

GUN SHOW



UNDERCOVER

REPORT ON ILLEGAL SALES AT GUN SHOWS

OCTOBER 2009

NYC

The City of New York
Mayor Michael R. Bloomberg
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GUN SHOW UNDERCOVER

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Executive Summary	5
Gun Shows in America	8
Background Checks and other Restrictions on Licensed Dealers	8
“Engaged in the Business”	9
The Gun Show Loophole	11
Crime Connected to Gun Shows	12
The Investigation	13
The Investigators	14
Sellers Approached in the Investigation	14
The Integrity Tests	14
The Results	16
Private Seller Integrity Tests	16
Licensed Dealer Integrity Tests	20
“Engaged in the Business” at Gun Shows	24
Solutions	27
Appendix: Summaries of Integrity Tests	31
Endnotes	33

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Every weekend, thousands of Americans in all parts of the country attend local gun shows. Organized by gun-owners associations or professional promoters, the shows offer a chance to browse among dozens, and sometimes hundreds, of vendors. For many Americans, gun shows are a family outing. For the gun enthusiast, there are a huge variety of guns – new and used long guns and handguns, historical curios or related accessories – and for the general shopper there are often other vendors selling clothing, books, or local crafts. The vast majority of vendors and customers at gun shows are law abiding citizens out to enjoy a day with others who share a common interest.

Unfortunately, gun shows are also considered a significant source of guns used in crimes. According to ATF, 30 percent of guns involved in federal illegal gun trafficking investigations are connected in some way to gun shows.¹ In response to these concerns, the City of New York launched an undercover investigation of illegal sales at seven gun shows across three states. The investigation shows it is both feasible and easy for criminals to illegally buy guns at gun shows.

Gun shows are a unique marketplace for guns because they feature sales from two types of vendors – federal firearm licensees (FFLs) and private sellers. By law, FFLs include anyone who sells guns professionally – at a gun store, a pawn shop, from their home, or at a gun show. Private sellers are individuals who are not “engaged in the business” but who may make “occasional sales” from their “personal collection.”² FFLs and private sellers are subject to different federal standards regarding gun sales, most importantly regarding background checks and recordkeeping.³ FFLs are required to

check every buyer in the National Instant Criminal Background Check System (NICS) to prevent sales to felons, domestic violence misdemeanants or other federal categories of prohibited purchasers. NICS checks are done over the phone and are generally instantaneous.⁴ FFLs are also required to maintain the paperwork that connects each gun sold to its buyer. These requirements are designed to keep guns out of the hands of prohibited purchasers and prevent gun trafficking by allowing law enforcement to trace guns recovered in crime to their original point of sale.

In contrast, because private sellers are presumed to be occasional sellers or hobbyists, they are under minimal regulation. They are not required to run background checks or keep records of their gun sales. However, even though federal law exempts private sales from background checks, it is still a felony for private sellers to sell to an individual they “know” or “have reason to believe” is a prohibited purchaser.⁵ Private sellers’ exemption from background checks and recordkeeping is often referred to as the “gun show loophole.” Even though this exemption applies regardless of where private sales take place, gun shows form a central market for prohibited purchasers to connect with private sellers who make anonymous gun sales.

Federal law enforcement agencies have repeatedly expressed concerns about the impact of the gun show loophole on crime. According to a 1999 report by the Justice and Treasury Departments, “gun shows leave a major loophole in the regulation of firearms sales” because they “provide a large market where criminals can shop for firearms anonymously.”⁶ ATF has said “[gun] shows provide a ready supply of firearms

EXECUTIVE SUMMARY

to prohibited persons, gangs, violent criminals, and illegal firearms traffickers.”⁷ Presidents Bill Clinton, George W. Bush, and Barack Obama have all called for the end of private sales without instant background checks at gun shows.⁸

In addition to concerns about private sales at gun shows, ATF has noted that even FFLs who sell firearms at gun shows are a source of illegally trafficked guns. In 1999, the Departments of Justice and Treasury and ATF reported that 34 percent of the investigations connected to gun shows involved licensed dealers.⁹ According to ATF’s report, FFLs at gun shows committed numerous federal crimes, including selling to out-of-state residents, selling without a background check, and engaging in straw purchases.¹⁰ A straw purchase – a federal felony – occurs when a dealer allows someone to fill out the paperwork and undergo the background check, but that person is not the actual buyer of the gun.

With no records of private sales at gun shows, it is almost impossible to know the exact extent of criminal activity that occurs there.¹¹ In fact, there are no definitive answers to many basic questions one might ask about gun shows: the number of gun shows in America; how many guns are sold at gun shows; or how many private sellers operate at gun shows. The very aspects of gun shows that make them attractive to criminals – the lack of background checks and recordkeeping – also make it impossible to gather

comprehensive information about undocumented sales that occur at those shows.

To shed light on the practices of firearms sellers at gun shows, the City of New York launched an undercover investigation of illegal sales. The investigation covered seven gun shows spread across three states: Nevada, Ohio, and Tennessee. Working undercover, agents conducted “integrity tests” of 47 sellers – both licensed dealers and private sellers – by simulating illegal gun sales at gun shows.

The investigation sought answers to two questions:

Question 1: Would private sellers sell guns to people who said they probably could not pass a background check?

Question 2: Would licensed dealers sell guns to people who appear to be straw purchasers?

Results

- 63 percent of private sellers approached by investigators failed the integrity test by selling to a purchaser who said he probably could not pass a background check; some private sellers failed this test multiple times at multiple shows.¹²

Total Sellers	Sellers That Passed Integrity Test	Sellers That Failed Integrity Tests	Percent of Sellers That Failed Integrity Tests
47	12	35	74%

- 94 percent of licensed dealers approached by investigators failed the integrity test by selling to apparent straw purchasers.
- **In total, 35 out of 47 sellers approached by investigators completed sales to people who appeared to be criminals or straw purchasers.**

Investigators also observed that some private sellers appeared to be illegally “engaged in the business” of selling firearms without a license, including a seller who sold to investigators at three different shows and who acknowledged selling 348 assault rifles in just under one year – for approximately \$174,000 in revenue.

Proposed Solutions

Gun shows are popular weekend attractions. But additional steps can be taken by Congress and federal law enforcement to both preserve gun shows

as a place to legally buy and sell guns and help prevent illegal sales to criminals and gun traffickers.

- **Close the gun show loophole.** Federal law should require background checks and records for all sales by private sellers at gun shows.
- **Increase enforcement of existing laws.** ATF should increase its enforcement efforts at gun shows by regularly conducting integrity tests of licensed and private sellers, investigating private sellers engaged in the business of selling guns without a license, and identifying whether recovered crime guns were purchased at gun shows. Congress should assist these efforts by providing additional resources to ATF.

By closing the gun show loophole and enhancing enforcement, the federal government can dramatically reduce the criminal activity at gun shows that arms criminals and threatens public safety.

There is no definitive count of the number of gun shows held each year. Some estimates put the number at approximately 2,000 and others at more than 5,000 annually.¹³ These shows are frequently held over a weekend, draw crowds of 2,500 to 15,000, and typically feature thousands of guns on-display.¹⁴ At some of the larger gun shows, over 1,000 guns can be sold in a single weekend.¹⁵ Nationwide, gun shows make up a multi-billion dollar industry.¹⁶

Though some shows are held by local gun collectors' organizations, many are run by commercial promoters. They are held in both civic and private venues including fairgrounds, convention centers, hotels, casinos, and armories. Gun sellers rent tables from promoters for a fee generally ranging from \$20 to \$145 per table and from \$200 to \$400 per booth.¹⁷ The size of shows can vary greatly, from only 50 tables to over 2,000.¹⁸ Many shows are open to the public and have free admission while others have a small entrance fee of \$5 to \$50.¹⁹

Typically, a wide variety of guns and other weapons are on sale at gun shows. Sellers offer both second-hand and new in-the-box handguns, shotguns, rifles, and "curio or relic" firearms.²⁰ Some vendors simply sell accessories, such as holsters, targets, ammunition, or clothing. Other vendors sell merchandise unrelated to firearms, including food, western-themed souvenirs, and books often about political and cultural topics.

