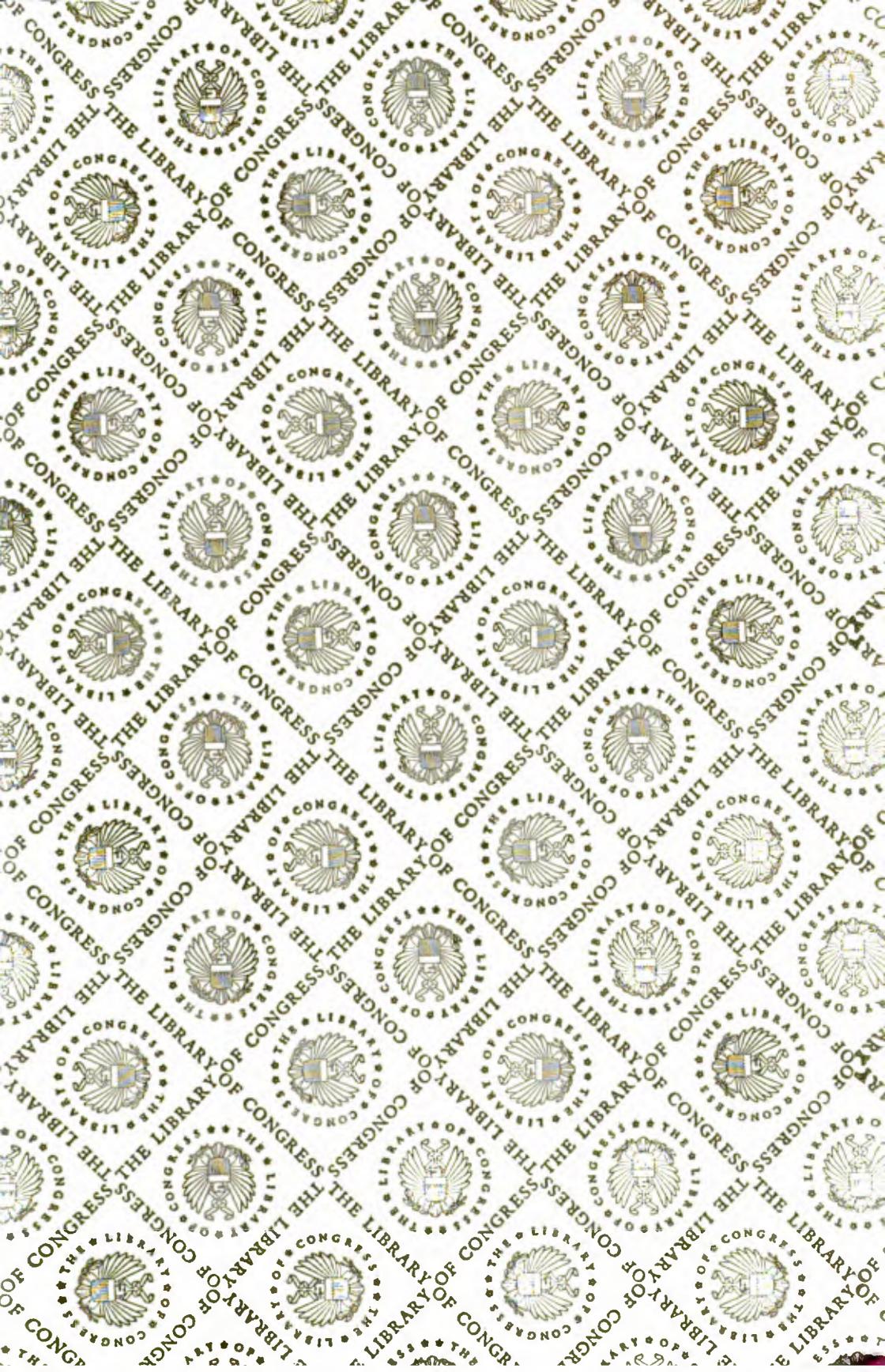


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BRADY HANDGUN VIOLENCE PREVENTION ACT

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HEARING
BEFORE THE
SUBCOMMITTEE ON
CRIME AND CRIMINAL JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

H.R. 7

BRADY HANDGUN VIOLENCE PREVENTION ACT

MARCH 21, 1991

Serial No. 4



Printed for the use of the Committee on the Judiciary

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BRADY HANDGUN VIOLENCE PREVENTION ACT

THURSDAY, MARCH 21, 1991

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:25 a.m., in room 2141, Rayburn House Office Building, Hon. Charles E. Schumer (chairman of the subcommittee) presiding.

Present: Representatives Charles E. Schumer, William J. Hughes, Edward F. Feighan, George E. Sangmeister, Craig A. Washington, Peter Hoagland, F. James Sensenbrenner, Jr., Steven Schiff, Jim Ramstad, Bill McCollum, and George W. Gekas.

Also present: Representative Hamilton Fish, Jr.

Staff present: James Rowe, chief counsel; Debra Diener, assistant counsel; Andrew Fois, assistant counsel; Teresa Faunce, clerk; and Lyle Nirenberg, minority counsel.

Mr. SCHUMER. The hearing will come to order.

Mr. SENSENBRENNER. Mr. Chairman, I ask unanimous consent that pursuant to committee rule 5, we permit the photography telecast and radio broadcast of this hearing.

Mr. SCHUMER. Without objection.

All right. Good morning, everybody.

OPENING STATEMENT OF CHAIRMAN SCHUMER

Mr. SCHUMER. Today's hearing comes at a pivotal time in our history. As war ends in the Middle East, another battle desperately awaits our attention here at home, the war on crime.

Unfortunately, we enter this fight handicapped. Although our veterans deserve to come home to an America where it is safe to walk the streets, as President Bush asserts, they come home instead to an America where buying a handgun is as easy as buying a toothbrush.

The Brady bill, legislation requiring up to a 7-day waiting period for the purchase of a handgun, would change that equation. And as we begin today's hearing, I want to call attention to three of my colleagues who have worked tirelessly on this issue for several years: Bill Hughes, long-time chairman of the Crime Subcommittee and strong advocate of waiting-period legislation; Ed Feighan, the original sponsor of the Brady bill, who was there from the beginning; and Jim Sensenbrenner, the forceful and respected ranking Republican on the subcommittee. I want to thank all of them for their commitment.

Consideration of the Brady bill has always focused on one issue: How important are guns in the war on crime? The gulf war answers that question. The President has analogized that we must fight the war at home with the same zeal and success that we fought the war in the gulf.

But the analogy goes further: Our mission in the gulf was to take away the weapons from the Iraqi enemy. Our first mission at home must be to take the guns away from our criminals, who are every bit the enemy Saddam Hussein's army was. Disarming them will bring us the same success we had in the gulf.

But even as President Bush exhorts law enforcement community to silence the guns here at home, he turns his back on the best silencer there is, the Brady bill. Even John Hinckley, the madman who tried to kill President Reagan and Jim Brady, has said, "If a waiting period was required from the time I attempted to purchase the weapon until the time I did purchase the weapon, I believe I would not have gone forward with the effort to shoot the President of the United States."

Jim Brady is here with his wife, Sarah, to tell us of his experiences on and since that day. We will hear from others who have lost family members to the violence of handguns. We will hear from the law enforcement community and we will hear from those who oppose H.R. 7.

[The bill, H.R. 7, follows:]

102D CONGRESS
1ST SESSION

H. R. 7

To amend title 18, United States Code, to require a waiting period before the purchase of a handgun.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1991

Mr. FEIGHAN (for himself, Mr. HUGHES, Mr. MAZZOLI, Mr. SCHUMER, Mr. SOLARZ, Mr. GREEN of New York, Mr. ANNUNZIO, Mr. TOWNS, Mr. BERMAN, Mr. LEVINE of California, Mr. WYLIE, Mr. EDWARDS of California, Mr. MCHUGH, Mr. SMITH of Florida, Mr. WOLPE, Mr. MOODY, Mr. SHAYS, Mr. MILLER of Washington, Mr. BENNETT, Mr. STARK, Mr. DELLUMS, Mr. SABO, Mr. MARKEY, Mr. LEHMAN of Florida, Mr. STOKES, Mr. HOYER, Mr. GONZALEZ, Mr. ROYBAL, Ms. PELOSI, Mrs. ROUKEMA, Mr. MRAZEK, Mr. SCHEUER, Mr. OWENS of New York, Mr. WEISS, Mr. SERRANO, Mr. TORRICELLI, Mr. CONYERS, Mr. JONES of Georgia, Mr. BORSKI, Mr. PAYNE of New Jersey, Mr. MANTON, Mr. ENGEL, Ms. KAPTUR, Ms. OAKAR, Mr. SAWYER, Mr. LANTOS, Mr. FASCELL, Mr. SYNAR, Mr. EVANS of Illinois, Mr. BOEHLERT, Mr. BEILEN-SON, Mr. HOCHBRUECKNER, Mr. FUSTER, Mr. MATSUI, Mr. JOHNSTON of Florida, Mr. LEWIS of Georgia, Mr. ATKINS, Mr. DE LUGO, Mr. DICKS, Mr. WASHINGTON, Mrs. BOXER, Mr. DWYER of New Jersey, Mr. ROE, Mr. JACOBS, Mr. DONNELLY, Mr. STUDDS, Mr. HYDE, Mr. KENNEDY, Mr. VENTO, Mr. HALL of Ohio, Mr. LENT, Mr. MCDERMOTT, Mr. STOKES, Mr. GOSS, Mr. SENSENBRENNER, Mr. GLICKMAN, Mr. MORAN, Mr. YATES, Mr. PORTER, Mr. BROWN of California, Ms. SLAUGHTER of New York, and Mr. STENHOLM) introduced the following bill; which was referred to the Committee on the Judiciary

APRIL 11, 1991

Additional sponsors: Mr. GIBBONS, Mrs. LOWEY of New York, Mr. MILLER of California, Mr. MAVROULES, Mr. SANGMEISTER, Mr. GEJDENSON, Mr. WAXMAN, Mr. RUSSO, Mr. RANGEL, Mr. FOGLIETTA, Mr. FAZIO, Mr. CARPER, Mr. COUGHLIN, Mr. DOWNEY, Mr. YOUNG of Florida, Mr. KLECZKA, Mr. MFUME, Mr. FAWELL, Mr. LAFALCE, Mr. MCGRATH, Mr. WHEAT, Mr. BONIOR, Mr. LIPINSKI, Ms. MOLINARI, Mr. TRAFICANT, Mr. LEVIN of Michigan, Mr. DURBIN, Mr. CLAY, Mr. MOAKLEY, Mrs. SCHROEDER, Mr. COYNE, Mrs. COLLINS of Illinois, Mr. LEHMAN of California, Mr. PEASE, Mrs. MORELLA, Mr. SKAGGS, Mrs. KENNELLY, Mr. MINETA, Mr. PALLONE, Ms. DELAURO, Ms. NORTON, Mr. ANDREWS of

New Jersey, Mr. ANDREWS of Maine, Mr. GUARINI, Mr. PANETTA, Mr. FORD of Tennessee, Mr. FLAKE, Mr. AUCOIN, Mr. TORRES, Mr. WALSH, Mr. MCMILLEN of Maryland, Mr. REED, Mr. ABERCROMBIE, Mr. BACCHUS, Mr. ACKERMAN, Mr. CAMPBELL of California, Mrs. BENTLEY, Mr. HAYES of Illinois, Mr. ROEMER, Mr. FALCOMAVAEGA, Mr. DIXON, and Mr. HOAGLAND

A BILL

To amend title 18, United States Code, to require a waiting period before the purchase of a handgun.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Brady Handgun Vio-

5 lence Prevention Act”.

6 **SEC. 2. WAITING PERIOD REQUIRED BEFORE PURCHASE**
 7 **OF HANDGUN.**

8 (a) IN GENERAL.—Section 922 of title 18, United
 9 States Code, is amended by adding at the end the fol-
 10 lowing:

11 “(S)(1) It shall be unlawful for any licensed importer,
 12 licensed manufacturer, or licensed dealer to sell, deliver,
 13 or transfer a handgun to an individual who is not licensed
 14 under section 923, unless—

15 “(A) after the most recent proposal of such
 16 transfer by the transferee—

17 “(i) the transferor has—

1 “(I) received from the transferee a
2 statement of the transferee containing the
3 information described in paragraph (3);

4 “(II) verified the identification of the
5 transferee by examining the identification
6 document presented; and

7 “(III) within one day after the trans-
8 feree furnishes the statement, provided a
9 copy of the statement to the chief law en-
10 forcement officer of the place of residence
11 of the transferee; and

12 “(ii)(I) the transferor has received written
13 verification that the chief law enforcement offi-
14 cer has received the statement, 7 days have
15 elapsed from the date the transferee furnished
16 the statement, and the transferor has not re-
17 ceived information from the chief law enforce-
18 ment officer that receipt or possession of the
19 handgun by the transferee would be in violation
20 of Federal, State, or local law; or

21 “(II) the transferor has received notice
22 from the chief law enforcement officer that the
23 officer has no information indicating that re-
24 ceipt or possession of the handgun by the trans-
25 feree would violate Federal, State, or local law;

1 “(B) the transferee has presented to the trans-
2 feror a written statement, issued by the chief law en-
3 forcement officer of the place of residence of the
4 transferee during the 10-day period ending on the
5 date of the most recent proposal of such transfer by
6 the transferee, which states that the transferee re-
7 quires access to a handgun because of a threat to
8 the life of the transferee or of any member of the
9 household of the transferee;

10 “(C)(i) the transferee has presented to the
11 transferor a permit which—

12 “(I) allows the transferee to possess a
13 handgun; and

14 “(II) was issued not more than 5 years
15 earlier by the State in which the transfer is to
16 take place; and

17 “(ii) the law of the State provides that such a
18 permit is to be issued only after an authorized gov-
19 ernment official has verified that the information
20 available to such official does not indicate that pos-
21 session of a handgun by the transferee would be in
22 violation of law;

23 “(D) the law of the State—

24 “(i) prohibits any licensed importer, li-
25 censed manufacturer, or licensed dealer from

1 transferring a handgun to an individual who is
2 not licensed under section 923, before at least
3 7 days have elapsed from the date the trans-
4 feree proposes such transfer; or

5 “(ii) requires that, before any licensed im-
6 porter, licensed manufacturer, or licensed dealer
7 completes the transfer of a handgun to an indi-
8 vidual who is not licensed under section 923, an
9 authorized government official verifies that the
10 information available to such official does not
11 indicate that possession of a handgun by the
12 transferee would be in violation of law; or

13 “(E) the transferor has received a report from
14 any system of felon identification established by the
15 Attorney General pursuant to section 6213(a) of the
16 Anti-Drug Abuse Amendments Act of 1988, that
17 available information does not indicate that posses-
18 sion or receipt of a handgun by the transferee would
19 violate Federal, State, or local law.

20 “(2) Paragraph (1) shall not be interpreted to require
21 any action by a chief law enforcement officer which is not
22 otherwise required.

23 “(3) The statement referred to in paragraph
24 (1)(A)(i)(I) shall contain only—

1 “(A) the name, address, and date of birth ap-
2 pearing on a valid identification document (as de-
3 fined in section 1028(d)(1)) of the transferee con-
4 taining a photograph of the transferee and a de-
5 scription of the identification used;

6 “(B) a statement that transferee—

7 “(i) is not under indictment for, and has
8 not been convicted in any court of, a crime pun-
9 ishable by imprisonment for a term exceeding
10 one year;

11 “(ii) is not a fugitive from justice;

12 “(iii) is not an unlawful user of or addicted
13 to any controlled substance (as defined in sec-
14 tion 102 of the Controlled Substances Act);

15 “(iv) has not been adjudicated as a mental
16 defective or been committed to a mental institu-
17 tion;

18 “(v) is not an alien who is illegally or un-
19 lawfully in the United States;

20 “(vi) has not been discharged from the
21 Armed Forces under dishonorable conditions;
22 and

23 “(vii) is not a person who, having been a
24 citizen of the United States, has renounced
25 such citizenship;

1 “(C) the date the statement is made; and

2 “(D) notice that the transferee intends to ob-
3 tain a handgun from the transferor.

4 “(4) Any transferor of a handgun who, after such
5 transfer, receives a report from a chief law enforcement
6 officer containing information that receipt or possession
7 of the handgun by the transferee violates Federal, State,
8 or local law shall immediately communicate all information
9 the transferor has about the transfer and the transferee
10 to—

11 “(A) the chief law enforcement officer of the
12 place of business of the transferor; and

13 “(B) the chief law enforcement officer of the
14 place of residence of the transferee.

15 “(5) Any transferor who receives information, not
16 otherwise available to the public, in a report under this
17 subsection shall not disclose such information except to
18 the transferee, to law enforcement authorities, or pursuant
19 to the direction of a court of law.

20 “(6)(A) Any transferor who sells, delivers, or other-
21 wise transfers a handgun to a transferee shall retain the
22 copy of the statement of the transferee with respect to
23 the handgun transaction.

24 “(B) Unless the chief law enforcement officer to
25 whom a copy of the statement is sent determines that a

1 transaction would violate Federal, State, or local law, the
2 officer shall, within 30 days after the date the transferee
3 made the statement, destroy the copy and any record con-
4 taining information derived from the statement.

5 “(7) For purposes of this subsection, the term ‘chief
6 law enforcement officer’ means the chief of police, the
7 sheriff, or an equivalent officer, or the designee of any
8 such individual.

9 “(8) This subsection shall not apply to the sale of
10 a firearm in the circumstances described in subsection (c).

11 “(9) The Secretary shall take necessary actions to as-
12 sure that the provisions of this subsection are published
13 and disseminated to dealers and to the public.”.

14 (b) **HANDGUN DEFINED.**—Section 921(a) of such
15 title is amended by adding at the end the following:

16 “(29) The term ‘handgun’ means—

17 “(A) a firearm which has a short stock and is
18 designed to be held and fired by the use of a single
19 hand; and

20 “(B) any combination of parts from which a
21 firearm described in subparagraph (A) can be as-
22 sembled.”.

23 (c) **PENALTY.**—Section 924(a) of such title is
24 amended—

1 (1) in paragraph (1), by striking “(2) or (3)”
2 and inserting “(2), (3), or (4)”; and

3 (2) by adding at the end the following:

4 “(4) Whoever knowingly violates section 922(s) shall
5 be fined not more than \$1,000, imprisoned for not more
6 than one year, or both.”.

7 (d) **EFFECTIVE DATE.**—The amendments made by
8 this Act shall apply to conduct engaged in 90 or more days
9 after the date of the enactment of this Act.

○

Mr. SCHUMER. I welcome dissenting views, but I must say that I am confounded by those who are reluctant to act. We need a waiting period for people to buy handguns, not for approval of the Brady bill. We don't need to wait for more data, in my judgment. We already know 9,000 people were killed by handguns in 1989. We already know that waiting periods work in States like Minnesota, California, New Jersey, Illinois, and Maryland.

We already know that virtually every law enforcement group in the country supports national waiting-period legislation.

What are the arguments against the Brady bill? That it would infringe on State's rights? The bill specifically exempts those States with a 7-day waiting period or which require a background check before gun purchases. That you would be helpless in an emergency? The bill specifically exempts people whose lives are threatened, giving local police the right to clear immediate handgun sales. That it would impose great costs? The bill carries an annual price tag of \$5 million, not even worth comparing to the lives it would save.

In fact, by acknowledging the principle behind the Brady bill, that there should be a check on who buys guns, even the NRA is admitting that not everyone should have a gun and something must be done about it.

The most important evidence, though, is nonempirical. It is the American mood. From the farm to the suburb to the subway station, Americans have had enough. They know that getting rid of guns won't get rid of crime, but they know a good start when they see one. Common sense can't be quelled forever, not even at gunpoint.

That is why Members of Congress are changing their votes. In the weeks ahead, we will see others, in and out of Congress, changing their minds and coming around to the sensibility of the Brady bill.

For that reason, I am confident that 1991 is the year that Congress will meet this challenge. This subcommittee will act early in April, with full Judiciary Committee consideration to follow shortly thereafter. I expect the full House to take up the measure sometime in May. Every good idea has its time. The time for the Brady bill has come.

In conclusion, 9 days from today marks the 10th anniversary of John Hinckley's assassination attempt. Mark it well, for the 11th anniversary will be different. On March 30, 1992, whoever wants to buy a handgun on a whim will have to wait a week. The lives saved in that week will be the best proof that this tremendous effort was worth every minute.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman, and thank you for your very good compliment that you gave in your opening statement.

The time has come to pass the Brady bill. The time has come to pass this bill because it is a reasonable and rational approach to the problem of handguns on the street.

The time has come to pass the Brady bill because the American public is demanding that the Congress of the United States listen to them and represent the overwhelming majority of the American

public, rather than listening to a few narrow-based special interests.

The Gallup poll showed 95 percent support for a 1-week waiting period. A CNN News poll showed 87 percent support, and even more significantly, another poll showed that 85 percent of the gun owners in this country support the principle of a waiting period between the time a handgun is ordered and the time it can be picked up.

I hope that Congress listens to these polls and listens to the overwhelming support for the concept of this legislation that the American public has expressed time and time again. The time has come for Congress to forget about the vituperative attacks that opponents of the Brady bill levy on those who support this needed and necessary legislation. I am living proof that you can stand up to the NRA and get reelected and reelected overwhelmingly.

Shortly before the 1988 election, when this bill was last considered by the House of Representatives, the NRA got out a letter to its membership in the Ninth District of Wisconsin that was the most vituperative letter that I have experienced in the over 22 years that I served in elected public office. There were 11 major misstatements of fact and the conclusion of the NRA's letter is that with Sensenbrenner representing you in Congress, you might as well have Ted Kennedy or Howard Metzenbaum sitting in that seat.

Well, anybody who knows the record of this conservative Republican Member of Congress knows that I am not a Ted Kennedy or a Howard Metzenbaum, but I am someone who looks at each issue on its merits and tries to cast a vote accordingly, representing the best interests of my constituents and the Nation as a whole.

After that letter hit my district, I was reelected with 75 percent of the vote, in a Democratic year in Wisconsin, where Michael Dukakis beat George Bush, and Herbert Kohl beat the Republican nominee for the U.S. Senate for the two major offices on the ballot. I think this clearly shows that if you stand up and represent your people and let your people know that you have done that, special interest lobbying, hate letters, misleading letters can very easily be overcome and a candidate that does that will earn the respect of his constituency, even those who might take a different viewpoint on the legislation at hand.

I hope that more of my colleagues will join me and ignore these kinds of threats of political action and stand up and do what is right when we vote on the Brady bill, and if that happens, it will become law.

Thank you.

Mr. SCHUMER. Mr. Feighan.

Mr. FEIGHAN. Thank you very much, Mr. Chairman, and let me congratulate you on assuming the Chair of this subcommittee and particularly to congratulate and thank you for making the Brady bill the top priority of this subcommittee and to make it the subject of the first hearing of this subcommittee.

As you have so eloquently stated, the passage of the Brady bill is even more than a top priority of members of this subcommittee. It is, in fact, a top priority of the American people. We have evidence of that.

A recent Gallup poll showed us that 95 percent of the American people demand implementation of the Brady bill's 7-day waiting period before the purchase of a handgun. In a 1989 Times CNN poll, we saw results that 87 percent of gun owners in America support the Brady bill. It seems to me that it is time to listen to the American people and make the Brady bill the law of this land.

Our constituents, and not the NRA, which I believe is dramatically out of step with its own membership on this issue, must be the people that we listen to on this issue. They want the Brady bill and they want it now.

From August 7 of last year, when the first American troops were deployed in the gulf, until the cease fire that ended the war in March, 298 Americans died, and during that same period, as astounding as this sounds, 1,266 Americans were murdered in New York alone; 1,242 were murdered in Los Angeles; 482 were murdered in Chicago; and 300 were murdered right here in the Nation's Capital. Most of these victims were murdered with guns.

The Brady bill, I believe, would have prevented some, if not many of these senseless and tragic deaths. The Brady bill has one simple goal, to allow law enforcement to run a background check on potential handgun purchasers to make sure they aren't felons or drug addicts or out and out lunatics. Local police would check their records, and assuming that the purchaser did not fall into one of those categories, he would then receive his handgun. If, however, the would-be purchaser was a criminal or an addict or a lunatic, he would not.

The Brady bill, I think, is simple common sense and that is why I think it has to become law. But there are many people who oppose this commonsense measure. They are the people, led primarily by the National Rifle Association, who have fought virtually every proposal to keep handguns out of the hands of criminals since the battle to curb violent crime in this country began.

Now, this time, they are telling us that they oppose the Brady bill's 7-day waiting period because they have a better idea, an instant background check system. There is only one thing that is wrong with an instant background check system. It won't work.

According to the Attorney General, Dick Thornburgh, a workable instant check system is at least 5 years and hundreds of millions of dollars away. I don't think we can wait 5 years. We don't have certainly the hundreds of millions of dollars to spend immediately.

The NRA knows that and members of this committee must know it. That is why there is no substitute for the Brady bill. Just 2 weeks ago, as the chairman said earlier, President Bush stood in the House Chamber and issued a challenge to Congress to move aggressively on anticrime legislation, to pass an anticrime package within 100 days, and we accept that challenge. We will pass an anticrime package and we will pass the Brady bill within 100 days.

Only then will the President's anticrime package truly be anti-criminal, and only then will our schools and our playgrounds be safe from criminals armed with guns and only then will people, like the heroic Jim and Sarah Brady, and the other victims that we will hear from today, be spared the senseless loss of loved ones. Only then will our job be done.

Thank you very much, Mr. Chairman.

Mr. SCHUMER. Thank you, Mr. Feighan.

Mr. Schiff.

Mr. SCHIFF. First, I want to congratulate you on assuming the chairmanship of this subcommittee.

Mr. Chairman, before arriving in Congress 2 years ago, I devoted a career of 15 years to prosecuting criminals. I did so because although I have not been privileged to meet the families who will testify here today, who have been the victims of violent crime, I have met many like them. I hoped when I got here to transfer my devotion to making people safe to what I could do in Congress.

I must say, though, I have some reservations about H.R. 7, this bill. I want to make it clear that my reservations are because I am not sure that this bill will do what its supporters say it will do, and I am not sure that there won't be unintended negative consequences of enacting it.

I welcome the opportunity to pursue this bill here today, but I want to make it clear that I have no philosophical objection to a background check before the purchase of a firearm; I do not believe that such a background check violates the second amendment to the Constitution or any other constitutional amendment; and I certainly am not in disagreement with the goals of the supporters of this bill and of the speakers who have addressed you before me.

Thank you.

Mr. SCHUMER. Thank you, Mr. Schiff.

Mr. Sangmeister.

Mr. SANGMEISTER. Thank you, Mr. Chairman. I also would like to commend you for making this piece of legislation the first to come before this subcommittee. I can think of no other legislation that will be more important than what we are going to consider here today.

As we all know, handguns play a major role in the occurrence of violent crimes. I could testify to that myself personally as a former prosecutor who has prosecuted many violations involving, of course, handguns. In fact, according to the Bureau of Justice Statistics, handgun crimes represent a full 27 percent of all violent crimes committed by armed offenders. That is an average of about 639,000 violent crimes each year between the years of 1979 and 1987.

In an effort to curb such crimes, the Brady bill would allow local law enforcement officials 7 days to conduct a background check on potential handgun owners, with reasonable exceptions being made for a person whose life is threatened or who presents a recently issued State permit to possess a gun.

Local law enforcement is the party best suited to address the problem of handgun proliferation. Neighborhood police chiefs and officers are familiar with their particular communities and are more likely to identify potential threats than anyone at the Federal level.

We in the Congress often refer to local law enforcement officials as the foot soldiers of the drug and crime war and go on to say they need more resources and latitude to do their job. This has been a staple of President Bush's drug and crime strategy, and I agree with it.

The Brady bill, as I understand it, is a top priority for law enforcement and represents one of the extra tools they need and want as the foot soldiers of this war.

Those who would oppose the Brady bill have argued that since criminals do not buy their guns through legitimate channels, this proposal will not work. In reviewing past hearings, however, all the information is to the contrary. The fact is that more handguns are purchased through legitimate channels than are purchased otherwise.

In past hearings, the former chairman of the Crime Subcommittee, Representative Hughes, cited a study financed by the National Institute of Justice, which revealed that 65 percent of the purchases of handguns by felons were from family and friends and lawful outlets that sold guns.

Most importantly, however, is the fact that we know the Brady bill will work and it will save lives. Again, borrowing some numbers from past hearings, the evidence is overwhelming. In California, where there exists a 15-day waiting period, some 1,200 applicants are deemed ineligible. In New Jersey during the past 19 years, 10,000 convicted felons have been stopped from buying handguns. In Columbus, GA, a 3-day waiting period weeds out two felons a week trying to purchase handguns. Memphis, TN, a 15-day waiting period can catch as many as 50 ineligible applicants in a single month, and yes, it works in my State of Illinois as well.

At the very heart of what makes crime an increasingly important issue, Mr. Chairman, is violent crime and the fear it invokes. The Brady bill and other measures which I feel this subcommittee should address are effective responses to violent crime, and despite existing differences, we must work for their passage.

I welcome all of the distinguished witnesses we will have here today, including Mr. and Mrs. Brady, and again, my thanks to you for moving forward, Mr. Chairman.

Mr. SCHUMER. Thank you, Mr. Sangmeister.

Mr. McCollum is next.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman. I, too, want to welcome you to the chairmanship. I am delighted to serve with you in this Congress.

I do take a different view of the Brady bill than some of my colleagues here this morning do, but not from the basic issue that is involved. I think all of us agree on one thing and that is that we need to reduce the amount of violent crime in the United States and we must do something to reduce the opportunity for felons, who have been convicted, from getting their hands on handguns.

We know that is a problem. It is a serious problem. While only 20 percent—and that is the best estimate of an excellent study done a couple of years ago—only about 20 percent of the felons who do get their hands on a handgun get them through gun dealers, there are still ways that we can work in order to reduce and minimize their opportunity to do this and to capture them when they go into a gun dealer's shop to buy a gun.

The bottom-line difference of where I come down on this, though, doesn't have anything to do with the basic premise. It has to do with the fact that I don't think the Brady bill is necessary, and when something isn't necessary, then it isn't a good idea.

Maybe when this bill was created, a lot of people did not understand there were alternatives or perhaps in the beginning there were not, but today there clearly are. The way that you find out whether somebody is a felon or not in this country, the only way you can do it within any period of time short of 1 month or more, is by going through a process of name check. Now, there are a lot of problems with that and that is why much of the debate has been clouded on this issue, because you can have people who have forged documents when they come in to buy a gun; you can have problems identifying them to be who they say they are. But that is irrelevant to any of the proposed alternatives to Brady, as well as the Brady bill itself.

The only way law enforcement today has, as a practical matter of checking out within this kind of timeframe, 7 days, as to whether somebody is a convicted felon or not who should not be able to buy a handgun, is by using a telephone system check to check through the process, going on the NCIC system, going through whatever other way it is, and checking on a name.

The fact of the matter is that the Virginia experience right here next door to Washington has demonstrated that it can be done in less than 7 minutes in most cases, not 7 days, and that in the worst-case scenarios, you are talking about just a couple of hours.

I don't see the need for 7 days. If you have a red flag put up under the Virginia system, you simply don't sell that person the gun until it is checked out, but there is no reason why everybody who is an American citizen going to buy a gun in a gun dealer's store today needs to wait 7 days in order to be able to acquire that weapon, when it isn't going to do any more good than the check that would be in place and could be in place in a matter of a few minutes or, at the most, a few hours.

So that is my basic problem with the Brady bill, not a misplaced concern over whether we should take these felons off the streets or stop the purchase of whatever handguns are sold over gun dealers' counters, but over the fact that I remain unconvinced—open to somebody to convince me, but right now just absolutely unconvinced that we need 7 days to do this in.

I think there are reasonable alternatives, and I look forward to hearing the testimony about some of those today, as well as hearing from the authors.

Thank you very much, Mr. Chairman.

Mr. SCHUMER. Thank you, Mr. McCollum.

Mr. Gekas.

Mr. GEKAS. I thank the Chair.

Everyone in this room, and beyond, has an enormous respect for Mr. and Mrs. Brady and the cause which they have undertaken, a heart-felt one and one in which they have committed their lives, really, and their friends' help and the help of many across the country; and, their goal, as the gentleman from Florida has stated, is one which we share: The elimination of the use of guns in our society for criminal purposes.

But I, too, feel that we must not get caught up in the emotion of what everyone says we must do; that is, eliminate the gun-wielder in our society with a set of principles or statutes that may be more harmful than helpful.

The two basic elements which I personally, and which we must all examine as we proceed in the consideration of this legislation is whether or not the Brady bill, as we call it, really does the job. Is the state of the records on which the Brady bill is going to ultimately have to rely—is the state of the availability of records of individuals who should be covered or will be or are intended to be covered by the Brady bill—is it in such a shape that reasonable reliance can be made upon such lists, such availability of our criteria? We think not.

If that is the case, then we must do something to make sure before we adopt the Brady bill that it is going to work in that regard.

The second is, and I believe that the evidence is overwhelming, that a substantial majority of the cases—perhaps 90 percent of the cases involving the use of handguns in the perpetration of crimes are perpetrated by individuals who obtained possession of that weapon through means other than a lawful application and process at the establishment of a gun dealer. Where did those guns come from?

They came from illegal sources; and, in the underground and underworld with which we have to deal, the only lesson that can be learned by those elements of our society is the swift and terrible consequences of mandatory sentences and the full force of law enforcement to put them out of society's way by the sentences which, more and more, are showing that we are able to deal with and are going to have even more resources to deal with, those kinds of offenders.

So we must keep those particular elements of this entire issue in mind as we proceed.

I, too, decry any vituperation that might creep into the due deliberations of this committee and the full committee, but I must say that there is a dose of vituperation that comes from people who criticize those of us who want to carefully analyze the bill. So maybe we can have a vituperation here today and begin the solid and reasonable consideration of the legislation.

Thank you, Mr. Chairman.

Mr. SCHUMER. I thank the gentleman from Pennsylvania.

Any opening statements from other members?

Then let me call the first panel. Mr. McNulty, Mr. Dillingham, and Mr. Kurre. While they are taking their seats, I would like to acknowledge the presence of law enforcement officers from jurisdictions all over the region in the audience, including the Washington Metropolitan Police Department, the Prince George County Police Department, the Baltimore County Police Department, Alexandria Police Department and others. These officers have come on their own time to express their support for the Brady bill. We welcome them and very much appreciate them being here.

Our first witness on this panel is Paul J. McNulty. He is the Acting Director of the Office of Policy Development in the Department of Justice. Mr. McNulty has been serving as the Deputy Director of that Office since 1990 and he is no stranger to many of us, as we remember his hard work, diligence, and intelligence as minority counsel to the subcommittee from 1987 to 1990.

Mr. McNulty's experience includes the years he spent as Director of the Office of Government Affairs for the Legal Services Corporation and as counsel for the Government on Standards of Official Conduct for the House, and we are delighted to have Mr. McNulty back with us today.

He is accompanied by Steven Dillingham, the Director of the Bureau of Justice Statistics. Before assuming his present position, Dr. Dillingham served as the Department's Deputy Director in the Bureau of Justice Statistics and as the Acting Deputy Director for the Office of Victims of Crime.

Also on our panel is Dennis Kurre, the Deputy Assistant Director of the FBI's Identification Division. Mr. Kurre has been with the FBI for 22 years, having begun as a special agent in 1969. He served the FBI in numerous supervisory and field positions before joining the Identification Division as an Assistant Section Chief.

Since Virgil Young, of the FBI is not at the panel, we will just read Mr. Young's qualifications into the record.

Gentlemen, we want to welcome you to the Subcommittee on Crime and Criminal Justice. We have received your written statements, which, without objection, will be entered into the record, and you may proceed, Mr. McNulty, with your allotted time as you wish.

STATEMENT OF PAUL J. McNULTY, ACTING DIRECTOR, OFFICE OF POLICY DEVELOPMENT, DEPARTMENT OF JUSTICE, ACCOMPANIED BY STEVEN DILLINGHAM, DIRECTOR, BUREAU OF JUSTICE STATISTICS, AND DENNIS G. KURRE, DEPUTY ASSISTANT DIRECTOR, IDENTIFICATION DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. McNULTY. Thank you very much, Mr. Chairman. It is a pleasure for me to be here today, and before I begin with my formal remarks, I would like to give a special greeting to Mr. McCollum, my former boss, and Mr. Fish, also, and I also want to greet Mr. Feighan, who has worked so hard on this legislation and for whom I have a great deal of respect. Thank you, Mr. Chairman, for the privilege of being here.

I am pleased to be here today to present the views of the Department of Justice on H.R. 7, a bill that would amend title 18 of the United States Code to require a 7-day waiting period before the purchase of a handgun. As you have said already, Mr. Chairman, I have Mr. Kurre, from the FBI, and Dr. Steven Dillingham, from the Bureau of Justice Statistics, with me today.

At the outset of my remarks, Mr. Chairman, I wish to express my respect for the work of this subcommittee. This hearing is a demonstration of your concern for the tragic consequences of fire-arm violence. As a former counsel to the Subcommittee on Crime, I was well acquainted with the sincere convictions of the members of that panel and I am certain that this tradition of care will be continued by you, Mr. Chairman, as you work on this difficult issue.

I also want to state clearly that the Department of Justice considers the threat posed by armed violent offenders to be one of its highest law enforcement priorities. In recent years, the Department has brought an increasing amount of its resources to bear on

the scourge of firearm violence. Congress has given us excellent tools for this effort.

The Armed Career Criminal Act and the mandatory penalties for using a firearm in a crime of violence or a drug trafficking offense are the most noteworthy of these tools. With these tough penalties, Federal prosecutors have been able to incarcerate and incapacitate dangerous gun predators who, if left on the streets, would certainly kill again.

Over the past 2 years, more than 2,500 offenders have been charged under the mandatory penalty for using a firearm in the course of a violent crime, 18 U.S.C. 924(c), and another 1,000 such cases are pending.

As you are well aware, Mr. Chairman, the President and the Attorney General are looking to expand these tools to continue this critical effort. The recently transmitted Comprehensive Violent Crime Control Act of 1991 includes many vitally important firearms offenses and penalties. Among others, the bill calls for new mandatory penalties for possession of a firearm by a dangerous felon, the possession of a gun during a crime of violence, and the stealing of a firearm or explosive.

In our view, the use of severe Federal penalties is the most direct form of gun control since it targets the violent offender. Studies clearly show that violent recidivistic offenders commit a disproportionately large number of crimes. As long as such criminals are free to engage in their life-threatening behavior, the carnage they bring will not end.

Unfortunately, limitations on the lawful availability to acquire a firearm will not stop them. The only certain way to control their use of guns is to control them.

The Department looks forward to working with this subcommittee to achieve passage of these amendments.

With regard to H.R. 7, the Department commends the goal of its sponsors to keep handguns away from felons. However, after a careful examination of the facts related to this proposal, the Department must unfortunately conclude that H.R. 7 will not achieve this goal. This conclusion is based on the following two factors: (1) That the consistent identification of felons is impossible at this time, given the quality of this Nation's criminal history records; and, (2) that the large majority of dangerous felons do not obtain their firearms from licensed dealers.

When these two realities are combined with the fact that the Attorney General is already required under current law to establish a national point-of-sale identification system to identify felons attempting to purchase all types of firearms, and that there is a great deal of activity on the State level in this regard, the Department's position on this bill becomes clear. We oppose H.R. 7.

As you know, Mr. Chairman, in 1988, a bill similar to H.R. 7 was rejected on the House floor for a substitute amendment offered by Mr. McCollum. The McCollum amendment, which was included in the 1988 drug bill, directed the Attorney General to establish a system for the immediate and accurate identification of felons attempting to purchase firearms.

In early 1989, Attorney General Thornburgh created a task force to study this issue and to report to him on the availability of vari-

ous options to identify felons. The task force finished its work in October of that year. While there has been considerable criticism by the opponents of the McCollum amendment about the cost of only one of several options identified by the task force; that is, the electronic transmission of fingerprints from the dealer to the FBI, the report provides a valuable review of the problems with Federal and State criminal history records and a wide range of point-of-purchase identification options.

In his letter of November 20, 1989, forwarding the report to Congress, the Attorney General recommended a program to enhance efforts to improve criminal history record information and to endeavor to reduce the sale of firearms to convicted felons.

The first recommendation was the implementation of a point-of-sale system with a preference based upon available technology for touch-tone telephone access by gun dealers to disqualifying information. The Attorney General, in recommending such a system, emphasized the need to take steps to protect the integrity of criminal records and to prevent abuse of these records.

Second, the Attorney General directed the FBI to establish a complete and automated data base of felons who are prohibited from purchasing firearms. The Attorney General recognized that this data base could not be created overnight and that significant efforts and expenditures on the part of both the States and the FBI would be needed.

To facilitate this effort, the FBI and the Bureau of Justice Statistics [BJS] were directed to develop voluntary reporting standards for State and local law enforcement. These standards emphasize enhanced recordkeeping for all arrests within the last 5 years and for the identification of convicted felons.

BJS also was directed to undertake a comprehensive study of the status of State criminal history reporting systems. Additionally, the Bureau of Justice Assistance [BJA] will be devoting 9 million in each of the next 3 years to fund grants to States to improve criminal history record information, to identify convicted felons and to comply with the voluntary reporting standards.

BJS is administering this program in collaboration with the funding agency, BJA.

Third, the Department has initiated a program to enhance FBI criminal history files by eliminating significant current arrests and disposition backlogs and by automating the records of active criminals who are part of the 8.8 million individuals whose records are currently being maintained manually. The FBI has established a plan for recruiting, hiring and training additional personnel to staff a satellite office to begin the manual record automation project.

The administration has endorsed and supported this effort by approving an FBI budget request in fiscal year 1992 for additional resources.

Finally, the Attorney General directed the FBI to continue to monitor the advances being made in biometric identification technology, which will permit more accurate identification of individuals based upon unique characteristics such as the live scanning of fingerprints and digitizing the data for transmission.

Since Federal and State criminal history records are the backbone of all felon-identification efforts, I wish to provide a thorough explanation of this issue. Presently, the only way to examine State and Federal criminal history records, either under a point-of-sale approach, or within a 7-day period of time, is to do a name-based computer search through law enforcement telecommunications systems.

Such a search would have to be conducted without fingerprint identification. As the Attorney General's 1989 task force noted, without fingerprint identification, some law-abiding citizens will be falsely identified as persons who have criminal records. The task force cited estimates from the FBI indicating that approximately 50 percent of the cases in which persons appear to have a criminal history record based upon an initial name search are eventually found to be false hits.

Conversely, it is likely that some purchasers with criminal records will go unidentified as they use fictitious information. In short, name searches are not as accurate as fingerprint identifications. Moreover, criminal history records are kept at three different levels of government: By operational law enforcements, such as police departments, by State identification bureaus and by the FBI.

When a local police department wants to conduct a thorough criminal history check, it can access State and Federal records through telecommunication systems such as NCIC and the National Law Enforcement and Telecommunications System. But not all criminal history records are automated. For example, a 1989 survey revealed that presently, only 10 of the 50 States had all their records fully automated and that, overall, the States had only 60 percent of their total records automated.

At the FBI, of the approximately 26 million criminal history records, slightly more than 54 percent are fully automated, and an additional 33 percent are considered partially automated because the person's name, but not criminal history, is in an automated name index.

In addition, where an automated record system exists, the disposition of a particular prosecution against a person is often missing. State and Federal records may show an arrest, but they may not show whether the person was convicted. If they do show a conviction, it may not be clear whether the conviction was for a felony.

A record may show, for example, that a person was arrested for aggravated assault and was subsequently sentenced to 9 months' imprisonment, but there would be no way to tell if the person was actually convicted of a crime punishable by imprisonment for more than 1 year or whether, for instance, he pleaded guilty to a lesser charge carrying only a misdemeanor-level punishment.

The task force concluded that based on the combination of partial automation of criminal history records and underreporting of convictions, it is reasonable to estimate that nationwide, the records of approximately 40 to 60 percent or more of felony convictions are not currently available in automated form and thus not immediately accessible by law enforcement authorities.

It is obvious, Mr. Chairman, that the upgrading of State and Federal records is absolutely necessary for all felon identification needs. The Department, therefore, has embarked upon the most

significant and comprehensive program ever undertaken to accomplish this goal. My associates from the FBI and the BJS can explain our efforts in more detail, but we plan to spend over \$12 million in fiscal year 1992 to clear up backlogs in the FBI criminal files so that they include the latest output from State criminal records and to convert some of the partially automated files to fully automated.

Because the FBI records are dependent on State records, we are allotting \$27 million through Federal grants over 3 fiscal years that started in 1990 to State law enforcement agencies to improve their criminal records. In addition, beginning in fiscal year 1992, and pursuant to the 1990 crime bill, BJA, in consultation with BJS, will ensure that 5 percent of formula grant moneys awarded to the States will be available for the purpose of improving State and local criminal records unless no such need is demonstrated and a waiver is granted. This funding is expected to total approximately \$20 million per year.

As I mentioned earlier in my summary statement of the Department's view, Mr. Chairman, the merits of H.R. 7 must be judged in connection with the practices of violent felons, as well as the ability to identify such persons. There can be no dispute with the fact that the most dangerous felons acquire firearms from unlawful sources. Felons, by definition, are lawbreakers.

A 1985 study, commissioned by the National Institute of Justice, clearly affirms this truth. That study, conducted by Profs. James Wright and Peter Rossi, concludes that only one out of every six incarcerated felons obtained handguns from licensed gun dealers.

Furthermore, the Department has seen nothing to indicate that a felon who attempts to buy a firearm from a licensed dealer and is denied the firearm through an identification system or has to wait 7 days to obtain it will turn away from his intended course of violent behavior. Perhaps the only way we could be certain of such a result is if the felon who attempts to purchase was arrested and immediately incarcerated for the attempted act. Given the already overburdened status of law enforcement agencies, such followup is quite difficult.

The allocation of limited resources is a major challenge for all levels of law enforcement. The Department believes that it is primarily through the focusing of resources on the apprehension and certain punishment of violent criminals that the civil government can best contribute to the safety of neighborhoods and communities.

Nevertheless, if the Department is going to devote its resources to an identification program, the point-of-sale approach is preferable. Since November 1, 1989, Virginia has been operating a point-of-sale approval system requiring felon checks for persons desiring to purchase firearms within the State. The Virginia system is a point-of-sale approval system using the telephone check. The system requires the gun dealer to call the State identification bureau with specific identification information, name, sex, race and date of birth, regarding the prospective purchaser. While the dealer remains on the line, a name check is made against the felony data base. It is also made against the State's CCH file and

the FBI's NCIC wanted files. If there is a hit, the dealer is advised that the sale is prohibited.

The average time for this check is reported to be less than 2 minutes, but it is important to note that more than 418,000, 56 percent, of Virginia's 744,000 criminal history records, and all of their master name index are automated. More than 86 percent of all their records have disposition data and more than 95 percent of arrests in the past 5 years have disposition data.

The Virginia approach is being replicated in Delaware and Florida. Representatives from six other States have reviewed this program for possible implementation in their States. The feasibility of this program makes it a preferable option for performing background checks of firearms purchasers.

Again, it must be emphasized that the desirability of the point-of-sale system is that it involves instant background checks that are just as reliable as those performed during a 7-day waiting period. Both identification systems are dependent upon the same criminal history records.

Furthermore, since implementation of the national point-of-sale system requires States to voluntarily cooperate with the FBI, the McCollum amendment does not mandate firearm dealer or State participation. A successful implementation effort by the Department will result in long-term benefits by dramatically improving the quality of State criminal history records.

Again, Mr. Chairman, I appreciate the opportunity to be here today to express the Department's view on this important issue. Consideration of H.R. 7 will involve an enormous effort for the Congress and I greatly respect your dedication to this matter.

I would be most willing to answer your questions.

Mr. SCHUMER. Thank you, Mr. McNulty.

[The prepared statement of Mr. McNulty follows:]

PREPARED STATEMENT OF PAUL J. McNULTY, ACTING DIRECTOR, OFFICE OF POLICY
DEVELOPMENT, DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Subcommittee, I am pleased to be here today to present the views of the Department of Justice on H.R. 7, a bill that would amend title 18 of the United States Code to require a seven-day waiting period before the purchase of a handgun. With me is Mr. Dennis Kurre, Deputy Assistant Director of the FBI's Identification Division, and Dr. Steven D. Dillingham, Director of the Bureau of Justice Statistics.

At the outset of my remarks, I wish to express my respect for the work of this Subcommittee. This hearing is a demonstration of your concern for the tragic consequences of firearm violence. As a former counsel of the Subcommittee on Crime, I was well acquainted with the sincere convictions of the Members on that panel, and I am certain that this tradition of care will be continued by you, Mr. Chairman, as you work on this difficult issue.

I also want to state clearly that the Department of Justice considers the threat posed by armed violent offenders to be one of its highest law enforcement priorities. In recent years, the Department has brought an increasing amount of its resources to bear on the scourge of firearm violence. The Congress has given us excellent tools for this effort. The Armed Career Criminal Act (18 U.S.C. 924(e)) and the mandatory penalties for using a firearm in a crime of violence or drug trafficking offense (18 U.S.C. (924(c)) are the most noteworthy of these tools. With these tough penalties, federal prosecutors have been able to incapacitate

dangerous gun predators who, if left on the streets, would certainly kill again. Over the past two years, more than 2,500 offenders have been charged under section 924(c). Another thousand such cases are pending.

As you are well aware, Mr. Chairman, the President and the Attorney General are looking to expand these tools to continue this critical effort. The recently transmitted Comprehensive Violent Crime Control Act of 1991 includes many vitally important firearms offenses and penalties. Among others, the bill calls for new mandatory penalties for possession of a firearm by a dangerous felon, the possession of a gun during a violent crime, and the stealing of a firearm or explosive.

In our view, the use of severe federal penalties is the most direct form of gun control since it targets the violent offender. Studies clearly show that violent recidivistic offenders commit a disproportionately large number of crimes. As long as such criminals are free to engage in their life-threatening behavior, the carnage they bring will not end. Unfortunately, limitations on the lawful availability to acquire a firearm will not stop them. The only certain way to control their use of guns is to control them. The Department looks forward to working with this Subcommittee to achieve passage of these amendments.

With regard to H.R. 7, the Department commends the goal of its sponsors--to keep handguns away from felons. However, after a careful examination of the facts related to this proposal, the Department must unfortunately conclude that H.R. 7 will not achieve

this goal. This conclusion is based on the following two factors: 1) that the state of this Nation's criminal history records is not such that consistent identification of felons is possible at this time; and 2) that the large majority of dangerous felons do not obtain their firearms from licensed dealers. When these two realities are combined with the fact that the Attorney General is already required under current law to establish a national point-of-sale identification system to identify felons attempting to purchase all types of firearms, and that there is a great deal of activity on the state level in this regard, the Department's position on this bill becomes clear. We oppose H.R. 7.

Before I expand upon this position, I will briefly summarize the content of H.R. 7. This bill would add a new subsection 922(s) to title 18 of the United States Code making it unlawful for a licensed firearms importer, manufacturer, or dealer to sell or otherwise transfer a handgun to another person who is not a firearms licensee, unless one of five conditions is met.

The first and most likely condition is that the firearms dealer receives from the prospective customer a statement containing the customer's name, address, and date of birth as they appear on a valid identification document, such as a driver's license, and a statement that the customer is not within one of the seven classes of persons prohibited from possessing firearms under 18 U.S.C. 922(g), which includes persons who have been convicted of a crime punishable by imprisonment for a term exceeding one year

and persons under indictment for such a crime.¹

The dealer would then be required to verify the identification of the customer by examining his or her identification document. Then, within one day, the dealer would have to furnish a copy of the statement of the customer to the chief law enforcement officer of the place of residence of the customer. The dealer would have to receive written notice that the chief law enforcement officer had received the statement. Next, seven days would have to elapse before the sale was consummated if the dealer had no word from the chief law enforcement officer. If the dealer received notice from the law enforcement officer that the police have no information indicating that the receipt or possession of the weapon would be illegal, the sale could be made in less than seven days. If, on the other hand, the dealer received word that the receipt or possession would be illegal, the sale would not be made at all.

The four other conditions under which a transfer may occur do not involve a waiting period of seven days. These conditions would allow an "on the spot" transfer if:

- (1) the customer presented the dealer with a statement issued by the chief law enforcement officer of the customer's place of residence within the last ten days indicating the customer requires the handgun because of a threat to his life or to any member of his household;
- (2) the customer presents to the dealer a permit, issued

¹The inclusion of persons under indictment for felonies is due to the proscription in 18 U.S.C. 922(n) against the receipt of firearms by persons in this class.

in the past five years by the State in which the sale is to take place, which must be the State of residence of the customer, authorizing the customer to have a handgun, provided State law allows the issuing of a permit only after government verification that there is no available information indicating the possession of the handgun would be illegal;

(3) State law requires at least a seven-day waiting period or requires that a State official verify that available information does not indicate that possession of the firearm would be illegal; or

(4) the dealer has received a report from any system of felon identification established by the Attorney General pursuant to section 6213(a) of the Anti-Drug Abuse Act of 1988, that available information does not indicate that possession or receipt of a handgun by the transferee would violate Federal, State, or local law.

The import of this last provision is that the seven-day waiting period would not apply if a national felon identification system were established and such a system furnished information to the dealer indicating that the customer was not under a firearms possession disability.

As you know, Mr. Chairman, in 1988 a bill similar to H.R. 7 was rejected on the House floor for a substitute amendment offered by Mr. McCollum. The McCollum Amendment, which was included in the 1988 drug bill, directed the Attorney General to establish a system for the immediate and accurate identification of felons attempting

to purchase firearms. In early 1989, Attorney General Thornburgh created a task force to study this issue and to report to him on the available options. The Task Force finished its work in October of that year. While there has been considerable criticism by the opponents of the McCollum Amendment about the cost of only one of several options identified by the Task Force (electronic transmissions of fingerprints from dealers to the FBI), the report provides a valuable review of the problems with federal and State criminal history records and a wide range of point-of-purchase identification options.

In his letter of November 20, 1989, forwarding the report to Congress, the Attorney General recommended a program to enhance efforts to improve criminal history record information and to endeavor to reduce the sale of firearms to convicted felons.

The first recommendation was the implementation of a point-of-sale system with a preference, based upon available technology, for touch-tone telephone access by gun dealers to disqualifying information (Option A2). The Attorney General, in recommending such a system, emphasized the need to "take steps to protect the integrity of criminal records and to prevent abuse of these records."

Second, the Attorney General directed the FBI to establish a complete and automated database of felons who are prohibited from purchasing firearms. The Attorney General recognized that this database could not be created overnight and that significant efforts and expenditures on the part of both the States and the FBI

would be needed. To facilitate this effort, the FBI and the Bureau of Justice Statistics (BJS) were directed to develop voluntary reporting standards for State and local law enforcement. These standards emphasize enhanced recordkeeping for all arrests within the last five years and for the identification of convicted felons. BJS also was directed to undertake a comprehensive study of the status of State criminal history reporting systems. Additionally, the Bureau of Justice Assistance (BJA) will be devoting \$9 million in each of the next three years to fund grants to States to improve criminal history record information, to identify convicted felons, and to comply with the voluntary reporting standards. BJS is administering this program in collaboration with the funding agency, BJA.

Third, the Department has initiated a program to enhance FBI criminal history files by eliminating significant current arrest and disposition backlogs and by automating the records of active criminals, who are part of the 8.8 million individuals whose records are currently being maintained manually. The FBI has established a plan for recruiting, hiring, and training additional personnel to staff a satellite office in March 1991 to begin the manual record automation project. The Administration has endorsed and supported this effort by approving an FBI budget request in Fiscal Year 1992 for additional resources.

Finally, the Attorney General directed the FBI to continue to monitor the advances being made in biometric identification technology which will permit more accurate identification of

individuals based upon unique characteristics, such as the live scanning of fingerprints and digitizing the data for transmission.

Since federal and State criminal history records are the backbone of all felon identification efforts, I wish to provide a thorough explanation of this issue. Presently, the only way to examine State and federal criminal history records, either under a point-of-sale approach or within a seven-day period of time, is to do a name-based computer search through law enforcement telecommunications systems. Such a search would have to be conducted without fingerprint identification. As the Attorney General's 1989 Task Force noted, without fingerprint identification some law-abiding citizens will be falsely identified as persons who have criminal records. The Task Force cited estimates from the FBI indicating that approximately 50% of the cases in which persons appear to have a criminal history record based upon an initial name search are eventually found to be false hits. Conversely, it is likely that some purchasers with criminal records will go unidentified if they used factitious information. In short, name searches are not as accurate as fingerprint identifications.

Moreover, criminal history records are kept at three different levels of government: by operational law enforcement such as police departments; by State identification bureaus, and by the FBI. When a local police department wants to conduct a thorough criminal history check, it can access State and federal records through telecommunications systems such as NCIC and the National Law

Enforcement Telecommunications System (NLETS). But not all criminal history records are automated. For example, a 1989 survey revealed that presently only ten of the fifty States had all their records fully automated, and that overall the States had only 60% of their total records automated.² At the FBI, of the approximately 26 million criminal history records, slightly more than 54 percent are fully automated, and an additional 33 percent are considered partially automated because the person's name -- but not criminal history -- is in an automated name index.

In addition, where an automated records system exists, the disposition of a particular prosecution against a person is often missing. State and federal records may show an arrest, but they may not show whether the person was convicted. If they do show a conviction, it may not be clear whether the conviction was for a felony. A record may show, for example, that a person was arrested for aggravated assault and was subsequently sentenced to nine months imprisonment. But there would be no way to tell if the person was actually convicted of a crime punishable by imprisonment for more than one year or whether, for instance, he pleaded guilty to a lesser charge carrying only a misdemeanor level punishment.

The Task Force concluded that based on the combination of partial automation of criminal history records and underreporting of convictions, it is reasonable to estimate that nationwide the

²See Survey of Criminal History Information Systems, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, March, 1991, pp. 1 and 11. The ten States with fully automated systems are Colorado, Georgia, Hawaii, Idaho, Michigan, Montana, Nevada, Oregon, Rhode Island, and Washington.

records of approximately 40-60% or more of felony convictions are not currently available in automated form and thus not immediately accessible by law enforcement authorities.

It is obvious, Mr. Chairman, that the upgrading of State and federal records is absolutely necessary for all felon identification needs. The Department, therefore, has embarked upon the most significant and comprehensive program ever undertaken to accomplish this goal. My associates from the FBI and BJS can explain our efforts in more detail, but we plan to spend over \$12 million in Fiscal Year 1992 to clear up backlogs in the FBI criminal files, so that they include the latest output from State criminal records, and to convert some of the partially automated files to fully automated.

Because the FBI records are dependent on State records, we are allotting \$27 million through Federal grants over three fiscal years that started in Fiscal Year 1990 to State law enforcement agencies to improve their criminal records. In addition, beginning in Fiscal Year 1992, the BJA, in consultation with BJS, will ensure that five percent of formula grant monies awarded to the States will be available for the purpose of improving State and local criminal records, unless no such need is demonstrated and a waiver is granted. This funding is expected to total approximately \$20 million per year.

It may be helpful for me to briefly describe how BJS is administering the Criminal History Records Improvements program. As I have already mentioned, the Attorney General directed that \$9

million be allocated in each of the three years beginning in Fiscal Year 1990 for this effort. By the end of fiscal year 1990, a total of \$6.3 million from the first year allocation had been awarded to 18 states. So far in fiscal year 1991 BJS has awarded more than \$2.4 million to 8 additional states. Applications requesting an additional \$1.3 million are currently being processed. (See attachment for listing of States and grant amounts.)

The major activities being undertaken by the States include "flagging" felony conviction records, increasing the level of systems automation, improving systems for disposition reporting, and initiating criminal history records audit activities. Many states such as Arkansas, Florida, and Georgia are using federal funds to enter case dispositions while developing new systems and procedures to prevent future backlogs. Other States are developing electronic interfaces between State criminal record systems and State or county courts to automatically exchange information. These systems are designed to increase data quality and timeliness and to prevent duplicate data entry. Iowa, for example, plans to interface computerized criminal history records with both court and corrections data. Two States, Maryland and Massachusetts, are developing a strategy to tie automated fingerprint systems to the central repository. All CHRI participants will conduct a data quality assessment or audit to identify limitations and improvements in their systems. Furthermore, the results of these activities will be evaluated and progress will be measured over time. To accomplish this, BJA will fund an evaluation of the CHRI

program beginning in Fiscal Year 1991.

