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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

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In re: Existing Gun Laws

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Verbatim record of hearing held at
the Riverside Inn, One Fountain
Avenue, Cambridge Springs,
Pennsylvania, on Wednesday,
August 25, 1999
10:00 a.m.

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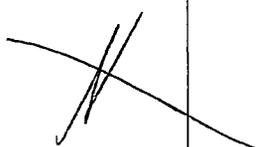
MEMBERS OF THE COMMITTEE

- Hon. Thomas P. Gannon, Chairman
- Hon. Babette Josephs
- Hon. Stephen Maitland
- Hon. Kathy Manderino

ALSO PRESENT:

- Brian Presk, Executive Director and Chief Counsel
- Hon. Teresa Forcier
- Hon. Tracey Seyfert

Reported by:
Nancy J. Grega, RPR



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1 CHAIRMAN GANNON: The House Judiciary
2 Committee will come to order. Today we're holding
3 public hearings in delightful Cambridge Springs.
4 The purpose of these hearings is with respect to
5 existing gun laws. The purpose of this hearing is to
6 get an overview of existing gun laws in Pennsylvania.
7 As many of you know, there are periodic requests for
8 strengthening or changing gun laws and on the other
9 side there are observations that we do have a number
10 of existing laws in Pennsylvania and some people
11 question the degree of enforcement of those existing
12 laws.

13 So, what the Judiciary Committee wants to do
14 is get some input on existing laws and the degree of
15 enforcement or nonenforcement of those laws and their
16 impact on guns and violence in our society.

17 Our first witness -- a little housekeeping
18 before I begin. If any of our witnesses have written
19 testimony, what I would appreciate you do is my staff
20 will be in the back of the room. If you would take
21 your written testimony and hand it to my staff in
22 the back of the room so that they can make it avail-
23 able to the committee members, I would appreciate it
24 very much.

25 With that, I would like the committee members

1 who are here at the table to introduce themselves.

2 REPRESENTATIVE MANDERINO: I am Kathy
3 Manderino, Philadelphia County.

4 REPRESENTATIVE SEYFERT: Good morning. I'm
5 Tracey Seyfert from Western Erie and Northwestern
6 Crawford County, the Fifth Legislative District.
7 Nice to be here.

8 MR. PRESK: Good morning, Brian Presk,
9 Chief Counsel for the Committee.

10 REPRESENTATIVE MAITLAND: I'm Steve
11 Maitland from the 91st District which is the
12 Gettysburg area and Adams County.

13 REPRESENTATIVE JOSEPHS: Good morning,
14 Babette Josephs from the middle of Philadelphia.

15 CHAIRMAN GANNON: My name is Tom Gannon.
16 I'm from Delaware County, the 161st Legislative
17 District. We have a lot of witnesses today. We are
18 on a tight time schedule. I know I have to catch a
19 flight. I think some of the other members have to
20 catch flights later today. So, when you present your
21 testimony, please keep that in mind; that we are on
22 a tight time schedule. With that I would like to
23 introduce our first witness, The Honorable Teresa
24 Forcier in whose district we are holding these
25 hearings. I would like to welcome Teresa and you

1 may begin when you are ready.

2 REPRESENTATIVE FORCIER: Thank you, Mr.
3 Chairman. Good morning. I would like to welcome you
4 to the great northwest, Crawford County, Cambridge
5 Springs, and by the way, if you don't know, this is
6 my hometown. I also am very please that you are
7 staying here at the historic Riverside Inn. It's
8 absolutely beautiful. I would like to thank a few
9 people before I get started. I'd like to thank my
10 husband, Kevin, my staff, Brian Presk, Rod Corry,
11 Roy Pitman and Harry Schneider for helping the
12 Judiciary Committee set up this hearing and today's
13 testifiers. Without their help, today's hearing
14 would not have happened.

15 I would like to thank my colleagues, the
16 Members of the Judiciary Committee of the
17 Pennsylvania House of Representatives, and especially
18 thank Chairman Gannon, for the opportunity to appear
19 before you today. Since this is my home district, I
20 would also like to take the opportunity to welcome
21 all of the people from Crawford County who were able
22 to attend. And finally, greetings to all those who
23 came in from across the great Commonwealth of
24 Pennsylvania. Before I open my remarks specifically
25 dealing with firearms, I would like to mention an

1 encouraging trend that is obviously linked, in the
2 minds of many, to firearms issues. Recent studies by
3 both the United States Department of Education and
4 the Centers for Disease Control and Prevention have
5 shown a marked decrease in violence in schools and in
6 the prevalence of guns in schools. I think this is
7 great. It sounds like Eddie Eagle is doing his job.

8 Today's hearing involves a topic which I
9 consider to be of vital importance to myself and
10 my constituents. The right of the individual to
11 transfer, possess and use firearms is at the core of
12 traditional American concepts of liberty. The right
13 to keep and bear arms has always been defined, at
14 least in this nation, the relationship between a
15 citizen and the government. We, as legislators
16 considering appropriate regulation of conduct in this
17 area, must continually be cognizant that firearms
18 rights are not granted, but merely recognized, by the
19 Pennsylvania Constitution.

20 Article 1, Section 21 of the Pennsylvania
21 Constitution, states that "the right of the citizens
22 to bear arms in defense of themselves and the State
23 shall not be questioned." This is the point at which
24 all inquiries concerning current firearms' laws, as
25 well as future firearms' legislation, should begin.

1 This constitutional guarantee is the yardstick by
2 which all laws dealing with firearms must be measured.
3 Keeping the language of our State's formative document
4 in mind, I will offer a few comments on present gun
5 laws.

6 The Pennsylvania Uniform Firearms Act of 1995
7 also known as Chapter 61 of the Pennsylvania Crimes
8 Code, has been the focus of much attention in recent
9 months in the mainstream press. I would like to take
10 this opportunity to agree with the sentiment of an
11 editorial piece which appeared in the August 5th, 1999
12 edition of the Philadelphia Inquirer. This editorial,
13 and keep in mind that I did say the Philadelphia
14 Inquirer, a paper whose reading of the Bill of Rights
15 normally stops right after the period at the end of
16 the First Amendment, this editorial upheld
17 Pennsylvania's firearms laws as a model worthy of
18 emulation by the federal government. While I have
19 my own quarrels with certain provisions of the
20 Uniform Firearms Act, today's discussion concerns the
21 current state of the law, specifically what our law
22 does that is right rather than what changes might be
23 beneficial for the law abiding citizens of the
24 Commonwealth.

25 While individuals who will testify later

1 today may provide a more comprehensive overview of
2 all of our state's firearms laws, I would like to
3 highlight a few of the important provisions which are
4 often overlooked.

5 In Pennsylvania, it is generally illegal for
6 one private individual to sell a handgun to another
7 unless that sale is conducted by either a licensed
8 firearms dealer or a county sheriff's office. Instant
9 background checks are conducted and handguns are kept
10 out of the hands of criminals. This requirement in-
11 cludes gun shows, handguns listed in the newspaper and
12 firearms sold at auction. The only exceptions, the
13 only private handgun sales which may be accomplished
14 without background checks into criminal records and
15 mental health records and all of the associated paper-
16 work, are transfers between a husband and wife, trans-
17 fers between a parent and a child, and transfers be-
18 tween a grandparent and a grandchild. And those limit-
19 ed intra-family transfers are still governed by all of
20 the prohibitions applicable to fugitives from justice,
21 violent criminals, et cetera.

22 Pennsylvania law denies many individuals the
23 right to own any firearm based on certain past
24 behaviors. I applaud those provisions of the state
25 law which prohibit murderers and rapists from owning
firearms. I agree that individuals convicted of

1 serious drug offenses and various violent crimes
2 should not be allowed to possess a firearm. Fugitives
3 from justice and illegal aliens should be subject to
4 firearms disabilities, as is currently provided in
5 Pennsylvania law. I do not believe that these pro-
6 hibitions violate the constitutional right to bear
7 arms when the loss of that right is tied to culpable
8 individual behaviors.