The majority of gun shows are family-friendly events attended by law-abiding citizens who legally buy and sell guns and other merchandise. Unfortunately, because gun shows are home to

a secondary market of unregulated gun sales by private sellers, gun shows have been found to be major sources of crime guns. In 1999, a joint review of gun shows by the ATF and the Treasury and Justice Departments reported that "ATF investigations paint a disturbing picture of gun shows as a venue for criminal activity and a source of firearms used in crimes."²¹ The report concluded that over a largely two-year period, 54,000 illegally trafficked guns were linked to gun shows and flea markets.²² ATF found multiple cases of illegal sales of guns, felons possessing guns, and guns involved in subsequent crimes such as homicide and armed robbery.²³

Background Checks and Other Restrictions on Licensed Dealers

In the United States, felons, illegal aliens, persons adjudicated mentally ill or incompetent, and people convicted of domestic violence crimes, among others, are prohibited from purchasing firearms.²⁴ Prior to 1993, firearms dealers had no way to screen purchasers to make sure they did not fall into one of these categories. Congress closed this gap in 1993 by passing the Brady Handgun Violence Protection Act.²⁵ Under the Brady Act, all federally licensed dealers (FFLs) – which include all gun stores and anyone who sells guns as a profit-making enterprise – must conduct background checks on all prospective firearms purchasers.²⁶

Under the Brady Act, if a purchaser buys a gun from an FFL, the purchaser is required to complete Form 4473 certifying that he is not a prohibited

person and that he is the actual buyer of the gun. The dealer then runs the purchaser's background check through the National Instant Criminal Background Check System (NICS), which resolves these checks instantaneously over 90 percent of the time.²⁷ In the last decade, NICS has been used to process over 105 million background checks and has blocked more than 720,000 sales from licensed dealers to felons and other prohibited persons.²⁸

Dealers also must comply with laws and regulations that help law enforcement trace guns recovered in crime to their original point of sale. After completing a sale, a dealer is required to keep a copy of the purchaser's Form 4473, which captures the serial number of the purchased gun and connects it to the buyer.²⁹ If a gun is recovered in a crime, ATF can ask the dealer to check that paperwork and disclose who bought the gun, which helps law enforcement solve crimes and identify traffickers. Licensed dealers are required to respond to such a "trace request" immediately, or no later than 24 hours.³⁰ In 2008, ATF attempted to trace 247,582 guns, including guns used in murders, armed robberies, and drug crimes.³¹

In addition to background check and recordkeeping requirements, licensed dealers cannot allow someone to fill out the paperwork and undergo a background check if the dealer knows the person is not the actual buyer. This is called a "straw purchase," and it is a federal felony. The straw purchase is a common method used by prohibited persons to avoid detection. In 2000, ATF reviewed its gun-trafficking investigations and found that "straw purchasers represent a significant overall crime and public safety problem." Of those

investigations, 46 percent involved straw purchasers who were connected to over 26,000 illegally trafficked guns.³² According to the FBI, straw purchases often involve a trafficker accompanying the straw buyer and paying for the gun while the straw buyer completes the paperwork.³³ In a successful straw purchase, the actual buyer, who could be a prohibited person, trafficker, or both, is never linked to the gun, and both the trafficker and the straw purchaser have committed a federal felony.³⁴ The dealer has also broken the law if he or she knew the straw purchase was taking place.³⁵

"Engaged in the Business"

Federal law recognizes two types of people who sell firearms: FFLs who are "engaged in the business" of selling firearms and private sellers who may make occasional sales from their personal collection.³⁶ There is no definitive statistic on what percentage of gun show sellers are private sellers. Studies have estimated that 25 percent to 50 percent of gun show sellers are private.³⁷ However, at the gun shows observed in this investigation, the majority of firearms sellers – 69 percent – were private, unlicensed sellers.³⁸

Because the law presumes private sellers only make occasional sales, private sellers are under minimal regulation and are exempt from the requirements to run background checks and keep records of sales. They cannot, however, sell guns to people they have reason to believe are prohibited purchasers,³⁹ residents of other states,⁴⁰ or (in the case of handguns) minors.⁴¹ The chart below

GUN SHOWS IN AMERICA

illustrates which regulations apply to private sellers and which apply only to licensed dealers.

The definition of “engaged in the business” of selling firearms is found in legislation passed in 1986.⁴² This legislation defines “engaged in the business” as repeatedly selling guns for the purpose of profit.⁴³ The legislation also introduced exceptions for “occasional sales” and selling from a “personal collection.”⁴⁴

These “needlessly complex” exceptions make the law against “engaging in the business” without a license difficult to enforce.⁴⁵ ATF has said the legal standard “often frustrates the prosecution of people who supply guns to felons and other prohibited persons.”⁴⁶

Even though this law can be difficult to enforce, it is clear that some private sellers cross the line. While there is no definitive standard, courts have looked for

Regulation Designed to Prevent Gun Crime	Licensed Dealers	Private Sellers
Dealer must conduct a background check to make sure the prospective purchaser is not a prohibited person.	✓	
Dealer must keep records of gun sales, including the serial number of the gun in case the gun is recovered in a crime.	✓	
Dealer must make sure the prospective purchaser is the actual buyer of the gun and not a “straw purchaser.”	✓	
Dealer must respond to ATF’s inquiries about guns recovered at crime scenes by checking records to see who purchased them and when.	✓	
Dealer must report to ATF if the same person buys more than one gun within five business days – a key sign of trafficking.	✓	
Dealer is subject to ATF inspections to confirm that records are being kept as required.	✓	
Seller cannot sell to a person they have reason to believe is a prohibited person.	✓	✓
Seller may not sell to residents of other states.	✓	✓
Seller may not sell to people below minimum age.	✓	✓

several key indicia to determine whether defendants are unlawfully “engaged in the business” of selling firearms without a license:

Indicia Often Considered by Courts	Engaged in the Business?
Selling numerous guns ⁵¹	✓
Selling guns regularly ⁵²	✓
Selling guns for profit ⁵³	✓
Buying and reselling guns within a short period of time ⁵⁴	✓
Repeated sales of guns with price tags ⁵⁵	✓
Selling new guns in their original packaging ⁵⁶	✓

Hiring employees, advertising or using professional signs or premises may also suggest substantial investment of time and a profit motive.⁴⁷ In February of this year, a U.S. District Court grand jury indicted Gary Russell and his son, Nicholas Russell, for selling guns illegally.⁴⁸ According to the indictment, although they called themselves private sellers, the duo engaged in more than 200 gun sales in 2007 and 2008 at gun shows, flea markets, and occasionally from their home.⁴⁹ In September of this year, ATF announced that a Florida man pled guilty to engaging in the business without a license after admitting that he sold over 400 firearms during a fifteen-year period.⁵⁰

The Gun Show Loophole

The term “gun show loophole” is often used to describe the fact that federal law allows private sellers to sell firearms without background checks or recordkeeping. While private sellers are exempt from running background checks no matter where they make the sale, this loophole is associated with gun shows because they are a large and central marketplace where these private sellers can easily connect with purchasers who wish to avoid detection.

In its 1999 report, ATF concluded that 30 percent of guns involving federal illegal trafficking investigations are connected to gun shows.⁵¹ ATF reported that the gun show loophole creates an environment where criminals can easily and anonymously purchase firearms from private sellers: “Gun shows leave a major loophole in the regulation of firearms sales” and “provide a large market where criminals can shop for firearms anonymously. Unlicensed sellers have no way of knowing whether they are selling to a violent felon or someone who intends to illegally traffic guns on the streets to juveniles or gangs.”⁵²

ATF has also observed illegal activity by licensed dealers at gun shows: “unscrupulous gun dealers can use these free-flowing markets to hide their off-the-book sales. While most gun show sellers are honest and law-abiding, it only takes a few to transfer large numbers of firearms into dangerous hands.”⁵³ Research has suggested that certain FFLs may be more likely to violate background check requirements and participate in straw sales at gun shows than in retail stores, in part because of the competition they face from private sellers.⁵⁴ According to ATF, 34 percent of trafficking investigations connected to gun shows involved licensed dealers⁵⁵ that participated in straw

GUN SHOWS IN AMERICA

sales, sold guns without a background check, and sold to out-of-state residents, among other illegal business practices.⁵⁶

Crime Connected to Gun Shows

By ATF's own account, "it is difficult to determine the precise extent of criminal activities at gun shows,"⁵⁷ in part because many gun sales at gun shows occur without background checks or recordkeeping. Despite this, gun shows have been linked to crimes in several well-known incidents.

- **Gun shows linked to Columbine:** On April 20, 1999, Eric Harris and Dylan Klebold entered Columbine High School with four firearms, killing a teacher and twelve students and injuring twenty-three additional students. All four guns were bought at gun shows from private sellers. Because they were too young to purchase a gun, Harris and Klebold convinced Robyn Anderson, an 18-year old senior, to assist them.⁵⁸ In a statement to the Colorado House Judiciary Committee, Anderson reported "I wish it would have been more difficult. I wouldn't have helped them buy the guns if I had faced a criminal background check."⁵⁹
- **Gun shows linked to terrorists:** In 2001, Ali Boumelhem was caught attempting to ship to Hezbollah a shipment containing ammunition, shotguns, parts of AR-15 assault rifles, flash suppressors, and speed loaders.⁶⁰ He and his brother Mohamed had purchased the arsenal of weapons from Michigan gun shows.⁶¹ Other

investigations have linked gun shows to potential terrorists in Florida and Texas.⁶²

- **Gun shows linked to Mexican drug-trafficking cartels:** ATF reported that between 2004 and 2006, the Phoenix field division conducted surveillance operations at eight gun shows in Phoenix, Yuma, and Tucson, Arizona, and Albuquerque, New Mexico. Suspected traffickers were later stopped at the border. ATF reported "those operations alone resulted in 13 arrests, 3 convictions, and 193 seizures of illegally purchased firearms."⁶³ ATF Assistant Director for Field Operations William Hoover said in Congressional testimony on February 7, 2008 that "the increased incidence of firearms trafficking to Mexico (from the U.S.) is influenced by," in part, "a readily accessible source of firearms and ammunition originating in mostly the secondary market such as gun shows, flea markets, and private sales."⁶⁴
- **Gun shows linked to street crime:** ATF's two-year investigation into illegal sales at gun shows and flea markets in Alabama resulted in the arrest of 11 individuals and the seizure of more than 700 firearms in 2007. ATF estimated this group had trafficked approximately 70,000 firearms over the past several decades. These individuals had sold 267 guns that were connected to several crimes, including homicides, robberies, assaults, and drug and sex crimes. One of the guns was used in the attempted murder of a Chicago police officer. Another was involved in a murder-for-hire scheme in New York City.⁶⁵

New York City’s investigation attempted to document illegal sales at gun shows. Investigators conducted undercover integrity tests of licensed and private sellers at seven gun shows in Ohio, Tennessee, and Nevada – each of which is among the 15 states that supply crime guns trafficked across state lines at the highest rates.⁶⁶ The integrity tests were designed to see if private sellers would sell to someone they believed couldn’t pass a background check, and to see if FFLs would sell to someone who appeared to be a straw

purchaser. In choosing which gun shows to attend, the City looked for shows that took place from May through August 2009 in diverse geographical areas. To narrow the field, the City considered the following criteria: reports from former law enforcement officers, federal prosecutions for straw buying and trafficking, and proximity to urban areas experiencing gang violence. The chart below catalogues the shows where investigators conducted integrity tests, their location, and the dates investigators attended them.

