

"Trivial Violations"?

The Myth of Overzealous Federal Enforcement Actions Against Licensed Gun Dealers

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
FIREARMS TRANSACTION RECORD PART I - OVER-THE-COUNTER

8. Race (Ethnicity): American Indian or Alaska Native Asian Hispanic or Latino Native Hawaiian or Other Pacific Islander

9. What is your State of residence (if any)? PA
State of residence only if you have resided in a State for at least 90 days prior to this transaction.

10. What is your country of citizenship? (List more than one, if applicable.) USA

11. If you are not a citizen of the United States, what is your INS-issued alien number or admission number?

12. Answer questions 12a through 12l by writing "yes" or "no" in the boxes to the right of the questions.

Question	Answer
a. Are you the actual buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Important Notice 1 for actual buyer definition and examples.)	NO
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (An information is a formal accusation of a crime by a prosecutor. See Definition 3.)	NO
c. Have you been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Important Notice 6, Exception 1.)	NO
d. Are you a fugitive from justice?	NO
e. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?	NO
f. Have you ever been adjudicated mentally defective (which includes having been adjudicated incompetent to manage your own affairs) or have you ever been committed to a mental institution?	NO
g. Have you been discharged from the Armed Forces under dishonorable conditions?	NO
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Important Notice 7.)	NO
i. Have you been convicted in any court of a misdemeanor crime of domestic violence? (See Important Notice 6, Exception 1 and Definition 4.)	NO
j. Have you ever renounced your United States citizenship?	NO
k. Are you an alien illegally in the United States?	NO
l. Are you a nonimmigrant alien? (See Definition 6.)	NO

13. If you are a nonimmigrant alien, do you fall within any of the exceptions set forth in Important Notice 6, Exception 2?
Yes No Not applicable (If "yes," the licensee must complete question 18c.)

I certify that the above answers are true and correct. I understand that answering "yes" to question 12a when I am not the actual buyer of the firearm is a crime punishable as a felony. I understand that a person who answers "yes" to any of the questions 12b through 12k is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 12l is prohibited from purchasing or receiving a firearm, unless the person also answers "yes" to question 13. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of law. (See Important Notice 8.)

Transferee's Signature: _____ Date: 2-9-06

ACKNOWLEDGEMENTS

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

“Trivial Violations”?: The Myth of Overzealous Federal Enforcement Actions Against Licensed Gun Dealers, was written by Brian J. Siebel and Elizabeth S. Haile. Thanks go to Dennis A. Henigan and Doug Pennington for their assistance.

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



A NOTE ABOUT THE COVER

The cover graphic shows the ATF Firearms Transaction Record that gun purchasers and gun dealers are required to fill out prior to selling a firearm. This record is critically important for identifying the retail purchaser of individual firearms. When law enforcement recovers a crime gun, it will often trace the weapon back to this first retail sale to develop investigative leads. If the record is not filled out or kept properly by the gun dealer, a critical law enforcement investigative tool is eliminated. Accordingly, the Federal government requires dealers to keep these records for 20 years, and, if they go out of business, to transfer them to ATF.

The particular ATF Firearms Transaction Record depicted on the cover was filled out at Valley Gun in Baltimore, Maryland, which sold the weapon despite the purchaser stating that he was not the actual purchaser, in violation of Federal law. Valley Gun, owned by National Rifle Association board member Sanford M. Abrams, had its license revoked by ATF after it was charged with committing more than 900 violations of Federal law.

The phrase “Trivial Violations” in the title is drawn from an allegation made by Sanford Abrams’ attorney, Richard E. Gardiner, during testimony in support of H.R. 5092, that during civil enforcement proceedings against licensed gun dealers, ATF focuses on “trivial, immaterial violations unrelated to public safety.” This report exposes the falsity of that allegation.

EXECUTIVE SUMMARY

As adjournment of the 109th Congress approaches and only the highest-priority bills receive attention, the U.S. House of Representatives is considering a bill backed by the National Rifle Association – H.R. 5092 – based on the bald assertion that legislation is urgently needed to curb overzealous enforcement of Federal gun laws by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The Republican leadership in Congress has made this bill part of its “American Values Agenda.”

Hearings were held on this legislation in March 2006, in the Subcommittee on Crime, Terrorism and Homeland Security of the House Judiciary Committee. On September 7th, the bill was passed out of the House Judiciary Committee. ***H.R. 5092 could come to a vote on the House floor at any time.***

One of the primary speakers invited to testify in support of the bill was the NRA’s former Director of State and Local Affairs and Assistant General Counsel, Richard E. Gardiner. As a private attorney, Gardiner makes his living representing gun dealers charged with serious violations of Federal gun laws. One of his clients is current NRA board member Sanford M. Abrams, whose lawsuit against ATF seeking reinstatement of the revoked Federal firearms license for his gun shop, Valley Guns of Baltimore, Maryland, was pending at the time of Gardiner’s testimony.¹

Gardiner leveled serious charges against ATF during the hearing. He claimed that during license revocation actions, ATF focuses on “***trivial, immaterial violations unrelated to public safety,***” and imposes “***unreasonable standards of perfection.***” He further asserted that “***any error, no matter how minor, may result in license revocation.***”²

Audrey Stucko, Deputy Assistant Director of Enforcement Programs and Services for ATF, responded to these charges.³ She stated that ATF “***resorts to license revocation only when it is clear that voluntary compliance is unlikely and that continued operation of the firearms business is not in the public interest.***”⁴

Is there any validity to the charges leveled against ATF? Has ATF been overzealous in its enforcement of Federal gun laws, revoking gun dealer licenses for what former NRA attorney Gardiner called “inadvertent errors and technical mistakes”?⁵ Or, has ATF been extremely cautious in its license revocation actions, not moving until it has compiled an overwhelming record of a gun dealer’s willful violations of law occurring over several years?

The best way to test the claim that ATF has been overzealous in its enforcement actions is to examine the Federal court cases where licensees have chosen to challenge ATF license terminations. Because Federal gun laws allow firearms licensees to go to court and have the evidence against them reviewed *de novo* (“anew; afresh; a second time”)⁶ by a Federal judge, these would be the ones most likely to vindicate aggrieved gun dealers, if in fact dealers are being unfairly punished by ATF. Of course, these cases comprise only a small subset of the total number of ATF license terminations because many gun dealers do not challenge ATF’s license



termination decisions. Indeed, out of approximately 500 license terminations over the last five years, only three have been reversed by the federal courts.⁷

During her testimony, ATF Deputy Assistant Director Stucko stated that over the past five years, “33 of 36 Federal district courts reviewing ATF’s license denial or revocation decisions have upheld those determinations.”⁸ To evaluate ATF’s record, Brady Center lawyers searched for those decisions and the facts behind them. We discovered that only 21 of the decisions have been published in searchable databases,⁹ and we outline the evidence amassed by ATF against each of those dealers in the attached Case Summaries.

Contrary to the gun lobby’s claims, these 21 license termination cases are replete with egregious violations of Federal law that have a direct and profoundly adverse impact on public safety. In each case, a Federal judge, looking carefully at the evidence, concluded that the gun dealer in question had committed willful violations of Federal gun laws warranting termination of its gun license. Among the 21 cases are the following examples:

- **Baltimore Gunsmith, Baltimore, Maryland.** ATF found the store sold to obvious straw purchasers (i.e., persons with clean records who buy guns for prohibited buyers) on six different occasions. In one case, the straw buyer filled out the paperwork while the real purchaser – a 17-year-old felon – accompanied him to the shop, picked out eight guns, and paid \$5,274 in cash for them. In another instance, the store’s owner advised the prohibited buyer to bring his spouse or girlfriend into the store to buy guns.
- **Breit & Johnson Sporting Goods, Elmwood Park, Illinois.** ATF found serious violations during multiple inspections. In one inspection, the dealer was unable to account for 2000 firearms that should have been in inventory. The store was also subject to a “sting” operation conducted by Chicago police in which it readily sold firearms to obvious straw purchasers. Other guns straw-purchased from the dealer were used in gang-related killings in Chicago.
- **Dick’s Sport Center, Howell, Michigan.** During one ATF inspection, a random selection of purchasers from Dick’s revealed that several were felons that would have been barred if the store conducted proper Brady background checks. The store also failed to enter the disposition of any firearms sold during a three-month period.
- **Franklin Gun Shop, Athens, Georgia.** During one inspection, ATF discovered 677 missing sales entries for guns no longer on the premises. A Federal court ruled, “[i]t is not acceptable for hundreds of firearms to be sold or transferred without proper documentation,”¹⁰ adding that “[i]nformation drawn from records kept by dealers is a ‘prime guarantee of the [Gun Control] Act’s effectiveness’ in keeping guns out of the hands of criminals, juveniles, and other dangerous persons.”¹¹

This report is powerful evidence that the gun lobby’s claims in support of H.R. 5092 are without foundation. Rather than weakening ATF’s ability to crack down on corrupt gun dealers, Congress should instead be enacting measures that strengthen law enforcement’s ability to curb the steady flow of guns from licensed gun dealers into the illegal market.



“TRIVIAL VIOLATIONS”?

THE MYTH OF OVERZEALOUS FEDERAL ENFORCEMENT ACTIONS AGAINST LICENSED GUN DEALERS

Is ATF overzealous in its inspections and oversight of Federal gun dealers? Or, to the contrary, does ATF actually need stronger enforcement powers to crack down on gun dealers who violate the law?

Corrupt Gun Dealers Supply the Illegal Market

Illegal guns are a serious problem in America. Over the last ten years, there have been more than 3.7 million violent crimes committed with firearms in this country,¹² or an average of about 100 violent gun crimes every day. The problem grew dramatically worse in 2005. *Indeed, between 2004 and 2005, criminal gun violence grew by an alarming 49.4 percent, and affected more than 477,000 victims – 146,000 more than were affected just the year before.*¹³ This number of victims was also the highest since 2001, even though overall crime rates have continued to fall.