9 Of course, Pennsylvania law also impairs the
10 firearm rights, without due process, of those
11 individuals who have been subjected to preliminary
12 involuntary examinations under the Mental Health
13 Procedures Act. And Pennsylvania laws prohibit and
14 impose a ban on new firearms purchases for multiple
15 DUI convictions even if the DUI convictions had
16 absolutely nothing to do with firearms. That said,
17 however, I will return my focus to those provisions
18 of the Commonwealth's firearms' laws which are
19 constitutionally defensible.

20 Pennsylvania law prohibits anyone under the
21 age of 18 from possessing a handgun unless that
22 individual is either lawfully hunting or trapping or
23 is under adult supervision and engaged in target
24 shooting, safety training or competitive shooting.
25 The law also permits, with adult supervision, an

1 individual under 18 to transport an unloaded handgun
2 for a lawful purpose, such as what I just previously
3 mentioned, target shooting, et cetera. Anyone who,
4 in violation of the law, knowingly provides a handgun
5 to an individual under 18 years of age is guilty of
6 a felony criminal offense.

7 Finally, Pennsylvania law also strictly regu-
8 lates the lending of handguns to other adults. A
9 firearm owner may, while in his home or business, lend
10 his handgun to another individual as long as it does
11 not leave his home or business. You are not in
12 violation of the law if you take a guest down to
13 your game room, unlock the gun cabinet and let him
14 see your new pistol. Otherwise, unless the borrower
15 of a handgun is licensed to carry a concealed weapon
16 or exempt from licensing, such as police officers, or
17 hunting, trapping or taking a hunter safety course
18 or engaged in certain approved firearms courses or
19 competitions, the lender of the firearm has committed
20 a criminal act. This gives new meaning to the old
21 phrase "neither a borrower nor a lender be."

22 All of these laws, and many more, actually
23 pages and pages of laws, are already on the books
24 here in Pennsylvania. The General Assembly has been
25 responsible for enacting legislation that is both

1 proactive and reactive, and we know that. We have
2 passed legislation to prevent criminals from obtaining
3 firearms and have also passed legislation to punish
4 those who violate firearms laws. Now it's time for
5 some of the offenders in our big cities to receive
6 good, long prison sentences. If they are in jail,
7 they aren't committing crimes.

8 I hope this overview of some of the forgotten
9 provisions of Pennsylvania's gun laws, especially the
10 applicable constitutional language, has been of some
11 help to the Judiciary Committee, I look forward to
12 listening to the rest of today's speakers as they
13 explain the full scope of the current state firearms'
14 laws. And for those of you who would advocate more
15 onerous statutory burdens on honest Pennsylvania gun
16 owners, I finish my comments with a quote penned by
17 one of our preeminent founding fathers, a man who has
18 had a lasting influence on Pennsylvania, Benjamin
19 Franklin. Good old Ben once wrote that, "They that
20 can give up essential liberty to obtain a little
21 temporary safety deserve neither liberty nor safety."

22 Thank you, Mr. Chairman.

23 CHAIRMAN GANNON: Thank you, Representative
24 Forcier. You are invited to sit up here with the
25 rest of the panel.

1 REPRESENTATIVE FORCIER: Thank you very
2 much.

3 CHAIRMAN GANNON: The first witnesses are
4 Major Ronald Hackenberg, Director of the Bureau of
5 Identification, Pennsylvania State Police, and Ron
6 Plesco, Esquire, Executive Policy Specialist with
7 the Pennsylvania State Police. Welcome, Major
8 Hackenberg and Mr. Plesco. You may begin when you
9 are ready.

10 MAJOR HACKENBERG: Thank you, Mr. Chairman.

11 Mr. Chairman, Committee Members, on behalf
12 of the Pennsylvania State Police, I welcome this
13 opportunity to testify on existing firearms laws and
14 regulations within this Commonwealth. The Department
15 recognizes the critical nature of this issue as it
16 relates to the safety of the citizenry of the
17 Commonwealth.

18 To begin, the best summary of the intent of
19 the existing firearms law, which was provided in the
20 preamble to Act 17 of 1995, amending the Pennsylvania
21 Uniform Firearms Act, and I quote:

22 "The General Assembly hereby declares
23 that the purpose of this act is to provide
24 support to law enforcement in the area of
25 crime prevention and control, that it is
not the purpose of this Act to place any
undue or unnecessary restrictions or
burdens on lawabiding citizens with
respect to the acquisition, possession,

1 transfer, transportation or use of firearms,
2 rifles or shotguns for personnel protection,
3 hunting, target shooting, employment or
4 any other lawful activity, and that this
5 act is not intended to discourage or
6 restrict the private ownership and use
7 of firearms by law-abiding citizens for
8 lawful purposes or to provide for the
9 imposition by rules or regulations of
10 any procedures or requirements other than
11 those necessary to implement and effectuate
12 the provisions of this Act. The General
13 Assembly hereby recognizes and declares
14 its support of the fundamental constitutional
15 right of the Commonwealth citizens to
16 bear arms in defense of themselves and this
17 Commonwealth."

18
19 Individuals who have been convicted of
20 specific enumerated offenses listed in Section
21 6105 of the UFA, or fall under other conditions
22 identified in the Act, shall not possess, use,
23 manufacture, control, sell or transfer firearms.
24 Such a person may be identified as having a firearm
25 disability and will be prohibited under state and/or
federal law from possessing, using, manufacturing,
controlling, selling, or transferring a firearm.

A prohibited individual may make application
to the Court of Common Pleas for relief from the
disability imposed by the UFA and restoration of the
individual's rights to purchase a firearm. If an
individual is disabled under federal law, a federal
relief from disability is required from the Secretary
of the Treasury of the United States. A provision in

1 the UFA recognizes that the U.S. Congress has not
2 appropriated sufficient funds to enable the Secretary
3 of the Treasury to grant relief from federal dis-
4 ability. Consequently the UFA provides a remedy by
5 permitting such an individual to seek a full
6 Governor's pardon of the disabling offense.

7 In cases where an individual is prohibited
8 under both state and federal law both remedies must
9 be obtained to remove the firearm disability.

10 The UFA establishes criteria for circumstances
11 where firearms are not to be carried or transported
12 without a license. It is illegal to carry a loaded
13 firearm in any vehicle or a concealed firearm, except
14 in an individual's place of abode, or fixed place of
15 business, without a valid Pennsylvania License To
16 Carry Firearms.

17 With regard to carrying firearms in
18 Philadelphia, no person shall carry a firearm at
19 any time upon the public streets, or on public
20 property in the city, unless the individual is
21 licensed to carry a firearm.

22 Our county sheriffs are charged with the duty
23 to conduct investigations on all applicants for a
24 license to carry firearms. This investigation includes
25 a Pennsylvania Instant Check System which we refer to

1 as PICS background check. The license fee is \$19.00.
2 The sheriff may take up to 45 days to conduct this
3 investigation. The criteria for determining an
4 individual's eligibility to obtain a license to carry
5 is very similar to the criteria for individuals who
6 are not to possess, use, manufacture, control, sell
7 or transfer firearms, although there are some specific
8 criteria unique to the licensing background check.
9 One unique element is that the county sheriff does
10 have the latitude to consider an individual's charact-
11 er and reputation or potential to act in a manner
12 dangerous to public safety, in determining an appli-
13 cant's eligibility to obtain a license to carry a
14 firearm. This element is not a factor in an
15 individual's right to possess a firearm.

16 Another firearms permit, the Sportsman's
17 Firearms Permit, may be obtained through the
18 county treasurer for a fee, not to exceed \$6.00.
19 Sportsmen, age 18 or older, may obtain the Sport-
20 man's Firearms Permit for the purpose of hunting,
21 fishing or furtaking. Sportsmen must carry a valid
22 hunting, furtaking or fishing license in conjunction
23 with a valid permit and must be engaged in hunting,
24 furtaking or fishing, or en route to or from this
25 activity.

1 Minors under the age of 18 in Pennsylvania,
2 may not possess or transport a firearm. A minor may
3 use a firearm under supervision of a parent, grand-
4 parent, legal guardian or other adult with consent
5 for the following activities; safety training, lawful
6 target shooting, organized competition shooting,
7 hunting or trapping. Any person who knowingly and
8 intentionally delivers or provides a firearm to a
9 minor in violation of this chapter commits a felony
10 of the third degree.