Date Attended	Location	Venue	Federal Firearm Licensees at the Gun Show	Private Firearms Sellers at the Gun Show	Approx. No. of Tables at the Gun Show
May 2-3, 2009	Dayton, OH	Dayton Hara Arena	10	23	400
May 16-17, 2009	Niles, OH	Eastwood Expo Center	19	50	500
May 30-31, 2009	Sharonville, OH	Sharonville Convention Center	23	25	280
June 27-28, 2009	Smyrna, TN	Tennessee Expo Center	17	41	470
July 11-12, 2009	Columbus, OH	Westland Mall	13	37	390
Aug. 8-9, 2009	Nashville, TN	Tennessee State Fairgrounds	17	16	380
Aug. 16-18, 2009	Reno, NV	Grand Sierra Casino	42	120	1280

THE INVESTIGATION

The Investigators

A team of 40 private investigators supervised by the global firm, Kroll, Inc. worked for four months to capture video of gun shows. Licensed as private investigators in 17 different states, these men and women have more than 460 years of combined law enforcement experience and included many retired federal agents and police officers. Participants were chosen based on their prior experience conducting undercover operations and performance in carefully constructed simulation exercises. Every investigator who participated in the integrity tests was required to complete an intensive training designed and administered by Kroll. Investigators were also taught how to properly use sophisticated video and audio recording devices. Cameras were concealed in baseball hats and purses and had lenses no larger than the tip of a ballpoint pen. The synchronized audio recording devices were concealed in watches.

Sellers Approached in the Investigation

New York City's investigation focused on two types of sellers: private sellers and licensed dealers. On the first day of each gun show, investigators did their homework, just as a sophisticated trafficker would, by observing business practices at the gun shows.

- **Private Sellers:** Investigators chose private sellers to approach by looking for visual signs of engaging in the business without a license, including those selling large numbers of guns, those who appeared at multiple shows, and those selling guns with price tags and new in-the-box guns. Investigators also took note of conversations that private sellers had with customers and other

sellers. They focused in particular on statements that the seller buys guns for resale, is reselling guns shortly after purchase, buys and sells a lot of guns, makes a lot of money on gun transactions, goes to gun shows frequently, or that additional kinds of guns other than those displayed are available.

- **Licensed Dealers:** Investigators chose FFLs to approach by watching for transactions exhibiting tell-tale signs of straw purchases. They also looked for licensed dealers engaging in business practices that rendered them vulnerable targets for gun traffickers, such as intermingling their private collections with their regular merchandise and employing a division of labor in which one clerk focuses on selling to customers while a completely different clerk oversees the paperwork.

The Integrity Tests

The Private Seller Integrity Test

Even though private sellers are not required to run NICS background checks, federal law bars them from selling guns to people they have reason to believe are prohibited purchasers. The purpose of the integrity test was to simulate a sale by a private seller to a person the seller would have reason to believe is a prohibited purchaser. The attempted purchases were designed to proceed in four stages. First, the undercover would establish that the seller is not a license-holder by asking "Are you a licensed guy?" The undercover would then express an interest in purchasing a particular firearm by asking about stopping power, concealability, or by dry-firing the weapon. After agreeing on a price, the undercover would signal to the prospective seller that the purchaser may fall within a prohibited category

under the Brady Law by saying he probably couldn't pass a background check. Finally, the undercover would complete the transaction by buying the gun. Each investigator was trained to follow this basic script to maintain uniformity among the undercover operations:

Training Document⁶⁷

Stage 1: "Are you a licensed guy?"

If the seller denies having a license, the Undercover will proceed to Stage 2.

Stage 2: "So no background check, right?"

If the seller answers in the negative, the Undercover will proceed to Stage 3.

Stage 3: "That's good because I probably couldn't pass one."

Stage 4: Consummate the cash purchase of a handgun or assault weapon.

The FFL Integrity Test

In the second simulation, investigators tested whether FFLs at gun shows would sell to an individual who appeared to be a straw purchaser. Each FFL integrity test involved two investigators, both of whom were equipped with hidden video and audio recording devices. One male investigator (the "Principal") played the role of a person who wanted to purchase a handgun but who appeared to be precluded from doing so for an unstated reason. One female investigator (the "Straw") played the role of a straw purchaser who appeared to be buying the handgun on behalf of the Principal. This scenario is typical of the straw purchases described by ATF and the National Shooting Sports Foundation,

a firearms industry group, in their training program. That program, "Don't Lie for the Other Guy," was designed to teach licensed dealers how to spot straw purchases. Investigators were trained to follow these basic guidelines in conducting FFL integrity tests:

Training Document⁶⁸

Stage 1 Introduction: The investigator posing as a gun trafficker (the "Principal") engages the dealer in conversation about the guns, such as asking about the comparative price, ammunition capacity, and stopping power of several options. While the Principal is speaking with the dealer, the female investigator posing as the straw purchaser (the "Straw") is in another area of the gun show some distance from the Principal. The Straw does not approach the dealer or engage in a discussion about the gun.

Stage 2 Making the Purchase: When the Straw can see or hear a deal being finalized between the dealer and the Principal, the straw approaches the table where the dealer is selling guns. Without necessarily initiating any conversation with the dealer, the Straw begins to fill out the paperwork. The Straw produces a valid in-state driver's license and completes the paperwork. The Principal should pay for the gun by putting money on the table and, after the sale is complete, the Principal should walk away with the gun.

Stage 3 Possession of the Gun: The Principal subsequently returns the gun to the female investigator posing as the Straw, who retains permanent possession and ownership of it.

THE RESULTS

Question 1: Would private sellers sell guns to people who said they probably could not pass a background check?

Federal law states that it is illegal for anyone to sell a gun to someone they “know” or “have reasonable cause to believe” is a prohibited purchaser. The City’s integrity test found private sellers would willingly sell to someone who said they probably could not pass a background check. Based on video evidence, it appears that 19 out of 30 private sellers (63 percent) sold guns illegally.

Total Private Sellers Tested	Private Sellers That Passed Integrity Test	Private Sellers That Failed Integrity Tests	Percent of Private Sellers That Failed Integrity Test
30	11	19	63%

Two private sellers were seen at multiple shows. One failed the integrity test two times, and one failed three times, making the failure rate for integrity tests even higher. Out of 33 tests, there were 22 failures – a failure rate of 67 percent. In total, 20 semi-automatic handguns and 2 assault rifles were purchased from private sellers, with prices ranging from \$100 to \$900.

Outcomes of Private Seller Integrity Tests

City	Total Private Seller Integrity Tests	Passed Integrity Tests	Failed Integrity Tests	Percent of Integrity Tests Failed
Dayton, OH	2	0	2	100%
Niles, OH	7	4	3	43%
Sharonville, OH	6	2	4	67%
Smyrna, TN	4	2	2	50%
Columbus, OH	6	1	5	83%
Nashville, TN	3	1	2	67%
Reno, NV	5	1	4	80%
TOTALS	33	11	22	67%

Some private sellers obeyed the law

Even though many private sellers failed the integrity test, when faced with this same scenario, 11 of the 30 private sellers (37 percent) terminated the sale because they recognized it as illegal. A private seller in Columbus, OH explained, “I mean even as a private citizen, I’m allowed a certain latitude, but once you say that, I’m kind of obligated not to.” Another seller in Smyrna, TN stated “Fact is, you done told me too much. I wouldn’t sell one to you at all.” Other private sellers simply declined, with comments such as “I’ll have to pass” or “I can’t help you then.” These actions show that many private sellers are aware of, and follow, the law that prohibits the sale of guns to persons who could not pass a background check.

Other Conclusions

Many private sellers made light of the fact that investigators appeared to be prohibited purchasers.

Many sellers who failed the integrity test minimized investigators’ statements that they probably could not pass a background check. Sellers

responded “I couldn’t pass one either” or “I don’t care.” Some private sellers confirmed that, unlike a sale by a licensed dealer, the background check would not stop them from selling the gun: “This is an individual sale. Breathe deep.” “No tax. No charges. Nothing... These are just private party sales.” Sellers even said “Have you been bad?” or “Don’t tell me that,” but then completed the sale.

Almost all private sellers seemed to know laws prohibiting out-of-state sales.