These violent gun crimes have been committed with millions of illegal guns. Approximately two million crime guns have been seized by local law enforcement and traced by ATF over the last ten years.¹⁴ This vast pool of illegal guns demonstrates how easily the criminal element can gain access to lethal weaponry. However, as the Director of ATF has pointed out, “[u]nlike narcotics or other contraband, the criminals’ supply of guns does not begin in clandestine factories or with illegal smuggling.”¹⁵ Instead, *virtually every gun used in crime started out in the legal market*, sold by a gun dealer licensed by the Federal government.¹⁶

The underground market for guns is largely a product of the diversion of massive numbers of guns from licensed gun shops into the hands of criminals.¹⁷ Studies of this diversion show, for example, that almost 60 percent of the guns traced to crime by ATF originated with only about one percent of the nation’s gun dealers.¹⁸

ATF has concluded that corrupt gun dealers are the source of the largest number of firearms diverted to the illegal market.¹⁹ Moreover, random inspections by ATF of licensed gun dealers nationwide have found that a large percentage have violated Federal firearms laws, and the problem appears to be getting worse. For example, in 1993, ATF found that 34 percent of gun dealers randomly inspected had violated Federal firearms law.²⁰ In 1998, ATF found that 56 percent of randomly inspected dealers and 30 percent of pawnbrokers selling 50 or more guns had violated Federal firearms law.²¹ In 2000, a more focused inspection of gun dealers that sold 10 or more guns traced to crime found that the vast majority of them – **75 percent** – had Federal firearms violations.²² In 2003, ATF inspectors found violations at 1,812 gun dealers, averaging *more than 80 violations per dealer.*²³



The Pending Legislation to Weaken ATF's Enforcement Authority

Despite this horrendous record of gun dealers violating Federal gun laws and diverting guns into the illegal market, Congress is considering a bill – H.R. 5092 – that would make it nearly impossible to revoke a law-breaking gun dealer's license. H.R. 5092 does this in a number of ways.

- ***Introduces a higher burden of proof to protect corrupt gun dealers.*** H.R. 5092 would require that ATF prove that a gun dealer not only knew of the requirements of the law and violated them, but also prove that he *specifically intended* to violate the law. Requiring that ATF prove a lawbreaker's specific mental state and purpose would present a nearly insurmountable burden. The U.S. Supreme Court has held that the current "willful" standard is sufficient "to protect law-abiding citizens who might inadvertently violate the law."²⁴ There is no need to amend it and cripple ATF's ability to crack down on corrupt gun dealers.
- ***Redefines serious Federal gun crimes as "minor."*** H.R. 5092 would re-classify Federal gun laws as serious and minor, and allow license revocation only for so-called "serious" violations. "Serious" violations would be rare and would exclude many violations that are extremely dangerous, such as when a dealer has "lost" numerous weapons from its inventory with no record of sale. For example, the assault weapon used by the D.C. snipers to terrorize the nation's capital area had been "lost" by a gun dealer notorious for being unable to account for weapons that should have been in its inventory during ATF audits.²⁵
- ***Keeps corrupt gun dealers in business long after their licenses have been revoked.*** H.R. 5092 would allow dealers who violate Federal gun laws to continue selling guns for 60 days after they have had their license revoked for willful violations or after their Federal firearms license expires. This makes a mockery of license revocation.
- ***Facilitates transfer of gun businesses of revoked licensees to family and friends.*** H.R. 5092 would facilitate the transfer of gun dealerships revoked for Federal law violations to friends or family members to evade ATF's legal sanctions and continue operating. This could foster sham transfers that enable scofflaws to remain involved in the gun business.
- ***Provides for toothless fines with no law enforcement value.*** Presumably to reduce the already-small number of license revocations, H.R. 5092 would allow ATF to impose fines up to \$5,000 for so-called minor violations of Federal law and \$15,000 for "serious" violations. However, ATF would still have to prove that a dealer specifically intended to violate the law, making it unlikely that ATF would ever impose even these miniscule fines. Further, the maximum fine applies to all violations uncovered at an inspection, no matter how many occurred, thus completely diluting its value. For example, ATF recently revoked the license of Trader Sports, a San Leandro, California, gun dealer that supplied hundreds of guns to criminals.²⁶ ATF found 7,477 firearms unaccounted for and dozens of other violations, but under H.R. 5092, even if these were classified as "serious" violations (and they are not), the maximum possible fine would be \$15,000, or an average fine of only a few dollars per violation. In comparison, the Consumer Product Safety Commission can impose fines on sellers of unsafe consumer products of \$8,000 per violation, up to a maximum of \$1,825,000.



The Myth of an Overzealous ATF

Is there a need to weaken ATF's current enforcement powers by adding any of H.R. 5092's proposed provisions? Or would they only protect lawless gun dealers that seriously threaten public safety?

In an attempt to make the case that H.R. 5092 is necessary, the chief sponsors of the bill, Rep. Howard Coble (R-NC) and Rep. Robert Scott (D-VA), invited testimony from the NRA's former Director of State and Local Affairs and Assistant General Counsel, Richard E. Gardiner, when they convened a hearing on the bill in March 2006 before the Subcommittee on Crime, Terrorism and Homeland Security of the House Judiciary Committee. Gardiner is now a private attorney and has represented numerous gun dealers charged with serious violations of Federal gun laws, including NRA board member Sanford M. Abrams. Abrams has sued ATF, so far unsuccessfully, for reinstatement of his revoked Federal firearms license for Valley Guns of Baltimore, Maryland, despite being charged with failing to account for hundreds of guns.²⁷

In his testimony, Gardiner claimed that during license revocation actions, ATF focuses on ***“trivial, immaterial violations unrelated to public safety,”*** and imposes ***“unreasonable standards of perfection.”*** He further asserted that ***“any error, no matter how minor, may result in license revocation.”***²⁸

If these claims had any truth to them, they would be borne out in lawsuits brought by gun dealers – many of whom are represented by Mr. Gardiner – to overturn license revocations. Federal gun laws, after all, require *de novo* review by a Federal judge when license revocations are challenged in court. Under *de novo* review, courts need not give any deference to the factual findings of ATF, but instead are free to reach their own conclusions based on the evidence presented. Moreover, ATF has to prove that the gun dealer's violations were “willful,” i.e., that he knew the requirements of the law and violated them. Accordingly, the best way to test the claim of overzealous enforcement is to examine court opinions that have evaluated gun dealers' challenges to ATF license terminations.

It is worth noting that only a small subset of the total number of ATF license terminations reach federal court because gun dealers typically do not pursue legal challenges to ATF decisions. ATF estimates that it terminates around 100 licenses every year, which is only one-tenth of one percent of the total population of licensees.²⁹ According to the Bureau, over the last five years there have been 36 federal court decisions reviewing ATF license terminations, and 33 were upheld by the reviewing courts.³⁰ Thus, of around 500 license terminations over the last five years, ATF decisions have been reversed by courts only three times.³¹

Brady Center lawyers searched available legal databases to locate Federal court rulings on dealer license terminations. We reviewed ***every case*** – 21 in all – decided since the Bush Administration took office in which a Federal court issued an opinion that was published evaluating a gun dealer's claim that its license was improperly revoked, or its renewal application improperly denied, by ATF.³² Because the three decisions reversing ATF are unpublished, we were unable to review the evidence against the dealers in those cases.



The published court rulings alone contradict any idea that ATF typically shuts down gun dealers for “trivial,” “minor,” or “inadvertent” errors, as the proponents of H.R. 5092 suggest. In every published court decision issued during the Bush Administration evaluating a dealer’s claim of unfair treatment by ATF, the courts found evidence of serious misconduct by the dealer, and affirmed ATF’s decision to terminate the dealer’s license.

The Brady Center is also aware of other ATF actions against law-breaking gun dealers that did not generate published court decisions but show that ATF does not focus on “trivial” violations. For example, ATF revoked the license of Valley Gun of Baltimore, Maryland, owned by NRA board member Sanford M. Abrams. Represented by Richard Gardiner and Christopher Conte, the NRA’s Legislative Counsel, Abrams sued to contest the revocation despite overwhelming evidence of wrongdoing by Valley Gun.

Valley Gun

The U.S. Department of Justice charged Abrams with being a “**serial violator**” of Federal gun laws, with “**over nine hundred**” violations of the Gun Control Act, and warned that Valley Gun “**endangered the public by failing to account for hundreds of weapons,**” including more than one-quarter of its inventory in ATF’s last inspection prior to revocation.³³

Trader Sports

ATF found **one out of every eight guns Trader Sports sold was recovered in crime**, which made it the second highest supplier of crime guns in the nation in 2005. A 2003 ATF inspection found the dealer was unable to account for at least 1,723 guns, illegally sold semi-automatic assault weapons, and sold guns to purchasers who identified themselves as under indictment for a felony. Trader Sports’ owner, Tony Cucchiara, tried to claim that ATF’s decision to revoke his license was based on “hyper-technical and inadvertent violations of the Federal Gun Control Act” and, unsurprisingly, urged Congress to pass H.R. 5092.³⁴

Trader Sports of San Leandro, California, also filed an unsuccessful Federal court challenge to ATF’s decision to terminate its license despite being charged with thousands of violations of Federal law over many years, as did Lou’s Loans of Upper Darby, Pennsylvania, whose license was revoked for sales to prohibited purchasers and straw purchasers.

Lou’s Loan

Case after case of Lou’s sales to obvious straw purchasers acting as conduits for illegal gun traffickers, and Lou’s ranking as one of the leading suppliers of crime guns in the nation, is detailed in The Brady Center’s report – *Lethal Lou’s: Profile of a Rogue Gun Dealer, Lou’s Loans, Upper Darby, Pennsylvania.*³⁵ **Lou’s even sold guns to a straw purchaser for a co-conspirator in the 1993 World Trade Center bombing.** Lou’s challenged ATF’s revocation action in Federal court, but withdrew it after reaching a confidential settlement with ATF. ATF did not reinstate its license, however.

