

The Enforcement Fable

**How The NRA Prevented Enforcement of
the Nation's Gun Laws**



**By Handgun Control and the Center to Prevent Handgun Violence
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It's a moral crime for Bill Clinton, Al Gore, Janet Reno and a host of Federal officers and prosecutors to fail to enforce the law. It's evil. And when innocent blood flows, it's on their hands.

*Wayne LaPierre
Executive Vice President
National Rifle Association
in American Rifleman,*

[More laws] gives jackbooted Government thugs more power to take away our constitutional rights, break in our doors, seize our guns, destroy our property and even injure and kill us.

*Wayne LaPierre
Executive Vice President
National Rifle Association
in a 1995 fundraising letter*



In recent months, the National Rifle Association has attempted to divert national attention from the shameful weakness of our nation's gun laws by repeating, at every opportunity, the mantra: "We don't need more gun laws when the federal government refuses to enforce existing gun laws." Since the Columbine shooting and the ensuing national outcry, the gun lobby has spent millions of dollars telling the nation that enforcing existing gun laws is a workable substitute for new, common-sense regulation of firearms.

The truth is that gun laws are being enforced more strongly than ever. Overall, federal prosecutions are up 16 percent since President Clinton took office, 22 percent on the local and state level, where most prosecutions take place. Furthermore, sentences for violent gun criminals are two years longer under this Administration. On June 10, 1999, *USAToday* reported that "Gun laws are enforced more vigorously today than five years ago by nearly any measure. Prosecutions are more frequent than ever before; sentences are longer; and the number of inmates in federal prison is at a record level. The number of inmates in federal prison on firearm or arson charges (the two are lumped together) increased 51% from 1993 to 1998...A U.S. Sentencing Commission analysis done for USA TODAY shows that lying on the background check form is prosecuted in federal court far more often than acknowledged."

Why then does the NRA persist in falsely accusing the President of failing to enforce existing law? Because it knows that lawmakers are facing the most intense pressure yet from the American people to strengthen our gun laws. Lost in this debate is the fact that, throughout its

history, the NRA has worked tirelessly to either block or weaken the enactment of laws that would have strengthened the federal capacity to fight gun crimes. The NRA's painstaking work to eviscerate the very laws they now say must be enforced, reveals their current public relations campaign to be the height of hypocrisy. This report details the many ways in which the gun lobby itself has hampered the nation's ability to enforce gun laws.

INTRODUCTION

The gun lobby's influence on our firearm laws is undeniable – the laws are a swiss cheese of loopholes that defy logic and exist solely for the convenience of gun owners and the profit of gun manufacturers. At the cost of millions of dollars and an untold number of lives, the National Rifle Association has placed obstacles and detours at each and every turn on the path to common sense gun legislation and has successfully limited both the reach and implementation of gun control laws.

In 1968, following the assassinations of Martin Luther King, Jr., and Robert Kennedy, and a marked increase in handgun violence throughout the country, Congress passed the Gun Control Act of 1968. The Gun Control Act specifically banned the interstate shipment of firearms and ammunition to private individuals; prohibited the sale of guns to groups such as minors, drug addicts, mental incompetents, and convicted felons; strengthened licensing and recordkeeping requirements for gun dealers and collectors; increased penalties for those who used guns in the commission of crimes covered by federal law; and banned the importation of foreign surplus firearms, except those suitable for sporting purposes. While the Gun Control Act had a modest impact, it did not take long for the gun lobby to regroup and attempt to weaken the act's provisions.

The NRA, for example, can take credit for enacting legislation specifically exempting domestically manufactured guns from any consumer safety standards. When Congress created the Consumer Product Safety Commission (CPSC) in 1972, it exempted firearms. All other consumer products, except tobacco, are regulated for safety. But, thanks to the gun lobby, guns are not. When asked why the bill to incorporate guns under the CPSC had failed in Congress, Senator Howard Metzenbaum (D-OH) a staunch supporter of common sense gun laws, said, "The NRA's position is consistent. They're opposed to any legislation that has the word 'gun' anywhere in it." When asked what would happen if the NRA dropped its opposition to the bill, Metzenbaum replied, "We would pass the bill overnight."