For purposes of identifying existing problems associated with State data quality and establishing a base with which to measure progress, the Attorney General directed BJS to undertake a comprehensive survey of State criminal history repositories to determine levels of automation, record completeness, felony identification capabilities and other related factors. The 50-State survey, conducted by SEARCH Group, Inc. (SGI), was released two weeks ago at the Attorney General's Crime Summit. BJS also managed a feasibility study to identify persons, other than felons, ineligible to purchase firearms. In addition, the FBI in conjunction with BJS issued voluntary reporting standards on February 13, 1991. The announcement for this fiscal year of the continuation of the CHRI program has been recently published in the Federal Register (March 15, 1991) and individual copies of the announcement have been released with a cover letter encouraging wider participation by the States.

As I mentioned earlier in my summary statement of the Department's view, the merits of H.R. 7 must be judged in connection with the practices of violent felons as well as the ability to identify such persons. There can be no dispute with the fact that most dangerous felons acquire firearms from unlawful sources. Felons, by definition, are law breakers. The 1986 study, commissioned by the National Institute of Justice, clearly affirms this truth. That study, conducted by Professors James Wright and Peter Rossi, concludes that only one out of every six incarcerated

felons obtain handguns from licenced gun dealers.

Furthermore, the Department has seen nothing to indicate that a felon who attempts to buy a firearm from a licensed dealer and is denied the firearm through an identification system or has to wait seven days to obtain it, will turn away from his intended course of violent behavior. Perhaps the only way we could be certain of such a result is if the felon who attempts to purchase was arrested and incarcerated for the attempted act. Given the already overburdened status of law enforcement agencies, such follow-up is quite difficult.

The allocation of limited resources is a major challenge for all levels of law enforcement. The Department believes that it is primarily through the focusing of resources on the apprehension and certain punishment of violent criminals that the civil government can best contribute to the safety of neighborhoods and communities.

Nevertheless, if the Department is going to devote its resources to an identification program, the point-of-sale approach is preferable. Since November 1, 1989, Virginia has been operating a point-of-sale approval system requiring felony checks for persons desiring to purchase firearms within the State. The Virginia system is a point-of-sale approval system using a telephone check. This system requires the gun dealer to call the State Identification Bureau with specific identification information (i.e., name, sex, race, and date of birth) regarding the prospective purchaser. While the dealer remains on the line, a

name check is made against the felony data base. It is also made against the State's CCH file and the FBI's NCIC wanted files. If there is a hit, the dealer is advised that the sale is prohibited. The average time for this check is reported to be less than two minutes. It is important to note that more than 418,000 (56%) of Virginia's 744,000 criminal history records and all of their master name index are automated. More than 86% of all of their records have disposition data and more than 95% of arrests in the past five years have disposition data.

During the 16 months that this program has been operational, 82,536 firearms transactions have been processed. Based on criminal history checks, 81,198 were approved; 1,338 transactions or approximately 1.6% were disapproved because the prospective purchaser either had a felony record or was prohibited by state or federal law from purchasing or possessing a firearm. Thirty-two fugitives have been apprehended as a result of this program and 130 have been charged with illegally attempting to purchase firearms, of which 45% have been convicted and approximately 15% are awaiting trial. Virginia experienced approximately \$76,000 in equipment start-up costs. Operational costs, including personnel, for the first year totalled \$310,000. The program is partially funded from fees collected by firearms dealers for each firearm transaction processed, supplemented by funding appropriated from the General Fund. Furthermore, the Virginia approach is being replicated in Delaware and Florida. Representatives from six other States have reviewed this program for possible implementation in their States.

The feasibility of this program makes it a preferred option for performing background checks of firearms purchasers.

Again, it must be emphasized that the desirability of the point-of-sale system is that it involves instant background checks that are just as reliable as those performed during a seven-day waiting period. Both identification systems are dependent upon the same criminal history records. Furthermore, since implementation of the national point-of-sale system requires States to voluntarily cooperate with the FBI (the McCollum Amendment does not mandate firearm dealer or State participation), a successful implementation effort by the Department will result in long-term benefits by dramatically improving the quality of State criminal history records.

Again, Mr. Chairman, I appreciate the opportunity to be here today to express the Department's view on this important issue. Consideration of H.R. 7 will involve an enormous effort for the Congress, and I greatly respect your dedication to this matter. I would be most willing to answer any questions.

BUREAU OF JUSTICE STATISTICS

SUMMARY OF CHRI GRANTEES

March 13, 1991

1. Georgia \$401,900 A major, one-time, 12-month effort to eliminate a 348,000 backlog of fingerprint cards and disposition reports.

2. West Virginia \$155,051 With no existing automated system, West Virginia will conduct a needs analysis and system design which will lead to development of a computerized criminal history system.

3. Texas \$469,608 Develop software and hardware designed to interface computerized criminal history records with county court automated systems to electronically capture disposition reports.

4. Wisconsin \$196,785 Reduce a backlog of disposition reports and FBI identification data, develop a "tickler" system to monitor the submission of dispositions, and provide an interface between two automated files in order to identify convicted felons.

5. Maryland \$83,832 Develop and implement a "live scan" booking system that will be eventually placed in every agency with responsibility for arrest processing. Automated systems will be developed to electronically interface such systems with State criminal history information.

6. New Jersey \$442,171 Rewrite its computerized criminal history system to allow an automated interface with a new system to be develop by the courts. This program will enable reporting of dispositions and other criminal justice actions to the State repository.

7. District of Columbia \$474,600 Design and implement an electronic interface with existing automated city criminal justice agency data bases to create a comprehensive computerized criminal history record system.

8. Maine \$374,566 Design, develop and implement an automated criminal history system within the State which will replace the existing manual records structure.

9. Florida \$325,759 Department of Law Enforcement will eliminate a backlog of disposition data, fingerprint arrest records and implement a felon "flag" indicator in their automated files. Additionally, the Office of State Courts Administrator plans to implement a model integrated criminal justice information system for a judicial circuit.

10. New York \$382,529 Conduct an analysis of the basic causes of under reporting of disposition and other data to the central repository and establish a collection unit to increase disposition reporting from known delinquent agencies.

11. Delaware \$375,976 As part of a coordinated proposal, Delaware will complete their statewide Master Name Index, eliminate a backlog of disposition data and develop a real-time state system which will insure future data quality and timeliness of criminal justice information.

12. Alaska \$242,350 Identify felony convictions; create a uniquely numbered multi-part form that would replace the current fingerprint card, the District Attorney's SID form, and supplement court disposition documents; meet minimum standards for FBI III participation; process backlog of 60,000 criminal histories.

13. Hawaii \$500,000 Conduct a data quality audit, develop a two-way interface with Judiciary's Circuit Court felony system, reduce backlog of delinquent dispositions, and flag convicted felons.

14. Oregon \$444,453 Develop a linkage between Oregon Judicial Information Network and the State Law Enforcement Data System, reduce disposition backlog of 32,000, flag convicted felons, and monitor status of rejected fingerprint cards.

15. Washington \$423,799 Identify felony convictions, eliminate disposition backlog, increase training in state and federal reporting, and develop a detailed implementation plan.

16. Montana \$92,664 Implement statewide numbering system, establish a requirement that judges use state ID arrest number, achieve 90% compliance with fingerprint card submission, achieve 85% disposition reporting, begin auditing submission rates, and flag convicted felons.

17. Arkansas \$497,320 Process backlog of over 70,000 arrests made within the last five years which do not contain disposition information. Using State funds, AR implemented a new computerized criminal history system designed to capture arrest and disposition data from courts and law enforcement agencies.

- 18 Iowa \$415,922 Develop systems to electronically extract and interface corrections and court data to improve CCH records.

19. Colorado \$220,443 Develop procedures designed to accurately identify persons convicted of at least one felony, meet the FBI voluntary reporting standards, and identify impediments and improve final charge disposition reporting.

20. Utah \$350,000 Implement procedures to eliminate loss of data as it moves between criminal justice agencies, routinely obtain prosecution declinations, install systems to improve court data reporting, identify convicted felons, and improve the flow of information from the state Department of Corrections.

21. Massachusetts \$431,672 Complete the work required to tie the state's Automated Fingerprint Identification System (AFIS) to offender disposition data to create a computerized criminal history system that meets state and FBI needs and requirements.

22. Alabama \$204,185 Contract with state courts to obtain missing disposition data from 1988. Determine procedures and implement changes designed to improve disposition reporting in the future.

23. Missouri \$478,685 Identify convicted felons, improve CCH, participate in III and meet FBI standards. The MO State Highway Patrol and the Office of Prosecution Services will develop and automated interface to received disposition data.

24. North Dakota \$351,049 (2 yrs) Using state funds, ND implemented CCH in 1988. Operational experience has identified areas of improvement. CHRI funds will be used to identify felons, link final dispositions to charges, implement systems for DAs and increase arrest and disposition reporting.

25. Idaho \$235,341 The Criminal Identification Bureau of the Department of Law Enforcement will implement an automated court disposition reporting system, reduce a backlog of arrest and disposition documents, conduct a baseline audit and flag convicted felons.

26. California \$144,196 The Criminal Identification and Information Branch of the Department of Justice will establish internal and external advisory committees and develop an implementation plan for improving the quality of the California Automated Criminal History System.

Total awarded as of 3/13/91: \$8,714,855

APPLICATIONS IN PROCESS

1. Pennsylvania \$502,690

2. Louisiana \$389,977

4. Illinois \$409,747

Total \$1,302,414

Total awarded and in process \$10,017,269

Mr. SCHUMER. I know that Mr. Kurre has a statement and, without objection, that will be entered into the record and we will go right to questions.

[The prepared statement of Mr. Kurre follows:]

PREPARED STATEMENT OF DENNIS G. KURRE, DEPUTY ASSISTANT DIRECTOR, IDENTIFICATION DIVISION, FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE

Mr. Chairman, I appreciate the opportunity to appear before your subcommittee to discuss the FBI Identification Division and, more specifically, the criminal history records maintained by the FBI and state repositories which could be utilized for the purpose of the identification of persons prohibited from purchasing firearms. With me today is Section Chief Virgil L. Young, Jr., FBI Identification Division.

It is our understanding that the focus of our prepared statement and subsequent remarks would be from a "records point of view" and how those records might lend themselves in a positive way toward identifying persons who may be disqualified from purchasing firearms. The FBI Identification Division maintains criminal history records that date back to 1924. Currently, our system contains the records of about 26 million individuals who have been arrested by local, state, and/or Federal agencies. Approximately 54 percent (14 million) of these records are fully automated and are readily accessible from our computerized files. Another 33 1/2 percent (8.7 million) are partially automated in as much as the name index, fingerprint minutiae, and physical descriptors are computerized.

If I may digress for a moment, I would like to mention that we have for almost 10 years been working toward decentralizing the FBI's maintenance of these records through a program known as the Interstate Identification Index (III) Program. Today, 21 states have interfaced their automated files with ours through III. This has enabled law enforcement agencies throughout the country to access the FBI and state records via

computer terminals for criminal justice purposes. The program is not fully developed yet and there are still legal and policy matters to be resolved that would enable all states' records to be used for all authorized purposes currently being met by FBI records. However, when this program is fully implemented, the FBI's Identification Division will retain: (a) fingerprints and criminal records of Federal offenders; (b) one fingerprint card per non-Federal criminal offender for each state of arrest; (c) no criminal history information on non-Federal offenders (except for basic identifiers such as date of birth and race); and (d) an index pointing to the records of state offenders with records in one or more states (but not the records themselves). I mention this program because it is the type of cooperative state/Federal effort that we would envision establishing to identify felons who attempt to purchase firearms. Further, I think it important to note that in the future, the FBI will not possess complete criminal history records and any national program will have to rely on a pointer system that utilizes state-supported systems.

At the Attorney General's direction, we have been working to define a system that would provide for the immediate and accurate identification of felons who attempt to purchase firearms. Initially, an Attorney General's task force looked at a wide range of options for such a system. More recently, we have been examining state programs that are in existence and operating today, and we also are working with state officials to further clarify their role in helping us perform this task.

As indicated by Mr. McNulty, a basic but very critical problem facing us is actually identifying the convicted felons in our record systems. Historically, when we captured information about the disposition of a criminal charge, the disposition was routinely reported as "convicted" or "found guilty" of a specific offense such as "larceny." There was no record made as to whether or not the offense was either a felony or a misdemeanor. Therefore, "felony conviction" data is not easily ascertained from our files and the historic files in state systems that are structured similarly. On the positive side of this issue, we are told that 13 states flag some or all felony convictions in their data bases; an additional 28 states collect sufficient information to identify at least some felony convictions that could be flagged.¹ Through Federal incentives, such as the Bureau of Justice Statistics (BJS) Criminal History Record Improvement (CHRI) grant program, "felony conviction" data in state files is expected to improve markedly.

Voluntary reporting standards, which are designed to enhance the quality of state records to facilitate the interstate exchange of information and to permit the identification of felony offenders, were developed by the FBI and the BJS. The standards were initially released in May 1990 for public comment and incorporated input from Federal and state representatives. The final standards were published in the Federal Register of February 13, 1991, Volume 56, Number 30, pp. 5849-5850.

While the BJS is providing incentives to the states for

improved record systems through Federal grant monies, the FBI is also planning to make significant strides to bring the national criminal history file up to a much higher level of completeness and accuracy. A budget request presented to the Congress in the President's 1992 Budget includes an additional 487 positions and \$12,500,000 for the FBI's Identification Division. These additional employees would be used to reduce the current fingerprint card and disposition backlogs, convert the 8.7 million partially automated criminal history records to a fully automated mode, and process additional incoming receipts to prevent record backlog growth. As a result of these efforts, any felon identification system will be able to access a more complete, up-to-date, and automated data base.

The Identification Division is streamlining current computer software for the conversion process in an effort to shorten the time required to fully automate manual records. We plan to devote 200 of the previously-mentioned 487 positions to a record conversion project at a newly established satellite facility in Clarksburg, West Virginia. Through ongoing initiatives, we have already reduced the fingerprint card backlog almost 200,000 cards since last May. Additionally, the growth rate of the disposition backlog, which grew from 1.2 million in October 1989 to 2.7 million in October 1990 (a growth rate of 125 percent), has been curtailed. From October 1990 through January 1991, the backlog increased from 2.7 million to only 2.9 million, a projected yearly growth rate of 22.2 percent. Streamlining

initiatives in all work areas and the increased emphasis on a program for encouraging states to submit their dispositions via computer tapes are responsible for this major success. Without the requested additional positions, however, we will be unable to reduce the existing work backlogs much further or to convert the remaining manual records.

To summarize some of the action being taken, the states are being provided with incentives and resources to improve state records, and we are working to improve the completeness and timeliness of the national records. By working together, the states, the FBI, and other involved groups will develop the means for checking prospective firearms purchasers for disqualifying felony convictions. But beyond these ongoing efforts, we still need to look ahead--past the short term--toward the advantages that will come about with the rapidly changing technologies, particularly those fingerprint technologies that will allow for the automatic scanning and long distance transmission of fingerprint images, and the automatic searching for matching candidates in a large data base. These are the technologies that we must incorporate into our future strategies for felon identification, and we are working toward these goals now.

Through a program to revitalize the Identification Division, a fully integrated Automated Fingerprint Identification System is being planned with an image transmission network interfaced with Federal and state law enforcement agencies throughout the country. This action reflects a total partnership

between the Federal community and the states and ensures that the initiative will meet the needs of our users. A system such as the one proposed would provide inestimable benefits to law enforcement and other users of identification services. The key concept of the effort is the electronic or paperless submission of fingerprint images to the FBI Identification Division which eventually would involve the elimination of fingerprint cards at every step of the process. The images would then be processed by a very advanced high-speed fingerprint matcher, and the results returned electronically. This concept could be applied to the identification of felons.

I hope the information we have provided here may help with your consideration of H.R. 7 and may have provided you with a perspective of how we are proceeding. I will be pleased to provide you with more details at your request and will be pleased to respond to any questions.

¹ Survey of Criminal History Information Systems, March 1991, Bureau of Justice Statistics

Mr. SCHUMER. We gave Mr. McNulty your time, Mr. Kurre, but we wanted to give him more than the 5 minutes we always give to witnesses because there were so many statements on this side.

The first question, I have for you, Mr. McNulty, is that I am sort of befuddled how you sit there, with a straight face, saying the Brady bill won't work because of the condition that Federal and State criminal records are in, but that a point-of-purchase system will work, relying on the same records. If it doesn't work for one, it doesn't work for the other.

Explain to me that contradiction. I could have read most of your testimony as an argument for the Brady bill because it says that the point-of-sale, the point-of-purchase system won't work at all because the records are in such abysmal shape.

Mr. McNULTY. Let me clarify, Mr. Chairman, if I was confusing on that. Our position is that right now, given the quality of these criminal justice records, no identification process is workable. Even though Virginia is experiencing some success, Virginia has a different kind of situation, since it only checks the State criminal records.

Our position is not that point-of-sale or Brady is ready to go today, or that any identification system is ready. What we are saying is that the records need dramatic improvements, and so our focus has been for the past year, and will be for the foreseeable future, to improve the quality of these criminal justice records. When that quality is such that we can rely upon them, then we believe that the most feasible system, the one that makes the most sense in balancing all the interests, is the point-of-sale or point-of-purchase system.

Mr. SCHUMER. How long do you think it would take before the records are updated? The Federal records are only 40 percent automated. Only 10 States have automated records. The other 40 don't.

In the letter the Attorney General submitted to this Congress in 1989, he estimated that the cost would not just be hundreds of millions, but could go well into the billions. He also estimated it would take 5 years to do it.

So you agree with those estimates? I mean——

Mr. McNULTY. Let me answer the question this way. It depends on just how far we are going to get in terms of the quality. I mean, perfection would be a long way away because we would have to go back in time. So we have to find a place where we think we have brought them up to a reasonably reliable level.

Now, Mr. Dillingham and Mr. Kurre are working with the two sides of this equation; Mr. Kurre with the FBI's improvement efforts and Mr. Dillingham with the States' improvement efforts, and they can provide you with more information about where we think these improvements are headed, but clearly, right now, we think that we have to begin to improve these State records by flagging the felony convictions so that when we access those records through the telecommunications systems that we have, we can spot where a felony conviction has occurred. That is going to take time.

Mr. SCHUMER. It seems to me the Department's position, at least in regard to the Brady bill, is you want to wait until all these records are in shape, which could be years and years away, until we really do something concrete about guns on the streets.

Now, I understand you say on page 13 of your testimony that we want to deal with apprehension afterwards and punishment afterwards. I think we all do, but I think the difference between you and most Americans, and certainly many on this panel, is we also want to not only punish after the crime has occurred, but stop the actual crime from occurring. The bottom line is that is the purpose of the Brady bill, that is the purpose even of the point-of-sale purchase and you are basically saying that neither of them is ready to work; let's do nothing on that side of the equation.

Mr. McNULTY. On that side of the equation, I think that there are two points I want to make, Mr. Chairman. One is that the Department is not waiting until all the records are in perfect condition. Our timetable is not that extended. We are trying to bring those records to the point where we think, in cooperation with certain States that are ready to go to use this national system, that it would be worth the effort, so what we are saying with regard to the records is that they are inadequate now, that right now we can't rely upon them.

Second, what we are saying is that in the front-end of the equation, as you put it, we are not convinced that even if you can identify a few felons—

Mr. SCHUMER. More than a few.

Mr. McNULTY [continuing]. That this automatically translates to a prevented violent crime. It certainly frustrates that individual's effort to acquire a firearm in that manner, but we have seen nothing, and perhaps there is something out there, but we have seen nothing which would show in any kind of statistical sense that this actually translates to a preventive violent crime. Incapacitation does, though. That is our point.

Mr. SCHUMER. Let me ask you, you say the Brady bill won't work. Has the Justice Department done any study on whether a waiting period won't work. Have you or anyone at the Justice Department done such a study and evaluation on your own?

Mr. McNULTY. We have certainly done a lot of evaluation of the idea. I am not sure what you would mean by a study. I mean, we haven't commissioned—

Mr. SCHUMER. Is there some written document that you could submit to us—no, OK.

Let me ask you this question—you say a few felonies might be stopped. State police in California stopped 1,793 proscribed purchasers in 1989. New Jersey police stopped 961 in 1989. State police in Illinois denied 2,920 permits and revoked 1,867 permits due to felony convictions. Today, felons are walking into gun stores and buying guns. Not all felons, but certainly more than a few.

I have given you 5,000 who were stopped. I don't consider that a few. Certainly, even if you assume that the Brady bill wouldn't stop all felons—that some of them would have found other means to commit their crime, no one claims the Brady bill is a panacea. It is going to make a dent in felons getting guns and I still haven't heard in your testimony any argument against doing that.

I haven't heard any argument against stopping those people from buying guns which State experience shows would happen.

Mr. McNULTY. I am trying and I am obviously not succeeding, but let me try—

Mr. SCHUMER. With me, you are not. I don't know about everybody else here.

Mr. McNULTY. Let me try again.

When I said that we may identify some felons, I didn't mean to communicate to you that we would stop some felonies. I have never used that language. What I have said is we may identify some felons, and you have given the statistics that I am not going to argue with, that there have been felons identified within State systems—

Mr. SCHUMER. I think the gentlemen to your right and left would confirm those statistics.

Mr. McNULTY. Oh, absolutely. Identification does take place. My point was that the consequences of the identification is not necessarily that we will prevent crime. That is the key fact. Everyone who is either for or against this legislation agrees that what we are trying to do is stop the occurrence of violent crime.

The Department is not saying that you can't identify anyone. What we are saying is that the few or whatever percentage that are identified, even though the records are so inadequate, does not mean that you have prevented a violent crime from occurring, unless, as I said in my testimony, an identified person should be incapacitated immediately and not available to be on the streets. But given the nature of lawbreakers, given the nature of criminals who, by the way, when they walk into the dealer are committing a felony right there by trying to buy a gun, since they have a felony record—

Mr. SCHUMER. We shouldn't compound it by giving them the gun.

Mr. McNULTY. True enough, and if we could identify them with—

Mr. SCHUMER. But we can identify some of them.

Mr. McNULTY [continuing]. Any kind of reliability—

Mr. SCHUMER. California, Florida—all these States have identified some of them, and you are standing in the way of doing it nationally.

Mr. McNULTY. What I am saying is that even when you identify some of them, you don't, then, prohibit them or keep them from committing a crime. That is why the Department is saying our emphasis, our focus, and our resources have got to be directed on keeping them from committing the crime. That has to do with getting them off the streets, getting lawbreakers away, not in assuming that if we identify them as felons, that this is going to immediately translate or automatically translate into a preventive crime.

Mr. SCHUMER. Let me ask Mr. Dillingham a question.

We all know that the State records are in terrible shape, even the Federal records are in terrible shape. At the rate of spending proposed by this administration, \$12 million for the Federal and \$27 million for State grants, which I applaud, how long would it take to have all of the records up to date fully automated, State and Federal?

Mr. DILLINGHAM. Mr. Chairman, let me begin with some general observations in answering that and I would like to commend you and other members of this committee who, for years, have supported the improvement of criminal history records at the State and Federal level, so we thank you for that support and look forward to

working with you with the Attorney General's program and successfully implementing it.

Some of the comments just made bear on the question you asked, and that is, you were discussing how this was going to affect the overall crime rates and there is a wide range of diversity of opinion there. The focus of the activities of the Bureau of Justice Statistics are to put this system into place and let me say this system is working. It is working, in fact, in the States and we are—we are not standing in the way of identifying felons—we are, in fact, identifying felons, and the Attorney General has made the most substantial commitment ever before in this Nation for that process and for that system.

The timeframe in which this can be accomplished and the cost, the cost figures, there are a variety of estimates, I have a lot of additional—

Mr. SCHUMER. Your best estimate, 12 million federally, 27 million State, how long would that take—

Mr. DILLINGHAM. My best estimate is by the end of fiscal year 1992, the Attorney General will have invested \$60 million into this effort. There will be substantial progress. This effort will hopefully—

Mr. SCHUMER. I would just like you to be a little more specific than substantial. You are really not answering my question directly, with all due respect.

Mr. DILLINGHAM. All I can say, Mr. Chairman, is that I would agree with you and concede at this point that—

Mr. SCHUMER. Ten years?

Mr. DILLINGHAM [continuing]. Perhaps this effort will never end and Congress has, in fact, dedicated 5 percent of the Bureau of Justice Assistance moneys for this purpose and that is, until we reach the point of a perfect system in all 50 States, it is a long-term goal; it was recognized by the task force and by the Attorney General and I think Members of Congress—

Mr. SCHUMER. Dr. Dillingham, would it be reasonable to say it would be, at that rate of spending, it would be at least 10 years before a fully automated system is in place?

Mr. DILLINGHAM. It depends on what type of fully automated system that you would like in place.

Mr. SCHUMER. The kind that is being—

Mr. DILLINGHAM. As you, Mr. Chairman, have said, we have a working system now. It is working day one. We are improving it as we speak. Whether or not it is a perfect system, with 100 percent of—

Mr. SCHUMER. Would you answer the question yes or no? I am sorry to do that.

Mr. DILLINGHAM. Ten years before—

Mr. SCHUMER. Is it reasonable to assume it would take at least 10 years at this rate of expenditure to put in any kind of fully automated system or the kind that they are putting in now because they are making progress, as you say. We are aware of that. It is just that the people here don't want to wait 10 years.

Mr. DILLINGHAM. Mr. Chairman, it depends on how you define "fully automated." Some States would—there are 10 States with fully automated—

Mr. SCHUMER. How about a Virginia-type system?

Mr. DILLINGHAM. The Virginia system, it took them approximately 1 year to implement, I think—

Mr. SCHUMER. They started in 1966.

Mr. DILLINGHAM. They started improving their records in 1966—

Mr. SCHUMER. That is a prerequisite.

Mr. DILLINGHAM. They didn't dedicate themselves to the point-of-sale system at that time.

Mr. SCHUMER. I would say, by every estimate, at least that the chairman has seen, it would take a minimum of 10 years to fully automate the records. Once you fully automate the records, you still have the cooling-off-period argument in terms of the Brady bill, but then at least when you arguing about point-of-purchase, there is some integrity to the argument.

Mr. McNULTY. Mr. Chairman, maybe I need to clarify something.

Mr. SCHUMER. Please.

Mr. McNULTY. The Department is not taking the position that we are going to wait under the authority we have in the McCollum amendment until the records are of such perfect or ideal quality 10 years from now or whatever. That is not what we are planning to do. Under the authority we have been given already with the McCollum amendment, this is our plan:

We are going to continue to work with the States, with these grants and with cooperative efforts to get them to improve their records, and then, within a period of probably 1 year—and Mr. Kurre at the FBI can give you details on this if you are interested, because the FBI is really in the front of this implementation effort—we are going to try to identify a State or two in which we can begin to establish this identification system.

Now, other States already, of course, have their own State identification systems. Florida, Delaware, are moving to point-of-purchase right now, so a lot is happening in the States. That is what Dr. Dillingham said when he referred to the system that is in place. The States have 60 percent automated records, so you have States that are busy trying to do what they can.

We will then identify the States that would want to take advantage of this opportunity, that have the quality records. We would begin to work with them, and if these models work, and we think it probably should with this cooperation, then within 2 years from now, we will be able to add more States.

Remember, Mr. Chairman, the McCollum amendment does not say to the States must do something, or it doesn't say to dealers, you are not allowed to transfer a firearm until you go to the system. It simply says that a national system should be established. So inherent to our work is to get the States with us, to cooperate and work together. We think that within 2 years, we are going to have some States in that system. So it is not like we are waiting for 10 years if you don't pass anything at all.

Mr. SCHUMER. I understand that, but I don't want to have to call another panel of victims together next year while we are waiting and waiting and waiting and waiting. Right now, the Brady bill would do lots of good by just every statistical measure and you ought to get with the program, as they say.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. McNulty, and welcome back and welcome to the hot seat.

Mr. McNULTY. Thank you.

Mr. SENSENBRENNER. In listening to your prepared remarks, it appears that the Justice Department's position is that the passage of the Violent Crime Act of 1991, as well as putting more money in a point-of-purchase verification system, would obviate the need for the passage of the Brady bill.

Now, why can't we do it all? Why can't we pass the Brady bill, as well as the Violent Crime Act and more money for point-of-purchase identification system?

Mr. McNULTY. I think that the heart of our view on that is that we don't think that H.R. 7 would add anything to that package, because, as we stand now with regard to the records, and with regard to the way that violent felons behave, we don't see H.R. 7 as doing something which enhances the effectiveness or the viability of that comprehensive approach to violent crime.

It might be easy enough for us to say that the total package would do the trick, but the fact of the matter is, as we look at H.R. 7, it would not add anything to that mix and that is why we hold the position—

Mr. SENSENBRENNER. Well, the crime problem is such a serious problem, as the President himself stated in the State of the Union Message, that doesn't it seem to be logical that we adopt an incremental approach to try to get at the violent crime problem in every way possible?

Mr. McNULTY. I understand that approach or that thinking. I guess I would again go back to the fact that since a waiting period system can be so easily circumvented, our concern would be that it would create a distraction to the passage of what we think really works, which is the total criminal justice improvement package that the President has sent up.

Mr. SENSENBRENNER. None of us who support the Brady bill say that it is going to put an end to violent crime as soon as the President signs his name on the bottom of it. What we are trying to say is that we ought to do anything that will help get at a piece of this problem and hopefully prevent violent crime from occurring, and if it does occur, having the tools to apprehend those who are responsible, prosecuting them, convicting them and incarcerating them.

It seems to me that the Justice Department's position is to approach the violent crime issue with one arrow in the quiver rather than having a whole quiver full of arrows and shooting them all off and hopefully getting some of this problem taken care of. Wouldn't you agree with that?

Mr. McNULTY. I respect that position. For us, what it comes down to is that when you look at the fact that at least 50 percent of the records in the national system are unavailable to check, and when you look at the fact that the use of those records would produce a false hit 50 percent of the time, we don't see how H.R. 7 gets us anywhere. When we take a position on a bill to say, well, it might not do any harm or why not, are not good enough reasons for us to come up here and to support the piece of legislation.

Mr. SENSENBRENNER. Then how come the Justice Department is swimming upstream from almost the unanimous opinion of the law enforcement communities around the country?

Mr. McNULTY. It is understandable that law enforcement would have very strong feelings about firearm availability of any kind. I mean, these men and women are putting themselves in the line of danger every day and they deserve all of the—

Mr. SENSENBRENNER. Just look at it. Practically every police organization, practically every association of prosecutors, practically everybody else who is intimately involved on the firing line in law enforcement is in support of the Brady bill and many of them have representatives here in this room, and the Attorney General of the United States, whom I have a great deal of respect for, sends one of his deputies up saying, they are all wrong and we are right.

Now, doesn't that give you pause for thought?

Mr. McNULTY. The Department of Justice has a very good relationship with law enforcement and—

Mr. SENSENBRENNER. That is going downhill, the more the Department of Justice opposes this piece of legislation.

Mr. McNULTY. Our sense of it is that it is not going in that direction, that it is actually getting better all the time, that law enforcement has a great deal of respect for the approach that the Attorney General and the President are taking to apprehending and severely punishing violent offenders.

I am not disputing the reliability or accuracy of polls regarding the waiting period, but I think that there is even a stronger desire in the public, Mr. Sensenbrenner. The public wants more than even the gun control. They want to get violent people off of their streets, out of their neighborhoods, out of their communities. They want violent people to not be plaguing their environment.

Mr. SENSENBRENNER. You better believe it, and I agree with what you say, and I am a cosponsor of the administration's Violent Crime Act of 1991. But, what you are telling me is because I support the Brady bill, I have made a mistake. But, it seems to me that you are approaching this subject of either you support the Brady bill or you support the administration's proposal, rather than being able to support both, which I do. I would seriously urge you to go back and tell Mr. Thornburgh that he would be much better on the merits and much better on the politics and much better on support of the law enforcement community if he could bring himself around to support both the Brady bill and the Violent Crime Act, like I have done.

Thank you.

Mr. McNULTY. Thank you, Mr. Sensenbrenner.

Mr. SCHUMER. Mr. Feighan.

Mr. FEIGHAN. Thank you very much, Mr. Chairman, and Mr. McNulty, let me welcome you back to the committee and it was a pleasure working with you as a staff member of this committee and I think it is a tribute to at least some of the good judgment over at the Department that they have you.

I, obviously, am bitterly disappointed that the Department has presented the testimony that they are presenting today, and I certainly associate myself with my colleague from Wisconsin. I think it must be enormously difficult for Attorney General Thornburgh

to face the law enforcement community, to face the victims, the spouses, the family members, perhaps even to face other members of the administration and to maintain the position that a 7-day waiting period would not be helpful in fighting crime.

I am certainly mindful, as I am sure you are and everyone in this room must be, of the testimony of Secretary Sullivan over the past few days when he told this Nation that the most significant form of death among teenagers in America today is homicide, and of those, the overwhelming majority by guns; that black teenagers are 11 times more likely to die from homicide or to be shot to death than their white counterparts, and in the face of all of that, to say that we cannot balance off at least some of that with what some are identifying as the inconveniences associated with a 7-day waiting period I find very hard to accept.

You say in your testimony before us today that one study found that only 17 percent of incarcerated felons bought their guns from federally licensed gun dealers. Let's work with that particular study. Seventeen percent. It certainly would be worthwhile if we could identify 17 percent of felons attempting to purchase handguns. You would concur with that.

Mr. McNULTY. Agreed.

Mr. FEIGHAN. Now, can we conclude that at least some percentage of those would not purchase their guns subsequently in a black market?

Mr. McNULTY. We could speculate that that would be the case, but we also might speculate at the same time that not all of those 17 percent that we identify were intending to commit a violent crime.

Mr. FEIGHAN. But in any event, they would be prohibited from purchasing a gun.

Mr. McNULTY. From acquiring their gun that way, that is right.

Mr. FEIGHAN. So let's say that there is some percentage, then, who we can identify and prevent from getting a gun in a black market.

Mr. McNULTY. I am not sure, sir, how that follows. I am sorry.

Mr. FEIGHAN. Presumably they are going to be—there is going to be some percentage.

Mr. McNULTY. I am sorry, I don't mean to interrupt you, sir, but what I don't understand is when you said that they would have been prevented, then, from gaining their gun in the black market, by identifying them at the point-of-purchase in a gun store or in some way during a background check—

Mr. FEIGHAN. If they are prohibited from purchasing their gun at a licenses dealership—

Mr. McNULTY. Yes.

Mr. FEIGHAN. Presumably some of them are not going to have access to purchasing in the black market because, obviously, the argument that—

Mr. McNULTY. Entirely possible.

Mr. FEIGHAN [continuing]. Is presented to us is that—

Mr. McNULTY. Yes, sure.

Mr. FEIGHAN [continuing]. If they can't get it at the gun store, they are going to go get it on the black market. Some percentage is not—

Mr. McNULTY. Some percentage may not.

Mr. FEIGHAN [continuing]. Therefore, some percentages—we are going to be able to save some lives.

Now, what are the inconveniences of—and the hurdles and the problems that a 7-day waiting period creates that we would allow the taking of lives, whatever that percent might be, contrasted with—

Mr. McNULTY. I have been careful today not to talk about inconvenience. I don't think that inconvenience is the basis of our position. I don't think that would be a substantial enough reason for us to come up here and oppose the bill. It is true that the overwhelming majority of these people who are buying the firearms are law-abiding citizens and it is true that we will get a lot of false hits and there will be people who are law-abiding citizens that shouldn't be discouraged from getting a firearm, and it is also true that there are a lot of jurisdictions or States that, demographically speaking, are much different than, say, Northeastern States where the 7-day waiting period would impact their lives differently, but that is not the Department's position.

We are not coming here saying it is a question of trading lives for inconvenience. What we are saying is that given the nature of the records and given the nature of felons, we are not convinced that these lives will be saved. That is the bottom line for us.

Mr. FEIGHAN. With some modest amendment, the Virginia system would be structured in a way that it would be exempted from the Brady bill.

Mr. McNULTY. Your legislation does that, doesn't it?

Mr. FEIGHAN. Yes, that is correct.

Mr. McNULTY. Yes.

Mr. FEIGHAN. Now, why, then, would it not make sense for us, as we are trying to develop a system which, I compliment the administration in its effort—why would it not make sense, then, as we are under that process, whether it takes until 1992, as you might suggest, which I think is overly optimistic, or the 10 years that the chairman suggests, why does it not make sense in the intervening time that we have a waiting period to allow those States that are so far behind because we acknowledge that Virginia is in a very unique set of circumstances with respect to their data base, to allow those other States to get caught up over that period of time and then, as they meet the same standards that the Brady bill will require, that essentially the Virginia system has, then they would be exempted from the waiting period and they can have their instant background check?

Mr. McNULTY. The problem we have is that there is a big distinction between what Virginia is capable of doing now and what a national background check process is all about now. In other words, in the Virginia system that is working now, they are able to be fairly effective identifying people with Virginia criminal records because the quality of their criminal justice records is so high. It is great quality.

But when the national records that would be used, the process of going through the FBI in those States that don't have a Virginia approach where they look just at their own State records, that is when the record quality problem escalates dramatically. That is

why we are saying it is ineffective to have this sort of dual system where you have some States coming through the FBI and trying to make use of insufficient records and, on the other hand, you have States like Virginia that are doing a limited background check. We think that the effectiveness of background checks will only be achieved when there is some reasonable reliability that the Federal records can be depended upon.

Mr. FEIGHAN. Mr. McNulty, you were obviously very familiar with the McCollum amendment that was adopted as the substitute in 1988, and that language required the Attorney General to begin implementation of a system. Has he done that?

Mr. McNULTY. Yes, I am familiar with the amendment and what "begin implementation" and other words in that amendment were intended to mean. I don't want to speak for Mr. McCollum—perhaps he might want to provide his insight as to the intention of the language—but as his counsel at the time, I can say that "begin implementation" has always meant, from my perspective, that the process would begin for the set up of this system.

But when the 1989 task force looked at the quality of the criminal just records, they concluded that the first step had to be to improve the records dramatically, and so 1990 has been the year for this extraordinary unprecedented effort to improve these records. The process of implementing the McCollum amendment is an ongoing process, starting with the report to Congress on November 20, 1989, and continuing until we have a system.

I might add that even the technology associated with the McCollum amendment will change. A lot of people criticized the McCollum amendment early on because they said it is a high-tech-billion-dollar system sending fingerprints electronically from dealer to FBI and so forth, but the record indicates that this is not the intention of the amendment. It is not to limit the Department to just some high-tech option, and in fact, the Department is starting, when we are ready to use the records, with a system similar to Virginia where you have an 800 number, what you might call even a low-tech option, and then progressing to a high-tech option some day. Mr. Kurre can tell you about what the Identification Division is doing to make fingerprint automation capability something that you could build an ID system upon, but for now, we will start with the technology that is available and so the McCollum amendment is an ongoing process.

Mr. Chairman, there is one last thing I would like to answer to Mr. Feighan about the Department's relationship with law enforcement. It has been suggested that this puts a strain on the Attorney General's relationship with law enforcement and I want to say that in my experience, being down there for 6 months, the Attorney General enjoys a very strong and cordial relationship with law enforcement because there appears to be, from what I see, an understanding on the part of law enforcement that this is a very difficult issue and that there are different perspectives that can be brought to the decision. Because of his strong stance on so many other issues that are important to law enforcement, I have observed that the law enforcement think very highly of him.

Mr. SCHUMER. Thank you, Mr. McNulty, Mr. Feighan.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. McNulty, I would like to ask about something that may be outside of your particular specialization in the Department—

Mr. McNULTY. That would be very easy to do.

Mr. SCHIFF [continuing]. Of Justice
[Laughter.]

Mr. SCHIFF [continuing]. And if so, I don't mean to blind-side you here. I would certainly accept that answer, but if the Department could get me a response in that event, I would appreciate it.

You made the point about the necessity of when an unauthorized person, a proscribed person, was seeking to purchase a firearm, it was necessary to do something to stop that person, too, in addition to wanting to stop them from getting the firearm; that we want to take that person off the street or remove their ability to commit a crime, since that is our major concern.

Right now, it is, as I am sure you know, a violation of Federal law, assuming Interstate Commerce laws are met, for a convicted felon to purchase or possess a firearm. Is that right?

Mr. McNULTY. Yes, that is correct.

Mr. SCHIFF. All right. Do you know if it is the Department of Justice's position to the U.S. attorneys that when a convicted felon is in possession of a firearm and there is adequate evidence that the U.S. attorneys around the country will definitely prosecute such a case?

Mr. McNULTY. I can give you some information on that. 924(c), which is an offense that would allow us to prosecute someone for using a firearm in the course of a violent crime or serious drug trafficking offense, and 924(e), which prohibits those who have three prior convictions from merely possessing a gun and includes a 15-year mandatory penalty—those two tools are being used with an increasing amount of interest and opportunity by U.S. attorneys including certain operations that are currently under way.

ATF has set up what is called Project Achilles. They are in 16 different cities where they are working to identify with the rap sheets at the local precinct the very dangerous felons, the recidivists that are operating in those 16 cities. Then they come in with the U.S. attorney's offices to indict these individuals who may otherwise have been arrested for or apprehended by local law enforcement.

You have an operation "Top Gun," which Mr. Sangmeister is probably familiar with, operating in Illinois, that is focused the same way. A U.S. attorney, working with local law enforcement, to identify people with guns and to prosecute with the mandatory penalties.

Mr. SCHIFF. Mr. McNulty, my question was simpler than that. There is a U.S. Federal law that says, a convicted felon may not possess a firearm—again, I am assuming Interstate Commerce, and assuming that the evidence exists that a convicted felon is in possession of a firearm, is it the policy of the Justice Department to always prosecute those cases?

Mr. McNULTY. I don't know if it is the policy to always prosecute every time a 922(g)(1) violation occurs, as you are talking about, the possession by a felon, but I can certainly give you information on

what our policy is. As you can imagine, that would be a very resource-intensive effort by any of those attorneys—

Mr. SCHIFF. Those were the words I was getting at because it is my distinct impression that it is not the policy of the U.S. attorney or U.S. attorneys around the country to prosecute every violation of possession of a firearm by a convicted felon, because of a resource problem.

Let me take that a step further. There is testimony—I don't know if you have seen the written testimony of those who may come after you, but there are police officers and officials from local jurisdictions—where there are background checks now, who talk about the number of stops they have made through a background check. In other words, we prevented this number of purchases that we believe would have been illegal in several States that have been mentioned.

Do you know in any of those States, what the percentage of prosecution is of those individuals who are denied a firearm under a background check or are they, then, just left free to go about the streets and then acquire a firearm illegally?

Mr. McNULTY. I am going to defer to Steve Dillingham, since he is the Director of the Bureau of Justice Statistics, to see if he has any information on that at all.

Mr. DILLINGHAM. Mr. Schiff, I just have information from the State of Virginia and after they have identified convicted felons who have attempted or who have purchased firearms, they have—45 percent have been convicted with approximately 15 percent awaiting trial. They have also identified 32 fugitives with 13 being apprehended. Of 130 prospective purchasers, 45 percent that illegally attempted to purchase weapons, 45 percent convicted, 15 percent are waiting trial in the State of Virginia.

Mr. SCHIFF. OK, so in Virginia, do they prosecute every case—again, I am assuming enough evidence that someone has illegally tried to purchase firearms.

Mr. DILLINGHAM. Mr. Schiff, I hope so, but I can't say that it is every case.

Mr. SCHIFF. The point I am getting at is that an argument in favor of this bill and against H.R. 1412, I believe is the number, is that this would be—H.R. 7 would be, handled by the police agencies and the alternative bill would not. I am looking at the resource availability of police departments, because I have constantly heard they don't have enough manpower and personnel power to enforce existing laws, and how this might impact them.

Thank you, gentlemen.

Mr. SCHUMER. Thank you, Mr. Schiff.

Mr. Sangmeister.

Mr. SANGMEISTER. Thank you, Mr. Chairman.

Mr. McNulty, I really think that you are looking for a lot more perfection in this bill than is absolutely necessary and I hope you are not trying to kill it by way of perfection.

By that, I mean, taking a look at your own testimony, you state that State and Federal records may show an arrest, but they may not show whether the person was convicted. If they do show a conviction, it may not be clear whether the conviction was for a

felony. A record may show, for example, that a person was arrested, so on and so forth.

Have you ever really looked at the practicalities and the bottom line of this legislation as I have discussed it with my law enforcement people back home? That is, simply, the reports of the local law enforcement officer, whether it be the sheriff or the chief of police in the community?

A lot of these men and women have been around for a long period of time. They know the people in their communities and just a name popping up of Mr. X can mean an awful lot to them. I think this could stop a lot of this problem right at the source.

I mean, have you given any credence at all to the practicalities of how this would work and how it has been, in my understanding, working in Illinois and other States that have the waiting period, whereby the law enforcement officer immediately recognizes a name when it is heard or when the report is made by the gun dealer? Have you thought about that?

Mr. McNULTY. I certainly have. I am well aware of that position. In fact, I know that in Illinois, years back, you had a tragic incident occur and my understanding is that since that time law enforcement has said that if we had had that form, we might have been able to spot that person. There are a couple of problems with that.

One is that the law is very clear on what disqualifies a person from possessing a firearm. It is not just that we know this person and we know may not be stable, particularly in the case of the Illinois tragedy where the adjudication of mental insanity was the issue. So for the question of how the law would actually operate—and then when you narrow down and keep narrowing down, given the nature of violent offenders and their use of gun stores and the reliability of these records, as you continue to narrow down that group that would be identified and then add into that the fact that, by simply identifying them, you don't stop them—logically it doesn't follow that you stop them from committing a violent crime. The Department's position is that even if you just take that approach, given the form, that the bill is not effective, and it doesn't do anything to enhance public safety. That is why we are focusing on the question of what really does address the issue of public safety.

Mr. SANGMEISTER. Being even more practical, I see this legislation covering circumstances and I come from, admittedly, a background as a former prosecutor where there is a lot of use of handguns in domestic affairs. Let's say someone is really ticked off, OK, and there is passion involved and they are going to kill this person. If they went to a gun dealer and were checked out, they would get a clear record. I understand that, because they have no prior record. But just the fact that there is a delay here, up to perhaps 7 days maximum, is important. A cooling-off period in domestic situations and other hot-blooded, emotional issues where somebody, after a day or two, might say, well, you know, has impact. The thought has changed to maybe I ought not to be doing something like that.

Isn't that an indirect benefit out of this type of legislation?

Mr. McNULTY. The cooling-off notion as an advantage of Brady has to be considered. On the other hand, I would be very interested in some information that suggests that a cooling-off period actually results in thwarting criminal intent, that someone who has a desire to commit a crime even in a case of domestic violence, by waiting 7 days or 48 hours or whatever the period of time that that is going to accomplish two things. Number one, keep the person from getting a dangerous instrument to commit harm. The statistics show that handguns are only one of many ways that people are murdered in this country and, in fact, off the top of my head, I think that even more than 50 percent of the murders committed in 1989 occurred with instruments other than handguns.

Second, that the cooling-off period would somehow change the intended purpose of the individual to commit the harm. We have seen nothing to suggest that this would happen. Even then, States and localities are free to establish cooling-off periods and that is why there are 20-some States with some form of waiting periods, and more, in terms of local jurisdictions, have gone in this direction.

The Department's attitude is that this is something that if the local government thinks is prudent to do, then they are certainly free to do it, but on a national level, we see nothing to merit that kind of comprehensive approach to it.

Mr. SANGMEISTER. Again, I think you are looking for an awful lot in the statistics. Obviously, nobody is going to come forward to law enforcement and say, gee, it was great that there was a cooling-off period. I would have killed John yesterday if I had the chance, but I thought secondly of it today and, as a result, put me down as a statistic. I think common sense tells you that cooling-off is an important part of this legislation.

I believe I heard you correctly when you said that one of the reasons you oppose this legislation—when one member of the panel asked you, what have we got to lose by moving forward in this area is that you feel this legislation is a distraction and would result in false hits? That is really a concern?

Mr. McNULTY. I am sorry. I wasn't communicating clearly when I said that. When I said "distraction," I didn't mean distraction from identification process. I meant distraction from what the Department has identified as its primary focus or what we believe that the Congress' primary focus should be. There is a sense in which, and not necessarily coming from this committee, but from the press, that the waiting period is a panacea of all harm. The Department is saying the primary approach to violent crime in America needs to be at the criminal justice system, to reform it, to bring people into more accountability, certainty of punishment and that this legislation does have the potential of distracting from that primary focus. That was my only point.

Mr. SANGMEISTER. My time is up, but let me close by associating myself with the remarks the gentleman from Wisconsin made, and I know, coming from the other side of the aisle, it came from his heart. There is a big disappointment. I think, on the part of law enforcement today. They look to the Justice Department and the FBI for leadership in these areas. The old saying, it might sound

trite, but, "one life saved . . ." and you can't tell me that this bill isn't going to save multiple lives.

I really think the AG and the FBI ought to be out in front on behalf of all law enforcement on this.

Thank you, Mr. Chairman.

Mr. SCHUMER. Thank you, Mr. Sangmeister.

Mr. Ramstad.

Mr. RAMSTAD. Mr. Chairman, Mr. McNulty, the gentleman from Illinois, said the cooling-off period is a maximum of 7 days. In other words, this isn't open-ended and I am referring to section 2 of the bill on page 3. Is that your interpretation, that this could not be—this cooling-off period could not—assuming there is no notification from the chief law enforcement officer of any—that the transfer would be a violation of any of the laws, that after 7 days, absolutely, the cooling-off period would lapse and this transfer would be made, in other words, the sale of the gun would and should be made?

Mr. McNULTY. If I understand your question correctly, I don't think there is anything in H.R. 7 that would extend the period beyond 7 days, if that is what you are referring to?

Mr. RAMSTAD. Yes.

Mr. McNULTY. None of the conditions for transfer or preconditions for transfer would extend it beyond 7 days. As I understand the legislation, it is just the opposite. Some of the conditions would actually shorten the period of time for transfer.

Mr. RAMSTAD. So you read that, Mr. McNulty, as mandatory language.

Mr. McNULTY. Unless the exceptions that are specified here, such as where you have a need for self-protection, or the establishment of a national identification system—are four, as I recall—unless those exceptions are met, then the transfer doesn't take place until the 7 days have elapsed.

Mr. RAMSTAD. Right, but those preconditions could cause—

Mr. McNULTY. Could shorten the period of time? Yes, sir, they could.

Mr. RAMSTAD. Thank you.

Thank you, Mr. Chairman.

Mr. SCHUMER. Thank you, Mr. Ramstad.

I had mentioned before Mr. Hughes came in that his leadership in this area has been instrumental, both in the Brady bill and also in the whole crime area and we are delighted that he is here today.

Mr. HUGHES. Thank you very much, Mr. Chairman, for those very kind and very generous remarks. I look forward to working with you. It is good to see some old friends at the counsel table. What an exchange of roles, but it is good to see the Acting Director of the Office of Policy Development, and I hope the Director in the months ahead, welcome.

I was just telling my friend, Ed Feighan, here, that I would bet I don't hear a thing new today. We have had these hearings for many years and, frankly, I always am—I understand and am disappointed with the position of the administration on this important issue.

The effort to screen out disqualified persons has worked. It has worked in New Jersey. People accept it in New Jersey. It has

worked because it is a commonsense initiative. We spend more time trying to screen people that are applying for a license to operate a restaurant than we do in attempting to find out if they should own a gun, whether they are disqualified. That is nonsensical.

I read the administration's statement, and much of what you say is accurate. Our fingerprint identification system is in shambles. We are trying to improve it, but it is not effective. Unfortunately, we don't have the capacity to tell you, by looking at a record, whether or not they were actually convicted. It shows an arrest record, not necessarily a conviction record, so your point is well-taken, that we get a lot of false starts. That is so today with the record system. We have that today in attempting to access information. As you know, we get false reports back in local departments when we attempt to access.

The argument is that we should have a point-of-sale system, and I agree. That would be a step, a giant step forward, but as you know, Mr. McNulty, we have a provision in the bill that does just that when we have that capacity, when we are able to do that. So my question is, what is so wrong with attempting to delay a sale for 7 days and implement a system, a point-of-sale system when we are able to do that?

At least with a 7-day delay, we have maybe some opportunity to ascertain whether the applicant for a handgun is a disqualified person. Under the present system in many States, we don't have that opportunity. So what is wrong with saying, until we have a point-of-sale system in place, we will screen applicants to determine whether they qualify?

In small communities, we are going to pick up hits because many of the police departments know those that are disqualified. What is your response?

Mr. McNULTY. First of all, Mr. Hughes, if I had known 6 months ago when I left the committee that I would be sitting here answering your questions on this issue, I would never have left the committee.

[Laughter.]

Mr. McNULTY. But let me say secondly that our position is based upon the fact that, as we observe all of the facts that come together, we think that it is ineffective, that it is actually—to use a harsher word—useless, and therefore, when we come forward to testify, we don't want to come forward and say it can't hurt so go ahead and do it. We would only want to support it if we thought that it was effective.

I just recently appeared on a panel with your superintendent of the State police, a very fine gentleman, and he gave a very good overview of New Jersey's success in identifying individuals, so I know that you are identifying individuals. The critical question I had said before you arrived is that the identification of individuals that has gone on in New Jersey or any State is an important step. We are supportive of background checks and we think they can be effective, but the problem is that we are assuming that those individuals that have been identified are now not going to commit a crime. In fact, in the case of New Jersey, I asked about the statistics relating to prosecutions after they have been identified and it

is a rather low figure, compared to the people identified, not surprisingly. New Jersey has limited resources and they have a lot of law enforcement needs, and so they can only pick and choose their cases as makes sense, but the fact of the matter is that saving lives or making the streets safer does not follow from the identifying of some felons.

That is the critical distinction we have in our two positions, and that is why we are not saying go ahead and do it, what can it hurt? We are saying, how does it help?

Mr. HUGHES. Of course, I understand that argument, but the fact of the matter is that in New Jersey, we have screened out over 18,000 disqualified persons with our recordkeeping system and that, in itself, suggests to me that we have been successful in preventing people from getting guns who shouldn't have them. You can never show that in some way they are not going to get a gun subsequently, but we can show that we prevented a lot of people that lied on their application, that committed crimes, that had mental histories, we can show that over 18,000 of those folks didn't get a gun.

Thank you, Mr. Chairman.

Mr. McNULTY. Mr. Hughes, Mr. Chairman, let me just finish on that and respond.

Mr. SCHUMER. Sure.

Mr. McNULTY. New Jersey State law does it the most effective way possible. In New Jersey, they do a very thorough background check and they take weeks, 4 to 8 weeks, I think, is the range, in doing the background check. I think I have even heard in past hearings, sitting on the other side of this panel, Mr. Hughes say that that is the most effective way to go and that is why New Jersey is able to identify so many individuals, but a 7-day waiting period accesses and depends upon an entirely different approach to identification. It is a different data base. It is a different methodology. It is not the thoroughgoing very reliable approach that New Jersey uses on the State level. This legislation will not permit that kind of background check. It will only permit the kind you can do either at a point-of-purchase or within 7 days.

Mr. HUGHES. I thank the gentleman.

Mr. SCHUMER. Mr. McCollum.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman.

I want to welcome our former counsel. We certainly think that it was our loss down here that you went downtown, but we are very happy to have you back and I think the Attorney General has made a wise decision to elevate you to the position of being able to come testify, so welcome.

Before I ask a question, Mr. Chairman, I have a statement that Congressman Marlenee wanted submitted from one of his folks, Jacquie Miller, to the record.

Is it appropriate at this point to ask unanimous consent to submit this statement for the record?

Mr. SCHUMER. I suppose, without objection, we will submit it. Who is the person?

Mr. MCCOLLUM. Jacquie Miller. I have the statement here. We will pass it to counsel, whoever.

Mr. SCHUMER. Fine. Mr. Marlenee's request will be submitted.

Mr. McCOLLUM. Thank you very much.
[The prepared statement of Ms. Miller follows:]

Testimony of Jacquie Miller, March 21, 1991
Prepared for the House Judiciary Committee
Subcommittee on Crime and Criminal Justice

My name is Jacquie Miller and I live in Louisville, KY. I worked full time at the Standard Gravure printing company until September 14, 1989 when Joseph Wesbecker, doped up on Prozac, entered the building with an AK-47. He shot me four times, killed eight and wounded twelve before killing himself. Had he used any number of standard hunting rifles or a shotgun that day, all 20 would have died.

I am in a wheelchair the same as James Brady, yet Rep. Schumer does not want his committee to hear from me. Do my wounds have less validity because I did not work for the President of the U.S.? When is one person more important than another?

When I saw Joseph Wesbecker out in the hall before he shot me, I knew by the look in his eyes he wanted me dead. He was totally dehumanized by Prozac. He was so far gone that his first choice of destruction was to blow the place up with a model airplane with an explosive attached to it. He changed his mind and used an AK-47 purchased six months before the shooting. A waiting period would not have stopped him.

His psychiatrist could have stopped him but decided not to take him off Prozac until his next session. Even as a diagnosed manic depressive he would have passed any background check. Why isn't

Miller

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this committee investigating the criminal consequences of taking Prozac and other drugs, such as the one Hinckley was on, that have been associated with people who kill? The psychotropic drug situation has become so serious that there is now a Prozac defense being used in courts against murder charges.

The most important thing about the day I was shot was that I was the only one there who had the power to stop Wesbecker. I had a .38 in my purse which I was going for when he shot me. The gun was illegal because Louisville does not allow permits for carrying concealed.

But as things went I was not able to get to my gun quick enough because I stopped to help someone already shot. That took up too much time. I only had 1/4 inch left for the gun barrel to be clear of my purse. Another five seconds and history would have been different and I would have been considered a hero instead of a lawbreaker. I am having insult added to injuries by losing the right to protect myself as well as having to wait to buy a gun and all the while being treated like I'm guilty until proven innocent. In the meantime, criminals will continue to get their guns on the street and through illegal channels and we will be totally at their mercy.

Miller

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The police cannot be everywhere all the time. The Louisville police were heroes and wonderful that day, but they got there after the fact. All they could do is be a cleanup crew.

As for the waiting period, what is that going to do to the criminal? As it is, I cannot picture them going to their neighborhood police station and saying, "Here, officer, here are my guns that are illegal now." Would a waiting period be fair to the Gainsville students who wanted to protect themselves against the serial murderer there? Or would a waiting period have stopped the man who killed 87 people by burning them to death in a nightclub with \$1 worth of gasoline.

Since I have been shot I have had seven operations and am facing more before I can ever walk normally again. The pain has been intense, both physically and mentally, and I would not wish this on anyone. I do not think that my tragedy should be imposed on everyone else in the country as the Bradys do. No one is going to take my gun away from me. I need it now more than ever since I have become confined to this wheelchair.

Please vote against the waiting period now before the committee.

Mr. McCOLLUM. Mr. McNulty, it seems to me that the essence of what we are talking about is really what you came down to in answering Mr. Hughes' last question and the response you just gave.

Am I not correct that the problem we have with the 7-day waiting period is that it is too short a time for a really adequate check? It takes 4 to 6 weeks to get into the system to find out if somebody has a felony record in most instances. Isn't that really the problem?

Mr. McNULTY. Absolutely. Mr. Kurre, from the FBI, can tell you that when we screen applicants for law enforcement and other civil positions, through the Identification Division, it is a different process and it is time-consuming, 4 weeks minimum, but much more reliable and that is why the system doesn't break down. It is the instantaneous check, either done at point-at-purchase or done instantaneously by a law enforcement officer some day during that 7-day period that is the problem.

Mr. McCOLLUM. So the bottom line is that, again, it goes back to the point I made in my opening statement. The Virginia system, or something like it, even though not every State has the Virginia records as complete as they are, but that type of telephone, that type of telecommunications check is going to be just as effective for States that don't have Virginia's records to get into the NCIC system or to get into the FBI records or whatever in 7 minutes or a couple hours, anyway, as 7 days.

In other words, the 7 days is the problem. The waiting period is not long enough to do the more thorough check that is the waiting period being proposed in H.R. 7 and it is not any more effective because it is only 7 days than the kind of a check you could do in a few hours.

Isn't that the bottom line of this?

Mr. McNULTY. That is correct.

Mr. McCOLLUM. Now, one other thing that I wanted to point out in this whole thing, and that is that there is a downside to the public in this, besides inconvenience. I have heard that term used. I know there are no witnesses here—at least I am not aware of any today—that are saying anything about this, but it seems to me that we have argued this before, and it is very apparent that if you have a situation like you had in Gainesville, FL, last year, where you had murders being committed, very violent serial killing occurring, you have young people on campus who would like to go get guns and buy guns and their parents would like them to have them, to ask them to wait 7 days is more than an inconvenience.

