

Acknowledgements

The Brady Center to Prevent Gun Violence is a national non-profit organization, working to reduce the tragic toll of gun violence in America through education, research and legal advocacy. The programs of the Brady Center complement the legislative and grassroots mobilization efforts of its sister organizations, the Brady Campaign to Prevent Gun Violence and the Million Mom March.

Guns and Terror was written by Loren Berger and Dennis Henigan of the Brady Center with the assistance of Allen Rostron of the Center. Editorial assistance was provided by Brady Center and Brady Campaign staff, including Dawn Canady, Brendan Daly, Amy Stilwell, Nancy Hwa and Tony Orza.

On the cover: still images from an undated recruitment videotape for Osama bin Laden's organization. (AP Photo)

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Published by Brady Center to Prevent Gun Violence
1225 Eye Street, N.W., Suite 1100, Washington, D.C., 20005

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Introduction

“We have a responsibility to deny weapons to terrorists and to actively prevent private citizens from providing them.”

President George W. Bush
Address to the United Nations
November 10, 2001

As our nation conducts its war on terrorism – at home and abroad – one salient and unassailable fact is conspicuously absent from the national dialogue: terrorists and guns go together. The gun is part of the essential tool kit of domestic and foreign terrorists alike. Guns are used to commit terrorist acts, and guns are used by terrorists to resist law enforcement efforts at apprehension and arrest. The oft-seen file footage of Osama Bin Laden, aiming his AK-47 at an unknown target, is now a familiar reminder of the incontrovertible connection between terrorism and guns.

For terrorists around the world, the United States is the Great Gun Bazaar. The Chicago Tribune reported recently that, found among the mounds of rubble at a training facility in Kabul for a radical Pakistan-based Islamic terrorist organization, was a manual entitled “How Can I Train Myself for Jihad” containing an entire section on “Firearms Training.” Tellingly, the manual singles out the United States for its easy availability of firearms and stipulates that al-Qaeda members living in the United States “obtain an assault weapon legally, preferably AK-47 or variations.” Further, the manual sets forth guidelines for how would-be terrorists should conduct themselves in order to avoid arousing suspicion as they amass and transport firearms.

Despite the President’s otherwise aggressive anti-terrorism program, the Bush Administration has a blind spot when it comes to guns. This is dramatically illustrated by the Administration’s policy on the privacy of gun sale background check records. At a Senate hearing on December 6, U.S. Attorney General John Ashcroft acknowledged that he had refused a request by the FBI – an agency within his own department – to use Brady Law criminal background check records to determine if any of 1,200 foreign nationals detained after the September 11 attacks had bought guns. Ashcroft cited “privacy” as the basis for denying the FBI’s request. This concern for the “privacy” of background check records comes from the same Justice Department that is allowing government agents to monitor conversations between detainees and their attorneys.

Since the horror of September 11, the National Rifle Association (NRA) has repeatedly reminded us that the airplane hijackers used box cutters, not guns. What, exactly, is the significance of this observation? Is the NRA suggesting the hijackers would not have preferred to carry Uzis on those planes rather than box cutters? For all the failings of our airport security system, at least it deterred the terrorists from using

guns. By now, of course, it should be obvious that ensuring true “homeland security” requires more than new efforts to prevent terrorists from crashing airplanes into buildings or sending anthrax through the mail. Homeland security involves combating the threat of terrorism in all its possible forms, with all its potential weapons. For this reason, the development of strategies to combat terrorism should involve a comprehensive reexamination of federal firearms policy.

This special report by the Brady Center to Prevent Gun Violence makes the case for stronger gun laws, and for enforcement of existing laws, as an essential part of a comprehensive homeland security program. This report details specific cases involving terrorists and guns purchased in the United States. In some instances, the perpetrators have been definitively linked to known terrorist organizations. In others, the perpetrators acted on their own, but were clearly intent on waging a campaign of terror against their targets. All of these cases illustrate weaknesses and loopholes in current law. These examples represent incidents in which perpetrators were apprehended and the details of their weapon acquisitions were reported in the press. The loopholes and weaknesses in current law, by definition, make it virtually impossible to know how many other terrorists, domestic or foreign, have been able to amass weapons and escape detection.

By examining in detail specific cases involving terrorists and guns, the report shows that:

- Gun shows are a breeding ground for gun sales to terrorists.
- Nothing in federal law prevents terrorists from quickly amassing arsenals of weapons.
- The irresponsibility of the gun industry, as well as irrational statutory restraints on federal record keeping of gun sales and other necessary enforcement tools, allows corrupt gun dealers to funnel guns to terrorists.
- Loopholes in federal law have allowed terrorists to buy assault weapons and high-capacity military ammunition magazines.
- A loophole in federal law allows terrorists to buy “gun kits” through the mail that can be assembled into untraceable assault weapons.

The case studies in this report generally involve successful use of our gun laws to prosecute those engaged in aiding terrorists. From that perspective, the cases show the importance of existing gun laws as tools against terrorism. Does this mean we should heed the NRA’s credo that strong enforcement of existing gun laws is the only remedy, not enactment of new laws?

The report supports three responses to this argument:

- First, in most of these cases, the wrongdoers were prosecuted only after the guns had found their way into the terrorists' hands to be used to wreak havoc either in the United States or abroad. Stronger laws could have prevented the guns from being obtained by terrorists in the first place.
- Second, enforcement of gun laws against terrorists would be strengthened by removing the statutory restraints on the Bureau of Alcohol, Tobacco and Firearms (ATF) imposed by the Congress at the behest of the National Rifle Association.
- Third, although there are many cases in which those supplying guns to terrorists are caught and prosecuted, there are likely even more cases in which wrongdoers are able to elude law enforcement authorities.

In short, the connection between terrorism and guns is undeniable. If authorities are to have the strongest possible mechanisms to root out terrorists before they strike, they need the strongest possible gun laws. Therefore, the final section of this report proposes a specific agenda for reform of our nation's gun laws in the interest of national security.

I. Terrorists Find Gun Shows An Inviting Marketplace

The ATF estimates that there are more than 4,000 gun shows annually, convened in every region of the country. The ATF's own gun trafficking investigations "paint a disturbing picture of gun shows as a venue for criminal activity and a source of firearms used in crime."¹ A review of its gun trafficking investigations conducted during the period July 1996 through December 1998 revealed that gun shows were "a major trafficking channel" and were associated with the diversion of approximately 26,000 firearms into the illegal market.²

Gun shows are a unique marketplace because they feature both federally licensed dealers and unlicensed sellers. In most states, however, background check requirements only apply to sales by licensed dealers, that is, persons required to obtain a federal firearms license because they are "engaged in the business" of selling guns. Indeed, background checks mandated by the Brady Act and many state laws have proven to be an invaluable tool to deny guns to terrorists. For example, in October, the Anti-Terrorism Task Force in Portland, Oregon arrested Ali Khaled Steitiye, a convicted

felon who claimed to have trained at Lebanese guerilla camps, after a background check stopped him from buying an assault rifle from a licensed dealer.³ At gun shows, however, there are thousands of gun sales without background checks by vendors claiming not to need a federal license because they are merely selling from their “personal collections” of guns.⁴ Thus, felons and other prohibited gun buyers can easily avoid criminal background checks by shopping at gun shows, where a diverse group of sellers are willing to do business with “no questions asked.”⁵ Gun shows also are notorious venues for unscrupulous licensed dealers willing to make illegal sales.⁶ It is difficult to imagine a more inviting marketplace for terrorists and those who seek to supply them with lethal weaponry.

Still, Congress has failed to pass legislation to close the gun show loophole that allows unlicensed or “private” sellers to sell guns at gun shows without background checks. Although a gun show bill sponsored by then-Senator Frank Lautenberg (D-NJ) passed the Senate in 1999, it died in the House. In this Congress, bills to close the loophole have been introduced in the Senate by Senator Jack Reed (D-RI) (S.767) and by Senator John McCain (R-Arizona) (S.890) and in the House by Rep. Michael Castle (R-Del.) (H.R. 2377).

Gun Show Pipeline: From Michigan to Lebanon

On September 10, 2001 – just one day before the devastating attacks on the Pentagon and the World Trade Center – Ali Boumelhem was convicted on a variety of weapons violations plus conspiracy to ship weapons to the terrorist organization Hezbollah in Lebanon. He and his brother Mohamed had purchased an arsenal of shotguns, hundreds of rounds of ammunition, flash suppressers and assault weapon parts from Michigan gun shows, according to press reports.