These cases, though unpublished, reaffirm that it is fiction to claim that Congress must make more lenient the standard for license termination because dealers are losing their licenses for “trivial, immaterial violations.”

The published cases detailed in the Case Summaries are replete with more examples of outrageous, illegal conduct by gun dealers that directly threaten public safety, including:

- Selling guns to straw buyers, and even advising criminals to bring straw buyers into the store to fill out the paperwork;



- Selling an assault pistol with its serial number obliterated;
- Selling guns to juveniles;
- Having no record of sale for hundreds or thousands of firearms that were acquired by the dealer but were no longer in store inventory at the time of ATF inspections;
- Failing to conduct Brady background checks on gun buyers;
- Selling handgun ammunition to juveniles on a regular basis;
- Failing to fill out multiple-sale forms, which are critical to ATF's ability to monitor firearm sales for evidence of gun trafficking;
- Failing to file stolen gun reports; and
- Selling guns without even asking for identification from the purchaser.

Moreover, upon closer review, it is clear in case after case that ATF has bent over backwards to give dealers every opportunity to come into compliance with the law despite finding the same kinds of serious violations during every inspection. For example:

- **Bill's Pawn Shop, Grand Prairie, Texas**, was inspected no less than 14 times by ATF between 1975 and 2003, with serious violations found each time, including hundreds of firearms unaccounted for and other errors. The dealer signed six separate Reports of Violations notifying him of his violations before ATF finally terminated his license.
- **Breit & Johnson Sporting Goods, Inc., Elmwood Park, Illinois**, was inspected at least four times, and each time repeat violations of the Gun Control Act were found. ATF gave the dealer ample opportunity to comply with the law. Yet, in one inspection, Breit & Johnson could not account for 2,000 firearms that should have been in inventory.
- **The Gun Cellar, Birmingham, Alabama**, was inspected six different times, and in each instance, serious violations were found. ATF issued explicit warning letters to the dealer, but the violations persisted. In its last inspection, the Gun Cellar could not account for 187 firearms.
- **The Hock Shop, Prestonburg, Kentucky**, was inspected at least seven times, and warned by ATF after each visit uncovered numerous serious violations. For example, the dealer sold guns without checking identification or conducting a Brady background check, could not account for hundreds of firearms, and failed to fill out multiple sale forms, which are critical to law enforcement's ability to stop gun trafficking.

The Federal judges reviewing ATF's license termination decisions have explained the seriousness of the violations and how they threaten public safety. For example, in *3 Bridges, Inc. v. United States*, 216 F. Supp. 2d 655, 659 (E.D. Ky. 2002), the court stated:

One of the purposes of the [Gun Control Act] is 'to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous.' By not



properly completing ATF background check forms or conducting proper [National Instant Check System] checks, this goal cannot be accomplished.

In *Willingham Sports, Inc. v. ATF*, 348 F. Supp. 2d 1299, 1305 (S.D. Ala. 2004), the court explained: “Recordkeeping violations such as those at issue here might compromise law enforcement’s efforts to trace firearms and might also enable prohibited persons to receive firearms from [the dealer].”³⁶

Against this overwhelming evidence, gun-dealer lawyer Richard Gardiner suggested in his testimony that ATF revoked licenses because a few boxes on Federal forms have been filled out incorrectly.³⁷ Indeed, he cited the facts of an Illinois case, without identifying it, as an example of ATF revoking the license of a dealer caught committing some lesser violations, such as incompletely filling out 12 pieces of information on Federal forms. Gardiner was apparently referring to *Article II Gun Shop, Inc. v. Gonzales*,³⁸ in which he was counsel to the dealer. Yet, Gardiner failed to inform the House Subcommittee that ATF also found extremely serious violations by that dealer including sales to straw buyers, a sale to a purchaser who admitted he was a fugitive from justice, and another sale to a purchaser who admitted that he was illegally in the United States.³⁹ Certainly supplying guns to the illegal market in such a manner is hardly, in Gardiner’s terms, a “trivial, immaterial violation unrelated to public safety.”

Gardiner’s testimony was materially deceptive. Even in his chief example of overzealous ATF action, the Bureau did not simply rely on a few unimportant errors in revoking the dealer’s license, as he suggested. As ATF Deputy Assistant Director Stucko testified, “[w]e take the overall picture.”⁴⁰ ATF “resorts to license revocation only when it is clear that voluntary compliance is unlikely and that continued operation of the firearms business is not in the public interest.”⁴¹

The published court cases overwhelmingly refute the view that ATF has been overzealous in its gun dealer license terminations. If H.R. 5092 passes, however, it is very likely that none of the dealers discussed in the Case Summaries would have had their licenses revoked. As a result, the lawlessness that is already a serious problem among gun dealers would likely worsen.

CONCLUSION

Congress should not be considering legislation to weaken ATF’s ability to crack down on corrupt gun dealers and terminate their licenses. Given the fact that only one percent of gun dealers supply nearly 60 percent of the guns traced to crime, Congress should instead be strengthening ATF’s enforcement powers to shut down these dealers.

The published cases reveal no evidence that ATF is terminating gun dealer licenses based on “trivial, immaterial violations” or “unreasonable standards of perfection.” Rather, a review of court rulings in which dealers themselves challenged ATF confirms that ATF typically provides ample opportunities for gun dealers to correct errors and stop violating Federal gun laws before taking steps to revoke licenses or deny license renewals. Moreover, in each of these cases, the gun dealer whose license was terminated had committed serious violations that directly threatened public safety.



CASE SUMMARIES⁴²

BALTIMORE GUNSMITH

Baltimore, Maryland

- *Anthony DiMartino v. Buckles*, 129 F. Supp. 2d 824 (D.Md. 2001); *DiMartino v. Buckley*, 19 Fed.Appx. 114 (4th Cir. 2001) (upheld ATF's denial of license renewal after *de novo* review).⁴³ According to the court:
- **ATF found serious violations endangering public safety.** ATF investigated the shop numerous times, including through the use of undercover agents. ATF found that on six different occasions, the gunshop sold guns to straw purchasers, when the shop knew or should have known that the purchases were illegal. Straw purchasing (by which a purchaser with a clean record buys a gun for a prohibited buyer) is the most common way that guns are trafficked, according to the ATF.⁴⁴

ATF agents, posing as a prohibited purchaser and a straw purchaser, were able to purchase numerous guns, including an Uzi, from Baltimore Gunsmith in 1992. The first ATF agent made clear that he was not a state resident, which would prohibit the gunstore from selling to him under Federal law. The store's owner then told the agent that he could have the second ATF agent, who was also in the store posing as the purchaser's fiancé, purchase the guns for him. **The store's owner, Anthony DiMartino, knew that his sale of the guns was illegal, saying, "For all I know, you could be from ATF and I'd be screwed...."** 129 F. Supp. 2d at 878-9.

Baltimore Gunsmith also sold eight guns to a straw purchaser for a 17-year-old convicted felon, Anthony Jones. Jones accompanied the straw purchaser in the shop, selecting the guns he wanted and paying \$5,274 for them, while the straw purchaser filled out the paperwork.

ATF found that Baltimore Gunsmith sold guns to a straw purchaser for a convicted felon in another instance in 1996. Anthony DiMartino told the felon that he could not purchase firearms because of his record. **"The only way you're going to get one, John, between you and I, has to be between you and I, you got to get either your wife, girlfriend or somebody to come in and get it."** 129 F. Supp. 2d at 829. DiMartino and the felon agreed that a woman named "Jen" would come in and purchase the gun for the felon. DiMartino sold the gun to an undercover ATF agent, posing as "Jen," after she made clear that she was paying for the gun with the felon's money and that the gun was for the felon.

ATF also found that Baltimore Gunsmith falsified its records to cover up these sales.

In 1997, Baltimore Gunsmith twice sold ammunition to a convicted felon. In both cases, the shop knew it would be illegal to sell ammunition to the purchasers because they failed the background checks, but the store sold them ammunition anyway.



ATF also found that the store purchased and sold an Intratec Tec 22 semiautomatic assault weapon with an obliterated serial number, which is illegal. ATF has found that guns with obliterated serial numbers are likely to have been trafficked.⁴⁵

- **Federal court found Baltimore Gunsmith’s violations were “willful.”** The Federal district court concluded that, “The violations in Counts 4 – 11 are more than sufficient to support the ATF’s decision to not renew petitioner’s license and to deny petitioner’s application for a new license.” 129 F.Supp.2d at 832.
- **Additional support.** According to press accounts, Baltimore Gunsmith was notorious for its role in supplying guns to the criminal market – local police called it the “7-Eleven of gun stores.”⁴⁶ Twenty percent of the firearms seized in Baltimore for a period of nine years – a total of more than 1,000 guns – were sold by Baltimore Gunsmith, more than any other dealer.⁴⁷ According to a 2004 study by the Americans for Gun Safety Foundation, Baltimore Gunsmith sold 794 guns traced to crime from 1996 to 2000, ranking 14th out of 80,000 gun dealers nationwide for numbers of guns sold that were recovered in crime and traced by ATF.⁴⁸



MIDWEST ORDNANCE

Royal Oak, Michigan

- *Trader Vic's Ltd. v. O'Neill*, 169 F. Supp. 2d 957 (N.D. Ind. 2001) (ATF's denial of license application for new business, Trader Vic's Ltd. of South Bend, Indiana, upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety.** Victor Reid's application for a license to sell guns at Trader Vic's was denied by ATF based on Reid's willful violations of the Gun Control Act while operator of Midwest Ordnance. In 1993, ATF found numerous violations at the Midwest Ordnance store, including two instances of selling guns to juveniles, selling SKS rifles with bayonets, and conducting business at out-of-state gun shows, which is prohibited by Federal law. Midwest Ordnance had been told by ATF in a letter that selling SKS rifles with bayonets was illegal, yet still continued to do so. Midwest Ordnance was also found to have errors in its federally-required recordkeeping.

