "Given the number of shows and flea markets, the agency cannot patrol these events, but does respond to information and allegations of illegal activity."

Section Four: Illegal Trafficking at Gun Shows

The factors described in the preceding section have combined to create a volatile mix, making gun shows a favored venue for unscrupulous sellers and criminal purchasers. Illegal transactions at gun shows usually occur in one of three ways: 1) straw purchases; 2) out-of-state sales; and 3) sales from "personal" collections.

Straw Purchases: "I Would Walk Out With the Guns in My Pocket"

Straw purchases occur when a person who is not in a restricted category (the "straw man") purchases a weapon for someone who is prohibited by federal, state, or local law from purchasing or possessing a firearm. Straw men are used by criminals, minors, or others in proscribed categories to transact sales with both Federal Firearms License holders and unlicensed hobbyists. In some cases the seller does not know that the weapon is being passed on to an illegal buyer, but in others the seller is aware of the straw sale. At a 1993 hearing on federal firearms licensing before the crime subcommittee of the House Judiciary Committee, convicted criminal Edward Daily III testified that he regularly used straw purchasers to buy handguns at gun shows in Virginia. The 22-year-old Daily traded the guns for narcotics in New York City. According to Daily:

I would have someone with a legal Virginia license and another form of ID. I would hand them the money and then tell them [the straw purchaser] to purchase this firearm, and then they would fill out the paperwork, and, basically, a lot of them would hand the guns to me after I purchased them, and I would walk out with the guns myself and put them in my car.

At the hearing, then-House Crime Subcommittee Chair Charles Schumer (D-NY), who has played a leading role in documenting gun show abuses, questioned Daily:

Schumer: It was obvious that you were violating the law?

Daily: Yes.

Schumer: And these people were dealers—were gun dealers?

Daily: Yes. At each gun show, there were about, maybe 250 tables with different gun dealers, and we would visit maybe 20, 30 tables. Some of them saw me every weekend, and they knew me....'Hi. How's it going....Are you picking up any guns today?'

Schumer: And you always bought from the same few dealers?

Daily: Yes sir, usually the same dealers because they sold the type of weapons that we wanted.

Schumer: And this was always at gun shows?

Daily: Always at gun shows.²³

The ease with which Daily purchased firearms using straw men is not uncommon. In November 1993, Robert Dart, then-head of the Chicago Police Department's gang crimes section, told the *Chicago Sun-Times* that despite Chicago's stringent gun laws the police department seizes in excess of 20,000 illegal guns a year. According to Dart, illegal purchases at gun shows have replaced theft as the criminal element's preferred method of obtaining firearms. Dart stated, "Gangs buy guns through straw purchases. If I want a gun and am a convicted felon, I take a friend with a state [Firearm Owner's Identification] card outside the city and he buys it. Back home, he sells it to me and risks only a minor violation." The article continued, "Semiautomatic weapons, including the gang-favored TEC-9 are bought at gun shows set up at unlicensed facilities at state fairs or county fairs.... Merchants rent property for a day, advertise a gun show and sell them out. Illinois has more than 100 such shows."

Out-of-State Dealers—Wheelchair Luis, Freckle Face George, Lightbulb, and Friends

Although federal law allows Federal Firearms License holders to sell at gun shows within their own state, FFL holders—and hobbyists—are not permitted to make out-of-state sales.²⁴

Evidence suggests that many dealers do not abide by the requirement that they sell only in their own state. This non-compliance by some dealers causes distress not only among law enforcement, but complying dealers. The National Association of Stocking Gun Dealers' Bill Bridgewater asserts that gun show violations occur all the time:

²³ See Appendix Two for a complete transcript of the exchange between Representative Schumer and Daily.

²⁴ ATF has enumerated several problems that would occur if FFL holders were allowed to engage in business at out-of-state gun shows. For example, there is concern that licensees would fail to record sales information in a timely fashion, thus hindering gun traces. Furthermore, dealers who spend a good deal of time traveling from show to show might be unavailable to respond promptly to tracing requests or to make records and inventory available for inspection.

If you can't see them, you're blind. When you go to a [North Carolina] gun show and you see every state licensee around you for 250 to 300 miles and you chat with various folk standing behind their table of handguns...[from Ohio, Florida, Virginia], does that give you a clue? There are a lot of [illegal sales being committed] under the color of an FFL traveling state to state every weekend and attending firearms shows and selling firearms unlawfully in those states. The principal reason they do is that at every gun show in this nation no one pays any attention to the law.

At a seminar presented at the 1992 S.H.O.T.²⁵ (Shooting, Hunting and Outdoor Trade) Show, "BATF: Issues and Answers," audience members complained to the ATF panel about out-of-state dealers, some using a straw licensee. Said one stocking FFL, "My main concern is out-of-state dealers coming and going through another [in-state] dealer to transfer. That's the only time this person ever sees this guy who's a resident of our state. I think it's a serious problem, that doesn't seem to be addressed—at least in our state—by ATF."

In response, then-ATF Firearms and Explosives Division Chief Robert Daugherty said, "If we find the individual selling at an out-of-state gun show, we wouldn't go after a license revocation right out of the starting block, but if that person were warned and continued to do that we have every right legally to revoke that individual's license. If he's not an FFL, it's a different story." Daugherty noted that for most prosecuting attorneys, illegal firearms sales at gun shows were just not a high priority. Yet to the stocking gun dealers they were. Said one:

I've contacted my state regarding these laws, and they've referred me to ATF. I've spoken with ATF regarding these people coming in from out of state and...sales going on without [federal] 4473 forms to people that shouldn't even have a handgun. When these [firearm] crimes occur within our city, the dealers that have the stores are the people being blamed for selling these weapons. I can't get any enforcement. I've spoken with our local ATF about this problem. They say, 'contact me before the next show.' I've done so. For some reason or another I can't get them to come. Are you saying that ATF cannot keep this person from say, Missouri out of our state, that goes to California the next week, and Florida the next week?

Sergeant Bernard Shaw of the Maryland State Police Licensing Division, a witness at the 1993 House Judiciary crime subcommittee hearing cited earlier, decried out-of-state dealers as a serious problem: "Federal firearms licensed dealers from out of State come into the State of Maryland at gun shows. They sell whatever they have, no questions asked." Sergeant Shaw offered as an example the Pikesville Gun Show, where, he said, there were "licensed dealers from New Jersey, New Hampshire, Vermont, Virginia, North Carolina, that are coming into...[Maryland]...selling firearms and, really, with no intent of obeying our laws."

²⁵ The S.H.O.T. Show is the annual trade show for the firearms industry and is sponsored by the National Shooting Sports Foundation, which is located in Newtown, CT.

Shaw's prepared statement described the motivation of such dealers:

The illegal sale of firearms may be as profitable as the illegal drug trade. Persons who may be prohibited by Federal or State laws from purchasing a firearm will pay more for an unregistered sale. It is an attractive business for those who are willing to make short trips to any state that conducts weekly gun shows, such as Maryland, Virginia, Carolinas, Georgia, Florida, Oklahoma, Texas, and many others. Sales of firearms at these shows circumvent federal and state laws.

Some of the persons who attend these shows are federal firearms licensees with business addresses at their homes, who work out of their vehicle or work on consignment for other federal firearms licensees. These persons are known as 'Hobby dealers' or 'Gun show dealers.' They sell and transfer firearms at gun shows with little or no restriction due to the lack of enforcement personnel to deal with the number of gun shows in the United States. These persons do not record the sales of these firearms in a permanent record and any possibility of tracing this particular firearm is lost. [The full text of Sergeant Shaw's prepared statement is reprinted in Appendix Three]

Other state law enforcement authorities have experienced similar problems with out-of-state dealers. For example, Richard Yarmy illegally sold a wide variety of weapons to New York City criminals who went by the names Wheelchair Luis, Freckle Face George, and Lightbulb. According to the New York district attorney, Yarmy was indicted for using his FFL—which he had possessed for more than 10 years—to supply guns illegally to Manhattan "drug dealers and other street criminals." Upon his arrest, New York officials called Yarmy "one of the highest volume dealers" at gun shows along the eastern seaboard. Weapons seized during the course of the investigation included assault pistols, Street Sweeper shotguns, and fully automatic firearms. Yarmy allegedly used his Boones Mill, Virginia residence to handle mail and telephone orders and to store firearms between gun shows, although the residence was not open to the public as required under federal law as a condition of licensure.

The Violence Policy Center's survey reveals that such violations are not unique:

We have revoked some licenses for people dealing at out-of-state shows. We got a lot of complaints at the beginning from legitimate dealers. We had one guy in 1990 that had licenses in eight states. He would set up limited partnerships with a dealer in that state, so he was attempting to do it legally, but the problem was he wasn't doing the transfer paperwork right. He would bring guns to sell in Ohio without transferring all of them to Ohio. He only transferred the guns he sold. And then some others got so greedy when they were told they couldn't go out of state anymore they still did anyway. *Dick Van Loan, Area Supervisor of Regulatory Enforcement, ATF Field Office, Detroit, MI.*

Another problem is out-of-state dealers....They're not as likely to be familiar with state law. The first show we ever went to there was no federal waiting period yet. An Ohio dealer sold a gun without honoring the Pennsylvania waiting period. We get more complaints from local dealers about out-of-state dealers. They don't worry about if someone is not a dealer and sold a gun. They worry more about the out-of-state dealer who sold five or six guns. The first time we ever went to a gun show in the first five minutes we were there an out-of-state [dealer] made a deal right in front of me. *Howard Wolfe, Area Supervisor, ATF North Atlantic District Office, Pittsburgh, PA.*

Despite the clear problems associated with Federal Firearms License holders selling at out-of-state gun shows, ATF may be preparing to shoot itself in the foot on this issue. In recent letters to Senator Fred Thompson (R-TN) and Representative James Oberstar (D-MN) obtained by the Violence Policy Center through the Freedom of Information Act, ATF has agreed to support, on condition of the inclusion of certain amendments, a measure (S. 1536 in the Senate and H.R. 659 in the House) allowing dealers to conduct business at out-of-state gun shows.²⁶ Although some might argue that legalizing sales at out-of-state shows would only decriminalize activity already occurring and improve recordkeeping of such sales, the risks clearly outweigh any potential benefit.²⁷ Such a change would undoubtedly further increase the number of gun shows as dealers would be freed up to attend out-of-state shows. On the eastern seaboard, for example, dealers could easily attend shows in multiple states on a regular basis. Since dealers are not required to keep records of whether a firearm is actually sold at a gun show or at their licensed place of business, law enforcement would have no way to pinpoint in which state a particular gun was transferred.