11 The Uniform Firearms Act provides for the
12 sale and transfer of firearms within the Commonwealth.
13 Licensed Pennsylvania Firearm Dealers are required
14 to conduct a background check through the PICS system
15 to determine an individual's eligibility to acquire
16 a firearm . Handgun purchasers are also required to
17 complete an Application/Record of Sale form. The
18 form is not required for the sale of a long gun. A
19 PICS background check is not required for the private
20 transfers or sale of long guns. Also, because an
21 Application/Record of Sale is not required to be
22 completed on the sale of a long gun by a dealer, if
23 individuals misrepresent themselves as not being
24 prohibited, which is a felony of the third degree,
25 they do not have to self-certify on the state document,

1 as they would if they were purchasing a handgun.

2 Copies of all Application/Records of Sale
3 form are submitted with the Surcharge Remittance form
4 to the State Police within fourteen days of the
5 transaction. The forms are prescribed by the
6 Department and copies are required to be retained at
7 the dealership for 20 years. Dealers are also direct-
8 ed that any confidential information obtained on an
9 individual shall be used for the sole purpose of a
10 firearms transaction background check.

11 The UFA no longer exempts wholesale sales
12 from the requirement to complete Application/Records
13 of Sale on each firearm sold, or to conduct a PICS
14 background check on Federal Firearm Licensees who are
15 not licensed here in Pennsylvania.

16 The law establishes various penalties for
17 violations of the UFA. Violations are generally a
18 felony of the third degree unless stated otherwise.

19 In compliance with the UFA, the Pennsylvania
20 State Police has established the Pennsylvania Instant
21 Check System to conduct background checks for deter-
22 mining eligibility of individuals to acquire firearms
23 and applicants for a license to carry firearms. A
24 toll-free telephone number has been established for
25 firearms dealers and for county sheriffs for

1 instantaneous access to the PICS background check
2 system.

3 Databases searched in the background check
4 process are: Pennsylvania criminal history, juvenile
5 records, wanted person files, mental health files,
6 protection from abuse files and national records
7 which include federal and other states' criminal
8 history, national wanted files, national protection
9 orders, national mental health, military records,
10 and renounced citizenship information.

11 The mental health database was established
12 by the Pennsylvania State Police as a part of the
13 PICS background check, as required by law. County
14 Mental Health/Mental Retardation administrators,
15 Mental Health Review Officers and Judges of the Courts
16 of Common Pleas are required, within seven days of an
17 involuntary commitment or adjudication, to submit
18 notification to the State Police of all individuals
19 who have been involuntarily committed to a mental
20 institution pursuant to Sections 302, 303 or 304 of
21 the Mental Healthcare Procedures Act or if they have
22 been adjudicated incompetent. This database is con-
23 sidered confidential information and its sole purpose
24 is for the background check and enforcement of the
25 UFA.

1 Descriptive information on individuals for
2 whom a background check was conducted and resulted
3 in an approval determination, may not be retained by
4 the Department. Denial information is retained in
5 the event the denied individual challenges the
6 records resulting in the prohibition.

7 Individuals who have had a firearm sale or
8 transaction denied due to a PICS background check
9 may challenge the records for which he or she was
10 denied.

11 The denial challenge is researched by our
12 PICS staff and a response is provided to the
13 individual, either reversing or upholding the denial,
14 and including the reason for the denial. At this
15 time there is no fee charged to the individual for the
16 research related to the challenge process.

17 The UFA imposes a \$3.00 firearms sales
18 surcharge on all taxable firearms sales. The in-
19 stantaneous background check fee is \$2.00 and that is
20 collected for all background checks conducted on the
21 sale or transfer of firearms. Both fees are collect-
22 ed by the firearms dealers and forwarded with the
23 appropriate forms to the Pennsylvania State Police and
24 are then deposited in the Firearms Instant Records
25 Check Fund.

1 The Department has prepared and distributed
2 firearm law summary and safety brochures to firearm
3 dealers to be provided to the general public.

4 Upon confiscation of a firearm, State Police
5 and local law enforcement must take reasonable efforts
6 to determine the lawful owner of the firearm and
7 return the firearm to the owner if the owner is not
8 prohibited.

9 The Department is also required to annually
10 compile and report to the General Assembly statistics
11 on the number and types of firearms sold, the number
12 of firearm sales denied, the number of challenges
13 submitted on denial and the number of final reversals,
14 as well as a summary of activities related to the
15 record check process.

16 The chief or head of any police force or the
17 county sheriff shall grant a firearms sales license
18 to reputable applicants. These licenses are valid
19 for three years. There is no provision for a PICS
20 background check to be conducted on the applicants.
21 The fee for obtaining the license is \$30.00 and is
22 paid to the County Treasurer. The business must be
23 carried on at the premises designated in the license
24 or at a lawful gun show or meet. The law further
25 defines specific guidelines the firearm dealer must

1 comply with under state law.

2 The decision of the chief of police, sheriff,
3 county treasurer or other officer is subject to
4 judicial review. An order sustaining a refusal to
5 grant a license shall not bar the individual from
6 submitting a new application after one year.

7 The loaning of a firearm is prohibited by
8 the Act, with exceptions. Altering or obliterating
9 marks of identification on a firearm is prohibited.
10 A violation under this section is a felony of the
11 second degree.

12 The provisions of the UFA do not apply to
13 antique firearms.

14 No municipality may regulate the lawful
15 ownership, possession, transfer or transportation of
16 firearms, ammunition or components. It is unlawful
17 for any person to possess, use or attempt to use
18 teflon-coated bullets while committing a crime of
19 violence.

20 Individuals, when carrying a concealed
21 firearm or in a vehicle, shall produce the license
22 for inspection when requested by a law enforcement
23 officer.

24 Nothing in the UFA prohibits a person from
25 lawfully acquiring a long gun in a jurisdiction

1 outside of our Commonwealth.

2 I hope that this testimony has provided you
3 with an overview of the UFA, and I would like to turn
4 it over to Mr. Plesco to talk about our PICS system.

5 MR. PESCO: Mr. Chairman, members of the
6 Committee, Representative Forcier, thank you again
7 on behalf of the Commissioner and the Pennsylvania
8 State Police for inviting us to attend and testify
9 here today. First off, what I would like to do is
10 discuss a document that a lot have in front of you
11 and those of you who do not have it in front of you,
12 it is available in the back of the room. On the
13 front of the document it is entitled Pennsylvania State
14 Police, Pennsylvania Instant Check System. In the
15 document the first couple pages contain Major
16 Hackenberg's testimony that he just went through.
17 The next set of pages contain the slide presentation
18 that I am about to present to you, a power point
19 presentation, and after that we have included a copy
20 of a record of sales form to let you see how it looks
21 and also a flow chart that we are going to go through
22 in some detail to give you an idea of how the PICS
23 process works and then a copy of the Uniform Firearms
24 Act and also a copy of the Gun Control Act of 1968.

25 With that, what I'd like to do is call your

1 attention to the screen behind you. I'm sorry for
2 having to ask you to turn around. Today I'd like to
3 go over a few things. Major Hackenberg talked about
4 the Uniform Firearms Act. I'm going to touch on the
5 Uniform Firearms Act as it applies to the Pennsylvania
6 Instant Check System and also touch on the Gun Control
7 Act of 1968 and then I'd like to go through in some
8 detail the PICS process, the Pennsylvania Instant
9 Check System process, what happens when an individual
10 calls into the system, et cetera. I'll give you a
11 demonstration. Actually, yesterday we recorded a live
12 call to the system for myself. Fortunately, I passed
13 the check and I'm able to use that presentation today
14 and then the Major and I will handle any questions
15 you might have.