At the same time, Reid and Midwest Ordnance were the subjects of a criminal investigation for selling unregistered guns and selling guns to a straw purchaser for a felon. Reid agreed to surrender the Federal firearms license for Midwest Ordnance in exchange for not being criminally prosecuted. *See* 169 F. Supp. 2d at 960.

- **Federal court found Midwest Ordnance's violations were "willful."** The Federal court agreed with ATF that Midwest Ordnance's violations of the Gun Control Act were willful. "As a federal firearms licensee, Reid had a duty to be cognizant of the rules and regulations issued by the Bureau of Alcohol, Tobacco and Fires and to follow those mandates." 169 F. Supp at 965.
- **Additional support.** Midwest Ordnance was a defendant in a civil case filed by Wayne County, Michigan for engaging in negligent firearm sales practices. *McNamara v. Arms Technology, Inc. & Archer v. Arms Technology, Inc.*, Nos. 99-912662 & 912658 (Circuit Court for the County of Wayne, Mich.). According to the complaint and videotaped evidence, in 1999, Midwest Ordnance sold three handguns to undercover officers posing as straw purchasers for felons and a handgun to an undercover officer posing as a juvenile. The same officers later visited Midwest Ordnance's store and purchased 11 handguns in one sale.



3 BRIDGES, INC.

Frankfort, Kentucky

- *3 Bridges, Inc. v. U.S.*, 216 F. Supp. 2d 655 (E.D. Ky. 2002) (ATF’s denial of license renewal upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety.** 3 Bridges sold handguns to an underage buyer, sold guns without running Federal criminal background checks and before background checks were completed, did not keep accurate inventory records, and had other errors in its federally-required recordkeeping.
- **ATF’s record of repeated inspections and warnings.** 3 Bridges was inspected three separate times in 1994, 1995, and 2000. In each instance, ATF found serious violations of the Federal gun laws. ATF also gave the dealer ample opportunity to clean up its act and comply with the law. After the 1994 inspection, ATF held a conference with the dealer and it was instructed on how to properly comply in the future. Yet the problems continued, as many violations were repeated in 1995 and 2000.
- **Federal court found 3 Bridges’ violations were “willful.”** The Federal court concluded the violations were willful because the dealer “understood the requirements of the law but knowingly failed to follow them or was indifferent towards them.” 216 F. Supp. 2d at 659. The court also found, “that there is ample evidence within the administrative record that Petitioner’s license should have been revoked, and Petitioner can offer no evidence to demonstrate otherwise.” 216 F Supp. 2d at 657.

One of the purposes of the GCA is ‘to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous.’ By not properly completing ATF background check forms or conducting proper NICS checks, this goal cannot be accomplished.

Id. at 659 (internal citation omitted).



HASSETT GUN SUPPLY

Waynesboro, Virginia

- *Cook v. Herbert*, No. Civ.A 5:03CV00042, 2004 WL 40525 (W.D. Va., Jan. 5, 2004) (ATF's revocation of license upheld after *de novo* review). Richard Gardiner represented this dealer in its petition in Federal court. According to the court:
- **ATF found serious violations endangering public safety.** ATF inspected Hassett Gun Supply in 2000 and *found that at least 247 firearms had been lost*. “Hundreds of other discrepancies, omissions, and errors” in the shop’s records were also found. 2004 WL 40525, at *1. A second inspection in 2001 uncovered repeat violations and 147 lost firearms. Failing to account for weapons that have been sold by a gun store is a serious offense, as it prevents law enforcement from being able to trace a gun from a crime scene back to a retail purchaser and thus impedes criminal investigations.
- **ATF’s record of repeated inspections and warnings.** Hassett Gun Supply was inspected multiple times prior to 2000 and 2001 and each time similar violations were found. ATF also gave the dealer ample opportunity to clean up its act and comply with the law. After the 2000 inspection, ATF held a conference with the dealer and it was instructed on how to properly comply in the future. ATF also told the store’s owner, Thomas Cook, that it would be back in one year. Yet, when it returned in 2001 inspection, ATF again found many repeat violations.
- **Federal court found Hassett Gun Supply’s violations were “willful.”** “This court finds that Cook acted with the purpose to disobey the law and therefore acted willfully pursuant to Cook’s own definition [of willful as acting intentionally and purposely and with the intent to do something the law forbids].” 2004 WL 40525, at *2.



BREIT & JOHNSON SPORTING GOODS, INC.

Elmwood Park, Illinois

- *Breit & Johnson Sporting Goods, Inc. v. Ashcroft*, 320 F. Supp. 2d 671 (N.D. Ill. 2004) (ATF's revocation of license upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety.** ATF's inspections of Breit & Johnson uncovered numerous instances of sales to prohibited purchasers and sales to purchasers when the shop had failed to obtain sufficient information to determine whether the sales were permitted. Breit & Johnson also continually failed to keep accurate records of its sales and inventory, and had other errors in its federally-required recordkeeping. In one inspection, ATF found that Breit & Johnson **could not account for 2,000 firearms**. Failing to account for weapons that have been sold by a gun store is a serious offense, as it prevents law enforcement from being able to trace a gun from a crime scene back to a retail purchaser and thus impedes criminal investigations.

ATF also found that analysis of crime gun traces showed that Breit & Johnson had more crime guns traced back to it than any other dealer in Illinois, except one.

- **ATF's record of repeated inspections and warnings.** Breit and Johnson's license was revoked after twenty years of repeat violations. The dealer was inspected in 1977, 1978, 1994 and 1998 and each time repeat violations of the Gun Control Act were found. ATF also gave the dealer ample opportunity to clean up its act and comply with the law. ATF held two warning conferences with Breit & Johnson and explained how to properly comply in the future. ATF also specifically told Breit & Johnson in 1994 that "should subsequent inspections disclose similar violations, your license may be revoked." 320 F. Supp. 2d at 680. Yet the violations continued.
- **Federal court found Breit and Johnson's violations were "willful."** At the license revocation hearing, the Hearing Officer found that Breit & Johnson had a "history of continued non-compliance with federal laws and regulations" and "the licensee continues to repeat the same violations...the violations continue to be of a serious nature." 320 F. Supp. 2d at 678. The court agreed with ATF that the dealer's violations were willful because the same violations were repeated over and over, even after the dealer was given warnings.
- **Additional support.** According to an analysis of ATF trace data, from 1989 through 1996, Breit & Johnson sold 347 guns traced to crime; 271 of those guns had a "short time to crime" as defined by ATF. For that period, Breit & Johnson ranked among the top ten dealers in the country in number of guns sold traced to crime. The guns were involved in at least 27 homicides, 46 assaults, 3 robberies, and 271 additional gun crimes. Breit & Johnson also sold at least 459 handguns in multiple sales. Multiple sales have long been regarded by ATF as an indicator of gun trafficking from a dealer.
- Andrew Young, age 19, was killed by a 19-year-old gang member with a gun straw purchased from Breit & Johnson.⁴⁹ According to the victim's Complaint against Breit & Johnson, the gun was purchased by Mariano DiVittorio, a known gun trafficker, for Daniel



Escobedo who allegedly told the store's owner that he was a felon and could not purchase the gun for himself. Breit & Johnson was a defendant in a civil case filed by Chicago and Cook County and the family of Andrew Young for engaging in negligent firearm sales practices. *City of Chicago et al. v. Beretta U.S.A. Corp.*, No. 95243 (Cook County Circuit Court, Ill.).



BEND OF THE RIVER

Cookeville, Tennessee

- *Appalachian Resources Development Corp. v. McCabe*, 387 F.3d 461 (6th Cir. 2004) (ATF's revocation of license upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety.** Bend of the River had its license revoked after selling handgun ammunition to an underage purchaser. Eighteen-year-old Aaron Rains purchased .25 caliber Automatic Colt Pistol ammunition from the dealer on July 16, 1997, and used it to commit suicide that same day. During ATF's inspection of this sale, ATF found that the dealer knew, or should have known, that Aaron was too young to purchase handgun ammunition. Aaron looked underage and in fact had been turned down by K-Mart when he tried to buy ammunition earlier that day, yet the sales clerk at Bend of the River asked for no proof of age and in fact asked Aaron no questions.

Charles Pardue, the president of Bend of the River, when questioned by ATF about sales of handgun ammunition to minors said, "*if we have it and they have money, we sell it.*" 387 F.3d at 463, n. 3.

- **Federal Court found Bend of the River's violations were "willful."** The Federal court found that it was undisputed that the dealer knew of the Gun Control Act's prohibition on selling handgun ammunition to purchasers under twenty-one years of age. Yet the dealer chose to violate the law, making the violation willful, and leading to Aaron's death.



THE GUN CELLAR

Birmingham, Alabama

- *Pinion Enterprises, Inc. v. Ashcroft*, 371 F. Supp. 2d 1311 (N.D. Ala. 2005) (ATF's revocation of license upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety.** On repeat occasions, ATF found that The Gun Cellar was failing to keep accurate records of its sales and inventory, and had other errors in its federally-required recordkeeping. ***In its last inspection, ATF found that the dealer could not account for the whereabouts of 187 firearms.*** Failing to account for weapons that have been sold by a gun store is a serious offense, as it prevents law enforcement from being able to trace a gun from a crime scene back to a retail purchaser and thus impedes criminal investigations.
- **ATF's record of repeated inspections and warnings.** The Gun Cellar was inspected six separate times, in 1983, 1989, 1993, 1995, 1999, and 2000, and in each instance, ATF found serious violations of Federal gun laws. ATF also gave the dealer ample opportunity to clean up its act and comply with the law. ATF had two conferences with the dealer and explained how the dealer should correct the violations. ATF also issued a warning letter to the dealer specifically explaining that "repeat violations will be viewed as willful, and may result in revocation." 371 F. Supp. 2d at 1312-3. Yet The Gun Cellar repeated the same violations over and over.
- **Federal court found The Gun Cellar's violations were "willful."** The owner of The Gun Cellar, Thomas Pinion, admitted that he had violated Federal law for each of the citations ATF found in 1983, 1989, 1993, 1995, and 1999. The Federal court found that,

Given Petitioner's long history as a license holder, its repeated failure to comply with regulations and his admitted understanding of the rules, the evidence was sufficient for the Attorney General to have concluded that the violations were willful.