"Personal Collections"

In defining the threshold of activity one must cross to be categorized as a "dealer," McClure-Volkmer specifically excludes a person who makes "exchanges or purchases of firearms for the enhancement of a personal collection...or who sells all or part of his personal collection of firearms."²⁸ Therefore, private individuals selling firearms at gun shows from their "personal collections" are not required to

²⁶ The bill is supported by the Collectors and Arms Dealers Association (CADA), which represents more than 50,000 gun dealers and collectors.

²⁷ Such an argument was used by some to justify the dramatic increase in the number of illegitimate Federal Firearms License holders under the Reagan and Bush administrations. This increase did not, however, aid ATF regulation and enforcement, but only created an unmanageable universe of FFL holders that effectively hid unscrupulous license holders who were using their FFLs for high-volume criminal gun trafficking.

²⁸ See 18 U.S.C. § 921 (a)(11)(A) and (21)(C).

obtain a Federal Firearms License, and as noted earlier, need not comply with the recordkeeping and reporting requirements that apply to license holders. In addition, unscrupulous dealers can thwart gun control laws by transferring weapons to relatives' or friends' "personal collections," to be resold with no record of the ultimate purchaser.^{29 30}

Kahau Morrison, resident agent in charge of the ATF Field Office in Wilmington, Delaware, said that while Delaware has made inroads reducing illegal sales by out-of-state Federal Firearms License holders, there are no restrictions or recordkeeping requirements on sales by non-licensed individuals. Such persons, she noted, can end up selling hundreds of guns out of what they call their "personal collections." Morrison added:

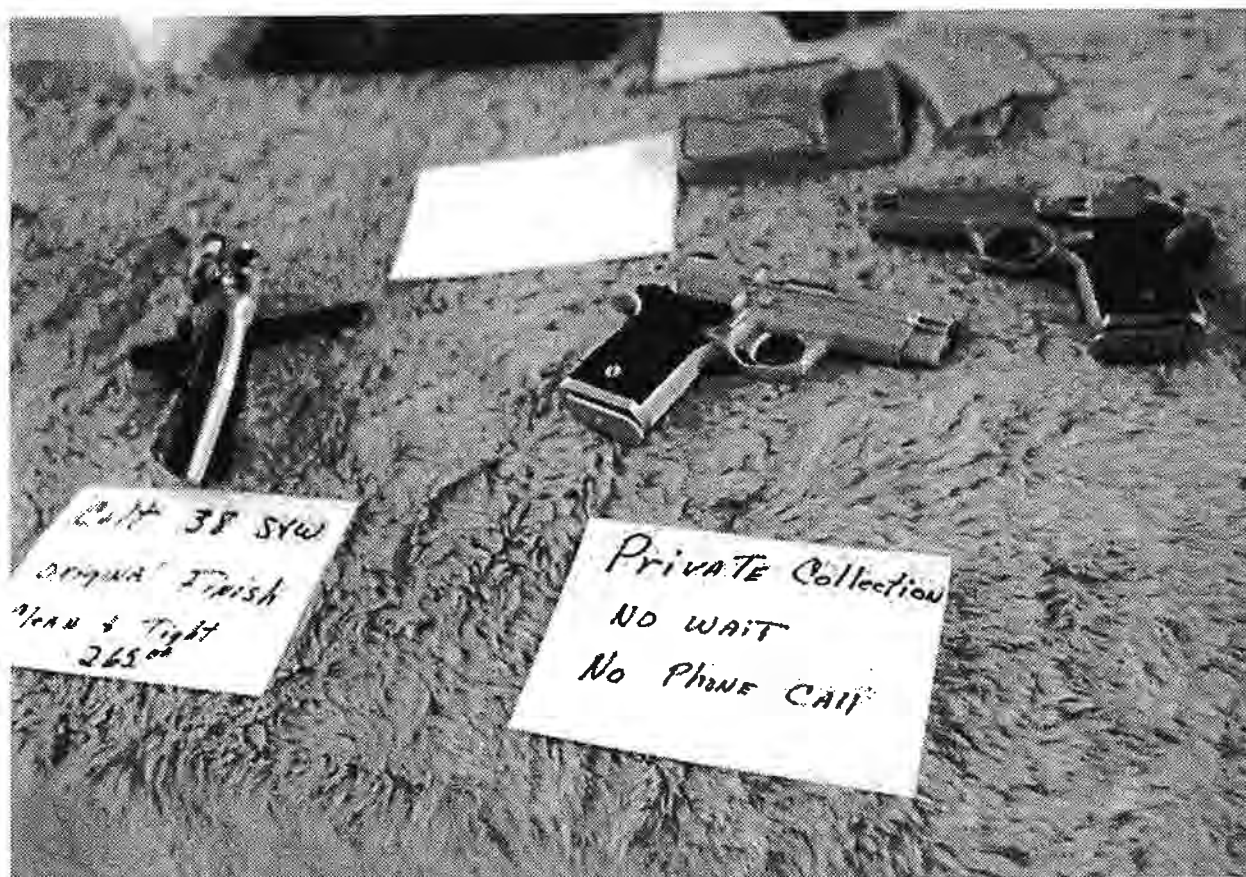
At the present time in Delaware there is no restriction on personal sales. We don't always know who is there [at a gun show] as a commercial entity and who is there [at a gun show] to sell personal weapons. It's no problem to sell your personal weapons, but if someone is constantly there and selling two to three hundred guns out of their 'personal collection' they are now violating federal and state laws. There are many people who are not permitted to be there [at gun shows] that go.

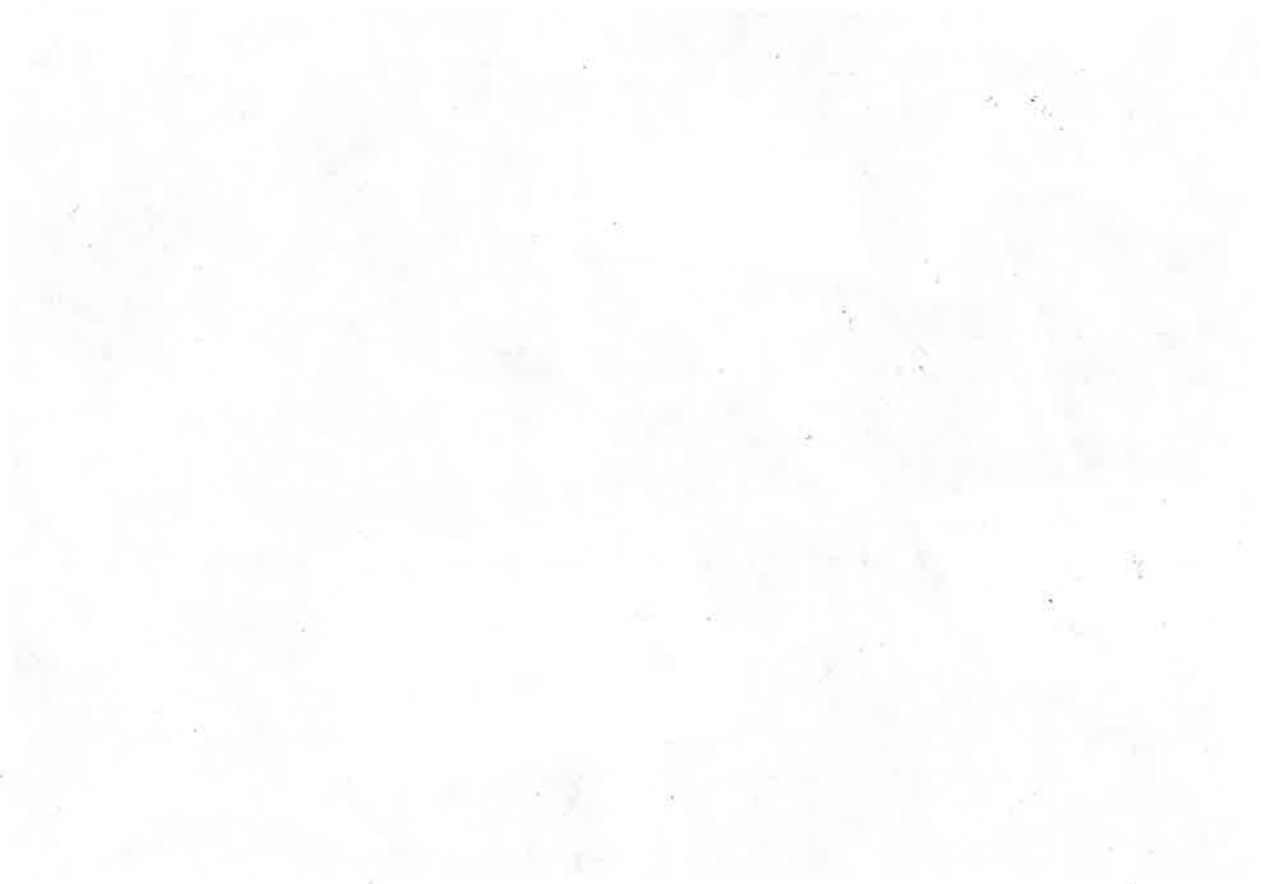
Agent Larry Ford, group supervisor of the ATF Detroit Firearms Trafficking Group, concurs that "personal collections" contribute to illegal gun trafficking:

The problem would be the regular citizen's being able to go...[to a gun show]..and put their own firearm on display without a license or any paperwork being done. Based on the type of cases that we put together in our group, some [criminals] indicate that they bought their firearms at local gun shows and flea markets.