There is the potential in those kinds of cases, and in other cases that you and I can all think of, where being able to go to a gun dealer and buy a gun legitimately is an important self-defense mechanism for the average citizen who does not want to rely on the police, no matter how good the police may be, and I don't think it is a question of constitutional rights. I think it is simply a question of the fact that that is what Americans feel in those periods of time.

So we are giving up something when we pass any kind of a waiting period. I happen to personally believe in a cooling-off period, a 24-hour, 48-hour, whatever it is, and I am all for States doing that, but 7 days is a lot longer than normal cooling-off periods, so I don't

see the point in passing a 7-day national cooling-off period in order to avoid the kind of thing where you have families getting involved in heated disputes, marital disputes and so forth.

But it isn't, in my judgment, a simple question of inconvenience to the public. If we are going to pass something longer, if we are going to pass the 7-day waiting period where you are going to have to wait that long, then you have to give the people who really have a sense of security in being able to go out and buy a gun right now to protect themselves, some reason for doing it. And, if you can't check the records in 7 days, and they are just not there to check any better than you can in 7 minutes or a couple hours, then I just can't buy that, and you are telling me, and I want to reiterate it again, that the bottom line in your testimony, that is on page 15, because you said at the end of your statement, says, "Again, it must be emphasized"—this is what Mr. McNulty said, "that the desirability of the point-of-sale system is that it involves instant background checks that are just as reliable as those performed during a 7-day waiting period. Both systems are dependent upon the same criminal history records."

That is the bottom line of your testimony, is it not, Mr. McNulty?

Mr. McNULTY. Yes, it is, Mr. McCollum.

Steve Dillingham wants to say something.

Mr. McCOLLUM. Mr. Dillingham.

Mr. DILLINGHAM. Congressman, on that point, what we have found is that basically there is no additional information that can be gained in addition to a point-of-sale system during the 7-day period. A national fingerprint check takes a minimum of approximately 30 days, 18 working days once it is received by the FBI, delays at the State level, delays in transmission of that information, so certainly you cannot do a national fingerprint check at all during the 7-day period on a routine basis.

Mr. McCOLLUM. Thank you very much. And, again, my time is about up, but the point remains that that is to me the essence of the argument in this case. Nobody has been able to convince me otherwise, and if there were some way that we could be convinced that this were really going to do the job, I wouldn't hesitate to vote for the 7 days. But, I don't think that it will do the job.

I remain unconvinced, though I am going to listen to the other panels as they come forward.

Thank you very much, Mr. Chairman.

Mr. SCHUMER. Thank you, Mr. McCollum.

Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman.

I apologize to the witnesses for not being here earlier. Judge Sessions, the Director of the FBI, was before the Subcommittee on Civil and Constitutional Rights, and I went there first. I did have an opportunity, Mr. McNulty, to read over your statement last night during my homework period, so I am familiar with the position you have taken.

Help me understand. I realize you were being led a little bit by my friend from Florida a few minutes ago, but I am having a difficult time understanding. You agreed with him that 7 days was too short a period, that it would take a minimum of 4 weeks.

You also agree with him that 24 hours was long enough. Both of those can't be true.

Mr. McNULTY. It is two kinds of checks, and that is the difference. If we want to do a check within a matter of minutes, the kind of check that depends upon the telecommunications system of the FBI involving name identification, that check takes minutes to do. When those forms, under H.R. 7, would be sent to law enforcement agencies, those that wish to participate would take the form and do what would be done during a point-of-purchase identification process. That is, they would access a name index and attempt to learn about the background of an individual through the automated records that are available in that form.

On the other hand, if we want to determine conclusively, or at least with some more reliability, substantially more reliability that the individual has or does not have a felony record, we can go through a process that is much longer through the FBI and which involves the fingerprint identification.

Mr. WASHINGTON. So that means that you are in favor of a longer waiting period there?

Mr. McNULTY. I think that the point is that if there is going to be a very reliable check, that kind of period has to exist, that length of time. It is not the Department's position, though, that we are for a waiting period, whether it be 7 days or 7 weeks. We are here to say that the waiting period that is being proposed in H.R. 7 is something we can't support.

I don't have a position for you on a longer period of time, but I think that my testimony has probably said enough with regard to how we think this relates to the actual occurrence of violent crime and the pattern of behavior of violent criminals, that a longer period of time, even though identification would be improved, would not be effective.

Mr. WASHINGTON. I was still waiting on a yes or no answer to the question that required a yes or no answer. Are you in favor of a longer waiting period?

Mr. McNULTY. No. That is the position I will give you today, although I have to say that I have not come here to testify on a 5-week waiting period, but I can safely say that we would be in opposition of that proposal as well.

Mr. WASHINGTON. So you criticize the bill because it has a 7-day waiting period because it is too short, but you are not in favor of a longer waiting period which would meet the requirements that you suggest or the deficiencies in the 7 days.

Mr. McNULTY. That is right.

Mr. WASHINGTON. Is that right?

Mr. McNULTY. That is right. I think the formulation—the formulation with a longer waiting period changes quite a bit.

Mr. WASHINGTON. I understand.

Mr. McNULTY. It is not just a question, then, of a reasonable period of time being involved and attempting, through some automated capacity, to learn whether or not the individual is disqualified.

If we extend that waiting period for a substantially longer period of time, of course, we have to bring in other factors. One factor would be that if an individual is intending to commit a violent

crime he will get a gun. I know, Mr. Washington, that you have far more experience with the criminal justice system and the things that go on than I do with your experience in Texas, but it is the Department's position that violent criminals don't like to obey the law. They walk into gun stores and they buy guns, even though they are not allowed.

Mr. WASHINGTON. That is right.

Mr. McNULTY. So I think our position would change in this respect, if the bill, H.R. 7, involved a 5-week waiting period. We would probably stress even more that this would be an ineffective tool in stopping violent crime because, in that situation, felons who want guns, would be faced with having to wait 5 weeks, 6 weeks, 7 weeks, to get a gun, and even that one-sixth that now walk into gun stores and say, for whatever reason, they want to wait for 7 days, that number would evaporate if it was 5 weeks or more. We would have only law-abiding citizens waiting that period of time and we would have the felons actively pursuing those 50 million-plus firearms that are currently in America.

Mr. WASHINGTON. My time is just about up, but let me ask one more question, if I could get it in hurriedly before my time is expired.

Mr. SCHUMER. Quick question, quick answer, sure.

Mr. WASHINGTON. Thank you, Mr. Chairman.

If we can demonstrate on the record here situations in which crimes would have been prevented if there had been a 7-day waiting period, don't you think that, then, puts the burden on those who oppose the bill to demonstrate that the crimes would not have been prevented?

Mr. McNULTY. With all due respect to you, sir, my sense is that the burden actually works in a different way and I know that sounds rather challenging and controversial, but I have to say that since common sense tells me that violent criminals don't obey the law—

Mr. WASHINGTON. Some violent criminals would go ahead and get the guns, but would you not at least concede that some violent criminals would not, they wouldn't be violent criminals if they didn't have a gun, right?

Mr. McNULTY. I am sorry. If they didn't have a gun? Yes, but we can't conclude that because they are stopped from buying at a particular gun store, that those violent criminals are reformed and they change their way of life and no longer desire to commit crime. That is our point. They would still find a way to get a gun.

Mr. WASHINGTON. Thank you, sir.

Thank you, Mr. Chairman.

Mr. SCHUMER. Thank you, Mr. Washington.

Let me thank Mr. McNulty for being here. I just want to make two final comments.

First, I was surprised when you said that the Brady bill is "useless." I wish you could stay and listen to the testimony of one of our law enforcement officers from Minnesota, where they have a 7-day waiting period, who will testify how effective that law has been in Minnesota.

I guess the final thing that I would say is that many of the Members here have pointed out, just contradictions. You have done a

great job defending basically untenable positions and I sympathize with you for having to do that, but the contradictions that are here, too long a period, too short a period, records good enough for immediate check but not good enough for a longer 7-day check—at least my conclusion is this administration is sort of stuck with the position that they took a while ago, perhaps for political reasons, and now has to defend it.

Maybe you can become unstuck. We are finding Member after Member who was in the same boat, stuck with the position all along, and has changed, Democrats and Republicans. I hope that maybe, Mr. McNulty, after today's experience, you might be able to persuade the higher-ups to rethink their position because when you look at the testimony it sort of winds back on itself three or four different times and contradicts itself a little bit. But I thank you for your testimony.

Mr. McNULTY. Thank you, Mr. Chairman.

Mr. SCHUMER. You are an able witness. I didn't know you very well when you were on this side of the Chair, but I know you will be an able friend and adversary, as the Crime Committee works its way through not only this bill, which is our opening foray, but also on the President's crime bill as well.

Mr. McNULTY. Thank you.

Mr. SCHUMER. Thank you, and I want to thank Mr. Kurre and Dr. Dillingham for being here as well.

We have had to have one quick schedule change. Our police commissioner from New York City, due to unforeseen circumstances, must leave at 12:30, so we are going to ask him to give his testimony. We are going to ask the members, with your indulgence, to put questions into the record for the Commissioner and then we will go right to the Bradys, who are our second panel, because I know they have time constraints as well.

So, Commissioner Brown, I want to welcome you and please take your seat. I am particularly pleased today that my hometown police commissioner, Lee Brown, could be with us here today. He has been doing an excellent job with New York City's CPOP program and is nationally recognized as a pioneer and leader in the community policing movement.

Commissioner Brown will be able to share with us his wide-ranging experiences in law enforcement. His background includes his years as a patrolman in San Jose, CA, through his academic experience as a professor of criminology to his experience as a police chief in Houston, TX, and finally, his current capacity as head of the country's largest municipal police force.

He is also here in a secondary capacity. He is president of the International Association of Police Chiefs. I know, Commissioner, that you must be gone by 12:30, so we will read your entire statement in the record and you can sort of summarize it in the 5 minutes that you have.

Thank you, Commissioner.

**STATEMENT OF LEE BROWN, COMMISSIONER, NEW YORK CITY
POLICE DEPARTMENT**

Mr. BROWN. Mr. Chairman, honorable members of the committee, first of all thank you for accommodating my schedule and also for inviting me to add my testimony to that of the other witnesses who will appear before you to talk about the importance of H.R. 7, the Brady Handgun Violence Prevention Act.

Somehow, it doesn't seem possible that 10 years have elapsed since Mr. James Brady was crippled in the assassination attempt against President Reagan. Like millions of other people around the world, I remember vividly the televised replaying of those awful moments of gunfire. Terrible moments like these are frozen in our collective memories.

For many of us, the string of such terrible moments began with the assassination of President Kennedy, followed by the assassinations of Senator Robert F. Kennedy and the Rev. Dr. Martin Luther King, Jr. Those are the shootings we remember collectively as a nation. The shock and revulsion that keep these shootings so fresh in our minds is really reassuring evidence of a vigorous social conscience.

But there have been thousands upon thousands of other shootings in America in the decade since Mr. Brady was so terribly wounded. The deaths and injuries to those other faceless Americans were due in large part to easy access to handguns. In New York, as in other cities, many of the victims are innocent bystanders and all too often, they have been children. Thousands have been killed, thousands more have been wounded.

Among the dead and the carnage of the last decade were 23 police officers in New York City. All were killed by guns in the line of duty since the Brady shooting. Another 168 were wounded. The dead left spouses and young children behind. Many of the wounded were left to cope with terrible disabilities.

To look at the official photographs of cops killed in the line of duty, they all look so young—too young—and indeed, it makes you want to cry. But we are grown men, grown women and we can do more than cry. We can make law.

Nationally, the death toll for police officers killed in the line of duty over the last decade is 735. Most were killed by handguns. Just like New York cops, they, too, left families behind. They, too, were too young.

Would all of them be alive today were the Brady bill law? No, but certainly some would have lived, and I would submit that one would be enough.

After all, what does the Brady bill ask of us? Wait 7 days so the police can check if the gunbuyer has a record, a record of criminality, a record of mental instability, or a record of both, a record that we prevent him or her from buying a gun under existing law. We ask just 7 days. I personally know of people who wait that long for their drycleaning. Is it too much to wait that long for a gun?

A word of caution, Mr. Chairman. There are opponents to the Brady bill who argue that the so-called instant check system would make Brady unnecessary by having gun sellers call toll-free to a central information bank. In theory, it would check instantly

whether the buyer had a criminal record. Besides relying on the dealer, instead of law enforcement, to initiate the check, the proposal has other flaws.

It would attempt to check criminal histories, but no other disqualifying information, such as histories of mental illness. To work effectively, it would require advanced optical scanning of fingerprints, the widespread application of which is decades and billions of dollars away. Any check based only on name cannot ensure a positive identification match in the computer.

While a national instant check system is interesting in theory, it is just that, a theory. It cannot be put into practical use now. It is no substitute for the Brady bill.

I might also point out, Mr. Chairman, that the witnesses here today to testify on behalf of the Brady bill were not compelled to be here by the committee. No subpoenas were issued. We are compelled in other ways. I am compelled by the fact that 17 New York City police officers were shot by armed suspects last year. None died, thank God. It is not because the criminals weren't trying.

Last year, we confiscated 17,575 guns in New York, most of them handguns. Ninety-six percent of them were purchased in States where the gun shops eagerly provide same-day service. No, I am not compelled by law to testify today, but I am compelled by the memory of the 23 New York police officers killed in the last decade and the 56 police officers in the decade before that. They are dead, but they are not forgotten.

So it is, as police commissioner of the New York City Police Department, the Nation's largest police department, that I urge this committee and the House to pass the Brady bill, and that is my position. It is the official position of the New York City Police Department. It is also the official position of Mayor Dinkins, the mayor of New York City.

I am compelled to testify also for police officers across America. I am compelled by the need for minimal precautions on behalf of living police officers, as well as by the memories of their slain brother and sister officers.

So, too, it is as president of the International Association of Chiefs of Police, the world's largest association of law enforcement executives, that I urge the committee and the House to pass the Brady bill.

I have talked about the police because I know policing best. I have been at it for over 30 years, but in that time, more and more civilians were killed by handguns in far greater numbers than police officers, often by people who knew the victims and even professed to love them.

Nationally, illegal guns are killing thousands of people, young people in particular. One out of every five young American males who died in 1988 was killed by a firearm. In 1988, that is the most recent year studied by the National Center for Health Statistics in Hyattsville, MD. That is for all males aged 15 to 24.

For young African Americans, the statistics are far worse. In fact, homicide is the leading cause of death among black males ages 15 to 24. Homicide was the cause of 44 percent of all deaths in that age group. Firearms, mainly handguns, were used in 83.5 per-

cent of those homicides. That is from the Center of Health Statistics, the Hyattsville Center.

A sister agency, the Center for Environmental Health and Injury Control, in Atlanta, GA, looked at contributing factors for such a high rate of homicides among young black Americans. The center identified the following factors: immediate access to firearms; alcohol and substance abuse; drug trafficking; poverty; racial discrimination and cultural acceptance of violent behavior.

Mr. Chairman, the Brady bill gives us an opportunity to tackle the first item on that list, immediate access to firearms.

I find it depressing, as it is illuminating, that these two prestigious Centers of Disease Control are now tracking homicides in much the same way we track polio or malaria.

I am no doctor of medicine, but I am a doctor of criminal justice, and I can tell you this: If the mosquito is the agent of malaria, then the handgun is surely the agent of homicide.

Public health officials eventually learned that the way to combat malaria was not to swat mosquitoes, but to drain the swamp. Although we confiscated over 17,500 guns in New York last year, we are still swatting mosquitoes. The swamps are in States where it is easy to get guns. We have tough gun control laws in New York. Other States don't. The way to control guns in New York or anyplace for that matter is to drain the swamps that surround us, and that can be accomplished only through Federal gun control.

As gun trafficking flourishes side by side with drug trafficking, we are strapped for police resources to deal with it. In New York, for example, we recently assembled a joint task force with the Bureau of Alcohol, Tobacco and Firearms to intercept guns coming into New York. We are finding that guns purchased in easy-to-buy States are sold at markup for use in homicides, robberies and other felonious activities.

Felons once relied on cheap guns or old guns, anything they could get their hands on, but now we are increasingly seeing more sophisticated weapons, including automatic weapons and semiautomatic weapons.

In New York City last year, handguns were used in 1,476 murders. They were used in 7,327 felonious assaults. Handguns were also used in 30,496 robberies and I said, we estimated that 96 percent of those guns come from out of the State.

I talked about homicide being tracked by the Nation's finest public health officials. There are other medical aspects emerging from the proliferation of guns on the street. You may have read about some of them where emergency rooms receive fatally wounded pregnant women whose babies are still viable. This has given rise to a new and distinctly American medical expertise, the successful delivery of babies whose mothers are the victims of prenatal gunshot wounds.

Meanwhile, emergency rooms across the country are coming to resemble war time MASH units.

I ask, is that to be our legacy? Medical advances in the face of domestic combat? I trust not.

The President alluded to it recently. Others have said it beforehand. The chances for survival of a young American are better in the Persian Gulf at war than they are in urban America at peace.

Those who risked their lives for America, the returning veterans or the police officers who never left, deserve better. So does the American public. The Brady bill will help slow the carnage. It will help staunch the bleeding. Believe me, Mr. Chairman, we are bleeding out there.

Thank you.

Mr. SCHUMER. Commissioner, thank you for your powerful testimony, based not only on your experience, but your emotions, and all I can tell you is we are going to do our best to pass the bill.

I am sorry we won't have time for questions. I am sorry the scheduling didn't quite work out. I appreciate very much your being here.

Mr. BROWN. Thank you for your consideration.

Mr. SCHUMER. Thank you.

Our next witnesses are Jim and Sarah Brady. If they would come forward.

Sarah and Jim Brady, really need no introduction to anybody, I think, in this room.

Sarah currently serves as the chair of Handgun Control. Jim is the vice chairman of the National Organization on Disability, a private organization based in Washington, DC, although he is here today as a representative of Handgun Control.

Of course, what can one say. They are the heart and soul of this whole movement for handgun control. Without Jim's courage and Sarah's perseverance, we wouldn't be as close as we are to passing this legislation and further legislation. They are an inspiration to everyone who meets them or who touches them. They have had lots of government experience. Sarah has long been active in the Republican Party. Jim's understanding of the Hill encompasses his years here, including his work for the late majority leader, Everett Dirksen.

I think I speak on behalf of every member of this panel, whether they agree with you or not, it is really an honor for you to be here before us today. Your entire statement will be entered into the record and proceed as you wish.

STATEMENT OF JAMES BRADY, HANDGUN CONTROL, INC.

Mr. BRADY. Thank you, Mr. Chairman.

Mr. Chairman, and Mr. Chairman emeritus, and members of this distinguished subcommittee, I appreciate the chance to testify before you today. My special thanks to you, Chairman Schumer, for your willingness to make the Brady bill one of your highest priorities. I am glad to see my old friend, Representative Sensenbrenner. I extend my thanks to you for your support.

I want to thank you, Representative Feighan, for serving as the chief sponsor of the Brady bill and for your hard work and perseverance and I especially want to thank you, Representative Bill Hughes, for your continued leadership and my special thanks to Representatives Levine, Sangmeister, and Washington for cosponsoring the Brady bill.

We are so proud of all of the Americans who fought for freedom in the Persian Gulf and we are terribly saddened by the tragic death and wounding which occurred during the war, but incredible

as it seems, more Americans were killed on our own streets than in the battlefields in the Persian Gulf.

Congress can no longer ignore the enemy here at home. This enemy, random gun violence, threatens our very existence and the social fabric of this great country. The family of Army Specialist Anthony Riggs knows all too well about the enemy here at home. Specialist Riggs returned home to Detroit last week after serving 7 months with a Patriot missile battery in Saudi Arabia. He was gunned down in front of his grandmother's home.

Anthony Riggs would have given his life for freedom across the sea, but instead, he lost his freedom to live here on a street in America.

I, too, know what it is like to have one's freedom taken away with just the pull of a trigger no longer have the freedom of mobility, the freedom to play or chase after my son, Scott, who is now 12, going on 30, the freedom to go places on my own, the freedom to walk around as I please or the freedom to dance with my wife.

I no longer have the freedom from pain or suffering, but I am one of the lucky ones. I survived. But too many others, like Mr. Riggs, do not.

On March 30, 1981, my freedom was taken away by a deranged young man who purchased his handgun over the counter without a wait or without a check. It will be 10 years ago next week. Since that day, over 200,000 men, women and children have been killed in America's gun war, more than Korea, Vietnam, Grenada, Panama, and the Persian Gulf combined.

And the war goes on. I anguish knowing that day in and day out, thousands and thousands of other Americans are in the crossfire because nothing stands between criminals and mad men and their handguns.

Sarah and I are on a crusade, a crusade to save lives, a crusade to make our Nation safer for our children and grandchildren and 95 percent of the American public is on the bandwagon. So many Members of Congress, who have previously supported the gun lobby, have come on board, and I am confident that this time, common sense will prevail. Attorney General, Dick Thornburgh, put it very eloquently when he said, "I have always called the first civil right of every American the right to be free from fear in our home, on our streets and in our communities."

I agree with the Attorney General. Our very freedom is on the line here. For millions of Americans, the fear means that many may stay in their homes. For many, it means sending their children to school with bullet-proof vests and yet, for those of us who have been unfortunate enough to have been in the line of fire, this has meant either losing our freedom to be independent or even losing our lives.

A 7-day waiting period to purchase handguns is not a loss of freedom; it is a measure to protect it. Random gun violence is out of control. It is not just an urban problem; Americans across our great land are at risk. Americans who live in cities, Americans who live in suburbs, Americans who live in small towns and in rural areas all face the threat of gun violence today. None of us are immune to this terrible plague.

Freedom must prevail here and you men can do something about it. I cherish my freedom. I have had to learn to live with my freedom diminished. I want to spare other Americans from going through what I have gone through for the last 10 years and I continue to experience every day.

We won the fight for freedom abroad; now let's win the fight for Americans in our land. Please pass the Brady bill and let freedom reign.

Thank you, and thumbs up to you all.

Mr. SCHUMER. Sarah.

STATEMENT OF SARAH BRADY, HANDGUN CONTROL, INC.

Mrs. BRADY. Mr. Chairman, and members of the subcommittee, thank you, again, for the opportunity to be here today.

As you know, this is not my first time I have been before this subcommittee to support the Brady bill. I have urged you to pass this legislation in the past because, yes, it will help; it will help save lives. My message hasn't changed over these years. Gun laws do work.

Yes, criminals do buy guns at gun stores, and we need a period of time to allow police to do this background check. I must say how pleased I am that our opposition, the National Rifle Association, has now endorsed these facts. The bottom-line difference is now how much time do we need to give police in order to run background checks?

As you know, Congress today has two bills before it, H.R. 7 and H.R. 1412. It is just no contest. The Brady bill can be implemented today and with all due respect to well-intentioned Congressman Staggers, the hotline is fatally flawed.

First, the Staggers bill is unnecessary. The Attorney General, as we have just heard, is already working to implement the 1988 system offered by Congressman McCollum with all deliberate speed. When that system becomes feasible, it will be put into effect and the Brady bill will sunset. As the Attorney General has acknowledged, the McCollum system will take years, and I repeat that, years, and millions, if not billions of dollars, to implement because criminal history records in this country are largely not computerized.

While Virginia, Delaware, and Florida are capable of conducting automated felon checks, such States as Maine, Mississippi and Mr. Staggers' home State of West Virginia, do not have any of their criminal history records on computer.

Fully half of the FBI's computerized arrest records do not show a final disposition. They simply do not know if a person has actually been convicted of a crime, and they are not likely to catch up soon because many States are very slow to report final dispositions to the FBI. This is an impediment to a national system.

Under the Brady bill, police are allowed sufficient time to check manual records to clear up any questions. The Attorney General says that he is in the process of spending \$40 million over a number of years to upgrade Federal criminal records. Once this is done, a national instant check system is estimated to cost up to \$35

million for startup expenses and an additional \$70 million annually for operating expenses.

The Stagers bill contains no provision for obtaining these funds.

In short, the Stagers bill is impossible to comply with. It requires a national automated system to begin operating in just 6 months. Attorney General Thornburgh has stated that a workable system is years away. The Stagers bill requires an initial accuracy rate of better than 2 percent. That standard cannot now be met.

In contrast, the Brady bill does not require a Federal apparatus. With up to 7 days, local police can perform background checks now anywhere in the country by using existing computer and/or manual records. The Brady bill's cost is insignificantly. Any State which can perform criminal background checks quicker and wishes to make handguns accessible in less than 7 days, is free to do so. If law enforcement notifies the dealer before 7 days that they have no information indicating that the purchase would violate law, the sale can go ahead quicker.

Members of this subcommittee, the Brady bill's time has come. The American public overwhelmingly supports it. The law enforcement community universally applauds it and dozens of national groups representing millions of members endorse it. It is now up to you.

Thank you very much.

Mr. SCHUMER. Thank you. I thank both of you, Mr. and Mrs. Brady.

[The attachment to Mrs. Brady's prepared statement follows:]

HANDGUN CONTROL

ONE MILLION STRONG . . . working to
keep handguns out of the wrong hands.

FATAL FLAWS OF H.R. 1412 STAGGERS "HOTLINE" SYSTEM

(I) SIMPLY IMPOSSIBLE TO ACCOMPLISH -- THREE REASONS.

Recently, the National Rifle Association (NRA) unwittingly provided the principal reason why the Staggers bill must be defeated: it "completely ignores the virtual impossibility of doing an accurate national felon identification check" (document opposing H.R. 7, attached to letter to Congress from James J. Baker, NRA Director of Federal Affairs, March 1991).

A. Bush Administration Task Force rejected this scheme. The Attorney General's 1989 Task Force on Felon Identification in Firearms Sales emphatically declared that a federal system of records checks was neither practical nor desirable because more than 90% of arrests and convictions in the U.S. are handled by state and local officials.

"Because of the variety of State laws, practices, and data systems, only State officials are in a position to properly interpret criminal history record information for their State. Moreover, state officials are in the best position to track down missing or incomplete information with local courts or prosecutors. Thus, the active involvement of State officials in the criminal history checks would seem essential to an effective felon identification system."

("The Report to the Attorney General on Systems for Identifying Felons Who Attempt to Purchase Firearms," October 1989, page 21.)

B. Impossible deadline. The Staggers bill requires the Attorney General to have the Hotline system up and running six months after the bill is enacted (Sec. 3(i)). But the Justice Department has made it clear that such a system is years away. As the Attorney General said as recently as March 17, 1991 on Meet The Press, "we can't do it now...." The Attorney General would have to obtain new office space, hire and train new staff to work 24 hours per day, 365 days per year, buy new computer hardware and software, buy new telephone equipment, install new toll-free telephone lines, and upgrade the federal criminal record database. Because of the work involved, it took the State of Florida 20 months to set up its infinitely smaller "instant" check system.

C. Can't meet 2% accuracy standard. H.R. 1412 requires the Attorney General to "ensure that not more than 2 percent of the initial telephone responses to the hotline" are false denials (Sec. 3(a)(4)). But both the Justice Department and the NRA have argued for two years that the rate of false denials will be much greater than 2% under a national check system.

According to the Department of Justice: "Estimates obtained from the FBI indicate that approximately 50% of the cases where persons appear to have a criminal history record based upon an initial name search are eventually found to be false hits." (1989 Report to the Attorney General, page 33.) And according to the NRA: "The records on which a background check are dependent are inadequate, incomplete, and often incorrect...hardly more accurate than the flip-of-a-coin..." (NRA letter to Congress, March 1991.)

Forty states do not have fully automated criminal history record files. Such states as Maine, Mississippi and Mr. Stagers' own West Virginia do not have any of their criminal history records on computer. Nine states do not require their courts to report felony case dispositions. Of those that report final dispositions, the time between the date the court makes its final determination in a case and receipt of the information by the State repository averages 48 days; and the time between receipt of the information and entry into the criminal history databases averages another 79 days! ("Survey of Criminal History Information Systems," March 1991, pages 1-4.) No wonder "the FBI estimates that approximately one-half of the arrest charges in their records do not show a final disposition." (1989 Report to the Attorney General, page 10.)

The point is that a 2 percent error rate is impossible. The Virginia system, touted as a model by the NRA, has had a false denial rate of more than 5 percent from November 1989 through February 1991.

(2) UNNECESSARY LEGISLATION.

There is no need for the Stagers bill. Under the provisions of the McCollum amendment in the Anti-Drug Abuse Act of 1988, the Attorney General is already required to implement a national "instant" check system for the purchase of all firearms. As the Attorney General stated on March 17, 1991, "according to what the Congress has directed us to do, we're implementing now a point-of-sale type of background check that they do in Virginia...."

(3) BUDGET BUSTING COSTS.

The Stagers bill would be exceptionally expensive to implement. First, the Justice Department must improve FBI computer records. On March 17, 1991, the Attorney General stated on Meet The Press that "we are in the process of spending \$40 million" to update those records. Then, the Justice Department would have start-up costs to cover new office space, training new staff, buying new computer hardware, software and telephone equipment, and installing new toll-free telephone lines. In 1989, start-up costs were estimated to be up to \$35 million and operating expenses, including rent, salaries, computer and telephone service contracts and toll-free phone bills were estimated to be up to \$70 million per year. (1989 Report to the Attorney General, page 19.) With the federal deficit at a record level, with law enforcement resources already stretched to the limit, where will the funds come from to establish and run the Stagers hotline?

(4) FULL OF LOOPHOLES.

A. **Loophole for indicted felons.** Although it is a federal crime for a dealer to sell a firearm to a person who has been indicted for a felony, the Hotline is not authorized to search its records for such indictments or use them to deny a handgun purchase request (Sec. 2(a)(1)(B)(i)).

B. **Loophole for state gun permits.** Transactions are exempt from H.R. 1412 if the handgun buyer displays a license to purchase, possess or carry a firearm (Sec. 2(a)(2)(A)). But there is no minimum standard for such permits. In states where permits are granted without a required background check, handgun sales would be made to permit holders without any records check having taken place.

C. **Loophole for dealers without telephone.** The Staggers bill places the convenience of handgun dealers and purchasers ahead of public safety by exempting those dealers who do not have telephone service in their areas (Sec. 2(a)(2)(C)).

(5) POTENTIAL FOR GROSS VIOLATIONS OF INDIVIDUAL RIGHTS.

A. **Abuse by dealers.** The "instant" check system invites abuse by private detectives, prospective employers or others who want information on individuals. Under the Staggers bill, the Hotline is only required to verify that the caller is a federal licensee (Sec. (c)(1)(A)). Any person who becomes a federal firearms dealer (at a cost of \$10 per year) can obtain limited access to information about non-purchasers, derived from confidential criminal history records. Imagine a large-scale employer whose director of security becomes a federal licensee in order to call the Hotline for persons being considered for employment. Incredibly, the Staggers bill contains no penalty for dealers who abuse the system!

B. **Abuse by government.** The Hotline would be authorized to access all files held by any agency of the federal government (Sec. 3(d)(1)). Ironically, the NRA, which regularly asserts a desire to protect the privacy interests of gun owners, is supporting a bill which grants the Department of Justice the broadest possible access to all federal government files, including confidential tax records kept by the Internal Revenue Service, mental health records kept by the Department of Veterans Affairs, and public assistance records kept by the Department of Health and Human Services.

(6) ALMOST NO PENALTY FOR BREAKING THE LAW.

Gun dealers don't have to worry much about violating the Staggers bill. Even if they knowingly and willfully fail to call the Hotline for a background check, Section 2(a)(4) provides no penalty at all unless the purchaser is later found to be prohibited. Even then, there is no criminal sanction. The Secretary of the Treasury has the discretion to suspend or revoke the dealer's license and fine him/her no more than \$5,000.

(7) INVITES SUITS AGAINST FEDERAL, STATE AND LOCAL GOVERNMENTS.

Section 3(c)(2) of the Staggers bill invites lawsuits. It provides:

"Any person denied a handgun because the hotline established under this section provided erroneous information relating to the person may bring an action in any United States district court against the United States, or any State or political subdivision thereof which is the source of the erroneous information, for damages (including consequential damages), injunctive relief, and...a reasonable attorney's fee...."

To prevail, the plaintiff does not have to show that the error was intentional or even negligent. If a typographical error was made years ago by a clerk in a local police agency, even if the government promptly corrected its records after it was pointed out, the plaintiff could still win damages from the local, state and federal governments.

(8) GUARANTEED TO FAIL.

A. Wrong information solicited from purchasers. The Staggers bill does not require from the dealer adequate information on the purchaser to conduct a thorough records check. H.R. 1412 requires only that the name and social security number be provided to the Hotline (Sec. 3(c)(1)(B)). Criminal justice records are not organized by social security number but by name and date of birth.

B. 24-hour deadline is unrealistic. Under the Staggers bill, handgun purchases can be completed after 24 hours, even if the Hotline cannot verify the purchaser's eligibility (Sec. 2(a)(1)(ii)(I)). This is less time than in any of the three states which currently conduct similar "instant" checks. In Florida, police are given three working days, which in some cases is not enough time to resolve questions in the criminal justice records. Police are given three calendar days in Delaware and until the end of the next business day in Virginia. The Staggers bill places an impossible burden on the Hotline staff to quickly resolve records discrepancies.

Mr. SCHUMER. I just have one question, because you have answered them all. You heard the administration testify here.

Mr. BRADY. I did.

Mr. SCHUMER. And you have rebutted some of their arguments. What is your gut reaction?

Mrs. BRADY. I want to applaud them for the work they are doing to eventually come up with the wonderful system that we are going to have in the future and I, of course, am in favor of that. I know when I was in college, I took logic and I did not find that they came to a logical conclusion. I think they proved more than anything that waiting periods are necessary.

It seemed to me their only problem seemed to be would the catching of a felon attempting to purchase a gun truly stop a crime. The way I would answer that, you, Mr. Chairman, mentioned 5,000 people that were stopped in, say, four States. I know Indiana. I am noticing here there is another 939 a year. I mean, we are talking about many thousands over the Nation stopped by waiting periods.

Would we rather see those guns in the hands of those felons? No, maybe we can't prove they are out to hold up the local 7-Eleven, but would you rather have 15,000 guns in the hands of felons or 20,000 guns in the hands of felons or would you rather stop them from being there? I think that answer is very clear.

I think anybody would come to that logical conclusion, that if we can stop felons at the point of purchase, wouldn't we want to be able to do that? Maybe we won't catch them all, but if we can catch 15,000 or 20,000—

Mr. BRADY. Or make some people think twice.

Mrs. BRADY [continuing]. Then aren't we going to stop some criminal acts from happening? Aren't we going to stop some lives from being lost, not all of them, no? We will never stop all of them, but I sure don't want to put the name on those bullets. I don't want to be the one to name whose child or whose husband or wife is the one with that name on the bullet.

If we can save lives, then I think it is overwhelmingly proved that we can, yes, it is up to us to do it.

Mr. SCHUMER. I have no further questions.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. Mr. Chairman, I have no questions, except to thank both Jim and Sarah Brady for being here today and for their very cogent and personal testimony.

Mr. BRADY. Thank you, Congressman.

Mr. SCHUMER. Mr. Feighan.

Mr. Feighan.

Mr. FEIGHAN. Thank you very much, Mr. Chairman. I want to thank both Jim and Sarah Brady. I don't think there could ever be enough opportunities for us to thank you for all the work that you have done on this and it has to be bitterly disappointing, although it is a tribute to both of you that you don't show it, that after 10 years, we have not been able to pass this very modest recommendation that is named in your honor, but perhaps this year will be, as we celebrate, unfortunately, the tragic anniversary of your injury, it might give us an opportunity to celebrate at least some victory and to give value and tribute to the effort that you have made over

the past 10 years in turning this very painful experience into something very productive and very important.

I have one question, if I can, and that is, you have talked to lots of Members of Congress; you have been so intimately involved in this whole process for the past 10 years, is there reason for greater optimism this year than we might have had 2 years ago? Do you have a sense that we are better positioned in the Congress or with the American people for passage of the Brady bill this year than in the past?

Mr. BRADY. Congressman, I think the winds of change are blowing, and I think they are blowing for the better. Day in and day out, we see people taking that trip, like St. Paul did to Damascus, and seeing some sort of light and being enlightened and with your leadership, we will continue to do that. People come up to me and they say, "Ed got me in the lobby the other day and here is what he said." So all of your persuasion is staying its course and we see people switching day in and day out.

Mrs. BRADY. I feel the same way. I think certainly the great number of lives that have been lost continues to appall the American public, but I think probably one of the most significant changes has been the fact that this year, everyone agrees that background checks and/or probably waiting periods will help and will save lives. It is just the method by which they are done.

I think we have heard testimony that waiting for instantaneous checks or waiting for the perfect system is pie in the sky right now, that we must do something today and that is what we see different in the Halls of Congress, too. Everybody seems to believe the same thing.

Mr. FEIGHAN. Thanks very much.

Thank you, Mr. Chairman.

Mr. SCHUMER. Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. and Mrs. Brady, I join the chairman in expressing the fact that I, too, feel honored at your presence here with the struggle that you have been through the last number of years.

Although you have testified before, I haven't heard that testimony because I was not on this committee until just recently, and to the extent I have time, I have just some mechanical questions about H.R. 7, the Brady bill, would work. I would like to ask them of you if I may.

First of all, an individual who seeks to purchase a firearm would fill out a form. That form would go to the chief law enforcement officer, defined as chief of police or sheriff. If you are in a community that has both, as many urban communities do, which one would it go to, then?

Mrs. BRADY. Now, that I am not sure of, but I am sure that somebody technically—it goes to the one that would be the—

Mr. SCHUMER. If the gentleman would yield, there is a designation all the time—

Mrs. BRADY [continuing]. Made—

Mr. SCHUMER [continuing]. Who is designated the chief law enforcement officer when there is—

Mrs. BRADY. There is one in charge and it would depend upon the individual State as to how that would be done.

Mr. SCHIFF. All right.

When the form is submitted to the chief law enforcement officer, under this bill, does that mean there will, in fact, be a background check?

Mrs. BRADY. It is not mandated that the background check be run, no, sir.

Mr. SCHIFF. So, under this bill, we could pass the bill and the President could sign it and there is not necessarily going to be one more background check than may exist today. Is that right?

Mrs. BRADY. Other than the fact that law enforcement across the country is so anxious for this opportunity to run the background checks, but given the opportunity, yes, they will.

So I think you will see, with almost certainty in almost all municipalities and localities throughout the country, there will be background checks run. They are not mandated, however, law enforcement indicates they will be done.

Mr. SCHIFF. Are there departments that specifically have said if only we had a waiting period, we guarantee that we would conduct a—

Mrs. BRADY. Absolutely. I have heard that. I have heard that across the country as recently as from a police chief in Wisconsin. I am sorry Mr. Ramstad is not here right now. I was in Wisconsin, Milwaukee, last week, where an entire delegation of the Attorney General of the State and police chiefs from throughout the State were fighting for a 7-day waiting period there and said they needed and wanted that opportunity.

Mr. SCHIFF. But their States have not passed a 7-day waiting period?

Mrs. BRADY. That is correct. They are working on it in their State. Half the States in this country have not provided either a waiting period and/or a permit-to-purchase system. That is why the law enforcement communities are so behind the Brady bill. I think you heard Chief Brown speak that while certainly local and State laws do help and do work, in order to be truly effective, it must be Federal so that the trafficking of guns from States like Ohio, which has no system, into Illinois, which does have a system, or into New York, can be stopped.

Mr. SCHIFF. I am informed by the chairman that my time is up. I regret that because I have a number of other technical questions and perhaps, with—

Mr. SCHUMER. Without objection, they can be submitted in writing and they can answer them.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. BRADY. Thank you, Congressman.

Mr. SCHUMER. Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman.

I don't have any questions. I would just like to say, Mrs. Brady, on your point about looking forward to the day when we no longer need the Brady bill, I join you in that. I am troubled, as I am sure you are, about the notion of all deliberate speed. Sometimes that means delay. That phrase, as you know, came from the *Brown v. Board of Education* case in 1954 and that has taken much too long.

We all want a day when we have a better system, but it seems to turn logic on its head to say that until we get that system we

should have no system. The argument from Mr. McNulty should have been that since we don't have a perfect world we shouldn't have one at all.

I commend you on your effort.

Mr. Brady made a good point a moment ago about discouraging some people, because I know in my experience, for instance, with a person who would use someone else's credit card, it takes a lot of courage to walk into a department store knowing that there is going to be a check made on that credit card; the risk factor goes up.

The analogy is very clear to me. When you know that a person who walks in knows that there is going to be a criminal record check made and a 7-day waiting period, one, he or she is much less likely to go in to purchase the gun; two, they are not going to go back. If they don't get the gun right there at the point of sale, they are not going to go back, because they know that when that records check comes back they are going to be turned down and they may be arrested for attempting to purchase a gun.

Mr. BRADY. And they may end up in the big house.

Mr. WASHINGTON. That is right, and that is what we want.

Let me say to you that I believe that Andrew Jackson would not be at all bothered by me paraphrasing his oft quoted phrase that one couple with courage is a majority, and you are that couple with the courage, and you are a majority; you are a majority to Members of Congress.

I promised you in the hallway last year when I was still wet behind the ears here, probably less than 1 month or so when the bill came up, that I would push hard for it. I renew that promise to you today. I apologize because we didn't get it passed last time. I will reinvigorate my efforts along with those who are much higher up in the chain of command around here.

Mr. BRADY. Congressman, you are not wet any more.

Mr. WASHINGTON. Thank you, Mr. Brady. You have my undying effort on behalf of this. We will get it passed.

Thank you, Mr. Chairman.

Mr. BRADY. Thank you.

Mr. SCHUMER. Thank you very much.

We have an opportunity to make sure nobody here in this Congress is all wet any more because of your leadership.

Mr. McCollum.

Mr. McCOLLUM. Thank you very much, Mr. Chairman.

Jim and Sarah, it is a pleasure to have you here and, Jim, particularly, to see you as vigorous today as you are. It was excellent testimony.

Mr. BRADY. I have good days, and I have bad days.

Mr. McCOLLUM. Well, it looked pretty darn good all the time to me.

Mr. BRADY. I'll tell you, the adrenaline is going today, and that helps out a lot.

Mr. McCOLLUM. It is. I want to commend both of you. Even though I think we differ on one aspect of this, I have never differed with you, either of you, on the concept of needing to have the check, and requiring it, and getting it going, and doing it right.

Sarah, as you said, we have already accomplished a good deal; we just need to do more; we need to do it faster.

I was not particularly pleased today with some of the Justice Department testimony, and I haven't been in the past.

Mr. BRADY. Nor were we, but we can't have everything.

Mr. MCCOLLUM. They are too slow in realizing that they can implement some of this now instead of waiting around.

But I have yet to be convinced—and I am listening, and I have listened to you today—that 7 days will do more than 1 day, although I am convinced 30 or 45 days would. It is just the 7-day part that has me bugged right now. So I am still open minded, I am still listening, but, frankly, I remain unconvinced at this point, because I think that the States and the Nation can do what you want to do right now in 7 days in the 1 day, or 7 minutes, or whatever.

But I do think we ought to mandate it. I think we ought to require that check. We ought to require every gun dealer to go out and do it. If you can convince me, or somebody else can, that 7 days is required to do this and we are actually going to accomplish more in 7 than we would in 1 under the present conditions of things, then I would be with you on that too.

Anyway, while we might differ on that one point, we certainly share the bottom line, and I commend you both for the time you put into this because it is a cause that does and will save lives.

Thank you.

Mr. BRADY. Thank you, Congressman.

Mr. SCHUMER. I think everything that is said has been said, but none of it equals the work and effort that both of you have put in and the courage that you have shown.

Mr. BRADY. We are not giving up yet.

Mr. SCHUMER. No, we are not giving up until this bill is signed by the President.

Mr. BRADY. It ain't over till it's over.

Mr. SCHUMER. Thanks. Thank you very much, Jim and Sarah Brady.

Mrs. BRADY. Thank you, Mr. Chairman.

Mr. BRADY. Thank you, Mr. Chairman.

Mr. SCHUMER. Our next panel has waited patiently, and they have very important stories to tell. I would like them to all come forward.

I am very grateful for our next panel of witnesses as they will share with us deeply personal and moving stories. These are the people that the Brady bill is all about, ladies and gentlemen. They know in a direct way that the Brady bill will save lives.

Our four witnesses, unfortunately, each represent a different kind of killing, one, by an unknown murderer; a second, a classic crime of passion slaying; the third, a murder by a mentally unstable person; and the fourth, by a convicted felon. I know for each of the witnesses it is extremely difficult to come here and testify, but I also know that their testimony will really do something and help importune this Congress, and that is why I am so glad they are here.

If we could please close the doors up there, I am going to introduce each witness. We will save all the questions until all four witnesses have testified, but I will introduce each witness or set of wit-

nesses separately. Our first is Mr. Edward Prince, who is accompanied this morning by his daughter, Jackie Prince.

I know this is the first time the two of you have testified and how difficult it is for you. I only had to look at your faces when you walked into my office this morning.

Mr. Prince lost his 19-year-old son Christian in a senseless shooting at Yale University earlier this year in a case of murder by an unknown killer. Mr. Prince is a lifelong resident of the Washington area. He is a partner in the firm of Cushman, Darby & Cushman, where he practices patent and trademark law. Jackie Prince is a staff scientist with the Environmental Defense Fund. Both are graduates of Yale University, where Christian was studying when he was killed with a small-caliber handgun in an apparent robbery attempt. Christian had hoped to be an intern on the Hill this summer, but that brutal murder will deprive us of the work he might have done.

Mr. Prince your entire statements will be entered into the record, and you may proceed as you wish.

**STATEMENT OF EDWARD M. PRINCE, WASHINGTON, DC,
ACCOMPANIED BY JACKIE PRINCE**

Mr. PRINCE. Thank you, Mr. Chairman. Thank you for the opportunity to appear here. I wish I weren't on this panel, I wish I were on one of the other panels, but this testimony is submitted in support of the Brady Handgun Violence Prevention Act on behalf of myself, my wife Sally, my daughter Jackie, my son Ted, who is at Duke Law School, but most of all on behalf of Christian Haley Prince, my deceased son.

Just over 1 month ago, my 19-year-old son Christian was shot and killed in what was described as an apparent robbery attempt on the campus of Yale University. We do not blame Yale University. Four successive generations of my family have attended Yale University, including all of my children. We know the campus well, and we know the street where Christian was shot. Christian was walking home from a party on Saturday evening, walking a block from the president's house, on a street that was not considered particularly unsafe. Rather, we blame Christian's death on the prevalence of handguns in communities across the Nation, guns in the hands of those who would act without responsibility, those who would shoot an innocent 19-year-old, those whose values are simply different from ours when it comes to the sanctity of life.

To the Princes, the Brady Handgun Prevention Act is the Prince Handgun Prevention Act. To the Biases, Whites, and Goulds, it is probably the Bias, White, and Gould Handgun Violence Prevention Act. To every parent, wife, husband, grandparent, sister, brother, it is a passionate plea for a handgun violence prevention act. The name itself is so simple, so morally right, one wonders what the controversy is about.

The act is about a senseless problem, a problem which affects people of all ages, of all races, of all religious backgrounds, as your witnesses so aptly illustrate. It is also an act which presumably has political ramifications and affects voter preferences. Yet tell that to the witnesses appearing here today, to the parents and loved ones

of victims of handgun violence throughout this great Nation. Our anguish and pain are enormous, our lives are permanently altered, and our priorities are a lot different.

How many tragedies does it take to change political priorities, or can good common sense put individual rights in proper perspective?

Now what did they, the authors of the second amendment, mean when they said, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed?"

Was that a well regulated militia that killed my son on Saturday night? Was it necessary for the security of the State? What does the word "infringe" mean? There is only one infringement here, the infringement of Christian Prince's right to life, liberty, and property. Christian was transgressed, deprived of his life by an instrumentality in the hands of a certain individual by virtue of the second amendment.

I want to know who has control over that handgun. I am simply not familiar with enthusiasts who use handguns for sport. I am sure there are some, but you count those individuals as against the victims of handgun violence, the victims of holdups conducted with handguns, and the grieving friends and relatives affected by such acts.

To all the handgun sport enthusiasts in the world, I only wish you had an opportunity to know Christian Prince.

Ms. PRINCE. He was a great athlete and an incredible sports enthusiast, with interests in football, tennis, and golf, hockey, he was a skier, he was an all-American lacrosse player who, as of the night he was killed, was a sophomore starter on a varsity collegiate team.

Mr. PRINCE. Tragically, he found the game of life was played on an uneven field, made so by an abuse of the second amendment.

To all of the gun proponents that claim the right to own a gun for protection and to the Members of Congress, I wish you, too, had an opportunity to know Christian Prince, a beautiful, sensitive, thoughtful person, a friend to all ages, an unassuming young man who, at 6 feet 2 inches, blonde hair, and blue-eyed, was described as having movie-star qualities.

Ms. PRINCE. He was a young man who drew over a thousand friends to celebrate his life at the funeral service and leaves many people devastated. I wish that you had known Christian Prince so that you might have even the slightest understanding of the pain and the grief that our family and other families must now endure, so that you would realize that all people of the United States must be protected from street violence, a much more serious problem than the so-called need for self-protection at home where locks and bolts, emergency numbers, and alarms already offer a means of protection. Christian Prince, a strong 19-year-old athlete, had nothing to protect him.

Mr. PRINCE. And if you still must bear arms, it is clear to me that the minimal regulations imposed by this act upon the right to acquire a handgun in the first instance are not an infringement upon any individual's right to keep and bear arms. I do not believe that any responsible American who truly believes he or she needs

a handgun for protection or for sport could not wait 7 days to purchase that handgun.

Mr. McCollum, if you need 30 days to run the background check, so be it; you can certainly wait 30 days to get that handgun.

The central requirement in the Brady bill, a 7-day or even longer waiting period while a background check is made, is not an infringement of anyone's constitutional rights. A background check will establish, to the extent that records are available, the reliability of the transferee. It will provide a minimum cooling off period. If it is longer, so be it, for those who are temporarily crazed over a particular act, and in smaller communities it will permit those in authority to have an opportunity to question the transferee, even if such questioning is only an acknowledgment or recognition that those in authority are aware of the possession of a handgun by the transferee.

While you have listened to our direct statement of injury and personal grief, it is clear that we are hurt indirectly by virtue of easy access to handguns. It is axiomatic that there are increased costs to the taxpayers as a result of the crime on the streets—increases in police force, prisons, lost contributions to society by the victims. I don't know the exact numbers, but the numbers are irrelevant. There is simply an increased economic burden which will be lessened by this act.

Would this act have prevented the tragedy which befell Christian Prince? The answer most probably is no. If it would have prevented the act of the tragedy which befell Christian Prince and it failed to pass 2 years ago because of 34 votes, can you imagine how deep our grief is today? But would this act prevent a similar tragedy against another under different circumstances? The answer most certainly is yes. If a single life is saved, is that not sufficient justification for this act?

I close with a further statement of fact to illustrate the problem. As stated in my introduction, my wife Sally is the owner of a series of retail establishments. One of these establishments has been held up three times with a handgun without direct violence. The fourth incident for our family had a more tragic ending. We are defenseless against these senseless acts. We pray that no Member of Congress or of this committee has to endure the anguish which the witnesses today have had to endure, but we pray for your assistance in protecting us, the citizens of the United States, against these infringements of our life, liberty, and property.

Mr. Chairman, with your permission, I would like to append to my remarks the extemporaneous comments by Senator Bond of Missouri on the floor of the Senate on February 21, 1991, following the funeral of Christian Haley Prince. Christian, the great-great-grandson of Senator Vest from the State of Missouri, worked on President Bush's campaign during the summer of 1987. As you indicated, he was scheduled to work for Senator Bond in this Congress during the summer of 1991.

Thank you.

Mr. SCHUMER. Without objection, the statement is put in the record, and we thank you.

[The attachment to Mr. Prince's statement follows:]

February 21, 1991

CONGRESSIONAL RECORD — SENATE

S 2137

CHRISTIAN HALEY PRINCE

Mr. BOND. Mr. President, yesterday we attended services at St. Columbus Church for Christian Haley Prince, a young man whose tragic loss was widely noted in the media last Saturday night, early Sunday morning, at Yale University.

The newspapers gave his basic biography, and it truly is an outstanding biography. He was a scholar, an athlete, a leader. President Bush rallied the parents at the visitation the night before to extend his condolences and to say that Christian Prince obviously was an all-American young man.

Certainly, his credentials indicate that he was an all-American: Dean's list, all-American lacrosse player, leader in prep school, recognized by his peers as an outstanding young man. He was going to be an intern in my office in the Senate this summer, and I am very disappointed that my colleagues and the Senate family did not have a chance to get to know him, because he truly was an outstanding young man.

The services was billed as a thanksgiving and celebrating the life of Christian Prince. It is difficult for me, as a layman, to be able to go to a service like that and to realize that in services for a 19-year-old, it could be a celebration. But there were some aspects of that service—the love that was evident there—that convinced me that, yes, maybe we could celebrate this life because, you see, the accomplishments on paper do not tell all there was to know about Christian.

One of the people who knew him much better than I, his headmaster, a teacher at Lawrenceville, said that it is unusual for a boy to do so well, so fast, in so many ways; just get out of his way and let him keep going.

The headmaster at his school said that Christian was a man of character

in the best sense of the word. He took on responsibilities not for acclaim and not for the public recognition that they would draw but because he believed it was right to help a friend in a crisis situation: to spend time tutoring some person who was slow. His uncle told me that he was a tremendous athlete. To put his arm around him was like putting his arm around an oak tree. Yet, he was a very gentle young man. He never spoke a word in anger. He had that great ability, even though he was shy, to make friends, because he was full of love.

His sister, in her tribute to him, said that he was a man that she would have chosen as her best friend, had he not been a brother. Another friend who has teenaged daughters said that this is the kind of person that a father hopes his daughter will ultimately meet.

We saw at those services not only the strength of his parents, Sally and Ted Prince; his brother Teddy, who delivered an eloquent homily; and his sister Jackie—and our hearts go out to them—but we saw such a warmth and a genuine feeling of love for Christian, and a concern for his family, that in the darkest of dark, we could look back in celebration at the life of a young man who in 19 years had achieved more than most of us will ever achieve, and who leaves his mark very eloquently among thousands who came to pay respects: friends from the lacrosse team at Yale, friends from high school, from prep school, from the neighborhood, from the church.

I truly regret that my friends in the Senate will not have an opportunity to get to know him. But I think his life has left us a wonderful legacy of love and accomplishment that I wanted to recognize tonight and to share with my colleagues.

I thank the Chair. I yield the floor.

Mr. SCHUMER. We know how difficult it was for you to come here, but I do think it will have an effect.

We have had a vote called, so I want to apologize to the other witnesses. We will briefly recess, I will try to be back here in 5 minutes, and we will resume testimony.

The subcommittee is recessed for 5 minutes.

[Recess.]

Mr. SCHUMER. The subcommittee will come to order.

Our second witness—and, again, I want to reiterate how difficult all of this is. It is difficult for those of us on this side of the table, so you can imagine how difficult it is for people on the other side of the table but I think necessary and important.

Our next witness is Mr. James Bias from Landover, MD. Mr. Bias is a lifetime resident of this area. He was born and raised in the District of Columbia, and he attends the Full Gospel AME Zion Church in Temple Hills, MD. He and his wife Louise are actively crusading against the drug crisis in this country. Many of you may recall that Mr. Bias lost his son Jay in Prince George's Plaza simply because Jay had been talking with the wrong girl. This is a classic example of a "heat of passion" killing. Jay was simply making a jewelry purchase, speaking with the sales clerk, when her husband, the gunman, walked into the store and got mad. Outside the store, the gunman and a friend drove up beside the car in which Jay was seated and shot Jay.

This is not the only tragedy the Bias family has suffered, of course. He also lost his son Len.

Mr. Bias, again, I very much appreciate your being here and am aware of the difficulty in testifying. Your entire statement will be entered in the record, and you may proceed as you wish.

STATEMENT OF JAMES S. BIAS, LANDOVER, MD

Mr. BIAS. Thank you, Mr. Chairman, honorable members of the subcommittee. Let me add my testimony to the rest of the distinguished witnesses today.

I am the father of Leonard Bias, the University of Maryland basketball star and student who died on campus on June 19, 1986, after being drafted by the Boston Celtics. I am also the father of Jay Bias, who, on December 4, 1990, was gunned down while on his lunch break at a shopping mall in Prince George's County. His death has prompted me to become involved in trying to find a solution to the senseless, wanton killings and murders that are taking place on our streets and in our communities. My activism was stimulated by his death.

I have long been an individual against violence and crime and drugs in the streets of America. I have seen America deteriorate in every sense of the word through violence and actions of those who are thoughtless, senseless, and are wielding guns in our streets and our communities.

The death of Leonard Bias has torn into the hearts of the family and friends throughout the country and abroad. Four and a half years later, and before being healed from the first tragedy, the family once again has been violently traumatized by the death of Jay. As a constant reminder, I can hear the words that I always

asked Jay to adhere to: "If you have an opportunity to walk away from a fight, always walk away first before getting involved in a fight."

Today I stand by that, knowing that Jay took the right road. He did what I asked him to do. He walked away, only to be gunned down by an errant young man with a gun and an attitude. We had better be sure, if we tell our children to walk away from a fight, that they have a chance for life after they do so.

We think we are teaching our children to do the right thing, and it becomes the thing that causes their death. This is why I have become involved, to attempt to make a secure environment for my children, my neighbors' children, and my community as a whole. All over America, groups are organizing and forming to encourage our elected officials to make sound judgment and to support the Brady bill.

The Brady bill allows a 7-day waiting period for individuals to purchase a handgun. When we apply for a credit card, there is a waiting period. If we apply for a bank loan, there is a waiting period. If we apply for an apartment, there is a waiting period. In all of these transactions, there is a waiting period and background check. It has become the norm in our society to do background checks on individuals before they are extended credit and many other privileges that we enjoy in this country.

A 7-day waiting period is a sound policy. It is a sound policy because, if the individual is a felon, by law he cannot own a handgun or purchase a handgun. If the individual is mentally incompetent, he cannot purchase a handgun by law.

The Brady bill also has an added factor of the cooling off period. If an individual is in a mental state where he wants to commit a crime of passion or other unstable acts, he has a 7-day cooling-off period before he can actually receive the gun, if at all he is eligible. This gives the individual time to think and to make a sound judgment. Possibly in this situation, a life is saved. The act that would be committed in the heat of passion would be delayed for 7 days, and the individual would have time to sort out his situation. Lives will be saved by the 7-day waiting period, and every life is important.

It is our responsibility as citizens and elected officials, and human beings, to be compassionate and have respect for human life. No longer can we stand by, pretending to be blind to the escalating murder and violence created by those who carry handguns and use them as an answer to all our social and economic ills.

I believe the Brady bill, H.R. 7, is a national solution to a national problem. No longer can we allow inconsistent gun laws to circumvent the safety of the citizens of this country. My prayers are with you in this cry for freedom. If we can liberate Kuwait, then surely our liberation at home can be no less a priority, and, to add to that, I would point out that on Monday a young man returned home from Kuwait in the face of impending death, Scud missiles, the threat of poison gas, and all the carnage of war, only to survive that and come home to America, to the country that he fought for, to be gunned down on the streets within a matter of hours of his arrival here, in an attempt to secure his family and move them from the neighborhood that he was in. I think that you, as elected

officials, have a responsibility to ensure that this never happens again.

I spoke at the National Conference of Mayors, and I made that statement, that it would be a tragedy if any of those young men came back from the Persian Gulf only to find one of their loved ones had been killed by an errant individual running with a gun in the neighborhoods of our country, and on Monday it took place. We owe that individual the right to life, liberty, and the pursuit of happiness in this country. Kuwaitis have their country back; we want our streets back; we want our neighborhoods back; we want to be able to move about freely, without fear; we want to go to shopping malls and go to theater houses and go to concerts and all. Young people have that right. Those rights have been taken away.

When we talk about the rights of individuals to carry guns, anyone who wants to carry a gun has the right to carry a gun. Those who don't have the right to carry a gun are the ones who won't go up and try to register. I mean, if you are a law-abiding citizen, you should have no problem with registering to attempt to own a handgun.

In this area, 703 deaths occurred, and Washington, DC, had 483 homicides here. Just a few blocks from this area where we are making the decisions about what we are going to do about this problem, the guns are going off even as we speak. This is the time to act. This is a national solution to a national problem. I encourage you to act. Your constituents want you to act. The USA Today poll showed over 80 percent of Americans want a meaningful handgun control law, which is the Brady bill. I encourage you to act on that, act on your constituents' wishes.