Had it not been for a police informant, they might have eluded any scrutiny.⁷ Neither federal nor state laws in Michigan require background checks between a private or unlicensed gun seller and a buyer. Mohamed had a clean record, but Ali was legally prohibited from purchasing firearms as a result of a felony grand-theft conviction.⁸

Ali Boumelhem was arrested in Detroit in November of 2000 before he could depart on a one-way ticket back to Lebanon, along with Mohamed, who was also indicted on conspiracy charges, but acquitted. According to press reports, the arrests came after a lengthy surveillance and the discovery on a Lebanon-bound ship of an auto-parts container whose cargo included the firearms, ammunition and gun parts. Federal agents said they watched Ali, a resident of Detroit and Beirut, travel to gun shows to buy gun parts and ammunition for shipment overseas. An ATF and FBI informant also told investigators that he had seen Ali in Beirut with automatic weapons and explosives, as well as grenades and rocket launchers.⁹

The Hezbollah is identified by the U.S. State Department as a terrorist organization. The group was founded in 1982 as a guerrilla movement to end Israeli occupation of southern Lebanon. It is known or suspected to have been involved in numerous anti-U.S. terrorist attacks, including the bombing of the U.S. Marine barracks in Beirut in 1983 that killed 241 people. Elements of the group were also responsible for the kidnapping and detention of U.S. and other Western hostages in Lebanon, according to the State Department.¹⁰

Moreover, testimony in the trial of suspects in the two 1998 U.S. Embassy bombings in Africa showed that some members of Osama bin Laden's al-Qaeda group had trained with Hezbollah in Lebanon in using explosives to destroy large buildings.¹¹

Al-Qaeda Suspect Goes Gun Show Shopping

Over the course of seven years, Muhammad Navid Asrar, a Pakistani and an illegal immigrant, frequented gun shows, buying several weapons, including a Ruger Mini-14 rifle, two pistols and a hunting rifle. On October 30, 2001, he pleaded guilty in Texas to immigration charges and to illegal possession of ammunition.¹²

Asrar said he resold the weapons at gun shows, but a federal grand jury is currently investigating whether he may be linked to al-Qaeda terrorists, according to the police chief of Alice, Texas where Asrar owned a convenience store and gasoline station.¹³ A Houston FBI spokesman said Asrar was being investigated by ATF agents before the September 11 attacks.¹⁴ He had aroused authorities' suspicions when he asked his employees to take pictures of tall buildings in Houston and other cities and to mail letters for him from Pennsylvania back to Texas.

Florida Gun Show Dealer Arms Irish Republican Army

To the young Irish Republican Army soldier from Belfast in pursuit of firearms, south Florida was a gun fanatic's free-for-all. "We don't have gun shows in Ireland, and you see things here like you never imagined," Conor Claxton said.¹⁵

Within weeks of Claxton's arrival in the U.S. in the spring of 1999, he and three associates spent more than \$18,000 on dozens of handguns, rifles and rounds of high-powered ammunition. They hid the arms inside toy firetrucks, computers and clothing, and then mailed their purchases overseas where they were intended to be used against the British government in Northern Ireland. Police intercepted 23 packages containing 122 guns and other weapons originating from the group.¹⁶

Claxton enlisted three U.S. residents, all natives of Northern Ireland and the Republic of Ireland, to buy the weapons. The team obtained crucial assistance from a licensed firearms dealer – Edward Bluestein, the owner of Big Shot Firearms in Delray Beach, Florida. Bluestein sold at least 43 handguns to associates of Claxton, who also bought weapons from other collectors and private citizens, but Bluestein was the oper-

atives' main source, and he agreed not to report all of the sales on required federal forms in exchange for an extra \$50 per gun.

Gun dealer Bluestein was approached by IRA operatives Anthony Smyth and his girlfriend Siobhan Browne, a naturalized U.S. citizen, at a gun show at the National Guard Armory in Fort Lauderdale in April 1999. They wanted to buy quality handguns that could be easily concealed. Bluestein obliged them and invited them to his home. Browne reportedly told Bluestein the guns would be used for a cause she and Smyth were "deeply devoted to."¹⁷ The two also told Bluestein the guns would be shipped out of the country and the serial numbers on the firearms would be obliterated.

Bluestein admitted that he received warnings from his fellow gun dealers at the armory, who were particularly suspicious of the intense interest of a woman, Siobhan Browne, in amassing numerous guns. "Other sellers there said, 'Be careful of her,' but I thought what a bunch of old ladies," Bluestein said. "Lots of people collect handguns. I had some of the lowest prices there. That's why she came to me."¹⁸

In all, Smyth and Browne negotiated with Bluestein to buy more than 100 weapons. In just a few weeks time, and before law enforcement authorities caught on to the scheme, 43 firearms had changed hands – Israeli pistols, Austrian semi-automatics, Smith & Wesson revolvers, and others. Bluestein courted even more business from the group, although he suspected the guns could wind up in the hands of assassins. Bluestein testified he had put up thousands of dollars of his own money to fill one of the team member's demands, and when that customer left him holding an order of 18 guns, Bluestein contacted him again to try to keep the shady deal alive. "I was totally trapped, what could I do? . . . I'm sitting there in debt from a transaction that's supposed to make me a rich man," Bluestein said in blunt defense.¹⁹

On July 6, 1999, British authorities noticed suspicious packages arriving with cargo at West Midland International Airport in Coventry. The labels said they contained toys, computers and baby clothes, but when the packages were X-rayed, police saw the image of a Ruger .357 Magnum. The serial number that was supposed to have been rendered illegible traced to Bluestein and Big Shot Firearms. British and Irish police, Scotland Yard's anti-terrorist unit and the FBI's Joint Terrorism Force intercepted many of more of Bluestein's firearms in packages mailed to Ireland in August 1999.

In September 2000, Claxton, an admitted officer of the IRA, was sentenced to approximately five years in federal prison for shipping the guns to Northern Ireland. The other collaborators each received shorter sentences for conspiring to carry out Claxton's mission.

Bluestein, who had agreed to cooperate with prosecutors, pleaded guilty to conspiring to export guns illegally. He received probation for two years, including six months of house arrest.

Taking Aim at the “Twin Sisters”

Only a lack of money kept Charles Kiles and Kevin Patterson from buying a grenade launcher to blow up two huge liquid propane storage tanks in a suburban community outside of Sacramento, California. A gun show dealer, Ronald Rudloff, recently testified in federal court that he nearly sold the rocket-propelled weapon to the pair at a January 1999 gun show in Las Vegas.²⁰

Rudloff said that Kiles put on his glasses to inspect the grenade launcher. With Rudloff’s permission, Kiles shouldered it and looked through the illuminated scope. Kiles then motioned for Patterson to join him and said, “Kevin, come on over and look at this. This is what we need,” according to Rudloff.²¹ Rudloff then explained to Kiles the weapon could be made operable simply by removing a pin placed in it by federal authorities.

Kiles, 51, and Patterson, 44, revealed they were members of the San Joaquin County (California) Militia. The conversation turned to rumors of threats by militant groups to be timed with the end of the millennium. Rudloff recalled Kiles saying, “We’re going to have a big bang ourselves. We’re going to take out a couple of propane tanks.”²²

Rudloff’s grenade launcher was priced at \$2,200. “They wanted to take it with them, but they couldn’t come up with the funds,” Rudloff said in court during an October 2001 criminal proceeding against Kiles and Patterson. The two men were being tried on charges of conspiring to build and use a “weapon of mass destruction” to destroy the tanks, located in the vicinity of both a residential and commercial development near Sacramento.

According to press reports, the militiamen called their targets – the two tanks holding 24 million gallons of liquid propane – the “twin sisters.” Their goal, federal investigators said, was to create such chaos on or around the New Year that the president would declare martial law – giving militant groups an opportunity to overthrow the government.²³

The California militiamen – frequent visitors to gun shows – were discovered to have had more than 50 firearms and 50,000 rounds of ammunition between them when their homes were searched in connection with their scheme to blow up propane tanks.²⁴ Agents also seized a trove of bomb-making chemicals and about 30 pounds of fertilizer that could be turned into explosives.

Kiles had been able to obtain guns even though he was personally prohibited from owning them due to a previous violation of firearms laws. In 1992, he had pled guilty to felony possession of an assault rifle.²⁵ In November 2001, a jury deadlocked 11-1 to convict Kiles and Patterson. They are currently awaiting a new trial.