While sellers were willing to sell to someone who probably couldn’t pass a background check, most seemed to be aware that they are prohibited from selling to people they have reason to believe are not residents of their own state.⁶⁹ Investigators observed that 29 of the 30 sellers (97 percent) asked to see a driver’s license. Sellers exerted varying degrees of effort to avoid interstate sales – some took the license, while others asked that the agent just “flash it” or said “just show me that you have one.” Two sellers referenced the fact that ATF or “the feds” had enforced this requirement at gun shows and in the words of one seller, “we don’t know who’s watching.”

Failing the Private Seller Integrity Test

It is a federal felony for anyone to sell a gun to someone they “know” or “have reason to believe” is a prohibited purchaser. While trying to buy a gun, investigators told private sellers that they “probably could not pass a background check.” 19 of 30 sellers were willing to finish the sale. Below are excerpts from the transcript of one illegal sale involving two private sellers working as partners at a gun show in Sharonville, OH on May 31, 2009. The investigator bought a semi-automatic Kel-Tec .380 for \$399.

❶ Investigator Tells First Partner That He Probably Couldn't Pass Background Check and Tests a Gun



INVESTIGATOR (I): (reading) Private collection, no paperwork?

SELLER #1 (S1): Yes, sir.

I: Does that mean no background check and all that?

S1: Right....Yeah, just cash and carry.

I: That's good, cause I probably couldn't pass one of those, anyhow.

S1: [Laughs] [...]

I: What I need, is, one shot: I don't have to worry about him getting back up.

S1: Yeah, that's – most people like the 45s for that principle.

❷ Investigator Discusses the Price With Both Partners



I: Take \$375?

S1: Uh....let me check.... No. \$399 is the bottom.

SELLER #2 (S2, right): That's a great deal there. That's a \$150 laser.

I: What's that?

S2: The laser's \$150 alone.

I: Oh..OK

❸ Investigator Tells Second Partner That He Probably Couldn't Pass a Background Check



S2: (after approaching) Private collection. No tax, no paperwork.

I: OK, so no background check?

S2: No.

I: Alright, good. I probably couldn't pass one.

S2: [Laughs]

I: One of those things, you know?

S2: I hear you. Yeah.

❹ Private Sellers Complete the Sale



I: Alright, let's do it.

S2: OK, buddy.

I: Who...who gets the cash? Who's the lucky man?

S2: He gets the money.

I: Alright.

S1: I get the money he makes the change.

S2: Yeah

I: Alright. One..Two..Three...Four. Alright?

S1: Yes sir.

Passing the Private Seller Integrity Test

Faced with this same integrity test, 11 of 30 sellers obeyed the law and stopped the transaction. Below are excerpts from the transcript of one such private seller at a gun show in Columbus, OH on July 12, 2009.

1 Investigator Discusses Guns with Vendor and Tests a Gun



INVESTIGATOR (I): How you doing?

SELLER (S): Hey

I: I was wandering around a little bit yesterday, um...Looking for something with stopping power – you have anything you can suggest, at a like at a lower price, like a 9 or a 45?

S: Depends on how much stopping power you want....

I: Well...

S: What capacity you want...

2 Investigator Tests a Gun



I: Can I see that one, please?

S: Sure.

I: This just come with the one mag?

S: Yes

3 Investigator Says He Probably Could Not Pass a Background Check



I: You a licensed guy?

S: Hmm?

I: Are you a licensed guy?

S: No. Just a private seller.

I: You do background checks?

S: No.

I: Well, that's good – 'cause I probably couldn't pass one

4 Private Seller Stops the Sale



S: Well why wouldn't you be able to pass one?

I: Oh I just wouldn't

S: I mean, even as a private citizen, I'm kind of allowed a certain latitude. But once you say that, then I'm kind of obligated not to.

I: Alright. I didn't know – I don't know what the rule is. I just... was going to buy that for \$350, but...If you're not allowed to...

S: Well, if you're basically telling me that you wouldn't pass a background check, then I wouldn't be allowed to.

I: Alright, well I don't want to jam you up or anything, I just...

S: Yeah, well, I think that's what the rules are.

THE RESULTS

Question 2: Would licensed dealers sell guns to people who appear to be straw purchasers?

ATF found that some FFLs at gun shows facilitate gun trafficking by engaging in illegal sales practices, including straw purchases – a common method of avoiding background checks and a

significant source of illegally diverted guns. This may be because of the competition posed by private sellers who are free to complete sales without background checks and recordkeeping. The City investigated whether FFLs at gun shows would complete a straw sale. The investigation found that 16 of 17 (94 percent) of federally-licensed dealers approached by investigators at gun shows willingly sold to an apparent straw purchaser.⁷⁰ In total, investigators bought 16 semi-automatic handguns ranging in price from \$169 to \$491.

Outcomes of Licensed Dealer Integrity Tests⁷¹

City	Total FFLs Tested	FFLs that Passed Integrity Tests	FFLs that Failed Integrity Tests	% of FFLs That Failed Integrity Test
Dayton, OH	2	0	2	100%
Niles, OH	3	1	2	67%
Sharonville, OH	3	0	3	100%
Smyrna, TN	4	0	4	100%
Columbus, OH	1	0	1	100%
Nashville, TN	4	0	4	100%
TOTALS	17	1	16	94%

One licensed dealer abided by the law.

When faced with an investigator who appeared to be engaging in a straw purchase, one dealer at a gun show in Nashville, TN ended the sale. The dealer asked, “Who’s buying what?” and then told the male investigator “It looks like it could be for you. So, all I need you to do is fill out a form and we’ll be good.” The dealer understood that background checks prevent sales to criminals – he asked, “Can you own a gun?” and stated, “We just want to make sure you’re a good guy.” When the male investigator refused to fill out a 4473, the dealer stopped the sale.

Other Conclusions

While conducting the 17 FFL integrity tests, investigators observed clear evidence that dealers

understood that a person other than the customer who chose the gun would complete the paperwork and undergo the background check.

- In many cases, dealers welcomed the female investigator posing as a “straw” and explained the paperwork.
- While the straw purchaser filled out the paperwork, several dealers discussed with the male investigator issues such as warranty or ammunition.
- In nearly every transaction, the gun was handed back to the man, even though the woman had filled out the paperwork, including one occasion where the male investigator was asked to sign the receipt.

Failing the FFL Integrity Test

It is a federal felony when a dealer allows someone to fill out the paperwork and undergo the background check but that person is not the actual buyer of the gun. That is called a “straw sale.” Working at six gun shows, investigators simulated apparent straw sales at 17 licensed dealers, and 16 dealers completed the apparent straw sale. Below are excerpts from a transaction on August 9, 2009 at a gun show in Nashville, TN, where the investigators bought a Kel-Tec P-11, a 9 mm semi-automatic handgun, for \$303.88 with tax.

1 Male Investigator Approaches Dealer While Female Investigator Goes Elsewhere



Left: Male Dealer in blue jeans and black shirt talks to Male Investigator in white pants and black hat.

Right: Female Investigator inspecting a separate vendor.

MALE DEALER (MD): Sir, are you looking for anything in particular?

MALE INVESTIGATOR (MI): Yeah. I tell you, I'm looking for something small. Uh...you know, something... you know... but something with a lot of stopping power. Something that hits pretty hard....

MD: Well if you want stopping power then you're talking caliber.

2 Male Investigator Tests Multiple Guns and Discusses His Budget



Left to Right: Male Investigator tests a gun and Male Dealer reaches for a second gun.

MI: OK. What do I need?

MD: 40 Caliber. We got that right here. Here's something small. It's a Glock 27 ... 40 caliber ... That'll shoot 180 grain bullet.

MI: OK.

MD: That's going to hurt [...]

MD: Probably this one right here, \$375.

MI: Still \$375.

MD: You looking to go lower than that?

MI: Yeah

3 Male Dealer Welcomes Female Investigator



Left to Right: Male Investigator, Female Investigator, and Male Dealer.

MI: Alright. Yeah, I'm going to...My friend over here's to do some paperwork for me.

MD: All right.

MI: OK...She....come here...have a seat here and help me out.

MD: How you doing, ma'am? [...]

MD: OK, so you need... you know...all right... one piece of ID.

4 Male Investigator Pays and Walks Away with Gun



Left: Male Investigators handing over money.

Right: Male Investigator walking away with gun in bag.

FEMALE DEALER (FD): All right so \$303.88. Here's your license, for you.

MI: OK.. One, Two, Three and Five. That's the best I can do.

FD: Oh... That's fine. [...]

FD: There you go. You guys have a good day. [Handing gun in bag to Male Investigator]

MI: Hey, appreciate it. Thanks

MD: My pleasure.

Passing the FFL Integrity Test

Only one licensed dealer stopped the apparent straw sale. Below are excerpts from that transaction on May 17, 2009 at a gun show in Niles, OH.

1 Licensed Dealer Welcomes Male Investigator While Female Investigator Goes Elsewhere



*Left: Male Dealer #1 talks to Male Investigator (not pictured).
Right: Female Investigator inspects a separate vendor.*

MALE DEALER #1 (MD1): How's it going?
MALE INVESTIGATOR (MI): Good. How about yourself?
MD1: Oh, pretty good. Can I help you?
MI: Well. I'm looking at...maybe at this Ruger here. Pretty nice.
MD1: Oh yeah. They're real sweet guns....Got any questions?
MI: Uh.. this is uh...15 rounds, right?
MD1: Yes.