This loophole has led to tragic and predictable consequences. Gun manufacturers make guns that require so little trigger pressure that two-year-olds can fire them. They make weapons which lack even the most basic safety features like a load indicator or a magazine disconnect safety. They have focussed all of their efforts on making guns smaller -- and therefore easier to conceal -- and more lethal. Without regulation, gun manufacturers lack any incentive to design safer firearms. Instead, thanks to the NRA, gun manufacturers have enjoyed tremendous profits while producing products with a callous disregard for safety.

By examining the NRA's role in just three aspects of federal gun control – the McClure-Volkmer Act, the Brady Law, and funding of the Bureau of Alcohol, Tobacco and Firearms – it is clear that the gun lobby's recent calls for better enforcement of the current laws are merely a smokescreen to fend off overwhelming public sentiment for stronger gun laws. The picture that emerges is one of NRA leadership and complicity in ensuring that this nation's gun laws are as weak and as difficult as possible to enforce.

THE MCCLURE-VOLKMER ACT: THE NRA WEAKENS ENFORCEMENT

After the passage of the Gun Control Act of 1968, the NRA's assault against any and all regulation of guns continued into the 1980's, but the tactics changed. Whereas the NRA typically opposed any proposed common sense gun legislation, in the 1980's they switched from the defensive to the offensive with the McClure-Volkmer Act, a bill sponsored by two NRA Legion of Honor recipients, Sen. James McClure (R-ID) and Rep. Harold Volkmer (D-MO). With the McClure-Volkmer Act, also known as the Firearms Owners Protection Act of 1986, the NRA decided to *pursue* gun legislation for the first time – in order to weaken the modest gun regulations enacted with the Gun Control Act of 1968.

Law enforcement groups around the country were outraged – they saw what the NRA was attempting to do and at what cost. The NRA proposals were going to put law enforcement officers at risk. The NRA was undeterred, however, and as *The New York Times* observed, “it was a measure of the power of the gun lobby that no member of Congress, in the day-long debate, spoke in favor of keeping all the existing controls. Rather, the question was the extent to which they should be eased.” The NRA spent around \$1.6 million dollars in its lobbying campaign – but the passage of the bill cost the NRA more than dollars – McClure-Volkmer cost the NRA support from law enforcement groups. Around the country, police officers had to swallow a bitter pill: the NRA was unwilling to accept any gun control legislation, even if it would save officers' lives. Hubert Williams, President of the Police Foundation, best described the problems with the McClure-Volkmer Act in his testimony before the Judiciary Committee:

“Law enforcement's examination of the McClure-Volkmer bill comes down to this: It would gut the 1968 Gun Control Act, and thus it would make the job of protecting American citizens all the more difficult. Congress passed the 1968 Gun Control Act in response to terrible tragedies: the assassinations by firearms of Martin Luther King, Jr. and Robert F. Kennedy.

To support McClure-Volkmer is to demean their record of accomplishment and their noble legacy. Those who support McClure-Volkmer cannot say that they also support American law enforcement, for the obvious fact is that the bill increases the threat to the lives of police officers.”

As the law enforcement officers of this country predicted, what McClure-Volkmer accomplished was to make it much more difficult for local and federal law enforcement agencies to enforce the nation's gun laws. The result has been a gun law riddled with loopholes and an enforcement agency saddled with restrictions.

In practice, the McClure-Volkmer Act has:

- Allowed unlicensed individuals to sell their personal firearms as a “hobby,” allowing for the sale of massive numbers of firearms to criminals and juveniles without background checks, since only those licensed dealers “engaged in the business” of selling firearms are required to check the status of their purchasers. The critically important definition of “engaged in the

business” gave many people the basis to contend that their firearm activities do not rise to the level that requires them to obtain a license and be regulated by the federal government.

- Increased the size, scope and visibility of gun shows by permitting federally licensed dealers (FFLs) to conduct business at gun shows located in their home state. Although FFLs must conduct background checks on gun-show purchasers, their presence at these arms bazaars has unquestionably enlarged the impact of these events, where private sellers sell hundreds of weapons without background checks to prohibited purchasers.
- Allowed criminals to keep or regain their rights to own guns. The original Gun Control Act made it unlawful for persons convicted of a crime punishable by a prison term exceeding one year to possess a firearm. The McClure-Volkmer Act amended the GCA to provide that the law of the jurisdiction where the crime occurred would determine what constitutes such a conviction. (In many states, illegal possession of firearms, for example, or domestic abuse, is only a misdemeanor.) Additionally, the McClure-Volkmer Act provided that a pardon, set aside or restoration of civil rights removes the “conviction” for purposes of gun ownership. You may not be able to vote after you get out of jail, but you can get your gun back.
- Severely restricted the ability of the ATF to conduct inspections of the business premises of federally licensed firearms dealers.
- Raised the burden of proof for violations of federal gun laws.