16 As the Major indicated and Representative
17 Forcier indicated in her testimony, Act 17 and Act 66
18 of 1995 are considered the most major amendments to
19 the Uniform Firearms Act in years. Since that time,
20 the Uniform Firearms Act has been amended three times.
21 The most significant amendment affecting the
22 Pennsylvania State Police occurred last year, Act 70
23 of 1998, and the reason I say significant, it put us
24 sort of behind the eight ball, if you will. It gave
25 us about two and a half weeks to get up and running

1 with an instant check system for handguns. Prior to
2 that, Act 17 and Act 66 required the Pennsylvania
3 State Police to have an instant check system up and
4 running by October of 1999. That's October of this
5 year. However, with the passage of Act 70 in June
6 of last year, we had about two and a half weeks to
7 get the system up and running. Thankfully, on July 1,
8 1998, with the participation of the sheriffs and
9 firearms dealers, we were able to establish the system
10 and get it running.

11 As the Major touched on, the Uniform Firearms
12 Act regulates the purchases of firearms, firearms
13 dealers and county sheriffs. An important distinction
14 between the Uniform Firearms Act and the federal law
15 is listed on the screen and that is that the Gun
16 Control Act and Brady Amendments to the Gun Control
17 Act since 1968 regulates firearms dealers only,
18 basically what is referred to in the firearms
19 community as a FFL, Federal Firearms Licensees. This
20 distinction is important as Pennsylvania Law does
21 both. It regulates purchases, possession, et cetera
22 and it also regulates dealers and county sheriffs
23 whereas the Gun Control Act regulates FFL's, Federal
24 Firearms Licensees. I'll explain to you why that
25 distinction is important in a couple of minutes.

1 The Gun Control Act of 1968 and the
2 subsequent amendments and implementing regulations
3 have set up a system whereby if a state has its own
4 instant check system, that state is considered a POC
5 or a Point of Contact State pursuant to federal law
6 and implementing regulations. A Point of Contact
7 State like Pennsylvania and 15 other states, there
8 are 16 total in the United States, have a system in
9 place that links to the National Instant Check System
10 to do a criminal background check on a firearms
11 purchaser.

12 In Pennsylvania, as the Major said, if you
13 purchase a handgun, you must complete an application/
14 record of sales form and a copy of that is included
15 in your packets. That form is completed by the
16 dealer. That form I have on the board, operator
17 license number based. It's the Pennsylvania Drivers
18 License based. You do not have a Pennsylvania
19 driver's license, the system can still process a call
20 from a dealer based upon your purchase, et cetera;
21 however, the system has to kick you out to an operator.
22 It cannot process it in an automated fashion.

23 In Pennsylvania, as the Major recognized in
24 his testimony, a PICS check is not required for the
25 private transfer of a long gun. An example would be

1 a transfer of a 12 gauge from myself to the Chairman
2 or from the Chairman back to me. That would not
3 require a PICS check on me, the receiver, or the
4 Chairman, the receiver of that long gun.

5 The PICS process, as I said before,
6 sheriffs and firearms dealers are the only ones that
7 are allowed to use Pennsylvania Instant Check System.
8 The system is protected by two unique security
9 measures. One is a ID. The second is a password.
10 Each dealer and sheriff has a numerical password and
11 a numerical ID that when they call the system, they
12 can enter. Therefore, anyone else cannot call that
13 system unless they have that unique password and ID.

14 I refer you now to a flow chart that is
15 contained in your handouts and also its contained
16 on the screen behind you. The flow chart goes
17 through the process of a call to the Pennsylvania
18 Instant Check System. The first thing that happens,
19 if you can see up in the left-hand corner, you can
20 see that the dealer/sheriff calls in and I have on
21 there IVR. A IVR is the interactive voice response
22 system. It is basically a computer, sort of like
23 calling some automative telephone company or credit
24 card company. A computer generated voice will ask
25 the dealer for their ID and for their password. Once

1 that happens, the dealer is then prompted to enter
2 in the person's driver's license number if they have
3 a PA driver's license. At that point that driver's
4 license number, our computer takes that driver's
5 license number and goes over to the PennDOT computer
6 and the PennDOT computer, it picks out the person's
7 name, date of birth and Social Security. It brings
8 that back and it reads the name, the date of birth
9 back to the dealer for authentication, identification
10 purposes. So, no one can misrepresent themselves in
11 buying a gun. The dealer also has to have a photo
12 ID. The Pennsylvania driver's license is also another
13 form of a photo identification. At that point, the
14 system then would query what we call the database.
15 It's two sets of databases. One set is the
16 Pennsylvania database and the other set is the Federal
17 database. The Pennsylvania databases are contained
18 in this screen and also in your packet. I'll go
19 through them briefly. The first is the Pennsylvania
20 Criminal Records History. The Pennsylvania State
21 Police is required by law, the Criminal Record
22 Information History Act, to keep all criminal record
23 information in a respository within the State Police.
24 The majority of that is computerized. So, if I have
25 ever been arrested in Pennsylvania, the Pennsylvania

1 State Police have a copy of that arrest. They also
2 hopefully have the disposition. I say hopefully,
3 and I'll get into that in a second. Most of the
4 records do have the disposition. The ones that don't
5 are troublesome. Within the Criminal Record History
6 the Uniform Firearms Act is unique in that it is one
7 of the few acts in the United States that requires
8 the Pennsylvania Instant Check System or the record
9 checker to check criminal history of a juvenile,
10 Juvenile Criminal Record History. Some of you may be
11 aware of the Judiciary Committee, traditionally
12 juvenile records are sealed. For the purposes of the
13 Uniform Firearms Act, they are not. It also contains
14 an active protection from abuse orders database, PFA.
15 A PFA database, if a person has done harm or threaten-
16 ed harm to a spouse, et cetera, a PFA is issued, a
17 civil PFA is issued. We have a database of all of
18 the PFAs issued that are active in the Commonwealth.
19 That database, if it restricts a person's right to
20 possess a firearm, it's hit off of by the
21 Pennsylvania Instant Check System and, therefore,
22 if I'm in there and I have a PFA that restricts my
23 right to possess, the database will send up that I
24 cannot possess. We also have a mental health database.
25 The Major went through that in detail. And last we

1 have a wanted/missing persons file. These are
2 warrants, et cetera. To date as of this week we have
3 captured what we term, I guess, Pennsylvania's
4 dumbest criminals. These unlucky individuals were
5 about a hundred individuals as of yesterday that went
6 into firearms dealers with a wanted warrant, some of
7 them with a felony wanted warrant, and attempted to
8 purchase a firearm. Our thoughts or maybe they
9 thought that the Pennsylvania Instant Check System
10 wouldn't catch them. What we did in those cases is
11 contact local law enforcements that were holding
12 the warrant, verified the warrant, contacted the
13 local law enforcement where the gun dealer was
14 located and they went out and arrested the person.

15 In addition to the Pennsylvania databases,
16 after the query goes from the Pennsylvania databases,
17 again, the name, date of birth, Social Security
18 number, it goes down to the National Instant Check
19 System and if you are familiar with computers, the
20 National Instant Check System is best considered a
21 routing system or in laymen's terms, an operator, a
22 switchboard. What it does is it takes that query and
23 sends it out to a handful of databases; again, name,
24 date of birth, Social Security. The first database
25 it hits is criminal record history, NCIC, which is a

1 compilation of all the criminal record histories
2 from every state in the United States which we call
3 triple I, Interstate Identification Index. The
4 second it hits INS, **Immigration** and Naturalization
5 Service, if you have ever renounced your citizenship,
6 you're an illegal alien, et cetera, you can not pur-
7 chase a gun in the country or in Pennsylvania.

8 The third database it hits is the Department
9 of Defense Military Records. If you have gone AWOL
10 from the military, if you have a military criminal
11 record, you cannot purchase a firearm in the country.

12 And third, similar to Pennsylvania, there is
13 a civil commitments file that is here. It's a
14 national compilation of those states that participate
15 of civil commitments, a person has been involuntarily
16 committed to a mental institution.

17 And finally, like Pennsylvania, there is a
18 Protection From Abuse Order, what they call, federal
19 system calls Protection Orders which is a national
20 compilation of participating states databases on PFAs.

21 What I'd like to do for you now and let me
22 turn this up is go through a call. Hopefully, it
23 will kick on here in a second. This is a call I made
24 yesterday to the system itself.

25 (A recording of the call was played for

1 the committee.)

2 MR. PLESCO: A lot of people like to see
3 what this system looks like. It's on the wall behind
4 you. It's a wall of computers basically.