2 Male Investigator Tries Multiple Guns and Chooses One



Male Investigator tries two different handguns.

MI: I like this... but I like the feel of this better. You know, it's a little lighter in my hand.
MD1: It's more of a compact gun
MI: Right
MD1: For carry.
MI: OK
MD1: Taurus is a good gun. They shoot really well.
MI: [Inaudible] Taurus.
MD1: You want it?
MI: Yup. Sure do.
MD1: Alright. Come on down here to my table.
MI: Baby? Where's my girl? Oh, there she is.

3 Female Investigator Comes to Fill Out Paperwork and Male Investigator Discusses Price



Female Investigator receives 4473 Form.

FEMALE DEALER (FD): How you doing?
FEMALE INVESTIGATOR (FI): Good
FD: I just need you to just fill out the front of that form.
FI: All righty.
FD: Thanks [...]
FD: Is that the right price?
MI: Uh.. I thought it was \$369. In fact, I'm sure it was.

4 Dealer Ends the Sale



*Left: Male Dealer #2 questions Male Investigator.
Right: Male Dealer #2 instructs Female Dealer to stop the sale.*

MALE DEALER #2 (MD2): Who's buying what?
I: [Inaudible]
MD2: OK. Can you own a gun buddy?
MI: Absolutely
MD2: OK. Do you have a problem filling out a form? [...]
MI: Alright, Yeah, no. I can't. I'm, I'm...It's not going to be my gun so I won't fill out the form.
MD2: Well we won't put anything in your name. We just want to make sure you're a good guy.
MI: What form am I going to fill out then?
MD2: Same one she did.
MI: No, Well, I, I'm not going to do that, 'cause the gun's not for me.
MD2: Void it, baby.

THE RESULTS

“Engaged in the Business” at Gun Shows

It is illegal to “engage in the business” of selling firearms without obtaining a federal firearms license and conducting background checks on buyers. Courts have considered several indicia – selling numerous guns, selling guns regularly, and selling firearms for profit, among others – to determine whether defendants are unlawfully “engaged in the business” and not selling occasionally from a personal firearms collection. Investigators observed many private sellers doing brisk business at gun shows.



One of four tables from private sellers in Smyrna, TN

Selling Numerous Guns

Sharonville, OH: A private seller said he sold over 348 SKS assault rifles in “just under a year.”

Smyrna, TN (pictured): A private seller reported that he did a “pretty good business” in 9 mm handguns and that when it came to .45s he sold “as many as he can get.”

Columbus, OH: Private seller explained “we keep a nice selection. We got revolvers...We have nice automatics. We got modern plastic guns. We got the Glock, we got the Springfield.” When asked if “You sell a lot of these?” the seller responded, “Mmm – hm. A lot.”

Reno, NV: Private seller had over 100 guns on display in twelve professionally designed cases.

Reno, NV: One private seller said, “believe it or not, we sold mostly to dealers. I bring lots of stuff that they don’t have, that they need... the next show I’ll bring different stuff...”

Selling Guns Regularly

Columbus, Sharonville and Dayton, OH: Two private sellers sold guns to investigators at three different shows. When asked if he is “at all the shows,” one of them responded, “I try to do that, yeah.” The other private seller said he goes to gun shows “every two weeks.”

Columbus, OH (pictured): A private seller explained that he keeps a lot of long guns in stock because he “does a lot of shows out of state” and can’t sell handguns out of state.



Two of five tables, from long gun seller in Columbus, OH.

Selling Firearms for Profit

Sharonville, OH (pictured): Private sellers sold 348 assault rifles for approximately \$174,000 in revenue.

Smyrna, TN: When an investigator tried to negotiate down the price of a gun, the private seller responded, “I can do a little dealing, but I’ve got to watch. I don’t know what [my partner’s] got in it.”



Assault rifle being bought in Sharonville, OH

Selling New-in-the-Box Guns

Niles, OH (pictured): Private seller sold a “new gun” in its Beretta box to an investigator.

Dayton, OH: After an investigator asked to see a gun, a private seller responded, “That one’s brand new... It’s got everything with it – all the paperwork, everything.”

Reno, NV: When asked “are all these [guns] new?” the private seller responded, “Some of them, yeah.”

Reno, NV: A private seller said that he was firm on the price of the gun because “it’s brand new.”



New-in-the-box Beretta sold in Niles, OH

Buying and Reselling Guns Within a Short Period of Time

Smyrna, TN (pictured): A private seller was offering a handgun for sale that he had “just bought.” When the investigator said, “Oh, so you’re turning them then today, huh?” the seller responded “I hope to turn one.”



Private seller selling gun he “just bought” in Smyrna, TN

Hiring Employees

Smyrna, TN (pictured): When asked about a price, a private seller said he was working for someone else and would check with him.

Sharonville, OH: A private seller told our investigator that “he worked for another guy” who customized the guns for sale. He also said “he’s the dealer...I just work for him.”



Private seller in Smyrna, TN who explained that he works for another private seller

THE RESULTS

Illegal sales by private sellers undermine law-abiding licensed dealers

When ATF surveyed licensed dealers about unlawful activity at gun shows, many “expressed frustration that unlicensed persons were able to sell to buyers without any paperwork (and advertise this fact), leaving the FFL at a competitive disadvantage.”⁷² Not only do private sellers at gun shows make anonymous, unrecorded sales,

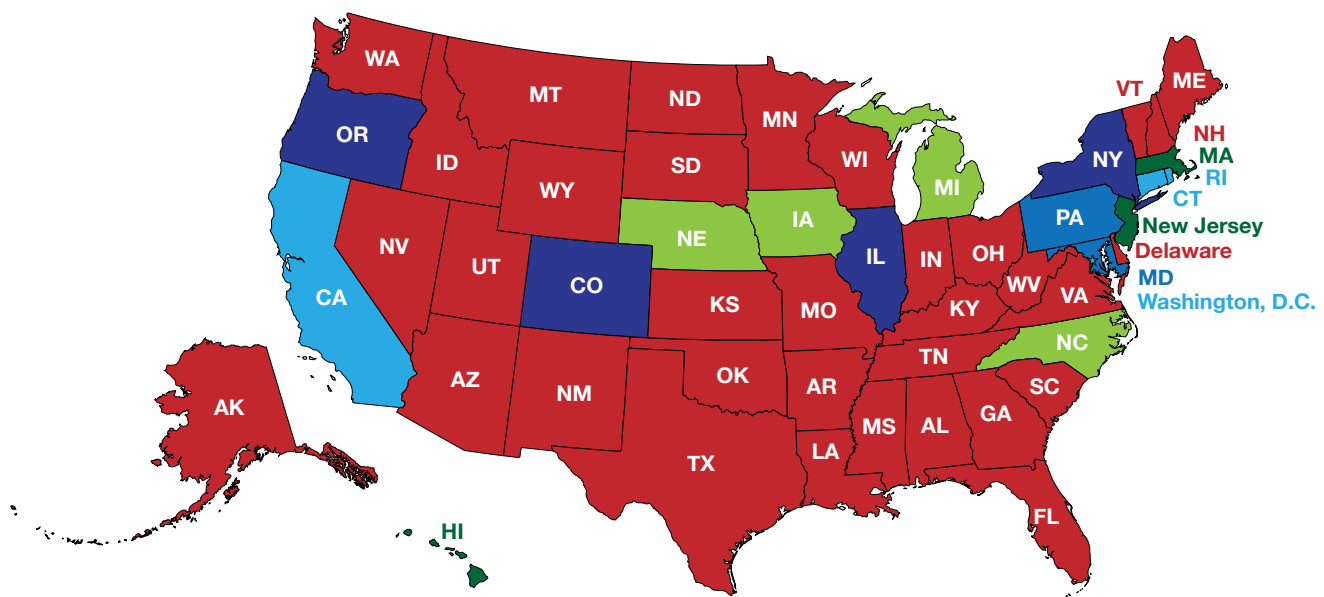
they operate with little or no overhead other than the minimal fee to rent their tables. In addition, none of the private sellers who exhibited indicia of being illegally “engaged in the business” collected sales tax, even though all three states involved in this investigation require taxes on frequent, profit-oriented sales.⁷³ Violation of these laws defrauds state, and often local, governments of revenue. Furthermore, several private sellers used the lack of sales tax as a selling point. For example, one quoted a price “no tax, no paperwork.”

Solution One: Close the Gun Show Loophole

The gun show loophole provides criminals and other prohibited purchasers easy access to guns by allowing them to sidestep background checks. The best way to stop these illegal sales is to require background checks for all sales at gun shows.

