

97th Congress }
2d Session }

COMMITTEE PRINT

THE RIGHT TO KEEP AND BEAR ARMS

REPORT
OF THE
SUBCOMMITTEE ON THE CONSTITUTION
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS
SECOND SESSION



FEBRUARY 1982

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

88-618 O

WASHINGTON : 1982

a dealer who sells to a legitimate purchaser may nonetheless be subject to prosecution or license revocation if he knows that that individual intends to transfer the firearm to a nonresident or other unqualified purchaser. This position was never published in the Federal Register and is indeed contrary to indications which Bureau officials had given Congress, that such sales were not in violation of existing law. Moreover, BATF had informed dealers that an adult purchaser could legally buy for a minor, barred by his age from purchasing a gun on his own. BATF made no effort to suggest that this was applicable only where the barrier was one of age. Rather than informing the dealers of this distinction, Bureau agents set out to produce mass arrests upon these "straw man" sale charges, sending out undercover agents to entice dealers into transfers of this type. The first major use of these charges, in South Carolina in 1975, led to 37 dealers being driven from business, many convicted on felony charges. When one of the judges informed Bureau officials that he felt dealers had not been fairly treated and given information of the policies they were expected to follow, and refused to permit further prosecutions until they were informed, Bureau officials were careful to inform only the dealers in that one state and even then complained in internal memoranda that this was interfering with the creation of the cases. When BATF was later requested to place a warning to dealers on the front of the Form 4473, which each dealer executes when a sale is made, it instead chose to place the warning in fine print upon the back of the form, thus further concealing it from the dealer's sight.

The Constitution Subcommittee also received evidence that the Bureau has formulated a requirement, of which dealers were not informed that requires a dealer to keep official records of sales even from his private collection. BATF has gone farther than merely failing to publish this requirement. At one point, even as it was prosecuting a dealer on this charge (admitting that he had no criminal intent), the Director of the Bureau wrote Senator S. I. Hayakawa to indicate that there was no such legal requirement and it was completely lawful for a dealer to sell from his collection without recording it. Since that date, the Director of the Bureau has stated that that is not the Bureau's position and that such sales are completely illegal; after making that statement, however, he was quoted in an interview for a magazine read primarily by licensed firearms dealers as stating that such sales were in fact legal and permitted by the Bureau. In these and similar areas, the Bureau has violated not only the dictates of common sense, but of 5 U.S.C. § 552, which was intended to prevent "secret lawmaking" by administrative bodies.

These practices, amply documented in hearings before this Subcommittee, leave little doubt that the Bureau has disregarded rights guaranteed by the constitution and laws of the United States.

It has trampled upon the second amendment by chilling exercise of the right to keep and bear arms by law-abiding citizens.

It has offended the fourth amendment by unreasonably searching and seizing private property.

It has ignored the Fifth Amendment by taking private property without just compensation and by entrapping honest citizens without regard for their right to due process of law.

The rebuttal presented to the Subcommittee by the Bureau was utterly unconvincing. Richard Davis, speaking on behalf of the Treasury Department, asserted vaguely that the Bureau's priorities were aimed at prosecuting willful violators, particularly felons illegally in possession, and at confiscating only guns actually likely to be used in crime. He also asserted that the Bureau has recently made great strides toward achieving these priorities. No documentation was offered for either of these assertions. In hearings before BATF's Appropriations Subcommittee, however, expert evidence was submitted establishing that approximately 75 percent of BATF gun prosecutions were aimed at ordinary citizens who had neither criminal intent nor knowledge, but were enticed by agents into unknowing technical violations. (In one case, in fact, the individual was being prosecuted for an act which the Bureau's acting director had stated was perfectly lawful.) In those hearings, moreover, BATF conceded that in fact (1) only 9.8 percent of their firearm arrests were brought on felons in illicit possession charges; (2) the average value of guns seized was \$116, whereas BATF had claimed that "crime guns" were priced at less than half that figure; (3) in the months following the announcement of their new "priorities", the percentage of gun prosecutions aimed at felons had in fact fallen by a third, and the value of confiscated guns had risen. All this indicates that the Bureau's vague claims, both of focus upon gun-using criminals and of recent reforms, are empty words.

In light of this evidence, reform of federal firearm laws is necessary to protect the most vital rights of American citizens. Such legislation is embodied in S. 1030. That legislation would require proof of a willful violation as an element of a federal gun prosecution, forcing enforcing agencies to ignore the easier technical cases and aim solely at the intentional breaches. It would restrict confiscation of firearms to those actually used in an offense, and require their return should the owner be acquitted of the charges. By providing for award of attorney's fees in confiscation cases, or in other cases if the judge finds charges were brought without just basis or from improper motives, this proposal would be largely self-enforcing. S. 1030 would enhance vital protection of constitutional and civil liberties of those Americans who choose to exercise their Second Amendment right to keep and bear arms.