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Our Out-of-Control Federal Law Enforcement Agencies

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The following is adapted from a talk delivered on July 23, 2024, at Hillsdale College's Blake Center for Faith and Freedom in Somers, Connecticut.

IN MARCH of this year, Bryan Malinowski, the executive director of the Bill and Hillary Clinton National Airport in Little Rock, Arkansas, was killed by agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) during a pre-dawn raid of his home. It was an unwarranted and indefensible killing of a kind that should never, ever happen in a free country like the United States. Because we have a media that no longer serves in its traditional role as a government watchdog, this incident was not widely reported. Because too many members of Congress no longer take seriously their responsibility to protect the rights of those who elect them, the ATF has suffered no repercussions.



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How and why did this killing take place?

Bryan Malinowski grew up as an avid collector of coins and, more recently, firearms. He took to displaying his coin and firearm collections at gun shows, where he would occasionally purchase and sell firearms.

Under federal law, it is perfectly legal to buy and sell firearms as a collector or hobbyist, even without a Federal Firearms License (FFL). An individual doesn't need to obtain an FFL unless he is "engaged in the business" of selling firearms. Congress has defined "engaged in the business" to apply to those who deal in firearms "as a regular course of trade or business with the principal objective of livelihood and profit" as opposed to those who make "occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby."

Malinowski already had a livelihood—indeed, as the executive director of the airport, he was one of the highest paid city employees in Little Rock. Buying or selling firearms was something he did in his spare time. So it makes sense that he did not see the need to obtain a license. At some point, however, the ATF came to the view that Malinowski had crossed over the nebulous line from hobbyist to "engaged in the business" and that he therefore *did* need to obtain an FFL.

Leaving aside the question of whether the ATF was right about this—a moot issue now, given the fact that the ATF

killed him—the obvious thing for the ATF to have done was to contact Malinowski through the mail, by phone, or in person, to inform him that it had determined he needed a license. If it had, he could have decided whether to stop selling firearms or to pay the nominal annual fee of \$65 for an FFL.

But the ATF didn't do the obvious thing and contact Malinowski. Here is what we know happened instead. Multiple undercover ATF agents were sent to observe Malinowski selling firearms at a gun show, a GPS tracker was secretly placed on Malinowski's car, and a search warrant was obtained for his home. Malinowski wasn't home the first time ATF agents showed up to serve the warrant, so the second time they left nothing to chance. Dressed in SWAT gear, together with Little Rock police, they showed up in ten vehicles at Malinowski's house before dawn on March 19. They cut the power to his house and put a piece of tape over the doorbell camera so that Malinowski couldn't see who they were. Less than a minute later, after an exchange of gunfire, Malinowski was dead. And in violation of both ATF and Little Rock police policies requiring body cameras, not one of the law enforcement agents involved in this deadly raid was wearing an activated camera.

After the killing, Malinowski's wife was forcibly taken outside in her nightgown in 34-degree weather and was kept outside for over four hours despite multiple requests to see her husband and use the bathroom. In an audio recording from a police vehicle she can be heard sobbing, asking why they killed her husband, and insisting that the agents must have the wrong house because she and her husband are honest, law-abiding people.

What happened to Bryan Malinowski is not an isolated incident. It is part of a

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growing pattern of KGB-style behavior by U.S. federal law enforcement agencies. Let me mention briefly just a few other cases.

Back during the Trump presidency, Roger Stone, a Republican political consultant since the Nixon era, was targeted by Special Counsel Robert Mueller for obstruction of justice and making false statements regarding the WikiLeaks release of Hillary Clinton's emails. These are non-violent crimes, and the nattily dressed, 72-year-old Stone has given no indication over his long life that he is prone to violence of any kind. But on January 25, 2019, the FBI conducted a pre-dawn raid at Stone's Fort Lauderdale home in a manner befitting a raid on an armed compound of a Mexican drug lord. Nearly 30 heavily armed agents swarmed Stone's home at 6:00 a.m. With guns aimed at his entryway, they pounded on the door until Stone showed up barefoot in his pajamas. Topping things off, there was a boat offshore behind Stone's home manned by armed agents and equipped with floodlights.