Thank you, sir, for the opportunity.

Mr. SCHUMER. Thank you, Mr. Bias. We very much appreciate your testimony and the tragedy you have gone through. It wasn't very long ago. As you said, your wounds healed, and now they are open again. We appreciate your trying to be here.

Next the subcommittee will hear from Ms. Cathy Gould from Florence, SC. Currently, Mrs. Gould works as a physical therapist at three local hospitals as well as tutoring in a local reading program. Cathy and her late husband Rick moved to Florence, SC, in 1977 because Rick was joining the local police force. In August 1989, Rick was the victim of a slaying by a known mentally unstable man whom Rich, as a good samaritan, had befriended.

Once again, Mrs. Gould, we very appreciate your being here and sharing some of your pain. You may proceed as you wish.

STATEMENT OF CATHY GOULD, FLORENCE, SC

Ms. GOULD. Good afternoon, Mr. Chairman and members of the subcommittee. I want to thank you for the opportunity to testify before you today. However, if the Brady bill was in effect 2 years ago, I would not be here.

August 22, 1989, exactly 17 months ago tomorrow, I lost my best friend to a bullet from a 38-caliber handgun, a handgun that should not have been purchased. My husband, Lt. Richard Gould of the Florence, SC, Police Department was my life. We were anticipating our fifteenth wedding anniversary that September 14 and

often talked about how we were going to spend at least 60 years together.

We were married in 1974, while we were both attending Northeastern University. I was well aware of Rick's career choice at that time—police work was all he ever wanted to do—and I knew all the dangers it entailed. He had lots of close calls as a police officer, from shootings, stabbings, to car accidents, and I had just gotten to the point in my life where he had convinced me that he knew what he was doing, he was careful, he didn't take any unnecessary chances. It is ironic that his life was taken 20 minutes after he got to the police station that day, sitting at his desk, by an 86-year-old man.

He had helped this man when he had arrived in Florence the previous March. It was by accident. He was trying to get to Florida, and he had an accent; the person at the train station thought he said "Florence." He wanted to go to Florida and take his life—at least that is what he told me—because he felt old and useless.

Rick took time off work, and, in our personal vehicle, he and another police officer drove this man back to New York at his son's request. The son was calling Rick at the police department and at our home several times a day: "Please bring my dad home."

The man was subsequently hospitalized for 1 month for psychiatric evaluation. He plotted to return to Florence to get back the, "ransom money" his son had paid Rick and the other police officer for bringing him home. After Rick's death, I found some letters full of irrational threats by this man, telling him he was going to take everything he had ever worked for away from him if he didn't give him back the money and apologize for kidnaping him. It was crazy.

On the morning of August 22, 1989, this man walked into a gun dealership with a South Carolina driver's license he had just gotten the week before and purchased a handgun. He had previously been denied a handgun purchase by a private individual, obviously not a licensed dealer. He arrived at the police station that afternoon, only hours after getting the gun, with a bouquet of flowers supposedly for me because I had been nice to him when Rick brought him to my house at 2 o'clock in the morning—I guess it was February 28.

I think the reason Rick let him in the office this time was because he did have the flowers and it looked like a goodwill gesture: Let's, you know, forget the past. He never let him in before. His captain and other police officers would say, "No, no, no. Rick can't talk to you now. Just, you know, go on your merry way." So I feel guilty about that. I feel like, if he didn't have those flowers and if he didn't say this is for your wife, Rick probably would have said, "Go away," and closed the door.

He pulled the handgun from behind the flowers and shot Rick once in the head. He didn't have a chance.

Had the Brady bill been in effect 2 years ago, this man definitely would have been denied the gun purchase. A background check by the local police department would have elicited a simple "do not sell him a gun" response. Even the dispatchers at the police department knew him by name. They knew the circumstances of his return in March. They knew he was back in Florence and they

knew he was harassing Rick and showing up at the police department on a regular basis.

There is no doubt in my mind that if the Brady bill was in effect in August 1989, my Rick would be here to help me raise our two small children and share the beautiful life we built together.

No one can imagine how hard it is to pick up the pieces and go on with your life when you feel so dead inside. Without the love of my family and Rick's family, my devotion to our children, and a great outpouring of love and support from my community, I would not be here today. I had given up for a period of time there.

Not only have the children and I lost a great deal, but the community has as well. Rick was a very devoted employee, a concerned citizen active in many aspects of community service, a wonderful friend to so many, and a truly beautiful person. He was so much fun to be around.

I would give anything to turn back the clock. I often wish that I could take his place, but obviously I can't do that.

It hurts too much to be without him. It's a daily struggle to convince myself and the children that life is good and worth living and we should strive to make the most of each day. My 11-year-old son goes to bed just about every night saying "I've had a lousy day. Everything happens to me. Nothing good ever happens to me." I am continually trying to convince him that, "Oh, yes, this happened and this happened, and this was good, this was positive." He doesn't feel any of that.

I have assigned the song "The Great Pretender" to my personality. Most of the time I pretend that everything is OK when it's far from that. Nobody wants to hear your problems and nobody wants to hear how much you hurt. You just put a smile on your face and take it one day at a time.

I have come to the Capital several times in the last 17 months, and I will continue to come. I will come 100 times if necessary to help our legislators realize the positive impact the Brady bill can have. Any small part I can play in bringing about its quick passage will help me to feel that my precious Rick did not die in vain. Many more lives will be spared if this commonsense measure becomes law. I want to ensure that another Cathy Gould will not become a young police widow and that more young children will not lose a parent to a senseless act of violence. I implore you to get this bill on the floor now and enacted into law as soon as possible. I can't find a reason not to.

Thank you.

Mr. SCHUMER. Well, we have another vote. And rather than rush the Whites, who I know both wish to testify, we will declare a brief recess. But I will come right back and we will resume within 5 minutes. I would urge the members to come back as quickly as they can.

Thank you.

[Recess.]

Mr. SCHUMER. The hearing will come to order.

Our final witnesses, last but certainly not least—one can't measure any of these tragedies against any other, they are all so large—is Dr. Jerry White and Mrs. White from Colorado Springs, CO.

Dr. White is a retired Air Force brigadier general. He served as a mission controller at Cape Kennedy during the height of our space program, and also taught for 6 years at the Air Force Academy. He is joined at the witness table by his wife, Mary, with whom he has coauthored several books. Dr. White is currently the general director and chief executive officer of The Navigators, which is an inter-denominational ministry helping children in over 70 countries.

In April of last year, Doctor and Mrs. White lost their son, Stephen, in an apparent robbery committed by a convicted felon who had purchased the murder weapon just 6 days before. For anyone who says the Brady bill wouldn't do anything, I hope they listen, as they have to the last three witnesses, to the Whites' testimony.

Dr. White, Mrs. White, you may proceed. Your entire statement will be entered in the record and you may proceed as you wish.

**STATEMENT OF JERRY WHITE, BRIGADIER GENERAL, USAF,
RET., COLORADO SPRINGS, CO**

General WHITE. Thank you very much.

Mr. Chairman and members of the committee, Mary and I do appreciate the opportunity to testify before you. We take the responsibility seriously because we feel we represent thousands upon thousands of relatives and parents of victims across the United States.

Let me just give you some background, although, Mr. Chairman, you gave a little bit. Our 30-year-old son, Stephen, held two jobs. One was as a radio announcer for the National Public Radio in Colorado Springs, and second, he owned his own taxicab under the auspices of the Yellow Cab Co. On April 26, 1990, he responded to a call for a cab and, upon picking up the passenger, there was an apparent robbery attempt. Steve had very little money, since he had just made a bank deposit, and apparently this angered the robber in some way and he shot Steve three times in the back of the neck with a .38-caliber handgun, killing him instantly.

In January of this year an individual was indicted for felony murder and first degree murder of our son. This particular individual had purchased a handgun from a pawn shop just 6 days prior to the killing. He was a convicted felon, known to everybody in the city. In fact, when they played the taxi tape, his parole officer immediately recognized who it was. This is ample testimony that the local law enforcement agencies, not necessarily a national check, is one of the major things that will help, because they knew him and they knew that he could not get a gun. And he was arrested almost immediately, although they had to wait for the indictment for other things to take place. No background check was made because no waiting period is provided in Colorado Springs.

In our sleepy little town of Colorado Springs, in this month, there have been five murders, four with handguns.

Now, it would be easy to classify us as emotionally involved parents, and certainly we are grieving, and still do grieve. But we don't harbor bitterness or anger because neither response would bring Stephen back to us. However, we do feel that there are many things that can be done and should be done to stop this carnage

and these tragedies. We believe that H.R. 7, the Brady bill, will be a significant help in this regard.

And with all apologies to the Bradys, I would call this the "people's bill." This is the citizens' bill, because everybody in the United States, 95 percent, want it passed. Congressman, we need to listen to the people.

Before making some remarks, I would just add a couple more things to my personal data.

The organization I work with is a group that works with young adults and students throughout the world. We have 3,200 staff. We are keenly aware of the societal problems of people, young people particularly, around our world, as well as their spiritual needs. One of these problems is simply the violence of society.

I believe there is a tremendously excellent rationale for a 7-day waiting period which allows a local check by law enforcement authorities in a community. That places the responsibility where it ought to be, in the community.

It is also clear to me that such a bill will not solve the problem entirely, but it has been clearly demonstrated in many States that a waiting period does, in fact, help. However, we need to do more.

Now, I have read the pros and cons of the waiting period, and there seems to be three issues that we need to consider: the moral issue, the effectiveness issue, and the constitutional issue.

The moral issue is simple. It is virtually beyond debate that we in the United States are the most violent Nation in the developed world. We are four to five times greater in our homicide rates than any other country, and many of these are committed with handguns.

Now, our personal goal in supporting this legislation is not that it's a panacea, but that it will simply reduce this murder with handguns by about 10 percent. That's 1,000 lives a year. Gentlemen, we are an irresponsible society if we fail to take action on something like this. And we are not dealing with percentages as were presented by the Justice Department. We are dealing with real people.

Now that the war in the gulf is over, I must agree with President Bush, who in recent remarks at the Attorney General's Crime Summit Conference, said that we must do something to rescue America from the grip of violence that paralyzes our streets. More citizens living in the United States, as we have heard testified, will be killed by handguns in a few weeks than in all of the war. General Schwartzkopf said, "The loss of even one American life is too much." Surely we can take this approach in this war against violence. The loss of one life is too much.

President Bush said that the kind of moral force and national will that freed Kuwait City from abuse can free American cities from crime. We need both prevention and prosecution. Gentlemen, our courts are clogged, penalties are light, plea bargains are frequent—there's going to be a plea bargain on the person that murdered my son—and hope for change, frankly, seems dim. At least we can do something now by way of prevention.

Mary.

STATEMENT OF MARY WHITE, COLORADO SPRINGS, CO

Mrs. WHITE. Some people feel that gun control cannot provide the answer but that we must have more rigorous sentences and speedier justice. When that possibility was suggested to us, we found it rather like locking the barn door after the horse had escaped. Certainly, swift justice and stringent penalties will have some deterrent effect, but gun regulation and sterner penalties can combine to effectively combat the slaughter in our society.

No family member who has lost a loved one to homicide could be convinced that a heavy sentence would somehow make up for the crime. Long jail terms for the offender can't erase the shock and the horror, the outrage and the sense of waste that permeates personal thoughts and feelings for months and years following the tragedy. Certainly stern punishment will give a sense of justice in action, but only an attempt to stop the shooting before it happens holds any hope for averting such suffering in the future.

The death of our own son has demonstrated to us the appalling loss of human potential and contribution in our society. In our personal case, our son was a caring, sensitive, creative person with an IQ in the genius category. He quietly served our community through his cab driving by catering to the elderly, the infirm, the blind, and the solitary citizens. He had a very strong sense of justice and generosity. His college degree in communications was opening opportunities for him in radio. All of his potential is now lost to our community.

With homicides repeated hundreds and thousands of times each year across America, our society suffers incalculable loss in the human contribution those victims could have made for a lifetime. Instead, we are left with those who committed these crimes and they require a tremendous investment of our judicial, psychiatric and law enforcement facilities. So we as a society lose twice: The contributing citizens are forever gone, and the perpetrators drain our energies and our resources.

If even a small number of these blameless victims could be spared, surely a 7-day waiting period is not too much to ask.

General WHITE. We also need to ask: Will a waiting period really make a difference? That's what several of you have asked. Realistically, you cannot give a full answer to a waiting period until the law has been in place. But if it is going to be effective, it has to be nationalized because neighboring State systems are inadequate.

Of course, there has been support for this "insta-check" system, but frankly, we have no evidence that it will work, either. The major problem—and I'm speaking as one who understands and who has worked with computers and data bases throughout my military career—is that a national data base simply is not available. Most secretaries can't get their computer systems to talk to one another in the same building. The Brady bill also has a sunset provision if and when a national system like that is put into use. In the meantime, we do need to act preventatively with strong public support for this system.

I still serve as a general officer in the Air Force Reserves, and I was personally very proud of the execution of the military during the gulf war. The President and the Congress did one thing right.

They let the military do the job that they needed to do and gave them the command authority. If the country's law enforcement agencies at home—the police chiefs, the sheriffs, the rank-and-file officers—were likewise permitted to do what was necessary, we could win this domestic war as well. The passage of this bill would be a major weapon.

I believe it will be effective. Frankly, had it been in place, my son would be alive today because there is no way that person would legally have gotten a gun. He was foolish enough to have signed his own name, which shows that criminals are not exactly that smart.

The argument that criminals will get guns, that may be. But the fact is, this will stop many.

The constitutional issue has been well spoken to by Mr. Prince in regard to a State militia. I just want to say that purchasing a handgun is a privilege as well as a right, and any law to regulate such a privilege does have some possibility of infringing on some rights. Drivers licenses, traffic laws, hunting licenses, land ownership regulations, all place restrictions on legitimate rights to drive, to hunt, and to own property. But no eligible, law-abiding citizen is prevented from purchasing a gun under this legislation. I propose that this legislation is a reasonable restriction to forge safety and preserve what we call the "domestic tranquillity" promised in the Constitution.

I realize there are some thoughts about the "camel's nose in the tent," that this will be the first step toward tighter controls. There are people with extreme agendas on both sides of the issue. But we can't operate on fear of extremes. Here we are dealing with a moderate, rational and responsible law.

I just want to say that I have also qualified as an expert marksman with a handgun. I am opposed to the registration and high restriction of guns. But we're not talking about those. There is no legitimate purchase that is hindered, no law-abiding citizen will be kept from getting one, and target practice is not that urgent.

In conclusion, I would like to simply say, as those who vote on a law like this, I realize you're under many pressures, not the least of which is the political realities of your constituency. The polls again and again have shown that the public favors this. The only major opponent to this legislation that I see is the National Rifle Association and its leadership.

As I said, I have used guns. I have hunted, my father was a champion trap shooter, gun collector and restorer. Many friends have been NRA members, but even those friends have clearly stated that this is a reasonable law which they support.

In conclusion, I would simply like to report what my daughter-in-law, my son's widow, said. Upon hearing that someone had said that a law such as the Brady bill would impose quite an inconvenience on legitimate buyers, she simply replied, "It really was quite an inconvenience to lose my husband."

Thank you.

Mr. SCHUMER. I want to thank you both, Dr. and Mrs. White, as I have thanked the whole panel for doing this. Every one of you has lost a loved one within the last year and I know how difficult it is. The eloquence of your testimony is something that I couldn't hope to match, and you have laid out the causes.

I guess the only question I have for you is sort of a personal one, and it is addressed to all or any of the panel members. Feel free to answer it if you wish.

What was your reaction to the administration testimony in general, the statement that the Brady bill would be useless, the statement that they were waiting for a fully automated system to be put in place? Just what are your feelings about that?

General WHITE. I'll just make one brief comment. I don't have to be quite as diplomatic as Mrs. Brady was.

It would have been amusing were it not so serious, at the twist of logic that was being used. I felt sorry for the individual who had to deliver that particular message. It did not make sense, and it still does not make sense in the statistics that they showed.

Mr. SCHUMER. Mr. Prince.

Mr. PRINCE. If a single life is saved by the passage of this act, it's worth it. I think that you have at least three or four people in front of you today who believe that the act could have had an effect.

We speak for people who are not here today, for Specialist Anthony Riggs from Detroit, for Joseph Ford, a 15-year-old black man killed in New Haven, CT, exactly 1 week before my son, a young man who wrote poetry and who danced. He didn't have a chance. My son didn't have a chance. The 7-day waiting period might give some of these kids and loved ones a chance. If it doesn't give them a chance, it's worth taking that risk.

Mr. SCHUMER. Again, as I said, I really don't have any further questions. I don't think there's a need.

Let me ask Mr. Schiff, do you have any questions?

Mr. SCHIFF. I just want to say that I have served in law enforcement long enough to know that none of us, who haven't been where you are today, can possibly understand what you're feeling and experiencing. It ought to serve to renew our commitment to prosecuting violent crimes as a primary goal.

I would just reiterate for myself that no questions that I asked previously, or that I ask in the future about this particular bill, should be construed as not understanding that.

Thank you.

Mr. SCHUMER. Mr. Hughes.

Mr. HUGHES. Thank you, Mr. Chairman. I have no questions, except to say thank you to the panel for your testimony here today. I know it is difficult and we're indebted to you for your contributions. Thank you.

Mr. SCHUMER. Mr. Feighan.

Mr. FEIGHAN. Thank you, Mr. Chairman. I want to thank all of the panel members for being here today. I want to just let them know as they leave that, as difficult and as painful as your testimony and your experience is here today, it is as helpful in our effort at convincing our colleagues in the Congress of the importance of passing this bill.

I have had the opportunity to hear some of you previously offer testimony, and I know the conversation among Members of Congress that follows after this type of testimony. And even though we will have sat here for 5 or 6 hours today hearing testimony, I know that over the next several days and weeks and even months the

conversation that most of our colleagues will engage in with respect to what was presented here today was the testimony from you in this panel. That is how important it's going to be in the process.

Thank you very much.

Mr. SCHUMER. Thank you, Mr. Feighan.

Mr. Hoagland.

Mr. HOAGLAND. I would just like to say, ladies and gentlemen, that I, too, appreciate the courage all of you have shown in coming and discussing your feelings about this with us here today.

Thank you, Mr. Chairman.

Mr. SCHUMER. I want to thank all of you again. I think Ed Feighan summed it up well. Your testimony will reverberate in the halls of Congress, it will reverberate around America, and hopefully those reverberations will help put the Brady bill over the top. As one of you said—and I wonder if I could be so strong—you don't have any bitterness or any anger because that's not going to bring your loved one back. But what you're doing here is a constructive act that I believe will probably save others who would have been in a similar position as your loved ones. So again, thank you for all of us. Whatever our views are on the panel, it's an act of strength and an act of courage and we appreciate it.

We will recess. I apologize to everybody, including our future witnesses, for these delays. We had originally scheduled this hearing for a different day but scheduling problems have gotten in the way.

We will take a short break and then resume with the next panel.

[Recess.]

Mr. SCHUMER. The hearing will come to order.

I would like to call the next panel, panel IV, consisting of two members from the law enforcement community who have been waiting patiently. We have Hubert Williams and Chief Kenneth Collins from Maplewood, MN.

I want to thank both of you for being here. The committee really does appreciate your patience. The hearing has gone quite long and we've had a number of votes, but as I'm sure you will agree, we're getting very good information out of the hearing. It's worth the wait, at least for us, and I hope it didn't disrupt your schedules too much.

We will have both witnesses testify and then we'll go to questions. Our first witness will be Hubert Williams, president of the Police Foundation. Mr. Williams, of course, is well known in the law enforcement community. He is a 25-year veteran of policing. He was police director of Newark, NJ, for 11 years, 1974 to 1985, and there he commanded the largest police department in the State.

He is here today representing the 11 member organizations of the Law Enforcement Steering Committee, which as most of us know is a nonpartisan coalition of law enforcement organizations representing over 400,000 police practitioners from across the country. These organizations include the Fraternal Order of Police, the International Association of Chiefs of Police, the National Sheriffs Association, the International Brotherhood of Police Officers, and many others. Mr. Williams, we're delighted that you're here.

Chief Kenneth Collins, who for a while I thought was from the NYPD because of the insignia, except for the maple leaf in the middle. He's from the Maplewood Police Department in Minnesota. He has been police chief there since August 1982.

On January 10, 1983, he was named director of public safety for the city of Maplewood, and that covers police and fire departments. He began his career in August 1966. He has been president of the Ramsey County Chiefs of Police Association and currently is president of the Minnesota Chiefs of Police. He has first-hand expertise in the successful use of a 7-day waiting period.

Gentlemen, I want to thank you for being here today. We have your prepared statements which, without objection, will be made part of the record. Why don't we begin with Mr. Williams.

STATEMENT OF HUBERT WILLIAMS, PRESIDENT, POLICE FOUNDATION, AND CHAIRMAN, LAW ENFORCEMENT STEERING COMMITTEE

Mr. WILLIAMS. Thank you, Mr. Chairman.

Good morning, and thanks to the committee for inviting me today to represent the views of law enforcement on H.R. 7, the Brady Handgun Violence Prevention Act. As the current chairman of the Law Enforcement Steering Committee, I speak for organizations representing virtually every public law enforcement professional in this country.

Almost 3 years ago, police from every corner of the United States came to Washington to march to the Capitol and to tell Congress that "7 days can save a life." They asked that the Brady amendment be passed and that the 7-day waiting period for the purchase of a handgun be instituted nationwide. What they got was not the Brady amendment but the McCollum amendment, which called for a feasibility study of the instant background check. Thousands of lives have been lost unnecessarily while we have studied.

So law enforcement comes before you again today to ask for passage of a simple, rational, cost-effective, life-saving legislation.

I would like to say a few words about the state of our communities and our criminal justice system. Every day the police in our cities see a side of life that is frightening, that is very close to chaos. They see legions of lost souls who have resorted to illegitimate means of acquiring whatever it is they desire in life. They pursue this lifestyle armed to the teeth with weapons they can buy with impunity at the local arms dealer. If there is local legislation regulating gun purchases, they merely head to the nearest jurisdiction with no such regulation, buy the tools of their trade, and return home to victimize another person, another business, another community.

This is just one reason police need the Brady bill. It will help us to prevent felons from buying guns in States allowing over-the-counter purchases and using these guns to commit crimes in localities with stricter gun laws.

A recent BATF study illustrates this point quite well. Of the guns traced by the D.C. Metropolitan Police Department through BATF's Project LEAD, all but one came from outside the District of Columbia.

An overburdened criminal justice system is not helping matters. Police are doing their jobs. They are arresting more people than ever before. But the result is too often not what is intended; that is, getting the criminal out of the community.

There is approximately one good arrest made for every five serious crimes. But we know that two-thirds of all felon defendants are released prior to disposition of their case. Many of them are rearrested for a felony while on pretrial release. And about two-thirds of those rearrested were released again after their arrest. Moreover, prison terms for those who are successfully prosecuted are short, owing to overcrowded prisons. In other words, those criminals know that the odds are they will escape harsh punishment for their crimes. They have no reason to exercise caution and they have easy access to weapons that they use with abandon, endangering the lives not only of their targets but of innocent bystanders and the police who attempt to apprehend them.

There is no practical way to fix the criminal justice system overnight, but there is a practical way to keep handguns out of the hands of criminals and the mentally ill. That way is the Brady bill. I truly believe that Congress will see its way to the right conclusion this time. The 500,000 police officers around this country sincerely hope that is the case.

We in law enforcement strongly object to supplanting the Brady bill at this time with new legislation to implement a national instant check system. We specifically object to H.R. 1412, the Felon Handgun Purchase Prevention Act of 1991. We object for several reasons:

It is clear that it would take years to implement this system; it is clear that it would cost tens if not hundreds of millions of dollars; it is clear that it would be based on an insufficient criminal record base; and it is clear that by requiring a 24-hour response, the system's operations would be subject to many, many errors.

We feel the weakness of this bill staggers the mind of anyone truly committed to reducing handgun violence in this country.

Perhaps the most important problem with H.R. 1412 is that it does not deal with the problems we have now. The Brady bill can be effective immediately and provisions of the bill state that when we have a working national identification system in order, then we will put it to good use.

The Brady bill, implemented now, will give us time to check the backgrounds of prospective purchasers which, in turn, will help us catch literally thousands of criminals trying to illegally purchase handguns. Every year in Maryland, for example, police stop 4 percent of all handgun sales. In 1990 alone, the State's waiting period enabled police to catch more than 1,300 people trying to purchase handguns illegally from legitimate gun dealers. Police in New Jersey, Illinois, California, Georgia and other States with waiting periods have similar success stories, which I would like to submit for the record later.

In conclusion, we in law enforcement strongly believe that if Members of Congress want safer streets for their constituents, if they want fewer guns in the hands of the violent, the mentally incompetent, the recidivist, or the youngster about to embark on a life of crime, if they want to spare thousands of families from the

kind of tragedies you have heard about numerous times in these hearings, they can do it and do it in a timely, cost-effective manner—by voting yes for the Brady bill. We strongly urge that from the law enforcement community.

Thank you very much.

Mr. SCHUMER. Thank you.

[The list of States with handgun laws follows:]



STATES WITH HANDGUN PURCHASE LAWS

James J. Wilson
 Chairman of the Board
 Robert Williams
 President

Alabama	48 hour waiting period
California	15 day waiting period
Connecticut	14 day waiting period
Delaware	Telephone check system
Florida	Telephone check system; 3 working day waiting period
Hawaii	Permit to purchase with 10 to 15 day wait
Iowa	Permit from Sheriff and 3 day wait
Illinois	Obtain permit first, then wait 72 hours
Indiana	7 working day waiting period
Massachusetts	Permit from police required to purchase
Maryland	7 day waiting period
Michigan	Permit from police required to purchase
Minnesota	7 day waiting period
Missouri	Permit from Sheriff required to purchase
North Carolina	Permit from Sheriff required to purchase
New Jersey	Permit from police required to purchase
New York	Permit to possess must be obtained
Oregon	15 day waiting period
Pennsylvania	48 hour waiting period
Rhode Island	7 day waiting period
South Dakota	48 hour waiting period
Tennessee	15 day waiting period
Virginia	Telephone check system
Washington	5 day waiting period
Wisconsin	48 hour waiting period

Mr. SCHUMER. Before Chief Collins testifies, his own Member of Congress is here to add his welcome. We want to tell you, Chief, we're delighted that we have Jim Ramstad on the committee. He is going to be a fine addition.

Mr. RAMSTAD. Thank you, Mr. Chairman.

Chief, welcome. As a fellow Minnesotan, it's a pleasure to see you here. I certainly enjoyed and appreciate your counsel, your thoughtful input for the 10 years we worked together when I was a member of the Minnesota Senate Judiciary Committee. You have been a real leader for law enforcement as president of the Minnesota Chiefs Association and I applaud those efforts and look forward to your testimony.

Welcome to the committee.

Mr. SCHUMER. Your whole statement will be entered into the record and you may proceed as you wish.

STATEMENT OF KENNETH COLLINS, CHIEF OF POLICE, MAPLEWOOD, MN, AND PRESIDENT, MINNESOTA ASSOCIATION OF CHIEFS OF POLICE

Mr. COLLINS. Good afternoon, Mr. Chairman, members of the subcommittee. It is an honor to appear before you today and testify on such important public safety legislation as the Brady bill, H.R. 7.

My name is Ken Collins. I am the chief of police of Maplewood, MN. I am also president of the Minnesota Chiefs of Police Association, as well as president of Citizens for a Safer Minnesota, a citizens organization working for passage of sensible firearms legislation.

I am here today to tell you that I know waiting periods work. In the State of Minnesota we have a 7-day waiting period to purchase a handgun, a Brady bill-like system already in effect. Minnesota is one of several States across the country that already has a waiting period and background check system in place and working. However, State laws end at State lines. Criminals can easily circumvent our waiting period by buying guns in another State and bringing them back into Minnesota.

The waiting period we currently have in Minnesota, while not perfect, works quite effectively. The city of St. Paul had approximately 630 requests for permits to purchase handguns in 1990. Through checks conducted by the local police department, 20 of these applicants were rejected because their criminal history, chemical dependency, or mental problems would disqualify them from obtaining a permit to purchase a handgun.

The city of Minneapolis received approximately 580 requests for permits to purchase handguns and rejected approximately 50 of them for reasons similar to those rejected in St. Paul. In addition to the requests for gun permits made to the city, Minneapolis is unique in that applications for permits to purchase handguns may be filled out at local gun dealers or pawnshops and then sent to the police department for the necessary checks. Of these 864 applications, 24 were rejected.

As the chief law enforcement officer in Maplewood, I can tell you that there is absolutely no way that I could conduct an instant

background check. In 1990, in Maplewood we received 126 requests for permits to purchase handguns. Of these, 10 were rejected because the applicants were not qualified by law to purchase or possess handguns.

With Minnesota's waiting period, I have ample time to access multiple data bases including the Maplewood data base, the Ramsey County data base, the Ramsey County warrants data base, the Hennepin County data base, the Hennepin warrants data base, the St. Paul Police data base, the Minnesota Bureau of Criminal Apprehension data base, and NCIC. In addition, I check county records to determine if the purchaser has been committed either voluntarily or involuntarily to a mental institution.

I also check with the Minnesota Department of Motor Vehicles to determine if the purchaser has been arrested on drunk driving charges. In Minnesota a judge may order a defendant to undergo an assessment for chemical dependency, and if the individual is found to be chemically dependent it will show up on our court records. This information takes time to find and is impossible for me to access immediately. The records are just not computerized. Another simple, yet effective, measure I employ is to check reverse directories, which are published every year by U.S. West, to determine if the prospective purchaser lives at his or her listed address. Without this waiting period, I would not have enough time to adequately conduct a background check.

In July 1990, two applicants applied for permits to purchase handguns in the city of Maplewood. All of the normal checks were completed and showed no signs of criminal history, chemical dependency or mental deficiencies. However, a check of the department of motor vehicle records revealed that these individuals were from another State, which led us to check through our reverse directories and find that indeed these individuals did not live in the State of Minnesota and were merely visiting at the residence that they listed as their home address.

These individuals did not qualify for a permit to purchase a handgun and were rejected. An instant check would not have allowed for this research and followthrough on these applicants and could very easily have resulted in their being allowed to purchase handguns which would in all likelihood have been transported to another State. It did require the entire 7 days to do the background and reverse checks on these individuals to make the determination that they were not residents of the State of Minnesota.

The Brady bill is supported by all national law enforcement organizations including the International Association of Chiefs of Police, of which I am a member, the National Sheriffs Association, the National Association of Police Organizations, and the Fraternal Order of Police. In Minnesota, all the State law enforcement organizations including the Minnesota Association of Chiefs of Police, the Minnesota Sheriffs Association, and the Minnesota Police and Peace Officers Association have passed resolutions in support of the 7-day waiting period.

It only makes sense. We have seen the Brady bill work for 17 years. Police know better than anyone how essential this public safety measure is to our daily jobs. Until we slow the proliferation of guns, we cannot begin to put a dent in the crime that is eating

away at our society. Last year was the deadliest year in American history. More people were killed than ever before, the majority of them by guns. The Brady bill is not a be-all and end-all, but is a huge step that we can take toward making the streets of America safer.

Thank you for the opportunity to share my views. I would be happy to answer any questions you may have.

Mr. SCHUMER. I want to thank both of you, Mr. Williams and Chief Collins, for your testimony.

First, Chief Collins, since his testimony is the freshest. I have always seen a sort of contradiction in the position of those who advocate the Stagers bill. On the one hand, they are saying don't vote for the Brady bill because the records aren't complete, and then they are asking that the records be checked within a day as opposed to 7 days. Your testimony brings out very vividly how the 7 days give you a chance to do a much more thorough check than a 1-day check.

Am I on the money with that?

Mr. COLLINS. You are accurate, Mr. Chairman. In my 9-year tenure as chief I have found that doing these checks in most instances require at least 7 days.

Mr. SCHUMER. It just strikes me as illogical to say the records are bad, therefore we need a 1-day check as opposed to a 7-day check. The worse the records are the longer the check should be, not the shorter.

Mr. WILLIAMS. Mr. Chairman.

Mr. SCHUMER. Go ahead. Yes.

Mr. WILLIAMS. Can I just respond to that.

Mr. SCHUMER. Mr. Williams.

Mr. WILLIAMS. Because I think that there is an intended purpose in what we have seen played out here today and what will follow the law enforcement panel, and that is to sort of cloak the truth with inconsistencies, circumloquacious logic, changing things, taking them out of context, using dated material. We have seen all of that. I have had an opportunity to read Mr. Baker's testimony, and he will follow this panel, on behalf of the National Rifle Association, and, if I may, I would just like to make a couple of comments on the basis of what Mr. Baker will testify to.

Mr. SCHUMER. Go ahead.

Mr. WILLIAMS. He will talk about the loss of constitutional rights as a result of the Brady amendment. But, in our Constitution we talk about regulation, and this is a minimal regulation to provide law enforcement an opportunity to make a check of people that are purchasing these weapons. There is a use of data going back for 15 years. Mr. Baker will use that to substantiate his argument. The Justice Department has testified earlier. They have under their auspices the Bureau of Justice Statistics, the Bureau of Justice Administration, the National Institute of Justice, and a series of other organizations with the capabilities to do studies and to evaluate. The National Rifle Association has considerable power and wealth and they could give us more accurate information before this Congress without going back 15 years. They are going to also talk about self-serving trends, that States are taking away now the waiting periods that they do have. But what they won't talk about

is the tremendous lobbying that is going on at State legislatures because they feel that they may lose the ball game on the Hill, so they are putting the pressure on at State legislatures. So I think that there is a purpose behind all this madness and the purpose is to put enough confusion before us so that we will not really understand what is going on. It is like a shell game, and I am hoping that the Congress will see with clarity the need for law enforcement and to pass this Brady bill.

Mr. SCHUMER. Mr. Williams, one of the jobs of our committee is to try, on all issues that are in our jurisdiction, to clear away the mists of confusion, and on this issue it isn't that hard. It seems pretty clear.

I just have one quick final question. My time has expired. Is this a very high priority for law enforcement? When we talked to the Administration before, they were indicating, "Well, we are a great friend of law enforcement," which I am not disputing, but that, you know, this was one where they differ. How do you feel about the Administration, how does law enforcement—you are the best spokesman one can have—not supporting this bill?

Mr. WILLIAMS. Let me say with respect to whether or not law enforcement supports the Attorney General, the Steering Committee, the Law Enforcement Steering Committee doesn't deal with personality. We stand on the issue. This is a top priority issue for our Steering Committee and we are adamantly opposed to the position that the administration is taking with respect to the Brady bill. We have fought for this for years, and we will continue to fight for it until it is passed by this Congress and made a law of the land.

Mr. SCHUMER. Thank you. Mr. Sensenbrenner.

Mr. COLLINS. Mr. Chairman, may I just add something to what Mr. Williams said?

Mr. SCHUMER. Chief Collins.

Mr. COLLINS. Minnesota took it as a top priority basically because we have a Brady-like law currently. But we definitely need other States to have a similar law in order to strengthen our law. Right now, as I testified, you can purchase guns elsewhere and bring them into the State. That is why we need a national law.

Mr. SCHUMER. And, as I understand it, you, Chief Collins, were an NRA member but are no longer, and I take it is because of the position on this issue.

Mr. COLLINS. That is correct.

Mr. SCHUMER. Thank you.

Mr. SENSENBRENNER. No questions, Mr. Chairman.

Mr. SCHUMER. Mr. Hoagland.

Mr. HOAGLAND. Let me start, Mr. Williams, by clarifying what I understand to be some of your testimony, and that is, that 500,000 police officers around the country strongly support the Brady bill. Is that right?

Mr. WILLIAMS. The organizations which represent approximately 500,000 police officers around the country, the organization that consists of the coalition formed by the Law Enforcement Steering Committee strongly endorse the Brady bill. If you mean have we taken a vote of every police officer in the United States, the answer is no. But these organizations have resolutions passed by the membership that back the Brady bill.

Mr. HOAGLAND. Well, let me ask you this. Are there any organizations of police officers or other law enforcement officers that are of significant size in terms of membership that oppose the Brady bill?

Mr. WILLIAMS. If you know of one, I would like for you to tell us which one that is. We have seen the National Rifle Association through their gamesmanship create illusions of organizational strength that are not in fact either strength or organizational representation. But the legitimate organizations that have been in this country for decades, if not—for decades, they are on this Steering Committee and they are 100 percent behind the Brady bill. From the chiefs of police to the cops walking the beat to the managers of police departments, the State troopers on the highway—they support the Brady bill. What do we need to do to communicate with this Congress that law enforcement wants this bill passed.

Mr. HOAGLAND. If that is the case, how in the world do you explain the fact that the chief law enforcement officer of the United States, the Attorney General, opposes it? I mean, why in the world would he oppose it, given the sentiment among the rank and file police officers around the country?

Mr. WILLIAMS. Well, that has puzzled us also. Let me say this much about it. I was a cop, walked the beat, in the radio cars, and ran one of the toughest police departments in the United States, Newark, NJ, in a State that has a waiting period. I know that the waiting period will make a difference. I don't know what perspective the Attorney General is viewing this matter from, but he is certainly not looking at it from the perspective of law enforcement out in the field, in the streets, on the line that are dealing with these weapons of mass destruction every day. We need help and we come to this Congress and plead with you to provide us that support.

I have heard the testimony from the Justice Department today, and I have heard Congressman Schumer and others question the inconsistencies in that testimony. After ingesting it, I am confused. I really don't know where they are coming from.

Mr. HOAGLAND. Well, why don't we set aside perspectives for just a moment. I mean, he is simply not correct in that position, is he?

Mr. WILLIAMS. What position are you referring to again, Congressman?

Mr. HOAGLAND. Well, the Attorney General's position. You are talking about from this perspective or from that perspective. Let's just talk about correctness as far as their position is concerned.

Mr. WILLIAMS. The Attorney General's opposition to the Brady bill is astonishing. We do not understand it. We do not agree with it. We have told him that and we tell you that.

Mr. HOAGLAND. Is it demoralizing for officers on the street or for officers of the various law enforcement organizations that the Justice Department is not supporting this effort?

Mr. WILLIAMS. I can tell you this. That it would certainly be a lot easier if the AG would join with us, take a lead position and support law enforcement officers out in the streets, in the field, dealing with the crime. I was at the crime summit that the Attorney General called. I am confused. I don't know why they won't support the Brady bill. I know that we support it. We know that it will

save lives, and the Attorney General's rationale is something that I don't understand personally, and the organizations which we represent don't understand why the Attorney General hasn't come on board and taken a lead position with us.

Mr. HOAGLAND. Mr. Williams, thank you.

Chief Collins, let me ask you a couple of questions. I wonder what information you can tell us about these gun shows. These traveling gun shows that take place around the United States. Do you have those in Minnesota?

Mr. COLLINS. Yes, sir. We generally have, in my community probably two to three a year. I can generally tell when they are about to come into town, because I get a large influx of people applying for permits to purchase. They come to the department prior to the gun show coming in, fill out the necessary paperwork, we go through the checks, and either the approval or denial takes place prior to the show's ever getting there.

Mr. HOAGLAND. Now, I have been told my time is up, but if I can follow up with two quick questions, Mr. Chairman? Is that all right?

Mr. SCHUMER. Quick questions, quick answers.

Mr. HOAGLAND. Thank you. Now, these gun shows, they generally come in town on a weekend?

Mr. COLLINS. Yes, sir. Generally, they will be there for a weekend. They will be there anywhere from 1 to 4 days at the most.

Mr. HOAGLAND. At the most, all right. And there will be actual purchases of weapons at those gun shows?

Mr. COLLINS. Yes, sir. That is correct.

Mr. HOAGLAND. All right. And States that don't have a permit system like Minnesota why the law enforcement would have no advance knowledge necessarily?

Mr. COLLINS. No, sir. Anything would be fair game at that point.

Mr. HOAGLAND. No further questions, Mr. Chairman. Thank you.

Mr. SCHUMER. Mr. Schiff.

Mr. SCHIFF. Thank you, gentlemen. I have some questions basically addressed specifically to how this bill would function and would assist law enforcement. This bill is referred to often as a cooling-off period. In other words, it has been stated the idea in part is that somebody with a hot temper would be prevented from going out, if this bill were in effect, and purchasing a gun at a store and then going back and committing a crime of passion. That is one of the strong rationales given for it.

I wonder if either of your departments, Newark, NJ, or Maplewood, MN, have a quantification of how many crimes of passion are committed by somebody who goes out and buys a store bought gun and comes back and then commits a crime of passion with it.

Mr. COLLINS. I will mention Maplewood. We don't have any statistical information on anything like that where the person has gone out, purchased a handgun and committed a crime of passion, precisely because of the permit requirement and the fact the purchaser has to go through the waiting period to purchase it.

Mr. WILLIAMS. I can only say to you that even today the majority of homicide offenses are still committed amongst people that know each other, and one of the significant factors about those particular—that particular category of crime is that a lot of the offenses

are when people are in the heat of passion. But with respect to the categorization of the data and the retention of the data, I don't think that either the FBI or the Department of Justice keeps that data, and clearly local police only keep it in a manner in which it would serve their purposes for crime analyses.

Mr. SCHIFF. I wonder, then, if either of you gentlemen can just describe to me the last case you know of in the United States where somebody was so angry that they could commit a crime of passion, then they went to purchase a gun at a store, then they came back and committed that crime of passion? Anywhere in the United States where you might know of that?

Mr. WILLIAMS. Yes. Let me just respond to that because Mr. Baker will testify with respect to the Hinckley incident that law enforcement would have been able to arrest Hinckley had it had a system in place such as the Brady bill. But Hinckley said himself was that if he had to wait, if it was more difficult for him to get the weapon, then he probably wouldn't have done it. He said, "Stiff penalties wouldn't have stopped me, but I think if it was difficult for me to get to the weapon I probably wouldn't have done it." I think that is a dramatic enough example to make the point.

Mr. SCHIFF. You will forgive me if I don't accept the testimony of someone who is in an insane asylum right now as the basis for passing legislation.

Let me go on—

Mr. COLLINS. Could I just answer? You asked about an example taking place on a crime of passion. There was an incident such as that in Minnesota, and I do not have the particular with me, but it happened in Brainerd, MN, a woman who had an order for protection against her husband. He went out, purchased a handgun, and came back and killed her.

Mr. SCHIFF. Well, let me switch to another subject because my time is almost up. Mental health records. One of the purposes of the Brady bill is to prevent those who are mentally incompetent or who have been committed, specifically who have been committed or adjudicated incompetent, from getting a handgun.

Is there any centralized record of adjudications of incompetence anywhere in the United States that you know of, where if you had 7 days or 7 years you could go and you go get, tap, a centralized source of these records?

Mr. COLLINS. Mr. Schiff, there is no centralized repository that I am aware of currently, and that is the fallacy with the Staggers bill. The Staggers bill would only help identify people who have been convicted of felonies, and it is a lengthy process to find those people who have been adjudicated as mentally incompetent or chemically dependent. Since there is no central repository at the present, what we need is time to find them, which is what the Brady bill would allow us.

Mr. SCHIFF. May I just follow up briefly, Mr. Chairman?

Mr. SCHUMER. Yes.

Mr. SCHIFF. Thank you, Mr. Chairman. That is my point. The Staggers bill has been criticized because it does not check into a central—it only checks on the convicted felons. But there is no central repository of mental health adjudications anywhere in the Nation. Right?

Mr. COLLINS. Mr. Schiff, that is correct. One comment that I would also like to make in reference to that. That is why it is so important for the local law enforcement to be conducting these investigations, and backgrounds checks versus an 800 number. I can give you an incident in my own city. A gentleman in Maplewood applies for a permit to purchase on an annual basis. I have denied him for the last 5 years. He has been adjudicated as being mentally incompetent. I happen to know this individual. I know where to find the records. You have an 800 number. The information I have would not show up in an automated check.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. WILLIAMS. I would just like to say also that one of the things about police work is that police know a lot of criminals. They also do the kind of rigorous investigation that would enable them to find certain information out that they could never do through a simple lock into an electrical system. So the argument earlier that a 7-day waiting period is no different from the Staggers bill I think is a fallacious argument.

Mr. HOAGLAND [presiding]. Mr. Ramstad, do you have any questions?

Mr. RAMSTAD. No questions.

Mr. HOAGLAND. Mr. Gekas.

Mr. GEKAS. Yes. I thank the Chair.

I was interested in Mr. Williams' puzzlement at the Attorney General's position. I wanted to ask Mr. Williams if he supports the Attorney General's initiatives on stronger mandatory jail sentences for people who use handguns and other weapons in the perpetration of felonies, and I assume he does.

Mr. WILLIAMS. Let me say this to you. I am a cop. I believe that people who commit crimes should be put in jail.

I also served on the Advisory Board to the Sentencing Commission. I know that the Federal system is over 50 percent overloaded. I know that the local system is busting apart at the seams. Where are we going to put these people that we now are pushing to arrest more and more?

Mr. GEKAS. But you support the concept and the application of and the implementation of the mandatory sentence as it now stands?

Mr. WILLIAMS. I support that in concert of a comprehensive program. These people that sat at the table earlier as victims can't be satisfied or made whole by capturing the person that killed their loved ones. We have got to do something in America to prevent crime, and we have got to emphasize more prevention, not merely enforcement. The police are part of the crime control apparatus of our society and they are not solely responsible for that. So, I support what the Attorney General is doing, but I believe that what he is doing has to be put in context to a more comprehensive program. That is not occurring, and I think that is central to our problem of crime control in America.

Mr. GEKAS. Isn't part of prevention, as you phrase it, deterrence, to try to put in a deterrent factor in all that we do in the law enforcement field, which, if translated properly, is a stronger penalty for, as mandatory sentences are, for those who would wield guns? That means if you believe in preventing crime, in my judgment,

you believe in installing deterrents. And, if a deterrent—some of us may quarrel with each other on that, but if you believe that a mandatory sentence is a deterrent, then, as you have agreed somewhat, you agree with the Attorney General's position on that.

Mr. WILLIAMS. Can I just make one response? I would urge you to read the front page of the Baltimore Sun today. It has a very telling story, and it is a story about a group of people that has been plaguing the city of Baltimore with holdups, a shotgun gang. And you see, they don't believe that going to jail is a penalty. They see it as home-going.

You have got to look at the counterculture that has developed within our penal system that educates people about criminality and does not serve to prevent anyone from committing crimes at all. And I am not saying everyone, but I am saying quite clearly that there are people in this society that have a distorted view of the penal system and it doesn't deter them. They see it as going home. They see coming out here as being the other world. We have created this system, and I think if we are ever going to get a hold on this problem we are going to have to try to look at things more holistically.

Our logic simply will not work unless we analyze it within the context of the criminal mind. And what you are doing, Congressman, is making a very good logical argument, but the context for your argument is the problem. Criminals do not necessarily think the same way that people who are not criminals think.

And we are not deterring people from committing crimes to the degree that we could. The other part of deterrence is prevention, and we do very little there.

Mr. GEKAS. Well, that is what I am trying to analyze with you. That prevention and deterrence go hand in hand in the quantity that we are talking about, and for those who feel that it is going home, I am willing to invite them home, for as long as it takes to keep them home so that we can prevent at least them from repeating the offenses, for a given time.

Mr. WILLIAMS. Are you willing also to impose on the taxpayers \$25,000 for each one that you put in there?

Mr. GEKAS. Yes.

Mr. WILLIAMS. And are you willing also to impose \$100,000 for each new jail that you build?

Mr. GEKAS. Yes.

Mr. WILLIAMS. Are you willing also to have America to incarcerate more of its citizens than any nation on earth, including South Africa—

Mr. GEKAS. Yes.

Mr. WILLIAMS [continuing]. And the Soviet Union? Are you willing to change our republic from a democratic system into a garrison state? How far are we willing to go with this logic?

Mr. GEKAS. The logic that you have just ended with is illogical. But you make a great cross-examiner. I should be down there, you should be up there.

But I do believe in building more prisons when necessary, and the Congress has seen fit to authorize money to go along with the mandatory system of incarceration, with new prison cells to match that commitment by the American people.

But what I am getting at is this. That the Attorney General who favors capital punishment, who favors strong mandatory jail sentences, who favors reform of habeas corpus, who favors and supports the reform of the exclusionary rule—all in the name of law enforcement and strengthening law enforcement, in this context believes that there are other ways to control the sale of guns than a bill which may not work.

Mr. WILLIAMS. First, can I apologize to you if I have been too provocative?

Mr. GEKAS. No. I enjoyed it.

Mr. WILLIAMS. This is an emotional issue with me.

Mr. GEKAS. I enjoyed it.

I thank the chairman.

Mr. WILLIAMS. I am sorry if I have been too provocative.

Mr. GEKAS. Don't apologize. I would like to talk to you privately.

Mr. SCHUMER. There is no need for an apology. You were perfectly in order, and I know my good friend, George Gekas, agrees with that.

I want to thank both of you, Mr. Williams, Chief Collins, not only for your patience but for your testimony which, again, was most helpful to us. We may have some written questions which, without objection—will be entered into the record.

Thank you, gentlemen.

Mr. SCHUMER. Our final panelist, and I want to thank him for waiting so long—seems like 7 days, I guess, almost—is Mr. James Baker. He is the director of governmental affairs for the National Rifle Association's Institute for Legislative Action, and Mr. Baker has been associated with the NRA for over 10 years, starting in the office of general counsel. His current duties include directing the NRA's legislative interests at the Federal level. He is a former prosecutor in Missouri, a member of the bar of that State and the District of Columbia. With Mr. Baker is his counsel, Richard Gardiner.

I would also like to read into the record statements from three other groups representing the interests of gun owners. They have been invited to submit written testimony. All three did. These groups are the Firearms Coalition, represented by Neal Knox; the Gun Owners of America, represented by Craig Markva and Lawrence Pratt; and the Citizens Committee to Keep and Bear Arms, represented by John Snyder. So, without objection, their testimony will be read into the record.

[The prepared statement of Mr. Pratt follows:]

GUN
OWNERS
OF AMERICA



TESTIMONY OF LARRY PRATT,
EXECUTIVE DIRECTOR OF GUN OWNERS OF AMERICA,
PRESENTED BEFORE THE HOUSE JUDICIARY COMMITTEE,
SUBCOMMITTEE ON CRIME, MARCH 21, 1991

My name is Larry Pratt. I serve as Executive Director of GOA (Gun Owners of America). GOA represents more than 100,000 United States citizens who believe very strongly in the Constitutional guarantees of the Bill of Rights. We appreciate the opportunity to present testimony in opposition to HR 7 relating to the proposed waiting period for gun purchases.

GOA opposes HR 7 for the following reasons: waiting periods can be abused by the police; they do not work in reducing crime; they have resulted in law-abiding citizens losing their lives; and they are unconstitutional.

HR 7 will not Prevent Police Abuse of Gun owners

Police departments across the country are reeling from revelations of brutality and corruption. This seriously damages the argument of Brady bill supporters who think that the police ought to be entrusted with the decision about who gets to buy a gun.

HR 7 calls for a waiting period that supposedly would be seven days, but in effect has no limit. The indefinite wait is snuck in by language in the bill (sec. 2(a)(1)(A)(ii)) that blocks the purchaser from getting a gun until the chief law enforcement officer writes back to the dealer that he has gotten the dealer's paperwork on a buyer.

If a police chief does not feel like letting any private citizen have a gun, he can simply refuse to send anything back to the gun dealer. Nothing in the bill would compel the chief to take action.

Moreover, the Brady bill imposes no penalties on police who would make an illegal gun owner registration list from the people covered by the waiting period.

Am I questioning the integrity of some of our nation's police chiefs? You bet I am. Certainly not every chief is corrupt, but there are enough bad apples to make this law unworkable.

Let's look at just a few of the cases of corruption and brutality that are in the news right now throughout the country.

* Many of us have seen the video of the brutal beating of Rodney King by officers of the Los Angeles Police Department. King, who was stopped for speeding, was beaten so severely that he suffered internal organ damage, a fractured eye socket, and a broken leg -- among other injuries.

Daryl Gates, chief of the L.A. police department, is one of the country's leading anti-gunners. He testified in 1989 before a Senate committee that it might be necessary to confiscate guns from citizens. He also testified that casual drug users ought to be taken out and shot.

Is it any wonder the L.A. Police Department has been paying out over five million dollars each year to settle brutality cases. Nor is it surprising that a Los Angeles Times survey found that in the last five years, one in four residents of Los Angeles either experienced or witnessed the use of excessive force by the police.

* Under the watch of then-Chief Lee Brown (now Commissioner of the New York City police department), Houston police during November and December of 1989 alone were investigated for murder, rape, heroin possession, police harassment and drug trafficking.

* Connecticut Attorney General Clarine Riddle has issued a report with the finding that the state police were illegally monitoring the conversations between defendants and their lawyers.

* Authorities in Brockton, Massachusetts dismissed hundreds of drug cases in September of last year, because prosecution had been made impossible when the city's former police chief stole the evidence to support his cocaine habit.

* Similar corruption charges are also swirling around the chiefs of the Detroit and Cleveland police departments.

* In Atlanta an investigation is underway into the beating of a suspected prowler by a dozen Clayton County officers. Witnesses say the officers took turn hitting the man, who was handcuffed.

If this is what some police chiefs encourage when people are armed, one wonders what will happen if these chiefs can prevent citizens from being armed. Citizens do not want a police chief like Daryl Gates to have total control over who gets a gun. Further, because law enforcement authorities can so easily abuse a waiting period/background check (by turning gun purchase requests into a registration list), GOA opposes any kind of waiting period whether it be a seven day wait or an instant background check.

HR 7's Waiting Period will not Reduce Crime

1991 is the tenth anniversary of the tragic shooting of President Ronald Reagan and his Press Secretary James Brady. Proponents of HR 7 are hoping to pass this bill in order to prevent the John Hinckleys of the world from committing such future atrocities.

Ironically, however, HR 7 (had it been passed by Congress before 1981) would not have prevented Hinckley from getting the gun he used to shoot President Reagan and Mr. Brady.

Hinckley acquired his gun in Texas. He had no previous felonies or criminal record. And at the time of his attack, he had no history of mental illness on the police files. There was nothing that would have alerted the police that Hinckley was a dangerous man, had Texas had a background check.

Sarah Brady claims that a simple check would have discovered that Hinckley had falsified his address. But police checks do not verify addresses; they only verify criminal records.

And even if a system is set up to check addresses, seven days would not be enough time. Consider the statement of Coby B. McCormack, registrar of voters in San Diego County, California. When testifying before Congress in 1988, she said that 10 days would be "insufficient" time to verify the addresses of voters.¹ If not ten days, how can one do it in seven?

If seven days is insufficient time, then why does Sarah Brady and the gun control lobby support this bill? Because they are not interested in just stopping with this waiting period. Pete Shields, chairman emeritus of HCI (Handgun Control, Inc.), in a 1976 New Yorker article called for making all handguns and the ammunition for them illegal except for the police, military, gun clubs and collectors.

Why should anybody believe that the Brady bill will be the end of gun control legislation?

A. Attorney General's Report

In 1988, Congress asked the Attorney General to conduct a study and determine whether a waiting period/background check could reliably identify felons who attempt to purchase firearms. The Attorney General's Task Force found that police records are not reliable.

The Task Force says "that nationwide the records of approximately 40-60% or more of felony convictions are not currently available in automated form and thus not immediately accessible by law enforcement authorities."²

In 1988, the Brady-waiting period was put on hold so the Task Force could give its conclusions. The conclusions say a waiting period/background check will not reliably identify felons who want to purchase a gun. Should we still go ahead with this system anyway?

A fanatic is one who goes ahead with his whimsical ideas, even when he is shown they will not work. This bill could cost the states thousands, perhaps millions, of dollars for a system we know will never stop criminals from getting their guns.

Of course, proponents counter that we must first pass the Brady bill and then improve the criminal records. Thus, they argue, when the records are made more accurate, we will already have a system in place to identify criminals who are trying to buy guns.

This claim is not supported by the facts. Studies conducted by gun control proponents have shown that waiting periods/background checks will not work to reduce crime, even if the criminal records are 100% accurate. Criminals just do not cooperate with the law.

B. The NIJ Report

The Brady bill's waiting period will affect very few criminals because they get their guns "off the record."

The Justice Department's National Institute of Justice (NIJ) surveyed more than 1800 criminals and found that 93% of handgun predators had obtained their most recent guns "off-the-record." These criminals almost always avoid the customary retail shops, and instead, get their guns from "friends and associates, family members, and various black market outlets."³

It is even possible that the criminals who acquire their guns from retail outlets use fake ID's or get surrogate buyers, known as "strawmen."

(In fact, fake ID's are so easy to get, it is estimated that half of the illegal aliens in this country are using them. Fake ID's can be bought on the black market for \$25 to \$40.)⁴

If a waiting period/background check does not stop illegal gun buyers from using "strawman" or fake ID's, can any law really stop a persistent criminal from getting a gun?

Sergeant R.G. Pepersack of the Maryland State Police Department, while testifying before Congress in favor a national waiting period, confessed that,

I must be realistic in stating that Maryland law or any law or set of laws, for that matter, cannot

prevent a determined person from acquiring a handgun to use in a criminal act.⁵

Interestingly, the one who conducted the above-mentioned NIJ study -- James D. Wright of the University of Massachusetts at Amherst -- was a former gun control advocate. He was financed with a grant by President Carter's Justice Department to study the effectiveness of gun control laws. And yet to his surprise, he found that waiting periods, registration laws, and all other gun control laws were not effective in reducing violent crime.⁶

The recent NIJ study was an effort to find out why gun control laws do not work. And Wright concluded, nearly one decade after expecting to prove just the opposite, that,

[Gun] controls imposed at the point of retail sale would not be effective in preventing the acquisition of guns by serious adult felons because these felons rarely obtain their guns through customary retail outlets.

Thus, the overwhelming majority of people who would be affected by a waiting period/background check would be law-abiding citizens.

If this is the case, then one must again ask, "Why does Sarah Brady and the gun control lobby support this bill?" The reason, as stated earlier, is that they are interested in much more than a seven day waiting period -- they want to take guns out of the hands of private citizens. Clearly, HR 7 is only a foot in the door.

C. Waiting Period Proponents: Manipulating the Figures

Proponents of HR 7 claim that waiting periods have worked successfully when tried and that they serve as a "cooling off" period.

The usual tactic Sarah Brady employs is to discuss anecdotal evidence. She told New Dimensions magazine that in 1989, waiting periods stopped 961 gun buyers in New Jersey, 1,793 in California, etc.⁸

What Mrs. Brady or her colleagues never discuss is, what is the percentage of gun buyers who are legitimately denied. Sgt. Peppersack of the Maryland State Police told a Congressional panel in 1987 that only about 4% of gun buyers are initially denied by Maryland's waiting period/background check. But that is not all.

Maryland law allows for those who have been denied permission to buy a gun under the waiting period, to ask for a hearing. (HR 7 does not allow for this.) Of those requesting a hearing, almost 80% are found to have been unfairly rejected. When all is said and done, the actual percentage of names which are submitted

for prosecution is very, very small. The problem is, one must run roughshod over the rights of law-abiding citizens to get the names of only a few criminals.

But proponents will counter that even though a waiting period is not effective in stopping criminals from getting guns, that at least the seven-day wait will serve as a "cooling off" period for people who are otherwise law-abiding.

This is not true, however. A waiting period would not have "cooled off" Hinckley. His was a case of extraordinary premeditation over many months. He bought his handguns legally, he would have passed the criminal background check and he then committed his crime months later.

What about domestic violence, will a "cooling off" period help? The facts say no.

Domestic disputes do not immediately result in a decision to kill. These unfortunate situations exist over long periods of time, certainly longer than any proposed waiting period.

A 1977 Police Foundation study of police records in Kansas City discovered that "90 percent of the homicides had been preceded by past disturbances at the same address . . ." The study reported that the disturbances were serious enough to have the police called in to investigate. The median number of reported previous disturbance calls was five per address.

It seems evident that these rates of domestic homicide can hardly be considered isolated outbursts. Rather they are the culmination of a long pattern of hatred, interpersonal abuse and domestic violence. A waiting period of 14 or 21 days before a citizen could buy a gun would have no serious effect on domestic homicide.

Furthermore, a "cooling off" period for guns will not prevent, say, an enraged husband from using a substitute weapon in a fit of passion. As long as there are substitute weapons like knives, baseball bats, etc., there will continue to be this problem of domestic violence.

Consider that the murder rate in the Soviet Union is higher than that of the U.S. -- even though the Soviet Union has some of the strictest gun control laws in the world.