As a gun show dealer, Rudloff didn't flinch at illegal deals. Five months after the two California militiamen at the Las Vegas gun show approached him, Rudloff himself was arrested. He was one of four gun show participants charged in June 1999 with unlawfully selling weapons to undercover agents, this time at the Great Western Gun Show held at the Los Angeles County fairgrounds.

Rudloff and the other criminal defendants allegedly sold illegal weapons, in addition to granting buyers immediate possession of all firearms, violating a California law requiring 10-day waiting periods for criminal background checks. When the state's attorney general, Bill Lockyer, announced the sting, he said agents shopping for illegal weapons found so many they ran out of money after visiting just a handful of the show's 5,300 booths.²⁶

II. Terrorists Can Easily Acquire Large Quantities of Guns

With the exception of a handful of states, there are no restrictions on the number of guns that can be purchased from retail gun dealers. Because there is no centralized, national record keeping of gun purchases, it is difficult for law enforcement even to determine whether someone has

bought a large number of guns. This is of great help to terrorists and gun traffickers, who are interested in purchasing as many guns as possible as quickly as possible, without detection.

Federal law enforcement authorities have long known that the purchase of large numbers of guns – particularly handguns – by a single buyer is an indicator of gun trafficking into the illegal market. For this reason, there is a special provision in federal law that requires that purchases of two or more handguns within a five business-day period be reported by licensed gun dealers to the ATF. This reporting requirement, however, is hardly a deterrent to trafficking. According to the ATF, handguns sold in multiple sales accounted for 22 percent of all handguns traced to crime in 1999.²⁷

In 1993, Virginia, weary of its reputation as the primary source state for crime guns trafficked to New York and other northeastern cities, enacted a landmark state statute curbing multiple sales. Virginia's statute limits purchasers to one handgun per month. The statute had a dramatic effect on gun trafficking from Virginia. For example, of the crime guns recovered in New York, the percentage traced back to Virginia fell by 61 percent.²⁸ However, only three other states – South Carolina, Maryland and California – place any quantity limits on gun buys. Moreover, the gun industry has

done nothing to voluntarily limit large-volume sales, an issue raised in the various liability lawsuits brought by municipalities against the industry.²⁹ The absence of a uniform federal limit on large-volume sales ensures a robust illegal market that is the terrorists' best source of lethal weapons.

The Racially-Motivated Terror of Benjamin Nathaniel Smith

In early 1997, Old Prairie Trading Post, a little shop in Pekin, Illinois selling mostly used goods, received its first visit from Donald Fiessinger. Fiessinger, a soft-spoken, retired janitor, was looking to buy cheap semi-automatic handguns. Soon, he became Old Prairie's best customer, returning to the store week after week, in each instance selecting one new gun at a time.³⁰

In two years, Fiessinger bought a total of 72 handguns, including Bryco pistols, a type of gun known as a "Saturday Night Special" and preferred by criminals because of its concealability and a low retail price of roughly \$100. Fiessinger then resold these guns through classified ads in the Peoria Star Journal at nearly twice the store price. Yet, in each of his trips to the store, Fiessinger filled out a sworn written statement that he was buying still another Bryco .380 pistol for his own personal use. The owner of Old Prairie, Robert Hayes, allowed him to do this, and the store never notified the ATF about the suspicious transactions.

Fiessinger's customer base included Benjamin Nathaniel Smith, a 21-year-old white supremacist with a shaved head and the word "Sabbath Breaker" tattooed on his chest. Smith's previous attempts to buy a weapon from a licensed dealer failed because a background check revealed that his ex-girlfriend had taken out a protective order against him. Fiessinger eagerly completed the sale when Smith responded to his newspaper ads touting, for instance, a ".380 nickel plated semi-auto, 7 shot-pocket or purse gun, \$165 cash."

In early July 1999, a week after purchasing two guns from Fiessinger – including a .380 Bryco originally sold by Old Prairie Trading Post – Smith went on a shooting rampage in Illinois and Indiana, killing two people and injuring nine others before fatally shooting himself. First, Smith drove to a predominately Jewish neighborhood in Chicago and shot and injured six people in front of a synagogue. In a quiet, residential neighborhood in Skokie, Illinois, Smith killed Ricky Byrdsong, an African-American man and former Northwestern University basketball coach as he walked with his children. The next day, on July 3, Smith shot and wounded an African-American minister and an Asian-American student at the University of Illinois. On July 4, 1999, Smith fired into a crowd of people entering a Korean Methodist Church in Indiana and mortally wounded Won-Joon Yoon, a Korean doctoral student of economics.

Smith was a member of the World Church of the Creator, an organization advocating supremacy over the “mud people” of other ethnic backgrounds. The group’s stated goal “is the survival, expansion and advancement of the white race.”³¹

Reporters questioned the owner of Old Prairie Trading Post, Robert Hayes, about the dozens of cheap, lethal weapons he had sold to Fiessinger. “Everything I did was fine, according to ATF guidelines,” Hayes said in December 1999,³² and so it appeared on the surface. While gun retailers must report to the ATF any single purchase of more than one gun, there is no such requirement when gun purchases are spread out over time. Fiessinger methodically spaced his buys at Old Prairie to only one gun per week, allowing Old Prairie’s Hayes to elude the multiple-sales reporting requirement, a crucial mechanism alerting the ATF to suspected gun trafficking.

In private interviews with ATF agents, however, Hayes confessed that he suspected Fiessinger was selling the guns all along.³³ Hayes said that Fiessinger had a standing order for weapons. Fiessinger would come to his store and order 12 guns at a time, even though he would return to methodically purchase only one gun a week.

Further ATF investigation revealed other illegalities by Hayes. While Illinois state law requires a three-day waiting period for every handgun purchase, Hayes violated this requirement for virtually every sale to Fiessinger in 1998.³⁴ Hayes admitted that he began to “get sloppy” with other paperwork requirements. He also conceded that he released guns to Fiessinger without first contacting the Illinois State Police for a background check and obtaining an approval number.

At first, Hayes claimed this had only happened on two or three occasions, but a review of the records seized from Old Prairie revealed that 13 background check approval numbers recorded on sales to Fiessinger were never listed in Illinois State Police records. Hayes was then forced to admit that in these 13 instances he “made up an approval number and placed the fictitious number on the form to make it look complete and accurate.”³⁵

On January 8, 2001, Hayes pleaded guilty to one of 13 counts of “willfully and knowingly” selling a Bryco .380 caliber to Fiessinger in violation of state laws. His firearms license was revoked, and he was later sentenced to two years probation and ordered to pay a \$1,600 fine. Fiessinger was charged with dealing guns without a license and received a 10-month sentence. Hayes “sloppy” paperwork led to his successful prosecution, but long after Smith’s rampage destroyed so many innocent lives.

In retrospect, Hayes conceded he should have more carefully scrutinized the man who came to his shop repeatedly and bought dozens of cheap handguns over a period of two years. “Maybe I could have stopped it,” Hayes said. “I could have saved some headaches.”³⁶

U.S. Guns Used in Violent Attempted Coup in Trinidad-Tobago

In June 2001, federal agents arrested a man in an alleged attempt to illegally purchase arms in Florida for the same Muslim group that had led a bloody coup campaign 11 years before in the Caribbean twin-island nation of Trinidad and Tobago.

Trinidadian Keith Glaude was arrested in Fort Lauderdale as he tried to purchase 60 AK-47 assault rifles and 10 machine guns from ATF undercover agents. Previously, he had admitted to the agents that he intended to ship the guns to the Jamaat Al Muslimeen, an Islamic extremist group, in his home country. Glaude allegedly was sent to Florida by a man the ATF identified as a high-level member of the group.³⁷

The Jamaat Al Muslimeen had previously done business with Florida gun dealers, and these sellers were willing to meet their ample needs. In 1990, the Muslimeen – armed with weapons purchased at Florida gun stores and shows – tried to topple the government in Trinidad and Tobago. More than 100 rebels set off a car bomb and then stormed into the legislature spraying bullets from the Florida-bought guns. They took over Trinidad and Tobago Television to announce they had seized control. Two dozen people were killed and hundreds wounded during six days of chaos.

The Muslimeen's gun runner in 1990 was Louis Haneef, a resident of Pompano Beach. Of the 135 weapons used in the coup against the government of Trinidad and Tobago, 105 assault rifles were provided by Haneef. He had told Florida gun shop owners that he needed the weapons for his business, the "All American Gun Club."³⁸

As was the case with firearms trafficker Donald Fiessinger in Illinois, Haneef was able to accumulate a cache of guns because there are no federal laws limiting the number of purchases by an individual. Haneef was a familiar figure at gun stores and gun shows all over south Florida. "Flashing wads of \$100 bills, Haneef bought dozens of assault rifles, shotguns, carbines and pistols."³⁹

The Muslimeen failed in its coup attempt and eventually surrendered, but the group remains active and has been linked to bomb threats and other insurgent activities in Trinidad.