In October 2021, pro-life activist Mark Houck and his twelve-year-old son were conducting a weekly prayer vigil near an abortion clinic in Philadelphia. Their standard practice was to hand out literature and, if women were interested, to help them find alternatives to abortion. Bruce Love, a volunteer escort at the facility, began to harass Houck's son using vulgar language. During the ensuing argument, Houck pushed Love and Love fell to the ground. Philadelphia police reviewed the incident and no charges were filed. Love later pressed charges, but the case was reviewed and dismissed. Soon thereafter, Houck received notice that he was the target of a federal grand jury investigation for violating the FACE Act, which prohibits blocking access to abortion clinics. Houck's attorney offered video evidence that Houck had not blocked

access. He also told federal prosecutors that if they insisted on bringing charges, Houck would voluntarily surrender. The FBI ignored the offer, and on September 23, 2022, at 6:30 a.m., roughly two dozen FBI agents and Pennsylvania law enforcement officers showed up at Houck's home in Bucks County, Pennsylvania. Houck's wife and seven children were still sleeping when five agents armed with rifles, tactical gear, and battering rams, began pounding on the door. Additional agents surrounded the property. Houck came to the door and his wife wandered down in her bathrobe. Houck was not allowed to say goodbye to his screaming children. Taken to a federal building, he was belly chained and had his wrists shackled to a table for six hours. Four months later a jury found him not guilty.

Craig Robertson was a 75-year-old Air Force veteran from Provo, Utah, likely demented, who made online threats against elected leaders, including President Biden. Neighbors described Robertson as "barely [able to] get around with a cane." But instead of confronting Robertson on his regular outings to church or to the grocery store, the FBI again decided on a pre-dawn raid. At 6:00 a.m. on August 9, 2023, FBI agents first attempted to break down Robertson's door with a battering ram, then resorted to using an armored vehicle to smash a hole in his house. The FBI claims that Robertson shot at agents before its agents shot and killed him—though the agency has refused to release any bodycam footage. Robertson's body was moved to the sidewalk and left unattended for hours.

Other cases could be cited—including the FBI's unprecedented raid on President Trump's home in Palm Beach, Florida, in which the use of "deadly force" was authorized—but the point is clear enough. Such actions by federal law enforcement agencies go far beyond what is justified by law

and custom in America. The agencies involved respond to criticism by saying that their actions are “by the book.” But this lie, parroted by corporate media, is preposterous on its face. If such a book exists, it represents a radical departure from the historical constraints of constitutional authority and the idea of equality before the law.

I served in the military as a Special Operations sniper and Sniper Team leader in 1st Ranger Battalion. I could have gone on to become a sharpshooter on a police SWAT team or even joined the FBI or one of the other three-letter federal agencies that were widely considered, in the past, to be the cream of the crop in terms of law enforcement. Sadly, they are no longer thought of in the same way.

The flip side of the increasingly thuggish character of these agencies is their diminished effectiveness in fulfilling their core missions, to the point that the American public cannot help but notice. Consider the recent assassination attempt—very nearly successful—on President Trump. The U.S. Secret Service and the FBI are being anything but transparent about their investigations and seem to be going out of their way to make it as difficult as possible for Congress and the public to learn what happened. But the most obvious fact about it, which cannot be covered up, is that the Secret Service allowed a 20-year-old shooter to access the most ideal location for a sniper, even after he had been spotted acting suspiciously and using a laser rangefinder and had been watched for almost 30 minutes. This alone is enough to know the Secret Service that day was more Keystone Cop than cream of the crop.

In closing, let me return to the agency I know best, having a lot of first-hand experience dealing with it—the

ATF. Like all these federal law enforcement agencies, the ATF was created by Congress and is tasked with executing laws passed by Congress. Congress, in turn, represents and acts on behalf of the American people. In this context, the first and most important thing in bringing the ATF and these other agencies back under control is to impress firmly upon them the fact that they are accountable to Congress and are the servants and not the enemies of the American people—and in the case of the ATF, the fact that one of the people it would still be serving, had ATF agents not killed him, is Bryan Malinowski.

