

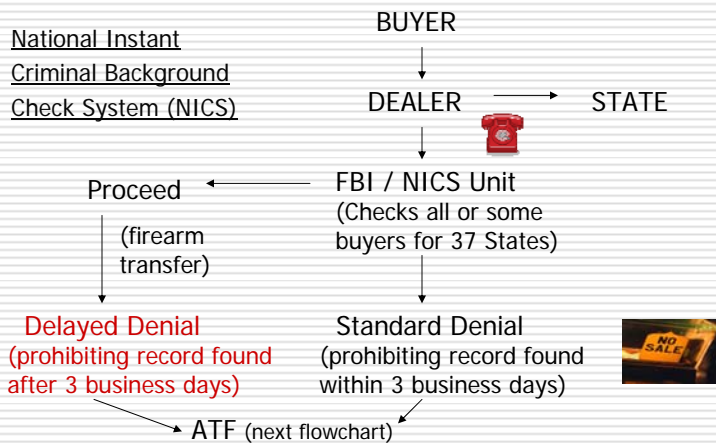
## Enforcement of the Brady Act, 2006

ATF investigations and United States Attorneys' prosecutions of firearm applicants denied by an FBI / NICS check in 2006

(<http://www.ncjrs.gov/pdffiles1/bjs/grants/222474.pdf>)

Ron Frandsen, Regional Justice Information Service (REJIS)

## FBI Firearm Denials: Basic Flowchart



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2

## FBI / NICS Denials, 2006

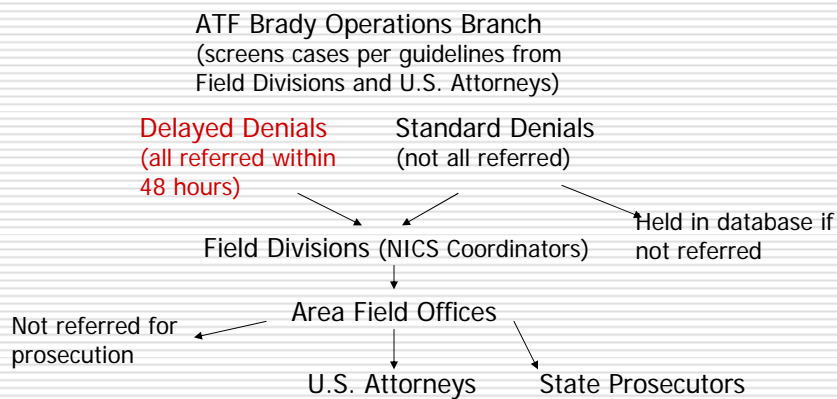
	Number	Percent
Total Denials	<u>69,930</u>	
Reasons for Denial include:		
Felon	25,259	36%
Domestic Violence	6,874	10%
Drug Abuse	6,083	9%
DV Restraining Order	3,034	4%
Illegal / Unlawful Alien	1,109	2%

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3

## ATF Investigations: Basic Flowchart

After referral from FBI / NICS unit:



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4

## **NICS Denials by FBI Referred to ATF Field Divisions in 2006**

	Cases	Percent
FBI referrals to Brady Operations	77,233	100%
Brady Ops referrals to field divisions		
Delayed denials	3,073	4%
Standard referrals	6,359	8%
Total referrals to field*	9,432	12%
Standard - Not referred to field	60,736	79%
Not referred and overturned	7,065	9%

\* Includes 434 denials overturned after referral to field

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5

## **Reasons for Referrals to ATF Field Divisions**

	Cases	Percent
Domestic violence misdemeanor	2,272	24%
Subject to protective order	2,105	22%
Convicted felon	2,053	22%
Under indictment or information	905	10%
Unlawful user of controlled substance	792	8%
Illegal or unlawful alien	763	8%
Other reasons	542	6%
	9,432	100%

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6

## Who received special attention?

Prohibited category	Percent of FBI denials	Percent of referrals to ATF field
Domestic violence misdemeanor	10%	24%
Subject to protective order	4%	22%
Illegal or unlawful alien	2%	8%



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7

## Unlawful Firearm Possession Cases

Outcome of ATF investigation  
(as of October 2007)

	Cases	Percent
Retrieval of a firearm	1,480	57%
Subject not prohibited	793	30%
Unable to locate subject	72	3%
Other outcomes	255	10%
	2,600	100%
Resolved cases	2,528	97%
Unresolved cases	72	3%

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## Retrieval Outcomes

Transfer to third party	728
Return to firearms dealer	620
Seizure by ATF	71
Abandonment by transferee	61
	<hr/>
	1,480



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9

## Cases Closed by ATF Field Offices

Reason for case closure	Number	Percent
Federal / state guidelines not met	3,972	42%
No prosecutive merit	1,929	20%
Closed by supervisor	1,575	17%
Other reasons	1,934	21%
Total*	9,410	100.0%

\*Actual number of cases is lower because some cases are assigned a new number when received by a field office.