As the Bureau of Alcohol, Tobacco and Firearms has noted, “[u]nlike narcotics or other contraband,” the underground gun market “does not begin in clandestine factories or with illegal smuggling.”⁴⁰ Rather, guns used in crime originate with licensed gun dealers. Through various means, guns are often diverted from these dealers into the illegal market. Indeed, ATF trace data indicates that a mere 1.2 percent of licensed gun dealers account for more than 50 percent of the guns traced to crime.⁴¹ ATF’s review of its own gun trafficking investigations showed that corrupt gun dealers accounted for nearly half of the total number of trafficked firearms.⁴² Some of these guns were trafficked to terrorists.

III. Corrupt Gun Dealers Funnel Guns To Terrorists

The problem of dealer diversion of guns into the illegal market reflects the failure of gun manufacturers to prescribe and enforce responsible business practices by their downstream sellers. At the same time, gun manufacturers typically impose requirements on their distributors and dealers designed to protect the manufacturers’ business interests. For example, for many years, handgun maker Sturm, Ruger would not permit its distributors to carry guns made by its rival Smith & Wesson. However, when it comes to preventing straw purchases,⁴³ large-volume sales and other trafficking methods, gun manufacturers show no interest in affecting dealer behavior. As former Smith & Wesson executive Robert Hass explained, despite the industry’s knowledge that the “black market in firearms is not simply the result of stolen guns but is due to the seepage of guns into the illicit market from multiple thousands of unsupervised federal firearms licensees . . . the industry’s position has consistently been to take no independent action to insure responsible distribution practices.”⁴⁴

In the past, the U.S. Department of Justice has called for implementation of specific self-policing strategies by the industry:⁴⁵

To properly control the distribution of firearms, gun manufacturers and importers should: identify and refuse to supply dealers and distributors that have a pattern of selling guns to criminals and straw purchasers; develop a continual training program for dealers and distributors covering compliance with firearms laws, identifying straw purchase scenarios and securing inventory; and develop a code of conduct for dealers and distributors, requiring them to implement inventory, store security, policy and record keeping measures to keep guns out of the wrong hands, including policies to postpone all gun transfers until NICS [background] checks are completed.⁴⁶

The failure of gun manufacturers to impose distribution controls has been a focus of the lawsuits brought against the industry by urban municipalities.⁴⁷ Indeed, only after such suits were brought did the industry’s trade association, the National

Shooting Sports Foundation, announce a program encouraging gun dealers to scrutinize purchasers for signs that they may be functioning as straw buyers on behalf of prohibited persons and to “politely refuse the sale” if “suspicions arise.”⁴⁸

The problem of corrupt gun dealers is not only a product of industry irresponsibility, but also of irrational statutory restrictions on the enforcement power of the ATF. Despite the NRA’s recent public relations strategy of insisting on more vigorous enforcement of existing federal guns laws before enacting new ones, the NRA has a long history of trying to weaken and discredit the ATF. Indeed, NRA Executive Vice President Wayne LaPierre, in his book Guns, Crime and Freedom, invoked the words of U.S. Rep. John Dingell (D-MI), a former NRA Board Member, who had called ATF agents “a jack-booted group of fascists” who were “a danger to American society” and “a shame and a disgrace to our country.”⁴⁹ In 1986, the NRA led a successful effort to pass the McClure-Volkmer Act, which has substantially hampered ATF’s enforcement activities. For example, McClure-Volkmer limited the ATF to a single unannounced inspection of an individual dealer in any 12-month period,⁵⁰ whereas prior law permitted ATF to inspect the inventory and records of a licensed dealer at all “reasonable” times.⁵¹

The McClure-Volkmer Act also made it more difficult to revoke the license of an irresponsible dealer, requiring a showing by the government that the dealer had committed a “willful violation” of applicable laws and regulations.⁵² This “willfulness” standard requires ATF to prove that the dealer *knew* the law and nevertheless *decided* to violate it. This is a more stringent standard than is generally applicable even in criminal prosecutions, in which ignorance of the law is not considered an excuse by the courts. In fiscal year 1999, despite the fact that 223 ATF compliance inspections revealed violations significant enough to warrant a follow-up inspection, only 13 licenses were revoked.⁵³

The most significant impediments to vigorous ATF enforcement are the existing statutory restrictions on the Bureau’s gathering and centralization of information. Although each purchaser of a gun from a licensed dealer must complete a federal Firearms Transaction Record documenting the sale, the form stays with the gun dealer and is not transmitted to ATF.⁵⁴ This curious state of affairs is mandated by a provision of McClure-Volkmer barring ATF from issuing any regulation that may require such records to be “recorded at or transferred to” a facility operated by the federal government or any state. The same provision prohibits the establishment of “any system of registration of firearms, firearms owners, or firearms transactions or dispositions”⁵⁵ Centralized record-keeping of gun sales would give ATF the information it needs to detect patterns of gun purchases indicative of gun trafficking. It could move far more quickly to disrupt trafficking operations and prosecute corrupt dealers long before they have funneled large numbers of guns into the underground market where they are accessible to terrorists and other violent persons.

The single most extreme, and irrational, limitation on government information about gun purchases has been imposed by the Bush Administration. Under the permanent provisions of the Brady Law, which created the National Instant Criminal Background Check System (NICS), all background check records relating to gun sales to legal purchasers must be destroyed.⁵⁶ In a decision issued in March 2000, however, the United States Court of Appeals for the D.C. Circuit held that such record destruction need not occur immediately following the NICS background check of an individual purchaser, upholding a Clinton Justice Department rule permitting six-month retention of such records for system auditing purposes.⁵⁷ The NRA, which had brought the suit contesting the six-month rule, sought review in the U.S. Supreme Court, but review was denied in June 2001. The Clinton Administration had successfully argued that such record retention was necessary, for example, to detect cases in which false identifications were used to thwart the background checks.

Just days after the Supreme Court denied review, Attorney General Ashcroft announced a proposed rule requiring the destruction of NICS records *after one day*.⁵⁸ Citing the “privacy rights of individual purchasers,” the Attorney General is thus refusing to use the clear legal authority given to him by the courts to retain NICS records for at least six months to ensure the integrity and effectiveness of the background check system. Senator Charles Schumer (D-NY) and Representative Carolyn McCarthy (D-NY) recently introduced legislation requiring that all NICS records be retained for at least ninety days and ensuring appropriate access to the records for law enforcement purposes.

The irony here is that while investigators have been able to discover where and when the September 11 terrorists took flying lessons and what hotels they stayed in, it is much harder to find out if they obtained guns. Given all the statutory constraints on effective enforcement of federal gun laws, all put in place at the insistence of the gun lobby, terrorists have, of course, found ways to exploit corrupt gun dealers to ensure a steady supply of firearms.

Al Fajr Trading Company: Trading in Death

Al Fajr Trading Company, a small Atlanta store wedged between a laundromat and a neighborhood grocery store, churned out tens of thousands of sticks of incense, body oils, air fresheners in Egyptian musk, sandalwood, rose strawberry and jasmine, and Cobray pistols that were converted into fully automatic machine guns.

In 1993, the store’s owners were convicted of illegally shipping hundreds of guns to Muslim street gangs and drug dealers in New York, Detroit and Philadelphia. Among the customers of Al Fajr Trading was a gang associated with Sheik Omar Abdel-Rahman, the Egyptian cleric who is serving a life sentence for his involvement in the 1993 bombing of the World Trade Center.⁵⁹

As a federally licensed firearms dealer, Al Fajr was required to record each gun purchase on a federal Firearms Transaction Record, but the store's managers intentionally failed to maintain records of nearly 1,000 guns trafficked to the Northeast. In August 1994, an Atlanta jury found Al Fajr's Amin Karim guilty of smuggling high-caliber pistols across state lines to illegal gun brokers and also convicted him and co-owner Jibri Rahman on charges of fraudulent record-keeping. The two men were sentenced to three years in prison each.