According to an Associated Press article last December 5, Soviet citizens murder about 21,500 people every year. In contrast, FBI statistics show that U.S. citizens murder about 18,000 per year. Soviet citizens may not have guns, but they know how to use knives, broken vodka bottles, clubs, or whatever they can get their hands on.

In contrast, almost every male citizen in Switzerland owns a fully-automatic assault rifle, and yet they have one of the

lowest gun crime rates in the world -- even lower than Japan's, England's or Canada's.¹⁰

This indicates that the availability of guns is not the problem. The real problem is that a waiting period may cost the life of someone who needs to get a gun in an emergency.

Waiting Periods Have Cost the Lives of Honest Citizens

Many people believe in the right of self-defense, but do not own a gun. Perhaps they put off buying one for financial or for other personal reasons. That is their right to do so. But when a serial killer is on the loose, their priorities often change.

In 1990, when a serial killer was stalking the University of Florida at Gainesville, many students tried to buy a gun for self-defense. They realized that the police could not stand guard in every apartment, that they could not protect the safety of every individual.

To their dismay, the students found that Alachua County (where Gainesville is located) has a two-day waiting period. But they knew that two days might be too long, that they might be dead by then. So those who were serious about defending themselves had to travel outside the county to purchase a gun for their own protection.

This is where the harsh reality of a waiting period meets the real world. Waiting periods put people's rights on hold, and the result can often be deadly. Consider the following examples of people who were put in harms way because of a waiting period:

* In 1983, Igor Hutorsky was murdered by two burglars who broke into his Brooklyn furniture store. The tragedy is that his business partner had applied for permission to keep a handgun at the store some time before the murder. Even four months after the murder, the former partner had still not heard from the police about the status of his gun permit.¹¹

* In 1985 in San Leandro, California, a woman and daughter were being threatened by a hostile neighbor. The lady went to buy a handgun for self-defense but found she had to wait through a 15-day waiting period. Fortunately, she was prompt in picking up her gun on the 15th day. The next day, the neighbor attacked and she shot him in self-defense. Clearly, had the neighbor attacked on the 14th day, the outcome would have been much different.¹²

* In 1990, Catherine Latta of Charlotte, North Carolina went to the police for permission to buy a gun. She had been threatened by her ex-boyfriend who had already robbed, assaulted and raped her. When the police told her the gun permit would take two to four weeks, she told the clerk she would "be dead by then."

So that afternoon she went to the "bad" part of town and bought an illegal pistol on the street. Five hours later her ex-boyfriend attacked her, but she shot him dead. Had she waited for the gun permit, her life might have been taken instead.¹³

The truth is that waiting periods will only affect the law-abiding. Even if a criminal is stupid enough to try buying a gun at a retail store (and he is later rejected by a waiting period/background check) he can still get one later on the streets -- and most do as the Wright study discovered. Criminals are not subject to a "cooling off" period or background checks. The success of a waiting period depends upon "law-abiding criminals."

HR 7's Waiting Period Infringes Upon People's Rights

Needless to say, the Constitution does not empower Congress to pass a waiting period bill. And the Second Amendment says the people have a "right to keep and bear arms."

In 1990, the Supreme Court stated in U.S. v. Verdugo-Urquidez that

"[T]he people" seems to have been a term of art employed in select parts of the Constitution. . . . "[T]he people" protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.¹⁴

Notice the Court did not say that "the people" in the Second Amendment refers to a select group of Americans (like the National Guard), but rather to all U.S. citizens.

Further, the Second Amendment says the people's right to bear arms "shall not be infringed." A waiting period infringes upon people's rights by putting their rights on hold. Imagine if the logic of the waiting period was applied to other rights:

* What if Congress mandated waiting periods for journalists, checking their backgrounds to ensure they would not write anything libelous and untruthful (as is done in the Soviet Union where only pre-screened Party members are allowed to write for the newspapers)?

* Or if prospective husbands had to go through a background check to ensure they would not be likely to batter their wives or an innocent third party (like a future child)?

These scenarios seem ridiculous to us, but they are not so

ridiculous in countries like the Soviet Union, where rights are seen to be privileges given-out by the government. What the government giveth, the government can also take away (or regulate).

But the right to bear arms is a pre-existing right which can not be put on hold by a waiting period or be regulated with a registration system (and there could very well be registration of names if this bill passes).

If Congress passes this bill, we will be adopting the same kind of thinking which is so prevalent in dictatorships like the Soviet Union. We will be reducing our pre-existing rights to the status of being privileges given-out by the government. And that is what a waiting period is: the police give us the privilege to buy a gun.

Countries like the Soviet Union utilize extremely restrictive gun control laws for the purposes of keeping their citizens under an oppressive reign of totalitarianism. Alexander Solzhenitsyn helps to put in perspective the roots of this proposed legislation in commenting on crime and punishment in the Soviet Union. He writes in The Gulag Archipelago:

The (Soviet) state, in its criminal code, forbids its citizens to have firearms or other weapons The state turns its citizens over to the power of the bandits -- and then through the press dares to summon them to "social resistance" against these bandits. Resistance with what? With umbrellas? With rolling pins?

Gun Owners of America asks the committee, what will the innocent American citizen protect himself with while he is waiting for permission to own something that is guaranteed to him by the Constitution? Will it be anything better than what the Soviet citizen has available to him? We urge the members of the committee to vote against HR 7.

ENDNOTES

- (1) U.S., Congress, House, "Voter Registration," Hearings Held Before the Subcommittee on Elections of the Committee on House Administration, 100th Cong., 2nd sess., 1988, p. 764.
- (2) U.S., Department of Justice, Office of Justice Programs, "Report to the Attorney General on Systems for Identifying Felons Who Attempt to Purchase Firearms," Task Force on Felon Identification in Firearm Sales, October 1989, p. 10.
- (3) U.S., Department of Justice, National Institute of Justice, "The Armed Criminal in America: A Survey of Incarcerated Felons," Research Report, July 1985, p. 36.
- (4) "INS: Illegal immigration on the rise -- Phony documents big reason behind recent surge, officials say," El Paso Times, 1 February 1991.
- (5) Senate, "Handgun Violence," p. 21.
- (6) The Justice Department report was published in book form as the following: James D. Wright, Peter H. Rossi, and Kathleen Daly, Under the Gun: Weapons, Crime, and Violence in America (New York: Aldine Publishing Company, 1983); see also the story of Wright's gun conversion in "Gun Critic Shifts His Position," The Denver Post, 28 November 1985.
- (7) U.S., Department of Justice, National Institute of Justice, "The Armed Criminal in America," Research in Brief, November 1986, p. 5.
- (8) Sarah Brady, "Waiting period laws save lives," New Dimensions: The Psychology Behind the News, April 1991, p. 46.
- (9) U.S., Department of Justice, Federal Bureau of Investigation, Uniform Crime Report for the United States (Washington, D.C., 1989), p. 11.
- (10) David Kopel [who is a former assistant district attorney from New York City] and Stephen D'Andrilli [who is a former New York City police officer], "The Swiss and Their Guns," American Rifleman, February 1990, p. 74.
- (11) Senate, "Handgun Violence," p. 107, citing Novae Russkae Slovo, Vol. LXXII, No. 26.291, Sunday, Nov. 6, 1983.
- (12) David Kopel, "Should Gunowners Compromise?" Gun World, March 1991, p. 45.
- (13) *Ibid.*, p. 44.
- (14) U.S. v. Verdugo-Urquidez, Slip Op., No. 88-1353, Decided February 28, 1990.

[The prepared statement of Mr. Knox follows:]



The Firearms Coalition

Neal Knox Associates
P.O. Box 6537
Silver Spring, MD 20906

Statement of Neal Knox
Concerning H.R. 7
Crime & Criminal Justice Committee
March 21, 1991

Mr. Chairman, Members of the Committee,

I first testified before the predecessor of this committee 24 years ago, on behalf of my readers at *Gun Week* newspaper, and have testified many times since. Although I have not always been allowed to testify in person, enough witnesses representing my views did testify to present a semblance of fairness.

In today's hearings, even the semblance of fairness is lacking. Never before have I seen equal victims of criminal violence treated so unequally. While the committee has invited Jim Brady, the Bias family, and the Printz family, all of whom support this bill, the chairman has refused to allow testimony of Ms. Jacquie Miller, still wheelchair-bound 18 months after being shot four times during the Louisville printing plant massacre by Joseph Wesbecker. Why are you afraid for the press and public to hear why she opposes this bill?

Never before have I known of this committee to refuse to hear members of Congress, including distinguished senior members of Congress like Mr. Dingell and Mr. Marlenee, whose views differ from those of the chairman and apparently the majority of the committee members from both parties.

Never before has an alternative idea, such as Mr. Stagers' proposal for an instant criminal background check on the buyers of handguns, been so fearfully concealed from public view.

I am a resident of Maryland, which has a so-called 7-day waiting period that often takes three weeks, and has twice caused me to wait three months to obtain another handgun. The "cooling off period" and criminal records check required in Maryland, and allowed by H.R. 7, arguably might accomplish something the first time someone buys a handgun. But **what possible justification is there for requiring another wait, or another background check, for someone who already has a gun?**

As a law-abiding citizen I object to these continual violations of my privacy, when I can provide ample evidence that criminals merely evade such laws by stealing their guns, buying them on the street, or paying \$20 or a hit of illegal drugs to have someone with a clean record buy a gun for them.

Does this committee encourage all states to emulate California, whose attorney general last year ordered all mental health clinics to report the names of their patients, so they can be listed alongside felons in the state's computers? That outrage, being done to implement California's new 15-day wait and background check on all transfers of all firearms, was reported last month in the *Los Angeles Times*.

There are many questions that should be raised about the bill which is before you. But this committee clearly does not wish to hear them. **And on the grounds of simple fairness, I object.**

(Contact: 301-460-6777)

[The prepared statement of Mr. Snyder follows:]

March 21, 1991

STATEMENT OF

JOHN MICHAEL SNYDER

DIRECTOR OF PUBLICATIONS AND PUBLIC AFFAIRS
CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS

ON H. R. 7

PREPARED FOR THE PUBLIC HEARING RECORD OF THE
SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

Mr. Chairman and Members of the Subcommittee:

We oppose H. R. 7, a bill to impose upon the American public a national, mandatory seven-day handgun purchase waiting period.

This proposal undercuts the right to self-defense of law-abiding citizens and, therefore, by implication, the very right to life itself.

If a law-abiding citizen faces a threat to his or her life or safety or that of a loved one, it is unconscionable for the government which supposedly represents him or her to tell him or her that he or she must wait for an entire week before he or she may obtain the very instrument with which he or she may ward off the aggressor or defend successfully against the attack.

When one tells a law-abiding citizen that he or she must wait a week before obtaining the handgun which he or she may well need for self-defense purposes, one in effect is telling that law-abiding citizen that he or she does not have a right to self-defense for a week.

Now, if he or she does not have that right for a week, how can one avoid the conclusion that the very right itself is not held sacrosanct? If that, then, is the case, how can one avoid the further obvious conclusion that the right to life itself, which cannot be said to subsist without the derivative right to protect it, is denied?

Is the life of one innocent victim which may be lost to criminality by virtue of the operation of this proposal worth its promotion and passage?

Are its promoters willing to accept upon their hands the blood of the innocent which will flow down upon them if this proposal ever were enacted into law?

- 2 -

Do its sponsors really intend in principle to sacrifice the lives of the innocent upon the secular altar of gun control?

The very fact that the bill would allow persons who can produce a police certificate indicating they need a handgun for self-defense to avoid the waiting period corroborates our contention that the acquisition of a handgun in a timely manner without the onerous burden of a government waiting period well may be necessary for self-defense.

This provision constitutes an intrinsic argument against the very bill of which it is a part. If it is admitted that law-abiding people may need to acquire handguns in a timely manner for self-defense, why promote a bill which would eliminate the possibility of such citizens making such acquisition?

It could take a lot of time for certain needy people to obtain the police certificate. What about those who, through no fault of their own, were unable to obtain the certificate and still needed the handgun in less than the seven-day period?

Are the sponsors of this bill ready to face the charge of discrimination. That's just what could happen if this bill ever were to pass and be implemented. Some needy citizens would get their guns in time to face an attacker and others would not. Those who did not then could be considered victims of discriminatory anti-gun laws.

Besides, the bill would not achieve its proponents' stated crime-fighting objectives, as an opinion survey of over 16,000 United States Chiefs of Police and Sheriffs, conducted every year for the last several years by the National Association of Chiefs of Police, indicates.

According to the 10 percent response to the postal opinion survey last year, over 76 percent believe a waiting period would have no effect on criminals' getting handguns, over 85 percent believe they could not determine fully within the seven-day period whether an individual has a criminal record, is mentally unsound or is an abuser of drugs or alcohol, and nearly 90 percent said they could not conduct the requisite investigation without taking patrol officers off the street.

In order to deal more effectively with the criminal acquisition of firearms while at the same time respecting the right of law-abiding citizens to keep and bear arms, legislative proposals should provide for updating the current nascent state of criminal justice record keeping in the United States with the objective of developing a system of instantaneous criminal record checking at the time and place of firearms purchase.

Mr. SCHUMER. Mr. Baker, again thank you for your patience. I know you have been here from the beginning. We didn't expect it to go this long, but the votes got in the way.

Your entire statement will be entered into the record. We are trying to wind up by four. So, if you could, go through the highlights of your testimony and then we will have some questions, that would be great.

Mr. BAKER. I would be happy to.

Mr. SCHUMER. Thank you.

STATEMENT OF JAMES JAY BAKER, DIRECTOR, FEDERAL AFFAIRS, NATIONAL RIFLE ASSOCIATION OF AMERICA [NRA], ACCOMPANIED BY RICHARD E. GARDINER, COUNSEL

Mr. BAKER. Mr. Chairman, the National Rifle Association appreciates the opportunity to testify today but does regret the fact that a number of Congressman, law enforcement officials and other citizens opposed to H.R. 7 were prevented from giving oral testimony.

The NRA shares the goals of all the witnesses we have heard today in wanting to keep firearms out of the hands of convicted felons and mental incompetents. Initially, the committee should be aware that only 16 percent of criminals buy their firearms directly or indirectly from legitimate dealers and that H.R. 7 or any screening system prior to purchasing a handgun deals primarily with screening the law-abiding and not interdicting criminals.

With only 19 percent of the violent crime involving handguns, on its face the bill is aimed at only 3 percent of the Nation's violent crime. Further, if a waiting period were in place nationally, criminals will still be able to purchase handguns on the black market and through legitimate channels with the use of false identification or by employing purchasers who have no criminal records.

H.R. 7 would exempt some 26 States that currently have background checks or permit-prior-to-purchase systems. The bill would only impose the 7-day waiting period on those States that have made it most clear they don't want their citizens to have to wait to exercise their constitutional rights.

Two things have changed since Handgun Control first began its massive push for a national waiting period. First, using sophisticated statistical analysis, criminologists have concluded that waiting periods do not work to reduce murder or violence or gun use in crimes. Second, the U.S. Attorney General's task force studying the criminal justice records has concluded that an accurate background check only rarely can be done in the 7-day period envisioned in the Brady bill. But where the records are accurate and complete enough for a 7-day check, it could be completed in minutes by telephone, and that is the experience of the State of Virginia, the State of Delaware, and the State of Florida.

That is why the NRA is supporting H.R. 1412, the legislation introduced by Congressman Staggers, modeled after the Virginia legislation providing for an instant telephone check of handgun purchasers. The legislation would be just as effective as any background check that is done in 7 days, and law-abiding citizens who wish to purchase handguns would not have to wait to do so.

The Virginia legislation was endorsed by Sarah Brady, and by Handgun Control, when it was passed and signed into law. The Brady bill acknowledges the efficiency of the Virginia system by explicitly exempting those States like Virginia, Delaware, and Florida that employ an instant check law. The Staggers instant check legislation mandates a background check of available records. The Brady bill, H.R. 7, does not mandate a background check.

Mr. Chairman, criminological research and a dozen studies over the past 15 years have shown that waiting periods don't work to reduce violent crime. A couple of the studies have found waiting periods associated with higher levels of homicide and robbery.

How could a waiting period make violent crime worse? About 645,000 law-abiding civilians each year use handguns for protection from criminals, according to surveys conducted of the public. To the extent that waiting periods discourage the acquisition of handguns, fewer citizens are in a position to use handguns for protection from criminals. If waiting periods don't cut crime, how can Handgun Control claim they work and are effective against crime.

Look at Handgun Control's data. It doesn't cite drops in crime but the number of persons denied permission to buy a handgun. Under this theory, if everybody was denied that would be a perfect system.

Waiting periods have worked to deny lawful purchases but have not reduced gun availability to or misuse by criminals. Wouldn't crimes of passion be reduced with a cooling off period alone? Not really. Crimes of passion, defined as family members killing one another, can be carried out with anything, especially by an abusive male. Those killings represent the culmination of a pattern of repeated violence that makes the final outcome of premeditated murder not a spur of the moment decision.

Homicidal people just don't rush out, buy guns and commit crimes. Over 98 percent of the guns used in crime, according to the Justice Department, have been in the hands of their owners longer than the Brady bill's 7 days. John Hinckley purchased his firearm more than 6 months prior to his attack on President Reagan and Mr. Brady.

The more likely scenario is that a woman unprotected by police after repeated calls would be denied prompt access to a means of protection from a male who doesn't need a gun to kill. After all, crimes of passion are at a quarter of a century low in part because more women own handguns for protection than in the past.

But aren't background checks optional under the Brady bill? Not really. Handgun Control's supporters were told in a confidential fundraising letter that Handgun Control's Center to Prevent Handgun Violence plans to sue any law enforcement agency that fails to perform an adequate check for any harm which follows from the handgun transfer and to quote, "When we sue a municipality for its negligence in not carefully screening handgun applicants we show State and local governments across the Nation that we mean business."

So, with the records imperfect and many checks as accurate as the flip of a coin, law enforcement agencies would risk lawsuits if they made mistakes in a background check or didn't run one at all.

And, as I will repeat, the Brady bill does not require a background check.

Wouldn't law-abiding citizens always be able to buy a handgun after the delay? No. Some citizens might be denied the right to ever buy a handgun from a dealer under the Brady bill. The bill says that no transfer can occur until the chief law enforcement officer acknowledges receipt of the application to purchase. An anti-gun chief of police or a police official that simply feels that law-abiding citizens shouldn't own firearms simply has to not acknowledge receipt, could deny transfers to people living in the city simply by inaction. And the bill expressly says that the law shall not be interpreted to require any action by a chief law enforcement officer which is not otherwise required. Law enforcement officers wouldn't be required to do anything, not even acknowledge receipt of an application.

For all these reasons, Mr. Chairman, the NRA believes that the approach taken in the Staggers bill is preferable to the Brady bill. No system that attempts to screen the law-abiding in an attempt to control criminals' misuse of firearms is ever going to be perfect or more than minimally effective in interdicting criminals. As long as the instant check alternative is viable, and the Virginia experience proves that it is, why should the law-abiding be forced to wait 7 days?

The further benefits of H.R. 1412 relating to the improvement in the criminal history data base will be of assistance to law enforcement in many areas beyond the simple screening of handgun purchasers.

Attorney General Dick Thornburgh, in the 1989 task force report to Congress, stated that the greatest hurdle to any identification system is the reality that felons obtain guns through many illegal, unlicensed means. There is an active black market in smuggled or stolen firearms.

Mr. Chairman, there is a monumental breakdown in our criminal justice system. In your State of New York, the chances of a felon spending 1 day in jail are less than 1 in 100. In many States, prison systems are under court order to release a prisoner every time a new convict is incarcerated. Felonies are habitually plea bargained to misdemeanors, and dockets are overloaded. We believe that calls for additional restrictive gun control as a fix for these serious criminal justice problems are driven more by ideological commitment than by factual analysis.

That concludes my testimony, Mr. Chairman.

Mr. SCHUMER. Thank you very much, Mr. Baker.

[The prepared statement of Mr. Baker follows.]

PREPARED STATEMENT OF JAMES JAY BAKER, DIRECTOR, FEDERAL AFFAIRS, NATIONAL RIFLE ASSOCIATION OF AMERICA

Mr. Chairman, I am here today as the Representative of the National Rifle Association of America to comment on H.R. 7, the "Brady Handgun Violence Prevention Act". H.R. 7 is virtually identical to legislation the NRA opposed in the 101st Congress. The reason for our opposition is based on an objective analysis of the facts, which when stripped of the emotionalism and sentimentality which has almost completely overshadowed the reality of this issue, indicate that imposing further restrictions on the firearms ownership rights of law-abiding citizens will not only be ineffective, but counter-productive to the stated goals of its proponents. We firmly believe the need for H.R. 7 to be unsubstantiated by circumstance, logic, or the form and factual content of the debate between responsible and criminal firearms ownership and is antithetical to the rights of every law-abiding citizen under the Bill of Rights.

Before proceeding to a more specific discussion of our substantive disagreements with the issues surrounding H.R. 7, the National Rifle Association Institute for Legislative Action (NRA-ILA) would like to, once again, attempt to lay to rest one of the linchpin myths used to argue in favor of a national waiting period and background check before purchase of a pistol or revolver. It is unfortunate that we must spend so much time belaboring this point; it is equally unfortunate that advocates of "gun control" continue to misrepresent the facts concerning the tragic assassination attempt on President Ronald Reagan.

In much of the propaganda produced in support of waiting periods, the allegation is made that, if such a waiting period/background check system had been in place, "John Hinckley would have been caught" because "he lied on a federal form" when he purchased the revolver used in his attack on President Reagan. It is further claimed that Hinckley

"would have been in jail, instead of on his way to Washington, D.C." had such a background check been conducted. These allegations are irrefutably false.

John Hinckley purchased a total of eight firearms -- two .38 cal. and four .22 cal. revolvers, as well as two rifles -- from August 1979 to January 1981. The .22 cal. revolver used in his assault on President Reagan was one of two he purchased in October 1980, more than six months before he left for Washington, D.C. Federal law was so diligently complied with in this case by the seller that multiple purchase forms were quickly filed with the regional office of ATF after the purchase.

Indeed, this purchase, and all previous purchases, were legal. And they would have been legal under this or any other "waiting period" scheme ever devised. At the time of his purchase, and until his attack on the President, John Hinckley had no felony record, he had no recorded history of mental illness or commitment, (as no check currently involves police inspection of private conversations with a psychiatrist) and he was using a valid Texas driver's license issued May 23, 1979, to make this firearms purchases. The contention that a background check would have "uncovered" the fact that he did not physically reside at the address listed on his license is a willful distortion of the criminal record check made by local police. To the contrary, had a check been run and all criminal records been thorough and completely available, they would have confirmed that Hinckley was not a prohibited person and that his last known address was in Lubbock, Texas.

Simply put, no detection system ever proposed or ever devised has mindreading capabilities. Advocates of the waiting period do a gross disservice to the nation by asserting that the tragic assassination attempt on President Reagan would have been prevented by the imposition of any regulatory "gun control" scheme. I urge this Committee

to look carefully at other arguments made by those who continue to make that claim citing the case of John Hinckley as evidence.

The long history of waiting period schemes points up the failure of those systems in other criminal justice areas, as well. Waiting periods, permit-to-purchase laws, and police background checks have been instituted around the country for most of the century. After the 1911 Sullivan law in New York, many were enacted in the 1920's and 1930's, about the same time that a Uniform Crime Reporting system was implemented to facilitate the collection of crime data from cities and states throughout the nation. Thus, criminologists and other scholars have had ample time and abundant evidence with which to study and document the effectiveness of a waiting period in deterring violent crime. The results are a damning indictment of those who propose to control crime by regulating the behavior of law-abiding members of the community.

In October 1975, Douglas R. Murray of the University of Wisconsin published "Handguns, Gun Control Laws and Firearms Violence." Using the standard statistical methods -- a multiple regression statistical framework -- he compared the various state firearms laws -- including purchase permit, waiting period, police notification, retail license, minimum age, permit to carry openly, and permit to carry concealed -- to crime rates, while considering socio-economic conditions. Murray found that "gun control laws have no significant effect on rates of violence beyond what can be attributed to background social conditions." Secondly, he found that such laws do not effectively limit access to guns by the violence-prone; and, finally, accessibility to handguns "seems to have no effect on rates of violent crime and firearms accidents, another reason why gun control laws are ineffective."

Murray summarized: "On the basis of these data, the conclusion is, inevitably, that gun control laws have no individual or collective effect in reducing the rates of violent crime."

Murray's study was replicated by a self-proclaimed "gun control" advocate, Professor Matthew DeZee at Florida State University. His conclusion? "The results indicate that not a single gun control law, and not all the gun control laws added together, had a significant impact . . . in determining gun violence. It appears, then, that present legislation created to reduce the level of violence in society falls far short of its goals ... Gun laws do not appear to affect gun crimes." Keep in mind that the types of laws studied by these scholars were identical to the legislation before you today.

Another study was conducted by two professors at the California State University at Long Beach. Professors Joseph Maggaddino and Marshall Medoff studied "waiting periods" and "cooling-off" periods and found them to be totally useless in curbing crime. They found no relationship between a waiting period or cooling-off period and any type of violent crime, except that they noted a slightly higher homicide rate and a slightly higher robbery rate in places with such laws.

Currently, there are twenty-four states with waiting periods or permit to purchase regulations required for the purchase of a pistol or revolver. Additionally, there are scores of cities and counties that have their own restrictive systems of this type. Again, the majority of these systems have been in place for decades, giving criminologists such as Murray, DeZee, Maggaddino and Medoff ample opportunity to unearth any supposed efficacy these systems have. Likewise, there has existed more than sufficient data for evaluation by those who are represented by Handgun Control Incorporated (HCI). We

find that, despite a great deal of sympathy, albeit short-lived, in the academic community for the idea of restrictive waiting periods, anti-gun scholars have failed to discern any benefits of the waiting period concept. A few, notably Massachusetts Professor James D. Wright, have been honest enough to change their position on this issue after their research revealed the facts.

In keeping with this criminological evaluation, which actually served to confirm common sense, the trend in this nation has been more towards rolling back or repealing existing waiting periods for handguns at the state and local level. Some states with handgun waiting periods have confirmed gun owners fears, not to mention their initial predictions, by increasing the length of waiting periods and including rifles and shotguns under waiting period strictures. In fact, voters in many states and cities have chosen to defeat attempts at imposing or lengthening existing waiting periods. The story at the state level in the recent past is of pro-gun initiatives, such as preemption and constitutional right to keep and bear arms amendments, passing overwhelmingly in reflection of the public's support of lawful, private firearms ownership. Waiting period proponents may quote as many simplistic polls as they choose, but it is these votes by duly elected state legislators, that should be viewed as the true gauge of public opinion. Clearly, public opinion reflected at the ballot box is running strong and hard against restrictive gun laws.

Preemption represents an implicit rejection of waiting periods and a justifiable claim for supremacy of the state legislative process in setting firearms regulatory law. Currently, forty states have preempted the field in firearms legislation, claiming for the state legislature the sole responsibility over the regulation of firearms. In Representative Feighan's own state of Ohio, Mr. Chairman, waiting periods have died in the 114th, 115th,

116th, 117th, and 118th, General Assemblies.

One of the more glaring deficiencies of H.R. 7 is that it would impose an additional burden of liability on law enforcement, if not de jure then de facto, without addressing the major problem in conducting a nation wide felon check -- namely the lack of accurate. The Attorney Generals Task Force on Felon Identification indicates that given the current state of criminal record keeping among the fifty states it is simply impossible to conduct a thorough and accurate background check on an individual on a state level. More to the point, Attorney General Thornburgh has said that to the extent criminal records are available for checking, the information is available on virtually an instantaneous basis, and that nothing is gained from the imposition of a seven-day waiting period.

Given this information we believe it is appropriate to restate our strong support for the implementation of a National Instantaneous Felon Identification system as embodied in H.R. 1412, the "Felon Handgun Purchase Prevention Act". H.R. 1412 was recently introduced by Representative Staggers, a member of the Judiciary Committee. Modeled on the very successful Virginia Firearms Transaction Program, H.R. 1412 addresses several key points which H.R. 7 either does not address, or worse, exacerbates rather than resolves.

First, it must be noted that H.R. 7 specifically exempts those states from the seven day waiting period which have in place, or implement an instantaneous check system. While we hardly consider this a definitive endorsement for H.R. 1412, it certainly obviates any argument that the proponents of H.R. 7 might make that such a system is ineffectual. To the contrary, an explicit endorsement of the superiority of H.R. 1412 has already been given by Handgun Control Inc. and Sarah Brady when testifying in support of the Virginia

system. That same testimony indicated that they believe it is legislation which could be used as a "model" for the nation. We agree. Moreover, based on the experience that Virginia has had, an instantaneous check system could be put into place in a relatively short period of time and at a reasonable cost. A strong argument can be made that a national felon identification system accessed directly by firearms dealers would be significantly cheaper than H.R. 7. At the very least, it will help to free law enforcement departments from the increasingly onerous burden of paperwork which so sorely impacts crime-fighting abilities. Then, too, the spillover benefits of upgrading the current national records keeping system are obviously applicable to many other areas in which certifying the lack of a criminal background may be a prerequisite for employment suitability. These include, but are not limited to: child care functions, banking, the securities and exchange industry, transportation, and the private security industry.

We are certainly not suggesting that this information should be widely accessible. To the contrary, we believe that the release of any information whatsoever must be strictly regulated and conveyed only on a legitimate need to know basis. We further believe that the penalties for the unlawful use or dispersal of such information should be clearly defined, and sufficiently stringent to discourage abuse. However, there are obvious advantages for implementing a system which encourages the respective states to comply with felon record keeping and conveyance systems which are already in place but are either deficient or misutilized.

Moreover H.R. 1412 does not rely on "star wars" technology, which various detractors of a national instantaneous check system have suggested in some of their comments. Unless of course these individuals are suggesting that a touch tone telephone

and a toll-free 800 number connection with the Justice Departments records center is the stuff of science-fiction. Certainly Attorney General Thornburgh does not think so or he would not have recommended the implementation of such a system. Quoting a letter from Mr. Thornburgh to Vice-President Dan Quayle in November 1989, he says, "Therefore, I recommend implementation of Option A2 as presented in the Task Force (on Felon Identification) Report. It would provide for the use of a touch-tone telephone by licensed firearms dealers to contact a criminal justice agency for access to criminal records information currently on file with the states or the federal government. After a computerized check, the dealer would be notified if the intended purchaser has a criminal record. If a record exists the sale could not go forward. This is exactly the system that H.R. 1412 proposes to be implemented within six months of the date of its enactment. In support of this time frame we cite the experience of Virginia, and more recently Delaware, both of which implemented instantaneous check systems in slightly more than half a years time.

Obviously such a system is not going to come on line with an immediate degree of perfection. But, the degree of accuracy available will be, in every case, equal or superior to that proposed by H.R. 7. And, again to cite the Virginia System, it can be implemented with the information which is currently available, and improved and perfected with time.

One of the more obvious shortcomings of H.R. 7. is that it essentially mandates police compliance without enhancing capabilities. Although H.R. 7 does not specifically mandate a background check it does require law enforcement to sign off on all handgun purchases. Handgun Control Inc. has raised the threat of litigation against any law enforcement agency which approves the sale of a handgun on the basis of an incomplete

or inaccurate background check from which subsequent harm would arise. In fact, in one of HCT's mass mailings they specifically cite a case in which a widow sued the City of Philadelphia and was awarded \$350,000 as a result of a handgun sale which should not have been allowed. If H.R. 7 is enacted you can expect, at a minimum, that there will be a proliferation of litigation against law enforcement, regardless of the circumstances of the approval. As a result not only will there be every incentive to do an extensive background check on every individual when possible, there will also be every incentive for police departments to delay or deny a purchase for as long as possible when available information is incomplete. Again, the result of this will be that numerous suits will, no doubt, be brought against law enforcement agencies by those individuals who are denied lawful possession of their firearm after the seven day period has elapsed.

Perhaps the most compelling reason for supporting H.R. 1412 is that it institutes a mandatory check based specifically on the information already required of a handgun purchaser, which H.R. 7 does not. Because of this, and in conjunction with the immediate verification of the information provided, H.R. 1412 insures that the legitimate Second Amendment rights of law-abiding citizens are untrammelled. The same cannot be said of H.R. 7.

For example, one of the oft repeated questions asked in some form to most members of this Committee at some time or another, is "Why can't an individual wait seven days to purchase a handgun?" The obvious response is another question, "Why should a law-abiding citizen be denied a constitutional right?." There is no comparable waiting restriction levied on any of the other amendments, nor an unsupported invalidation or restriction placed on any other right based on an unsubstantiated

presumption of guilt. By accepting other than the minimum criteria necessary to insure that those whom society has judged to be, by circumstances or behavior, unsuitable or in forfeiture of the legitimate exercise of the rights ordained by our Constitution, the American people will have adulterated and diminished not only their Second Amendment rights, but all other Constitutional protection in turn. Because H.R. 1412 provides for, essentially, the instant exercise of a constitutional right in keeping with the overall philosophy of the Founding Fathers, there is little question that it most clearly satisfies both the spirit and the letter of the Constitution. H.R. 7 fulfills neither criteria.

However, to specifically address the suitability of giving law enforcement the means to preclude an individual from taking possession of a handgun for a period of seven days, even were such a period necessary or desirable, highlights perhaps the most egregious, and in isolation, fatal flaw in H.R. 7. H.R. 7 specifically requires a firearms dealer to convey to local law enforcement the purchase request filled out by the customer within 24 hours. Yet, nowhere in H.R. 7 is there a similar mandate defined for law enforcement to return a purchaser's application to the gun store owner within the seven day time period the bills supporters suppose to be reasonable, or penalty if law enforcement fails to do so. It takes but a small exercise of the imagination to envision the scenarios under which unreasonable delays well in excess of the seven day period could occur. Regardless, the effect will be that a law-abiding citizen will be precluded from taking possession of the firearm which he is lawfully entitled to own, and for which he may have imminent necessity or practical need.

H.R. 1412 is value neutral and specifically defines the rights of an individual and the responsibilities of the system. And, unlike H.R. 7, H.R. 1412 entails no needless

infringement or proscription of individual constitutional rights based on the false assumption that firearms, and those who desire to possess them, are inherently deserving of societal suspicion. H.R. 1412 eliminates bias from the equation, H.R. 7 reinforces the circumstances under which biases can be exercised.

Perhaps the main reason there is no mandatory criminal records check by local law enforcement agencies is that those who support the concept embodied in H.R. 7 wish to have law enforcement support for the bill. Yet, a federal law which imposed duties on state and local law enforcement plainly might not be supported by state and local law enforcement; indeed, it might be actively opposed by them. Thus, the result is a bill which, by its express terms, "shall [not] be interpreted to require any action by a chief law enforcement officer which is not otherwise required." This places those in the law enforcement community who are supportive of any effort to prevent private acquisition and possession of firearms in a position where they can support legislation which appears to involve them in the acquisition process but which, in reality, requires them to do nothing.

Throughout its material, HCI misuses the word "caught" in reference to individuals denied lawful access to a handgun, for example, in saying that Columbus, Georgia or New Jersey police "catch" X number of convicted criminals under their system, or that Hinckley would "have been in jail instead of on his way to Washington." Rejection under the system does not equate with indictment, conviction, or incarceration for violation of firearms laws. In fact, our contacts with law enforcement around the country confirm that most individuals are not prosecuted, much less imprisoned, for violations of restrictive gun laws detected by background checks.

HCI's reference to New Jersey is especially interesting, in so far as it makes a

stronger case against institution of their scheme than for its implementation. HCI alleged that New Jersey officials denied applications of "33,000 criminals." NRA-ILA and many others pointed out that, in fact, a majority of those rejections were not based on previous criminals records; that the system in question included applications for permits to carry a concealed firearm which are frequently denied solely because the issuing authority determines the "need" is insufficient; and that the system allowed denial based on the arbitrary and subjective standard that issuance would "not be in the interest of the public health, safety or welfare."

HCI has now apparently adopted a lower number of "rejections of criminals," by citing 10,000 most recently. But, according to the New Jersey State Police Firearm Licensing Division, this number is also misleading. The fact is that the "10,000" includes applicants rejected as drug addicts, for medical reasons, as alcoholics, for falsifying records and for the following three completely arbitrary reasons: "public health, safety and welfare; in-sufficient need, and, of course, other." The police officers we spoken with have completely rejected HCI's characterization of the denials, saying, "we don't keep records that way." This is hardly evidence of an efficient system weeding out criminals while protecting the rights of the law-abiding. And in the face of data showing that the level of firearms-related violent crime in New Jersey, has been rapidly rising, relative to the U.S. as a whole, it is obvious that the system is not preventing the criminal acquisition of firearms.

HCI then claims that the Chief of Police in Columbus, Georgia, believes their waiting period system to be working. NRA-ILA staff has followed up on this assertion and has found that the officers responsible for the waiting period system in Columbus do not

share the Chief's view, as reported by HCI. In fact, HCI and/or the Chief appear to expand the level of rejections by more than four-fold. And again, denial does not necessarily indicate prevention of criminal acquisition of a firearm, nor does it relate to the level of violent crime in a community.

HCI also approvingly cites Memphis, Tennessee, and Atlanta, Georgia, as communities where restrictive gun laws are "working." They neglect to point out that those communities are two of the most crime-ridden within their respective states, and indeed within the South as a whole.

California's Attorney General may have been correct in his assessment of the effectiveness of their system in denying a constitutional right with frequency -- even though the number of rejections which ultimately result from the California system given represents less than 1/2% of the applicants -- but that assertion is unrelated to any crime reductive effect. It should be noted that the homicide rate in California increased 126% as the state increased the length of its waiting period from 48 hours to 5 days to 15 days, even as the national rate rose by less than half as much.

HCI also misrepresents the Wright-Rossi felon study, conducted under a grant from the U.S. Department of Justice. That study found no difference in the methods of firearms acquisition by criminals regardless of the type of state "gun control" laws in place. Wright notes that criminals "obtain guns in hard-to-regulate sources . . . Swaps, purchases, and trades among private parties (friends and family members) represent the dominant pattern of acquisition within the illicit firearms market." HCI would have us believe that these private networks would suddenly dry up, or that they would suddenly participate in a law enforcement effort aimed at them.

Finally, it is instructive to once again note that waiting periods, police background checks, and permit-to-purchase systems have been in existence at the state and local level for most of this century. HCI alleges that these laws work, and contend that they have examples in x number of states and dozens, if not hundreds, of cities and counties. Yet when called upon to produce evidence of this efficacy, all that they can muster are three states and a few localities. And, upon further examination, even this scant "evidence" is usually found to be completely lacking, outright deceitful, or distorted beyond the recognition of truth.

Mr. Chairman, and members of the Subcommittee, I thank you once again for the opportunity to present the views of millions of NRA members on the legislation proposed here today, H.R. 7. The timely disposal of this proposal would free this Congress to address issues providing hope for real reductions in our nation's rate of violent crime, such as the implementation of the instantaneous handgun check system proposed by H.R. 1412, the streamlining of our criminal justice system and the imposition of swift and certain punishment for criminal offenders. Above all else we need to abandon the skewed logic of H.R. 7 and its ilk which mistakenly targets not the criminal elements in our society, but rather those who already obey the law. This is the wrong approach in the short term, and a long-term prescription for disaster. The Founding Fathers of our Nation sought to create a structure of government not to rule the individual, but rather that the individual might to the fullest extent possible be free to rule his own actions. This is exactly why they were careful to specifically describe the inviolate rights of the first Ten Amendments to the U.S. Constitution apart from the restrictions which might be lawfully imposed under the general rubric of the preamble and body of the U.S. Constitution. H.R. 7 is inimical to these protections. Thank you.

Mr. SCHUMER. I find very little, of course, to agree with in your testimony, but I would like to welcome you to one cause, and that is, your belief in checks. You believe there ought to be some kind of check, obviously—

Mr. BAKER. It is not new for us. Since 1988—

Mr. SCHUMER. If you would let me ask the questions—

Mr. BAKER [continuing]. We have supported it.

Mr. SCHUMER. Right, which is very good. You don't think there is a constitutional objection, you don't think there is a moral objection, OK?

Mr. BAKER. It is the least intrusive.

Mr. SCHUMER. Right. You are just trying to make the streets safer in your way. But I wish you would be a little more honest about it. Everyone, every expert, agrees that a 7-day check, under the present circumstances, will be more effective than an instantaneous check.

Mr. BAKER. No, sir.

Mr. SCHUMER. Everyone agrees with that.

Mr. BAKER. I beg to differ with you.

Mr. SCHUMER. You think right now an instantaneous check, with 40 States not having fully computerized records, will be better? What I would say is, I think you ought to be straight about it. You ought to be honest about it.

Mr. BAKER. I am trying to be. If you will let me respond—

Mr. SCHUMER. What you ought to say is, you believe people should get guns as quickly as they can, law-abiding people, and you don't want to wait the 7 days. That is the position that is intellectually consistent, and we would have value judgments and disagree with it.

Instead, what you are saying—which nobody I have met believes—is that if you force an instantaneous check, you can find out more than if you can check for 7 days. Is that what you are saying?

Mr. BAKER. What I heard the Attorney General say this morning—and that is hardly nobody, Mr. Chairman—

Mr. SCHUMER. He does not say that.

Mr. BAKER. The Attorney General's representative—if you will let me respond—is that the amount of records that can be checked in 7 days is no different than the amount of records that can be checked in 7 minutes. Now that is Mr. McNulty's response from the Attorney General.

Mr. SCHUMER. Is Chief Collins not telling the truth?

Mr. BAKER. The bill that we are supporting, Mr. Chairman—

Mr. SCHUMER. No. I'm asking you—

Mr. BAKER. I'm answering you. The bill that—

Mr. SCHUMER. In the police department in Minnesota, can an instantaneous check with the present state of the records get as much as a 7-day check?

Mr. BAKER. Mr. Collins—

Mr. SCHUMER. Do you believe that?

Mr. BAKER [continuing]. The 7-day waiting period would be left intact under the Staggers bill.

Mr. SCHUMER. I didn't ask that. That is not the question I asked.

Mr. BAKER. I am not familiar with the system that is in place in—

Mr. SCHUMER. You are not familiar with the system in place in Minnesota?

Mr. BAKER. Not in Minnesota; no, sir.

Mr. SCHUMER. Then I don't think you should be advocating anything until you know the variety of systems. The Minnesota system is one of the systems that the Brady bill is based on because it works.

Mr. BAKER. We are very familiar with the system, but it doesn't show me—

Mr. SCHUMER. You are or you aren't familiar with the system?

Mr. BAKER. We are very familiar with the concept of a 7-day waiting period.

Mr. SCHUMER. Are you familiar with the Minnesota system?

Mr. BAKER. The concept of a 7-day waiting period.

Mr. SCHUMER. Are you familiar with the Minnesota system?

Mr. BAKER. Not explicitly; no, sir.

Mr. SCHUMER. Then your credibility is a little bit undermined.

Mr. BAKER. Well, I am not representing Minnesota.

Mr. SCHUMER. I understand that. You are representing an organization that wants to prevent a system like Minnesota's from being put into place.

Mr. BAKER. The Brady bill does not require a check like Minnesota's. It doesn't require that the police do anything, Mr. Schumer. By its own terms, it doesn't do that.

Mr. SCHUMER. It allows the police to do it, and Chief Collins has testified about it.

Mr. BAKER. But it doesn't require—you are saying that we are preventing a system like Minnesota's.

Mr. SCHUMER. Yes.

Mr. BAKER. We are not, because the Brady bill does not require a background check.

Mr. SCHUMER. That is correct. So it is even less onerous than the Minnesota system.

Mr. BAKER. Minnesota's does. So there is a fundamental difference there, is there not?

Mr. SCHUMER. No, no, no. We are talking about whether in 7 days you can find out more about an applicant for a gun than through an instantaneous check. If you line up 100 honest people, just about everyone in the world would say in 7 days you can check records more thoroughly than instantaneously, and if you disagree with that, I want you to tell me right now.

Mr. BAKER. Yes, I do. According to the Attorney General's study, the records that can be discovered instantaneously or in a 24-hour period are the same number of records that can be discovered in 7 days.

Mr. SCHUMER. Is that true of all 50 States?

Mr. BAKER. That is according to the—

Mr. SCHUMER. No, the Attorney General did not say that. I was here when his representative testified.

Mr. BAKER. Yes, he did.

Mr. SCHUMER. What he said was that an instantaneous check would not work now—

Mr. BAKER. No.

Mr. SCHUMER [continuing]. With the present State records. That is what he said.

Mr. BAKER. And he said the Brady bill was useless as well.

Mr. SCHUMER. He did say it was useless, and we disagreed with him on that, but that was on a different argument. He did not say that an instantaneous check works as well as a waiting period of up to 7 days. No one has said that. You don't believe that, Mr. Baker.

Mr. BAKER. Mr. Chairman, I do believe that that is what the Attorney General said.

Mr. SCHUMER. Do you believe it?

Mr. BAKER. Yes.

Mr. SCHUMER. You believe that in all 50 States—

Mr. BAKER. Only that the records there discoverable in 7 days are discoverable in 7 minutes; yes, sir, I do.

Mr. SCHUMER. Well, I would just let that argument—

Mr. BAKER. And the Virginia system proves that.

Mr. SCHUMER [continuing]. Let the apparent contradictions in that argument rest with everybody here.

Let me ask you another question.

Mr. BAKER. Certainly.

Mr. SCHUMER. The NRA says that we have to get better records so an instantaneous check can work.

Mr. BAKER. I'm sorry?

Mr. SCHUMER. Is that right? Don't you believe we need better records to make an instantaneous check work better?

Mr. BAKER. I think that would make a lot of sense; yes, sir.

Mr. SCHUMER. Yes. When have you been to Congress lobbying for more money to make the records better, to improve the records?

Mr. BAKER. In the context of the last crime bill, where we supported the provision offered by Mr. McCollum that provided that 5 percent of the Justice block grants that go to the States be used for improvement of records.

Mr. SCHUMER. How about this year?

Mr. BAKER. In the Staggers bill itself, another 5 percent of the Justice block grants would go for that purpose.

Mr. SCHUMER. How much money is that?

Mr. BAKER. So that is two occasions that I have just stated.

Mr. SCHUMER. I find your people up here, the people throughout the country, are lobbying against the Brady bill. We get letters against the Brady bill from your members; we get people coming to lobby us against the Brady bill. I, for one—and I have talked to about 20 of my colleagues, some on this committee, and I have asked, "Has the NRA ever lobbied you and made it a priority to spend money to update the records?" and I got—

Mr. BAKER. I just gave you two examples.

Mr. SCHUMER. I didn't get a single person who said there were personal letters. So what I would urge, if you really believe in instantaneous—

Mr. BAKER. Stay tuned, because we are going to be sending a lot of them in terms of upgrading the records.

Mr. SCHUMER. Good. Well, that would be something that you and I could agree on and I think most people could agree on.

Let me ask you this. What about the 47 other States that don't have the abilities of Virginia, Florida, and Delaware? What about the 40 States that have—

Mr. BAKER. They need to develop those abilities.

Mr. SCHUMER. What about the 40 States that don't have automated records? Do you think they can find anything out in an instantaneous check?

Mr. BAKER. What I think, Mr. Chairman, is that unless you take care of the problems of false identification and faulty records you can't do a background check, period, that is worth a darn thing. Without fingerprints and without 6 to 8 weeks to process those prints—

Mr. SCHUMER. Are you supporting a bill that would do that?

Mr. BAKER. No, sir, we are not.

Mr. SCHUMER. Why don't you?

Mr. BAKER. Because we don't believe that law-abiding gun owners ought to have to be fingerprinted and wait 6 to 8 weeks to purchase their firearms.

Mr. SCHUMER. That is a value choice argument, but that is the first thing that you have said that is not just totally contradictory to what people realize is obvious.

Mr. BAKER. No. Obviously, I don't agree with that.

Mr. SCHUMER. You don't believe gun owners should be fingerprinted. That is a value choice that people can debate.

Mr. BAKER. No, we don't.

Mr. SCHUMER. I understand that.

It is not a value choice to say that 7 days doesn't give law enforcement a better opportunity, and I want to ask you that question. You said that a waiting period sometimes results in higher criminal rates.

Mr. BAKER. Yes, I think that is possible.

Mr. SCHUMER. Do you have much faith in law enforcement in this country?

Mr. BAKER. Mr. Chairman, I don't find it surprising at all that some segments of law enforcement have a problem—

Mr. SCHUMER. Are there any segments—

Mr. BAKER. Can I answer the question?

Mr. SCHUMER. Yes. Well, don't say "some segments."

Mr. BAKER. Do you want to answer it for me?

Mr. SCHUMER. No. I would like you to answer it, but I would like you to answer it honestly.

Mr. BAKER. I don't have a problem—I don't think that it is unusual that some segments of law enforcement have a problem with some people owning firearms, period, and I think that if the second amendment wasn't there, if the fourth amendment, if the fifth amendment wasn't there, a lot of law enforcement work would be a lot easier, but I think that is exactly why the Bill of Rights was put there.

Mr. SCHUMER. All right. Do you believe law enforcement—in other words, what are they doing here? You are not arguing second amendment, fourth amendment, fifth amendment, you are arguing—

Mr. BAKER. I am arguing constitutional rights.

Mr. SCHUMER. No, no. Right now you are arguing that a waiting period would lead to higher crime rates. That must mean that 99 percent of all law enforcement wants higher crime rates.

Mr. BAKER. I am saying that in some States that have waiting periods, if you look at the crime statistics prior to the institution of the waiting period and after the institution of the waiting period, in many States there is no effect and in some States the crime rates have gone up.

Mr. SCHUMER. All right. Let me ask you a different question. Why do you believe the NRA has lost 300,000 members over the last few years?

Mr. BAKER. Probably for the same reason that National Geographic has. We have a depression going on, a recession, depending on how you want to define it. I don't know. I mean the membership money has gone up in terms of how much it costs, and it has gone down a little. We are working on it.

Mr. SCHUMER. Didn't the NRA membership start going down long before the recession?

Mr. BAKER. No.

Mr. SCHUMER. When do you say the recession began?

Mr. BAKER. I am not an economist, Mr. Chairman.

Mr. SCHUMER. Well, your membership started—

Mr. BAKER. And I didn't come here prepared to discuss recessions or membership, to be quite honest with you.

Mr. SCHUMER. By the way, and I believe this, the NRA and its lobbying efforts, not the PAC's but the actual idea of getting members of your organization to write letters and come and lobby Members of Congress, that is the American way. Most of your clout comes not from your doing anything wrong but from the rest of the citizens not doing what is right, arguing against you when they believe against you.

But I would say to you that your membership has gone down, beginning in April 1989 when the economy was still booming, because while most of your members agree with your fundamental beliefs you take such unreasonable positions that even most gun owners in this country, a very overwhelming majority, don't agree with you on this.

Mr. BAKER. I disagree with that contention.

Mr. SCHUMER. I understand that.

Let me ask you, have you studied waiting periods in any States? Have you done any study of how it works?

Mr. BAKER. We have looked into waiting periods in a number of States; yes, sir.

Mr. SCHUMER. Do you have any written studies—you know, written results—aside from "looking into?"

Mr. BAKER. I think that we could supply the committee with some; yes, sir.

Mr. SCHUMER. We will give you, say, 5 days to get those studies to the committee.

Mr. BAKER. We would be happy to.

Mr. SCHUMER. Thank you.

[The information follows:]



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1800 BRIDGE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20038

March 27, 1991

Honorable Charles E. Schumer
Chairman
Subcommittee on Crime and
Criminal Justice
Room 362 Ford HOB
Washington, D.C. 20515

Dear Mr. Chairman:

At the Subcommittee on Crime and Criminal Justice hearing March 21, 1991 regarding H.R. 7, the Brady Handgun Violence Prevention Act, you requested information to support my testimony that restrictive gun laws have had no effect on crime and, in fact, appear to be counter-productive. The National Rifle Association is pleased to present this information to you for inclusion in the record of proceedings.

The information presented here has been gleaned from several complex statistical models previously developed by noted criminologists Douglas Murray, Matthew DeZee, Maggadlio and Medoff, and Gary Kleck among others. In every case, they have documented that there is no relationship between waiting periods, or the imposition of other gun laws, and reductions in violent crime or homicide rates. In fact, without exception they have noted exactly the opposite result. I will be pleased to provide copies of the studies cited to the committee at your request.

ANALYSIS

The attached chart presents a before and after data comparison to describe the effects of "waiting periods" based on the twenty-two year time period, 1967-1989. The rationale for selecting this particular time-frame for study is based on several factors. 1967 is chosen as the bench mark year because, with the enactment of Title I (the State Firearms Control Assistance Act) of the 1968 Gun Control Act, most interstate sales and/or transfers of firearms were first prohibited by federal law at this time. Therefore, post-1967, any interstate "leakage" of firearms cannot be blamed on the stringency, or lack, of existing laws. Rather, in light of the significantly increased restrictions and controls imposed at that time, leakage factors must be viewed as the failure of federal law enforcement efforts and/or the unenforceability of the relevant laws. 1989 is chosen as the final year for the purpose of this analysis simply because it is the last year for which all necessary data is available.

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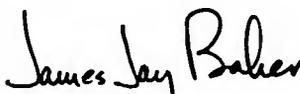
Gun control laws are ostensibly implemented for the purpose of reducing violent crime, although because homicide is obviously the most egregious manifestation of violence both data sets for the time period 1967-1989 are reported herein. Although handguns are often singled out as the target for control in preventing violent crime, there is not sufficient data to limit the analysis specifically to handguns and arrive at a meaningful conclusion. Moreover, because the incidence of controls on handguns are as a rule more stringent among the states, any arbitrary limitation in this regard will only strengthen the case that additional controls imposed on the sale of handguns have been ineffective in reducing violence.

The attached chart allows a comparison of the percentage of increase in violent crime and homicides in the states which have in place or have enacted waiting periods or other similarly restrictive gun-control laws, over the last twenty-two years. As you will note, in every case the data reflects an increase in violent crime and homicides. Of particular significance is the fact that, even as these increases have occurred, the rest of our Nation has experienced an overall drop in the incidence of violent crime based on the same categories.

You may argue with the specific circumstances which have caused the increases. However, absent some compelling evidence to the contrary, I believe that this data buttresses my contention, that of numerous criminologists, and a majority of rank and file policemen, that the only correlation between restrictive gun laws and crime control is a negative one. To reiterate my testimony before the subcommittee, the only people that H.R. 7 will affect is law-abiding citizens. Those who attempt to make the totally specious argument for H.R. 7 that because it may save one life it is worthwhile may not recognize the truth, but they can't ignore the facts. And considering the facts, I think those of us who oppose further restrictions on the firearms ownership rights of law-abiding citizens, as a means of saving lives, have a more compelling argument.

I would welcome the opportunity to discuss this with you, or members of the subcommittee, further. In the meantime, if you have any additional questions or comments I would be pleased to respond.

Sincerely,



James Jay Baker
Director
Federal Affairs

	<u>1967 Rate</u> <u>per 100,000</u>	<u>1989 Rate</u> <u>per 100,000</u>	Percentage Change
UNITED STATES VIOLENT CRIME	250.0	663.1	+165%
Homicide	6.1	8.7	+ 43
California-Violent Crime	352.1	977.7	+178
Homicide	5.4	10.9	+ 82
Connecticut-Violent Crime	95.9	511.8	+434
Homicide	2.5	5.9	+145
Illinois-Violent Crime	394.3	845.9	+115
Homicide	8.1	9.0	+ 23
Indiana-Violent Crime	156.7	406.5	+159
Homicide	3.7	6.3	+ 70
Maryland-Violent Crime	474.1	855.4	+ 80
Homicide	8.0	11.6	+ 25
Massachusetts-Violent Crime	127.6	675.0	+429
Homicide	2.8	4.3	+ 54
Minnesota-Violent Crime	132.0	288.3	+118
Homicide	1.6	2.5	+ 56
New Jersey-Violent Crime	188.5	609.0	+223
Homicide	3.9	5.1	+ 31
New York-Violent Crime	403.4	1131.2	+180
Homicide	5.4	12.5	+131
Virginia-Violent Crime	192.2	312.5	+ 63
Homicide	7.3	7.9	+ 8

Mr. SCHUMER. Do you know which States they were?

Mr. BAKER. I think that we have done some analysis of the system in New Jersey; we have done analysis of some of the permit-to-purchase systems, which are akin to waiting period, in Illinois and some other States; but I would be happy to supply those, too.

Mr. SCHUMER. And what do those show, do you know?

Mr. BAKER. Why don't you speak to that?

Mr. SCHUMER. Yes. Go ahead, you may, Mr. Gardiner.

Mr. GARDINER. Just one example. There are lots of studies out there. Of course, the best one was the one funded by the Department of Justice, the Wright, Rossi study of several years ago, but just to give you some examples of some data from 1989, the last year that full statistics were available, the violent crime rate in the United States was 563 per 100,000. In California, with its much vaunted waiting period, the violent crime rate was almost double that, 977 per 100,000.

Mr. SCHUMER. Do you think it is because of the waiting period that the crime rate was double?

Mr. GARDINER. Well, let me finish. In Virginia—

Mr. SCHUMER. No, no. You made an assertion. Do you agree that the two are related?

Mr. GARDINER. It probably is not related.

Mr. SCHUMER. Thank you.

Mr. GARDINER. The gun laws are essentially completely irrelevant to the crime rate.

In Virginia, the violent crime rate was 312 per 100,000, and in Vermont, the only State in the Union without any gun control laws at all, the violent crime rate was 132 per 100,000. That is about one-eighth of the violent crime rate in California.

The homicide rates are very typical—are very similar. The national rate is 8.7, California is 10.9, and Vermont is 1.9.

Mr. SCHUMER. Yes. So in other words—

Mr. GARDINER. There is no connection between, other than the—

Mr. SCHUMER. Do you know what your argument is like? Maple syrup reduces the crime rate. The people in Vermont have maple syrup; the people in California don't—

Mr. GARDINER. What is very apparent, though, is that the presence of the gun control law or the waiting period has not made any difference.

Mr. SCHUMER. Do you know anything about scientific method?

Mr. GARDINER. Sure.

Mr. SCHUMER. You would have to do a controlled experiment, Vermont with waiting period/Vermont without waiting period, to see which is lower.

Mr. GARDINER. We have all that as well.

Mr. SCHUMER. California with/California without, not comparing California and Vermont, which, quite frankly, is comparing—well, shall we say—apples with oranges.

Mr. GARDINER. You are absolutely right, and we can compare California to California as well, and what you find is that the homicide rate, the violent crime rate, has climbed faster in Califor-

nia than it has in States that have not implemented waiting periods.

Mr. SCHUMER. Let me ask you just one more question. When you sat here and heard the witnesses, and you heard, for instance, Dr. and Mrs. White: Someone who is a known felon bought a gun, and 6 days later went and shot their son, when, on its face, the Brady bill would have meant that that wouldn't have happened—on its face—how do you feel?

Mr. BAKER. Well, Mr. Chairman, nobody can fail to be moved by the tragedies that we heard described here today. When I was a prosecutor, I saw them time and time and time again. I don't know the specifics, all of the details of the case described by the Whites, but I am not at all sure that that felon, one, should have been on the street. I heard them say that he was on parole. He probably shouldn't have been, as far as we are concerned.

Mr. SCHUMER. That is a different issue. We will work together one—

Mr. BAKER. No, sir, it is not. If a recidivist isn't out there to commit crimes again—

Mr. SCHUMER. Are you lobbying for more prison money?

Mr. BAKER. We are lobbying for sentencing criminals for the crimes they commit, and in a very real way that doesn't go on today, and if you put them in jail and keep them there, they are not back out on the streets to commit more crimes.

Mr. SCHUMER. We agree with that.

Mr. BAKER. And the Whites described that this individual that perpetrated this was on parole, and I don't know that, one, that he should have been out, or, two, that if a check had been done on the individual, that he wouldn't have been discovered, and I don't know that he would have, or he wouldn't have gone down the street and bought a rifle and done the same thing; I don't know.

Mr. SCHUMER. If his parents hadn't met, he wouldn't have been born. My question to you is, all other things being equal, if there was a Brady bill that was the Brady law, all other things being equal, their son would be alive today. That is an incontrovertible fact.

Mr. BAKER. I have no way of knowing that.

Mr. SCHUMER. It is an incontrovertible fact.

Mr. BAKER. And I don't think you do either. It is not incontrovertible, Mr. Chairman. If he had been denied, he could have bought a rifle at the same shop. I mean the Brady bill doesn't talk about rifles and shotguns, and he could have perpetrated the same heinous act. So you don't know, and neither do I.

Mr. SCHUMER. We know very clearly that without the Brady law their son was killed. We know also that the same fact pattern could not have occurred with the Brady bill.