No wonder police officers, in full uniform, stood at parade rest at the entrance to the floor of the House of Representatives as a sign of silent opposition to McClure-Volkmer during a crucial vote. It is no exaggeration to say that, fifteen years later, law enforcement is still standing in opposition to the gun lobby’s successful attempt to cripple its ability to enforce the law.

“Engaged in the Business”: A Fatal Definition

The Gun Control Act of 1968 first required federal firearm licenses for those "engaged in the business." The definition of that phrase was substantially narrowed by the McClure-Volkmer Act. Prior to the 1986 Act, illegal gun dealing was a matter for a court or jury to determine on the basis of the facts presented by prosecutors. After McClure-Volkmer became law, the Government was required to meet a much tougher, multi-part standard of proof to illustrate that someone was “engaged in the business” without a license. To successfully prosecute an individual for illegal gun dealing, the ATF must now show that the unlicensed person engaged in "a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms...." The definition of "engaged in the business" also expressly excludes any "person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms," *regardless of its size*. By essentially demanding responsible behavior only from those gun sellers who have received a federal firearms license, this loophole allows the enormous secondary market for guns - at gun shows, over the Internet, and through individual private sales - to flourish unimpeded by any restrictions on buyers or sellers.

As a result, tens, if not hundreds, of thousands of firearms sales are made every year by individuals who may each sell an unlimited number of guns without obtaining a federal firearms license. Even at substantial investigative cost, such persons often cannot be successfully prosecuted for illegal gun dealing given the weakness of current law. As a result, the customers of

such "shadow sellers" are not subject to a background check (as they would be if purchasing a gun from a licensed dealer) and shadow sellers are not required to keep any records of their sales whatsoever. Accordingly, guns sold by such sellers later recovered at a crime scene cannot be effectively traced and (unless they yield fingerprints) are thus useless to law enforcement authorities trying to find and arrest murderers and other violent criminals.

Facilitating the Markets of Choice for Criminals: The Rise of Gun Shows After McClure-Volkmer

The McClure-Volkmer Act allowed licensed gun dealers to participate in gun shows in their home states and effectively popularized a significant source of criminal guns. Prior to the Act, the policy of the ATF prohibited sales by licensees at anywhere *other* than their regular place of business. While dealers were allowed to exhibit at gun shows, the actual sales had to be consummated at their place of business. The McClure-Volkmer Act changed that – dealers could both exhibit and sell weapons at gun shows and, as a result, gun shows began to flourish across the country. At the same time, Congress relaxed the law that distinguished gun dealers from “occasional” sellers, thereby permitting thousands of additional sellers to enter the field. After McClure-Volkmer, the combination of dealers freed from their storefronts and the new class of “private” sellers resulted in a dramatic increase in the number and size of gun shows nationwide. Gun shows no longer included only small-time collectors. After McClure-Volkmer, larger licensed dealers began to participate and were able to provide gun shows the merchandise necessary to attract customers. Indeed, the atmosphere of gun shows, usually held for one weekend only, leads to an atmosphere of impulse buying, which benefits both licensees and non-licensees alike.

A January 1999 report by the Departments of Justice and Treasury summarized the threat of gun shows:

Gun shows provide a large market where criminals can shop for firearms anonymously. Unlicensed sellers have no way of knowing whether they are selling to a violent felon or someone who intends to illegally traffic guns on the streets to juveniles or gangs. Further, unscrupulous gun dealers can use these free-flowing markets to hide their off-the-book sales. While most gun show sellers are honest and law-abiding, it only takes a few to transfer large numbers of firearms into dangerous hands.

In most states and under federal law, gun shows also provide legal outlets for individuals to sell guns from their “private collections” without a waiting period or background check on the purchaser. Many unscrupulous gun dealers exploit this loophole to operate full-fledged businesses without following federal gun laws.