371 F. Supp. 2d at 1317.

- **Additional support.** According to a 2004 study by the Americans for Gun Safety Foundation, The Gun Cellar sold 235 guns traced to crime from 1996 to 2000, ranking 96th out of 80,000 gun dealers nationwide, and fourth in the state of Alabama, for numbers of guns sold that were recovered in crime and traced by ATF.⁵⁰



WILLINGHAM SPORTS, INC.

Demopolis, Alabama

- *Willingham Sports, Inc. v. ATF*, 348 F. Supp. 2d 1299 (S.D. Ala. 2004); *Willingham Sports, Inc. v. ATF*, 415 F.3d 1274 (11th Cir. 2005) (ATF's revocation of license upheld after *de novo* review by Federal courts). According to the court:
- **ATF found serious violations endangering public safety.** On repeat occasions, ATF found that Willingham Sports was failing to keep accurate records of its sales and inventory, and had other errors in its federally-required recordkeeping. In its first inspection of Willingham, only three years after it was first granted a license to sell firearms, ATF found that every single one of its Firearms Transaction Records had errors. In another inspection, ATF found that Willingham could not account for 27 firearms, *the next inspection revealed 130 missing firearms*, and in the next inspection 28 firearms were missing. Failing to account for weapons that have been sold by a gun store is a serious offense, as it prevents law enforcement from being able to trace a gun from a crime scene back to a retail purchaser and thus impedes criminal investigations.
- **ATF's record of repeated inspections and warnings.** Willingham Sports was inspected in 1990, 1992, 1999 and 2001 and in each instance, ATF found serious violations of the Federal gun laws. ATF also gave the dealer ample opportunity to clean up its act and comply with the law. Following the 1990 inspection, an ATF officer personally went over the Federal regulations with the owner and answered his questions. After the 1999 inspection, ATF sent Willingham a warning letter advising it that repeated violations could result in its license being revoked. Yet in 2001, ATF found that Willingham had repeated the same violations.
- **Federal court found Willingham Sports' violations were "willful."** The store's owner admitted that it had violated the law in almost every instance ATF cited. Mr. Willingham also said, "It's all paperwork. And it's been neglected. And it's our fault." The court found these were not simply "paperwork" violations, stating,

[R]ecordkeeping violations such as those at issue here might compromise law enforcement's efforts to trace firearms and might also enable prohibited persons to receive firearms from Willingham.

348 F. Supp.2d at 1305 (citing Hearing Officer).

After the license revocation hearing, the Hearing Officer found that,

[I]t would not appear to be prudent on the part of the Government to allow a licensee to stay in business another 10 or 15 years when such a long history of noncompliance is demonstrated. *Proper maintenance of these records is one of the fundamental requirements of a Federal firearms licensee.*

The Federal court agreed, finding,



[T]he Supreme Court has noted that one purpose of the Gun Control Act is ‘to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous.’ Where a dealer does not properly maintain ATF records to the agency's exact specifications, the ATF's ability to fulfill its legislative mandate may be compromised. ***If ever there were a statutory scheme where a licensee should be obligated to ‘sweat the details,’ irrespective of how trifling they may appear, the Gun Control Act would appear to fit that bill.***

348 F. Supp.2d at 1309, n. 14.



AMORY PAWN AND GUN SHOP

Amory, Mississippi

- *Vaughn v. ATF*, No. 1:04MC3-D, 2005 U.S. Dist. LEXIS 41563 (N.D. Miss. Apr. 15, 2005) (ATF's revocation of license upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety.** In ATF's first inspection of Amory Pawn and Gun Shop, it found the store had illegally sold a firearm to a juvenile, as well as numerous errors in the dealer's federally-required recordkeeping. Subsequent inspections found repeated serious errors, including failure to verify that purchasers were not prohibited before selling firearms. Amory Pawn also transferred firearms on numerous occasions without conducting a Federal criminal background check.

In one suspicious instance, the dealer submitted three background check requests within a matter of minutes, with slightly altered personal information "suggesting that such information was being manipulated so as to receive a favorable response." (Firearms Revocation Hearing Memorandum).

ATF also found a total of 265 missing firearms. Failing to account for weapons that have been sold by a gun store is a serious offense, as it prevents law enforcement from being able to trace a gun from a crime scene back to a retail purchaser and thus impedes criminal investigations.

- **ATF's record of repeated inspections and warnings.** Amory Pawn was inspected four times, in 1985, 1989, 1990, 2002, and in each instance, ATF found serious violations of the Federal gun laws. ATF also gave the dealer ample opportunity to clean up its act and comply with the law, giving the dealer guidelines on how to comply with Federal law after every inspection. A warning letter was issued to the dealer after the 1989 inspection, explaining the seriousness of the violations and warning that repeated violations could result in the license being revoked, yet the problems continued.
- **Federal court found Amory Pawn's violations were "willful."** The Federal court concluded that the evidence "unquestionably demands revocation of the Plaintiff's firearms license," and showed "a knowing and blatant disregard for compliance with the law."

In addition, though not required, the Plaintiff was provided a written warning explaining that repeated violations could result in 'administrative action.' Despite repeated violations and the gratuitous warning, the Plaintiff was habitually non-compliant with federal rules and regulations. Such repeated non-compliance is clearly demonstrative of, at the very least, indifference to the legal requirements. In any event, whether purposeful or extremely careless, the evidence reveals willful conduct that is sufficient to strip the Plaintiff's privilege of possessing a firearms license. *Revocation of the license under these circumstances is also consistent with the purpose of the Gun Control Act – keeping firearms out of the possession and control of irresponsible individuals.*

Id. at *9.



CASH TO GO PAWN SHOP

Columbus, Ohio

- *Clust, Inc. v. ATF*, No. 2:04-CV-839, 2005 WL 1651794 (S.D. Ohio, July 13, 2005) (ATF's revocation of license upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety.** ATF found that Cash to Go Pawn Shop had sold guns to prohibited purchasers and to purchasers when the shop had failed to obtain sufficient information to determine whether the sales were permitted, and had failed to do background checks before making at least four sales. In at least two instances, Cash to Go sold a gun to a purchaser when the purchaser admitted that he was prohibited. On ten occasions, Cash to Go sold multiple guns to one purchaser without filling out the federally-required reports of multiple sale. Multiple sales have long been regarded by ATF as an indicator of gun trafficking from a dealer.

Cash to Go also failed to keep accurate records of its sales and inventory, losing at least six guns, and had other errors in its federally-required recordkeeping. As the United States Attorney noted in its argument in this case,

The Gun Control Act cannot keep firearms away from persons classified as 'potentially irresponsible and dangerous' when a licensee cannot accurately track its inventory. Lost or stolen firearms are particularly problematic because the possessors of those firearms are unknown. For this reason, licensees must timely record in the A&D Record both acquisitions and dispositions of firearms. Failing to properly keep these records makes tracing firearms more difficult and compromises the accuracy of inventory.

- **ATF's record of repeated inspections and warnings.** Cash to Go was inspected in 2001 and 2003, and in both instances, ATF found serious violations of the Federal gun laws. ATF noted that many of the violations found in 2001 were again repeated in 2003. After each hearing, ATF explained the violations to the dealer. The dealer admitted that he violated the law for each citation ATF found.
- **Federal court found Cash to Go Pawn Shop's violations were "willful."** The Federal court concluded the violations were willful because even though the store's owner understood the Federal laws, he was "'plainly indifferent' to them and 'had acted in purposeful disregard' of them in some cases." 2005 WL 1651794 at *3.



THE HOCK SHOP

Prestonsburg, Kentucky

- *Kuss v. ATF*, No. 7:04-453-DCR, 2005 WL 4541917 (E.D. Ky., Nov. 18, 2005) (ATF's revocation of license upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety.** Almost immediately after The Hock Shop received its Federal firearms license in November 1983, it began violating federal gun laws. In an inspection in 1984, ATF found that almost all of the shop's records of inventory and sales (known as an Acquisition and Disposition Book) had errors. At the next inspection, the dealer could not even locate its Acquisition and Disposition Book. Following inspections showed that The Hock Shop continued to fail to keep accurate records of its sales and inventory. In 2003, ATF found that the dealer could not account for 28 firearms. Failing to account for weapons that have been sold by a gun store is a serious offense, as it prevents law enforcement from being able to trace a gun from a crime scene back to a retail purchaser and thus impedes criminal investigations.

ATF found The Hock Shop also sold guns without asking for identification from the purchasers and accepted expired identification, six times sold guns without recording all the required information for a Federal criminal background check, and twice sold guns without performing background checks at all. On at least eleven occasions, the dealer sold multiple guns to one purchaser without filling out the federally-required reports of multiple sale. Multiple sales have long been regarded by ATF as an indicator of gun trafficking from a dealer.

The dealer had other errors in its federally-required recordkeeping as well.