At the time, the case was called the largest firearms-trafficking scheme ever uncovered in this country. "Most gunrunning is accomplished by small, diverse operations – 25 guns here, a dozen there," Jack Killorin, a spokesman for the ATF in Washington, D.C., said in 1994. "A thousand guns would be an exceptionally large gunrunning operation."⁶⁰

Al Fajr used two Atlanta residents – who were also indicted for gunrunning – to help the store broker sales in New York. The Atlanta corroborators illegally converted Cobrays – a semi-automatic weapon favored by drug gangs and criminals – to fully automatic weapons and obliterated the serial numbers so the guns could not be traced. The weapons were then transported via Federal Express to Massoud Shaheed, the ring-leader of a New York Muslim gang, a five-time convicted felon and a fugitive in a weapons case. Other packages to Shaheed included M-11 9 mm machine guns and cheap, easily concealable "Saturday Night Specials."⁶¹

An Atlanta ATF spokesman said Al Fajr Trading's gun smuggling operation "shows exactly what people can do who have illegal intentions when they obtain a firearms license."⁶² Although the ATF had surveilled the shop as a suspected supplier of illegal guns, the government agency's crackdown came too late. A large number of Al Fajr's weapons had already begun to show up in East Coast crimes and some of the guns had already been distributed to New York Muslims linked to terrorist Sheik Omar Abdel-Rahman.

Notorious Virginia Dealer Supplies Gun for Assassination

The .45-caliber handgun used by a suspected Iranian terrorist to slay a political enemy in New Jersey originated in Richmond, Virginia – at a gun shop notorious throughout the Northeast. Virginia Police Equipment Company, which had no connection to law enforcement despite its name, was preferred by straw purchasers, high-volume buyers, gun traffickers and convicted felons.

Parivash Rafizadeh, 51, an Iranian immigrant to the United States, bled to death after being shot twice outside her home in Northern New Jersey in late 1992. She, her husband and her brother-in-law were all thought to have had intimate involvement with the government of Iran under the late Shah Mohammed Reza Pahlavi, who was

ousted in a 1979 revolution orchestrated by Islamic fundamentalists and led by Ayatollah Khomeini.

Information gathered by the FBI's counterterrorist squad and New Jersey state police in a joint investigation of Rafizadeh's slaying led them to believe she was the victim of "an organized group of terrorists" who stalked her before the shooting.⁶³ News coverage of the murder quoted a New Jersey prosecutor as saying that Rafizadeh likely knew her killer; the motive apparently was not robbery; and that it was "execution-style."⁶⁴

Press accounts did not reveal how Rafizadeh's assassins came to possess the .45-caliber Haskell handgun originally sold by and traced back to Virginia Police Equipment Company. The FBI said that the gun was believed to have been among seven bought all at once by a Richmond area woman, a scenario highly suggestive of firearms trafficking.⁶⁵ Two months prior to Rafizadeh's killing, Virginia Police Equipment had been shut down by U.S. authorities after its owners pleaded guilty to charges in other transactions stemming from straw purchases. Throughout the years, the store gained these distinctions:

- Of 377 firearms bought by straw purchasers at Richmond, Virginia-area gun shops, 359 were sold at Virginia Police Equipment, according to federal indictments targeting straw purchasers in 1990. Out-of-state patrons of the store, many with criminal records, hired Virginia residents to acquire guns for them.⁶⁶
- In one 18-month period, nearly 10 percent of crime guns seized by police in New York had been bought from Virginia Police Equipment.⁶⁷
- More illegal guns recovered in the state of Virginia came from this dealer than any other store.⁶⁸
- For several consecutive years, Virginia Police Equipment reported more multiple sales than the combined total of all other gun dealers in a 37-county area surrounding Richmond.⁶⁹

Defense counsel for Virginia Police Equipment scoffed at the notion that the store's closing would reduce the flow of guns from Virginia. "Fat chance," said lawyer David Baugh. He then remarked on what the gun industry knows, but rarely publicly admits: the symbiotic cooperation between guns stores and the illegal market. Criminals who want to buy guns simply will go to other shops, he said.⁷⁰

The Blue Ridge Hunt Club: Virginia Dealer Supplies Violent Militia Group

The Blue Ridge Hunt Club in southwest Virginia invoked images of men, clad in plaid and in pursuit of deer, but the club, formed in 1994, functioned as a "citizens

militia," training to do battle with federal authorities.

Mechanic James Roy Mullins responded to what he saw as the government's crackdown on gun owners' rights by founding the Blue Ridge Hunt Club. After Mullins and five members of the club were arrested in late 1994, police found a stockpile of weapons, including handcrafted machine guns, illegal homemade silencers and practice grenade fuses. Mullins was also plotting a raid on a local National Guard armory to steal M-16 military rifles and rockets.⁷¹

Thirty-one weapons were seized from Mullins' group as well as a computer disk containing strategies for destroying bridges and airports and assassinating police and political figures when the time came for a confrontation between citizens and government.

"Greetings, Friends," Mullins wrote on his computer in a draft keynote speech for the first meeting of the militia group in the winter of 1994. "I'm glad that all of you are interested enough to come out today. It shows me that we still have some people in this country with some backbone and guts!"⁷² What the group needed, he wrote, were maps, camping equipment, explosives – and guns. It also needed people – military veterans who could provide leadership, machinists who could make weapons, intelligence sources inside police departments and snipers: "They will play an important part in the operation."⁷³

The group turned to licensed federal firearms dealer and fellow Blue Ridge Hunt Club member Paul Peterson to supply it with weapons difficult to trace, including TEC-9 and Glock .45-caliber pistols. Peterson obligingly sold a shotgun to a felon and agreed to provide other firearms "off paper" without the required state background check and transaction documents. "There was no indication of the limits of what he was willing to do," a federal prosecutor alleged.⁷⁴

The case provides an intricate view of how easy – and enticing – it is for a licensed gun dealer to elude federal laws. An ATF informant who belonged to the club tape-recorded his transactions with Peterson. Whenever the informant asked Peterson to break a law, Peterson agreed. He talked about how he planned to "lose" all of his federal paperwork that described to whom he had sold guns at his shop, Peterson Sporting Goods in Blacksburg, Virginia.⁷⁵

"There would be no paper trail . . ." Peterson admitted during subsequent criminal proceedings against him. "If a person was so inclined, he could do whatever he wanted to do with the weapon."⁷⁶

In one straw purchase scheme, fellow hunt club member Dennis Frith got his mother, brother and a friend to buy guns for him from Peterson. Peterson registered the guns in their names so Frith – who had a felony charge on his record – would not show up on ownership papers. Two of the guns were rifles then under consideration

for the federal ban on assault-style weapons.

In the most serious charge against him, Peterson knowingly sold a 12-gauge shotgun to a convicted felon, another “customer” whom the ATF recruited and provided money to buy the gun. According to a secretly-record conversation monitored by the ATF:

“Well, I’m going to be honest with you,” [felon purchaser Charles] Koiner said.

“I’m a convicted felon, okay?”

“I didn’t hear that” Peterson said.

“I appreciate that.”

“You were never here,” Peterson said. . . . “Just out of curiosity,”

Peterson asked, what were you convicted of?”

“Marijuana.”

“That ain’t nothing,” Peterson said.

[Koiner hands over \$175 in cash to Peterson.] “Okay?”

“Sure,” Peterson said. “I like not doing business with you.”⁷⁷

Five members of the Blue Ridge Hunt Club were indicted in 1995 on a total of 36 counts of federal firearms charges. Peterson pleaded guilty to four felonies, but received only three years of supervised probation after agreeing to cooperate fully with ATF authorities and to testify against his co-defendants. The group’s founder, James Roy Mullins, was sentenced to five years in prison.

Mullins insisted that his plans for guerrilla warfare were hypothetical. However, “[a]s far as the government is concerned, a potentially dangerous group was nipped in the bud before it had a chance to carry out any terrorist acts.”⁷⁸

IV. Terrorists, Assault Weapons and High-Capacity Ammunition Magazines

In 1994, over the vehement opposition of the National Rifle Association and its friends on Capitol Hill, Congress passed, as part of a broader anti-

crime measure, a statute banning the future manufacture and sale of military-style semi-automatic assault weapons.⁷⁹ These guns, like the AK-47 and the Uzi, are designed for maximum firepower with pistol grips and other military features accommodating “spray-fire” from the hip. The statute was passed with the broad support of major law enforcement groups, whose members were being out-gunned on the street by gang members, drug dealers and other violent criminals wielding assault weapons that can fire scores of rounds without the need to reload. The statute banned various assault weapon models by name and model number and included “copycats” of those models by banning all guns with certain military features. Congress also prohibited future production of high-capacity ammunition magazines (i.e., those that hold more than 10 rounds) typically used with assault weapons. However, the statute “grandfathered” assault weapons and high-capacity magazines already legally possessed as of the date of the statute.