Moreover, gun shows provide even licensees with the opportunity to sell off their “personal collections.” The McClure-Volkmer Act allowed licensees to sell guns from their personal collections. Federally licensed gun dealers must conduct Brady background checks on all prospective purchasers of firearms in their business inventory and record the serial number of all guns purchased (together with the name and address of the gun's purchaser) in a bound volume maintained by the seller. Such requirements do not apply to guns sold by a licensed dealer which allegedly come from his or her "personal collection" of firearms, if the weapon sold has been in the

dealer's personal collection for more than one year or did not originally come from the dealer's business inventory. *The law places no limit on the number of such "personal guns" that a licensed dealer may sell "off the books."*

As a result, nobody knows, or is able to determine, how many thousands of "off the books" sales are made by unscrupulous federally licensed firearms dealers under cover of the "personal collection" loophole. What we do know is that every such gun, despite being sold by a licensed dealer, can be sold without a background check to a felon, fugitive, domestic abuser or other prohibited purchaser and can't be traced if used in a crime. The same holds true for gun show sales in general, since so many sales that occur at gun shows are essentially unregulated, guns obtained at these shows that are later used in crime are difficult, if not impossible, to trace. According to the ATF, 25-50 percent of the vendors at most gun shows are unlicensed dealers. Felons buying or selling firearms were involved in more than 46 percent of the ATF investigations involving gun shows. In more than a third of the investigations, the firearms were known to have been involved in subsequent crimes, including assault, robbery, burglary and homicide. Not surprisingly, a February 1999 ATF report found approximately 10 percent of the guns used in crimes by juveniles and young people were sold at gun shows and flea markets.

Easy Access to Firearms (Even for Felons)

The NRA-backed McClure-Volkmer provisions eased restrictions against felons gaining access to firearms. The Gun Control Act of 1968 made it illegal for anyone convicted of a felony to ship, transport, possess or receive firearms in interstate commerce. Under that law, a felon could regain firearm privileges by being pardoned or having his civil rights restored, but only if the pardoning authority expressly authorized the possession of a firearm. With McClure-Volkmer, Congress amended the law to provide that unless a pardon or restoration of rights expressly provides that the person may *not* ship, transport, possess, or receive firearms, it has the effect of restoring such privileges. Accordingly, the burden is now on the authority that grants the pardon or restores the felon's civil rights to state *specifically* that the felon *may not* possess firearms.

While the NRA is preaching enforcement, it is clear that it effectively has weakened the nation's gun laws to the point that *even felons* have easier access to firearms.

ATF Can Do Its Job (But Only Once A Year)

Prior to the adoption of the McClure-Volkmer Act, the ATF was permitted to inspect the inventory and records of a licensed importer, manufacturer or dealer for compliance with applicable laws at all reasonable times. The Act, however, limited the ATF to a single unannounced inspection of an individual dealer in any 12-month period [see Section 923(g)(1)(B)(ii)(I) of title 18]. No other retailer of regulated products is so protected. The express purpose of this provision was to prevent what the NRA termed "ATF harassment" of gun dealers. Indeed, according to the NRA, the ATF's only purpose was to harass honest citizens. As one-time NRA Board Member U.S. Congressman John Dingell (D-MI) declared, and NRA Executive Vice President Wayne LaPierre quoted in his book, *Guns, Crime and Freedom*, "If I were to select a jack-booted group of fascists who were perhaps as large a danger to American society as I could pick today, I would pick BATF. They are a shame and a disgrace to our country."

Although inspections of licensed firearms dealers are among the most effective means to uncover violations of firearms laws, the stringent limitation on inspections ensures that criminal conduct by some FFLs will go unchecked and unpunished. In effect, a dealer who has been inspected by the ATF in early January knows that he now has eleven months before he can anticipate another visit by agents. In sharp contrast, ATF agents are permitted unlimited surprise inspections of explosives manufacturers, distributors and retailers.