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10

## Charges in Cases Referred for Prosecution

Number of Cases - 171

Basis of Charges	Charges	Percent
Federal Laws	267	98%
State Laws	6	2%
Total	273	100%

## Detail of Charges Referred for Prosecution

Federal Charge Definition	Charges	% of All Charges
Falsified information when buying firearms*	125	46%
Possession of firearm by convicted felon	51	19%
Receive/ship/transport firearm after indictment	20	7%
Possess firearm after domestic abuse charge	20	7%
Possess firearm: drug user	11	4%
Other Federal	40	15%
State charges	6	2%
Total	273	100%

\*"Lie and Try" cases

## **Status of Charges Referred for Prosecution**

<u>Status as of October 2007</u>	<u>Charges</u>	<u>Percent</u>
Declined by prosecutor	99	36%
Guilty plea by defendant	70	26%
Dismissed after indictment	49	18%
Pending action by prosecutor	29	11%
Indictment/information/complaint filed	21	8%
Guilty verdict at trial	3	1%
Pretrial diversion	1	--
Unknown	1	--
Total	273	100%

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13

## **Bargaining Chips?**

In 20 Cases:

Charge (or Charges) Dismissed After Indictment

and

Guilty Plea to Another Charge



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## Charges in Guilty Pleas and Verdicts

Charge Definition	Charges	Percent
Falsified information when buying firearms	28	38%
Possession of firearm by convicted felon	19	26%
Possess firearm after domestic abuse charge	8	11%
Receive/ship/transport firearm after indictment	7	10%
Other charges	11	15%
Total	73	100%

## Defendants Guilty at Trial

- ❑ Northern District of Oklahoma - 2 Charges  
Falsified Information When Buying Firearms  
Rec./Ship/Trans. Firearm After Indictment
- ❑ District of Maine - 1 Charge  
Falsified Information When Buying Firearms



## Judicial District Summary

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### Districts with the most unlawful possession cases

Arizona	187
South Carolina	160
Georgia Northern	140
Kansas	118
Louisiana Western	110

### Districts with most cases declined by field offices

Arizona	503
Texas Southern	440
Georgia Northern	427
South Carolina	396
Kentucky Eastern	372

## Judicial District Summary (continued)

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### Districts with the most charges referred for prosecution

Indiana Northern	28
Maine	20
Ohio Northern	17
Georgia Northern	14
South Carolina	11

### Districts with the most charges that resulted in a guilty plea or verdict

Indiana Northern	9
Alabama Southern	6
Iowa Southern, Maine, Oklahoma Northern, South Carolina, Wyoming	all had 4



## **Few prosecutions – does it matter?**

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2006 Cases:

- 77,233 Screened by Brady Operations
- 9,432 Investigated by Field Offices
- 171 Referred to Prosecutors; 273 Charges
- 62 Convictions; 73 Charges (as of 10/07)

BJS-funded study of persons denied by NICS in 1999 found that

- after denial, criminal activity (including firearm arrests) **increased**, which implies that:
- denied persons seek firearms for criminal activities

## **Why so few prosecutions?**

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No conclusive research; possible explanations:

- Retrieving firearms more important (1,480 in 2006)
- ATF lacks adequate resources
- U.S. Attorneys strained by “federalization” of crime
- Hard to prove intent in “lie and try” cases
- Jurors hostile to firearm cases in some places

U.S. Attorney survey being planned

## Contributors

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United States Department of Justice

Records of investigations and prosecutions provided by:  
Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF)  
Brady Operations Branch, Martinsburg, WV

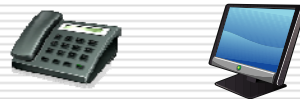
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## Contact Information

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