5 The authentication taking place right now
6 is the dealer password and ID are being entered.

7 This would be my driver's license number
8 going into the system.

9 Where we are in the flow chart is right
10 here (indicating).

11 REPRESENTATIVE MANDERINO: If I know the
12 tones, I would now know your driver's license?

13 MR. PLESCO: Yes. Now, the system goes
14 over to PennDOT to verify my driver's license number.
15 I have edited -- for identification purposes, I have
16 edited my information out except my last name.

17 Were that a normal call, Social Security,
18 date of birth, et cetera would be read to the dealer
19 for identification purposes.

20 REPRESENTATIVE MANDARINO: Did you edit out
21 your Social Security number?

22 MR. PLESCO: Yes, ma'am.

23 REPRESENTATIVE MANDARINO: But it would
24 have told the person on the phone verbally what the
25 Social Security number is?

1 MR. PLESCO: And they fill that out on our
2 form and on a ATF 4473 Form.

3 And that's basically to check. The
4 dealer is given a unique approval number ~~that~~ he
5 puts on the form and sends it to us.

6 The Pennsylvania Instant Check System
7 employs a variety of operators. As you see on the
8 flow chart, for those calls that contain an out-of-
9 state resident or a person without a driver's license
10 or from some rural areas in Pennsylvania that still
11 do not have touch ~~tone~~ capability, those phones are
12 transferred, those calls are transferred out to an
13 operator. We employ around the clock, Major, thirty-
14 some operators on duty?

15 MAJOR HACKENBERG: It depends. There are a
16 hundred total.

17 CHAIRMAN GANNON: Is it 24-hours a day?

18 MAJOR HACKENBERG: No, sir. It's 8 a.m. to
19 10 p.m.

20 CHAIRMAN GANNON: Seven days a week?

21 MAJOR HACKENBERG: Yes.

22 CHAIRMAN GANNON: In that time period did
23 that check all of these databases?

24 MR. PRESCO: Yes, sir. That's the remarkable
25 thing. We do get some complaints. The system is

1 database dependent. If one of the databases is not
2 functioning properly, ours or the federal databases,
3 the system will go down and not function. The
4 majority of the time, that does not happen. We can
5 get through and the average time of a call is about
6 three minutes.

7 REPRESENTATIVE MANDARINO: That's the
8 federal?

9 MR. PLESCO: That was a state and federal
10 check. That check for me checked all of the
11 Pennsylvania databases and all of the federal data-
12 bases. Fortunately, I don't have a record and it
13 didn't kick anything out on me.

14 CHAIRMAN GANNON: Does that keep a record,
15 like if you call today for another check, would it
16 know that you called yesterday to do a check?

17 MAJOR HACKENBERG: If you're approved and
18 an approval number is given, all that information is
19 purged. If there is some delay in the check, we can
20 leave it for you for the dealer to come back and get
21 that out of the pending file, but once we approve,
22 then the entire record is purged.

23 CHAIRMAN GANNON: If one of the databases
24 was off line, it would like go on a hold and keep a
25 record and pick it up later on?

1 MR. PLESCO: That's correct. On the process
2 chart, if an approval is issued, you get an approval
3 number as you heard with the call demonstration. If
4 an approval is not issued, the call may be thrown in
5 to research for a variety of reasons and we can get
6 into those with some of the questions. If it is
7 thrown into research, we generally reply within 15
8 days. Hopefully, we try to get back to the dealer
9 within the same day or the sheriff within the same day.
10 However, we are database dependent. The information
11 we have is dependent upon the information in the
12 databases and the accuracy of that information in the
13 databases. We have to verify that information that
14 is contained in the databases. So, sometimes it does
15 take longer to contact the jurisdiction that holds a
16 record and verify that record.

17 REPRESENTATIVE SEYFERT: When you gave this
18 presentation in Harrisburg, and I was there, we
19 brought up the point that I know in my district and
20 some of the surrounding districts, we have had
21 complaints from gun shops that have had to use this
22 system and when they hit the national database
23 system, they are on hold for a considerable length of
24 time even though this appears that it's a very short
25 amount of time and I believe at that time, and I would

1 like you to again speak to that, is that the National
2 Database is used by many systems and agencies and
3 government units and there are times that it may be
4 more tied up than others?

5 MR. PLESCO: Yes. I think both the Major
6 and I can answer that question. What happens, when
7 the call goes to the National Instant Check System,
8 we transfer via computer almost like an E-Mail
9 package to the National Instant Check System that
10 person's name, date of birth and Social Security that
11 is attempting to buy or get a license to carry.
12 What happens is that that call goes in what we call
13 in-queue. It sits and waits its turn in line. So,
14 there are 50 states that use the National Instant
15 Check System in one form or another. If they are
16 point of contact states, 16 of us use it via computer.
17 The remaining states use it by the toll-free
18 1-800 number that the dealers call. So, those all
19 sit in queue and it answers them in turn. Now, the
20 databases themselves, the federal databases, also take
21 in queue, first come - first serve, much like a
22 deli counter. What happens, and we find and the
23 Major can talk about this, in the afternoon, law
24 enforcement uses NCIC, the III, the Criminal Record
25 History, information that is kept by the federal

1 government, all law enforcement. When I say law
2 enforcement, the District Attorney's Office, local
3 law enforcement, state law enforcement, FBI, ATF,
4 DEA, parole, et cetera. Those queries that they send
5 to III, all sit in queue and wait to get answered.
6 And, Major, we have a theory on this and why this
7 happens, especially in the afternoon. Do you want
8 to elaborate on that?

9 MAJOR HACKENBERG: Well, there are times
10 during the day, all law enforcement uses this. If we
11 go to check something at NCIC and messages are back-
12 logged, there could be a police officer in Los
13 Angeles checking a vehicle to see if it's stolen,
14 checking a person, whether or not to see whether they
15 are wanted, and as you can see, as the West Coast
16 comes on board during the daylight hours as well as
17 these other states that are running their checks,
18 they start to slow down and our system is designed
19 so that you don't stay on hold forever. It times out
20 after a period of time if it doesn't get an answer.
21 Then, it goes to an operator and as Ron has mentioned,
22 we are database dependent and we have had our share
23 of problems with those databases. The federal data-
24 bases have made some changes and had some problems.
25 We have had some problems in-house. We have had

1 problems between phone lines from here to the federal
2 system and I can tell you this. I know, and we know,
3 it is extremely frustrating for dealers who are trying
4 to make a living and trying to conduct business when
5 it can't get these checks through and I can tell you
6 this. Every time that system goes down, we treat it
7 as an emergency. We pull out all stops. We call
8 vendors in state, out, do everything we can possibly
9 do to get back on line as fast as we can. If there
10 is anything we can do, innovative ways, to call the
11 federal system and hook up a phone line, an open
12 actual telephone between us, we have done pretty much
13 whatever it takes to get on as fast as we can but I
14 know that is very little comfort to those that are
15 trying to do their jobs and make a living while the
16 system is down.

17 MR. PLESCO: On the screen behind you, this
18 is a good segue way into the statistics, as of the
19 13th of this month from last year, we have had over
20 480 thousand calls to the system, 482,157. The
21 percentage of those calls that are completed in an
22 automatic function like the call demonstration that
23 I did with myself in front of you here a few minutes
24 ago is 62 percent, ergo 62 percent of the calls to the
25 system are completed without the dealer or sheriff

1 actually talking to an operator. They go through in
2 three to five minutes. The remaining forty-some odd
3 percent can be divided up a bunch of ways, 38 percent,
4 can be divided up a bunch of ways. Those are people
5 with records, records that have to be verified, out-
6 of-state individuals trying to purchase, et cetera,
7 and the calls do get transferred to an operator.

8 Since the system's inception, 12,814 people
9 have been denied of those 482,000. Of those denied,
10 the system sets up a process we have set up pursuant
11 to law, the person is permitted to challenge their
12 denial, their reason for denial. They are given by
13 the dealer or sheriff a form provided by the
14 Pennsylvania State Police requesting the reason for
15 the denial and basically administratively appealing
16 that denial. We, within receipt of that form, within
17 five days will kick out to the individual postmarked
18 within five days a response saying that we are
19 researching the record; we need more information,
20 et cetera. We try to generally get back to the
21 people with a decision within 30 days of receipt.
22 That's not prescribed by law. It's a limitation we
23 have set on ourselves. Of those that have gone the
24 next step and done the denial challenge, those 6,400,
25 2,572 have been reversed. They have given us more

1 information, records have been verified, et cetera.