In addition to inadequate inspections, the McClure-Volkmer Act also essentially guarantees that the ATF would be unable to maintain adequate records for any useful amount of time. The Act codified the law requiring that upon permanently closing a regulated business, a federal firearms licensee is required to forward all sales records required to be kept by law on the business premises (including the names and addresses of gun purchasers), to the Secretary of the Treasury. Since 1978, however, Congress has added a rider to the Treasury-Postal appropriations bill forbidding the Secretary from using any appropriated funds to consolidate or centralize within the Department any records maintained by federal firearms licensees. As a result, the Treasury Department is now restricted to keeping records of defunct firearms dealers on microfiche searchable only by the serial number of a gun. In that form, this large body of historical data is thus useless to law enforcement authorities with cause to research the firearms purchase histories of convicted felons, batterers and other prohibited purchasers who may pose a danger to the community. The data is also unavailable for rapid search for law enforcement authorities faced with a hostage or barricade-type emergency who need to know whether the perpetrator has amassed an arsenal by legal means. Moreover, many guns used in crime are not identifiable by serial number, because criminals file or burn identifying markings off their guns. In the end, the ATF's inability to maintain records for any length of time or in any usable manner renders ineffective the recordkeeping provision and frustrates its attempts to do what the NRA claims it wants – enforcement of the laws.

Prosecution With One Arm Tied Behind the Agency's Back

The McClure-Volkmer Act ensured that the ATF would be unable to prosecute dealers who violate federal gun regulations by raising the standard for prosecution to the impossibly high "willfulness standard." The law provides that the Secretary of the Treasury may revoke a federal firearms license for "willful violation" of applicable laws and regulations by the licensee after the licensee is given notice and an opportunity for an administrative hearing. The high "willfulness standard" was enacted at the request of the NRA, which accused the ATF of harassing gun owners. As the NRA's Wayne LaPierre has claimed, "they (ATF agents) behave like street thugs. Charged with enforcing federal gun control laws, federal agents persecute and entrap citizens who have done nothing wrong and would never contemplate doing anything wrong."

To prevent this perceived harassment, the McClure-Volkmer Act restricted the ATF's ability to pursue those in violation of the laws. Except for failures to comply with the Brady Law, the ATF has no authority to simply fine an FFL or to temporarily suspend his or her license for infractions that do not warrant permanent revocation of a license. By forcing the ATF to take a "revoke or pass" approach to FFL policing, current law assures that dealers who deserve discipline short of revocation will go unpunished and remain undeterred from continuing to violate important provisions of the law. Even if a violation warrants revocation of an FFL's license, because of the

“willful violation” standard, in order to revoke a license, the ATF must prove that the violator knew the law and then decided to violate it. *A licensee’s claim of ignorance or misunderstanding of the law operates as a full defense.* The “willful violation” standard all but ensures that only a few violators will ever be punished. Criminal cases use the “beyond a reasonable doubt” standard – the “willful violation” standard is much higher – and in criminal cases ignorance of the law is no excuse. Effectively, unless the licensee admits to knowingly and intentionally having violated the law, the ATF will usually fail to meet the “willful violation” standard and the licensee will go unpunished.

According to the Department of the Treasury, in FY1999 only 1,700 compliance inspections were conducted of the nearly 104,000 federal firearms licensees (most of which are dealers or pawnbrokers.) Just 13 dealers’ licenses were revoked by ATF, but 56% of those inspected had violations which warranted follow-up inspections at the earliest opportunity. Presumably many of those dealers would have been issued fines or had their licenses suspended if the law permitted such actions. Again, the McClure-Volkmer Act has ensured that the enforcement of the laws is continually frustrated.

THE BRADY BILL: NRA LOST THE WAR BUT WON SOME BATTLES

With the passage of the Brady Bill in 1993, Congress enacted the most important piece of gun control legislation since 1968. This historical event was the result of nearly a decade of struggle against the no-holds-barred opposition of the NRA. The NRA argued that the requirement of a pre-purchase background check and short waiting period for handgun purchases contained the seeds of "Government" confiscation of all firearms. As the NRA testified, it did not believe background checks to be "in the public's interest." However, true to its usual lobbying form, when passage of the Brady Bill seemed unstoppable, the NRA shifted its lobbying and grassroots resources into weakening the law to the maximum degree possible.

In 1988, the NRA warned its members that the Brady Bill would result in "total, strict gun control on all America" and that it would cause the government to "spend millions and billions of your tax dollars investigating you and other honest citizens." Later in 1991, an article in *USAToday* said, "Since helping to defeat the waiting period in 1988, the NRA has done little to tout an 'instant-check alternative' it quickly embraced this year."