²⁹ In some cases, license holders have illegally "sold" firearms to friends and relatives by having them fill out sales forms for weapons they never received. The dealers then sell the actual firearms to individuals who might not otherwise pass a criminal background check or who are otherwise ineligible to possess firearms. The 1993 *St. Petersburg Times* series reported that Stephen Lemons "was a firearms dealer who had something for everyone. He kept two sets of guns at his flea market booth—one for customers who could buy guns legally, and one for people who had a problem with the law." Lemons confided to an undercover officer that "any gun with a yellow tag could be purchased secretly, because phony buyers had already signed as the owners." Lemons had sales forms that indicated he had sold dozens of guns to just two people—people he had paid to sign the forms for future sales. Lemons was finally arrested by undercover detectives when he agreed to sell a machine gun and silencer without going through the proper licensing criteria.

³⁰ Under certain circumstances dealers may transfer firearms out of their own "personal collections" without recording the transaction. Prior to the passage of McClure-Volkmer, licensed dealers were required to record the sale or other disposition of firearms held in both their business inventories and their personal collections. See e.g. *National Rifle Association v. Brady*, 914 F.2d 475, 480 (4th Cir. 1990), citing *United States v. Endicott*, 803 F.2d 506, 510-11 (9th Cir. 1986).





Section Five: Where the Famous and the Infamous Shop

The Famous

Gun shows appeal to a wide range of firearm enthusiasts—from hunters and collectors looking for bargains to anti-government militia members preparing for battle against the New World Order. One show organizer characterized attendees as "the same kind of people [you find] at malls" and noted that the shows were a popular destination for local celebrities, from sports heroes to politicians.

An organizer for the North Texas Gun Club lists singer Mel Torme and members of the Dallas Cowboys as visitors to his shows. And gun shows appear to be a favored forum for political candidates in conservative locales. The North Texas Gun Club's shows have hosted Texas state political opponents Glen Box and Pete Sessions. Earlier this year the *New York Times* reported that during his failed campaign for the U.S. Senate in Virginia, former Reagan official Jim Miller went to gun shows so often that "his traveling aide [would] monitor the candidate's purchases to make sure that he...[did]...not violate the Virginia law restricting a buyer to one handgun a month."

Probably the most famous politician with an affinity for gun shows is presidential candidate Pat Buchanan, who prior to the March 1996 Arizona primary attended a Phoenix gun show in black cowboy shirt and hat. Urging his supporters to "take back the nation," the *New York Times* reported that he promised fellow gun show participants that he would protect the right to bear arms as part of his "crusade for America." Buchanan's comments, accompanied by the image of the presidential candidate holding a rifle over his head, made headlines across America.

And the Infamous

Gun shows hold a particular appeal for the pro-gun fringe. Militia members and other extremists attend shows not only to purchase weapons, but also to distribute anti-government materials and recruit new members.

As noted in Section Two, in 1980 ATF Director G.R. Dickerson warned of the role gun shows had played in supplying weapons to a wide range of criminals—from the Symbionese Liberation Army to would-be presidential assassin Sara Jane Moore. The Weather Underground and the Black Liberation Army were also listed as having acquired firearms at gun shows. Two decades later, only the names have changed.

As early as 1993 the FBI, ATF, and Arizona Department of Public Safety were warned that Oklahoma City bombing suspect Timothy McVeigh's activities at a gun show raised suspicions that he might be dangerous and warranted investigation. According to June 1995 *Associated Press* and *Mesa Tribune* reports:

The warning stemmed from a Phoenix police detective's concern when McVeigh demonstrated how a flare gun he was selling could be used to shoot down an 'ATF helicopter....' McVeigh also was selling caps with 'ATF' spelled in simulated bullet holes and was passing out the home address of an FBI sniper who fatally shot the wife of Idaho militant separatist Randy Weaver....

In June 1995, *ABC World News Tonight* reported that Timothy McVeigh's Army friend Michael Fortier had allegedly admitted to joining McVeigh and Terry Nichols in a \$60,000 robbery of an Arkansas gun collector's ranch in which 70 shotguns, rifles, and handguns were taken. *ABC World News Tonight* reported that Fortier had admitted taking many of the weapons to Kingman, Arizona and later selling them at gun shows.

Like his alleged avenger McVeigh, Branch Davidian leader David Koresh frequented gun shows. The *St. Petersburg Times* reported that Koresh purchased a large quantity of the weapons stockpiled at Mount Carmel (the Branch Davidian compound in Waco, Texas) from Hewitt Handguns, a Texas gun dealership operated by Karen Kilpatrick with Henry McMahon. Koresh had picked up their business card at a Texas gun show. Hewitt Handguns' licensed place of business was McMahon's home, and the *Times* reported that Kilpatrick and McMahon "did business mostly on weekends traveling from gun show to gun show." According to the *Times*, from 1990 to 1992, Kilpatrick and McMahon sold Koresh approximately 225 guns and 100,000 rounds of ammunition. The article noted, "Until someone told federal agents they were arming a cult leader, they reported these sales to nobody. By law, they were not required to do so."

In the *St. Petersburg Times* article, Karen Kilpatrick said that "she thought Koresh was buying military-style assault rifles as an investment, knowing their value would increase if gun control laws made them harder to get. After all, he also collected Corvettes, Harleys, boats and guitars."

In testimony before the 1995 House Judiciary Committee during hearings investigating federal actions at Waco, author Dick Reavis asserted that Koresh was not only a buyer at gun shows—but a seller. Reavis testified:

[I]n late 1991 he [Koresh] began buying guns and studying armaments. In the process, he learned that fortunes can be made by vendors at weekend gun shows. Within a few months, Koresh and a handful of associates were not only buying but also selling goods at the shows—ammunition vests, or 'mag bags,' gas masks and

Meals-Ready-to-Eat, or packaged military rations. They did it for fun, to learn, and to make a profit.

While McVeigh and Koresh may be two of the best known gun show customers, there are other lesser known but equally disconcerting attendees. According to the January 23, 1995 issue of *National Review*, convicted serial killer Thomas Dillon began his murderous career by killing more than 500 dogs and cats, then moved on to humans—allegedly killing at least five men. In 1989 he announced to a friend that he had quit killing animals and began inviting the friend to attend gun shows with him. "On their long drives," the friend explained, "they would talk about guns, hunting—and serial murders." The friend eventually decided to call the police. The article reported:

When a prosecutor seeking to deny him bond named him in court as a suspect in the serial killings, another witness stepped forward with a Swedish Mauser he had bought from Dillon at a gun show on April 5, [1992] the day the second fisherman was killed [by Dillon]; ballistics tests [showed the Mauser had been used in the murder and] nailed Dillon, and he eventually pleaded guilty to five murders.

The Militia Movement

In the 1990s, festering anti-government hysteria received validation from the National Rifle Association. The NRA bombarded gun owners with direct mail calling federal law enforcement personnel "jackbooted thugs" and warning readers that it was only a matter of time before President Clinton "pushes legislation that takes away from our freedoms and creates a police state." Its magazines, the *American Rifleman* and the *American Hunter*, ran a series of inflammatory articles. "The Final War Has Begun" purported to reveal a secret document confirming a wide-ranging conspiracy to disarm America. "Confiscate, Disarm, Destroy" warned that "a national snitch system to pit neighbor against neighbor in a taxpayer-funded war of hearsay, rumor and suspicion against gun owners like you" was imminent. The cover story "Stop the Rape of Liberty" raged, "American liberty is being raped. The very essence of freedom is being ravaged by political opportunists who bear no conviction, who sustain no tradition, and who display no understanding of the Bill of Rights....This desecration has occurred only because gun owners have allowed it. Too many gun owners have been too willing to stand by, to surrender, to compromise, while their enemy's honey-tongued double-talk disguises the real seduction at work." The cover illustration showed a politician attempting to rape a desperately struggling Statue of Liberty.

With the NRA providing the motive, gun shows offered the means for disaffected gun owners to get involved with the militia movement. Author William Pierce has observed that "gun shows provide a natural recruiting environment. Many more are being held now than ever before, and many more people are

attending them." Pierce's opinion carries more weight than most. He is the author of the infamous *Turner Diaries*, the racist, anti-government screed described as the Bible of the militia movement and believed to have inspired Timothy McVeigh's alleged bombing of the Alfred P. Murrah Federal Building in Oklahoma City.

As anti-government activity by militias and other extremists has grown, so has the awareness that gun shows are not only a key source for firearms and other material, but are a town square where extremists can gather information, make contacts, and mingle with the like-minded. Gun shows are often nothing less than Tupperware® parties for criminals.