Mr. BAKER. Maybe not the same fact pattern, but the similar result certainly could have, Mr. Chairman.

Mr. SCHUMER. Unlikely.

I guess my final comment is that I think you folks have done a very, very effective job in proffering your viewpoint over the years, but I would say to you the gig is up. The public is now angry. Gun owners are now angry. People feel that some reasonable controls and limits on guns, so that people who shouldn't have guns won't

get them, are needed. You believe people who shouldn't have guns shouldn't have them, and then you don't want to do anything about.

Mr. BAKER. Mr. Chairman—

Mr. SCHUMER. And so what I would say—and I will let you have the final response, but what I would say, quite frankly, is, we are going to pass the bill this year.

Mr. BAKER. I understand that is what you think.

Mr. SCHUMER. And it is because—not because of anything anyone on this panel has done, but the public is fed up, polls show the public is roused, and the stranglehold that your organization, using legitimate, legal means, has had on the Congress, I would argue to you, is over.

Mr. BAKER. Mr. Chairman, I would just say that there are 20,000 gun laws in this country at the State, local, and Federal level, and I don't think that you can show where one of them has reduced crime.

Mr. SCHUMER. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

Mr. Baker, has the NRA polled its membership on the subject of the Brady bill?

Mr. BAKER. Not specifically on the Brady bill. We have polled our membership on the question of waits and background checks and different lengths of waits prior to the purchase of firearms, and the results come back anywhere from 90 percent opposed to 70 percent opposed. It varies, depending on the variation of the question that you are asked.

Mr. SENSENBRENNER. Has that been a complete membership poll or just a selective membership poll?

Mr. BAKER. No. It has been, at least on two occasions that I am aware, a complete membership poll.

Mr. SENSENBRENNER. And when was the most recent, complete membership poll?

Mr. BAKER. I think, Mr. Sensenbrenner, that it was about this time last year, if I am not mistaken; I am not certain.

Mr. SENSENBRENNER. How do you sort out that result with the Time magazine/CNN poll, that was done about a year and a half ago, that indicated that 87 percent of gun owners favor the concept of a waiting period?

Mr. BAKER. I think that those are obviously two contradictory results. I think that—you know, on polling generally, I think that ignorance of an issue breeds certainty on an issue and that if people are informed about a waiting period, whether it is effective, what kind of background check could be done with current records, that they have a different opinion on the issue, and a lot of our members read a lot of material on the issue because they are active and they want to understand issues, and I am not at all sure that the people that Time polled were NRA members or gun owners or who they were. They say they were gun owners, but I don't know that they were NRA members.

Mr. SENSENBRENNER. So I guess what you are saying is that if there is an inconsistency with the poll, the NRA doesn't represent all gun owners' views.

Mr. BAKER. No. That is clearly—I mean it is a large realm of individuals, and they have different opinions on different issues, like everybody else does.

Mr. SENSENBRENNER. Let me ask you another question. Do you believe that the second amendment is absolute?

Mr. BAKER. It depends on what you mean by “absolute.” I don’t think that any right is absolute. You can’t yell, “fire” in a movie theater; you can’t print libelous things or say slanderous things. I think it is a question of where you draw the line, and I think if you are going to abridge or infringe on a right that there ought to be a darn good reason for doing it in terms of an effective and public policy reason for doing it, and even then it ought to be done as a last resort after having done everything else that you can think of to deal with the problem.

Mr. SENSENBRENNER. I happen to agree with the NRA that the two clauses of the second amendment should not be read as a limitation one to another but should stand separately. In other words, “the right of the people to keep and bear arms shall not be infringed” applies to all the people rather than just those that happen to belong to the militia. So we will agree on that point.

Mr. BAKER. Yes, sir.

Mr. SENSENBRENNER. So just having the second clause of the second amendment in question, what limitations do you think the second amendment does authorize?

Mr. BAKER. Well, there is obviously a number of them, Mr. Sensenbrenner. Obviously, you shouldn’t be able to sell firearms to juveniles, to felons, to mental incompetents. There are many gun laws that make sense.

Mr. SENSENBRENNER. But that isn’t stated in the 2nd amendment. It says “the right of the people.”

Mr. BAKER. No. I said it wasn’t absolute. I said there ought to be a good reason for abridging it, but there are some reasonable reasons for abridging it, as I said, and, akin to the first amendment, it is not absolute either. You can’t yell, “Fire” in a movie theater, for instance. And I think it is a question of where you draw the line on a given proposal to abridge that amendment.

Mr. SENSENBRENNER. That perhaps shows the difference in the value judgments between your organization and me as an individual. It seems to me that if we do want to keep firearms out of the hands of juveniles and adjudged mental incompetents and convicted felons and all of these other people that you say the second amendment doesn’t cover, there ought to be an opportunity to make a determination of whether that is the case, based upon the current state of the art.

Now we heard the Justice Department testify today that the records aren’t up to date and it is going to be a long, long time before the records will be up to date in sufficient form to allow an instantaneous and accurate background check to take place. Now we have got a crisis at hand, and one of the reasons why there are many more extreme firearms control proposals before the Congress today is because we have a crisis, and the number of homicides using firearms has gone out of control, and I think everybody admits that.

I agree with you that mandatory sentences and building more prisons are part of the answer, and I support the President's crime bill in that respect, and I also support the death penalty for certain extremely heinous crimes, but that is after the fact. That is after somebody has been shot and perhaps killed. A person goes on trial and, if convicted, goes off to jail, hopefully for a long, long time. What do we do to prevent that from happening to begin with?

Mr. BAKER. It was a long question, but I will try to recall it from the beginning. But I think that your point about trying to screen out those people that shouldn't have them—felons, juveniles—you know, it has been against the law for juveniles to purchase firearms for quite some time. But screening them out is a laudable goal. It is a question of how one does that. The same records that the Brady bill would have to go to, to do the check, are the same records that the instantaneous check would be able to access.

I mean we are in favor of improving those records. There are provisions in the Stagers bill to do that. I don't think—at least our judgment is that you can do the same amount of background check, like Virginia does over the phone, that you can do in 7 days. The Brady bill doesn't mandate that check. Some departments may choose to do it; others may not.

Mr. SENSENBRENNER. I have got one further line of questioning, if I can, Mr. Chairman.

As you may recall, I supported the NRA in the passage of the McCollum amendment back in 1988, not as a substitute for the Brady bill but in addition to the Brady bill, and the Brady bill expressly states that when the system that is envisioned by the McCollum amendment comes up to speed, whenever that may be, then the 7-day waiting period becomes a thing of the past, and the Brady bill is, in effect, an interim measure that will last only as long as it takes to get the background check system that the McCollum law envisions.

Now the NRA has supported H.R. 1412, which is the Stagers amendment. Is this supposed to substitute for the McCollum amendment? You know, is it supposed to run in a dual track from the McCollum amendment? And how does this interface with the McCollum amendment?

Mr. BAKER. At least in terms of the way I see it, it is the implementation of the McCollum amendment. It is taking it a step further.

We understand that the records are not perfect; we understand they are imperfect; we simply believe, as I think the Attorney General believes, that whatever check you can do in 7 days, with the available records, as imperfect as they are, if you are not going to take fingerprints and wait 4 to 6 weeks, the same amount of records are available to you as quickly as they are in 7 days.

Mr. SENSENBRENNER. Mr. Baker, I would respectfully suggest that the way to implement the McCollum amendment is by giving the Justice Department and the States the money to do it rather than passing another unfunded bill.

The McCollum bill was a very good ploy 3 years ago to get the Brady bill off the track, and it worked. The Stagers bill is using the argument 3 years ago and, I think, dilutes the impact of the

McCollum bill, and I think you ought to come up with a new idea—

Mr. BAKER. I don't think the McCollum amendment was—

Mr. SENSENBRENNER [continuing]. To try and get the Brady bill off track than using the 3-year-old one.

Mr. BAKER. With all due respect, Mr. Sensenbrenner, I take exception to calling the McCollum amendment a diversion or a ploy. I mean that has resulted in the improvement of criminal history records at the Federal level and at the State level, and it continues to do so. So I think that the Staggers amendment is a logical extension of the McCollum amendment, and it contains a funding provision for States. But we would be happy to support a bill like you and the chairman introduced in the 100th Congress for the improvement of criminal history records.

Mr. SENSENBRENNER. We will agree to disagree on this one, Mr. Baker. I hope it will be more agreeably this time than 3 years ago.

Mr. BAKER. That would be fine with me as well, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you.

Mr. SCHUMER. We have approximately 12 minutes to a vote, so I think, rather than keeping everyone here until after a vote, we will try to wrap it up. So I would ask both Mr. Hoagland and Mr. Schiff for their period of questions, and then we will make it in time for the vote.

So, Mr. Hoagland.

Mr. HOAGLAND. Let me ask you a couple of questions, if I might, about the gun shows that travel through the country.

Mr. BAKER. Yes, sir.

Mr. HOAGLAND. Chief Collins indicated that in Minnesota they generally come through and they will be open for 1 to 4 days. Is that pretty much the practice around the country?

Mr. BAKER. My understanding is, that is one method. They are held around the country, Congressman Hoagland, usually on weekends.

Mr. HOAGLAND. And people in parts of the country that permit them—why, people can buy guns right on the spot, can't they?

Mr. BAKER. Most States do not require individual purchasers—in other words, if you are a resident of Maryland, you can buy from another resident of Maryland. The Federal law prevents you from buying handguns in a State other than the State of your residence. So that is what enables gun shows to take place, basically.

Mr. HOAGLAND. So if a gun show sets up in Baltimore, say, in an auditorium, there will be maybe 50 booths and Maryland residents can go booth to booth and they can look at various weapons and then buy one that day if they want, is that right?

Mr. BAKER. That is correct; yes, sir.

Mr. HOAGLAND. So one problem with the Brady bill from the point of view of your members who sell weapons at gun shows is, they are going to lose a lot of their sales if somebody comes up and wants to buy a weapon but they can't; they have got to wait 7 days.

Mr. BAKER. No, sir, I don't think so, because the Brady bill applies only to transactions through dealers, not from private individual to private individual.

Mr. HOAGLAND. But a lot of the individuals who set up booths are dealers, aren't they?

Mr. BAKER. Not at most—there are some dealers at gun shows, but most of them, in fact, at least at the ones I have been to, are not, they are private collectors that are unlicensed.

Mr. HOAGLAND. And they will set up a booth?

Mr. BAKER. Correct.

Mr. HOAGLAND. But also at those shows you will have dealers who will rent space and set up booths.

Mr. BAKER. There are some dealers at some gun shows; yes, sir; but predominantly they are private individuals.

Mr. HOAGLAND. Why don't we take the gun dealer situation—and I will be brief, Mr. Chairman, so Mr. Schiff will have some time—why don't we take a gun dealer situation in a State like California that has a 15-day waiting period, or New Jersey that requires a permit from a police officer, or Rhode Island with a 7-day waiting period. Now those dealers are going to lose sales, aren't they, as against a dealer in Nebraska that has no waiting period?

Mr. BAKER. Well, they just would have to wait 7 days to deliver the firearm, and I don't know that that loses sales.

Mr. HOAGLAND. What percent of the customers are not going to come back? I mean let's say in Nebraska anybody that comes into the store can buy a gun that day, and in Rhode Island they have got to come back 7 days later.

Mr. BAKER. That is a concern of ours. I think the 7-day waiting period may push people away or have a chilling effect on people buying firearms. That might not be a positive thing, it might be a negative thing, from the standpoint of personal protection.

Mr. HOAGLAND. So you are probably hearing from your dealers in States like Rhode Island: "Don't let that happen in a State like Nebraska, because sales are going to drop off." I mean only 75 percent of the people that come by the store the first time are going to come back 7 days later to get their gun.

Mr. BAKER. Mr. Hoagland, we only represent individual owners; we do not represent dealers or industry, nor do they contribute in terms of contributions, or are we funded by them.

Mr. HOAGLAND. But surely lots and lots of the gun dealers around the country are members of NRA, aren't they?

Mr. BAKER. I would imagine that quite a few of them are, yes.

Mr. HOAGLAND. And they have input in your policy decisions?

Mr. BAKER. I'm sorry?

Mr. HOAGLAND. They have input in your policy decisions, like any other member.

Mr. BAKER. No, sir, not really; they don't. Our policy decisions are dictated by our board of directors, and I don't know of a dealer on the board, to be quite honest with you.

Mr. HOAGLAND. Well, I have run out of time.

Thank you, Mr. Chairman.

Mr. SCHUMER. I thank Mr. Hoagland for his speed in getting to the heart of the matter.

Mr. SCHIFF. I will be even briefer, Mr. Chairman.

Mr. SCHUMER. There is enough time for your full questioning.

Mr. SCHIFF. I will be very brief, because we have the vote.

I want to make the point, Mr. Baker, that for me there is no constitutional objection regarding a waiting period and a background check here. It is a question of efficiency. Therefore, the question is, would a bill help? and, which bill? And I have three questions. I would like you to answer them as briefly as you can.

Mr. BAKER. Yes, sir.

Mr. SCHIFF. First, we were told earlier that if H.R. 7 would save even one life through a 7-day waiting period, it would be worth passing. Are there examples where States now have waiting periods where the waiting period has cost a life?

Mr. BAKER. Yes, sir. I can supply those for the committee. I have one here that happened recently, which is the reason that I brought it, and I can put you in contact with the gentleman, whose name is Jim Fendry. But this is a case in Wisconsin where—

Mr. SCHIFF. But the answer is yes?

Mr. BAKER. The answer is yes; yes, sir.

Mr. SCHIFF. All right.

Mr. BAKER. And I can supply you with others.

Mr. SCHIFF. Thank you.

Second, in either system—that is, the Virginia and the other two States with the dial-in system or the 7-day systems, where they exist—if somebody is blocked from being able to buy a firearm, because presumably they are a hit on the NCIC—

Mr. BAKER. Yes, sir.

Mr. SCHIFF. What happens to that person? Is that person then prosecuted in those States?

Mr. BAKER. Handgun Control talks in terms of criminals caught. By and large, they are not caught, they are simply denied the opportunity to purchase at that place at that time. There are no figures, that I am aware of, that indicate that any of those people, or very many of those people, are prosecuted.

In Virginia, you have got—Richard, why don't you respond?

Mr. GARDINER. From the testimony this morning from Mr. McNulty, he indicated that in Virginia there were 1,338 transactions disapproved. Out of that, 130 people—that is, a little less than 10 percent—have been charged, and out of that—

Mr. SCHIFF. Excuse me. I am sorry. I interrupt, but not to be rude. Those who are not prosecuted are free to go on and try to get a gun from some other place.

Mr. BAKER. That is quite correct.

Mr. SCHIFF. Last question: In either system, is there room for an extension? In other words, let's suppose you get from the Federal Government, what I am very familiar with: You know there was an arrest for a felony, but you don't know the disposition. Does either system allow additional time in order to check the person or when the time runs?

Mr. BAKER. I believe that H.R. 1412 and the Virginia system have a 24-hour, same business day, feature in both bills. In other words, if there is an arrest or if they have some question about being able to tell the dealer to go ahead and deliver the firearm to the purchaser, they can get back to them that same business day or in a 24-hour period.

Mr. SCHIFF. I thank the Chair.

Mr. SCHUMER. I thank the gentleman from New Mexico.

We just have two administrative measures. The following statements have been submitted for the hearing record and, without objection, will be admitted: From Mayor Walter Kenney, Michael Bender, and the International Brotherhood of Police Officers.

[The prepared statements of Messrs. Kenney and Bender follow:]

City of Richmond



WALTER T. KENNEY
MAYOR

900 EAST BROAD STREET
RICHMOND, VIRGINIA 23219

**TESTIMONY PRESENTED TO THE HOUSE JUDICIARY
SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE
ON MARCH 21, 1991
BY MAYOR WALTER T. KENNEY
CITY OF RICHMOND, VIRGINIA**

As Mayor of the City of Richmond, I strongly urge Members of Congress to support H.R. 7 (the Brady Bill).

The 7-day waiting period proposed in this bill would put into place a much-needed deterrent against the needless violence which continues to grip Richmond and fellow cities across this nation. As we look at population trends in the wake of the 1990 Census, we need to take a sobering look at how much population we lose to homicides every year. That loss equalled a staggering 23,000 human lives in 1990 alone. The vast majority of these homicides is committed with firearms, often with handguns.

Nationally, over 300,000 Americans have been killed by handguns in the past decade. In Richmond, over 75 percent of all homicides have resulted from the use of handguns. Last year alone, 91 of 114 (80 percent) of all homicides were committed with firearms, 75 percent of which were handguns.

I view the Brady Bill as an important tool needed to help stem this tide of violence. This bill would finally allow our nation to address dangerous impulse-purchasing of handguns. I have yet to be convinced of any legitimate rationale for needing to purchase and take immediate possession of a handgun. As such, law-abiding citizens could only benefit from the criminal background check proposed in the bill. This extra step would help us keep guns out of the wrong hands.

Richmond feels so strongly about this aspect of gun control that it took the unprecedented measure of destroying 800 used police firearms in January to guarantee that they would never find themselves in the hands of criminals. This \$100,000 sacrifice could not compare with the value of a single human life which could be snuffed out by a shot from one firearm. And that is the way I feel about the Brady Bill.

This bill would also help to discourage so-called "straw purchases" of handguns, in which individuals with clean criminal records are recruited to purchase guns for criminals. Forcing these individuals to take the extra steps of filling out a form and

returning to the gun shop would surely discourage them from engaging in such activity.

States with waiting periods stop thousands of felons attempting to purchase handguns each year. However, we still make it too easy for criminals to purchase guns in states with weak laws, and then traffic them back into states with stronger laws. That's why we need a national law.

Richmond is not alone in its support of a 7-day cooling-off period. According to a September 1990 Gallup Poll, 95 percent of respondents said they favored such a waiting period. Likewise, a survey for Time and CNN revealed that 87 percent of gun owners who responded favored both the waiting period and the background check. Further, this year's session of the Virginia General Assembly has revealed a growing sensitivity to the need for gun control.

Please help the Virginia cities you represent fight violent crime by supporting the Brady Bill. Thank you and please let me know if I can be of any help to you in this endeavor.

Summary of
STATEMENT OF MICHAEL L. BENDER
on behalf of the
AMERICAN BAR ASSOCIATION
SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE
COMMITTEE ON THE JUDICIARY
of the
UNITED STATES HOUSE OF REPRESENTATIVES
on the subject of
HANDGUN CONTROL
March 21, 1991

(1) Legislation providing for a waiting period and background check prior to the purchase of handguns is needed to implement previously enacted federal legislation which prohibits sales of handguns and other firearms to certain categories of ineligible individuals. Signed sworn statements alone, as presently required of those purchasing handguns, are an inadequate safeguard against handgun purchases by individuals legally incompetent to possess or own them. Because state and federal automated records are estimated currently to contain only a minority of applicable criminal records, a reasonable waiting period is needed (a) to assist law enforcement agencies to screen the majority of ineligible felons, by providing an opportunity to conduct federal or local manual screening of criminal records, and (b) to identify those potential purchasers ineligible for other reasons, such as those who are underage or mentally incompetent;

(2) Legislation providing for a waiting period and reasonable background check imposes an insignificant burden upon law-abiding handgun purchasers.

Mr. Chairman and Members of the Subcommittee:

My name is Michael L. Bender. I am the Chairman of the Section of Criminal Justice of the American Bar Association. I am submitting this statement today on behalf of the Association at the request of its President, John J. Curtin, Jr.

I began my career as a Public Defender for the City and County of Denver, Colorado. I am currently in private practice and president and shareholder of Bender & Treece, P.C., a Denver law firm emphasizing civil and criminal litigation.

The American Bar Association, since 1973, has supported amendments to strengthen the Gun Control Act. It has consistently opposed measures that would loosen restrictions, particularly those dealing with record-keeping and the interstate sale of firearms. As early as 1965, the ABA expressed support for effective legislation to control the importation, sale, possession and transportation of firearms. This position was reaffirmed by the Association in 1973. In 1975, the ABA House of Delegates adopted a detailed policy on measures necessary to strengthen the Gun Control Act. Our policy specifically supports Congressional legislation that would require a background check prior to the purchase of any firearm. The ABA supports enactment of a reasonable waiting period as a means of allowing completion of a reasonable investigation to verify the sworn statement now required and to determine that the applicant

is not an individual for whom it is unlawful to receive or possess a handgun, because of a prior conviction, minor status or mental incompetency.

In 1983, the ABA reaffirmed the earlier policy statements and endorsed the recommendations of the Section of Criminal Justice Task Force on Crime for implementation of effective measures to control successfully the possession of handguns.

Let me turn now to the ABA's principal reasons for supporting a federal waiting period prior to the purchase of a handgun.

I. A Waiting Period Is Necessary To Implement Existing Federal Law

A waiting period should be required for the purchase of a handgun to allow for a records check to ensure that the purchaser is not prohibited from owning a handgun by the Gun Control Act of 1968 or Title VII of the 1968 Omnibus Crime Control and Safe Streets Act. This is simply what H.R. 7 would provide.

A fundamental purpose of the Gun Control Act of 1968 and of the Omnibus Crime Control and Safe Streets Act was to reduce violent crime, and one of the principal means to do so was to prevent the possession of handguns by proscribed groups of people. Under those Acts certain categories of individuals are ineligible to receive

firearms that have been shipped in interstate commerce. These include:

Fugitives from justice

Persons under federal or state felony indictment

Persons convicted of a federal or state felony

Persons ineligible by state or local law to possess a firearm

Minors, under 18 years of age for rifles and shotguns, and under
21 years of age for handguns

Adjudicated mental defectives or persons committed to a mental
institution; mental incompetents

Unlawful users of or addicts to any depressant, stimulant, or
narcotic drug

Persons dishonorably discharged from the United States Armed
Forces

Former United States citizens

Illegal aliens

However, these Acts have not resulted in preventing unlawful sales. A person purchasing a firearm from a dealer is required only to sign a form on which he affirms by sworn statement that he is not barred from purchasing a firearm. This signature relieves the dealer from any liability for illegal transfer, as long as he requests and examines a form of purchaser identification, other than a Social Security card, that "verifies" the purchaser's name, age, and place

of residence. There is, at present, no effective method to verify a purchaser's eligibility, and the proscriptions in the statute are largely meaningless. Since drug addicts, felons, and mentally disabled persons are not the best risk for "the honor system," a waiting period between the signing of the presently required form and delivery of the handgun to the purchaser is necessary to permit the verification of the purchaser's eligibility. Indeed, there is mounting evidence that drug gangs and drug dealers, both domestic and foreign based, have exploited our failure to regulate gun sales, with the result that they are increasingly armed with highly sophisticated military-designed semi-automatic pistols. The attendant rise in violent drug-related crime across our country provides graphic and painful evidence of this phenomenon.

In response in part to this mounting drug-related crime wave, the Anti-Drug Abuse Act of 1988 contained a requirement that the U.S. Attorney General develop and implement a system to conduct criminal background checks prior to the purchase of handguns. A Task Force Report to the Attorney General submitted October 25, 1989 (54 Fed. Reg. 43524) notes that while the goal of immediate identification will be increasingly feasible as the advance of technology continues, immediate identification will not be feasible for a number of years. Only a minority of those with criminal records could be identified by immediate checks if such a system were implemented today. There are currently serious proposals to improve the present system so that it may at a future date be possible to conduct virtually instantaneous criminal background checks.

We support this goal. A waiting period will be necessary until such technology is currently feasible and a system to screen ineligible purchasers could be presently implemented. When a feasible instantaneous system is developed and implemented, a waiting period would be unnecessary and should no longer be required. But we should be conducting criminal background checks today.

The Task Force Report to the Attorney General concluded that federal legislation will be needed for a number of reasons, most notably because either mandating a specific system for the states or basing a system on voluntary compliance by the states will require new legal authority. A federal system is needed to overcome self-defeating inconsistencies between state laws which currently operate so that potential gun purchasers can render criminal background checks required in one state ineffective by purchasing guns in a neighboring state, or other states, which conduct no background check. There is mounting evidence that drug gangs, drug dealers and other criminals systematically exploit this inconsistency in state law today. A uniform federal waiting period with background checks will end the current ineffectiveness and prevent easy circumvention of state law. There is need for a federal strategy that would provide consistency and uniformity across state boundaries. Federal gun laws have failed to achieve their intended purpose due in part to this unintended loophole and the lack of an adequate enforcement mechanism.

Efforts by some states to screen felons and other ineligible classes of persons from purchasing handguns do show in fact that large numbers of criminals are prevented from obtaining weapons through such background checks, at least in those states. Clearly, limiting access to handguns by those deemed by Congress most likely to misuse them should help reduce their use in violent crimes nationwide. The need to address and reduce violent crime itself in the United States is not in doubt, even among the most regimented opponents of this reasonable legislation.

Dealers should be required to contact law enforcement authorities to allow them to verify a purchaser's eligibility. In addition, this requirement may also provide a "cooling off" period for individuals who might otherwise purchase and use a handgun in the heat of passion.

II. The Waiting Period Provision Such As H.R. 7 Provides Would Impose An Insignificant Burden Upon Law-Abiding Handgun Purchasers.

Legislation providing for a brief waiting period and a reasonably conducted background investigation imposes an insignificant burden upon law-abiding handgun purchasers. H.R. 7 would require a brief

waiting period and notification of law enforcement officials to provide an opportunity to conduct a minimal background check to determine whether it is legally permissible for the prospective purchaser to receive and possess the handgun.

H.R. 7 will not prevent purchase and ownership of handguns by any responsible individual. During consideration of similar bills in prior Congresses, critics have pointed to delays of several months up to a year in some states as a deprivation of rights. This legislation provides for a very short time period between application and delivery, a time period less than that which frequently occurs in the purchase of a wide range of consumer goods. However, in the case of handgun purchases there is a compelling state interest involved--detering crimes committed with handguns, providing for the public safety and welfare, and preventing loss of life. We do not believe passage of waiting period legislation presents a serious Constitutional question. Indeed, we are not aware of a single federal court or United States Supreme Court decision in our nation's history which has struck down a state or federal firearms law on Second Amendment grounds. This legislation goes far to minimize any potential impact on the millions of lawful gun purchasers, while meeting the important public purpose of preventing handgun purchases by those currently

proscribed by federal law. H.R. 7 provides for the destruction of the purchaser's application within thirty days. It does not provide for a permanent record of any kind, as opponents have alleged. The proposal for a short waiting period does not broaden the limitations on handgun ownership contained in existing law; it simply enables the intent of the law to be fulfilled - that criminals be prevented from purchasing handguns - an intent that has wide public support. In addition, a waiting period and reasonable background check provision has the overwhelming support of law enforcement officers throughout the country.

Handguns should be kept out of the hands of those who Congress has already determined should not have them. H.R. 7 provides a carefully-drawn and limited method to insure Congressional intent will be carried out and deserves your strong support.

[The prepared statement of the International Brotherhood of Police Officers follows:]

PREPARED STATEMENT OF THE INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS,
AFL-CIO

INTRODUCTION

The International Brotherhood of Police Officers (IBPO) is an affiliate of the Service Employees International Union, the fifth largest union in the AFL-CIO. The IBPO represents federal, state and local police officers nationwide, and is the largest law enforcement organization in the AFL-CIO. On behalf of our membership, the IBPO welcomes this opportunity to express our support for HR 7.

At the outset the IBPO wishes to thank Congressman Feighan for all his efforts in support of HR 7, and to express our gratitude to you, Chairman Schumer, for your leadership on this issue. We applaud you for moving quickly to enact the Brady Bill in the 102nd Congress.

THE NEED FOR ACTION

Despite the efforts of dedicated police practitioners across the country, violence and crime continues to escalate on our city's streets; handguns play a familiar and increasing role in murders, robberies, rapes and assaults. In fact, an average of 72 times each hour for the next year handguns will be used to help commit the above crimes. As a labor organization, our membership is made up of "street cops"; the police officers charged with enforcing the laws of states, counties and municipalities on a day to day basis. For these officers there is no escaping the horror wrought by violent

criminals, and they see no end to the increasing proliferation of easily accessible firearms. Our officers are all too frequently witnesses to, or the victims of criminal violence involving handguns used by criminals and the mentally unstable.

Statistics establish that handguns are used in approximately seventy-five (75) percent of all murders of police officers nationwide. For example, in 1989 two of our members of IBPO Local 623 in Atlanta were gunned down in the line of duty with handguns. One officer, a sixteen year veteran of the force, was shot and killed while answering a domestic dispute call; the other officer, a seven year veteran of the force, was shot and killed while attempting to arrest a robbery suspect. Incidents like these clearly establish the importance of battling crime through many fronts; one of these fronts must be preventative steps to keep handguns out of the wrong hands. Therefore, the IBPO has supported waiting periods in the 100th Congress (H.R. 975), 101st Congress (H.R. 467) and now the 102nd Congress (H.R. 7).

WAITING PERIODS WORK

The IBPO believes that thousands of lives could have been saved and thousands of criminals prevented from purchasing handguns if this legislation had become law with the 1988 Drug Bill. A Justice Department study found that as many as twenty-one (21) percent of all handguns obtained by criminals are through purchases from legitimate dealers. Where states have waiting period laws, they have found them to be extremely

helpful in screening out disqualified buyers. The State of California denied almost 1,800 inelegible buyers in 1989; Illinois denied almost 3,000 permits and revoked almost 1,900 due to felony convictions, and other states have had similar successes with state waiting period legislation.

In addition, the public has shown to be fully supportive of this measure. A September, 1990 Gallup Poll reported that 95 percent of the respondents favored a seven-day waiting period for handgun purchases, and that 78 percent favored stricter firearms laws in general. Other polls corroborate these findings. In summary, a uniform national waiting period policy will enhance the effectiveness of the various state waiting period laws currently in place. Additionally, it is a measure that is overwhelmingly supported by the American public.

THE MCCOLLUM AMENDMENT AND THE ATTORNEY GENERAL'S REPORT

Congress however, has refused to act on a national system, which would prevent the circumvention of state laws by purchasing guns in states with weak laws. The 100th Congress defeated police efforts to enact a national seven day waiting period on the sale of handguns by a vote of 228-182 on September 15, 1988. Instead, the McCollum Amendment substitute required that the Attorney General implement an "immediate and accurate system designed to identify felons who attempt to purchase handguns. The Attorney General's Report, while endorsing a point of sale system over a prior approval system, concluded that a screening system is not feasible at this time because of the inaccuracy of the criminal history files, and the cost of such a system. The Attorney General's Report

remains as true today as it did two years ago--we are 3-5 years and billions of dollars away from an effective instant check system.

The IBPO, however, believes that once it becomes operational, an instant check or point of sale system could have enormous benefits. Under such a system, the public would be safer due to the instantaneous background checks, and the minimal inconvenience to gun owners would be shortened. Until such time as a system is in place, though, the IBPO believes that the Brady Bill could serve as a viable, reasonable low cost alternative to prevent the purchase of handguns by those legally prohibited from obtaining them.

While no legislation could completely prevent criminals from obtaining firearms, the IBPO believes that a national waiting period for handgun purchases will reduce the easy availability of handgun sales over the counter to criminals. After all, the BATF has testified before this committee and others that drug gangs and criminals often purchase their weapons not on the black market, but through legitimate gun dealers in certain states with no waiting periods. HR 7 can be an important and effective weapon in this country's efforts to protect both the public and law enforcement personnel from those individuals who would use handguns for improper purposes.

PROVISIONS OF THE BILL

The Brady Bill establishes a seven day waiting period to allow law enforcement to conduct background checks on handgun purchasers. The Brady Bill applies only to handgun sales through licensed dealers. In addition, the Brady Bill does not apply to handgun purchases where state law already imposes a waiting period of at least seven days or where state law requires that law enforcement verify the purchaser's

eligibility to possess a handgun. Within one day of the proposed transfer, the dealer is required to provide a copy of the purchaser's sworn statement to the chief law enforcement officer where the purchaser resides. The statement must include the name, address, date of birth, and the date the sworn statement is made. Law enforcement officers then have the option to do a background check to ensure that the sale would not violate local, state, or federal law. Unless law enforcement notifies the dealer that the sale is illegal, the sale may proceed accordingly.

Every effort has been made to waive the provisions of the Brady Bill under legitimate extenuating circumstances. For example, threats to one's life are a legitimate emergency which could cause law enforcement to waive the waiting period. In addition, the privacy of gun owners will not be compromised--the law enforcement officer must destroy his copy of the sworn statement within thirty days. Over the years the IBPO has been very strongly supportive of the Second Amendment and the legitimate rights of firearms owners. In fact, we recently opposed efforts in Connecticut to publish lists of people who have legally secured gun permits onto public

record. We felt that the privacy of the gunowner was paramount and additionally could pose a threat to the safety of officers and the community. Burglars in need of handguns would have the names and addresses of legal owners where they could "shop" for handguns. This is one example of how the IBPO has stood up for the rights of gun owners, and we will continue to do so. However, we feel that the Brady Bill is an excellent option that does not interfere with the legitimate citizen's right to possess a firearm.

Currently, there are simply too many loopholes for criminals to obtain guns legally over the counter without fear of their felony convictions being discovered. In the states without adequate laws, any individual, regardless of past demonstrated history of unlawful or dangerous conduct, may walk into a firearms dealer's store, fill out a few forms and walk out with a handgun. While current law mandates that a handgun purchaser be a resident of the state in which a purchase is made, he or she need only "certify" their past history in order to obtain a weapon. We believe, as did the Reagan Administration's 1981 Attorney General's Task Force on Violent Crime, that drug addicts, felons, and mental defectives are not the best risks for the "honor" system currently in place.

There are other compelling reasons for the adoption of the Brady Bill. In addition, to making it more difficult for inelegible individuals to obtain the firearms with which they may wreak havoc, the waiting period will reduce the potential for the tragic results arising from crimes of passion committed with handguns. We are all too familiar with the many instances

of violent acts committed during periods of anger, or despair by individuals who have lost control of their behavior. Thus, the waiting period provided by the bill is a "cooling off" period for those persons considering violent acts in the confusion of a heated or desperate moment.

Balanced against the clear benefits of national waiting period legislation is the minimal inconvenience a seven day delay will place upon the legitimate handgun purchaser. Again, the IBPO fully supports the rights of all law abiding citizens to own and use handguns for legitimate and lawful purposes. HR 7 would have no significant impact on the rights of the overwhelming majority of law abiding handgun owners. The seven (7) day delay proposed in HR 7 is a truly modest price to pay for the increased protections the measure will provide to the public and law enforcement personnel upon its enactment.

CONCLUSION

The IBPO supports all reasonable and effective efforts to improve the ability of law enforcement to protect the public safety and reduce the all too often tragic consequences of unlawful handgun use by those who simply should not have access to weapons. On behalf of our membership, the IBPO supports a national waiting period for the purchase of handguns. We appreciate this opportunity to express the views of membership in support of HR 7 and would attempt to address any questions you might have.

Mr. SCHUMER. Second, I want to thank the witnesses from the NRA. They are, as I said, formidable opponents, and this is going to be a tough and long fight, and I guess we will be seeing more of one another.

Mr. BAKER. I am sure.

Mr. SCHUMER. And, finally, I always like to thank the unsung heroes of this hearing, aside from my staff, this committee staff, which did a superb job, the people who peck away for hours on end. We have Ben Leesman now, and before that it was Larry Teter. So I want thank both of you.

The hearing is now adjourned.

[Whereupon, at 4:17 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

STATEMENTS SUBMITTED FOR THE HEARING RECORD

TESTIMONY OF GARY L. BUSH CHAIRMAN, SEARCH, THE NATIONAL
CONSORTIUM FOR JUSTICE INFORMATION AND STATISTICS, SUBCOMMITTEE
ON CRIME, HOUSE JUDICIARY COMMITTEE

April 4, 1991

REPRESENTATIVE CHARLES E. SCHUMER (D-NY)

INTRODUCTION

On behalf of SEARCH, the National Consortium for Justice Information and Statistics ("SEARCH"), I want to thank the Chairman for this opportunity to submit testimony regarding H.R.7, the Brady Hand Gun Violence Prevention Act. The Chairman has been a national leader in the war against crime and the role of information systems and criminal justice records in that war. On behalf of SEARCH I want to commend you, the members of the Subcommittee and the Subcommittee's excellent staff for this leadership and commitment.

As you know, SEARCH shares your commitment. SEARCH is comprised of Governors' appointees from every state. SEARCH appointees represent the interests of the state criminal justice community on matters concerning criminal justice information

systems, criminal history records and related technology, policy and statistical issues.

As such, SEARCH has a long standing interest in the issues raised by background checks for firearms purchase eligibility determinations. In 1989, SEARCH staff prepared a report for the Department of Justice on the legal and policy issues relating to the use of biometric identification technologies in a firearms purchaser identification system. In addition, SEARCH has published numerous research reports over many years with respect to the use of biometrics, identification information and criminal history record information for various types of non-criminal justice purposes. In January of 1990 SEARCH testified before the Subcommittee with respect to the Attorney General's report to the Congress dated November 20, 1989 in compliance with Section 6213 of the Anti-Drug Abuse Act of 1988 requiring that the Attorney General, "develop a system for immediate and accurate identification of felons who attempt to purchase one or more firearms" but who are ineligible to do so by virtue of a felony conviction.

RESPONSE TO SUBCOMMITTEE QUESTIONS

In a letter of March 13, 1991 from Subcommittee staff to SEARCH's General Counsel the Subcommittee asked SEARCH to respond to several questions. The testimony that follows does so.

Question No. 1. "SEARCH has just completed a very thorough survey (March 1991) of the state criminal history records. How would you compare the current condition and quality of the records as opposed to their condition when SEARCH testified before the Subcommittee on Crime in January 1990?"

Answer: In our testimony of January 1990 SEARCH made two points regarding the condition and quality of criminal history records:

1. The existing condition of federal, state and local criminal history record data bases is inadequate to meet the nation's needs; and
2. The Bureau of Justice Assistance ("BJA")/Bureau of Justice Statistics ("BJS") initiative to devote \$9 million in each of FY '90, 91, 92 to improving criminal justice records is likely to have a significant impact

because the criminal justice information community now knows which strategies and initiatives work and which do not work and, accordingly, assuming appropriate infrastructure support (modeling and demonstration programs, technical assistance and training), these funds can be effectively targeted and leveraged.

Have the federal funds, in fact, made a difference? The answer is that it is too soon to say. The first year's disbursement of the \$9 million has just now been completed. Moreover, many of the grants were for needs assessments and audits and thus are designed to establish a base line against which to measure future progress and to create a road map to guide that progress. This is not a criticism. To the contrary, SEARCH believes that this is the proper approach. But, this kind of approach means that it will be a few years before it is possible to evaluate the benefits of the federal expenditures.

Notwithstanding this caution, we see some encouraging signs. First, BJA and BJS staff have worked diligently to implement an effective program for the disbursement of these funds. Second, pursuant to the Attorney General's report, the FBI, in conjunction with the Office of Justice Programs, has published voluntary standards with respect to data quality and the reporting of criminal history record data to the FBI. While the

standards are by no means perfect and, sadly, the standards lack an explanatory commentary, nevertheless the standards are the most comprehensive and substantive federal statement with respect to data quality, and, as such, are an important precedent.

Third, BJS recently published (March 15, 1991) program guidelines for obtaining grants under the data quality program and these guidelines are substantive and extremely helpful. Fourth, BJA in consultation with BJS has launched a \$600,000 plus evaluation process to support the \$9 million BJA/BJS initiative. SEARCH is currently working with BJA in the development of the evaluation process, although SEARCH will not be involved in the evaluation itself. SEARCH believes that the evaluation initiative is a positive and important development. Fifth, the 101st Congress added an "earmark" provision to S.3266, the Crime Control Act of 1990. Effective in FY '92, the earmark provision requires that states set aside at least 5 percent of their block grant funds for improvements in their criminal justice information systems.

Does this mean that the \$9 million in the BJA/BJS initiative and the \$20 some odd million to be earmarked from BJA block grant funds will solve all of the nation's criminal history data quality problems? Hardly. For one thing, substantially more money than this will have to be spent. Merely automating the remaining manual criminal history records for example, carries a price tag in excess of \$100 million. Moreover, these federal

funds in the BJA/BJS initiative and the earmark are not used exclusively to improve the quality of criminal history records held in the state repositories. The funds are also used to generate felony conviction files (i.e. flag felony convictions); to attempt to improve the quality of other types of criminal justice records; to improve the quality of criminal history and other types of criminal justice records at the local level; and to improve reporting to the FBI.

Second, solving some of the data quality problems requires not so much money as time. Even with the brightest prospects for funding, it will take years before the quality of criminal history records in some states can reach acceptable levels.

Third, more federal money needs to be spent on "infrastructure support" for the data quality initiative. Money needs to be spent, for example, to replicate, and demonstrate successful data quality strategies; to coordinate the states' approach to the use of the federal data quality funds; to provide technical assistance and training to support the data quality initiatives; and to launch a national educational program through conferences and other means to publicize both the successes and the pitfalls associated with efforts to improve data quality. Absent this kind of infrastructure support, the chances for failures in specific states increases; the ability to leverage

the federal dollars decreases; and the likelihood that the nation will be able to establish a coherent, coordinated approach to criminal justice systems and data quality decreases. We are hopeful that BJA will fund as much of this critical infrastructure support activity as possible.

Question No. 2: "In your survey, SEARCH found a nationwide automation level of 60%. What is the significance, if any, of the data showing that twenty-one states have 50% or less of their criminal history records automated. Ten states have fully automated their criminal history records. Please describe the ability to check records accurately where 50% or less of the records are automated?"

Answer: This question raises two issues: (1) retrieval issues; and (2) data quality issues.

With respect to retrieval issues, the fact that a system contains a high percentage of manual records does not mean that the system will be unable to "check records accurately". If a request is fingerprint supported and if the repository does a "technical search" so as to match the prints associated with the request with prints associated with a manual criminal history record, the repository will be able to accurately check records regardless of the degree of automation. However, when a

technical search is done on a manual basis it means that the search will take far longer and be more costly. It also means that if the record subject has a criminal history record under different alias the manual search is unlikely to obtain the entire criminal history record. For these reasons and others, automated fingerprint identification systems ("AFIS") are far preferable. In addition, of course, AFIS systems provide law enforcement agencies with an enhanced latent print capability.

The real danger with respect to manual systems and their ability to check records accurately is that the delay and cost associated with the manual technical search encourages agencies without an AFIS capability to do "name only" checks. Where a data base search is done on the basis of name and certain other identifying information, but without fingerprints, research has shown that there is a substantial risk that responsive records will not be found, even though the records are in the system.

With respect to data quality, the significance of a low automation rate depends in large measure on what is or is not automated. Certainly, the absence of an automated name index or an automated name index that has a relatively low percentage of record subjects in the index is a substantial handicap. Fortunately, only a handful of states are in this predicament.

Apart from the automated name index, the problems encountered when records are held in a manual only form varies depending upon whether the manual records have seen activity in the last five or so years. Research indicates that records which have been inactive for five or more years are unlikely to see future activity and thus the fact that they are in a manual format is not disadvantageous. On the other hand, where a state has been unable to automate records as to which there has been recent activity, this inability is likely to add substantially to difficulty in posting disposition information to the record; difficulty in retrieval; delay and added cost in retrieval; and material inaccuracies.

Question No. 3: "There are still, apparently, approximately 18,254,900 manual criminal history records at the state level. Can you estimate how long it would take for the states to automate those records? Is it possible to estimate what such an endeavor would cost?"

Answer: As indicated above, it is SEARCH's opinion that not all of these 18 million records may need to be automated. Of the approximately 18 million manual records just over 13 million are held by states that have less than 50 percent of their records automated. Thus, it is likely that as to this 13 million the percentage of "active records" (records as to which activity

has been posted in the last five years) is relatively high. With respect to the remaining 5 million manual records it is more likely than not that most of those records are older and not active records.

Assuming, for the sake of analysis, that this very rough bifurcation is accurate, it means that the real number to be focused upon is closer to 13 million manual records than 18 million manual records. As to those 13 million records it would certainly be advantageous if the records were automated for all of the reasons set forth in our answer to question number two.

Some repository officials, as a rule of thumb, estimate that it takes one person day to automate between four and eight criminal history records. Thus, it would take anywhere from just under one million person days to just over 3 million person days to automate the 13 million manual records. Obviously, such an endeavor would be extremely expensive -- perhaps in excess of one hundred million dollars. Repository officials, however, are looking at introducing a new generation of optical character readers that can be used to convert manual to automated records without key strokes.

Most state repositories are automating records only at such time as activity is posted to a manual record. In a few states,

only the newest entry is automated. Clearly, the nation is several years and many millions of dollars away from being in a position to say that in every state or virtually every state every active criminal history record is automated.

Question No. 4: "Did SEARCH encounter states resistant to automating their criminal history records? If yes, could you please identify those states. What means would SEARCH suggest for: (a) obtaining full automation of state records; (b) transmitting complete case disposition information from the local levels to the state repositories?"

Answer: First, SEARCH did not find any states that are resistant to automating their criminal history records. The benefits of automation are all too apparent for that situation to develop. There are, of course, a handful of states which have had difficulty automating their records and which lag far behind. Almost without exception these states are sparsely populated, with low crime rates and extremely limited resources. Even in those states, however, automation is a priority and automation activity is underway.

For states that are lagging behind in automation and are faced with limited resources (and this is essentially the case in every such state) SEARCH often recommends that scarce dollars be

spent on constructing an automated name index; and in applying a "day-one" approach: i.e. automaton is applied only to new files; existing files are automated only when an event is posted to the file.

SEARCH has identified numerous strategies for improving disposition reporting to state repositories. Indeed, this has been, perhaps, SEARCH's number one priority over the last few years. Many of those strategies are identified and briefly discussed in a SEARCH/Bureau of Justice Statistics publication entitled Criminal Justice Information Policy: Strategies For Improving Data Quality. With the Chairman's permission, we have attached a copy of this relatively brief but extremely useful book to our testimony and we ask that it be reprinted in full.

In addition, just in the last few months, SEARCH in conjunction with the National Center for State Courts, and with funding from BJS, has convened a high level task force of judges, court administrative and record keeping personnel and repository officials from throughout the nation to develop strategies for improving cooperation among courts and state repositories in reporting dispositions. The task force is finishing its work on a set of findings and strategies for improving disposition reporting. Everyone connected with the effort has been impressed by the substantive merit of the task force's work product. As a

result, SEARCH, is exploring possibilities for a national task force initiative pursuant to which every state would be encouraged to establish its own task force of high level court officials and repository officials to seek ways to develop strategies for their own state to improve disposition reporting. We believe that this is an important and promising development.

Question No. 5: "The Administration has committed \$9 million per year for the next three years to enable states to improve their criminal history records. What has been the impact of the first \$9 million? If the impact is not yet apparent, can you suggest when the impact of these funds might be seen? What would SEARCH recommend as to the most effective way, or ways of utilizing those funds?"

Answer: As we stated in response to our answer to question number 1 it will be at least a few years before the impact of the \$9 million can be measured. Also as stated in our answer to question number 1, SEARCH believes that the bulk of the funds should go to state central repositories or to support the improvement of the accuracy and completeness of records in the state central repositories.

The types of initiatives that should be funded in order to improve data quality in the state central repositories include

automation and the strategies identified in SEARCH's data quality strategies book attached hereto; identified in the FBI voluntary standards; to be identified in SEARCH's upcoming court task force report; and identified in SEARCH's 1990 testimony. These initiatives include the following:

- Implementing systems which link arrest entries with subsequent disposition entries.
- Implementing disposition monitoring systems.
- Implementing programs for frequent and random audits.
- Automation.
- Implementing automated fingerprint identification systems.
- Improving the relationship between repositories and the courts so as to make repository data bases more responsive to court needs and encourage the courts to report dispositions (the task force initiative).

Question No. 6: "What, if any, technological changes have been made in the year since the January 1990 testimony in the identification area?"

Answer: It is, of course, difficult to identify or measure technological change over a one year time frame. It is well worth noting, however, that two technological developments with respect to identification have accelerated in the last year. First, the development and implementation of image transmission technology has accelerated. This technology permits criminal justice agencies to transmit images of fingerprints and other biometric identifiers as well as photographic information on a reliable and on-line basis.

Second, the acquisition of AFIS systems has continued throughout the criminal justice system. Today, more than half of the states have acquired or have access to AFIS systems, as have many of the larger metropolitan police departments. As we discussed earlier, AFIS systems have made a material impact on the speed and reliability of retrieving criminal history record information.

Question No. 7: "The Subcommittee would be interested in SEARCH's thoughts about whether a "point of purchase" system such as exists in Virginia is a feasible national option?"

Answer: We have not had an opportunity to study the Virginia system. As we understand it, the Virginia system involves a telephone inquiry to a state agency; a name only check; and a check only of Virginia records, rather than a national check. We certainly applaud the state of Virginia for putting into place what is evidently a workable, cost effective and "feasible" system.

On the other hand, SEARCH has long been on record as supporting only criminal history checks for non-criminal justice purposes that rely upon positive identification -- that is to say a fingerprint supported criminal history record check. Any other type of criminal history check is simply too unreliable and too likely to miss retrieving available criminal history data. Further, it goes without saying that a national check would be far preferable to a state only check.

Having said all that, it remains true that for the foreseeable future a point of purchase system which is fingerprint supported and which includes a national check is feasible only in conjunction with what is sometimes termed an "enrollment model". Under an enrollment model, a firearms purchaser would first have to obtain a permit and in that connection undergo a fingerprint supported records check during a

relatively substantial waiting period. Once a permit is in hand an immediate, reliable point of purchase records check to update the purchaser's file would be feasible.

CONCLUSION

On behalf of SEARCH, I want to thank you Mr. Chairman for this opportunity to address these critical issues. While we understand that there is much controversy surrounding background checks for eligibility to purchase firearms, it seems to us clear that there is one benefit to this initiative that is beyond dispute. This effort has focused much needed attention and much needed resources on deficiencies in the accuracy and completeness of the nation's criminal history records.

Throughout the 1980s Mr. Chairman you worked to focus attention on and to obtain resources for precisely this issue. You introduced remedial legislation, and in 1988 a version of that legislation what incorporated in the Anti-Drug Abuse Act of 1988 expressly authorizing the Bureau of Justice Statistics to "provide for research and improvements in the accuracy, completeness and inclusiveness of criminal history record information, [and] information systems," Unfortunately, as you know, funding was not available. Thus, the attention and resources focused on data quality as a result of the controversy

over background checks for firearm purchaser eligibility has been serendipity.

We believe that if the Justice Department is able to assure that technical assistance, education, training and replication of successful strategies accompanies the expenditure of the data quality monies; and if the Congress and the Federal government have the resolve to continue over some substantial period of time to make this funding available, that perhaps by the turn of the century the nation will be able to point with pride to accuracy and completeness levels in its criminal history record systems.



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Office of Justice Programs
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NCJ 115-339, April 1989

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The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: the Bureau of Justice Statistics, National Institute of Justice, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

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INTRODUCTION

The accuracy and completeness of criminal history record information — best summed up by the term “data quality” — is recognized as one of the most significant information issues now confronting the criminal justice community. The criminal history record, widely considered the most vital record used in the criminal justice system, is relied upon at virtually every stage of the criminal justice process. It plays a significant role in almost every decision in the process — from the initial decision to file charges to the final decision to release an individual from custody or supervision. In addition, criminal history records are being made increasingly available outside the criminal justice system for a wide variety of noncriminal justice purposes, such as background screening for public and private employment and occupational licensing.

Unfortunately, much of the available empirical data suggest that the quality of criminal history record information in many agencies and record systems is low. Reportable actions and decisions, particularly court dispositions, often are missing from criminal history records and information that is reported may often be recorded inaccurately. As a result, criminal justice decisionmaking, as well as research and statistics that rely on criminal history data, may be compromised. Moreover, the trend toward more extensive dissemination of criminal history records for noncriminal justice purposes may also increase the risk of unwarranted harm to record subjects caused by incomplete or inaccurate records and may increase the exposure of criminal justice agencies to the risk of liability suits. For these reasons and others, increasing concern about and awareness of the quality of criminal history records has led criminal history record officials in recent years to implement initiatives to improve data quality levels.

Although few jurisdictions or agencies have fully solved the data quality problem, some criminal justice agencies, at both the state repository and local levels, have achieved notable, demonstrable success in improving accuracy and completeness levels by implementing data quality strategies that, in many cases, may be emulated by other agencies throughout the country. The purpose of *Strategies For Improving Data Quality* is to identify a number of these strategies and to provide enough information about them to enable criminal justice officials to assess the potential usefulness of the strategies in their own agencies.

In compiling these strategies, advice was sought from SEARCH Members, members of the SEARCH Criminal Justice Information Network, and other state and local criminal justice officials. Some of these persons reviewed drafts of the document to ensure that the strategies selected for inclusion are appropriate and operationally sound and are accurately and adequately described.¹

All of the strategies are appropriate for implementation in fully automated agencies, as well as in agencies that have manual information systems and procedures. However, some strategies — such as monitoring disposition reporting and implementing disposition tracking and systematic auditing systems — are more easily implemented in agencies with automated information systems. Indeed, enhanced automation is itself identified as a discrete strategy in recognition of the widely-held view that automation is an important tool in achieving enhanced data quality.

Strategies For Improving Data Quality is divided into four sections: Administrative, Data Entry, Data Maintenance and Regulatory Strategies. The five suggested Administrative Strategies require the support of high-level management in recognizing data quality as an important agency priority and in formulating specific initiatives and plans to achieve this goal. Included are strategies that suggest establishing a task force to formulate and implement a comprehensive program for improving data quality; implementing or enhancing automated systems; and performing comprehensive audits and needs analyses. The five suggested Data Entry Strategies propose ways agencies can increase data quality by collecting accurate and complete data at the point when the data first enter the criminal justice system. Included are strategies that suggest developing uniform documents and forms for data gathering, reporting and recording purposes; implementing routine system procedures such as audits and computer edit/verification programs to monitor the accuracy and completeness of new information; and using data-tracking systems to ensure arrest and disposition data are properly linked, that individual charges and counts are accounted for, and that rap sheet ambiguity is avoided. The four suggested Data Maintenance Strategies propose ways agencies can protect the

¹ See Appendix for a list of those who participated in the review of this document.

accuracy and completeness of criminal history data once the data are in the system. Included are strategies that suggest enacting mandatory reporting laws to improve arrest and disposition reporting to central state repositories; monitoring arrest and disposition reporting; improving the collection of court disposition information via prosecutor reporting; and using preprinted disposition reporting forms. In addition, it is suggested that one of the Data Entry Strategies — systematic audits — also be considered as a viable Data Maintenance Strategy. Finally, two suggested Regulatory Strategies outline specific procedures to help improve data quality levels in criminal justice information systems. Included are strategies that suggest that agencies develop written agency policies and train agency personnel who have recordhandling responsibilities.

Strategies For Improving Data Quality focuses primarily on statewide programs designed to improve data quality; much of the text describes the implementation of data quality strategies at the state level, particularly at central state record repositories. Virtually all of the strategies, however, are appropriate for implementation at any level of government, including local law enforcement agencies, prosecutors offices or courts.

This document does not describe the strategies in extensive detail or include specific procedures for implementing them. Rather, each strategy is described to enable readers to understand its purpose and how it works and to evaluate its potential usefulness in their own agencies. Officials at all levels, from state central repositories to local criminal justice agencies, should be able to identify proven strategies that are appropriate for implementation in their own agencies and to understand essentially how they work and what benefits can be derived from them.

This document is intended only to provide examples of workable strategies. There may be alternative strategies which are appropriate for use by individual agencies and which will also achieve improved data quality. Due to varying factors at any particular agency, the application of a strategy to a system does not necessarily guarantee its success.

I. ADMINISTRATIVE STRATEGIES

Administrative Strategies for improving data quality are those that reflect high-level management commitment to data quality enhancement and that are essential first steps or underlying themes in a comprehensive program to improve the quality of criminal history records. They include:

- identifying improved data quality as an agency priority;
- establishing a task force on data quality;
- recognizing automation as an important data quality tool and planning for new automated systems or enhancing existing automated systems;
- undertaking an initial baseline audit of data quality levels and procedures; and
- analyzing the data quality needs of the agency and of related offices or agencies.

STRATEGY:**MAKING IMPROVED DATA QUALITY A PRIORITY*****Formally Recognizing Data Quality as a Serious Agency Commitment***

A theme underlying many of these data quality strategies is that significant progress in improving data quality will not be realized unless a serious commitment to such improvement is made by high-level criminal justice executives and, in particular, by criminal history record systems managers. Officials in agencies that have successfully improved data quality in their systems agree that progress came only after criminal history record data quality was identified as a specific agency priority and efforts were made to ensure that all phases of the agency's operations reflected a commitment to improving accuracy and completeness. Thus, a critical part of any program to improve data quality, whether at the statewide level or in a particular agency, must be an effort to ensure that appropriate officials and practitioners understand both the universal usefulness of the criminal history record and that improved accuracy and completeness of record information makes the job of recordkeeping easier and more effective. This understanding can be translated into a commitment to improving data quality on the part of officials who make funding available for data quality initiatives, as well as agency personnel who collect, report and enter data into information systems.

High-level Directives

Such a commitment should be formalized by an announcement or directive issued by appropriate officials, such as (in the cases of a statewide commitment) the governor, the chief justice of the state supreme court, or the administrator of state courts. The directive should identify data quality improvement as a priority and should identify officials who will be responsible for formulating, implementing and evaluating data quality initiatives.

The importance of a high-level executive commitment to data quality cannot be overstated. Virtually everyone in the criminal justice community acknowledges the importance of data quality. Too often, however, such acknowledgment is not followed by appropriate action to improve data quality levels. Systems officials and criminal justice practitioners commonly believe that they are too busy with other essential duties to undertake the additional effort of

improving data quality. In some cases, funding for additional staff and equipment may be needed and may seem unattainable. As a result, improved data quality may remain an acknowledged, but largely neglected, long-range goal for criminal justice agencies, and practitioners may continue to struggle to perform their duties using data of less than acceptable quality. To remedy this situation, a person or a group must decide that data quality improvement is an important, attainable goal, and must take action to ensure that all involved officials and personnel understand this commitment and support it through appropriate action.

Summary

The essential purpose of this strategy is to ensure that: officials and practitioners understand the usefulness of the criminal history record and the importance of high data quality; improved data quality is identified as a priority by high-level officials who can direct that appropriate action be taken to implement the goals of this priority; and officials and practitioners at all levels understand the importance of cooperating in the subsequent programs and initiatives designed to make improved data quality a reality.

STRATEGY:**TASK FORCE ON DATA QUALITY*****Establishing a High-level Task Force to Formulate and Implement a Comprehensive Data Quality Improvement Program***

An effective strategy for making data quality a priority within a state or a particular agency, as well as for implementing specific initiatives, is the formation of a task force dedicated to and responsible for improving data quality within the state or agency. Such a task force can take the lead in promoting the concept of improved data quality as a priority goal for criminal justice and can provide statewide or agencywide leadership in developing and implementing programs designed to enhance data quality. At the state level, task forces can also help in identifying and resolving problems that transcend departmental or agency lines (such as recordkeeping problems caused by the use of disparate information systems in courts and other criminal justice agencies, some of which use different offense classification codes and recordkeeping protocols). A task force can also emphasize the need for cooperation between courts and central repositories and help to encourage cooperation by allaying judicial concerns about court autonomy and the potential misuse of court records by repositories and their user agencies.

Membership

To have the greatest impact, the membership of the task force should be as high-level as possible. If possible, the governor of the state should be the chairman of a state-level task force, or it should, at a minimum, have the governor's support and be administratively associated with the governor's office. If this is not feasible, the chief justice of the state supreme court is an excellent choice to chair the task force. Other appropriate choices include the state attorney general, particularly if the state's criminal record repository operates under his authority, and the chief executive officer of the Department of Public Safety or its equivalent.

The director of the state's central criminal record repository should be a member of the task force, since the task of data quality improvement intimately affects the repository. To help ensure the cooperation of the courts, the task force membership should include the highest ranking judicial officials possible, such as the chief justice; the chief judges of the appellate courts and the major trial

courts; the administrator of the state courts; and the official responsible for the state's judicial information system, if one exists. Other members may be drawn from criminal justice agencies throughout the state, from information system administrators or from public interest groups. Technical committees or project implementation committees may be set up as necessary to provide needed expertise and to oversee particular task force initiatives. Funding is critical to the success of any effort to substantially improve data quality and legislative initiatives, such as enactment of a mandatory reporting law, may be necessary. For these reasons, it is advisable that the state-level task force include members of the state legislature, particularly the chairs, and perhaps prominent staff members, of the judiciary and appropriations committees.