Even more telling was this description of the NRA's actions in the state of Georgia, taken from a 1997 editorial in the *Atlanta Constitution*: "...to escape the waiting period in Georgia, the NRA reversed its long-standing position and pushed a bill creating the state's instant background check. But it also tried to plant a self-destruct device in the law. The NRA and its supporters wanted to make sure that if the federal Brady Law was ever declared unconstitutional, Georgia's background check would be repealed automatically."

During the battle to pass the Brady Bill, the NRA's staunchest Senate allies let it be known that the "price" of their acquiescence to a vote on the measure would be compromises that have since severely frustrated the true intent of the law. While the NRA opposed background checks – and continues to do so today, they relented to the Brady Bill *as long as it required the destruction of all records associated with the Brady background check*, even at the potential expense of the system's integrity and utility to law enforcement authorities.

The NRA Never Met a Background Check It Didn't Hate

In the wake of the Columbine massacre on April 20, 1999, in which several weapons obtained through gun show sales were used to kill 12 students and a teacher, senior spokespersons for the NRA repeatedly claimed that the Association had long-supported conducting gun show background checks. *Such claims were completely and knowingly false.* In fact, the NRA fought for more than a decade against the minimal requirement that licensed gun dealers perform background checks until the Brady Bill finally became law in 1993 *over the NRA's objections.* At the time of Brady, the NRA argued for an "instant check" system, knowing that criminal history records were insufficiently computerized to ensure effective checks. As political scientist Robert Spitzer noted, "[b]y proposing an alternative of little or no feasibility, the NRA and its allies were offering a plan that seemed to offer a meaningful reform yet posed no actual change in gun purchasing procedures for many years to come." As a compromise, the bill was passed with a termination date for the waiting period requirement and the provision for the research and development of an "instant check" system. Now, \$200,000,000 later, the FBI has developed the technology for an "instant

check” system and millions of records have been computerized, and the NRA has the gall to say the Brady background check is in fact the “NRA instant check.”

Despite the NRA’s persistent attempts to thwart the law, the Brady background check has proven effective. The Department of Treasury notes that the Brady Bill, “for the first time empowered FFLS and law enforcement to combat the practice of ‘lying and buying.’ ” Moreover, since the Brady Law went into effect, background checks nationwide have stopped approximately 500,000 felons and other prohibited persons from buying handguns. The Justice Department has estimated that, in the first five years of the Brady Law, 3/4 of those rejected from buying a handgun were felons (or under felony indictment), domestic abusers or under restraining order. Felons alone made up 63% of those rejected.

Even with the success of the Brady background check system, however, the NRA has *never* supported this precautionary measure since it refuses to support extending background checks to all purchasers. Again, it must be stressed that current law only requires background checks for purchases made through FFLs, even though every year, more than 4,000 gun shows are held nationwide at which tens of thousands of firearms are legally offered for sale by private, unlicensed individuals on a "no-questions-asked," "cash-and-carry," "no-background-check" basis. The Internet has also opened a vast new market for the sale and exchange of firearms. Although out-of-state transfers are supposed to be handled through licensed gun dealers, who are required to handle the background check process, in practice there is no current way to police private transactions on the Internet. Despite such popular secondary gun markets, the NRA has refused to support an extension of the background check requirement to these venues.

In fact, as recently as the spring of 1999, the NRA unsuccessfully opposed Senator Frank Lautenberg’s (D-NJ) amendment to the Juvenile Justice Bill in the Senate to require such checks at gun shows and it helped kill comparable legislation the following month in the House of Representatives. It did so by authoring and backing a proposal by former NRA Board member Rep. John Dingell to drastically cut the time that law enforcement authorities would have been permitted to complete gun show background checks (from 3 business days to just 24 hours).

Again, the NRA proposed an alternative of little or no feasibility – the NRA-Dingell proposal would not work. According to the FBI, had the Dingell Amendment been the law for the six months preceding the House debate, over 17,000 individuals who were refused the ability to buy a gun from a gun dealer would have been able to obtain one over-the-counter. That’s why the NRA-authored Dingell Amendment was opposed by most major national law enforcement organizations and the National Association of Stocking Gun Dealers. Although the NRA now says it supports background checks – and claims to have even authored the current background check system – they have been steadfast in their opposition to any background check that would effectively prevent prohibited purchasers from gaining access to firearms. Instead, when push comes to shove, the NRA will only support provisions that do not inconvenience gun buyers – and also fail to promote the laws.