The importance of gun shows to the militia movement can be seen in the *Free Militia's Field Manual: Principles Justifying the Arming and Organizing of a Militia*. In a section on "Secrecy and Security in the Free Militia," readers are warned that "gun show" is one of the 21 "topics and words you should stay away from when talking openly in public or on the phone."

As Morris Dees, chief trial counsel for the Southern Poverty Law Center and a leading expert on extremist groups, points out in his 1996 book (with James Corcoran) *Gathering Storm*, militia leaders use gun shows to disseminate their anti-government strategy. Dees also notes that in its efforts to take its anti-government and anti-law enforcement message to Middle America, the National Rifle Association utilized gun shows as a key communications conduit. Dees writes that "amid tables laden with Ruger Mini-14 semiautomatic rifles, Mossberg shotguns, and Beretta 9mm pistols, and piled high with holsters, military ponchos, and camouflage uniforms, they peddle the idea of militias as a defense against a tyrannical government...." Dees says that "early calls to action were posted at gun stores and handed out at gun shows that brought together those who had tired of the paintball war games of the 1980s, and others who just loved guns, where paramilitary fanatics like Timothy McVeigh and Terry Nichols sold weapons, racist propaganda, and militia manuals."

In the December 1995 *Arkansas Democrat-Gazette*, Dan S.—an undercover investigative journalist who had been an infiltrator in the extremist movement for 12 years—spoke about the common themes used to bring new members into the militia movement:

One thing we would preach continually at tax protest meetings was to stockpile weapons, ammunition and food. We would tell people that, as the protests grew, it would bring the collapse of the government, and that blacks and Jews and Hispanics and everyone else were going to riot and come after them, and they would have to defend their families and communities from this horde. That's when everyone in the movement began stocking up on guns, preparing for the downfall of the country.

According to the article, many of these groups stockpiled weapons they obtained at gun shows:

Another gateway into the militia subculture, which leaped into the spotlight after the Oklahoma City bombing, was the nation's vast meshwork of gun shows with its thriving commerce in weapons, paramilitary paraphernalia and anti-government invective. 'Gun shows are huge in the movement,' Dan acknowledged. 'They're very popular in the heartland, and you can't go into one without getting the literature. They're a key dissemination point.'

And sometimes militia sympathizers find validation and reinforcement in the views expressed by the politicians who attend gun shows. As reported in the *New York Times*, at the February 1996 Phoenix, Arizona gun show Pat Buchanan "drew a parallel between his enthusiastic and heavily armed audience and the minutemen at Lexington and Concord." Buchanan warned, "What were the British coming for? The British were coming to capture the arsenal of the colonists, because before they could repress the colonists, they had to capture all their weapons and guns, and then they could put them under the boot of the British crown." Such rhetoric clearly echoes the beliefs held by many militia members and sympathizers that a well-armed populace is all that protects America from take-over by a sinister New World Order.

Section Six: "Truck Loads of Parts Are Readily Available"

Gun shows have become a primary source for military hardware stolen from U.S. military installations. This has become prevalent enough to be addressed in the mainstream publications of the firearms industry. An article in the March/April 1996 issue of *Shooting Sports Retailer* asked the question, "Are gun dealers in trouble?" The article noted a shift in gun show fare from antiques and collectibles to military parts:

In their infancy, gun shows were usually a place to go when looking for antique and collectable firearms. Some of them are still that way. But many modern gun shows seem to be more 'military armory' than 'old west,' and a growing number of sellers are non-store dealers.

In November 1993, the Senate Committee on Governmental Affairs conducted a hearing, "Gun Violence: Do Stolen Military Parts Play a Role?" The hearing explored the findings of a November 1993 report from the Government Accounting Office (GAO), *Small Arms Parts: Poor Controls Invite Widespread Theft*. The GAO report had been undertaken at the request of Senator John Glenn (D-OH), then-chairman of the committee, to investigate reports of inadequate control by the Department of Defense over its inventory of small arms parts. The GAO found that these deficiencies allowed large-scale theft and that the stolen material was widely available at gun shows across the country. GAO personnel were able to purchase stolen military parts at gun shows in each of the six states they visited, and at 13 of the 15 gun shows they visited. At almost every gun show, GAO staff also found 30-round M-16 magazine clips in government packaging. In five states, GAO personnel were able to purchase all of the parts necessary to convert a semiautomatic AR-15 assault rifle into a fully automatic M-16 machine gun.³¹ The availability of such material to the general public is in direct violation of Department of Defense regulations regarding the disposal of property—including M-16 rifle and M-60 machine gun parts. The regulation states, "Small arms, weapons and parts are not authorized for sale to the general public except as scrap after necessary demilitarization is completed."

The Committee on Governmental Affairs hearing delved into who purchases stolen military parts and how the parts are filtered into the general—and often criminal—population. Michael Vaughn, detective supervisor for the Los Angeles Police Department and a witness at the Senate hearing, revealed, "All too often,

³¹ The GAO was able to purchase the hammer, trigger, bolt carrier, disconnecter, selector lever, and automatic sear. Army experts verified that the parts purchased had been manufactured for military use. The government's cost for these parts was estimated at \$55. Gun show prices ranged from \$85 to \$165.

white supremacists, survivalists, organized criminal organizations, subversive groups, and gang members have stockpiled military hardware that surpasses anything available to local, State, and Federal law enforcement agencies." Vaughn spoke of his experience with thousands of gang investigations and how they had led to the recovery of such materiel as: explosives, heavy machine guns, rocket launchers, automatic rifles, grenades, plastic explosives, and land mines. He reported that often these weapons and parts were: traded for narcotics which were then sold on the street; sold by criminals specializing in military hardware; or, sold to gang members for use in crimes or against rival gangs or police. Vaughn confirmed that many of these weapons and parts are available at gun shows:

We recently monitored a gun show where enough parts can be purchased to assemble the M-16 automatic rifle and Colt M 1911 45 caliber semiautomatic pistol, as well as bombs and booby traps. Many of these parts are still packaged in military crates, original Cosmoline packaging, and available in unbelievable quantities. Virtually truck loads of parts are readily available for purchase. Training ammunition is sometimes unavailable to train troops, but can be purchased by civilians in any amount. Case upon case of this clearly marked military ammunition sits stacked on the floor, available to cash customers.

In response to questions from Senator Glenn regarding the prevalence of pilfered military supplies, Vaughn stated:

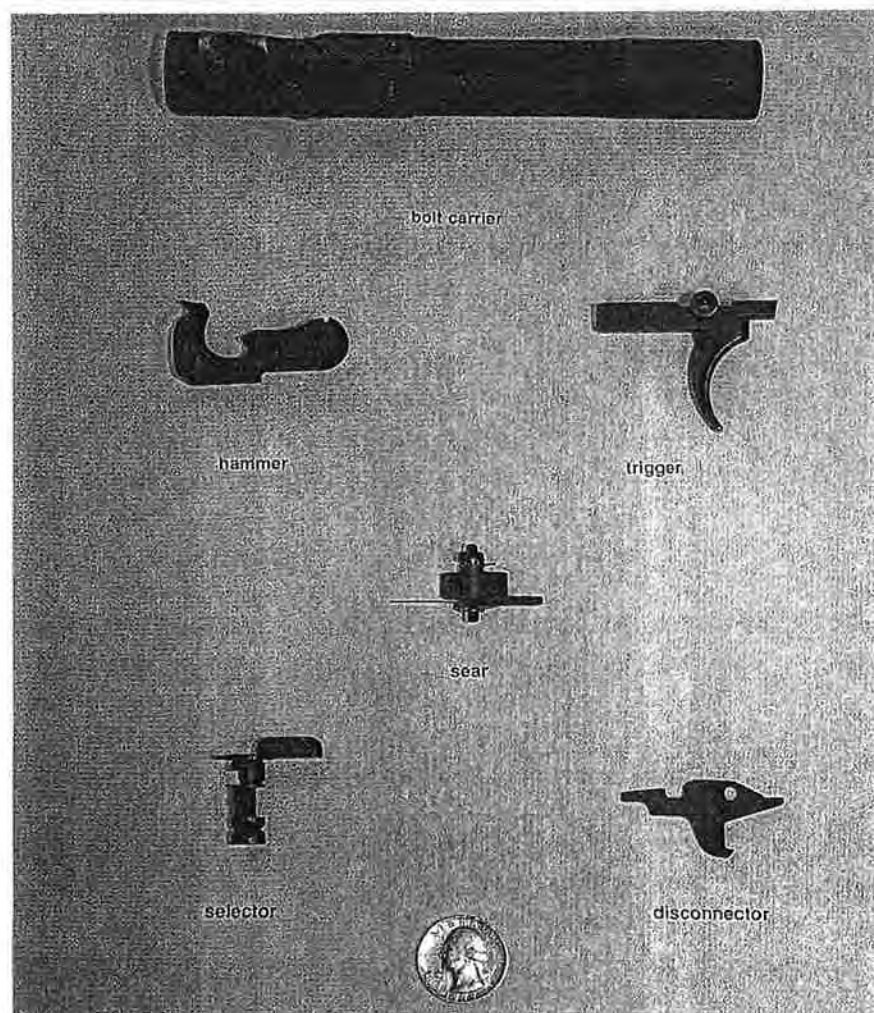
When you go to these gun shows or you travel to swap meets, you can virtually see just about any military hardware available. Criminal organizations have been reported to have a variety of different types of weapons. Some even claim that they can produce armored military vehicles for the right amount of cash.