Most of the cases in which I have dealt with the ATF have to do with companies that are licensed to sell firearms—companies that have FFLs—and are under threat of losing their license and thus being put out of business. The Gun Control Act of 1968 is the main body of law concerning this, and in 1986 this law was amended to allow the ATF to revoke an FFL only for a “willful” violation of the law. The willfulness standard was added “to ensure that licenses are not revoked for inadvertent errors or technical mistakes.” In recent years, however, the ATF has adopted what it calls a “Zero Tolerance Policy” that flies in the face of the willfulness standard—and therefore in the face of laws passed by Congress on behalf of the American people.

The ATF’s egregious treatment of Point Blank Firearms, a Michigan company that it is trying to put out of business, provides an example of the harm caused by ATF overreach.

During compliance inspections, the ATF is largely concerned with determining three things: if there are any missing firearms, if all the required records have been filled out and kept properly, and if the licensed company is doing its job as the front line of defense against the criminal possession of firearms.

In the case of Point Blank, the ATF makes three claims, one of which amounts to an inadvertent clerical error. The other two are provably false. The first is that Point Blank was missing firearms transaction forms, which, if true, would be serious. These forms are filled out by the purchaser of a firearm and contain information about the gun, the purchaser, and the background check results. They are the only way for the ATF to prove who ended up with a firearm or who possibly lied on the form. But every single form at Point Blank has been accounted for, complete with the customer's signature and background check information.

The second claim is that Point Blank transferred a firearm to someone more than 30 days after his background check was run. Again, if true, this is a violation of the law. However, it has been proven that the firearm was transferred on the very same day as the background check. Yet the Detroit field division of the ATF continues to threaten Point Blank with the loss of its license.

Point Blank is a client of mine, so I understand if you don't take my word on faith. But if you look into it, you will see that the ATF is not only overreaching, but is violating the very rules it requires everyone else to follow. Indeed, of the many ATF inspections I've been a part of, not once have the ATF's records been accurate.

Do you remember Operation Fast and Furious, a program in which the ATF used licensed firearms dealers to funnel thousands of American firearms to Mexican drug cartels? Due to sheer incompetence, most of those firearms were lost and never recovered, and none of the high-level Mexican drug cartel members who ended up with the firearms have been arrested. When U.S.

Border Patrol Agent Brian Terry was killed in a shootout at the border, the weapon that was used to kill him was one of the guns that the ATF intentionally gave to the drug cartels. Needless to say, no heads ever rolled at the ATF as a result.

Another area in which the ATF is violating federal law is in keeping a firearms registry. The Firearms Owners Protection Act passed by Congress in 1986 specifically prohibits the ATF from having an electronic database of firearms and their owners. But Georgia Congressman Andrew Clyde recently visited the ATF records center in West Virginia and discovered that the ATF currently has over 900 million such records scanned and stored electronically.

HOW DO WE REGAIN CONTROL OVER THE ATF AND OTHER FEDERAL LAW ENFORCEMENT AGENCIES? NOT THROUGH CONGRESSIONAL HEARINGS THAT PROVIDE A FORUM FOR POLITICAL SHOWBOATING AND PARTISAN POSTURING AND GO NOWHERE. THE AMERICAN PEOPLE MUST DEMAND THAT CONGRESS EITHER REASSERT ITS AUTHORITY OVER THESE AGENCIES OR ELSE ABOLISH THEM AND START ANEW. IF WE DON'T, BRYAN MALINOWSKI WILL HAVE DIED IN VAIN AND THE REST OF US WILL BE LOOKING OVER OUR SHOULDERS.

So how do we regain control over the ATF and other federal law enforcement agencies? It is not going to happen through congressional hearings that provide a forum for political showboating and partisan posturing and that go nowhere. We the American people must demand that Congress, on our behalf, either reassert its authority over these agencies in a way to make it stick or else abolish the agencies and start anew.

If we don't, Bryan Malinowski will have died in vain and the rest of us, as if we are no longer Americans, will be looking over our shoulders. ■