Nine states and the District of Columbia have

passed laws that specifically require checks on at least all handguns sold at gun shows. These states have taken slightly different approaches, including requiring background checks for all sales at gun shows,⁷⁴ background checks for sales of all guns regardless of the venue,⁷⁵ and background checks for all sales of handguns regardless of the venue.⁷⁶ In addition, seven other states have passed laws that require buyers to obtain permits that require background checks before purchasing handguns.⁷⁷ The following map details each state’s laws:



- States with Universal Background Check Requirement
- States with Universal Background Check Requirement for Purchasing Hand Guns
- States that Require Background Checks At Gun Shows (No Check Required for Other Private Sales)
- States that Require State-Issued Permits to Purchase Any Gun From Private Sellers (Some Form of Background Check Required)
- States that Require State-Issued Permits to Purchase Hand Gun From Private Sellers (Some Form of Background Check Required)
- No Gun Show Background Checks By Unlicensed Sellers or Purchase Permits Required

SOLUTIONS

State laws aimed at closing the gun show loophole appear to reduce the flow of crime guns from that state. According to a December 2008 report by Mayors Against Illegal Guns, states that do not require background checks for sales of handguns at gun shows are the sources of crime guns recovered in other states at more than twice the rate of states that do require such background checks.⁷⁸ Moreover, these state laws have not disrupted gun show operations. California regulates private party sales at gun shows by imposing a waiting period as well as requiring background checks. But gun shows continue there. In fact, a study of gun shows comparing California to states without such restrictions found no statistically significant differences in the number of vendors or attendees.⁷⁹

Public sentiment clearly favors closing the gun show loophole. According to a bi-partisan 2008 poll, 87 percent of Americans and 83 percent of gun-owners favor requiring everyone who sells guns at

gun shows to conduct criminal background checks on the purchasers. President Obama and Senator John McCain have both supported closing the gun show loophole.⁸⁰ In 2004, Senators voted 53 to 48 in favor of an amendment introduced by Senator McCain to close the gun show loophole. However, the legislation to which the amendment was attached was never passed by Congress.⁸¹

Two federal bills are pending that would close the gun show loophole by requiring background checks on all firearm sales at gun shows: H.R.2324, introduced by Representative Mike Castle (R-DE), and S.843, sponsored by Senator Frank Lautenberg (D-NJ). Both bills require unlicensed dealers who sell at gun shows to have FFLs run background checks on their behalf and generate records of the transfer.⁸² H.R. 2324 would also authorize ATF to hire at least 40 additional Industry Operations Investigators for the purpose of carrying out inspections of gun shows.

Solution Two: ATF Should Enforce Existing Laws at Gun Shows

Although closing the gun show loophole is an important step towards curbing the flow of illegal guns from gun shows, ATF could also reduce the flow of illegal guns by increasing enforcement of existing laws at gun shows in the following ways. Additional funding for ATF would help the agency implement these recommendations.

Recommendation One: Conduct criminal enforcement at gun shows without a specific target

Under current practice guidelines, ATF agents must have a specific person under suspicion to conduct a criminal investigation at a gun show. ATF agents' discretion should be broadened to allow investigations when intelligence, arrest debriefings, and cooperating witnesses suggest that a particular show is a site of problematic firearms sales – even when intelligence does not identify an individual suspect. ATF should also issue new guidance to special agents and investigators that allow agents to conduct comprehensive residency checks at shows known to be major sources of trafficked guns.

Recommendation Two: Investigate problematic private sellers

ATF should collect intelligence, using trace data, witness interviews, and undercover operations to identify sellers at gun shows who appear to

be “engaged in the business” of selling firearms without a license. Investigations could examine sales volume and profits as well as document whether problematic gun sellers appear at multiple shows. ATF should also conduct undercover integrity tests similar to those used in this investigation to identify private sellers who illegally sell to prohibited buyers and FFLs who sell to straw purchasers at gun shows.

Recommendation Three: Identify whether recovered crime guns were purchased at gun shows

ATF does not consistently identify whether traced guns were purchased at gun shows, even though FFLs are required to identify whether the sale took place at a gun show and identify the gun show's location in response to Question 19 on Form 4473. When National Tracing Center personnel trace a particular gun, they should routinely ask the FFL in possession of the form whether the recovered gun was purchased at a gun show and determine the show's location. The failure to include this information in a trace report deprives ATF and local law enforcement of important clues about which gun shows are favored by persons involved in the illegal diversion of firearms.

Recommendation Four: Increase resources for ATF to enforce existing laws at gun shows

ATF also needs more resources to effectively enforce existing laws at gun shows. For example, ATF has set a goal of inspecting licensed dealer at least once every three years, but because of

SOLUTIONS

limited staff it is only inspecting dealers two to three times less often. In many cities ATF has set up task forces with local law enforcement. With added resources, these task forces could support coordinated enforcement activities at gun shows. Adding resources may be particularly urgent in states along the southwest border, where ATF has reported that gun shows are a major source of guns illegally trafficked into Mexico. ATF is underfunded compared to similar federal agencies – in 2009, the anticipated budget for the Drug Enforcement Administration, for example, is more than twice that of ATF.⁸³

Table 1: Summary of Private Seller Integrity Tests

Show Details	Total Private Seller Integrity Tests	Passed Integrity Tests	Failed Integrity Tests	Percent Integrity Tests Failed	Guns Purchased and Price
Dayton, OH May 2-3, 2009 <u>Venue:</u> Dayton Hara Arena <u>Promoter:</u> Bill Goodman's Gun and Knife Shows	2	0	2	100%	<ul style="list-style-type: none"> • Laseraim .45; \$500 • Hi-Point 9mm; \$190
Niles, OH May 16-17, 2009 <u>Venue:</u> Eastwood Expo Center <u>Promoter:</u> Niles Gun Show, Inc.	7	4	3	43%	<ul style="list-style-type: none"> • Glock 23 .40 Caliber; \$550 • H&K P9S 9MM; \$825 • Beretta PX4 Storm 9mm; \$625
Sharonville, OH May 30-31, 2009 <u>Venue:</u> Sharonville Convention Center <u>Promoter:</u> Bill Goodman's Gun and Knife Shows	6	2	4	67%	<ul style="list-style-type: none"> • Beretta Cougar 8045F .45 ACP; \$485 • Kel-Tec .380; \$400 • American Derringer 9mm; \$400 • SKS Carbine Assault Rifle; \$500
Smyrna, TN June 27-28, 2009 <u>Venue:</u> Tennessee Expo Center <u>Promoter:</u> R.K. Gun Shows, Inc.	4	2	2	50%	<ul style="list-style-type: none"> • Kel-Tec CNC Model P11; \$265 • Kel-Tec; \$350
Columbus, OH July 11-12, 2009 <u>Venue:</u> Westland Mall <u>Promoter:</u> C & E Gun Shows	6	1	5	83%	<ul style="list-style-type: none"> • CZ-USA .40 Caliber Model CZ 75B; \$550 • Colt .45 Caliber Automatic; \$900 • Springfield Armory Model XD-9 9mm; \$480 • SKS Carbine (Chinese); 7.62 x 39 Caliber; \$350 • Jennings Firearms "Bryco 38" .380 Auto; \$150
Nashville, TN Aug. 8-9, 2009 <u>Venue:</u> Tennessee State Fairgrounds <u>Promoter:</u> Bill Goodman's Gun and Knife Shows	3	1	2	67%	<ul style="list-style-type: none"> • Hi-Point Model CF380; \$100 • H&K P9S 9MM; \$825
Reno, NV Aug. 16-18, 2009 <u>Venue:</u> Grand Sierra Casino <u>Promoter:</u> Big Reno Gun Shows	5	1	4	80%	<ul style="list-style-type: none"> • Beretta Px4 Storm .40 Auto Pistol; \$598 • Llama Minima X45 Sub Compact .45; \$500 • Sig Sauer P230 .380; \$725 • Jennings 9mm; \$400
TOTALS	33	11	22	67%	<ul style="list-style-type: none"> • Twenty semi-automatic handguns • Two SKS Assault Rifles

APPENDIX

Table 2: Summary of Licensed Dealer Integrity Tests

Show Details	Total Private Seller Integrity Tests	Passed Integrity Tests	Failed Integrity Tests	Percent Integrity Tests Failed	Guns Purchased and Price
Dayton, OH May 2-3, 2009 Venue: Dayton Hara Arena Promoter: Bill Goodman's Gun and Knife Shows	2	0	2	100%	<ul style="list-style-type: none"> • Taurus PT 145 .45 ACP; \$363.75 • Taurus PT 92 AFS 9mm; \$491.13
Niles, OH May 16-17, 2009 Venue: Eastwood Expo Center Promoter: Niles Gun Show, Inc.	3	1	2	67%	<ul style="list-style-type: none"> • Hi-Point 9mm; \$169.33 • Smith & Wesson 9mm; \$364.00
Sharonville, OH May 30-31, 2009 Venue: Sharonville Convention Center Promoter: Bill Goodman's Gun and Knife Shows	3	0	3	100%	<ul style="list-style-type: none"> • Hi-Point C9 9mm Luger; \$191.65 • Taurus 9mm PT III Pro; \$395.00 • Ruger 9mm P95; \$421.00
Smyrna, TN June 27-28, 2009 Venue: Tennessee Expo Center Promoter: R.K. Gun Shows, Inc.	4	0	4	100%	<ul style="list-style-type: none"> • Taurus Millennium PT1 40 Pro; \$437.04 • Kel-Tec P11; \$325.00 • Hi-Point C9 9mm Luger; \$174.00 • Hi-Point C9 9mm; \$196.20
Columbus, OH July 11-12, 2009 Venue: Westland Mall Promoter: C & E Gun Shows	1	0	1	100%	<ul style="list-style-type: none"> • Smith & Wesson 9mm; \$373.57
Nashville, TN Aug. 8-9, 2009 Venue: Tennessee State Fairgrounds Promoter: Bill Goodman's Gun and Knife Shows	4	0	4	100%	<ul style="list-style-type: none"> • Bersa Fire Storm .380; \$284.05 • Kel-Tec P-11 9mm Luger; \$303.88 • Hi-Point Model C9 9mm Luger; \$190.00 • Kel-Tec P-11 9mm Luger; \$271.11
TOTALS	17	1	16	94%	<ul style="list-style-type: none"> • Sixteen semi-automatic handguns