Senator William Cohen (R-ME) inquired about the amounts of military hardware available. Vaughn responded:

Large amounts of military hardware are available. They are not available on the street corner to the average individual criminal. You get into your more sophisticated organized groups, yes. Some of your survivalists and those type of organizations have a tremendous amount of the military hardware available. But it is not sold on the street corner *per se* to the average gang member. [A] lot of it does wind up in their hands through thefts or through sales at gun shows by people that don't really realize what they are doing.

The committee's investigation found that most of the weapons and parts that made their way from military installations, to gun shows, and onto the streets were stolen. Mark Carter, a former National Guardsman who stole military gun parts from his base, told the Senate committee that he sold the bulk of those parts to an Illinois gun dealer. In his testimony before the Senate committee, Carter detailed the ease with which he sold the stolen parts:

**Six Parts Obtained by the General Accounting Office at Gun Shows
That Can be Used to Convert a Semiautomatic AR-15 to a Fully
Automatic Machine Gun**



I happened to go to a gun show and I didn't have the money to buy the parts I needed, but I had extra parts at home which I had taken from the National Guard. I took those extra parts to the show and sold them to purchase the parts I needed to put my rifle together....You might want to know what was happening to the parts that were stolen by people like me. There is a black market network across the country which buys stolen arms parts from different National Guard units, then they sell the stolen parts at gun shows and through gun magazines and newspapers.

Section Seven: Trends

The Role of Civil Litigation

An increased willingness on the part of the courts to hold gun show organizers liable when guns from their shows wind up in the wrong hands and cause death or injury may help motivate gun show promoters to control inventory and ensure that laws are obeyed. One example is the recent landmark ruling by an Ohio court in *Pavrides v. Niles Gun Show, Inc.*,³² a case involving two teenage attendees at a gun show sponsored by Niles Gun Show, Inc. The show's lax security allowed the two boys to walk away with three handguns and other paraphernalia. The boys then stole a car and proceeded to drive across lawns and crush curbside garbage cans. The teenagers fired on two neighbors who gave chase and one, Greg Pavrides, was hit and paralyzed from the waist down. He sued the teenagers and the gun show for negligence as well as wilful and wanton misconduct. In response to a motion by the defendants that the case be dismissed, the plaintiffs submitted an affidavit from another gun show promotor, Bill Goodman, the proprietor of International Gun-A-Rama, Inc. In his affidavit, Mr. Goodman stated:

Based upon my experience and expertise, I am of the opinion that the availability of any type of firearm and ammunition in the possession of a minor creates a potential danger, and it is clearly foreseeable that a weapon in the hands of a minor will result in injury. Based upon the fact that a 13-year-old boy was able to purchase .38 caliber [sic] hollow point ammunition and that three [sic] minors were permitted into the defendant Niles Gun Show and able to easily steal firearms creates a foreseeable danger that said minors would use these firearms to cause injury.

An Ohio jury found the youths and the gun show jointly and severally liable and awarded \$750,000 in compensatory and \$10,000 in punitive damages, although Mr. Pavrides was found 50 percent at fault for giving chase. Under Ohio law and the doctrine of joint and several liability, Niles Gun Show will be liable for the entire amount because the two youths were insolvent and the law allows full recovery to plaintiffs in cases, like *Niles Gun Show*, in which the jury finds that punitive damages are warranted. This case has undoubtedly put gun show promoters on notice that failure to adequately monitor gun show inventory can result in significant financial liability. Considering the lack of formal regulatory oversight of gun shows, this incentive to enhance gun show security is a minimal first step to protect the public safety.

³² *Pavrides v. Niles Gun Show, Inc.*, 637 N.E. 2d 404 (Ohio App. 1994).

The Number of Federal Firearms License Holders Begins to Decrease

It is important to note the emergence over the past few years of a new variable in the future of gun shows. Beginning in 1994 there has been a dramatic decrease in the number of Federal Firearm Licenses issued and renewed by the federal government. When President Clinton took office in 1993, there were more than 245,000 Americans holding Type 1 Federal Firearms Licenses. Because of changes in the management of the licensing procedure made by the Clinton Administration and due in large part to changes in federal law related to gun dealers, by February 1996 the number of Type 1 Federal Firearms Licenses had plummeted to 142,220.³³

That the drop in the number of federally licensed dealers may have a long-term impact on the volume of gun shows has also been noted by some industry insiders. Bill McCaughtry, editor of *Gun Tests* magazine, wrote in the February 1996 issue, "Gun show producers concede that lots of their exhibitors have dropped out of the weekend circuit as a result of license reduction program [sic]. They expect more to do so before all is said and done." McCaughtry quoted Bob Templeton, director of the National Association of Arms Shows, as saying, "The reduction in licensees is the most insidious long-term and short-term problem we face."

NRA Sponsorship of Gun Shows: If You Can't Beat 'Em, Join 'Em

Federal law encourages gun shows to be overseen by some organizing entity—however loosely defined. Under federal law "gun shows" and "events" must be "sponsored by any national, State, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions...in the community."³⁴

³³ In August 1993 President Clinton issued a Presidential Memorandum directing ATF to "take whatever steps are necessary, to the extent permitted by law, to ensure compliance with present licensing requirements...." These included: the development of a more comprehensive application form; improving the thoroughness and effectiveness of background checks; and expansion of cooperative agreements between ATF and state and local enforcement authorities. That November, as part of the Brady waiting period law, the dealer fee was raised from \$30 for three years to \$200 for three years (\$90 for three years for renewals). Then, in September 1994, the federal crime bill codified many of the reforms contained in the 1993 Presidential Memorandum. It also required that: all licensees comply with state and local laws and inform the local chief law enforcement officer that they intend to apply for a Federal Firearms License; all licensees report to ATF all firearm thefts or losses; and that ATF notify state and local jurisdictions of all persons to whom a firearms license has been issued.

³⁴ 18 U.S.C. § 923 (j) and 27 CFR § 178.100.

The National Rifle Association attempted to eliminate this sponsorship requirement by suing President Bush's Treasury Department. The NRA argued that based on the grammatical structure of the statute, gun shows were not required to have organizational sponsorship and that the sponsorship requirement applied only to "events." The Treasury Department strongly disagreed, arguing:

[T]he construction which plaintiffs [NRA] urge—that 'events' must be sponsored, but 'gun shows' need not be—would lead to impossible problems of interpretation in enforcement....The interpretation for which they call would create overwhelming incentives to designate temporary displays of firearms as 'gun shows,' rather than 'events,' in order to escape the requirement of organizational sponsorship.

The Department went on to describe the absurd outcome that would result:

Without the limiting concept of sponsorship by some organization, commercial or nonprofit, devoted to the sporting use of firearms, any collection of firearms merchants could set up traveling sales operations. Each stop on the tour would in some sense be a 'gun show'; salespeople would show guns to those who wanted to see them. Such a construction, however, would eviscerate the statutory requirement that licensees operate from fixed business premises, and destroy the accountability to licensing authorities which the statute and implementing regulations are designed to achieve.

In 1990 the U.S. Court of Appeals for the Fourth Circuit agreed with the Treasury Department and upheld the agency's interpretation of the statute. In response, the NRA has adopted an "if you can't beat 'em, join 'em" approach to the ruling. The organization has announced that it will sponsor the first annual NRA National Gun Collectors Show & Conference in September 1996 at the Opryland Hotel in Nashville, Tennessee. According to the *American Rifleman*, this will mark "the first time NRA has sponsored a national gun show."³⁵

The NRA apparently believes that gun shows offer fertile ground for membership recruitment. The organization's membership programs include a "Shows and Exhibits" department, which, according to the NRA web site, "recruits new members and renews existing memberships at over 100 sport and gun shows each year." Complementing this effort is the "Promotor Program," which has as its ultimate goal "having an NRA recruiter at virtually every gun show across the country."

³⁵ The NRA counts among its largest contributors many gun show promoters. For example, during the past year the Arizona Arms Associations, Virginia Gun Collectors, Kentuckian Arms Collectors, and Memphis Weapons Collectors Association have all contributed \$1,000 or more to the NRA's lobbying arm, the Institute for Legislative Action. In addition, Albert C. Ross, past president and current board member of the Dallas Arms Collectors Association, serves on the NRA's board of directors and was recently named second vice president of the organization.

Section Eight: Recommendations

Do something about the 'gun shows.' Either shut them down or regulate them and restrict their activities to legal transactions in firearms. The Grand Bazaar approach that we now have ensures that every pugnacious child with a grudge to settle and every other form of human predator have easy access to all the firearms that they might desire, while the legitimate firearm owner is increasingly saddled with more and more onerous restrictions.

Bill Bridgewater, executive director of the National Alliance of Stocking Gun Dealers, in a 1993 letter to the House of Representatives Crime and Criminal Justice Subcommittee

The dangers and problems associated with gun shows were well known in 1986 when Congress voted to pass McClure-Volkmer. Yet in spite of this, the National Rifle Association and its congressional supporters moved to pass a measure that would increase the number of gun shows and create a raft of new law enforcement problems, above and beyond the well-documented problems that already existed. To argue that the bill's effects could not have been predicted is not credible. The most cursory reading reveals that McClure-Volkmer was certain to multiply the number of gun shows and the number of people allowed to participate in them.

The most effective approach to remedying the law enforcement problems presented by gun shows would be to ban them. Gun shows could be effectively banned by reinstating the prohibition forbidding dealers to sell from any location other than their licensed place of business and requiring that all sales by a private individual be consummated by a licensed dealer. Short of banning gun shows, many restrictions and requirements could be imposed to greatly reduce the shows' role in criminal gun trafficking.

On the federal level—

Limit gun show participation to licensed dealers and step up enforcement of all existing requirements regarding posting of license, recordkeeping, etc. This would eliminate confusion regarding which sellers must complete the federal paperwork and abide by waiting periods and background checks and would address the problem of licensees competing with non-licensees by engaging in illegal transactions.