2 One other thing I'd like to draw your attention
3 to is the system last year went into operation on
4 July 1, 1998 and at the end of November, December 1,
5 1998, the national system went on line. Simultaneous,
6 we went up with checking the background of purchasers
7 of long guns. Now, if you want to purchase a firearm,
8 as the Major said, in Pennsylvania, firearm being
9 defined as long gun or handgun, from a dealer, a
10 check has to be done. If you notice, our numbers
11 have gone up significantly with the addition of long
12 guns. We estimate that there is about 1.2 million
13 firearms transactions in Pennsylvania a year. We
14 are right on with that estimation so far with the
15 calls into the system.

16 Again, on behalf of the Pennsylvania State
17 Police, I'd like to thank you for this opportunity
18 for us to testify and we would now consider any
19 questions that the panel may have.

20 CHAIRMAN GANNON: Thank you, Mr. Plesco and
21 Major Hackenberg. We'll start with questions from
22 Representative Forcier.

23 REPRESENTATIVE FORCIER: Thank you, Mr.
24 Chairman. I have really been working at trying to
25 understand the PIC System and I really appreciate it.

1 There was a point in time when Representative **Hess**
2 and I had an opportunity to have a tour to try to
3 understand this but I jotted down a few questions and
4 I guess one of them jogged my memory on the denials.
5 Do you feel a lot of the denials are being done because
6 the people that are having the background checks do
7 not realize the juvenile records are going to be
8 brought up and they are saying, oh, my goodness, I
9 stole a case of beer from a neighbor's garage when I
10 was 14 years old. Now, all of a sudden, I forgot
11 all about it and I am being denied for that, but then
12 they go through the process and for what, a thousand
13 dollars, they can get their record cleared and that's
14 what I'm starting to see happening. Do you believe
15 that's true, that's what's happened?

16 MAJOR HACKENBERG: What you have touched
17 upon is one of the issues involved with this system.
18 As you know, we check for compliance with both state
19 and federal law. I'm sure you'll be pleased to know
20 that at least from my point of view, most of the
21 problems that are similar to what you are alluding to
22 are problems with the federal law. The state law
23 is very clear under 6105, convictions of these
24 particular sections will prohibit you. The federal
25 law has a provision that says that if you are ever

1 convicted of a crime, ever, that could have got you a
2 sentence longer than two years, you are prohibited.
3 Now, when you go back in history 30 years ago, the
4 old Pennsylvania Crimes Code, driving under the
5 influence, was one of those laws that could get you
6 more, any type of theft no matter how minor, if it
7 was a package of gum, could get you that; drag racing
8 on highways. There are people that have been convict-
9 ed in the early 1960's of drag racing who are now
10 prohibited for life from possessing a firearm and
11 this is federal law. We have no -- most of the
12 people who complain write to us and say I have been a
13 law-abiding citizen for 30 years. I was 18 years
14 old. I was in a drag race. Why are you prohibiting
15 me from getting a gun? Well, the answer is the
16 federal law is doing that and we as the State Police,
17 we don't have the discretion to say go ahead and do
18 that transaction regardless of the person's conduct
19 since.

20 REPRESENTATIVE FORCIER: But I think what
21 they are doing, if they have the money and can afford
22 an attorney, they are going through the process of
23 expunging their record or trying to clear that so
24 that if people have the money and can afford it, I
25 mean, that's kind of where I'm leading to. You can

1 get an attorney to expunge your record and have the
2 money to do that, then records are cleared.

3 MAJOR HACKENBERG: That's not exactly
4 correct. You can't get a conviction expunged. It
5 just can't happen. So, the alternatives that they
6 have, because there is no way for them to get a relief
7 from federal disability, there is no way for them to
8 do that right now because, as mentioned in testimony,
9 there is no system in place to do that. The only
10 alternative they have is to try to get a governor's
11 pardon of the offense and in Pennsylvania, as you are
12 well aware, we take a governor's pardon very
13 seriously. They do a very, very extensive background
14 on the person. They are very slow in coming and
15 they are very few in coming because they take that
16 very, very seriously and it's very difficult to do
17 but that's pretty much their only opportunity.

18 REPRESENTATIVE FORCIER: Thank you. On the
19 state maintenance, the federal law versus state law,
20 when you are talking about identification you showed
21 that and you showed that on the slide, I am very
22 concerned about identification for the Amish and what
23 I have come across, and maybe you can talk a little
24 bit more on it is that for the Amish, the state will
25 accept some other form of identification. The federal

1 law is explicit what they will accept, and it's
2 hard to believe that they will accept only a valid
3 photo driver's license. So, not only are they not
4 going to have a driver's license but they certainly
5 aren't going to have a photo on it.

6 MAJOR HACKENBERG: It's a government issued
7 photo ID is a requirement under federal law. State
8 law made a provision for the Amish but federal law
9 does not.

10 REPRESENTATIVE FORCIER: So, at the present
11 time how are the Amish able to purchase firearms?

12 MAJOR HACKENBERG: They have to go get a
13 photo identification, a non-driver's photo ID or a
14 driver's license.

15 REPRESENTATIVE FORCIER: So, at the present
16 time if they don't have a valid photo ID or a valid
17 driver's license, they will not be able to purchase
18 a firearm?

19 MAJOR HACKENBERG: That's correct.

20 MR. PLESCO: Photo ID.

21 CHAIRMAN GANNON: Is that any firearm?

22 MAJOR HACKENBERG: Any firearm.

23 CHAIRMAN GANNON: Even a long gun?

24 MAJOR HACKENBERG: Yes, sir.

25 CHAIRMAN GANNON: So, if I was Amish and I

1 wanted to purchase a shotgun, I have to go through
2 the PICS check?

3 MR. PLESCO: If you are purchasing it from
4 a dealer. If you are purchasing it from a neighbor,
5 no. Private sales of long gun, no photo ID is
6 required.

7 REPRESENTATIVE FORCIER: I promise to move
8 quickly on this, but a lot of my constitutents, and
9 I have to agree, I am confused on this issue also.
10 What documents are saved by Pennsylvania State Police
11 at information? What is required to be deleted and,
12 you know, eliminated through the law and is that being
13 done?

14 MAJOR HACKENBERG: PICS approval information,
15 when you apply to purchase a firearm and you are
16 approved for that purchase, all that information is
17 deleted. We have had cases where maybe a serious
18 crime has occurred and the investigating agency or
19 members of the media have called up and said for
20 this person, were they approved for a PICS check.
21 We have no way of knowing. There are the forms that
22 Mr. Plesco has provided within your packet, the
23 record of sale form is retained by us but that's
24 separate from the instant check system.

25 REPRESENTATIVE FORCIER: Now, once a person

1 purchases a firearm and there is a background check,
2 how long is that good for that they can go and
3 purchase without a background check? Is there a
4 certain period of time?

5 MAJOR HACKENBERG: By law, just that day.
6 It's up until midnight.

7 REPRESENTATIVE FORCIER: So, one day I go and
8 I pay the fees, fill out the paperwork and go through
9 the background check, a day or so I go back again and
10 even though I have been approved, they have to do the
11 process again?

12 MAJOR HACKENBERG: Yes, that's correct.

13 REPRESENTATIVE FORCIER: Okay. We talked
14 a little bit about the -- Representative Seyfert
15 talked about like the instant checks when the system
16 is down and that sort of thing. Could you give me an
17 idea how many are down in a period of time, maybe half
18 the calls or give me a number or a figure on that?