- **ATF's record of repeated inspections and warnings.** The Hock Shop was inspected at least seven times, in 1984, 1989, 1992, 1993, 1995, 2001, and 2003, and in each instance, ATF found serious violations of the Federal gun laws. After each inspection, ATF inspectors explained to The Hock Shop what the violations were, how to correct them, and the importance of complying with Federal law. After the 2001 inspection, ATF held a warning conference with The Hock Shop, explaining its concern with the "repeated and apparent willful nature of the violations." Yet the dealer again repeated many of the same violations in the 2003 inspection.
- **Federal court found The Hock Shop's violations were "willful."** The Federal court concluded the violations were willful because "the evidence ... demonstrates a *persistent* pattern of violations even after numerous warnings from ATF inspectors." 2005 WL 4541917, at *5 (emphasis in original). The court noted that the record contained "considerable evidence of Kuss' repeated and consistent violations of the bookkeeping and other requirements imposed pursuant to the Act. Furthermore, Kuss has not contested this evidence." *Id.* at *4.



ON TARGET SPORTING GOODS, INC.

Valley Park, Missouri

- *On Target Sporting Goods, Inc. v. U.S.*, No. 4:04-CV-1644, 2005 WL 4541133 (E.D. Mo., Dec. 21, 2005) (ATF's denial of license renewal upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety.** In an inspection in 2002, ATF found that *On Target Sporting Goods had sold at least three guns to purchasers who indicated on Federal forms that they were prohibited* – one to a convicted felon, one to a non-citizen and another to someone who did not answer whether they had ever been committed to a mental institution – and sold a gun to another purchaser before getting a response on the Federal criminal background check. On Target also failed to keep accurate records of its sales and inventory, losing 51 guns. Failing to account for weapons that have been sold by a gun store is a serious offense, as it prevents law enforcement from being able to trace a gun from a crime scene back to a retail purchaser and thus impedes criminal investigations. Specifically, ATF attempted to trace three handguns through On Target, but the dealer had no records of the purchasers. ATF found numerous other errors in federally-required recordkeeping as well.
- **ATF's record of repeated inspections and warnings.** On Target was inspected at least three times, in 1993, 1996, and 2002 and in each instance, ATF found serious violations of the Federal gun laws. ATF also gave the dealer ample opportunity to clean up its act and comply with the law, explaining after each inspection the dealer's responsibility and how to properly comply with Federal law. Yet, the problems actually grew worse, culminating in sales to prohibited purchasers.
- **Federal court found On Target's violations were "willful."** "A *de novo* review of the evidence leads to the conclusion that On Target was indifferent to the requirements of the law." 2005 WL 4541133, at *6. The court found that the dealer admitted that he had not met his responsibilities, even after he was continually informed, leading to a finding that the violations were willful.



GUN WORLD/ARTICLE II GUN SHOP

Bensenville, Illinois

- *Article II Gun Shop, Inc. v. Gonzales*, 2005 WL 701053 (N.D. Ill., Mar. 25, 2005); 441 F.3d 492 (7th Cir. 2006) (ATF's license revocation upheld after *de novo* review by Federal district and appellate court). Richard Gardiner represented this dealer in its petition in Federal court. According to the court:
- **ATF found serious violations endangering public safety.** Among the most serious violations ATF found in its inspections of Gun World over two decades were two sales to straw purchasers, a sale to a purchaser who admitted he was an illegal alien, a sale to a purchaser who admitted he was a fugitive from justice, sales to purchasers who did not answer whether they had ever been committed to a mental institution, and 49 sales to legal aliens without obtaining required documentation. On multiple occasions, Gun World sold guns without doing a background check or properly noting the result of the background check. Gun World also had other errors in its federally-required recordkeeping.
- **ATF's record of repeated inspections and warnings.** Gun World was inspected three times, in 1981, 1998, and 2000 and in each instance, ATF found serious violations of the Federal gun laws. ATF also gave the dealer ample opportunity to clean up its act and comply with the law. The inspector who conducted the 1998 inspection discussed the violations with the owner, and explained the corrective actions Gun World would need to take. Gun World promised to take corrective actions to prevent further violations, but Gun World continued to break the law.
- **Federal court found Gun World's violations were "willful."** The Federal court concluded the violations were willful, finding that the dealer continued violating federal law even after it was warned that its license could be revoked based on its violations.
- **Additional support.** According to a 2004 study by the Americans for Gun Safety Foundation, Gun World/Article II Gunshop sold 202 guns traced to crime from 1996 to 2000, ranking 119th out of 80,000 gun dealers nationwide, and 13th out of 2,127 dealers in Illinois, for numbers of guns sold that were recovered in crime and traced by ATF.⁵¹
- According to press accounts, Gun World was the source of at least six guns found in an arsenal of handguns, rifles, and assault weapons in the home of a Chicago man accused of threatening co-workers after being bypassed for promotion.⁵²
- Press also reported that 23-year-old David Soskin was convicted and sentenced to 20 months in Federal prison for stealing 150 firearms from Gun World, *his father's shop*, in 1998. At least 20 of the guns were recovered in crime, one in a homicide and several others in robberies.⁵³



E&B SPORTING GOODS

Salem, Connecticut

- *E & B Sporting Goods, v. McCarron*, No. 3:04CV1535, 2006 WL 417351 (D. Conn., Feb. 21, 2006) (ATF's denial of license renewal upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety.** Three years after E & B Sporting Goods began selling firearms, an ATF inspection revealed that *at least seven times the dealer had sold guns without running a Federal criminal background check*. On two other occasions, the dealer sold guns to purchasers when the shop had failed to obtain sufficient information to determine whether the sales were permitted. Another inspection revealed repeated errors in its federally-required recordkeeping, as well as 20 gun sales to purchasers without running a Federal criminal background check, and five sales where the results of the background check were not recorded properly. E & B Sporting Goods also failed to report missing or stolen firearms within 24 hours of learning they were missing, as required by Federal law.
- **ATF's record of repeated inspections and warnings.** E & B Sporting Goods was inspected in 2000 and again in 2002. In each instance, ATF found serious violations of the Federal gun laws. ATF also explained to the dealer, in person, what the violations were, giving the dealer ample opportunity to clean up its act and comply with the law.
- **Federal court found E & B Sporting Goods' violations were "willful."** The Federal court found that the dealer admitted that it had violated Federal law, and that the undisputed evidence demonstrated that the dealer knew of its obligations, yet continued to commit violations.



BILL'S PAWN SHOP

Grand Prairie, Texas

- *Strong v. U.S.*, 422 F. Supp. 2d 712 (N.D. Tex., Mar. 3, 2006) (ATF's denial of license renewal upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety. *Bill's Pawn Shop lost at least 171 guns.*** Failing to account for weapons that have been sold by a gun store is a serious offense, as it prevents law enforcement from being able to trace a gun from a crime scene back to a retail purchaser and thus impedes criminal investigations. ***Almost every single one of the Federal records Bill's was required to keep had errors, including 18 failures to record the results of Federal criminal background checks, calling into question whether the guns had been sold to prohibited purchasers.*** Although the owner disputed that 171 guns were unaccounted for, he was unable to reconcile his inventory even after he had three years to try to do so.
- **ATF's record of repeated inspections and warnings.** Bill's Pawn Shop was ***inspected 14 times*** from 1975 to 2003, during which ATF found serious violations of the Federal gun laws in half of the inspections. ATF gave the dealer ample opportunity to clean up its act and comply with the law. ATF also discussed the seriousness of the violations with the store's owner, and each violation was "discussed at length."
- **Federal court found Bill's Pawn Shop's violations were "willful."** The Federal court concluded:

Strong [the owner] possessed a knowledge and understanding of applicable regulations or, at the very least, maintained his firearms records in a state of disrepair he knew to be unlawful. Strong, a veteran in the firearms business, who had been licensed for over 35 years, knew that his license status hinged upon his compliance with the Gun Control Act and its regulations. At the hearing, Strong admitted that he received ATF newsletters explaining regulation updates, and Worthington admitted that Bill's Pawn Shop had on-premise a copy of the current regulations guide. Likewise, Strong stated, 'We've made a lot of mistakes. I'll admit our bookkeeping's bad.' Moreover, Strong has 'repeatedly violated' the Gun Control Act. He received citations on five separate occasions for violating, among other regulations, 27 C.F.R. § 178.125(e) and its recordkeeping requirements. The only reasonable inference that may be drawn is that Strong is habitually noncompliant. ***He has persisted in violating the same requirements, even after the ATF pinpointed deficiencies to him, time and time again,*** through Reports of Violations. ***Such conduct epitomizes a 'plain indifference' or disregard to the laws and regulations imposed upon firearms dealers and is a textbook 'willful violation.'*** Strong's contention that he was 'trying' to comply with the Gun Control Act does not square with the record. At some point in time, 'the jig is up.'

422 F. Supp.2d at 722-3.



DICK'S SPORT CENTER

Howell, Michigan

- *Dick's Sport Center, Inc. v. Alexander*, No. 204CV74482, 2006 WL 799178 (E.D. Mich., Mar. 29, 2006) (ATF's license revocation upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety.** Dick's Sports Center's egregious violations of the Gun Control Act included sales of firearms to prohibited purchasers, sales of firearms without running Federal criminal background checks, entering false information in Federal forms, and sales of multiple guns to one purchaser without filling out the federally-required reports of multiple sales. Multiple sales have long been regarded by ATF as an indicator of gun trafficking from a dealer. Significantly, ATF found that in one random sample, Dick's had sold to three felons. ***Dick's also failed to keep records of sales of any firearms for a three month period.*** This lack of recordkeeping prevents law enforcement from being able to trace a gun from a crime scene back to a retail purchaser and thus impedes criminal investigations.
- **ATF's record of repeated inspections and warnings.** Dick's was inspected in 1992, 1998, 2001, and 2002, and ATF found serious violations of the Federal gun laws in three of the inspections. After each inspection, ATF explained the violations found and how to properly comply with Federal law. ATF also gave the dealer ample opportunity to clean up its act and comply with the law. A warning conference was held after the 2001 inspection and Dick's was specifically told that future violations could result in the revocation of its license, yet in 2002, the problems were actually worse.
- **Federal court found Dick's Sport Center's violations were "willful."** The Federal court agreed with ATF that the dealer's violations were willful, especially due to their repeated nature even after being made aware of the corrective actions that were required. The court also found,

Firearms dealers must comply with applicable regulations in order to promote community safety; failure to comply with exacting book keeping regulations may hinder the ATF's ability to perform its mandated function.