Require that Federal Firearms License holders who participate at gun shows must notify ATF when they engage in business away from their licensed premises, and require that the location and date of the gun show and number and types of guns sold at the show be reported to ATF. (This requirement could likely be promulgated by ATF under current law.)

To facilitate the tracing of firearms transferred at gun shows, require that all firearm sales at gun shows be recorded on a separate version of the federal Form 4473. The form should include the name, location, and date of the gun show. (This requirement could likely be instituted by ATF administratively.)

Amend the definition of "engaged in the business" to close the loophole that allows sales from a personal collection in supposed "pursuit of a hobby." One option could be to disallow such sales at gun shows altogether.

Grant ATF interim powers such as license suspension, civil penalties, or offers of monetary settlement. Currently, ATF's enforcement tools are limited to either revoking or failing to renew a license.

Limit the type of weapons sold at gun shows. Prohibitions on the sale of assault weapons, handguns, and weapons regulated under the National Firearms Act (e.g. machine guns, silencers, sawed-off rifles and shotguns), would reduce the shows' appeal to criminals and illegal traffickers.

Strictly enforce the prohibitions on the sale of U.S. military hardware at gun shows. In this area, gun show organizers and promoters could play a key role in reducing distribution outlets for stolen military material. Stepped up surveillance of shows by local, state, and federal law enforcement targeting the sale of stolen military hardware is called for.

On the state or local level—

State or local authorities could require that all sales made by private individuals at gun shows be reported to local law enforcement agencies on a standardized form.

Communities could limit the number of gun shows held in their areas. Reducing the volume of shows occurring each year would aid enforcement authorities and reduce the opportunity for criminal

trafficking.

State and local authorities could also require certification of gun show organizers and promoters. Requirements could include: keeping accurate records of all gun show participants selling firearms; showing proof that the organization carries adequate theft and liability insurance; and, showing proof that adequate steps are being taken to ensure that all sellers are complying with applicable federal, state, and local laws.

As on the federal level, the type of weapons sold at gun shows could be limited by a state or community. Prohibitions on the sale of assault weapons, handguns, and weapons regulated under the National Firearms Act (e.g. machine guns, silencers, sawed-off rifles and shotguns), would help reduce the shows' appeal to criminals and illegal traffickers.

Appendix One

Samples of Gun Show Advertisements

GUN SHOWS & SHOOTING EVENTS

MILITARY Relics Show, Wichita, KS, May 18 & 19. Cessna Activity Center, 2744 S. George Washington Blvd. 8' tables, \$30.; Reservations: Jim Uttinger, PO Box 63012, Wichita, KS 67203: 316-264-5536. Charlie, 316-684-1050. 5-3

PENSACOLA, FL May 18 - 19. Fairgrounds. 225 8' tables at \$35. (\$40. at door); U.S. Classic Gun Show, 1454 Cottonwood Dr., Denham Springs, LA 70726. Call: Sandra Bean-Dodd, 504-665-3054. 5-2

NORTHERN ILLINOIS LAKE COUNTY SPORTSMEN GUN SHOW, May 19. Buy, Sell, Trade Firearms & related items. Military Surplus & Collectibles at the LAKE COUNTY FAIRGROUNDS, Grayslake, IL. Rt. 120 at Rt. 45 just West of I-94 Tollway. This is Illinois Largest Show with over 600 tables in 4 buildings. Show opens to the public at 8:00 AM. Admission is \$5. ea. Table space is available for exhibitors, \$24. ea.; Breakfast & Lunch food available at Fairgrounds Cafeteria. Send checks to: Lake County Gun Collectors, PO Box 1667, Arlington Heights, IL 60006. For information call: 847-577-8380. 5-2

SC ARMS Collectors Assoc. Gun & Knife Show, Columbia, SC. May 18 & 19. Jamil Temple. 8' tables, \$35. members, \$40. non-members; Bob O'Shields, PO Box 6611,

Northwest Arms Collectors
Presents

**PORTLAND
GUN & KNIFE
SHOW**
AUGUST 10-11, 1996
MEMORIAL COLISEUM

With 500 TABLES of QUALITY ARMS
& RELATED ITEMS, our Shows are
The BEST in the WEST!

Jim Mallard, Northwest Arms Collectors, Inc.
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EVANSVILLE, IN MILITARY COLLECTORS CLUB Military Relic Show, April 20 & 21. Sat. 9 AM - 5 PM, Sun. 9 AM - 3 PM. Days Inn, Hwy. 41 N., Evansville, IN. Admission, children under 12 free with adult. Military items: Uniforms, insignias, patches, wings, documents, field gear & equipment, military guns & knives, trench art & any related items. All nations, all wars. Buy, Sell, Trade; For more information: 812-476-6790. 4-2

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MILWAUKEE, WI, April 26, 27, 28, State Fair Park. 100 8' Tables, \$15; WSMI-CA, 1111 W. Delevan Dr., Janesville, WI 53415. 608-752-0627. 4-3

GUN & KNIFE SHOW, APRIL 27th & 28th, Pikesville, MD. Pikesville Armory, 610 Riestertown Rd. Sat. 9-5, Sun. 9-4. 500 Trade tables. Admission \$5.; Preston, 410-391-8883. 4-3

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RICHMOND, VIRGINIA, APRIL 27 - 28 at the CIVIL WAR SHOW OF VIRGINIA, exclusively Civil War period, 200+ Tables, Virginia State Fairgrounds, CIVIL WAR SHOW OF VIRGINIA, PO Box 288, Highland Springs, VA 23075. PH: 804-737-2254 or FAX: 804-737-1628. 4-3

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JACKSONVILLE, FL. No. Florida Arms Collectors Gun Show, May 25 & 26. Snyder National Guard Armory, Normandy Blvd.; 904-461-0273. 5-3

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Appendix Two

**June 1993 Testimony of Convicted Firearms Trafficker Edward Daily III Before the
U.S. House of Representatives Subcommittee on Crime and Criminal Justice**

FEDERAL FIREARMS LICENSING

HEARING
BEFORE THE
SUBCOMMITTEE ON
CRIME AND CRIMINAL JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS

FIRST SESSION

JUNE 17, 1993

Serial No. 24



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

73-253 CC

WASHINGTON : 1994

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Mr. DAILY. Yes, sir.

Mr. SCHUMER. Then you sold the narcotics to others?

Mr. DAILY. Yes, sir, because it was a better profit. You could buy the guns cheaper.

Mr. SCHUMER. Right.

How many guns did you buy at one time?

Mr. DAILY. Each individual would buy anywhere from 6 to maybe 8, and, as a group, 12 to 20 a weekend.

Mr. SCHUMER. And you always bought from the same few dealers?

Mr. DAILY. Yes, sir, usually the same dealers because they sold the type of weapons that we wanted.

Mr. SCHUMER. And this was always at gun shows?

Mr. DAILY. Always at gun shows.

Mr. SCHUMER. And the dealers knew that you weren't buying them for your own use.

Mr. DAILY. Oh, yes.

Mr. SCHUMER. It was obvious—you described that—from the way you filled out a form.

How much profit did you make on a gun?

Mr. DAILY. It depends on which type of pistol I would buy. If it was a smaller pistol, say a .25-caliber or a .38-, \$300 profit. If it was a 9-millimeter of the familiar Tech-9 and M-11, \$600 profit.

Mr. SCHUMER. Right.

I am just going to finish up a couple of questions, and then we will go vote.

Were you ever concerned that the police would catch up with you?

Mr. DAILY. It never really crossed my mind, because I saw other people doing the same thing I was doing at the gun shows. You know, someone like me would point out a gun to another person, and he would hand him the money and buy it for him.

Mr. SCHUMER. How many other people did you see doing the same thing, using straw purchasers?

Mr. DAILY. At each show, I would see basically sometimes the same people. I would say about four or five different groups of people coming in.

Mr. SCHUMER. So it would be fair to say that at these gun shows everyone knew that the gun dealers were violating the laws.

Mr. DAILY. Yes, sir. If I was a regular citizen watching someone purchase a handgun this way, I would know, you know, that this was wrong.

Mr. SCHUMER. And these are free and open and everywhere.

Mr. DAILY. Yes, sir. You go in, and there's 250 to 300 tables of guns, everything you need, laying out there. We not only purchased handguns, we would get, like, stiletto knives, brass stuff.

Mr. SCHUMER. Do they advertise these things publicly?

Mr. DAILY. Yes, sir. They have them in magazines: American Rifleman, Guns and Ammo, Gun List, which is a paperback magazine, where they also sell guns out of the magazine, private citizen to citizen.

Mr. SCHUMER. And there is no question in your mind that every dealer you dealt with knew what they were doing was illegal?

Mr. DAILY. Yes, sir.

Mr. SCHUMER. This is just—it is amazing and galling. You know, you hear about it; it sounds benign. You know what happened to the guns. Would you guess that one of the guns that you sold ended up killing some innocent person?

Mr. DAILY. Yes, sir.

Mr. SCHUMER. Do you know that for a fact, or you just surmise it?

Mr. DAILY. I surmise it.

Mr. SCHUMER. It would be your judgment then that guns are easily available to people with criminal records?

Mr. DAILY. Yes, sir. More available to criminals than to citizens, I would say.

Mr. EDWARDS. Will you ask him what does he mean by a gun?

Mr. SCHUMER. OK.

Well, go ahead, Don.

Do you mean handguns?

Mr. SCHUMER. Are you talking about rifles?

Mr. DAILY. Pistols, as in—no rifles—handguns.