Mandate

The task force's mandate is to review the state's criminal justice information system and to implement necessary initiatives to improve data quality, ensuring that the needs of criminal justice agencies within the state are met. The task force must develop specific goals and objectives that will guide planners and will help evaluate progress. Its most important contribution, however, can be in ensuring that data quality is recognized as a priority goal of the criminal justice system and in facilitating interagency cooperation and communication to ensure successful implementation of data quality initiatives.

Summary

The high-level commitment and influence of an appropriate (preferably statewide) task force can immeasurably enhance the chances that a program to improve data quality will succeed. In the absence of such commitment, and in the absence of the involvement of officials who can ensure that appropriate action is taken, data quality initiatives often receive little more than lip service. The primary contribution of the task force can be ensuring that data quality is made a priority goal for criminal justice and helping develop and implement programs to meet this goal.

**STRATEGY:
INCREASED AUTOMATION*****Implementing Automated Systems or Enhancing Existing
Automated Systems to Facilitate Data Quality Improvement***

Surveys show that criminal justice officials at all levels overwhelmingly believe that automation has resulted in the greatest improvement in information management in their agencies and is the single most important tool for achieving better data quality. Automated systems make it more practical and economical to implement many other data quality strategies, such as improved data entry procedures and editing, disposition monitoring and data-linking systems. Furthermore, the telecommunications components of automated systems make the reporting of arrest and disposition data easier and more economical and reliable.

Automation

A major component of any comprehensive effort to improve data quality should include consideration of new automated systems or enhancement of existing automated systems. Attempts to enhance existing automated criminal justice information systems, however, should be managed very carefully, with careful consideration given to how the systems will interact with other existing or planned systems and how these systems will be integrated into a successful statewide system. These are extremely complex issues that should receive the attention of a task force, needs assessment group or other similar group with multiagency, multidiscipline representation and technical expertise.

Automated systems can include facsimile equipment capable of transmitting fingerprint impressions over telecommunications lines, thereby making it easier and faster to positively identify record subjects. Some very advanced automated systems also possess an automated fingerprint identification capability which vastly improves the speed and reliability of fingerprint processing. Finally, the needs assessment and system analysis strategies that follow constitute a vital part of any undertaking to enhance automation and invariably result in better interagency cooperation and improvement in the efficiency of the recordkeeping operations of constituent agencies.

Summary

The automation of the recordkeeping functions of criminal justice agencies can increase both the efficiency of agency activities and the accuracy and completeness of criminal history records. Accordingly, the implementation of new automated systems — or the enhancement of existing systems — should receive careful consideration by criminal justice agencies as a major goal of any program to enhance data quality. Because of the complex issues involved with such automation, the consideration of a task force or similar group with multiagency, multidiscipline representation and technical expertise is recommended.

**STRATEGY:
BASELINE AUDIT**

Performing a Comprehensive Data Quality Audit as the Basis for Formulating a Data Quality Improvement Program

Auditing is one of the most effective, yet most neglected, data quality tools. Although the Federal Regulations require annual audits of the central state repositories and representative samples from contributing criminal justice agencies,² only a few states have performed extensive audits of their repositories and only a handful have undertaken any substantial auditing of local agencies. In practically every state, therefore, a desirable early step in a program to improve data quality is a comprehensive baseline audit of the repository and representative auditing of contributing agencies to assess existing data quality levels and to identify problem areas and agencies. Using the data from such audits provides a point of reference from which agencies can work in formulating a data quality improvement program and will enable agencies to better tailor a program to fit their needs.

Audit Components

A baseline audit ideally should include an evaluation of the repository's data quality procedures, including reporting procedures applicable to contributing agencies, and an assessment of the completeness and accuracy of the criminal history database maintained by the repository. In addition, an evaluation of reporting procedures and other data quality procedures of local agencies, particularly large agencies and agencies known to have data quality problems, should be performed. A sample of repository records should be compared with source documents maintained by local criminal justice agencies, including police department arrest logs and the original court records of disposition. Transmittal forms used in forwarding information to the repository should be checked because errors often occur in transferring information onto such forms.

If possible, the audit should be performed by an outside contractor or by an independent agency such as the state auditor's office. Extensive outside audits are quite expensive, however, and it may be difficult to obtain adequate funding for such an undertaking.

² 28 C. F. R. § 20.21(e).

The goal should be to perform the most extensive and objective audit possible with available funding.

In-house Audit

If an outside audit is not feasible, an in-house audit of the repository should be performed. Much can be learned about data completeness and accuracy from a relatively inexpensive in-house audit of the repository. Although the results of such auditing may not be statistically reliable in a strict sense, they may well be adequate as baseline data for assessing the general level of data quality in a state, identifying problem areas and agencies, and formulating a strategy for data quality improvement.

An in-house audit should include an evaluation of the repository's data quality procedures and an assessment of existing levels of completeness and accuracy based on available data. The audit can include any number of activities, such as:

- comparing repository fingerprint cards with the identification and arrest charge components of sample rap sheets;
- undertaking representative sampling to assess the accuracy of name search and technical fingerprint search techniques used by the identification bureau;
- checking rap sheet disposition data against disposition reporting forms (if such forms are used and kept on file);
- assessing the timeliness of disposition reporting by comparing the dates of reportable events against data that indicates the dates the repository received the information or when the information was entered into the criminal history system;
- making site visits to contributing agencies to verify repository data against source documents (or sending sample records to such agencies for verification if site visits are not feasible); and
- undertaking representative sampling to assess the completeness of criminal history information (using available statistics or assumptions concerning the average time required for various reportable events to occur and be reported).

Summary

A baseline audit should be undertaken as an early step in any campaign to improve data quality. Such an audit should be as extensive as is feasible and should assist agencies in assessing existing data quality levels, identifying problems in the present system, and providing a basis for evaluating the success of data quality initiatives. In addition, a major goal of any data quality improvement program should be the establishment of continuing regular audits as a priority program, since regular auditing is universally recognized as one of the most effective data quality tools.

**STRATEGY:
NEEDS ANALYSIS*****Ensuring that Data Quality Improvement Initiatives Reflect
the Needs of Criminal Justice Practitioners***

Any program to improve data quality should include a comprehensive analysis of the information needs of the criminal justice agencies that actually use the information maintained by state and local criminal history record repositories. Whether performed by a data quality task force or some other group, such an analysis should gauge the needs of the repositories and those of criminal justice practitioners statewide who use criminal history data in performing their duties. These include practitioners in law enforcement agencies; prosecutors and trial judges; and judges responsible for first appearances, bailsetting and sentencing, since they are an often-overlooked category of criminal history record users.

Sufficient Data

The primary goal of a needs analysis is to ensure that rap sheet information is sufficient to meet the needs of practitioners at every level of the system and that it is presented in a clear and unambiguous format. If a survey of practitioners indicates that changes in the rap sheet format are necessary or that additional information should be included, these modifications should be made priority goals. Even in automated systems which would require extensive reprogramming, modifications to improve the clarity and usefulness of the rap sheet should be considered necessary and worth the cost. Although the rap sheet data may be accurate and complete, its usefulness can be seriously compromised if the format makes it difficult to understand. This is particularly the case with the many non-criminal justice users, who are unfamiliar with the criminal justice process and with technical terms and symbols.

A comprehensive, systemwide needs analysis can also help a repository determine whether its data quality improvement initiatives are properly focused to serve the needs of practitioners. In addition, such an analysis may assist criminal justice agencies in better understanding their own data needs. This can result in agencies improving their own procedures and forms in order to make their jobs easier and in increasing cooperation in implementing any number of data quality improvement initiatives. (If reporting agencies perceive that they will benefit from new initiatives that require

little substantial work, the success of data quality improvement strategies fares better.)

Summary

Whether included within a baseline audit as part of an automation enhancement program, or whether undertaken separately, a careful analysis of the information needs of criminal justice practitioners served by state and local criminal history record repositories should be an essential part of any data quality improvement program. Such an analysis can ensure that rap sheet information sufficiently meets the needs of practitioners and that data quality improvement initiatives are properly focused. It can also enhance the support for such initiatives of the practitioners who use the data and determine the success of any data improvement program.

II. DATA ENTRY STRATEGIES

Data Entry Strategies for improving data quality are those that can improve data entry procedures to facilitate the collection of accurate and complete data and minimize the likelihood of that erroneous data will find its way into criminal history record systems. They include:

- developing uniform data collection documents;
- implementing systematic edit and verification techniques;
- implementing unique-number tracking systems to ensure that arrest and disposition data are properly linked and that reported information is appended to the right rap sheet; and
- using review procedures to avoid ambiguity in rap sheets by eliminating disparities between arrest charges and disposition information.

STRATEGY:**UNIFORM DOCUMENTATION*****Developing Uniform Documents and Forms for Reporting and Recording Criminal History Data***

Using uniform documents and forms is an often-overlooked, but very important, strategy for improving the quality of data entered into criminal history systems. The use of uniform documents, forms, offense codes and reporting procedures makes data collection easier and more economical; helps to ensure that the repository will receive appropriate data; and makes it easier to interpret and verify reported data.

Repository/Agency Development

Ideally, the documents, forms, offense codes and reporting procedures should be developed jointly by the repository and contributing criminal justice agencies. This can be accomplished through a needs analysis of the type described in Section I, Administrative Strategies. This should make it possible to educate contributing agencies on the needs of the repository and other criminal justice agencies and to achieve greater cooperation in developing uniform documents, forms and procedures. In addition, particular agencies may redesign their data handling procedures to ensure that the data needed by the repository is collected and reported in the necessary format without entailing additional work by agency personnel. Particularly in automated agencies, repository reporting can be a painless by-product of the day-to-day case processing and data gathering activities undertaken by agency personnel.

Summary

In addition to improving data quality, a real benefit of uniform data collection documents, forms, offense codes and reporting procedures is the cooperative effort between repositories and criminal justice agencies that is generally required to produce the agreement on uniformity. Documentation and reporting procedures, therefore, can become a method for improving communication and cooperation among the various component agencies of the criminal justice system.

**STRATEGY:
SYSTEMATIC AUDITS*****Implementing Routine System Procedures to Enhance
Data Accuracy and Monitor System Operations***

All criminal justice agencies, whether their information systems are automated or manual, can implement numerous data collection, data entry and systematic audit procedures to greatly minimize the possibility that inaccurate information will be entered or stored in their systems. There are many such procedures, and each is very effective in improving data quality levels.

Foremost, data collection documents should be designed to be easy to understand and fill out. They should capture all necessary information — while allowing no unnecessary information — in a way that minimizes the possibility of misreading or misinterpretation. All criminal justice agencies should review such documents periodically to ensure that they are properly designed and used.

Editing and Verification

Data entry edit procedures range from such manual methods as visually checking data before input to detect inaccurate or missing information to using sophisticated computer edit and verification programs. Some agencies follow a routine procedure of having at least two people check the information before it is entered into the system to ensure that source documents have been properly interpreted and that all required information has been accurately recorded. All criminal history printouts produced for dissemination, manual updating or as part of other in-house processing routines, may be visually checked to ensure that updated data are accurate and that historical data have no apparent inaccuracies.

Computer edit and verification programs are limited only by the imagination of system designers and the initiative of system managers. Various software programs to perform standard edit and verification tasks are available on the market. In addition, programs tailored to specific agency needs can be developed by system designers and programmers. These programs can check for required data fields and perform a wide variety of checks on the accuracy and consistency of information entered into the system.

Systematic Audits

Automated systems can, and should, keep logs to provide an audit trail for all transactions, including: inquiries; responses; updates; data rejections; changes and modifications; source document numbers; and operator identification codes. These logs facilitate error notification procedures and make it possible to identify operators who make frequent mistakes and who need additional training. Although it is more difficult, manual systems can keep transaction logs to store some of the above information for audit trail purposes.

Criminal justice agencies can implement programs of random inspection in both automated and manual systems. In such a procedure, sample record entries are compared against source documents to monitor accuracy and completeness levels and to ensure that data-handling procedures are being properly followed. Automated systems can be programmed to periodically print out random samples of criminal histories for this purpose. These random in-house audits should be run against all files — name indexes, fingerprint and criminal history files.

Summary

All criminal justice agencies can improve data quality through the implementation of a wide variety of data collection, data entry and systematic edit and verification procedures designed to improve data entry accuracy, to monitor data quality levels, and to ensure that system procedures are properly followed. These systems are not expensive or difficult to implement, particularly in automated systems, and can result in dramatic data quality improvements.

Note: This strategy may also be considered a helpful Data Maintenance Strategy.

STRATEGY:**TRACKING SYSTEMS — UNIQUE TRACKING NUMBERS*****Using Unique Tracking Numbers to Ensure that Arrest and Disposition Data are Properly Linked***

Aside from the failure of criminal justice agencies to report dispositions, perhaps the most difficult data quality problem faced by repositories is the proper linking of reported data to the appropriate individual and case cycle, so that arrest, prosecutor, court and correctional data can be accurately linked to the right rap sheet and arrest event. Some states have had limited success with a combination of tracking systems that help link data by subject name with the various case identification numbers assigned by criminal justice agencies. However, the few extensive repository audits undertaken have shown that accurate linking of data is best facilitated by tracking systems that use unique tracking numbers. These numbers are assigned at the arrest stage and are included with all reported data associated with that arrest as it is processed through the criminal justice system.

Unique Numbers

The unique tracking numbers may be pre-printed on disposition reporting forms or assigned by arresting agencies and passed along with case papers. An advantage of using pre-printed forms is that the tracking number can be printed on all pages of the form or on additional peel-off strips bearing the tracking numbers for use by other agencies. These strips may be attached to reporting forms or other papers passed along with the case file as the case is processed through the system, thus reducing the chance that the tracking number will be omitted or that an error will be made in entering it. A variation of this approach involves the use of bar coding on the strips or forms. Since this technology represents a significant improvement in the accuracy of data capture, its use in criminal justice information management should be carefully considered.

Whatever the approach used, it is important that the unique tracking number be assigned at the time of arrest and that it be attached to or written on the arrest fingerprint card forwarded to the central repository. In this way, the tracking number can be tied to positive identification of the arrested individual and to the charges stemming from the arrest. This will ensure that subsequently re-

ported disposition data are associated with the correct rap sheet and the appropriate arrest cycle.

In automated systems — particularly if repository reporting is automated — procedures should be implemented to ensure that the unique tracking number is accurately entered with all reported disposition data. Data entry screens should include the tracking number as a required field, and system edit procedures should reject disposition data entries that do not include the number. An additional safeguard is to include a check digit in the tracking number and institute system edit procedures to monitor accurate keying in of the number.

Case ID Number

A strategy for increasing the effectiveness of unique tracking number systems is to require or encourage prosecutors, courts, corrections and other appropriate agencies to use the tracking number as their case identification number. Although it may be difficult to persuade agencies to change long-established case numbering systems, the goal of a single systemwide tracking/case numbering system is well worth pursuing as a long-range objective. If particular agencies install automated systems or significantly modify existing automated systems, implementation of the unique tracking number as the agency's case identification number may be included in the design.

Aside from facilitating data linking, unique tracking numbers also increase the effectiveness of error notification procedures and delinquent disposition monitoring systems. In addition, tracking numbers can greatly facilitate data quality auditing if the number is included on all source documents.

Summary

The implementation of data tracking systems that use unique numbers should be considered as a data quality strategy. It is difficult to overrate the importance of a unique tracking number system as a data quality initiative. Such systems can ensure that arrest and disposition data are properly linked, thus enhancing the accuracy of rap sheets and making them easier to read. They also make other data quality procedures — such as data quality auditing and error notification — more effective.

STRATEGY:**TRACKING SYSTEMS — CHARGE TRACKING*****Using Unique-Number Tracking Systems Keyed to Individual Charges and Counts to Ensure that All Charges and Counts are Accounted For***

Some states have implemented unique-number tracking systems that assign a single number to an arrest and all of the charges stemming from it. Although some of these systems work relatively well in enabling the repository to associate disposition data with previously reported arrest cycle data, they do not provide the basis for reliably associating particular dispositions with particular charges and counts. Since most arrests result in multiple police charges, and since these charges may be modified or augmented at later stages of the criminal process (e.g., after initial review by the prosecutor, by a grand jury, or as a result of plea bargaining), it is common for the repository to receive court dispositions for a particular arrest cycle on charges other than those initially reported by the police and entered in the charge column of the rap sheet. Although a single tracking number may enable the repository to append the disposition data to the proper arrest cycle, the resulting rap sheet may be ambiguous: it may be difficult or impossible to determine the disposition of all of the charges or even whether all charges have been disposed. Audits and needs analyses have shown that this problem is a source of confusion and detracts more from the usefulness of the rap sheet than repository administrators and other record officials often believe.

Suffix Numbers

A strategy agencies with tracking systems can use to solve this problem is to assign a suffix number to each charge and count reported by the police and entered on the rap sheet, for example, 01, 02, 03. These numbers, in combination with the tracking number for the arrest cycle, should then be used in subsequent processing of the case for reporting disposition data to the repository. If a charge or count is dropped or modified by the prosecutor, this information may be reported to the repository by tracking and charge numbers and can be shown clearly on the rap sheet. If new charges are added by a grand jury, these charges can be assigned new numbers — e.g., 04, 05 — and reported to the repository. In this way, every charge shown on the rap sheet can be accounted for or it

can be determined which reported dispositions relate to particular charges, even if a disposition is not reported and recorded for each charge.

This strategy can be implemented as an entirely new tracking system in jurisdictions which currently do not have a tracking system or can be implemented as a modification to existing tracking systems that do not have charge-tracking capabilities. The benefit of charge-tracking is that it permits the repository to account for every charge shown on the rap sheet for a particular arrest, thus eliminating a source of rap sheet ambiguity.

Summary

In order to link disposition data with the particular charges and counts associated with a particular arrest cycle, agencies should consider using unique-number tracking systems that assign suffix numbers to each charge and count. This will allow agencies to easily determine the disposition of every charge shown on the rap sheet and will help end rap sheet ambiguity.

STRATEGY:**TRACKING SYSTEMS — INITIAL RAP SHEET CHARGES*****Including Charges on Rap Sheets Only After They Have Been Reviewed by the Prosecutor***

In most states, the repository enters initial charge data on the rap sheets from the arrest fingerprint cards sent in by the police. It is a common practice in practically all jurisdictions, however, for the charges made by the police at the time of arrest to be subsequently modified by the prosecutor. After reviewing a case, the prosecutor may decide either to not prosecute some charges, to modify existing charges or to add new charges. This creates a source of confusion for agencies, since subsequent court disposition data may not match the initial arrest charges shown on the rap sheet. This problem can be solved by a unique-number charge-tracking system, as described in the previous strategy, combined with full reporting by all components of the criminal justice system.

Prosecutor Review

If implementation of a unique-number charge-tracking system is not feasible, this problem may be handled in part by instituting this procedure: charges will not be recorded on a rap sheet until after they have undergone initial review by the prosecutor's office. The feasibility of this strategy will depend, of course, upon how cases are processed in particular jurisdictions and how data are reported to the repository. It will work best in jurisdictions where the prosecutor reviews cases before the defendant's initial appearance or arraignment, and where the courts with first appearance/arraignment jurisdiction cooperate in reporting disposition data to the repository.

If this is the case, the repository may follow the practice of recording only identification data, arrest event data and tracking numbers from the arrest fingerprint card. The charges shown on the rap sheet would be reported by the court and would be those for which the defendant will appear for bailsetting or arraignment. Since, in this scenario, the charges would have already been reviewed by the prosecutor, "unpapered" police charges would not appear. The charges recorded on the rap sheet would be those that are more likely to be actually prosecuted and result in trial court dispositions. Thus, perhaps the greatest source of disparity between

initial rap sheet charges and court dispositions will have largely been eliminated.

A variation of this strategy is for the prosecutor to report charge data to the repository after his initial review of the case; the repository then enters this data on the rap sheet as the initial charge data. There are other variations, of course; but the overall goal is to record initial charge data on the rap sheet only *after* the charges have been reviewed by the prosecutor. This eliminates inclusion of unpapered police charges for which subsequent court dispositions will not occur and assures inclusion of charges added by the prosecutor after the case is forwarded by the police.

Summary

A troublesome source of ambiguity in rap sheets may be eliminated by a practice of entering initial charges on the rap sheets only after they have been reviewed by the prosecutor's office (and perhaps initially filed in a court of first appearance). This practice is preferred to entering charges from arrest fingerprint cards.

III. DATA MAINTENANCE STRATEGIES

Data Maintenance Strategies for improving data quality are those that provide an ongoing check on the accuracy and completeness of the information contained in databases. One such strategy is to periodically print out sample records to verify their accuracy by comparing them with source documents or other available data. This strategy, first discussed in Section II, Data Entry Strategies, is part of suggested systematic audit procedures that can also be used as a viable Data Maintenance Strategy.

Other proven Data Maintenance Strategies include:

- legally mandating arrest and disposition reporting;
- implementing systems for monitoring arrest and disposition reporting;
- obtaining court disposition data through reporting from prosecutors; and
- using preprinted reporting forms to facilitate disposition reporting and linking of arrest and disposition data.

STRATEGY:**MANDATORY REPORTING*****Enacting Laws Requiring the Reporting of Criminal History Record Data***

Every state should consider enacting a law that specifically requires mandatory reporting to the central repository of all information to be included on the rap sheet. This includes arrest data and all subsequent actions and dispositions occurring in the case up to, and including, release of the record subject from the cognizance of any segment of the criminal justice system. Thus, the law should deal with arrest warrants, arrest data, and information concerning case processing by local detention centers, bail agencies, prosecutors, trial and appellate courts, parole and probation agencies, correctional agencies (including departments of mental health) and the governor's office (executive clemency).

Specifics

A mandatory reporting law should specify the information to be reported and identify the official or agency responsible for reporting each reportable event and the time period within which reporting should take place. The law should specify penalties for noncompliance. Numerous states have enacted detailed reporting laws of this type which may be used as models. At least one state's law requires that the salary of officials be withheld if they fail to comply with reporting requirements.

The reporting law should authorize the state's central criminal record repository or some other appropriate body to issue regulations to implement the law. Several states have vested this responsibility jointly in the repository administrator and the chief justice of the state supreme court or state court administrator. It is critically important that the law authorize these officials to specify the form in which information must be reported and to develop and require the use of uniform data collection and reporting forms and procedures. Specific strategies in the legislation should, of course, reflect individual state and local administrative structures and procedures.

Participation

Criminal justice officials from all segments of the system should be involved in developing and drafting the reporting law. If widespread agreement can be reached concerning the need for re-

porting and the responsibility for reporting specific information, this agreement can be the beginning of the kind of interagency cooperation that is necessary for achieving significant data quality improvement.

While mandatory reporting laws do not guarantee high levels of reporting (since they are often difficult to enforce, despite the inclusion of penalties), they are generally regarded as helpful and in some cases have proved highly effective. At the very least, they emphasize the state's commitment to data quality improvement, and they can be cited as legal authority for programs to improve reporting.

Summary

Properly-drafted mandatory reporting laws should be considered a highly effective data quality strategy. Such a law can help increase arrest and disposition reporting levels, and the interagency cooperation necessary for developing such a law can benefit an overall data quality improvement program. Enactment of such a law should be a priority goal in any state that does not have one.

**STRATEGY:
MONITORING DISPOSITION REPORTING*****Implementing Systems to Monitor Disposition Reporting and to Identify Cases in Which Dispositions Have Not Been Reported in a Timely Fashion***

One of the most effective methods for improving disposition reporting is to implement a system of regular and random audits to monitor compliance with reporting requirements. Such systems, often referred to as delinquent disposition monitoring systems, are designed to flag arrest entries for which dispositions have not been reported after a reasonable period. They can be used to monitor data reporting at all stages of the criminal justice process and are not difficult to implement, particularly in automated systems.

System Features

Implementing a delinquent disposition monitoring system first requires the establishment of a list of reportable events along with estimated time periods within which each event should occur and be reported to the repository. The monitoring system should be designed to generate a delinquency flag if a reportable event in a particular case cycle is not received within the established time period. The system also could be designed to generate a flag when a particular reported event indicates that a prior event occurred and was not reported. This would serve to alert repository personnel of the missing data; in addition, the system could be designed to trigger a notice to the appropriate criminal justice agency, requesting that it provide the missing arrest or disposition data or provide current data on the status of the case.

Delinquent disposition monitoring systems operate far more economically in automated systems than in manual systems. It is a relatively simple matter to program most automated systems to generate the necessary delinquency lists. Manual systems, however, can also establish workable disposition monitoring procedures. In these cases, monitoring can occur, for example, when requests for dissemination of particular records are made. Before an agency disseminates the printout of a requested record, it can be reviewed and, if it appears that disposition data are missing, some check — such as a telephone inquiry to a prosecutor or court official — can be made to update the record.

Delinquency lists are generated periodically in some automated systems as a routine check on data quality levels. Often, however, no further use is made of such lists due to lack of personnel or other reasons. If data quality is truly to be made a priority, further action must be taken to obtain and record the missing information, through the mailing of delinquency lists to appropriate criminal justice agencies or the assignment of field personnel to obtain the missing data.

Summary

A monitoring system that flags missing arrest and disposition data, coupled with procedures to obtain such information, can be one of the most effective ways of increasing completeness levels in criminal history record systems. This strategy operates more economically in automated systems but is also a workable strategy for agencies with manual systems. Serious consideration should be given to such procedures in all agencies that have not implemented them.

STRATEGY:**COURT DISPOSITION REPORTING BY PROSECUTORS*****Obtaining Court Disposition Information from Prosecutors in Jurisdictions Where Court Reporting is Poor***

Criminal record repositories face yet another serious data quality problem when they fail to obtain court disposition data. Because some judges believe that they have the least need for criminal history records and some court officials tend to maintain their independence from executive department initiatives, some states have had difficulty improving data quality through increased disposition reporting by court personnel.

Prosecutor Reporting

Some states may want to employ an approach that has proved successful in other jurisdictions — the reporting of court disposition information by prosecutors. Prosecutors generally are involved in the processing of criminal cases from soon after arrest through the conclusion of court processing. Thus, they are in a position to obtain and report not only court disposition information, but also bail, pretrial detention and grand jury data. In addition, prosecutors often make extensive use of criminal history records, and thus are aware of the advantages that can accrue from significant data quality improvements. For these reasons, their cooperation in disposition reporting may be easier to obtain in some jurisdictions than that of court personnel.

Prosecutor reporting of court dispositions can be facilitated in a variety of ways. Prosecutors can be provided with pre-printed, uniquely-numbered disposition reporting forms, as discussed in the following strategy, or repository reporting can be made a by-product of an automated prosecutor management information system. As in all initiatives of this kind, its chances of success are increased if procedures can be devised to ensure that reporting does not entail significant additional work by prosecutors. It may be possible to redesign existing forms and procedures used in the prosecutor's office to make reporting a by-product of information practices undertaken as a part of the prosecutor's normal duties. For example, reporting to the repository may be accomplished through the use of computer tapes generated by existing prosecutor management information systems.

It must be emphasized that this approach — case disposition reporting by prosecutors — should be regarded as an interim strategy. The only official court disposition information is the court record; this data should be reported, if at all possible, by judicial personnel. Efforts to enlist the cooperation of the courts should be regarded as critically important. In this regard, prosecutors may be able to assist in other ways in resolving difficulties associated with court disposition reporting by judicial personnel. For example, prosecutors may report lists of cases that have been adjudicated, thus providing a back-up on the adequacy of disposition reporting by the courts. Prosecutors may also be willing to assume responsibility for making contacts and performing necessary research to resolve ambiguities in court-reported disposition information. In this way, they may help to make judicial reporting more effective.

Summary

Complete and timely reporting of court dispositions by judicial personnel should be an important goal of any data quality enhancement program. The reporting of such data by prosecutors, however, may represent an effective interim approach in jurisdictions where the full cooperation of court personnel cannot be obtained.

STRATEGY:**PRE-PRINTED DISPOSITION REPORTING FORMS*****Using Pre-printed Forms to Facilitate the Reporting of Dispositions and the Linking of Arrest and Disposition Data***

A number of states have improved disposition reporting and facilitated the matching of arrest and disposition data by using pre-printed disposition reporting forms of varying kinds.

Pre-printed Forms

Typically, pre-printed forms consist of multiple-page sets of color-coded pages or tear-off sections to be used by each reporting agency for reporting data to the repository. The arresting agency enters identification data and arrest charges on the top page, mails the information to the state repository and passes the remaining parts of the form to the next agency in the criminal justice process, for example, the prosecutor's office or the court where the arraignment takes place. Each agency enters appropriate, reportable event information, mails its page or form to the repository and passes the remaining pages to the next agency in the process. All of the pages may have carbon backs so that case information printed on one page will appear on the other pages.

Pre-printed Notices

A variation of this approach involves the use of pre-printed notices by which criminal justice agencies both notify the repository that the case has been received and report case identification numbers. These numbers are then used to link subsequent disposition data to previously reported data. The repository enters the numbers in the system for linking purposes and mails forms back to the agency to be used in reporting disposition data when it is available. An advantage of this approach is that the pre-printed form package is less bulky. Another advantage is that the repository is notified when the case is received by each criminal justice agency. A disadvantage, however, is that more forms must be exchanged, which increases the chances that the process will break down.

Typically, the pre-printed forms use a tracking number to identify the case and to facilitate the matching of data reported by different agencies. The numbers may be pre-printed on the forms or spaces may be provided for the entry of the numbers. Pre-ad-

dressed mailing envelopes may be provided to facilitate the forwarding of disposition reporting forms to the repository.

A weakness in these systems is that they require the cooperation of several criminal justice officials at various stages of the case, and the failure of any one of them can cause the system to break down. Other weaknesses are heavy reliance on the inter-agency postal service to exchange forms and the handling of a large number of forms. To ensure that such a system will work, some way of monitoring compliance must be implemented, such as a disposition reporting monitoring system (itself another Data Maintenance Strategy).

Summary

If properly implemented and monitored, pre-printed disposition reporting forms can increase disposition reporting levels at all stages of the system and also facilitate the accurate linking of arrest data and disposition data. Use of such forms requires the cooperation of criminal justice personnel at all levels of the justice system.

IV. REGULATORY STRATEGIES

Regulatory Strategies can significantly increase the chances that any initiative to improve data quality will succeed by ensuring that data quality procedures are understood and properly implemented. Such strategies help maintain continuity and consistency in agency procedures and personnel performance. These strategies include:

- developing written agency procedures; and
- implementing a program of standardized training for agency personnel with recordhandling responsibilities.

STRATEGY:**WRITTEN AGENCY PROCEDURES*****Formulating Written Agency Policies and Procedures
Relating to Data Quality***

In every criminal justice agency, policies and procedures relating to information handling — particularly those relating to data quality — should be set out in written documents. Although there is wide agreement on the need for such written policies and procedures, it is surprising how few agencies, large or small, have adequate policy documentation. The development of written procedures for data quality can in itself be an important data quality strategy, since it requires agency officials to review existing policies and procedures and to focus on their adequacy and effectiveness. This exercise commonly results in the improvement of existing procedures and the identification of areas in which existing policies and procedures are lacking or inadequate to meet legal or functional requirements.

Purpose

Once developed, written procedures and manuals serve several important purposes. First, they greatly assist in the training and supervision of new personnel. If written in enough detail, they can provide continuing guidance to agency personnel, thus ensuring that such activities as source document interpretation and data entry are performed correctly and consistently. Second, they provide a basis for reviewing personnel performance and determining whether additional training is necessary. Finally, they provide a basis for auditing agency performance and serve as a departure point for planning and developing improvements in data quality activities.

Summary

The development and issuance of policy documentation in the form of written agency procedures and manuals should be a major goal of all data quality improvement programs. In addition to resulting in better data quality, such procedures require agency officials to review the adequacy and effectiveness of existing procedures and provide a basis for continuity in a data quality program.

STRATEGY:**STANDARDIZED TRAINING*****Implementing a Program of Standardized Training for Agency Personnel with Recordhandling Responsibilities***

Closely related to the need for detailed written procedures is the need for an ongoing standardized training program for employees with data quality responsibilities. It is an unfortunate reality that, in many criminal justice agencies, data entry and document processing personnel are among the lowest paid employees. Due to the resulting low motivation levels and high turnover rates among such personnel, many agencies find it difficult to recruit and retain qualified employees to perform these functions.

Training

Standardized training, both at the entry level and on a continuing basis, can help to ensure that data handling functions are performed correctly and consistently. Such training should, therefore, be viewed as a necessary and routine part of agency activities.

Training programs should use written agency policy statements and detailed manuals and instructions. The programs should stress the need for adequate employee skills and standardized performance routines, but should also cover such matters as legal and policy requirements, privacy and security considerations, and the risk that the agency or its personnel will be liable for mishandling sensitive information.

If properly developed and implemented, this type of training program will help increase employee motivation by stressing the importance of data quality activities and will lead to improved performance and enhanced data quality levels. It can also help to ensure consistent, standardized performance, notwithstanding employee turnovers. In addition, the very development of training programs focus attention on agency policies and procedures, which in itself leads to improvements that help to enhance data quality.

Summary

Agencies that do not already have them should place a high priority on the development and implementation of standardized training programs for data handling personnel. Such programs, which should include appropriate written procedures and manuals, will help ensure data handling functions are performed accurately and consistently.

APPENDIX

The following persons participated in the review of this document:

Kenneth A. Bentfield

Director, Office of Information Systems Management
Minnesota Department of Public Safety

Gray Buckley

Inspector, Agent in Charge, Crime Information Section
Colorado Bureau of Investigation

Dr. Hugh M. Collins

Judicial Administrator, Supreme Court of Louisiana

William C. Corley

Assistant Director, Division of Criminal Information
North Carolina State Bureau of Investigation

Patrick J. Doyle

Director, Division of Criminal Justice Information Systems
Florida Department of Law Enforcement

Owen Greenspan

Deputy Commissioner, New York Division of Criminal
Justice Services

Stephen Goldsmith

Prosecuting Attorney, Marion County, Indiana

Paul E. Leuba

Director, Data Services, Maryland Department of Public Safety
and Correctional Services

Gary D. McAlvey

Chief, Bureau of Identification
Illinois State Police

Larry Polansky

Executive Officer, District of Columbia Court Systems

Fred Wynbrandt

Assistant Director, Criminal Identification and Information
Branch, California Department of Justice

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Consequences of drug use

Abuse
Addiction
Overdose
Death

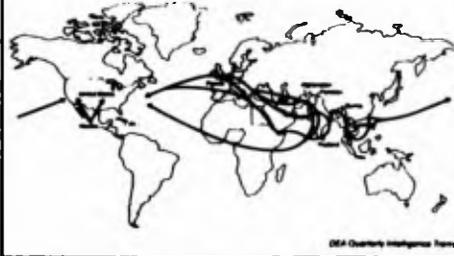
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For drug money
Trafficking

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**Joseph M. Bessette
Acting Director**

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A WAITING PERIOD FOR THE
EXERCISE OF A CONSTITUTIONAL RIGHT:

TESTIMONY ON H.R. 7/S. 257

by

Stephen P. Halbrook, Ph.D., J.D.*

Subcommittee on Crime and Criminal Justice

House Committee on the Judiciary

March 21, 1991

*Attorney at Law, 10605 Judicial Dr., Suite B-3, Fairfax, Virginia, 22030, (703) 385-8610. Ph.D., Florida State University; J.D., Georgetown University. Former philosophy professor, Tuskegee Institute, Howard University, and George Mason University. Author of The Fourteenth Amendment and The Right to Keep and Bear Arms, The Right to Keep and Bear Arms: Report of the Subcommittee on the Constitution, Senate Judiciary Committee, 97th Cong., 2d Sess., 68-82 (1982); To Keep and Bear Their Private Arms: The Adoption of the Second Amendment, 1787-1791, 10 NORTHERN KENTUCKY LAW REVIEW 13-39 (1982), reprinted in 131 CON. REC., 99th Cong., 1st Sess., S9105-9111 (July 9, 1985); Tort Liability for the Manufacture, Sale, and Ownership of Handguns? 6 HAMLINE UNIV. LAW REVIEW 351-382 (1983); THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT (University of New Mexico Press 1984, reprinted by the Independent Institute); Bear Arms and Go To Jail, COMMUNITY FORUMS ON THE CONSTITUTION, 14 pp. (American Bar Association 1987); Firearms, the Fourth Amendment, and Air Carrier Security, 52 JOURNAL OF AIR LAW AND COMMERCE 585-680 (1987); A RIGHT TO BEAR ARMS: STATE AND FEDERAL BILLS OF RIGHTS AND CONSTITUTIONAL GUARANTEES (Greenwood Press 1989).

I. ANALYSIS OF TEXT OF H.R. 7 and S. 257

H.R. 7 and S. 257 make it a crime for a licensed dealer to sell a handgun to an individual. A handgun sale is not a crime if several constitutional rights are forfeited, particularly the rights to privacy and to keep (and hence acquire) arms.

The proposed bills would impose one of five sets of requirements for sale of a handgun. The first method would be reporting to the chief law enforcement officer of the proposed exercise of the constitutional right to keep arms, and the invasion of the privacy of the transferee; this in itself amounts to a system of registration of gun owners. Following this is a seven day waiting period or suspension of constitutional rights, during which time the law enforcement officer may approve or disapprove the transfer. The law enforcement officer is not a member of the legal profession and may have a personal belief that citizens should not own firearms, yet there is no appeal from his arbitrary assertion that possession of the handgun would be in violation of federal, state, or local law.

The second way to purchase a handgun would be to obtain a written statement from the chief law enforcement officer that the transferee requires access to a handgun because of a threat to the life of the transferee or a member of his or her household. This is totally unrealistic. The average person cannot even get an appointment with the chief law enforcement officer of a large city, or it may take months to do so. Being philosophically

opposed to the Bill of Rights in general, some police officials believe that citizens should not possess firearms, which allegedly would not be useful in event of an attack, and that such matters must be left to the police. Many citizens have routinely experienced such police capriciousness in seeking to obtain firearms permits of various kinds under existing state and local law.

The third way to purchase a handgun would be equally non-existent in most states. One's state of residence must have conducted a police check and must have issued a permit to possess a handgun within the last year. Most states make no provision for such a permit.

The fourth way to purchase a handgun is where state law requires a seven-day waiting period or a government official verifies that such official does not have information that possession of a handgun by the transferee would be in violation of law. No deadline is imposed by the latter. To the extent that state law provides for an instantaneous check by a toll free number, such as Code of Virginia §18.2-308.2:2, no reason exists for a national waiting period to be imposed on all other states.

The fifth method assumes that a felon identification system is established by the Attorney General pursuant to §6213(a) of the Anti-Drug Abuse Amendments Act of 1988. Since this would be an immediate check and is restricted to identification of felons and not law-abiding persons, the waiting period again loses any

ostensible justification.

The bills provide that "nothing in this subsection shall be interpreted to require any action by a chief law enforcement officer which is not otherwise required." Thus, the police chief has no duty to certify that a person may purchase a handgun because of death threats. Indeed, in our system of federalism, the local officer has no legal obligation to conduct any criminal record searches and make a report, and the state or locality has no duty to finance these expensive fishing expeditions.

If no checks are conducted, obviously the waiting period has no purpose. If checks are conducted, given the large volume of handgun sales, this routine spying on citizens will significantly distract from law enforcement efforts to combat actual crime. Moreover, criminal records are notoriously inaccurate and incomplete, and usually contain only arrests and not convictions. Millions of would-be purchasers will be denied the right to acquire handguns due to misidentification and sloppy records.

The bills would require a privacy violation against which civil libertarians have fought for decades--the requirement of a government-issued identification card before a constitutional right may be exercised. Subsection (3) would require use of a valid identification document which is of the kind referred to in section 1028(d)(1) and which contains a photograph of the transferee. 18 U.S.C. Sec. 1028(d)(1) provides:

the term "identification document" means a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, a political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals. . . .

By contrast, current ATF Form 4473 for firearm sales does not require a government-issued identification card. It is sufficient if the buyer is personally known to the seller, and if not, the identification card shown is not required to be issued by the federal or a state government. Since there are seventy million firearms owners in the United States, the proposed bills promote the totalitarian concept of a required identification card for all persons.

If the dealer receives a report that receipt of the handgun violates federal, state, or local law, he must immediately communicate "all information" he has about the transferee to local law enforcement agencies. Given the existence of inaccurate and incomplete criminal records, law-abiding citizens will find themselves being arrested for felonious attempts to purchase firearms. Moreover, law enforcement will be called upon to enforce every petty local ordinance on the books, many of which are void as being preempted by state law or in violation of the right to keep arms under the state bills of rights.

The bills suggest that the chief law enforcement officer shall destroy within thirty days records of the name, address,

and birthdate of purchasers who qualify to possess handguns. No penalty is imposed upon an officer who fails to do so and who instead compiles all information on gunowners so that this "suspect class" can be watched. Indeed, Congress has no authority to impose a duty to destroy records on a state or local officer, since such a duty is not required by the federal Constitution. Puerto Rico v. Branstad, _____ U.S. _____, 97 L.Ed.2d 187, 194-96 (1987).

Violation of the above is punishable by a \$1000.00 fine and one year imprisonment. No requirement exists that the paperwork violation be willful.

Overall, the proposed legislation is calculated to discourage handgun sales and ownership by creating mountains of paperwork and police surveillance of the general citizenry. At the same time, it would divert scarce police resources away from investigation of and action against violent criminals, and toward routine investigation of the people at large. It would allow registration of all persons who exercise the right under the federal and state bills of rights to keep arms. It provides no realistic exception for emergencies in which the red tape and waiting period could be waived on behalf a person under threat of deadly attack.

In essence, the proposal would require a seven day waiting period before one may exercise the constitutional rights to keep and bear arms and to protect life. It requires that police be

notified of the names and other personal information of American citizens who would exercise the rights guaranteed by the Second Amendment. This legislation is a massive surveillance system in which those who exercise constitutional rights are subject to police scrutiny.

Constitutional freedoms are priceless rights, suspension of which for seven days is irreparable harm and not a "slight inconvenience." It is no different than requiring a waiting period and police background checks to exercise the rights of free speech and press, assembly, and petition, under the guise that subversion, riots, and criminal conspiracies will be stamped out. It recalls laws which required that membership lists of controversial groups be turned in to authorities, in order that the right of association not lead to Communist infiltration.

The legislation creates a presumption that each and every American citizen is a convicted felon, narcotics addict, or other prohibited person. It would impose a chilling effect and prior restraint on exercise of constitutional rights, with the police acting as the board of censors. Requiring a citizen to wait a week to purchase a handgun pending police approval is no different than prohibiting the citizen from publishing an article in or buying a newspaper or joining a labor union for a week, so that censors and political police may review the proposed exercise of a constitutional right. By the same logic, the police could conduct warrantless searches and seizures of our

persons and houses for a week, and arrest all persons in possession of incriminating evidence. Proponents may as well argue that it would be only a "slight inconvenience" to allow police to conduct routine wiretaps and searches of persons, autos, and homes, in order that would-be criminals are detected.

II. THE PROPOSED LEGISLATION WOULD INFRINGE ON
THE SECOND AMENDMENT RIGHT TO KEEP (AND HENCE ACQUIRE) ARMS

The Second Amendment to the U.S. Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The following demonstrates that the Second Amendment was prompted in part by British attempts to ban private possession and transfer of firearms, and that Congress adopted, and the States ratified, the Second Amendment as an individual right so that the people could retain a balance of power with government, which has the potential for oppression. Congress reaffirmed its support for the Second Amendment right of individual possession of firearms, including firearms which are useful for militia purposes, by the passage of legislation in 1941 and 1986. Finally, the U.S. Supreme Court and the state courts have upheld the individual right to keep and bear firearms.

A. VIOLATION OF THE RIGHT TO
KEEP ARMS BY THE BRITISH

Second Amendment rights were enumerated because the Framers recalled how the British sought to deprive the colonists of their

private arms. Just as the British troops were about to begin the occupation of Boston in 1768, a patriot (possibly Samuel Adams) wrote in the Boston Gazette, the most influential patriot newspaper in the colonies:

It is reported that the Governor has said, that he has Three Things in Command from the Ministry, more grievous to the People, than any Thing hitherto made known. It is conjectured 1st, that the Inhabitants of this Province are to be disarmed. 2d. The Province to be governed by Martial Law. And 3d, that a Number of Gentlemen who have exerted themselves in the Cause of their Country, are to be seized and sent to Great-Britain.

Unhappy America! When thy Enemies are rewarded with Honors and Riches; but thy Friends punished and ruined only for asserting thy Rights, and pleading for thy Freedom.¹

The military occupation occurred after the citizens of Boston voted in a town meeting to require all citizens to obtain arms. Samuel Adams defended the right to keep arms in a 1769 article as follows:

At the revolution [of 1689], the British constitution was again restor'd to its original principles, declared in the bill of rights; which was afterwards pass'd into a law, and stands as a bulwark to the natural rights of subjects. "To vindicate these rights, says Mr. Blackstone, when actually violated or attack'd, the subjects of England are entitled first to the regular administration and free course of justice in the courts of law--next to the right of petitioning the King and parliament for redress of grievances--and lastly, to the right of having and using arms for self-preservation and defence." These he calls "auxiliary subordinate rights, which serve principally as barriers to protect and maintain inviolate the three great and

¹ Boston Gazette, Sept. 26, 1768, at 3, cols. 1-2. On the influence of this newspaper, see S. Korbe, THE DEVELOPMENT OF THE COLONIAL NEWSPAPER 118-20 (1960).

primary rights of personal security, personal liberty and private property": And that of having arms for their defense he tells us is "a public allowance, under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression."--How little do those persons attend to the rights of the constitution, if they know anything about them, who find fault with a late vote of this town, calling upon the inhabitants to provide themselves with arms for their defence at any time; but more especially, when they had reason to fear, there would be a necessity of the means of self preservation against the violence of oppression.²

Between 1768 and 1775, the British resorted to every possible measure to deprive the Americans of arms. In 1774, the Crown-appointed counsellors of Boston considered banning possession of arms by the people, leading to widespread protests:

It is said, it was proposed in the Divan last Wednesday, that the inhabitants of this Town should be disarmed, and that some of the new-fangled Counsellors consented thereto, but happily a majority was against it.--The report of this extraordinary measure having been put in Execution by the Soldiery was propagated through the Country, with some other exaggerated stories, and, by what we are told, if these Reports had not been contradicted, we should by this date have had 40 or 50,000 men from the Country (some of whom were on the march) appear'd for our Relief.³

But the British did seize private arms, as the address from the County of Worcester to General Gage made clear: "This County are constrained to observe, they apprehend the People justified in providing for their own Defense, while they understood there are no passing the Neck without Examination, . .

² Boston Gazette, Feb. 27, 1769, at 3, col. 1, reprinted in 1 H. Cushing ed., THE WORKS OF SAMUEL ADAMS 316 (1904).

³ Massachusetts Spy, Sept. 8, 1774, at 3, col. 3.

. and many Places searched, where Arms and Ammunition were suspected to be; and if found, seized"⁴ In fact, seizing the people's arms was seen as even worse than infringing on their right to assembly: "But what most irritated the People next to seizing their Arms and Ammunition, was the apprehending six gentlemen, select men of the town of Salem, who had assembled a town meeting"⁵

The British also imposed an embargo on importation of arms and ammunition into the American colonies. Edmund Burke pointed out in debates in Parliament in 1775 that such injustices had been tried before in Wales:

Sir, during that state of things, parliament was not idle. They attempted to subdue the fierce spirit of the Welsh by all sorts of rigorous laws. They prohibited by statute the sending all sorts of arms into Wales, as you prohibit by proclamation (with something more of doubt on the legality) the sending arms to America. They disarmed the Welsh by statute, as you attempted, (but still with more question on the legality) to disarm New England by an instruction. They made an Act to drag offenders from Wales into England for trial, as you have done (but with more hardship) with regard to America.⁶

The Declaration of Causes of Taking up Arms of 1775, passed by the Continental Congress, complained that General Gage tricked the citizens of Boston into surrendering their arms (allegedly for temporary "safekeeping") with their own magistrates, and then

⁴ Boston Gazette, Oct. 17, 1774, at 2, cols. 2-3.

⁵ *Id.*, Dec. 5, 1774, at 4, col. 1.

⁶ 18 COBBETT, PARLIAMENTARY HISTORY OF ENGLAND 512 (1813).

had his Redcoats seize the arms, which included muskets, pistols, and blunderbusses.⁷ Gage's disarming of the people of Boston was widely reported in colonial newspapers and clarified for all patriots Gage's tyrannical designs. One report stated that "the Governor and gentlemen of Boston have agreed to open the town, on condition of the inhabitants delivering up their arms to the Selectmen."⁸ A patriot wrote from Roxbury: "Gage and his troops are immured within the walls of Boston; and . . . our friends are entrapped by them:--We have some hope they will be liberated this day; Gen. Gage has proposed, upon their surrendering their arms, that they may march out; they surrendered their arms yesterday."⁹

After collecting their arms, Gage refused to allow the people to leave Boston. It was reported from New London: "By the post, who left the head quarters at Roxbury, last Monday o'clock P.M. we learn that only two persons have been permitted to come out of Boston that day, that no more of the inhabitants would be permitted to leave the town for the present; and that on the same day a town meeting was to be held in Boston, when the inhabitants were determined to demand the arms they had deposited in the hands of the Selectmen, or have liberty to leave the

⁷ See S. Halbrook, *THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT* 59-60 (1984).

⁸ *Pennsylvania Evening Post* (Philadelphia), May 2, 1775, at 2, col. 2.

⁹ *Id.*, May 9, 1775, at 3, col. 2.

town."¹⁰

Meanwhile British troops began plundering houses in Boston,¹¹ and Gage proclaimed martial law, ordering the rebels to surrender their arms.¹² The following is a typical patriot's response:

What terms do you hold out in this gracious proclamation? . . . Now, Sir, waving all that may be said of your hypocrisy, cruelty, villainy, treachery, perfidy, falsehood, and inconsistency, are you not ashamed to throw out such an insult upon human understanding, as to bid people disarm themselves till you and your butchers murder and plunder them at pleasure! We well know you have orders to disarm us, and what the disposition of the framers of these orders is, if we may judge from the past, can be no secret.¹³

The inhabitants of the other colonies feared the same treatment, because it was widely reported "that on the landing of

¹⁰ *Id.*, May 20, 1775, at 3, cols. 1-2.

¹¹ *Id.*, May 25, 1775, at 2, col. 1.

¹² *Id.*, June 24, 1775, at 2.

¹³ E. Ludlow, "To the Vilest Tool of the most profligate and tyrannical Administration that ever disgraced a Court. Inhuman Butcher!" *Id.*, June 27, 1775, at 1, cols. 1-2.

A further editorial on Gage's proclamation stresses that an armed populace must keep government in check. "A Freeman," *id.* at 2, cols. 1-2 states:

The opposing an arbitrary measure, or resisting an illegal force, is no more rebellion than to refuse obedience to a highway-man who demands your purse, or to fight a wild beast, that came to devour you. It is morally lawful, in all limited governments, to resist that force that wants political power, from the petty constable to the king. . . . They are rebels who arm against the constitution, not they who defend it by arms.

the general officers, who have sailed for America, a proclamation will be published throughout the provinces inviting the Americans to deliver up their arms by a certain stipulated day; and that such of the colonists as are afterwards proved to carry arms shall be deemed rebels, and be punished accordingly."¹⁴

In 1777, William Knox, Undersecretary of State in the British Colonial Office, circulated a proposal entitled "What is Fit to be Done with America?" Besides a ruling aristocracy loyal to the Crown, establishment of the Church of England, and an unlimited power to tax, Knox offered the panacea of disarming all of the people:

The Militia Laws should be repealed & none suffered to be re-enacted, & the Arms of all the People should be taken away, & every piece of Ordnance removed into the King's Stores, nor should any Foundry or manufactory of Arms, Gunpowder, or Warlike Stores, be ever suffered in America, nor should any Gunpowder, Lead, Arms or Ordnance be imported into it without Licence; they will have but little need of such things for the future, as the King's Troops, Ships & Forts will be sufficient to protect them from any danger.¹⁵

B. THE INTENT OF THE FRAMERS OF THE SECOND AMENDMENT

When the Constitution was proposed in 1787 without a Bill of Rights, the federalists argued that one was unnecessary, since Congress had no enumerated power to control rights such as a free press and bearing arms. In The Federalist No. 29, Alexander

¹⁴ Virginia Gazette, June 24, 1775, at 1, col. 1.

¹⁵ 1 SOURCES OF AMERICAN INDEPENDENCE 176 (H. Peckham ed. 1978).

Hamilton wrote that the government should not require

the great body of yeomanry and of the other classes of citizens to be under arms for the purpose of going through military exercises and evolutions, as often as might be necessary to acquire the degree of perfection which would entitle them to the character of a well regulated militia. . . .

Little more can reasonably be aimed at with respect to the people at large than to have them properly armed and equipped. . . .

. . . This will not only lessen the call for military establishments, but if circumstances should at any time oblige the government to form an army of any magnitude that army can never be formidable to the liberties of the people while there is a large body of citizens, little if at all inferior to them in discipline and the use of arms, who stand ready to defend their rights and those of their fellow citizens.¹⁶

In The Federalist, No. 46, James Madison, in contending that "the ultimate authority . . . resides in the people alone,"¹⁷ predicted that encroachments by the federal government would provoke "plans of resistance" and an "appeal to a trial of force."¹⁸ To a regular army of the United States government "would be opposed a militia amounting to near half a million citizens with arms in their hands." Alluding to "the advantage of being armed, which the Americans possess over the people of almost every other nation," Madison continued, "Notwithstanding the military establishments in the several kingdoms of Europe,

¹⁶ Madison, Hamilton, and Jay, THE FEDERALIST PAPERS 184-85 (Arlington House ed. n.d.)

¹⁷ Id. at 294.

¹⁸ Id. at 298.

which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms."¹⁹ If the people were armed and organized into militia, "the throne of every tyranny in Europe would be speedily overturned in spite of the legions which surround it."²⁰

In fact, the Founding Fathers were even more explicit in insisting that American citizens would be able to possess military-type small arms. Noah Webster, the influential federalist whose name still appears on dictionaries, stated: "Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any band of regular troops that can be, on any pretence, raised in the United States."²¹ Similarly, Tench Coxe, a friend of James Madison and a tireless federalist, wrote:

The power of the sword, say the minority of Pennsylvania, is in the hands of Congress. My friends and countrymen, it is not so, for THE POWERS OF THE SWORD ARE IN THE HANDS OF THE YEOMANRY OF AMERICA FROM SIXTEEN TO SIXTY. The militia of these free commonwealths, entitled and accustomed to their arms, when compared with any possible army, must be tremendous and irresistible. Who are the militia? are they not ourselves. Is it feared, then, that we shall

¹⁹ *Id.* at 299.

²⁰ *Id.* at 300.

²¹ N. Webster, An Examination into the Leading Principles of the Federal Constitution (1787), in PAMPHLETS ON THE CONSTITUTION OF THE UNITED STATES 56 (P. Ford ed. 1888).

turn our arms each man against his own bosom. Congress have no power to disarm the militia. Their swords, and every other terrible implement of the soldier, are the birth-right of an American. . . . [T]he unlimited power of the sword is not in the hands of either the federal or state governments, but, where I trust in God it will ever remain, in the hands of the people.²²

The antifederalists insisted that these promises be made in writing. Insisting on a Bill of Rights, Richard Henry Lee wrote that "to preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them" ²³ The Supreme Court recently noted:

The remarks of Richard Henry Lee are typical of the rejoinders of the Antifederalists. . . . The concerns voiced by the Antifederalists led to the adoption of the Bill of Rights. . . .

The fears of the Antifederalists were well founded.²⁴

When James Madison proposed the Bill of Rights in 1789, he wrote that the proposed amendments concerning the press and arms "relate first to private rights" ²⁵ Ten days after its introduction, federalist leader Tench Coxe wrote of what became the Second Amendment: "As civil rulers, not having their duty to

²² Pennsylvania Gazette, Feb. 20, 1788, in 2 DOCUMENTARY HISTORY OF THE CONSTITUTION OF THE UNITED STATES (Mfm. Supp.) 1778-80 (Jensen ed. 1976).

²³ R. Lee, ADDITIONAL LETTERS FROM THE FEDERAL FARMER 170 (1788).

²⁴ Minneapolis Star v. Minnesota Com. of Rev., 460 U.S. 575, 584 (1983).

²⁵ 12 MADISON PAPERS 193-194 (Rutland ed. 1979).

the people duly before them, may attempt to tyrannize, and as the military forces which must be occasionally raised to defend our country, might pervert their power to the injury of their fellow-citizens, the people are confirmed by the next article in their right to keep and bear their private arms."²⁶ Madison endorsed Coxe's analysis, which was reprinted without contradiction.²⁷

In fact, what became the Second Amendment was seen as embodying the proposal drafted by Samuel Adams, "that the said constitution be never construed to authorize congress . . . to prevent the people of the United States, who are peaceable citizens, from keeping their own arms"²⁸

St. George Tucker, the first major commentator on the Bill of Rights,²⁹ explained the Second Amendment as follows: "The right of self-defense is the first law of nature Wherever . . . the right of the people to keep and bear arms is, under any color or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction."³⁰

²⁶ "Remarks on the First Part of the Amendments to the Federal Constitution," Federal Gazette, June 18, 1789, at 2, col. 1.

²⁷ See 12 MADISON PAPERS at 239-40, 257 (1979).

²⁸ Independent Gazetteer (Philadelphia), Sept. 9, 1789, at 2, col. 2.

²⁹ New York Times v. Sullivan, 376 U.S. 254, 296-97 (1964).

³⁰ 1 Tucker, BLACKSTONE'S COMMENTARIES (Appendix) 300 (1803). Henry St. George Tucker, another major commentator, wrote that "the right of bearing arms" was one of the "protections or barriers [which] have been erected which serve to

C. REAFFIRMATION OF THE SECOND AMENDMENT
BY CONGRESS IN THE TWENTIETH CENTURY

From the time the Second Amendment was adopted by Congress in 1789 and ratified by the states in 1791, little controversy surrounded the right to keep and bear arms. Other than requiring all able-bodied males to acquire and keep militia arms, Congress passed nothing on firearms until the twentieth century.

In 1934, Congress passed the National Firearms Act, a comprehensive taxation and registration system for machineguns, shortbarreled shotguns and rifles, and certain other firearms. Proponents of this legislation recognized that Congress could not ban possession of such firearms due to its limited powers under Art. I, Sec. 8 of the Constitution and the Second Amendment, and thus opted for the taxation scheme.³¹ Again, in 1938, Congress passed the Federal Firearms Act, which regulated interstate commerce in firearms and prohibited possession of firearms by felons where an interstate nexus could be demonstrated.

In 1941, less than two months before Pearl Harbor, Congress enacted legislation to authorize the President to requisition broad categories of property with military uses from the private sector on payment of fair compensation. Known as the Property Requisition Act, the legislation included the following provision

maintain inviolate the three primary rights of personal security, personal liberty, and private property." 1 TUCKER, COMMENTARIES ON THE LAWS OF VIRGINIA 43 (1831).

³¹ National Firearms Act: Hearings Before the House Committee on Ways and Means, 73rd Cong., 2d Sess., 19 (1934).

to reaffirm and protect Second Amendment rights:

Nothing contained in this Act shall be construed--

(1) to authorize the requisitioning or require the registration of any firearms possessed by any individual for his personal protection or sport (and the possession of which is not prohibited or the registration of which is not required by existing law), [or]

(2) to impair or infringe in any manner the right of any individual to keep and bear arms³²

The reason for the above was explained by the House Committee on Military Affairs as follows:

It is not contemplated or even inferred that the President, or any executive board, agency, or officer, would trespass upon the right of the people in this respect. There appears to be no occasion for the requisition of firearms owned and maintained by the people for sport and recreation, nor is there any desire or intention on the part of the Congress or the President to impair or infringe the right of the people under section 2 of the Constitution of the United States, which reads, in part as follows: 'the right of the people to keep and bear arms shall not be infringed.' However, in view of the fact that certain totalitarian and dictatorial nations are now engaged in the willful and wholesale destruction of personal rights and liberties, our committee deem it appropriate for the Congress to expressly state that the proposed legislation shall not be construed to impair or infringe the constitutional right of the people to bear arms. In so doing, it will be manifest that, although the Congress deems it expedient to grant certain extraordinary powers to the Executive in furtherance of the common defense during critical times, there is no disposition on the part of this Government to depart from the concepts and principles of personal rights and liberties expressed in our Constitution.³³

³² P.L. 274, 77th Cong., 1st Sess., Ch. 445, 55 Stat., pt. 1, 742 (Oct. 16, 1941).