19 MAJOR HACKENBERG: Do you mean the system is
20 totally out of service?

21 REPRESENTATIVE FORCIER: If they are in a
22 pending status or --

23 MAJOR HACKENBERG: Okay.

24 REPRESENTATIVE FORCIER: Or they are going
25 to further lengths, instant check.

1 MAJOR HACKENBERG: As the demonstration show-
2 ed, most of them are two to three minutes of those
3 62 percent that sail right through. I think when
4 this system was envisioned, I think people felt that
5 we would have some sort of an automated system that
6 would tell us right away whether or not a person was
7 prohibited, but the problems are, as Mr. Plesco has
8 described, there are many, many arrests and con-
9 victions, excuse me, arrests without dispositions.
10 If we see that you were acquitted or the charges
11 withdrawn, obviously you are allowed to purchase the
12 firearm. You are convicted, you are not, but if there
13 is no disposition, we have to do the research,
14 sometimes within Pennsylvania, sometimes outside of
15 the Commonwealth of Pennsylvania and we are at their
16 mercy to provide us the information that we need.
17 There are other offenses which came from the federal
18 Lautenburg Amendment to federal law that requires
19 the persons who were convicted of domestic violence
20 offenses to be prohibited. So, therefore, if some-
21 body has an assault conviction, we have to do some
22 research to find out who it was that was assaulted.
23 If it's a domestic violence situation, that person
24 is prohibited. If it's not a domestic violence-
25 related, they can purchase. Other times we have

1 offenses from other states. Maybe it will say aggra-
2 vated battery of the third degree. Now, we have to do
3 some research to determine where does that fit in to
4 Pennsylvania's law. Is that a prohibiting offense
5 or not and we have to get ahold of that state to try
6 to determine whether or not that is a prohibiting
7 offense. Another issue that can come up is sometimes
8 an issue of identification. We'll have somebody with
9 the same name and date of birth with a protection
10 order that prohibits them from having a firearm in
11 Erie and we may have a physical description and we
12 will have to talk to the dealer to try to ascertain
13 whether or not this is the person and do some checking
14 there. So, those are the main things that will get
15 it out of that vast automated mode into a research
16 mode.

17 REPRESENTATIVE FORCIER: So, would it be
18 fair to say that maybe half of the calls you get
19 there is further research because of some more names
20 or problems with Social Security numbers and so on,
21 maybe like half the calls?

22 MAJOR HACKENBERG: Well, 62 percent are going
23 through without any problems. The other 38 percent
24 are going to an operator. Sometimes this can be
25 resolved in five minutes while they are still on the

1 phone. Sometimes it may take up to fifteen days to
2 get it resolved.

3 REPRESENTATIVE FORCIER: A quick question on
4 gun shows, on Page 6 of the testimony you talk about
5 the lawful gun shows. In Pennsylvania they do back-
6 ground checks at the gun shows; is that correct?

7 MAJOR HACKENBERG: Yes, it is.

8 REPRESENTATIVE FORCIER: What people are
9 reading from the news media that, oh, it's terrible
10 that people are purchasing guns from gun shows, I
11 think this is an appropriate period of time to tell
12 people that in Pennsylvania that would not happen
13 because at gun shows we do background checks.

14 MAJOR HACKENBERG: That's correct. It's
15 been a national issue but not an issue in Pennsylvania.

16 REPRESENTATIVE FORCIER: So, that would be a
17 good law that we have been able to avoid those
18 problems at gun shows. Just to finish up, I under-
19 stand that there are a lot of snags with the back-
20 ground checks and so on but recently I received a few
21 phone calls and I'm just curious to know, has there
22 been recently several state police who have tried to
23 apply for firearms purchase and they have been denied;
24 there is a snag in the process or, I mean, that could
25 happen or do you know of that being true?

1 MAJOR HACKENBERG: I wouldn't be able to
2 discuss any particular information.

3 REPRESENTATIVE FORCIER: Just in general,
4 it's a possibility that a state police or any law
5 enforcement could go in, find records, Social Security
6 number, they go in and they are denied?

7 MAJOR HACKENBERG: It could happen and it
8 does happen to anyone. People who go in to purchase
9 a firearm should not be -- the dealers are well aware
10 of this. They should not feel embarrassed if some
11 problem comes up with their record because many times
12 we just have to sort this out. Even as Mr. Presco
13 showed you the numbers, even when people are denied,
14 a lot of the times initially denied, with further
15 research we find that, in fact, they are legally
16 able to do this; that this happens with a system this
17 size.

18 REPRESENTATIVE FORCIER: Thank you very much
19 for your time. Thank you, Mr. Chairman.

20 CHAIRMAN GANNON: Representative Mandarinó?

21 REPRESENTATIVE MANDARINO: Thank you. Just
22 finishing up, I can be an active law enforcement
23 person who has an outstanding PFA. So, that could
24 deny me from purchasing in my own name, correct?

25 MR. PLESCO: Yes, so long as the PFA

1 prohibits you from possessing a firearm, purchasing
2 a firearm.

3 REPRESENTATIVE MANDERINO: I'm a little bit
4 confused on exactly what is applicable in case of
5 long guns versus handguns versus arm's length
6 transactions or dealer to purchaser transactions
7 versus private transactions. That's what I'm trying
8 to understand here. If I am purchasing a handgun
9 or a long gun from a dealer, I have to go through
10 the PICS process?

11 MR. PLESCO: Yes.

12 REPRESENTATIVE MANDERINO: If I am purchas-
13 ing a handgun or a long gun from an individual, can
14 you do a handgun from an individual to an individual?

15 MAJOR HACKENBERG: No, unless you have the
16 relative -- unless it's a relative.

17 REPRESENTATIVE MANDERINO: Okay. If I'm
18 doing a long gun from an individual to an individual,
19 I don't go through PICS, but do I have to fill out
20 one of these sales papers?

21 MAJOR HACKENBERG: No.

22 REPRESENTATIVE MANDERINO: Okay. So, there
23 is no record of that particular transaction?

24 MR. PLESCO: That's by law.

25 REPRESENTATIVE MANDERINO: If I am a 14-year-

1 old girl and I want to go hunting with my mom and
2 dad, we're in the '90s here now, I need a junior
3 license or I don't? Do we have -- I thought we had
4 junior licenses in Pennsylvania?

5 MR. PLESCO: You need a hunting license.
6 Some areas refer to them as junior hunting licenses.

7 REPRESENTATIVE MANDERINO: I can't just go
8 out one day with mom in the woods without first
9 getting my license, even as a minor?

10 MR. PLESCO: Correct.

11 REPRESENTATIVE MANDERINO: Now, in terms of
12 the gun ownership, I as a minor don't own the gun in
13 my name?

14 MR. PLESCO: Correct. You are prohibited
15 from purchasing or possessing.

16 REPRESENTATIVE MANDERINO: Okay. So, mom or
17 dad own the gun?

18 MR. PLESCO: Correct.

19 REPRESENTATIVE MANDERINO: And how do I get
20 to use that given what you have described to me with
21 regard to transfer and use of guns by other people?
22 That's the part I'm trying to understand.

23 MR. PLESCO: The way you get to use it as a
24 minor is the law makes an exception for hunting. A
25 minor can possess under the age of 18 a long gun for

1 hunting purposes so long as there is a guardian
2 present, parent, et cetera. Here is a list of
3 reasons, hunting, furtaking and two other reasons,
4 I'm remiss. They are in the law. On the top of my
5 head, I can't think of it but one is hunting. The
6 other is furtaking. So long as one, a guardian and
7 you are doing one of these activities that there is an
8 exception for, you are fine.

9 REPRESENTATIVE MANDERINO: I know I as a
10 minor am fine. I'm trying to get to the adult who
11 is the owner. Who as an adult gun owner is allowed
12 to quote unquote lend their firearm to a minor?

13 MR. PLESCO: Parents or guardians so long as
14 it's lent for those purposes.

15 REPRESENTATIVE MANDERINO: What about those
16 adults hunting with my 19-year-old friend, I can use
17 my 19-year-old friend's gun?

18 MR. PLESCO: Correct, consenting adults.
19 For those purposes, a 19-year-old friend would, for
20 a long gun, would be fine.

21 REPRESENTATIVE MANDERINO: Okay. On the
22 gun dealers, and maybe this is because it's covered
23 by their federal check, but you said that county
24 sheriffs shall grant a firearm sales license to
25 reputable applicants but there is no provision for a

1 PICS background check. So, is there a prohibition
2 from somebody with a criminal record being a licensed
3 firearms dealer and is just being checked somewhere
4 else and not through PICS?