Mr. EDWARDS. You are talking about handguns.

Mr. DAILY. Twenty-five-caliber, .38-caliber, 9-millimeter.

Mr. EDWARDS. Revolvers and automatics.

Mr. DAILY. Revolvers are not a market. People want more. They want 20 rounds in a clip, 15 rounds in a clip, 30, they don't want 6 rounds in a revolver.

Mr. EDWARDS. Weapons that are meant to kill people, and not—

Mr. DAILY. And quantity of people, not just be able to shoot a person one time, they want to shoot five people five times.

Mr. SCHUMER. Do you feel bad about what you did?

Mr. DAILY. Yes, sir.

Mr. SCHUMER. Have you done anything to help stop some of these dealers or gun shows?

Mr. DAILY. I cooperated with the Alcohol, Tobacco and Firearms Bureau.

Mr. SCHUMER. Have they indicted or convicted any of the people whom you bought guns from?

Mr. DAILY. Yes, sir. There's 24 people involved in my case.

Mr. SCHUMER. At least you made some good of a bad situation.

The bottom line is then—and you tell me if I am wrong here—there are lots of dealers who are breaking the law who have Federal licenses. They know they are breaking the law. They are selling lots of guns to people like you, and the guns end up killing people.

Mr. DAILY. Yes, sir.

Mr. SCHUMER. There is no doubt in your mind.

Mr. DAILY. No doubt in my mind whatsoever.

Mr. SCHUMER. OK. I think my colleagues will have questions, but probably we should go vote and come back. Since we have two votes, let us try to resume at 5 to 1. That will mean we will resume at 1 o'clock, but 5 to 1. OK, the hearing is temporarily recessed, and we thank you, Mr. Daily.

[Recess.]

Mr. SCHUMER. We will resume, and I just have one final question for you, Mr. Daily, other than thanking you for coming here and

telling us of your activities, and that is, why did you need straw purchasers? Why didn't you just get the guns yourself with either a fake ID or something like that?

Mr. DAILY. At the time, I didn't have an ID to do that with, and I really—I didn't want to.

Mr. SCHUMER. Why didn't you?

Mr. DAILY. I really never needed an ID, you know.

Mr. SCHUMER. You didn't have a driver's license?

Mr. DAILY. No. No, sir, nothing. I just didn't need it.

Mr. SCHUMER. How old were you at the time when you did this?

Mr. DAILY. Twenty, 21. I just turned 22.

Mr. SCHUMER. OK. And why not just buy a fake one?

Mr. DAILY. It was easier for straw purchasers. I had so many people willing to do it.

Mr. SCHUMER. And you paid them to do it?

Mr. DAILY. Yes.

Mr. SCHUMER. How much?

Mr. DAILY. Fifty dollars, \$25 a handgun.

Mr. SCHUMER. There is so much money in this business that that was not a consideration?

Mr. DAILY. No. And sometimes, instead of paying them cash, I would give them drugs.

Mr. SCHUMER. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

Mr. Daily, I just have one question. We all know in Virginia that they have an instant check system that is on line to check out whether the person who is attempting to purchase a handgun there is legally entitled to do so. Did any of the people that you enlisted to buy guns at these gun shows get checked out by the dealers there who were selling them?

Mr. DAILY. Yes. A lot of times they would have to wait for the phone calls to go through. One time I had—one person had to wait an hour and a half for his phone call to go through because they were so busy calling and checking the ID's up on people. Usually there was a 25-, 30-minute wait for the gun because they would tell us—the gun dealer would say, "Oh, there's so many people buying guns; the phones are ringing off the hook."

Mr. SENSENBRENNER. So the Virginia gun dealers were complying with their State law in selling these handguns to your straw men and straw women.

Mr. DAILY. Yes, sir. Well, to the part, maybe on the form where it says, "Are you the true purchaser of this firearm?" you know, the person who was buying it wasn't.

Mr. SENSENBRENNER. Virginia recently passed a law that I believe limits people to one or two handgun purchases per month. If that law were in effect when you were doing what you were doing, how would that have affected your business?

Mr. DAILY. I would use more people, and I might try fake ID's, you know, because I only purchased four guns the last time I went when I was arrested. I got a \$10 ID at a check cashing place that I told them what the information was on it, and I went to the DMV and got a walker's ID, and I bought guns with that.

Mr. SENSENBRENNER. So, in your opinion, the law that the Virginia Legislature passed is not going to be effective in achieving slowing down the sales of guns at gun shows and flea markets.

Mr. DAILY. It might slow it down, but it won't stop it because people will still buy fake ID's or they will recruit more straw purchasers.

Mr. SENSENBRENNER. Thank you very much.

Mr. SCHUMER. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

Mr. Daily, you have obviously been rehabilitated, and it is very much to your credit to be here today. We are grateful, and I hope the parole officer takes that into consideration.

Mr. DAILY. Thank you.

Mr. EDWARDS. And I am sure he will.

How rich did you get at the peak of your career in this business?

Mr. DAILY. It depends. When I went to gun shows, before and after, I never had really, you know, a bank account or wealth, I would have possessions. At the time I had three cars, I would walk around with \$2,000/\$3,000 in my pocket at a time. I never lived in an apartment, I stayed in hotels. I never had a home for the entire time, I was a hotel person every night.

Mr. EDWARDS. You lived a pretty high life.

Mr. DAILY. Yes, sir.

Mr. EDWARDS. And if you were in our shoes as legislators, what would you do about this runaway traffic and possession of handguns?

Mr. DAILY. There's, first of all, the fake ID's. I mean if you could stop the person from getting an ID real easy, you would probably stop a lot of the gun running, because a lot of people do use fake ID's. I do read the newspapers and stuff like that. And also background checks need to be longer.

We originally were going to purchase firearms in Fairfax, VA, and Alexandria, but we found out that there was a 3- to 5-day waiting period. As soon as I found out that I could go to a gun show in the lower parts of the State in Virginia—Richmond County, and I think it is Henrico County, Warrenton—and it was a 5-minute waiting period, the business started booming. We had 5 minutes and as many guns as we wanted.

The waiting period, it was a big factor. The reason we stopped doing it in North Carolina, which was where I originally started, was because the waiting period was too long, and it was two minimum. We could only get three handguns a month. When I found out Virginia was as many as I wanted, I just started my business here.

Mr. EDWARDS. Thanks very much.

Thank you, Mr. Chairman.

Mr. SCHUMER. So what you are saying is that the one gun a month law that just passed in Virginia would have greatly put a crimp in your activities.

Mr. DAILY. It probably wouldn't have because—

Mr. SCHUMER. Or would you have been able to have gone to just 20 or 30 different dealers in a day?

Mr. DAILY. Well, it is one gun a month. I don't know how the system works. From what I understand, it is one gun a month per per-

son, and it goes in the computer, so you couldn't go to a different dealer, but I had a lot of other people lined up that were willing to go.

Mr. SCHUMER. You just get straws to get around it.

Mr. DAILY. I'd just get a lot more people.

Mr. SCHUMER. Understood.

Mr. Smith.

Mr. SMITH. I don't have any questions. Thank you, Mr. Chairman.

Mr. SCHUMER. OK. Then I want to just join with my colleague, Mr. Edwards, in thanking you for cooperating here. Obviously, you know you have done some pretty bad things, but you are also trying to rehabilitate yourself, and you are also trying to educate not only our committee but the public on this kind of problem.

Mr. DAILY. Yes, sir.

Mr. SCHUMER. And that is much appreciated.

I hope after you finish your term in prison, you—I don't know what the term is any more.

Mr. DAILY. Straighten my life up.

Mr. SCHUMER. Straighten your life up—thank you. So that you straighten your life up and learn from your mistakes.

Mr. DAILY. Thank you, sir. I appreciate your time.

Mr. SCHUMER. Thank you, Mr. Daily, and I want to thank your officer for being here.

Mr. DAILY. He is ATF Agent Jeff Bragman.

Mr. SCHUMER. Thank you.

Mr. BRAGMAN. Thank you.

Mr. SCHUMER. Panel two is also just one person, and that is Mr. Stephen Higgins. He is the Director of BATF in the U.S. Treasury Department. He has served with BATF for 32 years, his last 10 years as Director. He has received numerous law enforcement and public service awards. He is accompanied by Mr. Brad Buckles. He is the Deputy Chief Counsel for BATF.

Mr. Higgins, your entire statement will be read into the record, and given the fact that we are going to have votes—the frequency of the votes is going to increase over the next little while—if you could summarize your statement, we would most appreciate it.

Mr. HIGGINS. I will rush through here as quickly as I can. I know you want to get to questions.

Mr. SCHUMER. Thank you.

Appendix Three

**June 1993 Testimony of Bernard Shaw of the Maryland State Police Licensing
Division Before the U.S. House of Representatives Subcommittee on
Crime and Criminal Justice**

FEDERAL FIREARMS LICENSING

HEARING
BEFORE THE
SUBCOMMITTEE ON
CRIME AND CRIMINAL JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

JUNE 17, 1993

Serial No. 24



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1994

73-253 CC

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-044182-X

Mr. SCHUMER. OK, why don't we bring the third panel up. It is going to be Shaw, Travis, Farley, and Archer, so you may as well sit in that order.

Our fourth panel today begins with Sgt. Bernard Shaw of the Maryland State Police. Sergeant Shaw has served the Maryland State Police for 22 years. He is currently supervisor of the firearms licensing section, and he is responsible for licensing and regulation of all Maryland pistol and revolver dealers. He was also instrumental in developing Governor Schaefer's gun show bill.