Since the assault weapon ban was enacted, the gun industry has repeatedly tried to evade it. For example, various foreign assault weapon makers modified their assault rifles to remove some of the military features. However, they did not alter the feature that gave the guns extraordinary firepower: the ability to accept large-capacity military ammunition magazines.

In 1998, as importers were poised to bring over 1 million modified Uzis, Galils and AK-47s into the United States, the ATF acted to block their importation, finding that rifles that can accept such military magazines do not meet the “sporting purposes” test for importation of firearms under the Gun Control Act.⁸⁰ In Springfield, Inc. v. Buckles, a federal district court judge upheld the legality of the ATF decision, dismissing a suit brought by a gun importer.⁸¹ That lower court ruling is now on appeal before the U.S. Court of Appeals for the District of Columbia Circuit. Argument in the case was held on December 3, 2001. In early 2002, the appeals court will decide whether the floodgates will be opened to imported military assault rifles. Terrorists operating in the United States would be highly motivated customers for these rapid-fire guns.

The assault weapon ban automatically “sunset” in 2004, when Congress again will face the question of whether military-style weapons should be sold to the general public.

The Assault Weapon Attack on the CIA

On January 25, 1993, Mir Aimal Kasi, armed with an AK-47 clone and 150 rounds of ammunition, silently walked between two lanes of traffic stopped at a red light outside the CIA and fired point-blank into five cars, killing two CIA employees and wounding three other people. Kasi then fled to Pakistan and disappeared. He became the target of an international manhunt and an entry on the FBI's 10 Most Wanted list. Kasi was captured in a small town near Quetta, Pakistan on June 15, 1997 in a high-profile arrest.

After his capture in 1997, Kasi told an FBI agent: "I aimed for the chest area of the people I shot."⁸² He said he took enough bullets and magazines to kill dozens of CIA employees.⁸³ According to one woman at the scene, Kasi returned to finish off one of the victims with a "killing shot" after first wounding the man.⁸⁴

An investigation into the shooting revealed that between January 10 and January 22, 1993, Kasi visited David Condon Guns, a licensed retail dealer in Chantilly, Virginia, four times to choose and then buy ammunition, two handguns – an East German Makarov 9 mm semi-automatic and a Beretta .25-caliber semi-automatic pistol – and a Colt AR-15 assault rifle. He returned to the store on January 22, to exchange the Colt weapon for an AK-47 type rifle manufactured by Norinco, a Chinese company.⁸⁵ Presumably, the gun had been modified to evade the Bush Administration's 1989 assault weapon import ban. Since it accepted a high-capacity magazine, it would have been barred from importation under the ATF's expanded import ban put in place in 1998.

A native of Pakistan, Kasi came from the Pashtun tribe, the dominant ethnic group across the border in neighboring Afghanistan. He entered the United States in 1991 on a business visa, settling in Virginia, and received a one-year work permit in 1992 after he applied for political asylum. Kasi found work delivering packages for a Herndon, Virginia courier firm with frequent jobs at the CIA.

A roommate told police that Kasi "wanted to shoot something up" to punish the U.S. government for its bombing of Iraq and what he saw as its involvement in the killing of Palestinians.⁸⁶ Kasi also believed that the CIA was too deeply involved in the internal affairs of Muslim countries. He saw something on CNN that upset him and then said, "I'm here, the CIA is there, and I've got to do something," according to trial testimony.⁸⁷

In November 1997, a Virginia jury convicted Kasi on 10 counts and then recommended the death penalty. Kasi's countrymen had threatened to retaliate during the course of his trial. Following the guilty verdict, four American accountants with a Houston-based oil company on business in Karachi, Pakistan were assassinated by gunmen who ran their car off the road and sprayed them with machine-gun fire.⁸⁸ As of now, Kasi remains on death row.

At the time of his conviction, Kasi's connections to any organized terrorist group remained in question. But press reports noted that Ramzi Yousef, the mastermind of the 1993 World Trade Center bombing – which occurred just one month after the CIA shootings – fled the U.S. on a Pakistani passport along the same airline route and to the same remote provincial town of Quetta as Kasi had.⁸⁹

Of recent note, the prosecutor who tried Kasi in 1997 told reporters that following the September 11 attacks, he has begun to wonder whether Kasi may have had broader terrorist affiliations. Bells went off, for example, when Virginia prosecutor Robert Horan read that federal and international investigators had zeroed in on Hamburg, Germany and arrested three suspected terrorists in fall 2001 who were part of a cell dedicated to the “spectacular destruction” of key American buildings. In late 1990, Kasi made what is now seen as a curious trip to Germany before coming to the United States to reside in Virginia.⁹⁰

High-Capacity Firepower and the Empire State Building Shooting

“My restless aspiration is to murder as many of them as possible, and I have decided to strike at their own den in New York, and at the very Empire State Building in particular.”⁹¹

– Excerpts from a note by Ali Abu Kamal to himself

On February 23, 1997, Ali Abu Kamal visited the observation deck on the Empire State Building in New York City and opened fire into a crowd of tourists, killing one person and wounding six others. Kamal killed Chris Burmeister, a 27-year-old Danish rock musician. An American, 27-year-old Matthew Gross, was the most critically wounded of the survivors and fell into a coma after a bullet entered the right side of his head and exited the left. Other victims were a Swiss native, a man from Argentina, a French couple and a Bronx resident. Kamal shot himself in the head and later died of the injuries.

The story behind this mass shooting of American tourists at Manhattan's Empire State Building begins in December 1996 when Kamal, a resident of Gaza City, arrived in New York from Cairo on a tourist visa. After a short stay in New York, he traveled to Melbourne, Florida. He checked into a cheap motel and showed the motel receipt as proof of “residency” to obtain a Florida identification card on January 30, 1997. That same day, Kamal used the ID card to buy a 14-shot, semi-automatic Beretta .380-caliber gun from a Melbourne gun shop called Oaks Trading Post.⁹²

Kamal successfully sidestepped a federal requirement that foreign-born gun buyers be United States residents for at least 90 days before purchasing a firearm, but the laws in effect at that time provided no effective mechanism to detect the violation and prevent the sale.⁹³ The total time from his arrival in this country to the purchase of the gun: 37 days.

The Beretta he purchased had the kind of firepower Congress had sought to prohibit in 1994 when it enacted the ban on sale of ammunition magazines of over 10 rounds. However, Congress left a gaping loophole in the law by failing to restrict high-capacity magazines already in circulation. Kamal passed a mandatory criminal background check; there was no information available about him given his very brief time in the United States. Five days later, Kamal picked up the Beretta pistol and headed back to New York.

Although he was not discovered to have been associated with an organized terrorist or religious group, a letter found on Kamal's body suggested he planned the attack to strike at "Zionists" and what he viewed as other enemies of his homeland. The letter, written in Arabic and in English, complains that the actions of "the big three" – apparently the United States, Britain and France – have inflicted suffering on the Palestinians.⁹⁴

The Kamal case shows that it is not enough to have a patchwork of state gun laws because high-risk buyers will seek to buy guns in the jurisdictions with the weakest laws. Strong federal gun laws are critical. Following the Empire State shootings, New York Mayor Rudolph Giuliani lashed out at Florida's laissez-faire gun laws. "He [Kamal] just shows up in Florida, gets a residence in a motel, walks in and walks out with a gun that could kill 14 people in three or four seconds," Mayor Giuliani said. "He was living in a motel and you hand him a Beretta."⁹⁵ Giuliani added, "It's insane to sell a semi-automatic weapon to a transient."⁹⁶

Spurred by the Empire State Building shootings, Senators Richard Durbin (D-Ill.) and Edward Kennedy (D-Mass.) proposed federal legislation to close what they called "a glaring gap in U.S. gun laws" that permitted any alien with a tourist or "non-immigrant" visa to purchase a gun. As finally enacted into law in October 1998, the provision prohibits aliens admitted on non-immigrant visas from purchasing guns unless they have a special waiver from the Attorney General or qualify for one of several statutory exceptions, including possession of a valid state hunting license or permit.⁹⁷

Speaking nearly five years ago about the tragedy at the Empire State Building in terms that ring true today, Senator Durbin declared that "[o]ur nation is a terrorist target" and it "should not be a one-stop shop for would-be terrorists."⁹⁸