The Paranoia of “Lists” – NRA Recordkeeping Provisions Continually Frustrate Law Enforcement

The gun lobby has spent much time and money to convince Congress and the American public that enforcement of current gun laws, meaning the stringent prosecution and incarceration of gun criminals, is the key to addressing the problem of gun violence. What they will not tell you is that it is their paranoia about maintaining any sort of gun records that presents law enforcement with the single largest impediment to successful prosecution.

Currently the Brady Law requires a federally licensed gun dealer to contact the national instant background check system before completing a sales transaction and a record of the background check inquiry is kept. The record consists solely of an identifier number assigned to the inquiry and the date of the sale. ***By law, all other information about the purchaser and the gun purchased must be destroyed.***

As a result, premature destruction of instant background check records precludes the effective audit of the check system for accuracy and the absence of fraud. It also deprives law enforcement authorities of a valuable snapshot of firearms sales and/or purchasing activities by dealers under suspicion of illegal dealing and by purchasers under investigation for weapons or other criminal offenses.

Along with the destruction of all records related to Brady background checks, the NRA demanded as the price of Senate passage of the Brady Bill a provision requiring local authorities to destroy their copies of multiple gun sale forms less than three weeks after their receipt. Federally licensed firearms dealers are required to file a report with the Secretary of the Treasury reporting the sale of two or more handguns to any single individual within any five consecutive business days. A copy of the report also must be filed with state or local law enforcement authorities. Although the ATF may retain so-called "multiple sale" forms, federal law requires state and local authorities to destroy all such forms (and any record of them having been filed) within 20 days of receiving them. The multiple sale reporting requirement does not cover purchases made at different FFLs. A purchaser can buy as many guns as he likes, without worrying about a multiple sale report, so long as the guns are purchased from different licensees.

Without the legal ability to maintain and periodically review multiple sale reports for purchasing patterns, efforts by State and local law enforcement authorities to identify and prosecute gun traffickers are seriously compromised. Given its severely limited resources, the ATF cannot reasonably be expected to conduct customized research on demand in its database of multiple sales reports for states and localities. Furthermore, the law's failure to address purchases made at various FFLs prevents the ATF from monitoring what are effectively multiple sale purchases and leaves unchecked a primary source of illegal gun trafficking.

The inability to retain multiple sales information for any period of time also severely restricts the usefulness of the information. This is unfortunate given the important role multiple sales play in the illegal secondary gun market. Research by the Center to Prevent Handgun Violence further demonstrates that multiple handgun purchases disproportionately involve the purchase of categories of handguns that have been linked to crime (e.g., Saturday Night Specials

and handguns with the shortest intervals of time between the purchase and recovery by law enforcement). The finding was particularly apparent for bulk purchases that involved the highest number of guns. Specifically, the Center found that Saturday Night Specials accounted for 17.5% of all pistols purchased in bulk and over 25% of pistols purchased in transactions involving five or more handguns. Furthermore, of the handguns recovered from youth and juveniles as part of the 1998 Youth Crime Gun Interdiction Initiatives, handguns with the shortest “time to crime” accounted for 32% of pistols purchased in transactions of 5 or more handguns. There is a close correlation between multiple sales and the illegal market – unfortunately, law enforcement is not given the tools necessary to pursue these issues and as a result, the market continues unabated.

THE ATF: UNDERMANNED AND OVERREGULATED

The ATF is the lead enforcement agency for federal gun laws and statutes. While the NRA cries for the enforcement of the laws, no one should forget that the NRA has made sport of vilifying the agency chiefly entrusted with the task of enforcing the laws and has blocked all legislation designed to empower it. The NRA has repeatedly claimed the ATF harasses gun owners and dealers. In the 1981 NRA-produced film, *It Can Happen Here*, the NRA depicted ATF agents as Gestapo-like fascists. During Congressional hearings the following year, one-time NRA Board member Rep. John Dingell called ATF agents “knaves and rogues” and said, “I would love to put them in jail. I would dearly love it.” Of the agency, he said, “I think they are evil.”