1. See U.S. Dep't of Treasury, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Following the Gun: Enforcing Federal Law Against Firearms Traffickers, at 13 (2000) (gun shows were associated with 25,862 out of 84,128 total trafficked firearms connected to the prosecutions examined in the report).
2. 18 U.S.C. § 921(a)(21)(C).
3. 27 C.F.R. §§ 478.124, 478.129(b).
4. In the last decade, NICS has been used to process over 100 million background checks and has blocked more than 720,000 illegal sales. Federal Bureau of Investigation, Website for the National Instant Criminal Background Check System, <http://www.fbi.gov/hq/cjisd/nics.htm> (last visited October 5, 2009). Not only can NICS handle a large number of transactions, background checks are being processed more efficiently and more quickly than in the past: in 2006, 92 percent of all NICS checks were resolved immediately. That figure was up from 72 percent between November 1998 and December 2001. See Letter from Thomas E. Bush, III, Assistant Director, CJIS Division, The Federal Bureau of Investigation, to The Honorable Michael R. Bloomberg, Mayor of New York City (October 21, 2008) (available at http://www.mayorsagainstillegalguns.org/downloads/pdf/FBI_NICS_Data_response.pdf).
5. 18 U.S.C. § 922(d).
6. U.S. Departments of Justice and Treasury, Gun Shows: Brady Checks and Crime Gun Traces, at 26 (January 1999).
7. Id. at 6.
8. Id. at 31.
9. See Id. at Appendix, Table 1.
10. Id., at 7-8
11. "It is difficult to determine the precise extent of criminal activities at gun shows, partly because of the lack of obligations upon unlicensed vendors to keep any records." Id. at 9.
12. During this investigation, agents approached 30 different private firearms sellers for integrity tests. If private sellers were working together as a team to sell a gun to an investigator, they were counted as one "private seller."
13. Statement of Michael Bouchard, Assistant Director of Field Operations, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Oversight of the Bureau of Alcohol, Tobacco, Firearms, and Explosives Part 2: Gun Show Enforcement, Hearings before the House Subcommittee on Crime, Terrorism, and Homeland Security, 109th Congress, 2d Session, at 4 (February 28, 2006).
14. U.S. Department of Justice Office of the Inspector General Evaluation and Inspections Division, The Bureau of Alcohol, Tobacco, Firearms and Explosives' Investigative Operations at Gun Shows, at 6 (2007) (available at <http://www.usdoj.gov/oig/reports/ATF/e0707/final.pdf>).
15. Id. at 6.
16. See Website of the National Association of Arms Shows, <http://www.naas-info.org/Background.htm> (last visited on October 6, 2009).
17. Investigative Operations at Gun Shows, supra note 14, at 6.
18. Gun Shows: Brady Checks and Crime Gun Traces, supra note 6, at 4.
19. Investigative Operations at Gun Shows, supra note 14, at 6.
20. "Curio and relic" firearms are guns that are "of special interest to collectors" for some reason, such as being over 50 years old or having belonged to a famous person. See 27 C.F.R. § 478.11.
21. Gun Shows: Brady Checks and Crime Gun Traces, supra note 6, at 7.
22. Id. at 6-7. "The large majority of investigations" came from 1997 and 1998, but a few shows were from as far back as 1991. See Id. at 6, n.11
23. Id. at Appendix, tables 2 & 3.
24. People prohibited from possessing guns include (1) convicted felons, (2) fugitives, (3) drug addicts and abusers, (4) people with serious histories of mental illness, (5) aliens who are in the United States illegally or (with certain exceptions) on a nonimmigrant visa, (6) persons dishonorably discharged from the Armed Forces, (7) those who have renounced U.S. citizenship, (8) subjects of domestic-violence restraining orders and (9) domestic violence misdemeanants. 18 U.S.C. § 922(g). In addition, people cannot buy guns while they have pending felony charges. 18 U.S.C. § 922(n).
25. Pub. L. No. 103-159, codified in relevant part at 18 U.S.C. § 922(t).
26. See 18 U.S.C. § 922(t). The NICS database went into operation in 1998.
27. In the last decade, 92 percent of NICS checks were resolved "immediately" during the phone call with the FFL. 97 percent of checks are resolved within the three-business day limit under the Brady Law. Letter from Thomas E. Bush, III, Assistant Director, Criminal Justice Information Services Division, FBI, to Mayors Against Illegal Guns, Oct. 21, 2008, at 21.
28. Federal Bureau of Investigation, Website for the National Instant Criminal Background Check System, <http://www.fbi.gov/hq/cjisd/nics.htm> (last visited on October 6, 2009).

ENDNOTES

29. See 27 C.F.R. §§ 478.124, 478.129(b).
30. See 18 U.S.C. 923(g)(7).
31. Letter from Kenneth E. Melson, Acting Director, ATF to the Honorable John Peyton, Mayor of Jacksonville (May 19, 2009) (on file with Mayors Against Illegal Guns).
32. See Department of Treasury, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Following the Gun: Enforcing Federal Law Against Firearms Traffickers, at 18 (2000).
33. Special Agent Joseph P. Greco, “Pattern Crimes: Firearms Trafficking Enforcement Techniques,” FBI Law Enforcement Bulletin, Sept. 1998, at 6, 7.
34. “Don’t Lie for the Other Guy: A Retailer’s Guide to Recognizing and Deterring Strawman Purchases.” This brochure was a joint production of ATF and the National Shooting Sports Foundation, which represents the gun industry. The false claim to be the actual buyer on Form 4473 violates 18 U.S.C. §§ 922(a)(6) and 924(a)(1)(A) among other laws.
35. Id.
36. 18 U.S.C. § 921(a)(21)(C). The term “dealer” “shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby.” Id.
37. Gun Shows: Brady Checks and Crime Gun Traces, supra note 6, at 4.
38. The seven gun shows attended by investigations are not a significant sample. Investigators arrived at this number by looking for federal firearms licenses displayed on vendors’ tables, observing to see if vendors asked a purchaser to fill out a Form 4473, and – if any uncertainty remained – approaching the vendor and asking if he or she was a licensed firearms dealer. In addition, of the 84 FFLs at the 7 shows, 53 percent of them failed to have their license on display, which a violation of federal law. See 27 CFR §§ 478.91, 478.100(a)(1).
39. See 18 U.S.C. § 922(d).
40. See 18 U.S.C. § 922(a)(5).
41. See 18 U.S.C. § 922(x) (prohibiting the transfer of handguns to people under 18, with certain exceptions). Stricter age limits apply to FFLs; they cannot sell handguns to people under 21 or long guns to people under 18. § 922(b)(1).
42. Pub. L. No. 99-308, § 101(6), as amended by Pub. L. No. 99-360, § 1(b) and codified at 18 U.S.C. § 921(a)(21)-(22). Prior to 1986 when Congress passed the Firearms Owners Protection Act (FOPA), the legal standard for “engaged in the business” was not defined by federal statute and did not explicitly exclude collectors. Some courts applying the pre-1986 “engaged in the business” standard analyzed whether the defendant had a “profit motive” and whether he devoted “time, attention and labor” to selling firearms; others applied a less restrictive test that focused on the defendant’s “readiness and willingness to procure weapons for sale” and whether the defendant held himself out as a dealer. See e.g., United States v. Reminga, 493 F. Supp. 1351, 1355 & 1358 (W.D. Mich. 1980). For both of these tests, claims of selling from a personal collection were not a defense, and the case focused on how many guns were sold, how much time was spent was selling them, and whether they were sold for profit. See Id. at 1358; United States v. Tarr, 589 F.2d 55, 59 (1st Cir. 1978) (establishing “regular course” requirement, which was later written into statute); Oddo v. Dep’t of the Treasury, ATF, 13 M.S.P.R 483, 485 (1982); United States v. Hernandez, 662 F.2d 289, 291 (5th Cir. Oct. 1981) (upholding conviction based on buying and reselling 30 guns over four months); United States v. Murphy, 852 F.2d 1, 18-20 (1st Cir. 1988).
43. See 18 U.S.C. § 922(a)(1)(A); 18 U.S.C. § 921(a)(21)(C).
44. Id.
45. Department of Justice, National Integrated Firearms Violence Reduction Strategy (2001) (available at <http://www.usdoj.gov/archive/opd/gunviolence.htm>); Gun Shows: Brady Checks and Crime Gun Traces, supra note 6, at 24. ATF continues, “Although illegal activities by unlicensed traffickers often become evident to investigators quickly, months of undercover work and surveillance are frequently necessary to prove each of the elements in the current definition and to disprove the applicability of any of the several statutory exceptions.”
46. Id.
47. Cf. Reminga, 493 F. Supp. 1351 (holding oneself out as a dealer indicated being “engaged in the business” under pre-FOPA standard).
48. See United States v. Russell et al., No. 09-cr-5 (filed Feb. 12, 2009); Kenneth Hart, “ATF: Illegal Gun Dealing a Concern,” The Daily Independent, April 5, 2009.
49. As of the date of this report, Gary Russell’s case was reassigned for sentencing, and Nicholas Russell is awaiting re-arraignment. See Order dated September 28, 2009, United States v. Russell et al., No. 09-cr-5 (filed Feb. 12, 2009).
50. ATF Press Release, “Unlicensed Firearms Dealer Pleads Guilty” (September 24, 2009) (available at http://www.atf.gov/press/2009press/field/092409tam_unlicensed_dealer-guiltyplea.htm).
51. See Following the Gun, supra note 1, at 13 (2000). Studies by the Bureau of Justice Statistics (“BJS”) found that less than two percent of felons incarcerated for violent, gun-related crimes claim they bought guns themselves at gun shows. That statistic does not

account for the fact that gun traffickers and straw purchasers, who often supply street criminals, frequent gun shows because they are rich source of guns where background checks are easy to circumvent. *See, e.g.*, Anthony A. Braga and David M. Kennedy, “Gun Shows and the Illegal Diversion of Firearms,” 6 *Geo. Pub. Pol’y Rev.*, at 11 (Fall 2000).