2006 WL 799178, at *4.



SHOOTER'S CHOICE

Wilmington, North Carolina

- *In re Revocation of Federal Firearms License Held By Sullivan*, 431 F.Supp. 2d 574 (E.D.N.C. 2006) (ATF's license revocation upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety.** ATF found that Shooter's Choice began violating Federal law shortly after it was initially issued a Federal firearms license, even though the dealer had been personally instructed by ATF on how to comply with Federal law.

After an inspection in 2004, ATF found that on 42 occasions, Shooter's Choice sold guns without keeping federally-required records identifying the person to whom the guns were sold. This lack of recordkeeping prevents law enforcement from being able to trace a gun from a crime scene back to a retail purchaser and thus impedes criminal investigations. The dealer also made 19 sales of firearms without running a Federal criminal background check, and on three occasions sold multiple guns to one purchaser without filling out the federally-required reports of multiple sales. Multiple sales have long been regarded by ATF as an indicator of gun trafficking from a dealer. The dealer made three more sales to purchasers without a pistol purchase permit which is required by North Carolina state law. Finally, the dealer was pawning guns without a Federal license to do so.

- **Federal court found Shooter's Choice's violations were "willful."** The Federal court found that the dealer did not dispute that any of the violations had been made. The court concluded that the dealer "knowingly failed to follow the requirements of the law or were indifferent to those requirements." 431 F.Supp.2d at 577.



TERRITORY TOWN PAWN

Okemah, Oklahoma

- *Francis v. ATF*, No. CIV-05-380-RAW, 2006 WL 1047026 (E.D.Okla., Apr. 20, 2006) (ATF's license revocation upheld after de novo review). According to the court:
- **ATF found serious violations endangering public safety.** In an inspection in 2004, ATF found that Territory Town Pawn had sold guns to prohibited purchasers, including a sale of one shotgun to a California resident, when the sale would have violated California and Federal law. Even though dealers are required to know state laws, and the dealer had a state firearms laws handbook, the dealer said he did not know that shotguns couldn't be sold to residents of any state.

Territory Town Pawn also sold guns to prohibited purchasers, one of whom admitted that he had been committed to a mental institution, and another who admitted he had been convicted of a misdemeanor crime of domestic violence. ***The dealer admitted he did not even look at the Federal form the purchaser had filled out before selling the gun.*** The dealer also sold firearms on at least two occasions without conducting Federal criminal background checks, and in at least once instance sold multiple guns to one purchaser without filling out the federally-required reports of multiple sale. Multiple sales have long been regarded by ATF as an indicator of gun trafficking from a dealer.

Until ATF completed its audit, the dealer had not noticed it was missing nine guns. Failing to account for weapons that have been sold by a gun store is a serious offense, as it prevents law enforcement from being able to trace a gun from a crime scene back to a retail purchaser and thus impedes criminal investigations.

Territory Town Pawn had other errors in its federally-required recordkeeping as well.

- **Federal court found Territory Town Pawn's violations were "willful."**

Plaintiff has admitted that he knew of his obligations under 18 U.S.C. § 923, yet he was not in compliance. The record is clear that there were numerous and serious violations. This shows at the very least a plain indifference.

In light of the numerous and serious violations established at the hearing and acknowledged by Plaintiff, and because Plaintiff knew of his obligations and was at least plainly indifferent to them, thus willfully violating 18 U.S.C. § 923, the revocation was authorized.

2006 WL 1047206, at *4.



PRO GUN AND SPORTS SUPPLY

Cuyahoga Falls, Ohio

- *Procaccio v. Lambert*, No. 5:05-MC-0083, 2006 WL 2090166 (N.D. Ohio, July 25, 2006) (ATF's license revocation upheld after *de novo* review).⁵⁴ According to the court:
- **ATF found serious violations endangering public safety.** ATF found that, *for a period of seven months, Pro Gun and Sports Supply had not recorded the whereabouts of any firearms it sold.* On multiple occasions, the dealer sold multiple guns to one purchaser without filling out the federally-required reports of multiple sales. Multiple sales have long been regarded by ATF as an indicator of gun trafficking from a dealer. The dealer had also sold firearms to purchasers who did not certify whether they had ever been committed to a mental institution, or whether they were illegal aliens. A number of times, the dealer did not record the results of a Federal criminal background check, calling into question whether the guns had been sold to prohibited purchasers. ATF found other errors in federally-required recordkeeping, including missing and disorganized forms.
- **ATF's record of repeated inspections and warnings.** ATF inspected Pro Gun four times and in each instance, ATF found serious violations of the Federal gun laws. After each inspection, ATF agents issued a report to the dealer explaining the citations and gave the dealer an opportunity to discuss the problems. The dealer attended a warning conference in 2000 where it was explained that subsequent violations could cause him to lose his license. The dealer admitted that ATF had consistently warned him about his violations, yet he continued to repeat the same violations for over a decade.
- **Federal court found Pro Gun's violations were "willful."** The owner, Thomas Procaccio, admitted that he had committed the violations, but argued that "he only committed inadvertent violations of picayune and hyper technical requirements," and that "virtually every gun dealer" completes the federally-required forms incorrectly. 2006 WL 2090166 at *4. However, the Federal court disagreed, emphasizing the seriousness of the violations and agreeing with ATF that the violations were willful.

Moreover, the Petitioner is not a proper arbiter of what conduct implicates the public safety. The very purpose of ATF and other regulatory agencies is to execute programs that protect the public welfare. ATF Deputy Assistant Director Audrey Stucko testified before the House Committee on the Judiciary that the 'enforcement efforts in inspecting [firearms sales licenses] are a valuable tool in protecting our communities. *The commodities in which these businesses are dealing in are not ordinary products....If ever there was a business where extraordinary diligence is required, it is a firearms business.*' ATF requires such diligence in all aspects of transferring firearms, including tracking mechanisms.

2006 WL 2090166, at *5 (internal citation omitted).



DEER HUNTER, INC.

Norton, Ohio

- *Deer Hunter, Inc. v. ATF*, No. 5:06-CV-0312, 2006 WL 2233451 (N.D. Ohio, Aug. 3, 2006) (ATF's license revocation upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety.** Two years after it received its Federal firearms license, the Deer Hunter already began racking up violations of the Gun Control Act, including on one occasion having sold a gun to an underage purchaser. The store repeatedly sold guns without keeping federally-required records identifying the person to whom the guns were sold and ***in one inspection was found to have lost 63 guns, and in another to have lost 114 guns.*** Failing to account for weapons that have been sold by a gun store is a serious offense, as it prevents law enforcement from being able to trace a gun from a crime scene back to a retail purchaser and thus impedes criminal investigations.

ATF also found the dealer had sold guns before receiving a response to the Federal criminal background check. On multiple occasions, the dealer sold multiple guns to one purchaser without filling out the federally-required reports of multiple sales. Multiple sales have long been regarded by ATF as an indicator of gun trafficking from a dealer. The Deer Hunter had other errors in its federally-required recordkeeping as well.

- **ATF's record of repeated inspections and warnings.** Between 1988 and 2004, Deer Hunter was inspected nine times and after eight of those inspections ATF cited it for serious violations of Federal gun laws. ATF also gave the dealer ample opportunity to clean up its act and comply with the law. ATF issued a warning letter after an inspection in 1999, explaining that the violations were grounds for revocation and repeat violations could lead to revocation. ATF also discussed the violations, and consequences, with the store several times.
- **Federal court found the Deer Hunter's violations were "willful."** The dealer admitted that he had committed the violations. The Federal court concluded the violations were willful and admonished the dealer for arguing that compliance with the requirements for reporting multiple sales was "impossible." 2006 WL 2233451, at *3.



FRANKLIN GUN SHOP, INC.

Bogart, Georgia

- *Franklin Gun Shop, Inc. v. Gonzales*, No. 3:05-CV-87, 2006 WL 2263992 (M.D.Ga., Aug. 8, 2006) (ATF's license revocation upheld after *de novo* review). According to the court:
- **ATF found serious violations endangering public safety.** ATF found that Franklin Gun Shop continually failed to keep accurate records of its sales and inventory, and had other errors in its federally-required recordkeeping. In one inspection, ATF found that the dealer ***could not account for 677 firearms***. The dealer maintained that over half of these had been stolen, but had never filed a theft report with ATF. Failing to account for weapons that have been sold by a gun store is a serious offense, as it prevents law enforcement from being able to trace a gun from a crime scene back to a retail purchaser and thus impedes criminal investigations.

The Court noted how “troubling” the dealer’s loss of firearms was:

These firearms simply disappeared without any notice until the audit, when Petitioner was unable to account for their absence. Prior to the audit, Petitioner would not have noticed the loss because Petitioner did not conduct regular inventory reviews....Petitioner’s refusal to conduct such an inventory at any time prior to the 2003 audit seems to be an indication of indifference to its obligations under the Gun Control Act. This lack of attention to inventory is particularly distressing for an operation that maintains an inventory of more than 6,000 firearms on its premises.