Concurrent with their ongoing smear campaign against the ATF, the NRA has waged a sustained and successful Congressional campaign to fiscally cripple ATF's firearms enforcement activities by minimizing the Agency's budget in an era of high inflation. This campaign has taken a heavy toll in the Agency's enforcement personnel. Between 1980 and 1987, for example, the number of ATF agents was slashed from 1,502 to 1,180 (-21.5%) and the number of inspectors dropped from 655 to 626 even as the number of licensed firearms dealers exploded.

Emboldened by its success in the '80s, the NRA escalated its lobbying and its rhetoric in the '90s, calling ATF agents "jackbooted thugs" in a now infamous fundraising letter signed by Wayne LaPierre. Challenged on the slur in the media and Congress, LaPierre initially defended the slur on all federal law enforcement officers before "clarifying" his intent. Former President George Bush wasn't convinced and resigned his NRA life membership in protest. Nonetheless, the NRA has refused to temper its character assassination of ATF and the many men and women who place themselves in harm's way every day to enforce the nation's NRA-sabotaged firearms laws. As recently as February 3 of this year, Rep. Helen Chenoweth (R-ID), a recipient of the NRA's Legion of Honor award, described President Clinton's plan to enhance ATF resources as a “charade” that would “unleash 500 more abusive ATF agents on the American public.”

Law enforcement agencies – the groups the NRA pleads with to enforce the laws – understand the NRA's agenda to weaken and deride the ATF. As William J. Bratton, former New York City Police Commissioner observed, “the NRA has strenuously opposed increased financing for the bureau and has successfully lobbied against giving it the authority to quickly investigate the origins of gun sales.” As a result of the NRA's tactics, for more than 25 years, Congress has provided ATF with far fewer funds than necessary to hire, train, equip and support a sufficient number of inspectors and agents to effectively enforce the nation's firearms laws. For example, in 1973, ATF and the Drug Enforcement Agency (DEA) had comparable numbers of agents and enjoyed nearly equal funding (about \$250 million). By 1998, however, the number of DEA agents had almost tripled (from 1,470 to 4,261), while ATF's remained static (1,631 ATF agents were on payroll in 1998, only 9 more than were employed in 1973). The DEA's budget grew to nearly 1.4 billion in 1998. ATF's funding, by contrast, increased to just \$450 million in the same year (adjusted for inflation). Additionally, ATF agents assigned to gun violations are required by law to spend at least 25% of their time investigating the misuse of explosive devices and illegal tobacco sales. Virtually no other federal law enforcement agency's resources are stretched so thin.

Insufficient funding means, necessarily, inadequate inspection and oversight of the more than 104,000 federal firearms licensees who are currently firearms dealers. Inadequate inspection, in turn, means undetected illegal gun trafficking, "straw purchases" of firearms by sham buyers for criminals and other individuals, and the kind of potentially sloppy dealer recordkeeping that can cripple crime gun tracing efforts. The ATF estimates that, in order to inspect each currently licensed gun dealer just once during his or her three-year license term, the agency would need to hire, train and deploy approximately 500 more inspectors (excluding support personnel and equipment) than it can now afford. Thanks to the NRA – the ATF has been inadequately funded and staffed, as well as unjustly maligned – and now they are asking the agency to more aggressively enforce the laws.

CONCLUSION

This brief survey of three aspects of the gun debate – the McClure-Volkmer Act, the Brady Law and funding of the Bureau of Alcohol, Tobacco and Firearms – illustrates that, when the NRA complains about the “lack of enforcement,” it is guilty of hypocrisy on a grand scale. Unfortunately, there are many, many more examples of NRA action on the state and local level that further demonstrate the hollowness of its rhetoric. Most gun laws are state, not federal, ones and the NRA has just as much of a stranglehold on many state legislatures as it does on Congress. Its ongoing campaign to weaken state laws on carrying concealed handguns – over the objections of law enforcement – is yet another example of the NRA’s extremist agenda.

If the NRA wants Congress to step up enforcement, it should work to reverse the decades-long damage that has been done to our gun laws at its behest. The NRA knows the ATF is understaffed; indeed, their lobbying efforts have resulted in Congress continually underfunding the agency. The NRA knows the laws are weak – they have spent millions of dollars making sure of that. And now, the NRA claims that the fault lies with the President, the Vice President, and the Attorney General, federal officers, and prosecutors. Enough with the rhetoric. If we want the gun laws enforced, let’s remove the obstacles to enforcement. Let’s strengthen the laws that work and let’s empower the agency that enforces those laws.

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