In a further response to the Empire State Building shootings, President Clinton held an Oval Office ceremony with law enforcement officials in March 1997 to announce new measures to ensure stronger enforcement of the 90-day state residency requirement that Kamal violated without detection. The regulations announced by the President require purchasers to identify state of residence on the federal forms completed at the time of purchase, require aliens to present documentation such as lease agreements and utility bills to prove their 90-day residency in the state, and require

dealers to inspect a photo identification document from all aliens purchasing firearms.⁹⁹

While these legislative and regulatory responses were important, more can be done. The Empire State Building shootings underscore the vital importance of ensuring that law enforcement officials have the time they need to conduct thorough background checks, including searches of immigration records when necessary. It is also essential that ATF and the gun industry do everything they can to train dealers to detect bogus identification. When the U.S. General Accounting Office recently conducted an undercover investigation in five states that rely solely on the Brady Law's minimum requirement of an instant background check, it found that it was possible for agents to purchase firearms using counterfeit state driver's licenses with fictitious names and social security numbers, all made using off-the-shelf software, a scanner, a laminator and a color laser printer. The GAO report noted that other states have additional requirements for purchasing firearms in addition to those of the Brady Law, such as successful completion of firearms safety or training courses, approval of license applications by the local police commissioners or chiefs of police, waiting periods as long as two weeks, and fingerprinting.¹⁰⁰

The new laws and regulations prompted by the Empire State Building shootings also did not address the continuing dangers posed by the circulation of high-capacity magazines and weapons, like the gun used by Kamal. His Beretta was capable of firing 14 shots in the time it takes to read this sentence.

The same Florida gun store that sold the high-capacity Beretta semi-automatic to Kamal played a similar role in another horrific shooting spree almost a decade before the Empire State Building event. The Oaks Trading Post is where mass murderer William Cruse bought a semi-automatic rifle and ammunition in March 1987 – a month before he opened fire at two shopping centers in Palm Bay, Florida. Six people, including two police officers, were killed, and two dozen shoppers were wounded in the prolonged hail of bullets outside the Winn Dixie and Publix supermarkets. Cruse used a Ruger Mini 14 rifle, with a 30-round ammunition magazine.¹⁰¹

Assault Weapons and the Jewish Defense League

During its heyday, the New York-based Jewish Defense League spoke a language of Uzis and homemade silencers. Under the leadership of founder Rabbi Meir Kahane, the JDL frequently attacked and abused African-Americans and Hispanics involved in peaceful protest. Group members, including Kahane, were repeatedly jailed on weapons charges. Kahane and his followers also campaigned to drive Arabs from Israel and were banned by the Israeli government for acts of subversive violence.

In 1971, Kahane was convicted in a New York federal court for conspiracy to manufacture weapons. He received five years probation. The following year he was

arrested in Israel for attempting to smuggle explosives to Europe to blow up the Libyan Embassy in Brussels in revenge for the murder of 11 Israeli athletes at the 1972 Summer Olympics in Munich. He was put on trial again in Israel and charged with sedition for calling Arabs a “cancer spreading in our midst” during an anti-Arab rally.

On April 1, 1987, a dozen FBI agents pulled up in front of the East Meadow, New York home of JDL member Murray Young. Acting on an informant’s tip, federal agents seized 17 firearms in Young’s home, including an Uzi submachine gun, several rifles and stun guns. Young was wanted for his involvement in a long line of JDL terrorist incidents, including a wave of New York bombings of targets connected to the Soviet Union in a campaign to pressure that country to freely allow Jewish emigration.

The JDL eventually split into warring factions. In 1989, Mordechai Levy, head of a dissident group – the Jewish Defense Organization – went to the roof of his building in New York’s Greenwich Village and opened fire with a Ruger-14 mini semi-automatic assault rifle on two JDL members. Other guns in Levy’s possession included an Uzi, an AR-15 assault rifle, two pump-action riot shotguns and two .22-caliber rifles. Levy traveled with the guns and used them in a firearms-training camp in the Catskill Mountains for young recruits of his splinter organization.¹⁰²

In the most spectacular act of violence associated with the JDL, one of its doctrinaires – Brooklyn native Baruch Goldstein who migrated to Israel – used a Galil assault rifle to shoot and kill 29 unarmed Muslim worshippers at a West Bank mosque in 1994. Goldstein had joined the paramilitary JDL as a teenager and had learned to fire a weapon at its New York training camp.

Ironically, on November 5, 1990, Kahane himself was a victim of gun violence when El Sayyid Nosair, an Egyptian-born U.S. citizen, walked into a crowded ballroom at the New York Marriott on 49th Street and shot and killed him. At the time, authorities believed that Nosair acted alone to assassinate the anti-Arab Kahane. It was not until after the 1993 World Trade Center bombing – which resulted in the convictions of two Long Island companions of Nosair’s – that the FBI realized he was part of a terrorism network.

Still, the spirit of Kahane lives on in the form of an offshoot group calling itself “Kahane Chai” (“Kahane Lives” in Hebrew) founded by Kahane’s son, Binyamin. Binyamin was assassinated in Israel by Palestinian militants 10 years after his father’s murder. Kahane Chai continues to operate mainly in Israel’s West Bank, although it is reported to receive financial support from sympathizers in the United States and Europe. Today, it is one of 28 foreign groups officially designated by the U.S. State Department as a terrorist organization.¹⁰³

Meanwhile, the JDL’s reputation for violence continues in this country. On December 12, 2001, its chairman Irv Rubin and another member were booked in Los

Angeles in connection with a plot to set off pipe bombs at the office of a congressman of Middle Eastern descent and at a famous mosque. Footage of a raid of one of their homes by law enforcement reportedly showed officers carrying out cardboard boxes and 12 firearms.¹⁰⁴

V. Gun Kits and Mail-Order Terror

Imagine an assault weapon that fires scores of rounds without reloading, that can be sold to purchasers by mail-order with no background check and with no serial number to allow the gun to be traced. This terrorists' dream

weapon is readily available right now through such gun publications as Shotgun News and Guns-N-Stuff. After the Brady Law and the assault weapon ban, how can such a gun be purchased through the mail with no questions asked? The answer: Yet another loophole in federal gun laws.

The problem is the definition of "firearm" that triggers the application of all the federal laws and regulations governing the manufacture and sale of guns. The definition of "firearm" in the Gun Control Act includes "any weapon . . . which will or is designed to or may readily be converted to expel a projectile by the action of an explosive" or "the frame or receiver of any such weapon."¹⁰⁵ The "frame" or "receiver" is the part of the gun on which the serial number is stamped; it houses the firing mechanism of the gun. Under ATF's reading of this definition, it is possible to sell all the parts to a gun together in a "parts kit" and not be selling a "firearm" as long as the seller leaves the receiver out of the kit. By selling guns as "parts kits," the seller avoids all the laws, like the Brady Law, regulating "firearms." ATF also permits the unregulated sale of "flats" that can be folded into completed receivers. Thus, it is possible to purchase through the mail every part necessary to make a completed high-capacity, untraceable, assault weapon.

Mail-Order Mayhem on the Brooklyn Bridge

On March 1, 1994, Rashid Baz, a 28-year-old Lebanese immigrant, opened fire on a van of Hasidic students as it was crossing the Brooklyn Bridge, killing a 16-year-old boy and wounding one other student.

The van driver stopped on the edge of the bridge, while panic broke out among the more than a dozen passengers. The gunman stopped his car next to them in traffic, took aim and fired. In a desperate attempt to escape the attack, the van sped off, but Baz continued his relentless pursuit. He caught up with the yeshiva students in the middle of the bridge and shot at the students for a third time from behind the wheel of

his car.¹⁰⁶

The attack came less than one week after Baruch Goldstein massacred 29 Muslim worshippers at a mosque in the West Bank.

One of Baz's pistols was a Cobray M-11/9 assault pistol, which fired 18 shots in seconds. The gun was unusually distinctive in another respect: it had no serial number because the Cobray M-11/9 had been purchased in parts and assembled from a mail-order kit manufactured and marketed by a Tennessee company owned by Wayne and Sylvia Daniel. The Daniels sell the Cobray as a \$160 kit to anyone with a phone and a credit card, no questions asked – no waiting period, no background check to weed out felons, juveniles or other prohibited purchasers – and without the serial number the law would require if the gun were sold assembled.

The kit comes complete except for one part, a receiver, but the Daniels sell a version of that separately. For just \$8.50, the Daniels provide a "Fold Your Own Sheet Metal Flat," that one can bend into the shape of the finishing receiver.¹⁰⁷ In addition, the Daniel companies offer 24-hours a day customer service to answer questions regarding assembly and use of the Cobray.¹⁰⁸ Thus, the Daniels ingeniously exploit a lethal loophole in federal gun laws to sell a product that enables the buyer to build an untraceable assault weapon, but is not a "firearm" subject to federal regulation.