52. *Gun Shows: Brady Checks and Crime Gun Traces*, *supra* note 6, at 26.

53. *Id.*

54. Garen Wintemute, Gun Shows Across a Multistate American Gun Market: Observational Evidence on the Effects of Regulatory Policies, *Injury Prevention*, 13: 150-156 (2007) (available at <http://www.ucdmc.ucdavis.edu/vprp/pdf/gunshowsIPman.pdf>) (noting that illegal straw purchases are more frequent in states that do not require background checks on all sales at gun shows).

55. *Id.* at Appendix, Table 1.

56. *Id.* at 7-8.

57. *Gun Shows: Brady Checks and Crime Gun Traces*, *supra* note 6, at 9.

58. Lynn Bartels, Gun Dealers Rejected Columbine Killers, *Rocky Mountain News*, at 4A, Jan. 27, 2000.

59. *Id.*

60. *See United States v. Boumelhem*, 339 F.3d 414, 418 (6th Cir. 2003).

61. *See* Page, Susan. “McCain: Terrorists bypass laws by using gun shows,” *USA TODAY*, Nov. 27, 2001 (available at <http://www.usatoday.com/news/sept11/2001/11/27/guns.htm>).

62. *See id.*; Eric Holder Jr., “Keeping Guns Away from Terrorists,” *The Washington Post*, October 21, 2001; Jeremy Schwartz, “Sentencing in Weapons Case is Delayed, Alice Storeowner Asrar Faces Additional Accusations of Weapons Possession,” *The Corpus Christi Caller-Times*, January 29, 2002.

63. *Investigative Operations at Gun Shows*, *supra* note 14 at 30.

64. William Hoover, Statement Before the United States House of Representatives Committee on Foreign Affairs Subcommittee on the Western Hemisphere, February 7, 2008 (available at <http://foreignaffairs.house.gov/110/hoo020708.htm>).

65. “A Gun Probe Yields Hundreds of Weapons Used in Crimes,” *Associated Press*, March 4, 2007.

66. *Mayors Against Illegal Guns, The Movement of Illegal Guns in America*, at 7 (December 2008) (available at http://www.mayorsagainstillegalguns.org/downloads/pdf/trace_report_final.pdf).

www.mayorsagainstillegalguns.org/downloads/pdf/trace_report_final.pdf).

67. This is an excerpt of the training document given to investigators.

68. This is paraphrased excerpt from the training document given to investigators.

69. Federal law prohibits private dealers from selling guns to “any person . . . who the transferor knows or has reasonable cause to believe does not reside in . . . the State in which the transferor resides,” unless the buyer is an FFL. 18 U.S.C. § 922(a)(5). FFLs, however, can sell long guns to residents of other states under certain conditions. § 922(b)(3). Ohio imposes similar restrictions. Ohio Rev. Code § 2923.22(B), (C).

70. In 2006, the City of New York conducted a similar investigation by simulating straw purchases at out-of-state FFL retail stores among the top sources of crime gun recovered in New York City. Over the course of the 2006 investigation, 69 percent of licensed dealers failed the integrity test. New York City initiated litigation against 27 of the FFLs that failed the integrity test. Twenty-four of the 27 targeted dealers have either settled with the City or defaulted and are thereby under the oversight of a court-appointed special master.

71. Straw purchase integrity tests were not conducted at the gun show in Reno, NV. Unlike with some private sellers, there was only one integrity test of each FFL.

72. *Gun Shows: Brady Checks and Crime Gun Traces*, *supra* note 6, at 18.

73. Nevada and Tennessee require people who are engaged in the business of selling guns at retail for profit to collect and pay sales tax (though their definitions vary). Nevada imposes sales taxes on every person who intends to “engage[] in the business of selling” guns for profit and then sells one at retail, with an exemption for “occasional sales.” Nev. Rev. Stat. §§ 372.020, 372.035(1)(a), 372.055(1), 372.070, 372.105, 372.125(1), 372.320. Tennessee’s sales tax, applies to people “engaging in the business” of selling guns at retail for profit. Tenn. Code Ann. §§ 67-6-102(9)(A), -201(a)(1), -202(a). Though the state exempts from the definition of “business” people who sell regularly during two or fewer periods per year, § 67-6-102(9)(B), that exception will not apply at gun shows that meet the statutory definition of a “flea market,” §§ 67-6-102(25)(C), (42), -220. Ohio tax law reaches even more broadly; it applies whether or not the seller is engaged in the business, unless the gun was originally bought for personal use. Ohio taxes any retail sales of guns unless a specific exemption applies. Ohio Rev. Code § 5739.02(A)(1).

74. *Illinois*: 430 Ill. Comp. Stat. 65/3, 65/3.1; *New York*: N.Y. Gen. Bus. Law §§ 895-897; *Colorado*: Colo. Rev. Stat. § 12-26.1-102; *Oregon*: Or. Rev. Stat. §§ 166.432-166.441.

ENDNOTES

75. California: Cal. Penal Code §§ 12072 (d), 12082; District of Columbia: D.C. Code Ann. §§ 7-2501.01, 7-2502.03, 7-2505.01, 7-2505.02; Rhode Island: R.I. Gen. Laws §11-47-35-11-47-35.2; Connecticut: Conn. Gen. Stat. § 29-33c.

76. Pennsylvania: 18 Pa. Cons. Stat. §§ 6111(b), 6111(c), 6111(f) (1), (2); Maryland: Md. Code Ann., Pub. Safety §§ 5-101(r), 5-124, 5-130(j). Maryland also requires universal background checks for all assault rifle sales.

77. Nebraska: Nebraska Rev. Stat. Ann. §§ 69-2403, 2404, 2409; Hawaii: Haw. Rev. Stat. Ann. §§ 134-2, 134-13; Massachusetts: Mass. Gen. Laws ch. 140, §§ 121, 129B, 129C; New Jersey: N.J. Stat. Ann. §2C:58-3; Iowa: Iowa Code §§ 724.15-724.20; Michigan: Mich. Comp. Laws §§ 28.422, 28.442a; North Carolina: N.C. Gen. Stat. §§ 14-402 – 14-404.

78. See The Movement of Illegal Guns in America *supra* note 66, at 11.

79. Garen J. Wintemute, “Gun shows across a multistate American gun market: observational evidence of the effects of regulatory policies,” 13 Injury Prevention 150, 152, 153 tbl. 1 (2007), available at <http://injuryprevention.bmj.com/cgi/content/full/13/3/150>.

80. PBS NewsHour, “McCain Urges Closing Gun Show Loophole But Touts Gun Rights in NRA Address,” May 16, 2008 (available at http://www.pbs.org/newshour/vote2008/blog/2008/05/mccain_urges_closing_gun_show.html).

81. S.1805. The McCain Amendment was No. 2636.

82. Other provisions of the bills will help to gather information about the scope of problems at gun shows and will subject sales at gun shows to common-sense regulations like those that apply to sales by licensed dealers. FFLs’ records of how they assisted with private party sales, like FFLs’ other required records, will be subject to inspection to ensure that FFLs are obeying the law. If a gun that was sold at a gun show is recovered from a crime scene, those records will let law enforcement identify the buyer. ATF will not, however, keep records on what private parties buy or sell guns at gun shows except when a gun is traced or in other suspicious circumstances. In particular, the licensed dealers will tell ATF when one private party buys multiple handguns from another – which ATF has identified as a sign of trafficking – just as FFLs report their own multiple handgun sales. The bill also toughens federal laws that apply to crimes by licensed dealers, such as by increasing the potential penalty for making a straw sale.

83. In 2009, ATF’s budget request was \$1.0 billion compared to DEA’s budget request of \$2.2 billion. U.S. Department of Justice, Congressional Budget Submission: Fiscal Year 2009, Bureau of Alcohol, Tobacco, Firearms, and Explosives, at 1 (February 2008) (available at <http://www.usdoj.gov/jmd/2009justification/pdf/fy09-atf.pdf>); U.S. Department of Justice, Congressional Budget Submission: Fiscal Year 2009, Drug Enforcement Administration, at 1 (2008) (available at <http://www.usdoj.gov/jmd/2009justification/pdf/fy09-dea.pdf>).

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