³³ Rept. No. 1120 [to accompany S. 1579], House Committee on Military Affairs, 77th Cong., 1st Sess., at 2 (Aug. 4, 1941).

On the House floor, Congressman Edwin Arthur Hall explained: "Before the advent of Hitler or Stalin, who took power from the German and Russian people, measures were thrust upon the free legislatures of those countries to deprive the people of the possession and use of firearms, so that they could not resist the encroachments of such diabolical and vitriolic state police organizations as the Gestapo, the Ogpu, and the Cheka."³⁴ In a further explanation of Second Amendment rights, Congressman A.J. May, Chairman of the Committee, stated: "the right to keep means that a man can keep a gun in his house and can carry it with him if he wants to; . . . and the right to bear arms means . . . that nobody has any right, so long as he bears the arms openly and unconcealed, to interfere with him."³⁵

Congressman Jack Kilday, author of the right-to-bear-arms language, insisted on the prohibition on registration of firearms because it "is only the first step. It will be followed by other infringements of the right to keep and bear arms until finally the right is gone. . . . The right to keep and bear arms is a substantial and valuable right of a free people"³⁶ Congressman Boren found the provision necessary both to protect individual rights and to preclude any power to disarm the State

³⁴ 87 CONG.REC., 77th Cong., 1st Sess., 6778 (Aug. 5, 1941).

³⁵ *Id.* at 7098 (Aug. 13, 1941).

³⁶ *Id.* at 7101.

militia.³⁷ The Second Amendment was seen as a counterbalance to federal power over the militia, Congressman Patman pointed out, and "if we should have some Executive who attempted to set himself up as dictator or king, the people can organize themselves together and, with the arms and ammunition they have, they can properly protect themselves."³⁸

Fear of tyranny was both real and reasonable in those dark days. Ironically, the very kind of legislation the statutory reaffirmation of the Second Amendment was intended to preclude is now being proposed in the Congress. Long forgotten are the words of wisdom spoken in Congress about the legislative prohibitions on individual firearms possession in Nazi Germany and Communist Russia and the growth of the Gestapo and other police organizations which sought to monopolize possession of firearms.

Aside from 1789 and 1941, the third and most recent time Congress passed a constitutional amendment or legislation in support of the right to keep and bear arms was in 1986. The years of hard legislative work leading to enactment of the Firearms Owners' Protection Act of 1986 are too well known to require analysis here. It is sufficient to recite the preamble to the Act:

CONGRESSIONAL FINDINGS--The Congress finds that--

³⁷ Id.

³⁸ Id. at 7102.

(1) the rights of citizens--

(A) to keep and bear arms under the second amendment to the United States Constitution;

(B) to security against illegal and unreasonable searches and seizures under the fourth amendment;

(C) against uncompensated taking of property, double jeopardy, and assurance of due process of law under the fifth amendment; and

(D) against unconstitutional exercise of authority under the ninth and tenth amendments;

require additional legislation to correct existing firearms statutes and enforcement policies; and

(2) additional legislation is required to reaffirm the intent of the Congress, as expressed in section 101 of the Gun Control Act of 1968, that "it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap shooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes."³⁹

D. THE SUPREME COURT AND THE SECOND AMENDMENT

The U.S. Supreme Court has analyzed the Second Amendment as guaranteeing an individual right to keep and bear arms. It has also held that all guarantees of the Bill of Rights are entitled to respect, and must be interpreted consistently with the intent of the framers. Police surveillance and waiting periods for exercise of any constitutional right would be inconsistent with Bill of Rights jurisprudence as developed by the Supreme Court.

In the Dred Scott decision, the Supreme Court conceded that

³⁹ Sec. 1(b), P.L. 99-308, 100 Stat. 449 (May 19, 1986).

if African Americans were citizens, they would be "entitled to the privileges and immunities of citizens" and would be exempt from the special "police regulations" applicable to them. "It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies . . .; and it would give them the full liberty of speech . . .; to hold public meetings upon political affairs, and to keep and carry arms wherever they went."⁴⁰ The current proposals would relegate all law-abiding citizens to the status of slaves in the antebellum states, many of which prohibited possession of firearms to slaves.

During Reconstruction, the Court stated that the rights of the people "peaceably to assemble for lawful purposes" and "of bearing arms for a lawful purpose" were not "granted" by the Constitution because they existed long before its adoption.⁴¹ The amendments which recognize these rights serve to "restrict the powers of the National government" ⁴² A later opinion again recognized "the right of the people to keep and bear arms"

⁴⁰ Scott v. Sanford, 60 U.S. (19 How.) 393, 417 (1857). (Emphasis added.) "Nor can Congress deny the people the right to keep and bear arms, nor the right to trial by jury, nor compel anyone to be a witness against himself in a criminal proceeding." *Id.* at 450.

⁴¹ United States v. Cruikshank, 92 U.S. 542, 551, 553 (1876).

⁴² *Id.* at 553.

and repeated that the Second Amendment is a limitation "upon the power of Congress and the National government. . . ."43

At the turn of the century, the Court wrote of "the freedom of speech and of the press" and "the right of the people to keep and bear arms" that "the law is perfectly well settled that the first ten Amendments to the constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we inherited from our English ancestors"44

In United States v. Miller (1939),⁴⁵ the court avoided determining whether a short barrel shotgun may be taxed under the National Firearms Act consistent with the Second Amendment. The district court had declared the Act unconstitutional as in violation of the Second Amendment,⁴⁶ and thus no evidence was in the record that such shotgun was an ordinary military arm. The Supreme Court remanded the case for fact-finding based on the following:

In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than

43 Presser v. Illinois, 116 U.S. 252, 265 (1886). Miller v. Texas, 153 U.S. 535, 538 (1894) repeats that "the restriction of" the Second and Fourth Amendments operate "upon the Federal power."

44 Robertson v. Baldwin, 165 U.S. 275, 281-82 (1897).

45 307 U.S. 174 (1939).

46 26 F.Supp. 1002, 1003 (W.D. Ark. 1939).

eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense. Aymette v. State, 2 Hump. 154, 158.⁴⁷

Whether a pistol or revolver is ordinary military equipment or could contribute to the common defense should be within judicial notice, but is at a minimum a factual issue which is easily resolved in the affirmative by noncontrovertible evidence. Just a year after the Miller decision, the American Committee for Defense of British Homes pleaded with American gunowners to contribute pistols, revolvers, rifles, and shotguns to British households for defense against anticipated Nazi invasion. Handguns wanted for the war effort included those in .22, .25, .32, .380, .38 and .45 calibers. Copies of such solicitations published in the American Rifleman are attached herewith.

⁴⁷ 307 U.S. at 178 (emphasis added). Since no factual record was made in the trial court that a "sawed-off" shotgun could have militia uses, and defendant Miller did not even appear and file a brief in the Supreme Court, the Court did not consider whether the tax and related registration requirements of the National Firearms Act violated the Second Amendment. However, the Court has held of a newspaper tax: "It is a license tax--a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the federal constitution." Murdock v. Pennsylvania, 319 U.S. 106, 113 (1943). See Thomas v. Collins, 323 U.S. 527, 538-40 (1944) (state may not require registration of persons who exercise First Amendment rights); Minneapolis Star v. Minnesota Comm. of Rev., 460 U.S. 575 (1983) (special tax on only a few newspapers invalid). Of course, the manufacture of all sporting firearms is also subject to an excise tax.

The Miller court did not suggest that the possessor must be a member of the militia or National Guard, asking only whether the arm could have militia use. The private, individual character of the right protected by the Second Amendment went unquestioned.

The Aymette opinion was a Tennessee case which stated on the page cited above by the U.S. Supreme Court: "If the citizens have these arms in their hands, they are prepared in the best possible manner to repel any encroachments on their rights, etc."⁴⁸

Referring to the militia clause of the Constitution, the Supreme Court stated that "to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made."⁴⁹ The court then surveyed colonial and state militia laws to demonstrate that "the Militia comprised all males physically capable of acting in concert for the common defense" and that "these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time."⁵⁰ Handguns in common use from the time Miller was decided to the present include revolvers and semiautomatic pistols in calibers .22 through .45.

The Miller court noted that most states "have adopted

⁴⁸ 2 Hump. (21 Tenn.) 154, 158 (1840).

⁴⁹ 307 U.S. at 178.

⁵⁰ Id. at 179.

provisions touching the right to keep and bear arms" but that differences in language meant variations in "the scope of the right guaranteed."⁵¹ State precedents cited by the court are divided mainly over whether the respective state guarantees protect all arms or only militia-type arms.⁵²

Miller also cites approvingly the commentaries of Joseph Story and Thomas M. Cooley.⁵³ Justice Story stated: "The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of the republic; since it offers a strong moral check against usurpation and arbitrary power of the rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them."⁵⁴ Miller's reference to Judge Cooley finds him stating:

Among the other safeguards to liberty should be mentioned the right of the people to keep and bear arms. . . . The alternative to a standing army is 'a well-regulated militia'; but this cannot exist unless the people are trained to bearing arms. The federal and state constitutions therefore provide that the right of the people

⁵¹ 307 U.S. at 183.

⁵² Id. at 183 n.3. These cases are analyzed in S. Halbrook, THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT 167-69 (1984).

⁵³ 307 U.S. at 183 n.3.

⁵⁴ 2 J. Story, COMMENTARIES ON THE CONSTITUTION 646 (5th ed. 1891). "One of the ordinary modes, by which tyrants accomplish their purpose without resistance is, by disarming the people, and making it an offense to keep arms" J. Story, A FAMILIAR EXPOSITION OF THE CONSTITUTION OF THE UNITED STATES 264 (1893).

to bear arms shall not be infringed⁵⁵

The Supreme Court has recently denied that some Bill of Rights freedoms "are in some way less 'fundamental' than" others. "Each establishes a norm of conduct which the Federal Government is bound to honor -- to no greater or lesser extent than any other inscribed in the Constitution. Moreover, we know of no principled basis on which to create a hierarchy of constitutional values" ⁵⁶ The proposed legislation, to quote an earlier opinion, "appears on its face to be within a specific prohibition of the Constitution, such as those of the

⁵⁵ T. Cooley, CONSTITUTIONAL LIMITATIONS 729. T. Cooley, GENERAL PRINCIPLES OF CONSTITUTIONAL LAW 281-282 (2d ed. 1891) states further:

The right declared was meant to be a strong moral check against the usurpation and arbitrary power of rulers, and as a necessary and efficient means of regaining rights when temporarily overturned by usurpation.

The right is General--It may be supposed from the phraseology of this provision that the right to keep and bear arms was only guaranteed to the militia; but this would be an interpretation not warranted by the intent. . . . But the law may make provision for the enrollment of all who are fit to perform military duty, or of a small number only, or it may wholly omit to make any provision at all; and if the right were limited to those enrolled, the purpose of this guaranty might be defeated altogether by the action or neglect to act of the government it was meant to hold in check. The meaning of the provision undoubtedly is that the people from whom the militia must be taken shall have the right to keep and bear arms, and they need no permission or regulation of law for the purpose.

⁵⁶ Valley Forge College v. Americans United, 454 U.S. 464, 484 (1982).

first ten amendments⁵⁷ Misuse of the press or of arms may be punished, but Congress may pass no law restraining exercise of these rights. After quoting the First Amendment, the Court has referred to "the equally unqualified command of the Second Amendment: 'the right of the people to keep and bear arms shall not be infringed.'⁵⁸ Moreover, these arms include but are not limited to, semiautomatic rifles, pistols, and shotguns, just as pamphlets and leaflets are just as protected as newspapers and periodicals.⁵⁹ As stated by the Court:

This constitutional protection must not be interpreted in a hostile or niggardly spirit. . . . Such a view does scant honor to the patriots who sponsored the Bill of Rights as a condition to acceptance of the Constitution by the ratifying States. . . .

⁵⁷ United States v. Carolene Products Co., 304 U.S. 144, 152 n.4 (1938).

⁵⁸ Koingsberg v. State Bar of California, 366 U.S. 36, 49 n.10 (1961).

⁵⁹ Lovell v. Griffin, 303 U.S. 444, 452 (1938) states:

The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.

As the experience of the Revolution attests, pistols, rifles, and shotguns have also been "historic weapons in the defense of liberty," to use the above language. Moreover, "'pistol' ex vi termini is properly included within the word 'arms,' and that the right to bear such arms cannot be infringed." State v. Kerner, 181 N.C. 574, 107 S.E. 222, 224 (1921).

As no constitutional guarantee enjoys preference, so none should suffer subordination or deletion. . . . To view a particular provision of the Bill of Rights with disfavor inevitably results in a constricted application of it. This is to disrespect the Constitution.⁶⁰

The Supreme Court has also held that "when we do have evidence that a particular law would have offended the Framers, we have not hesitated to invalidate it on that ground alone."⁶¹ The Constitution must be construed as intended by the framers and by the people adopting it.⁶² "In the construction of the language of the Constitution . . . we are to place ourselves as nearly as possible in the condition of the men who framed that instrument. Undoubtedly, the framers . . . had for a long time been absorbed in considering the arbitrary encroachments of the Crown on the liberty of the subject"⁶³

The Supreme Court decided two cases in 1990 which contribute to an understanding of these issues. First, in United States v. Verdugo-Urquidez, a Fourth Amendment case, the Court made clear that all law-abiding Americans are protected by the Second Amendment as follows:

⁶⁰ Ullman v. United States, 350 U.S. 422, 426-29 (1956).

⁶¹ Minneapolis Star v. Minnesota Comm. of Rev., 460 U.S. 575, 583-84 n.6 (1983).

⁶² Whitman v. National Bank of Oxford, 176 U.S. 559 (1900).
See Puerto Rico v. Branstad, 107 S. Ct. 2802, 2809 (1987).

⁶³ Ex Parte Bain, 121 U.S. 1, 12 (1887).

Amendment as follows:

"The people" seems to have been a term of art employed in select parts of the Constitution. . . . The Second Amendment protects "the right of the people to keep and bear Arms," and the Ninth and Tenth Amendments provide that certain rights and powers are retained by and reserved to "the people." See also U.S. Const., Amdt. 1, ("Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble"); Art. I, § 2, cl. 1 ("The House of Representatives shall be composed of Members chosen every second year by the People of the several States") (emphasis added). While this textual exegesis is by no means conclusive, it suggests that "the people" protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.⁶⁴

In his dissent, Justice Brennan argued even more broadly that "the term 'the people' is better understood as a rhetorical counterpoint 'to the government,' such that rights that were reserved to 'the people' were to protect all those subject to 'the government'. . . 'The people' are 'the governed.'"⁶⁵ Justice Brennan also reviewed the drafting history of the Fourth Amendment, noting that the Framers "could have limited the right to 'citizens,' 'freemen,' 'residents,' or the 'American people.' . . . Throughout that entire process, no speaker or commentator, pro or con, referred to the term 'the people' as a

⁶⁴ United States v. Verdugo-Urquidez, 494 U.S.-, 108 L.Ed.2d 222, 232-33, 110 S.Ct. 1056, 1060-61 (holding the Fourth Amendment warrant requirement inapplicable to the search of a home in a foreign country).

⁶⁵ 108 L.Ed.2d at 247.

limitation."⁶⁶ Similarly, the Framers could have limited the Second Amendment right to select state militias, but instead used the terms "the people."

Finally, Justice Brennan pointed out that rights are not "given to the people from the government. . . . The Framers of the Bill of Rights did not purport to "create" rights. Rather, they designed the Bill of Rights to prohibit our Government from infringing rights and liberties presumed to be pre-existing."⁶⁷ This statement is particularly applicable to the right to keep and bear arms, which has been recognized as a personal right for centuries.⁶⁸

The second 1990 Supreme Court opinion has relevance to the twentieth-century argument that the Second Amendment protects only the "right" of a state to maintain a militia, and that the "militia" is restricted to the National Guard. In Perpich v. Department of Defense (1990),⁶⁹ the Court recognized that the National Guard is part of the Armed Forces of the United States and that the Reserve Militia includes all able-bodied citizens.⁷⁰

⁶⁶ Id. at 248.

⁶⁷ Id. at 247.

⁶⁸ S. HALBROOK, THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT 7-54 (1984).

⁶⁹ 110 S.Ct. 2418.

⁷⁰ Id. at 2424-25.

The issue was whether the militia clause allows the President to order members of the National Guard to train outside the United States without the consent of a state governor or the declaration of a national emergency.⁷¹ Perhaps the most noteworthy fact about the opinion is its failure to mention the Second Amendment at all, that amendment being irrelevant to the issue of the state power to maintain a militia. In fact, the Court refers to the state power over the militia as being recognized only in "the text of the Constitution," not in any amendment:

Two conflicting themes, developed at the Constitutional Convention and repeated in debates over military policy during the next century, led to a compromise in the text of the Constitution and in later statutory enactments. On the one hand, there was a widespread fear that a national standing Army posed an intolerable threat to individual liberty and to the sovereignty of the separate States, while, on the other hand, there was a recognition of the danger of relying on inadequately trained soldiers as the primary means of providing for the common defense. Thus, Congress was authorized both to raise and support a national army and also to organize "the Militia."⁷²

The Court then reviewed Congress' various militia enactments. The first, passed in 1792, provided that "every able-bodied male citizen between the ages of 18 and 45 be enrolled [in the militia] and equip himself with appropriate weaponry"⁷³ In 1903, new legislation "divided the class

⁷¹ *Id.* at 2420.

⁷² *Id.* at 2422-23.

⁷³ *Id.* at 2423.

of able-bodied male citizens between 18 and 45 years of age into an 'organized militia' to be known as the National Guard of the several States, and the remainder of which was then described as the 'reserve militia,' and which later statutes have termed the 'unorganized militia.'⁷⁴ Both of the above were passed under the Militia Clauses of the Constitution.⁷⁵

By contrast, in legislation dating to 1916, "the statute expressly provided that the Army of the United States should include not only 'the Regular Army,' but also 'the National Guard while in the service of the United States'"⁷⁶ Today's National Guard came into being through exercise by Congress of the power to raise armies, not the power to organize the militia.

The Court referred to "the traditional understanding of the militia as a part-time, nonprofessional fighting force,"⁷⁷ and as "a body of armed citizens trained to military duty, who may be called out in certain cases, but may not be kept on service like standing armies, in time of peace."⁷⁸ The Court also recognized the existence of "all portions of the 'militia'--organized or not

⁷⁴ *Id.*

⁷⁵ *Id.* at 2423-24.

⁷⁶ *Id.* at 2424.

⁷⁷ *Id.* at 2426.

⁷⁸ *Id.*, quoting *Dunne v. People*, 94 Ill. 120 (1879) (emphasis added).

. . . ."79

The Court concluded that "there is no basis for an argument that the federal statutory scheme deprives [a state] of any constitutional entitlement to a separate militia of its own."⁸⁰ The Court failed even to suggest that the Second Amendment had any bearing on the issue.

In sum, it was clear enough to the Supreme Court in 1990 that "the people" in the Second Amendment means individuals generally, as it does in the rest of the Bill of Rights; that the "militia" means the body of armed citizens at large, organized and unorganized; and that the Second Amendment is not relevant to the power of a states to maintain the militia.

Inherent in the right to keep and bear arms is the penumbral right to transfer arms. A Tennessee court has held: "The right to keep arms necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair."⁸¹ The U.S. Supreme Court has not addressed that

⁷⁹ Id. at 2429 n.25.

⁸⁰ Id. at 2429. "[The Constitution left] under the sway of the states undelegated the control of the militia to the extent that such control was not taken away by the exercise by Congress of its power raise armies." Id. at 2430 n.29, quoting Selective Draft Law Cases, 245 U.S. 366, 383 (1918).

⁸¹ Andrews v. State, 3 Heisk. (Tenn.) 165, 8 Am. Repts. 8, 13 (1871). See Rhodes v. R.G. Industries, 173 Ga.App. 51, 325 (continued...)

specific point, but Justice Brennan wrote: "The protection of the Bill of Rights goes beyond the specific guarantees to protect from congressional abridgement those equally fundamental personal rights necessary to make the express guarantees fully meaningful. . . . 'Constitutional provision for the security of person and property should be liberally construed.'"⁸²

Far from construing it liberally, proponents of firearms bans and waiting periods would ignore the Second Amendment altogether. While the U.S. Supreme Court has had no occasion to consider a prohibition on possession or immediate acquisition of firearms by law-abiding citizens, state courts with a similar jurisprudence have upheld the fundamental character of the right to possess firearms.

The Second Amendment has recently been held to confirm that handguns are not unreasonably dangerous when marketed to the general public.⁸³ Being a penumbra of a fundamental,

⁸¹(...continued)

S.E. 2d 465, 466-67 (1985) (Second Amendment precludes product liability for marketing of safe firearms to the general public).

⁸² Lamont v. Postmaster General, 381 U.S. 301, 308-09 (1965).

⁸³ Rhodes v. R.G. Industries, 173 Ga.App. 51, 325 S.E.2d 465, 466-67 (1985) states:

Appellant first contends that "the trial court erred in holding as a matter of law that handguns are exempt from Georgia's product liability law because the lack of safety
(continued...)

constitutional right, the right to purchase handguns cannot be infringed by waiting periods and police surveillance.

The proposed legislation will endanger legitimate self-defense because an emergency may occur during the waiting period. There may not be time to obtain a law enforcement certificate that the potential victim requires access to a handgun because of threats to his or her life. Indeed, the average citizen may not even be able to get an appointment to see the chief law enforcement officer. A similar law restricting pistols was held unconstitutional because it "would place law-abiding citizens entirely at the mercy of the lawless element. . . . For all practical purposes it is prohibition of the constitutional right to bear arms. There would be no time or opportunity to get such

83 (...continued)

connected with such weapons raises a political, nonjusticiable question." Her last contention is that the trial court erroneously held as a matter of law that the R.G. revolver is not unreasonably dangerous when marketed to the general public. We disagree on both points. The Second Amendment to the U.S. Constitution guarantees the right of the people to keep and bear arms, as does Art. I, sec. I, Par. VIII of the Georgia Constitution 1983, which states that that right "shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne."

Accord, Martin v. Harrington and Richardson, 743 F.2d 1200, 1204 (7th Cir. 1984) ("the right of private citizens in Illinois to bear arms is protected"). See S. Halbrook, Tort Liability for the Manufacture, Sale, and Ownership of Handguns? 6 HAMLIN L. REV. 351, 364-379 (1983).

permit. . . ."⁸⁴

Even if there is time to get the law enforcement certificate showing imminent danger to life, many chief law enforcement officers refuse to recognize the right of ordinary citizens in danger to have arms. In some cases, it has taken years of protracted litigation to require such officers to issue firearms permits to which citizens are entitled.⁸⁵ The Indiana Court of Appeals has explained the problem as follows:

We think it clear that our constitution provides our citizenry the right to bear arms for their self defense. . . .

In Schubert's case it is clear from the record that the superintendent decided the application on the basis that the statutory reference to "a proper reason" vested in him the power and duty to subjectively evaluate an assignment of "self-defense" as a reason for desiring a license and the ability to grant or deny the license upon the basis of whether the applicant "needed" to defend himself.

Such an approach contravenes the essential nature of the constitutional guarantee. It would supplant a right with a mere administrative privilege which might be withheld

⁸⁴ State v. Kerner, 181 N.C. 574, 579, 107 S.E. 222, 225 (1921).

⁸⁵ See Motley v. Kellogg, 409 N.E.2d 1207, 1210 (Ind. App. 1980) (police chief "denied members of the community the opportunity to obtain a gun permit and bear arms for their self-defense."); Buffa v. Police Dept. of Suffolk County, 47 A.D.2d 841, 366 N.Y.S.2d 162 (1975) ("withdrawal of police approval" insufficient reason); Storace v. Mariano, 35 Conn.Sup. 28, 391 A.2d 1347, 1349 (1978) ("in my opinion, he is an unsuitable person to carry a gun" insufficient reason); Salute v. Pitchess, 61 Cal.App.3d 557, 132 Cal.Rptr. 345, 347 (1976) (sheriff may not determine in advance "that only selected public officials can show good cause" for permit); Schwanda v. Bonney, 418 A.2d 163, 165 (Ma. 1980) (criteria not mandated by state statute may not be imposed); Iley v. Harris, 345 So.2d 336, 337 (Fla. 1977) (permit must be based on criteria, not discretion).

simply on the basis that such matters as the use of firearms are better left to the organized military and police forces even where defense of the individual citizen is involved.⁸⁶

The court went on to find the ordinary citizen's interest in self-defense to be a proper reason for issuance of the license, and rejected the following "Catch-22":

Any ordinary citizen applying for a license could be "factually" denied a permit because no one had actually threatened him. Thus, he would have no "need" to defend himself. Similarly, if threatened, the permit could be denied on the basis that the official police agencies were capable of handling the matter so that he had no "need" to defend himself.⁸⁷

By contrast, in some states the courts have upheld police denials of firearms permits under the dogma that handguns can never be effectively used by private citizens for self-defense. Physicians who carried narcotics in their bags in high crime areas at night were not entitled to permits because the New Jersey Supreme Court alleged, "their possession of handguns in the streets would . . . furnish hardly any measure of self-protection"⁸⁸ Massachusetts' highest court affirmed the one year mandatory prison sentence of a person who was repeatedly assaulted with a knife, complained to and sought protection from police to no avail, and was forced to carry a firearm, even

⁸⁶ Schubert v. DeBard, 398 N.E.2d 1339, 1341 (Ind.App. 1980).

⁸⁷ *Id.* at 1341 n.5.

⁸⁸ Reilly v. State, 59 N.J. 559, 284 A.2d 541, 542 (1971).

though "it is possible that the defendant is alive today only because he carried the gun that day for protection."⁸⁹

It is well established that "official police personnel and the government employing them are not generally liable to victims of criminal acts for failure to provide adequate police protection"⁹⁰ "There is no constitutional right to be protected by the state against being murdered by criminals or madmen."⁹¹ Public officials have been held not liable for negligent failure to issue firearms permits even where the person disarmed thereby is murdered.⁹²

Not only will the provision for emergency certifications be nullified by police officials who are unwilling to recognize citizens' rights, but many handgun transactions will be defeated altogether by the existence of invalid local ordinances. The courts have repeatedly declared void local ordinances which conflict with and are preempted by state law on handgun sales.⁹³ Many of these ordinances remain on the books and are enforced

⁸⁹ Commonwealth v. Lindsay, 396 Mass. 840, 489 N.E.2d 666, 669 (1986).

⁹⁰ Warren v. District of Columbia, 444 A.2d 1, 8 (1981).

⁹¹ Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982).

⁹² Nunn v. State, 35 Cal.3d 616, 200 Cal.Rptr. 440, 677 P.2d 846 (1984).

⁹³ E.g., Doe v. San Francisco, 186 Ca.Rptr. 380, 136 Cal.App.3d 509 (1983) (ordinance prohibited any further handgun sales); Dwyer v. Farrell, 193 Conn. 7, 475 A.2d 257 (1984).

despite repeated attorney general opinions that they are illegal.⁹⁴

It is well established that "the right to defend oneself from a deadly attack is fundamental."⁹⁵ In declaring a handgun ordinance invalid as an interference with the rights to bear arms and to self defense, one court stated: "Even though the governmental purpose may be legitimate and substantial, the purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved."⁹⁶ Another court has stated concerning the right to keep rifles and pistols: "The State can take no action which will unnecessarily 'chill' or penalize the assertion of a constitutional right and the State may not draw adverse inferences from the exercise of a constitutional right."⁹⁷

In at least 20 reported opinions, state courts have invalidated various prohibitions on the right to keep and bear arms. E.g., City of Princeton v. Buckner, 377 S.E.2d 139, 143 (W.Va. 1988) (citations). For instance, the West Virginia Supreme

⁹⁴ E.g., 1982-1983 Report of the Attorney General (Virginia) at 755 (1983); 1981-1982 Report of the Attorney General (Virginia) at 112 (1982).

⁹⁵ United States v. Panter, 688 F.2d 268, 271 (5th Cir. 1982).

⁹⁶ City of Lakewood v. Pillow, 180 Colo. 20, 501 P.2d 744, 745 (1972).

⁹⁷ State v. Rupe, 101 Wash.2d 664, 683 P.2d 571 (1984).

Court invalidated a requirement of a license to carry a weapon as follows:

W.Va. Code, 61-7-1 [1975] is written as a total proscription of the carrying of a dangerous or deadly weapon without a license or other authorization. W.Va. Code 61-7-1 [1975] thus prohibits the carrying of weapons for defense of self, family, home and state without a license or statutory authorization. Article III, section 22 of the West Virginia Constitution, however, guarantees that a person has the right to bear arms for those defensive purposes. Thus, the statute operates to impermissibly infringe upon this constitutionally protected right to bear arms for defensive purposes.⁹⁸

A waiting period with routine police scrutiny violates the rights to life, to have arms, and to privacy. Wholly aside from these infringements, the proposed legislation is not based on any known constitutional power and contradicts the constitutional scheme of federalism. It seeks to criminalize transactions in firearms which are wholly unrelated to interstate commerce. It would impose overreaching federal burdens on legitimate activities, despite the fact that the overwhelming majority of states have rejected such laws. The proposed legislation is precisely the kind of infringement that the Bill of Rights was adopted to prevent.

⁹⁸ 377 S.E.2d at 144. The Court added: "We stress, however, that the legitimate governmental purpose in regulating the right to bear arms cannot be pursued by means that broadly stifle the exercise of this right where the governmental purpose can be more narrowly achieved." *Id.* at 146.

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American Rifleman, November 1940

ZERO HOUR

ON SEPTEMBER first we said editorially:

"There is excellent evidence that a politically skillful group intends to try to put over a firearms permit and registration bill in each of the State Legislatures this winter. The effort will be supplemented by attempts to have City Councils adopt permit and registration ordinances. There will be many 'statements' issued to the press about need for such laws because of the 'danger of Fifth Column activities.'"

Late in October the first of these City ordinances was introduced in California and New York.

During the first week in November, newspapers from coast to coast began printing an identical editorial, obviously a "boiler plate" release, beginning with the following paragraph:

"A recent survey by the International Association of Chiefs of Police reveals that not one state has regulations governing the purchase, possession and carrying of firearms which are considered by that organization to be adequate. That such a condition should exist is particularly alarming in view of significant evidence of the activity of subversive groups in this country at the present time," says the association's report on the survey."

Under date of November ninth, International News Service distributed a release to newspapers, beginning with the following:

"Legislatures of the 48 states are being urged to pass uniform laws providing the most stringent firearms act in the country's history as a national defense precaution.

"Approved by the National Conference of Commissioners on Uniform Laws, the act was sanctioned by representatives of 31 states, while others rejected some of its more severe provisions."

Meeting in the Department of Justice offices in Washington on November fourteenth, the "Federal-State Conference on Law Enforcement Problems of National Defense" is being requested to approve a proposal for a Federal-State act, which will bring every rifle and shotgun in the United States under the control of the political authorities in the name of "national defense."

At first glance it would appear that with such a variety of law-enforcement groups supporting similar measures, there must be "something to" the idea.

There is. But the "something" is not concerned with the national defense! It is as narrow-minded and distasteful an attempt by a small group of stubborn individuals to foist their ideas upon the American people as any incident in our political history. It is narrow-minded because it refuses to accept the opinions of impartial individuals and groups, including Congressional Committees, which have exhaustively studied the

problem. It is disgraceful because it attempts to gain its end by capitalizing on the patriotism of American citizens and their officials in the face of living evidence in England that general firearms regulation and control is a serious handicap to national defense and an invitation to looters and other criminals during a national emergency.

The key to the fact that several different organizations have been hoodwinked into supporting the general disarmament idea does not lie in independent studies by these groups, but in the fact that *the same small group of individuals is active in all these apparently separated associations, committees, and conferences!* It is the same small group which has been trying unsuccessfully to put over the same dangerous doctrine for eight years. The cold light of logic has blocked them in Congress and in State Legislatures alike, and they now adopt the cheap tactics of the fear-mongering Nazi propagandist in an effort to win victory by substituting hysteria for reason.

Do not be misled by "big names" which will be used to support this anti-firearms campaign. No man was ever more sincere than Herbert Hoover when he authorized the reduction of the American Navy. Chamberlain was sincere when he followed the policies that brought bitter suffering to an unprepared Britain. Laval and Blum were sincere when they led France to its destruction. Only "big names" can command the confidence of a people sufficiently to override the "horse sense" of the average man and so lead him into trouble, misery, and eventually ruin!

Sportsmen of America, the "zero hour" has come. An unscrupulous, well-organized enemy is on the march. Stand to your arms! Break up this attack, and counter-charge with all the power of which you are capable. You cannot "wait for George to do it" *this time!* Make your position known to your City Councilmen and State Legislators *before* they have these bills presented. Tell the *true* story of this misleading propaganda to your friends. Reply by letter to the editor of every newspaper editorial supporting this dangerous theory. Point to England's experience.

As England, *disarmed and gun-ignorant by reason of the same type of gun law that is now proposed for America*, is forced to turn to American arms plants and to American gun-owners for guns and ammunition for defense against invaders from without and criminals from within!

What folly to say that such a law will serve as "a national defense precaution!" It is more logical to say that the little group who stubbornly strive for such laws are themselves the dupes of the very "fifth column" about which they express so much concern!

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30-06, 51, 45 LUGER, VERY GOOD EXCEPT one upside bush, \$60.00; Enfield, sporter stock, Winchester 23 scope, bore excellent, \$50.00. 30-40, 95 carbine, Lyman receiver, Enfield, bore good, light and accurate, \$40.00. Model-97, 15 gauge rim, reloaded, good condition, \$15.00. Over 7000 rounds ammunition, left from close out of store, from 27 Long Rifle to 300 Magnum & 248. Over 700—30-30 & 1800—. 31 Remington, .33, 18-40, 31-35 & 38 .43-70, 41-90, 303 Savage & British, 35 Super, Rem. Luger, 214, 27 H.P. etc. Wire brushes, oil, accessories, inventories about \$600.00. Present retail prices including above run, all for \$200.00, write for list. E. P. Powell, Junction City, Calif. 8-4

MANLICHER-SCHOENAUER 8.5 MM. CARBINE, by J. Petermann, Pre-War 1, Remondt Salsas N. heavy brother case, excellent except blue on screw, \$100.00. Winchester 23 H. R. No. 18813, Fecker 7M, iron sights, sling, plastic P. G. perfect, \$110.00. Mauser Superior 8 mm. Corrad scope, excellent except stock, have extra stock partly installed, \$70.00. Colt Frontier 75", 44 S&W, C. & S. error, very good, \$135.00. Colt Automatic Military 28, good plus, \$35.00. Colt N. P. 21, good, \$25.00. Spanish 22 Remington, \$17.00. Remondt sent by Gal and Paris 21 8.5. Target pistol, ivory action, small O. A. 8 mm. Revolver, silver rod, screw driver, perfect, \$40.00. B&W Army 31 Automatic, good, \$33.00. Martin-Henry carbine, .410-377, \$17.00. Remondt Sporter 304, S&W barrel, custom stock, left cheek piece, no iron sights, Corrad scope, one lens chipped, \$150.00. Winchester 248. Knag improvement, 44 cal. 7" barrel rough in, good out, special grade stock, \$14.00. Osborne L. Steels, Clayton, New York. 8-4

28 SPECIAL OFFICERS' MODEL, PERFECT. \$70.00. B&W Dwyer, perfect, \$65.00. Winchester Model 72, standard 11 mag., perfect, \$70.00. B&W N. E. A. Model, 15.5 X cupric, perfect, \$70.00. W. P. Day, Police Headquarters, Seattle, Washington. 8-4

FOR SALE—BEAUTIFUL LIGHT WEIGHT 28 gauge Franchot Double with silver pebble trigger, in excellent condition for \$150.00. Cash. Straight Circumax walrus stock 14X134X214, 28 inch barrel, improved cylinder, matted check, weight 24 lbs., shells extra. Great Flier, Bald Mountain, Maine. 8-4

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FOR SALE—SPORTING RIFLE. MANLICHER action, caliber 8mm, 24 inch octagon barrel, matted, plain sights, double set triggers, walnut stock, check piece, checkered pistol grip. Condition good, match original bush, \$40.00. Another C. G. Mansel, Manlicher action, caliber 8mm, 23 inch round and octagon barrel. Stamped Bohler Bush, (Bohler Bush), blatted rib, sling swivel, two chokes iron sights, folding leaf rear. Franchot walnut stock, check piece, checkered pistol grip and fore-end, double set triggers. Fine rifle by a famous maker. Condition good or better. Much original bush, \$15.00. Another, same as above except 23 inch barrel, ivory head front, matted top, silver stock, see \$115.00. Same as above, but with 22 inch barrel, long service, Manlicher action, matted top, top wire drive. Good condition, but much original bush. See condition on 12-gauge rig. Fine sporter—\$35.00. Free specimens, Mauser, Kar 98 and Gew 98 also Manlicher, Kar 98 and Gew 98. Descriptions and prices on request. Any bona fide C.F.O. privilege examination or deposit amount sufficient to cover charges in both directions. Life Member N.R.A. E. Macky, Box 391, Duane Vista, Colorado. 8-4

NEW RIFLES—WINCHESTER MODEL-70, BULL. Cal. cal. 300 H & H Magnum, Lyman 48 rev. \$147.70. Cartridges, \$15.00 per 100. Weaver, 21-410 Over and Under, Tenite stock, \$29.50. Public Sport Shoppe, R-43, 72 S. 16th St., Philadelphia. 8-4

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COLT S.A.A. .357 MAGNUM, EXCELLENT plus, 7 1/2 inch. Red line, adjustable rear, Tenite grip, \$150.00. Colt S.A.A. .44 Special, excellent, 3 1/4 inch full ribbed barrel, Bakky hammer, Newman manufacturing, inflexible rear. Tenite grip, \$43.00. Colt S.A.A. .45 4K inch, King line sight, ivory overland grip, wide trigger, excellent plus, \$45.00. Colt P.P.S., 1 inch, .25 Special, perfect, \$17.50. H&R New Delmar, perfect, \$37.50. Pale Bying eagle ivory grip for .45 A.C.P., \$17.00. Walnut stock 20 gauge, aluminum, \$10.00. Bumpkin case with eagle pistol, money orders only, Express prepaid. J. P. Shaw, Sanford, Tenn. 8-4

WINCHESTERS—37, HEAVY BARREL, LYMAN'S 48 & 12, excellent, \$70.00, 53, 31 WCF, balanced, good 50 cartridges \$15.00, 14 Hornet, selected, very good, 100 cartridges, \$70.00, 86 Winchester deluxe 45-90, rebound, good, \$50.00, 12, 44 WCF, condition like new, \$11.50, Callie—Olinus Model 33 Special, 19, good, carved Blazer barrel, v.g. \$60.00, Frisco 19, 31 WCF, adjustable sight, v.g. \$50.00, Colt rifle, 31 WCF, 38 WCF, very good in, \$70.00, 19, N.E.M.C. \$10.00 per thousand. Revolutionary British heavy face smelter, good \$20.00, messy Blakely, Winchester, SS Scherwin rifle, 20-06 bull-pup, low priced shotgun and revolvers. Liner, mass. Will grant. Crozier's Commerce, Hamer, N. Y.

SELL—COLT .38 AUTOMATIC RIMLESS, semiauto, driver very, very good, \$40.00. Gus Scherwin, Ord, Nebraska.

EXCELLENT 19-18 HORNET, 200 ROUNDS, gun case, anti-rust rope, \$50.00. Roland Langford, Dover, New Jersey.

SAVAGE AUTOMATIC 120-CUTTS COMPEN- vator, beautiful stock, new \$13.00, Winchester E-field, Redfield ramp, vuvor 29EN new, chrome blue, good action, chamber, perfect, some ammunition, \$75.00. Harvey's Modern Gunsmithing with supplement new \$10.00. WANTED—Winchester single shot action or rifle. Raymond Wick, 2118 Cortez St., Chicago, Illinois.

MFD. 30-06 L&J PERFECT, ABOUT 100 ISSUR shells, 1500 large rifle primers, 1912 Enfield, Bishop stock outside good, inside excellent, 72 hi-power Savage MP9 in fair, not good, BM&I tank, 12 hi-power dm. Price on request. T. Hambrick, Clearwater Beach Trolley Pl., Clearwater, Florida.

FOR SALE—RIFLE, KRAG SADDLEY HEAT treated single shot action, 21 Mauser Helmer, heavy barrel, custom stock, scope blocks, excellent, \$100.00. Louis Perry, 2411 Anderson, Chattanooga, Tenn.

FIFTY MODERN HANDGUNS LIST 10c, ALSO plenty of Blazer and rifles, would buy 21 and 31 bullets, Hornet ammunition and Gibbs K&R Traps. State price. K. Green, Mc. Haverhill, N.H.

MODEL 70 WINCHESTER, 210 SWIFT, 295 Waver scope, Remington 7, smooth, also iron sights, fine, excellent \$120.00. Remington 7, smooth, also iron sights, fine, excellent \$120.00. Model EG Savage, caliber 300, brand new, 1 hi-power action, \$150.00, 210-300 Savage, 410 bore, excellent condition, \$110.00, 22 Hi-Power Savage, regular Savage scope like iron sights, balanced, beautiful condition, 7 base \$110.00, Winchester automatic 22 caliber excellent condition, 200 rounds of ammunition, \$60.00, Remington 7, smooth, also iron sights, fine, excellent, 1 base of ammunition, \$100.00, Enfield rimmed, new, Redfield scope, checked and bore, excellent condition, 7 base, new stock, also \$110.00, Chris Wilson, 616 Highland, Irvine, Kansas.

F X 40 B&C BINOCULARS—CENTRAL FOCUS- ing, lightweight, in factory case, \$120.00, 10 x 20 standard, individual focusing, optically perfect, standing weight, outside shows a little wear, original coat \$370.00, net for \$135.00, 5, 8 x 30 Bush, \$25.00, 8 x 30 Army, \$35.00, 5 power Navy field glasses, about 50mm. objectives, \$72.50, BX Winchester rifle scope, like new, \$15.00, German make camera, cut-down and film pack, 6.5 x 5 cm., Zeiss 6.5 lens, rapid Compuser shooter, extra, \$87.50, Kahnt Flashgun and 12 21 bulbs, new, \$30.00, 10 x 14 print dryer with chrome plate, like new, \$15.00, 8 mm. Drives, 700 watt projector in carrying case and extra lens, \$20.00, J. H. P. General Electric, 3 phase, 270 volt, 1800 R.P.M. electric motor, new shaft and bushings, \$51.00, 5 or 10 cell Coss Light, \$4.25, 15 H.P. Callie, Redhead clam "C" outboard motor, model 41 in excellent running condition, \$55.00, Auto Radio, Philips 4 tube, new, \$24.95 and Firestone 8 tube, \$29.50, 20 gear four Johnson double, Kamm model, inside perfect, outside shows showing wear, \$35.00, 20 gear Stevens single, \$12.00, Savage 23-B, very good to excellent, 60 cartridges, \$27.50, 22 L.R. Lamson, 22 L.R. Super-Speed and 290 Savage and Remington Hornum to trade for West home before, Call 57 Automatic with holster and few cartridges, \$27.50, WANTED—Call 230 Automatic with open holster, 8 mm. 500 watt projector either Ampro, Fibre or Levere, Varmeter, 6X or 8X Jumbo Target or 11X or 15X Super Target, 5 H.P. or 10 H.P. Binoculars, Small Lathe, Drill Press or F bench saw, Winchester 70 receiver and stock, Comie Malinowski, South Decatur, Miss.

WINCHESTER 40 STREAMLINED AUTOMATIC 22 scope shot, model with extra 36" tall double barrel, better than excellent, \$125.00, Winchester speedload heavy barrel Hobbals Special 51, excellent \$110.00, Mavin 410 lever action, excellent, \$45.00, SAW 32 LadySmith, excellent, \$50.00, Calli Olinus 22 Target, King rib and sights, shortened action, ruckey, hammer, Rembau trigger, short target prism, perfect, \$125.00, Ranger double hammer 17, excellent, \$15.00, Calli Olinus Model 22 target, excellent, \$45.00, Zeiss 8 x 30 Deltarim zoom form binoculars, excellent, \$125.00, G. Bennett, Box 81, Hartford, Wisconsin.

EXCELLENT WOODSMAN, 45", 54", 500 CAR- tridge, \$35.00 each, 38 Super, \$45.00, cartridge \$2.00 box, 1911 45, good outside, perfect inside, \$60.00, 31 Savage, 35 Colt's Automatic, \$21.50 and \$21.95, Winchester 22 pump, 500 cartridges, \$35.00, Price For Money Orders, No Trade, Seams for reply, Don't miss until asked, Norma M. Rie, Box 27, Jacksonville, Florida.

LDGER 7.65 MILLIMETER J4 BARREL Mauser 7.65 Millimeter, civilian model, both guns are in excellent condition and are in a third case, 3 lenses, Lever shells 3 boxes Mauser shells, each \$123.00, Bill Wilson, 4124 Trumb, Kansas City, Missouri.

WINCHESTER M70 TARGET, 210 SWIFT, LY- man 48 new, Lyman 77 front, scope blocks, excellent to perfect condition, perfect inside, Ficker 34", 4X, M dick mount, new, perfect, 200 rounds Smith crown loads, \$215.00, Winchester M70 Target, 210 Swift, Lyman 48 new, Lyman 27 front, scope blocks, perfect, ivory new, unshod, 180 rounds factory ammunition, \$175.00, Winchester M71, deluxe, factory new, unshod, 30 rounds fresh ammunition, \$100.00, Robert J. McFarer, 179 Lincoln Place, Irvington, N. J.

FOR SALE—MODEL 8 REMINGTON 35 AUTO- matic loader, perfect, \$25.00, 14 gauge double Waver Field new, \$31.00, Iver Johnson 51 revolver 2 1/2" barrel, \$15.00, Colt Automatic 21 new condition with shells, \$39.00, Libco Waters Army 12 gauge double, like new \$26.50, 11 gauge double Baker nicely engraved, Hammer \$22.00, LeVeau 20 gauge automatic \$10 Model, new \$49.50, Everwade Zepher 5 H.P. used 10 hours \$21.00, Donald W. Clark, 30 Front Ave., Greenwich, Conn.

FOR SALE—F1&L 22 L.R. PISTOL 1/4 AND 1/8" barrels. Detachable shoulder stock, good, \$15.00. George Skewes, Scotch Plains, N. J.

KRAG AS ISSUED, VERY GOOD, TOOLS, CASES, primers, \$40.00, Remington Handing Rifle, \$1.00, Springfield, 45-70, 50-70, very good, \$47.00, Want good Winchester ammunition, Ernest Baldwin, Treason, N. J., R. D. 21.

21-51 SAW 7' NOT RECESSED, EXTRA 4 1/2" barrel, \$45.00, 45 SAW, 12 Magazine, 30 cartridges, \$43.00, 35 Special SAW Remington Target, \$45", nicely engraved, \$45.00, 33 D. M. Callie, \$15.00, 23 Call-P-J, 47", 100 cartridges, \$35.00, Winchester 70, 250, 330 Waver and iron sights, about 30 factory loads, \$100.00. All above in fair to good out, perfect in. Earl Carpenter, Court House, Malone, N. Y.

COLT OFFICIAL POLICE COMMANDO 38 SP- ecial 4" barrel, almost perfect \$45.00, Dr. Charles Reynolds, Hastingham, W. Va.

WINCHESTER 311 AUTOMATIC LATEST model, new unshod, extra 10 shot magazine, 30 shells \$93.00, Winchester M95 405, rifle butt, 50 shells, excellent to perfect \$35.00, British SHLE 303 Mark III, 10 shot in frame, v.g. in, better out, good collectors item, scarce, \$50.00, Cash only, Mauser, Joseph Winkler, 113 Howard Ave., Anniston, Conn.

JOE MAGNIFIC, ENFIELD ACTION, CUSTOMED by Chet Paulsen, Alaska scope, Redhead Senior mount, check opening, beautifully stocked, 40 hunting loads, 916 lbs. perfect, \$215.00, Mauser tactical Winchesters, perfect, \$70.00, Two standard Winchester, 916, very good, \$40.00 each, Model "E" McCasland, Ring nose and action, very good, excellent in, \$43.00, Sgt. W. F. Day, Police Officers, Seattle, Washington.

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April 1, 1991

David B. Kopel, Esq.
 106 West Ellsworth Ave.
 Denver, Colorado 80203

Representative Charles Schumer
 Subcommittee on Crime
 Committee on the Judiciary
 House of Representatives
 Washington, DC 20515

Dear Rep. Schumer:

Attached is research on the waiting period issue, which I would like to submit for the record for the Subcommittee's recent waiting period hearings.

I am pleased that the Congressional rules allow citizens to submit written testimony, and I hope the research will be of value to your subcommittee.

It is unfortunate that the actual live testimony before the Subcommittee was so skewed in favor of proponents of the waiting period. It would have been more appropriate to have a balance of those in favor and those opposed. In particular, Ms. Jackie Miller, a gun crime victim, was in the hearing room and eager to testify about why gun controls endanger law-abiding citizens. Ms. Miller has never testified before Congress, and the subcommittee should not have denied her the opportunity. This is particularly true since several of the gun crime victims who testified in favor of the waiting period have testified before Congress already; indeed, Mr. and Mrs. Bredy are essentially professional witnesses and lobbyists.

It is also unfortunate that the subcommittee allowed testimony only from the National Rifle Association, and not from any of the law enforcement or civil rights organizations that oppose the waiting period. The skewed and unfair selection of witnesses defeated the very purpose of the hearing, which should be to provide Representatives with new information to help them evaluate the issue. Instead, the "hearing" had no more in common with a true hearing than a Stalinist show trial had in common with a real criminal trial.

I hope that in the future hearings before the Subcommittee on this important issue will be conducted more fairly.

Sincerely,

David B. Kopel
 David B. Kopel

*The attachment, Independence Issue Paper, No. 4-91, published by the Independence Institute, 14142 Denver West Parkway #101, Golden CO 80401, has been retained in the Subcommittee's files.

KENTUCKY CHAPTER FOR HANDGUN CONTROL
 P. O. BOX 131
 PROSPECT, KY 40059

TO THE HOUSE SUBCOMMITTEE ON CRIME

DEAR CONGRESSMEN,

My life has been changed forever since the day Jack Billings walked into my brother's medical office, put a gun to his head and pulled the trigger. In our family, there is no joy, no happiness. There is only sorrow, anger, and bitterness. Now I find myself appearing on television, giving speeches before groups, writing politicians, organizing meetings all for the purpose of telling people that there must be something we can do to help stop the slaughter of our people.

The tragedies that make the headlines are but a fraction of what takes place everyday. People in opposition to gun control are concerned for their freedom. It is their right to own a firearm. The communist governments in China, Cuba, Russia have taken away guns and oppressed the people. Guns are not the problem, it's the people pulling the trigger. Gun control measures will never stop violence, people will always find a way to kill. The real purpose of gun control is to take all the guns away from all the people and give government total control.

We say "wake up". Get real. This problem comes from poverty, ignorance, drinking, mental disorders, and drugs. There must be things we can do, at all levels, that could help stop the killings and still insure freedom for the people. Couldn't we have safety courses, better care for the mentally ill, better education, better opportunity for the poor, stiffer penalties for criminals? In our state, anyone can walk into a gun shop and walk out with a weapon. Can't we do something to stop giving away guns to criminals, drug addicts, and the mentally deranged without comprising the freedom of the honest person? No, a measure like that won't stop all crime but it doesn't make sense to give the guns away. We ask our leaders to enact legislation that makes sense. Protect our freedom, and help us protect ourselves. Don't take our guns away but stop giving the guns to the wrong people.

All of you will be asked to consider the passage of the Brady Bill. We ask that you consider this bill on its own merit. Remove it from the framework of PAC money, subversive plots to undermine our freedom, its very small part in a

huge problem. It makes sense. You don't smoke on planes, you don't drink at NCAA tournaments, and as a people we are still free.

With Highest Regards,

Joe Long
President

Mr. Albert Johnson

Bettie S. Shadburne

Debra K. Red

John Long

Bobbie Long

**A TIME TO
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Amen House

Testimony of Michael Beard, President of the Coalition to Stop Gun Violence

On behalf of the Coalition to Stop Gun Violence and our 34 member organizations, I would like to thank the subcommittee and especially chairman Schauer for allowing me this opportunity to provide written testimony.

The Coalition to Stop Gun Violence strongly supports H.R. 7, the Brady Bill. The Brady Bill is the only proposal currently before Congress which could possibly have any impact on the number of felons who presently have access to handguns.

Last year, if early estimates hold, will have been the bloodiest year in the history of the U.S. with over 23,000 homicides. Nine of the nation's twenty largest cities experienced a record number of homicides. As in past years firearms, almost exclusively handguns, were used in a majority of these killings.

The American people are fed up with the terror with which they are confronted daily due to the easy availability of handguns. Significant segments of our society live in constant fear for their lives. Nowhere is safe, not the shopping mall, not the schoolyard, not the workplace or even home.

This year more than 15 children were killed by stray gunfire. Four in one week this summer. While these statistics might seem as if they were from war torn cities such as Beirut or Northern Ireland they are not. They are from New York City.

It is time for Congress to act to reduce gun violence by reducing the easy availability of handguns. Since 1968,

convicted felons, people adjudicated mentally incompetent or individuals dishonorably discharged from the armed forces, have been prohibited from purchasing a handgun. However, no enforcement mechanism exists. Today, if a convicted felon wishes to purchase a handgun all he or she must do in most states is complete a form stating that he or she is not a disqualified person. No other steps are taken to ensure a prohibited person does not purchase a weapon.

Surprisingly, a significant number of felons attempt to buy guns from licensed dealers. States that have already implemented waiting periods with background checks have prevented thousands of felons from legally purchasing guns.

The waiting period also provides the advantage of allowing the local police to verify the name and address on the application. By determining the accuracy of these facts the police would be able to prevent a significant amount of illegal gun-running. Gun-running, bringing guns from states with lax laws into states or cities with restrictive laws, would be severely curtailed by a waiting period with a background check. An instant check, which would be unable to verify identification or address, would not stop this practice.

Of course, neither would the Brady Bill if the background check was not executed by the local police. We have little reason to be hopeful that background checks would indeed occur throughout states which do not currently perform them. For this reason we feel the Brady Bill must be amended to include a mandatory background check in order to be completely effective.

The case of Rueben Floyd, recently profiled on the front page of The Washington Post is a useful example. Mr. Floyd was arrested for running

guns from Ohio into gang riddled neighborhoods in Philadelphia. Mr. Floyd and his guns so terrorized his neighborhood that when Floyd was arrested his neighbors cheered.

The paper also reported that Floyd commonly drove to Ohio and, using a false address would purchase twenty or thirty guns at a time. The instant check offered by Representative Staggers as an alternative to the Brady Bill would not have prevented Floyd from making those purchases. Because he was not a convicted felon, Floyd's name would not appear on a the disqualified list of a computerized check and his purchases would have proceeded.

Further without a mandatory background check the Brady Bill might not have prevented this sale either. However, if the local police were required to verify the application they would have realized that Floyd had used a fake address and the sale would have been stopped.

Proponents of the Brady Bill contend that local police in most instances will perform the background check. We have no assurances of this fact. It is reasonable to assume that in some jurisdictions local police will not bother conducting a background check at all. Without mandating a background check it is reasonable to assume that gun running will continue. And gun violence will continue to terrorize many municipalities across the country.

Most of the public assumes that the bill already contains a background check. The media are beginning to note that under Brady any background check is the option of the police.

When I, or members of my staff, debate pro-gun groups on the radio or TV, as we have done often over the last few weeks, the anti-gun control spokespersons are quick to point out that their bill has a background check

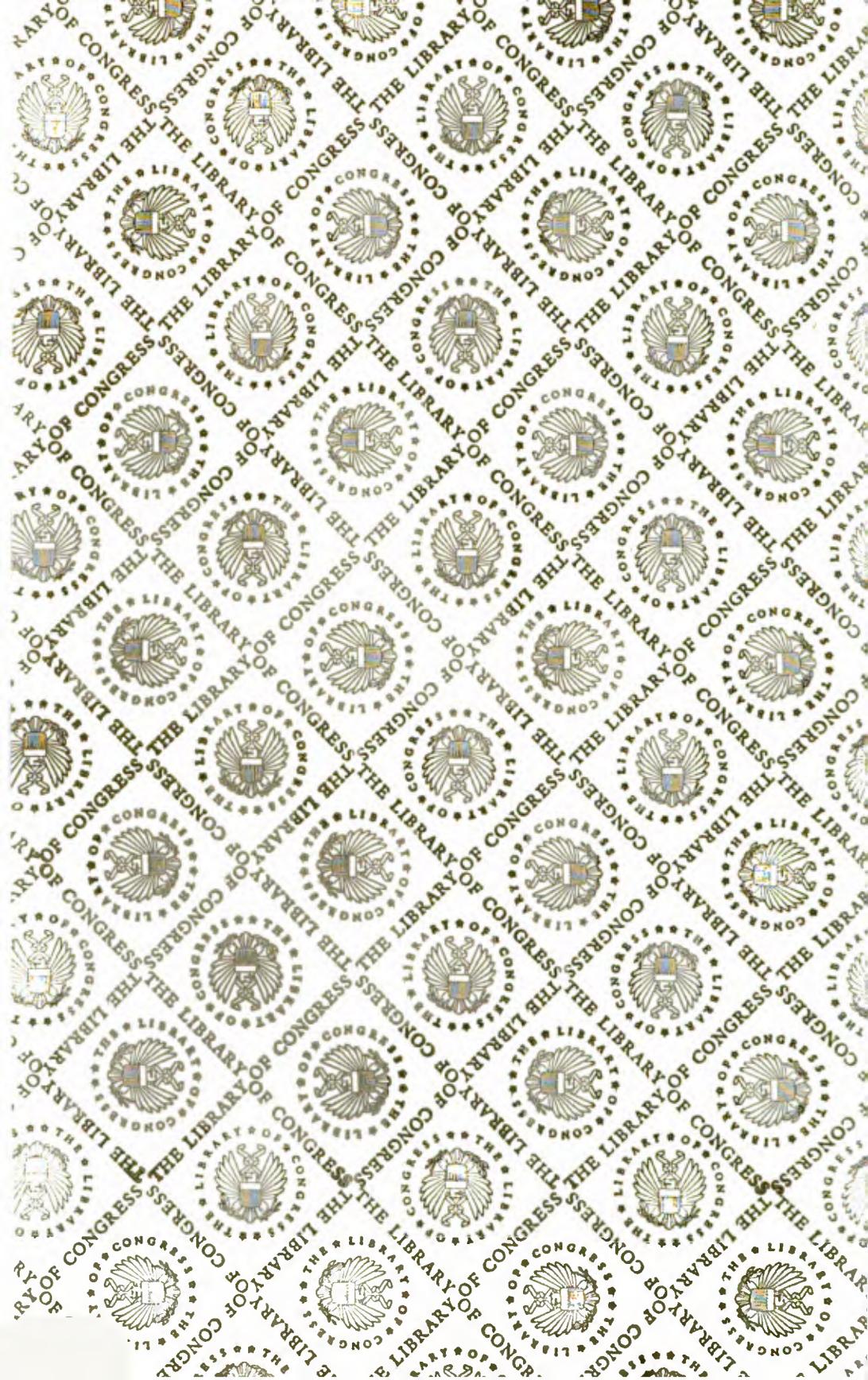
and ours does not. The National Rifle Association even testified before this subcommittee and stated for the first time that they support a background check. It seems only logical then that the waiting period could be supplemented by a background check at no political costs, while improving the effectiveness of the bill immensely. The NRA will not be convincing opposing a bill because of a provision they support.

Undoubtedly, the power of the gun lobby has been overestimated through the years. In both the 1986 and the 1988 election cycles they failed to knock off any of the Congressional incumbents whom they targeted. In 1990 the NRA was just as unsuccessful in attempting to oust Senate incumbents. They targeted Sens. Paul Simon, Tom Harkin and Carl Levin for defeat. All won easily. In the House of Representatives the NRA was slightly more successful, helping to unseat freshmen Rep. Peter Smith of Vermont. Of course, Rep. Smith also made some tactical mistakes himself which contributed to his loss.

The Brady Bill is supported by over 90% of the American public. Voting in favor of it contains hardly any political danger. Enacting the Brady Bill would undoubtedly save lives. Adding a background check would save even more.

The Brady Bill is in no way a panacea to the problem of gun violence. Most homicides still occur between people who know each other and the guns used are often those owned by "law abiding citizens." Still, the Brady Bill will help. There is no plausible reason to vote against it.







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