"They're not guns," Wayne Daniel told a reporter. "They're parts."¹⁰⁹

The Cobray was designed in the 1960s as a fully automatic submachine gun for military use. Manufactured for close combat, the features of the Cobray allow the shooter to engage in extremely rapid and sustained fire, making the lightweight assault weapon well suited for criminal use and inappropriate for sporting or hunting purposes. The Daniel companies also offer through mail order a detachable 34-round ammunition magazine for the Cobray.¹¹⁰

The Cobray gun kits were advertised in gun publications to appeal specifically to criminal customers by touting the assault weapon as "the gun that made the '80s roar;" a reference to inner-city turf and drug wars. "Yes! You can still build your own SEMI-AUTOMATIC M11/9 firearm!" one ad boasted. "No License Required! Anyone can Purchase!"¹¹¹

After the origin of the gun used in the Brooklyn Bridge shooting became known, Rep. Jerrold Nadler (D-NY) introduced legislation in Congress to extend the federal ban on the sale of firearms by mail to include key parts, such as a barrel, stock or any part of the action.

To date, Congress has done nothing.

VI. Reforming our Nation's gun Laws

The preceding examples illustrate why it is critical for our nation to include the strengthening of gun laws as part of our efforts to enhance homeland security. Outlined below are specific, common-sense measures that would help to pre-

vent terrorists, both foreign and domestic, from obtaining guns. At the same time, these measures would not prevent law-abiding citizens from purchasing, owning and using firearms.

- *Require Complete Criminal Background Checks for All Gun Sales, Including All Gun Show Sales*

The wisdom of ensuring that gun purchasers undergo background checks is now beyond dispute. Although the NRA sought the defeat of the Brady Bill, arguing that criminals do not buy guns at gun stores, we now know that Brady's background checks have stopped nearly 700,000 felons and other legally prohibited gun buyers from buying guns from licensed gun dealers.¹¹² It makes no sense, however, to allow the Brady background checks to be evaded by felons and terrorists through private sales at gun shows, through classified ads or over the Internet. Congress should pass the strongest possible bill to ensure that no guns sales be made without a criminal background check, whether by licensed dealers or anyone else. Mandatory background checks for all gun show sales should be the first step toward comprehensive background checks.

Moreover, in implementing background checks, the priority should be completeness, not speed. It is essential that federal officials be given the time necessary to check all relevant records, including immigration records, even if they are not computerized. Therefore, Congress should reinstate the waiting period in effect during the first five years of the Brady Law (1993-98) to enhance the effectiveness of the statute in blocking gun sales to terrorists and other dangerous persons.

- *Retain Federal Background Check Records, Allow Reasonable Access to Those Records by Federal Law Enforcement and Repeal Existing Statutory Restrictions on Gun Sale Recordkeeping*

It is absurd that federal law enforcement authorities have access to every conceivable record documenting the activities of terrorists and suspected terrorists – from flight training records to motel registrations – but are unable to determine whether the culprits have recently purchased guns. Attorney General John Ashcroft should immediately reverse his decision to deny FBI access to background check records of approved purchasers conducted by the National Criminal Instant Background Check System or, if he does not believe he has the authority to do so, should immediately seek that authority from the Congress. Attorney General Ashcroft should also immedi-

ately reverse his decision to destroy NICS criminal background check records of approved purchasers after only 24 hours. The federal courts have confirmed the Justice Department's authority to retain those records for at least six months. The Attorney General should use that authority to the fullest.

Congress should also repeal the provisions of the McClure-Volkmer Act and the Brady Law that prohibit centralized records of gun transactions. Because these provisions have the effect of preventing purchase records from being computerized, the records are not easily searchable. Under the NICS system, most gun buys are given approval within minutes.¹¹³ It should not take federal authorities any longer to trace the origins of a gun recovered in crime or taken from a suspected terrorist.

- *Congress Should Limit Large-Volume Gun Purchases to Curb Trafficking of Guns to Terrorists and Criminals*

Congress should enact a uniform federal law preventing the sale of more than one handgun per month to an individual buyer. The success of Virginia's one-gun-a-month statute is a powerful demonstration that curbing large-volume gun sales to single purchasers will diminish trafficking of guns into the illegal market where terrorists and criminals shop for firepower. Although helpful, state laws are not the ultimate answer because traffickers will simply migrate to states with weaker laws.

- *Congress Should Repeal the Provisions of the McClure-Volkmer Act That Weaken ATF's Enforcement Powers Against Corrupt Gun Dealers*

The easiest way for terrorists to arm themselves is through the complicity of federally licensed gun dealers. In the McClure-Volkmer Act, the NRA was successful in largely emasculating ATF's enforcement powers against corrupt dealers. This shameful statute limits ATF dealer inspections, makes it difficult to revoke dealer licenses and imposes other restrictions on ATF's ability to enforce the law. These provisions should be repealed. Moreover, gun manufacturers themselves need to take responsibility for the conduct of those selling their products by setting standards of conduct for the retail sale of guns that would stop straw purchasing for prohibited buyers, limit large-volume sales, impose inventory controls and terminate dealers whose guns are disproportionately traced to crime.

- *Congress Should Permanently Reauthorize the Assault Weapon Ban and Strengthen It*

The existing assault weapon ban expires in 2004. Congress must act now to reauthorize it on a permanent basis. Moreover, Congress should close the loopholes in the existing ban. For example, the statute should be amended to ban the future sale of "grandfathered" assault weapons and high-capacity ammunition magazines. Although the assault weapon ban has prevented the gun industry from pumping more

of these killing machines into commerce, terrorists can still obtain assault weapons in circulation before the ban.

- *Congress Should Close the "Parts Kit" Loophole*

Anthrax is not the only terrorist weapon sent through the mail. Congress must close the loophole that allows gun makers to evade federal regulation and sell untraceable assault weapon kits that terrorists and other criminals can purchase by mail and assemble at home. An assault weapon without a serial number is a terrorist's dream.

Conclusion

Since the horror of September 11, the Bush Administration has called on Congress to give it all the necessary authority to protect our citizens from terrorism, yet the anti-terrorism legislation passed at the Administration's request contained not a single provision to prevent terrorists from having access to guns.

The Bush Administration and Congress should act now to strengthen our country's gun laws. Our national security demands it.

Endnotes

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- ² Bureau of Alcohol, Tobacco and Firearms, Following the Gun: Enforcing Federal Laws Against Firearms Traffickers xi (2000).
- ³ Arrest in Oregon – Police: Lebanese Immigrant Had Arsenal, Fake Documents, ABCNews.com, Dec. 12, 2001.
- ⁴ Whether an individual seeking to sell a firearm will be regulated as a federal firearms licensee (FFL) or as a nonlicensee depends on whether that individual is “engaged in the business” of dealing in firearms. When Congress enacted the Gun Control Act of 1968, it did not define the term “engaged in the business” and courts upheld convictions for engaging in the business without a license under a variety of factual circumstances. In the McClure-Volkmer Act of 1986, supported by the NRA, the law was amended to make it clear that the term did not apply to a person “who sells all or part of his personal collection of firearms . . .” 18 U.S.C. § 921(a)(21)(C). According to the Bureau of Alcohol, Tobacco and Firearms and the Justice Department, “the effect of the 1986 amendments has often been to frustrate the prosecution of unlicensed dealers masquerading as collectors or hobbyists but who are really trafficking firearms to felons or other prohibited persons.” Gun Shows, *supra* note 1 at 14. See generally Handgun Control and the Center to Prevent Handgun Violence, The Enforcement Fable: How the NRA Prevented Enforcement of the Nation’s Gun Laws 6-8 (2000).
- ⁵ Even gun manufacturer Smith & Wesson has recognized the special dangers presented by gun shows. In its March 17, 2000 agreement to settle certain of the municipal lawsuits against the gun industry, the company agreed to require its distributors and dealers to “[m]ake no sales at gun shows unless all sales by any seller at the gun show are conducted only upon completion of a background check.” (Emphasis added.) A modified version of this agreement has been entered by the Court as a consent decree in the litigation brought by the City of Boston. See Consent Decree and Final Judgment, City of Boston v. Smith & Wesson Corp., Civil Action No. SUCV1999-02590-C (Mass. Super. Ct. 2001).
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Notes