2006 WL 2263992, at *5, n.7.

- **ATF’s record of repeated inspections and warnings.** This dealer’s license was cited for the same types of violations in 1993, 1998, and 2003. After each inspection, ATF explained the violations, and in 1998, ATF issued a warning letter to the dealer reminding the dealer that its license could be revoked for future violations.
- **Federal court found Franklin Gun Shop’s violations were “willful.”** The Federal court concluded that the violations were willful, finding,

With two prior warnings from ATF, with thirty years of experience as a firearms dealer, and with an annual sales volume of thousands of weapons, ***Petitioner has no excuse for the sort of sloppy record-keeping revealed in the record of this case. The strict record-keeping requirements of the Gun Control Act display a sense that the sale of firearms is a serious business that requires diligence of firearms dealers. Such diligence is especially required of huge operations such as Petitioner's, which acquired more than 95,000 firearms over a thirteen-year period.*** It is not acceptable for hundreds of firearms to be sold or transferred without proper documentation, and it is clear that Petitioner was aware this degree of non-compliance was unacceptable. Accordingly, the Court concludes that



Petitioner's violations were willful and that the Attorney General was authorized to revoke Petitioner's firearms license under 18 U.S.C. 923(e).

2006 WL 2263992, at *9.



ENDNOTES

¹ For much greater detail on Valley Gun and Sandy Abrams, see the Brady Center's report *Death Valley, Profile of a Rogue Gun Dealer: Valley Gun, Baltimore Maryland* (June 2006), available at <http://www.bradycenter.org/xshare/pdf/reports/death-valley.pdf>. See also Amit R. Paley, *Gun Seller's Case Reveals Hurdles of Enforcement*, *The Washington Post*, July 23, 2006, at A1; Matthew Dolan and Gwyneth K. Shaw, *Gun Shop Lost License, But Can Sell Inventory*, *Baltimore Sun*, July 13, 2006, at 1A.

² See *Hearing before the Subcommittee on Crime, Terrorism and Homeland Security of the House Judiciary Committee*, No. 109-114 (hereinafter *House Hearing*), at 15, 17 (March 28, 2006) (testimony of Richard E. Gardiner, Attorney at Law, Fairfax, VA) (emphasis added).

³ *Id.* at 4-14.

⁴ *Id.* at 11.

⁵ *Id.* at 15.

⁶ Black's Law Dictionary, 5th edition.

⁷ ATF Deputy Assistant Director Stucko testified that ATF typically revokes approximately 100 licenses per year, "about one-tenth of one percent of the total population of FFLs," on the basis of willful violations of the law and regulations. *House Hearing*, at 5, 49.

⁸ *Id.* at 5, 11.

⁹ This set of 21 cases consists of every court decision since January 1, 2001, on revocation or denial of renewal of federal firearm licenses, accessible in the legal databases Westlaw and Lexis-Nexis. These databases do not necessarily include every federal court decision, nor do they include any licensing cases where a federal court did not render a decision.

¹⁰ *Franklin Gun Shop v. Gonzales*, No. 3:05-cv-87, 2006 WL 2263992, at *9 (M.D. Ga., Aug. 8, 2006).

¹¹ *Id.* (quoting *Huddleston v. United States*, 415 U.S. 814, 825, (1974)).

¹² See National Crime Victimization Surveys 1996-2004; FBI Uniform Crime Reports 1996-2004. Estimates applied for 2005.

¹³ See U.S. Department of Justice, Bureau of Justice Statistics, *Nonfatal firearm-related violent crimes, 1993-2005*, available at <http://www.ojp.usdoj.gov/bjs/glance/tables/firearmnonfataltab.htm>.

¹⁴ Brady Center to Prevent Gun Violence, *Without a Trace: How the Gun Lobby and the Government Suppress the Truth About Guns and Crime* at 9 (2006), available at www.bradycenter.org/gunindustrywatch. Even this huge number significantly undercounts the number of crime guns seized nationwide, as not all law enforcement agencies trace all of the crime guns they seize each year.

¹⁵ U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Law Against Firearms Traffickers* at iii (June 2000).

¹⁶ See ATF, *A Progress Report: Gun Dealer Licensing and Illegal Gun Trafficking* at i (1997) ("Virtually all new firearms used in crime first pass through the legitimate distribution system of federally licensed firearms dealers.").

¹⁷ *Id.* at 15 ("There is a large problem of diversion to the illegal market from licensed gun establishments.").

¹⁸ ATF, *Commerce in Firearms in the United States*, at 2 (Feb. 2000). Numerous other studies and reports have confirmed this concentration of illegal supply among high-risk dealers. See, e.g., Glenn L. Pierce, et al., *The Identification of Patterns in Firearms Trafficking: Implications for Focused Enforcement Strategies, A Report to the United States Dep't of Treasury, Bureau of Alcohol, Tobacco and Firearms Office of Enforcement*, 12-13 (1995); Report of Sen. Charles E. Schumer, *A Few Bad Apples: Small Number of Gun Dealers the Source of Thousands of Crimes* (Jun. 1999) (finding that 137 of the worst dealers accounted for 34,000 of crime guns over three years); Philip J. Cook & Anthony Braga, *Comprehensive Firearms Tracing: Strategic and Investigative Uses of New Data on Firearms Markets*, 43 *Ariz. L. Rev.* 277 (2001).



¹⁹ ATF, *Following the Gun*, *supra* note 15, at x.

²⁰ ATF *Operation Snapshot* at 8 (July 1993). For Operation Snapshot, ATF randomly inspected 400 gun dealers nationwide. This statistical sample is of a size that would allow ATF, within ± 5 percent, to apply these percentages to the universe of gun dealers in the United States.

²¹ ATF, *Operation Snapshot: An Analysis of the Retail Regulated Firearm Industry* at 12 (1998). In addition, 18 percent of the dealers and 45 percent of the pawnbrokers had guns missing from inventory in the 1998 survey. Like the Operation Snapshot survey done in 1993, this survey also was a statistically-significant random sample of gun dealers.

²² ATF, *ATF Regulatory Actions: Report to the Secretary on Firearms Initiatives* at iii (November 2000).

²³ *Id.* at vi.

²⁴ *Bryan v. U.S.*, 524 U.S. 184, 195 n.23 (1998).

²⁵ Mark Shanahan, *Lawsuit Targets Windham Manufacturer of Snipers' Weapon*, Portland Press Herald, Jan. 17, 2003, at 1A.

²⁶ Brady Center to Prevent Gun Violence, *Trading in Death: Profile of a Rogue Gun Dealer, Trader Sports, San Leandro, California* (May 2006), available at <http://www.gunlawsuits.org/xshare/pdf/reports/trading-in-death.pdf>.

²⁷ *See supra* note 1.

²⁸ *See House Hearing*, *supra* note 2.

²⁹ *Id.* at 5.

³⁰ *Id.* at 5, 11.

³¹ *Id.* at 49.

³² *See supra* note 9.

³³ *See supra* note 1.

³⁴ *Trading in Death*, *supra* note 26, at 9. Trader Sports was also the focus of an exposé in the East Bay Express. *See Kara Platoni, Dealing in Death*, East Bay Express, July 5, 2006.

³⁵ *Id.* The report is available at <http://www.gunlawsuits.org/xshare/pdf/reports/lethal-lous.pdf>.

³⁶ Government briefs have also explained the critical importance of the Gun Control Act's recordkeeping requirements: "The purpose behind the enactment of the Federal firearms laws was to curb crime by keeping 'firearms out of the hands of those not legally entitled to possess them because of age, criminal background or incompetency.' To accomplish this purpose, Congress imposes strict recordkeeping requirements on the licensed firearms dealers. Information gleaned from the records kept by firearms dealers guarantee the Federal law's effectiveness in keeping firearms from those individuals in whose hands weapons would be dangerous to society. The firearms records also provide information to law enforcement personnel where a firearm recovered was used in a crime. Plaintiff's failure to maintain acquisitions and disposition information on firearms purchased and disposed of by her, defeats the ability of ATF to provide trace information in regard to who acquired such firearms to law enforcement personnel." Brief of the United States in Support of Motion for Summary Judgment, at 19, (internal citations omitted), *Vaughn v. ATF*, No. 1:04MC3-D, 2005 U.S. Dist. LEXIS 41563 (N.D. Miss., Apr. 15, 2005).

³⁷ *House Hearing*, *supra* note 2, at 15-19.

³⁸ 2005 WL 701053 (N.D. Ill., Mar. 25, 2005); 441 F.3d 492 (7th Cir. 2006).

³⁹ *See infra* at page 22.

⁴⁰ *House Hearing*, *supra* note 2, at 50.

⁴¹ *Id.* at 11.

⁴² The violations discussed for each dealer in each Case Summary are based on information found in court rulings and court filings.



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- ⁴³ Baltimore Gunsmith attempted to evade the denial by filing a separate application for a new license, for the same premises and same inventory. ATF also denied this license application and the denial was upheld in federal court.
- ⁴⁴ ATF, *Following the Gun*, at 41; ATF, *The Illegal Youth Firearms Market in 27 Communities* (1998) at 2.
- ⁴⁵ ATF, *Commerce in Firearms in the United States* at 22.
- ⁴⁶ Peter Hermann, *Shop Ordered to Halt Sales of Handguns*, Baltimore Sun, Sept. 26, 1997.
- ⁴⁷ *Gun slingers' supplier falls in federal trap*, Baltimore Sun, Jan. 6, 2001.
- ⁴⁸ See American for gun Safety Foundation, *Selling Crime: High Crime Gun Stores Fuel Criminals* (Jan. 2004) at 9, available at <http://www.americansforgunsafety.com/reports/ReportSellingCrime.pdf>. H
- ⁴⁹ Complaint, *Young v. Bryco Arms*, 213 Ill.2d 433 (Ill. 2004).
- ⁵⁰ See *Selling Crime*, at 22, *supra* note 48.
- ⁵¹ *Id.* at 22, 23.
- ⁵² Fran Spielman, *Cops say city worker stockpiled weapons*, Chicago Sun Times, Sept. 19, 2001.
- ⁵³ *Gun Charges Net Man 20 Months*, Chicago Tribune, Jan. 31, 1998.
- ⁵⁴ ATF denied the dealer's application for renewal of his license pending the outcome of assault charges against the owner. ATF's decision to revoke the license was not based on the assault charges, of which the dealer was later acquitted.