Mr. Jeremy Travis is the deputy commissioner for legal matters for the New York City Police Department. He has served New York City in numerous capacities, and briefly he was former chief counsel for this House Subcommittee on Criminal Justice. Ten years ago, Mr. Travis also served as law clerk to Judge Ruth Bader Ginsburg, who of course this week was nominated for Associate Justice of the Supreme Court. So we didn't know we were having such a distinguished witness working for two Madison High School graduates, myself being the other one.

Mr. Farley from Chesapeake, VA, also joins us this morning, William Farley. He is here to testify about the senseless murder of his wife—and I have read your testimony and very much appreciate your being here, Mr. Farley—and about his successful lawsuit against the gun dealer that sold the weapon used in that crime.

Our fourth witness on this panel is Attorney Steven Archer of L.A., CA. Mr. Archer represents Mrs. Lillian Goldfarb, who also sued a licensed firearms dealer successfully after the dealer sold a gun to a mentally unstable woman who then shot and killed Mrs. Goldfarb's husband, Gerald.

So obviously we have serious issues here.

I am going to try to ask all the witnesses to limit their testimony to the 5 allotted minutes. We have been going over that, but we are going to have more votes, unfortunately, and it is going to extend the hearing. So I would ask unanimous consent that every statement be read into the record in its entirety and begin with Sergeant Shaw.

STATEMENT OF BERNARD SHAW, FIRST SERGEANT, MARYLAND STATE POLICE LICENSING DIVISION, WOODLAWN, MD

Sergeant SHAW. Mr. Chairman, members of the committee, thank you for the opportunity to speak.

My testimony is in, and I am going to quickly go over that. The first thing I said in paragraph one is that presently the illegal sale of firearms may be as profitable as the illegal sale of drugs, and I think Mr. Daily, the first gentleman you had here who had been arrested, may have enforced such statement somewhat with the profit and the way—his manner of living.

Maryland identified a problem with gun shows back in 1991. As a result of that, we started attending gun shows and have made arrests at each one we have attended.

Mr. SCHUMER. That is a pretty good record, Sergeant Shaw, and it says a lot about the gun shows.

Sergeant SHAW. The picture I am showing you right now—and throughout my testimony I said that the people that come in, I am not talking simply of Federal firearms licensed dealers, I am talk-

ing about private citizens that work for Federal firearms licensed dealers, and the reason I brought this picture is, this gentleman at the Westminster Gun Show in June 1991 was basically that. This is a picture of his display, and I'll explain it. He had in excess of 35 regulated firearms, and when I say regulated firearms, Maryland does not regulate the sale of rifles and shotguns, so he had in excess of 35 regulated firearms, including an assault weapon, that he was selling.

He sold under the table a banned firearm for \$125. Now that may not sound like much, but when the value of the firearm is \$45, then you can understand the profit margin.

The problem that Maryland has identified is that Federal firearms licensed dealers from out of State come into the State of Maryland at gun shows. They sell whatever they have, no questions asked.

The Pikesville show—we just attended a show on May 29 at Pikesville. A Virginia Federal firearms licensed dealer sold me a gun directly across the table—of course I wasn't across the table—but directly across the table, no questions asked.

Mr. SCHUMER. I wouldn't think they would be that brazen, Sergeant.

Sergeant SHAW. No. No, he wasn't quite that brazen. But it goes on.

We have identified the problem. As a result of identifying the problem, the Governor of Maryland, Governor Schaefer, and the general assembly last year passed senate bill 330, and that dealt strictly with gun shows, which will be effective on October 1, 1993, and we are hoping that that will take care of some of our problems.

The problem is not simply with Federal firearms licenses, it is with some of the other Federal laws. If the Federal law right now, to be engaged in the business, it allows occasional sales. Maryland does not allow occasional sales, and when the Federal firearms licensed dealer goes into a gun show and sells what we consider a regulated firearm, and that goes back to the definition of engaged in the business by Federal law, it doesn't work in Maryland, and the problem is that people may be obeying Federal law but not the State laws, and they are coming out of State.

Mr. SCHUMER. Coming out of State, per se, is a violation.

Sergeant SHAW. And at the Pikesville Gun Show we had Federal firearms licensed dealers from New Jersey, New Hampshire, Vermont, Virginia, North Carolina, that are coming into our State selling firearms and, really, with no intent of obeying our laws.

The Westminster show that I am showing you a picture of—I also said in my testimony that the displays of private sales and FFL's embarrass the displays of the licensed dealers, and this is a display at the Frederick show. This gentleman had videos. He was selling something called Hellfire. He was selling assault weapons, no questions asked. If you have got the money, he has got the gun; that is it. We need to resolve this problem, and hopefully with our law.

At the Pikesville show, this gentleman was selling for \$1,750 and HK-91 assault rifle, which I believe is banned for importation into the United States.

The problem that we have in Maryland right now is, we have over 3,000 Federal firearms licensed dealers within the State limits. We have a total of 399 licensed pistol and revolver dealers. And the red light went off. I'm done.

[The prepared statement of Sergeant Shaw follows:]

PREPARED STATEMENT OF BERNARD SHAW, FIRST SERGEANT, MARYLAND STATE
POLICE LICENSING DIVISION, WOODLAWN, MD

The illegal sale of firearms may be as profitable as the illegal drug trade. Persons who may be prohibited by Federal or State laws from purchasing a firearm will pay more for an unregistered sale. It is an attractive business for those who are willing to make short trips to any state that conducts weekly gun shows, such as Maryland, Virginia, Carolinas, Georgia, Florida, Oklahoma, Texas, and many others. Sales of firearms at these shows circumvent federal and state laws.

Some of the persons who attend these shows are Federal Firearms licensees with business addresses at their homes, who work out of their vehicle or work on consignment for other Federal Firearms licensees. These persons are known as "Hobby dealers" or "Gun show dealers". They sell and transfer firearms at gun shows with little or no restriction due to the lack of enforcement personnel to deal with the number of gun shows in the United States. These persons do not record the sales of these firearms in a permanent record and any possibility of tracing this particular firearms is lost.

An example of an illegal sale occurred in Maryland June 15, 1991 when an individual arrested and charged with several violations of the Maryland law at the Westminster gun show in Westminster, Maryland. This individual advised an undercover Corporal of the Maryland State Police that all guns were legal for sale in the United States. He sold a handgun that was banned in Maryland. In addition, he purchased a handgun from another citizen and resold that handgun to an undercover Sergeant of the Maryland State Police along with a switchblade knife and another handgun. This individual did not ask any questions as to residency or name, but if the Sergeant was a cop. His only concern was the amount of money he made on the sale. Upon arrest it was discovered that he had a Virginia drivers license and Virginia registration on his vehicle, yet was selling regulated firearms at a Maryland gun show. A search and seizure warrant was executed on several locked cases and copies of Federal Firearms licenses were located in other dealers names.

Another example is of an individual who was employed by a licensed Maryland Pistol and Revolver dealer who possessed a Federal Firearms license and was contacting prospective purchasers at the gun shop and ordering regulated firearms for them without a Maryland license. This person sold firearms without background checks, on parking lots, and on at least one occasion to a fugitive from justice.

A third example is when a person who possessed a Federal Firearms license in Virginia sold and transferred a pistol to an undercover First Sergeant in the Maryland State Police at the Pikesville gun show in Pikesville, Maryland without completing any registration forms and he did not ask for any identification until after the sale was completed.

Another problem at gun shows are the sale of so-called "private collections" that are put up for sale by individuals who sell their firearms to anyone who has cash in hand. Very often, the sellers of these "private collections" have table displays that rival those of the licensed dealers. They display video taped promotions, manufacturers' display set ups, and offer brand new firearms for sale in original factory packaging. Yet these individuals can sell their wares to anybody. The problem is straightforward. Individuals who are prohibited from purchasing of firearms through legal means find easy access to firearms from these private sellers. These non-registered sales completely undermine the validity of law enforcements' efforts to keep firearms out of the hands of convicted criminals.

Currently the Governor of Maryland and the Maryland General Assembly has taken measures to address these problems with Senate Bill 330 to be enacted on October 1, 1993. This new legislation will require anyone who does not have a State license to obtain a Temporary Transfer Permit prior to any sales of regulated firearms at gun shows. In addition they must comply with the same laws as a licensed dealer.

Federal Firearms licensees have been determined to be "engaged in the business" by the Maryland Attorney General's office and are not permitted to sell or transfer any regulated firearms at gun shows or elsewhere within Maryland without a Maryland Pistol and Revolver Dealers' License. Yet, as previously stated they continue to violate Maryland law.

Currently there are over 3,000 Federal Firearms licensees in Maryland as compared to 399 licensed Maryland Pistol and Revolver Dealers. With the number of Federal Firearms licensees growing each day, a unique problem is presented to Federal and State law enforcement agencies in preventing the sale of firearms to convicted criminals.

Mr. SCHUMER. Thank you not only for your testimony, Sergeant, but for your trailblazing work in this area. You have achieved a national reputation in terms of gun shows.

Sergeant SHAW. If I could take one more—

Mr. SCHUMER. Please. You can take 1 more minute.

Sergeant SHAW. OK. This is a gun show calendar, and to show you the problem that we have, not just in Maryland but in the United States, here is an example of Sooner Gun Shows; the Grand National Gun and Knife Show, on August 21 and 22, 1993, 2,200 tables at \$40 each [indicating poster]. Now who is going to regulate that? I think that identifies the problem for you. What law enforcement agency is going to control 2,200 tables? So it is going on, and we need to resolve it.

Mr. SCHUMER. Thank you, Sergeant.
Jeremy Travis.