5 MR. PLESCO: To be a licensed firearms
6 dealer under Pennsylvania law, not federal law, a
7 Pennsylvania instant check background check is not
8 required by law, by Pennsylvania law. However, a
9 sheriff can use the Pennsylvania instant check system
10 if they want for those purposes. The law does not
11 tell them that they can. It doesn't tell them that
12 they can't. It's silent.

13 REPRESENTATIVE MANDERINO: So, is reputable
14 something that is defined by each and every sheriff
15 as to whether they want to give you that license?

16 MR. PRESCO: Yes, subjective.

17 REPRESENTATIVE MANDERINO: We don't in law
18 say a person is reputable if they have no felony
19 convictions.

20 MR. PLESCO: Correct.

21 REPRESENTATIVE MANDERINO: If they have
22 never been, et cetera. We don't define reputable
23 anywhere in our law?

24 MR. PLESCO: That's completely correct.
25 It's dependent upon the subjective thoughts, et

1 cetera, whatever the sheriff decides. However,
2 there is an appeal, a due process in place if they
3 have been denied. They can appeal to the Court of
4 Common Pleas. Then, the sheriff would have to air
5 the reason for denial based upon character and then
6 the Judge would make the determination whether that
7 was a valid denial or the Judge will overturn the
8 denial.

9 REPRESENTATIVE MANDERINO: So, if the
10 sheriff in Erie County is checking my criminal
11 background because that's what he decided he thinks
12 reputable means but the sheriff in Crawford County
13 doesn't check criminal backgrounds because he doesn't
14 think that is applicable to whether or not somebody
15 is a reputable dealer, what standards do we
16 follow if somebody appeals?

17 MR. PLESCO: There are no standards in
18 place to follow if somebody appeals. The Court of
19 Common Pleas in that jurisdiction, Crawford County,
20 Erie County, would have to document the reason for
21 the denial. The sheriff does have to document the
22 reason for the denial. They wouldn't say bad
23 character, et cetera. That would be appealed to
24 Common Pleas Court. The sheriff would have to state
25 on the record what the finding of bad character or

1 irreputable character was and the Judge would make
2 that determination. You are right, there is no
3 uniform standard. 67 counties, possibly 67 differ-
4 ent standards.

5 REPRESENTATIVE MANDERINO: And I must apply
6 for that license in the county --

7 MR. PLESCO: Where you conduct business,
8 the place where you'll be expecting business. If I
9 am here in Crawford County, Erie County, and I want
10 to conduct business in Allegheny County, if I'm
11 going to conduct business in Allegheny County but I
12 live here, I have to apply to the Allegheny County
13 Sheriff's Office.

14 REPRESENTATIVE MANDERINO: I'm a gun dealer
15 and I do most of my sales at gun shows and so I
16 travel around the Commonwealth gun shows. Each
17 time -- I live in Crawford County and each time I go
18 into a county for a gun show at the Armory or the
19 Convention Center, I have to go see that sheriff
20 first?

21 MR. PLESCO: No, ma'am.

22 REPRESENTATIVE MANDERINO: Or are gun shows
23 exempt?

24 MR. PLESCO: Gun shows are exempt. My
25 recollection is that gun shows are exempt. They have

1 to be -- to be able to do that, they have to be a
2 federal firearms licensee also. The majority of
3 licensees in Pennsylvania, there are around 8,000
4 registered gun dealers in Pennsylvania. About
5 3500 are active, meaning they participate with the
6 Pennsylvania Instant Check System and they regularly
7 sell. All of those dealers, those 3500, have two
8 licenses, a Pennsylvania license issued by the
9 county sheriff in the place where they conduct their
10 business and certainly a FFL, a federal firearms
11 license issued by the ATF.

12 REPRESENTATIVE MANDERINO: Does the federal
13 firearms license check criminal background?

14 MR. PLESCO: Yes, ma'am.

15 REPRESENTATIVE MANDERINO: And they have
16 standards that are uniform?

17 MR. PLESCO: Yes, ma'am.

18 REPRESENTATIVE MANDERINO: Okay. So then,
19 who can be a firearms dealer in Pennsylvania that is
20 not firearms dealer licensed by the feds?

21 MR. PLESCO: Anyone in this room so long as
22 you have a place that you are going to conduct
23 business and you can pass the background check or
24 whatever the sheriff of that county where you are
25 going to conduct business would put you through.

1 REPRESENTATIVE MANDERINO: Okay. So then, I
2 would be able to conduct business only in that
3 county or I would still be able to go to all of the
4 gun shows across Pennsylvania?

5 MR. PLESCO: Only where you put on the form,
6 wherever you are going to conduct business at. If
7 you put on that form that you are going to conduct
8 business in that county, you can only conduct
9 business within that county. If you wanted to go to
10 the gun shows, you have to be a FFL.

11 REPRESENTATIVE MANDERINO: Okay. Thank you.

12 REPRESENTATIVE MAITLAND: Please speak up
13 for the audience. I notice people in the back having
14 a problem.

15 REPRESENTATIVE JOSEPHS: Thank you. All
16 right. I've tried to follow this exchange but I
17 have to admit I'm somewhat confused and then I have
18 some other questions. But you could -- hypothetically
19 you could be an individual, anybody in this room who
20 got a Pennsylvania license to deal -- now, would
21 that be in all firearms or just long arms?

22 MR. PRESCO: All firearms.

23 REPRESENTATIVE JOSEPHS: You could go to
24 gun shows and sell. Could you go to gun shows and
25 deal in firearms, all kinds of firearms, without

1 having a federal or a national license as well?

2 MR. PLESCO: No, ma'am. My recollection of
3 law, and I'll doublecheck it and get back to you but
4 my recollection of the law, both federal law and
5 state law, is that if you are going to deal with
6 gun shows, you have to be a FFL, Federal Firearms
7 Licensee as well as a Pennsylvania Licensee if that
8 gun show is taking place within the Commonwealth.

9 REPRESENTATIVE JOSEPHS: Okay. Suppose
10 you have only a Pennsylvania -- you are only a
11 Pennsylvania licensee, where can you do business if
12 not at gun shows?

13 MR. PLESCO: You can do business only at
14 the place that you have designated. For instance,
15 if I designated this hotel as my place of business
16 for conducting the sale of firearms in Pennsylvania
17 and I want to sell long guns, handguns, whatever, I
18 need a Pennsylvania license and I have to put this
19 hotel as the place of business but the ATF will
20 come and see me once I sell multiple sales and tell
21 me that I need a FFL, a Federal Firearms License also.
22 So, really, there is dual licensing in Pennsylvania.
23 If you are going to do this for a business, you are
24 going to be both a Pennsylvania licensee, licensed
25 dealer, and a Federal Firearms Licensed dealer.

1 REPRESENTATIVE JOSEPHS: Is that a
2 satisfactory system? I mean, are there some states
3 that have state licensure requirements that sort of
4 subsume or take priority over the FFL?

5 MR. PRESCO: FFL, Federal Firearms Licensee.
6 Is it satisfactory, ma'am, my personal opinion is
7 that the system works. They are checked because if
8 they do want to do backgrounds, if they do want to
9 sell firearms, then ATF requires them to have a FFL
10 and a background check is performed. As far as
11 other states, I do not know other states' law in the
12 area of issuing licenses. I know of one or two
13 states that have a system similar to the Federal
14 Firearms Licensing System. Major, do you have any-
15 thing to add?

16 MAJOR HACKENBERG: No.

17 REPRESENTATIVE JOSEPHS: What happens or what
18 controls are there if I'm a Pennsylvania registered
19 dealer and I want to sell firearms, any kind, through
20 the mail?

21 MR. PLESCO: Any firearms transactions that
22 takes place through the mail in Pennsylvania,
23 i.e., if I want to mail it to you in your district,
24 I actually would have to -- you'd have to pass a
25 background check. It would be mailed hopefully with

1 insurance to you in Pennsylvania. Now, a lot of the
2 transactions that take place are outside of
3 Pennsylvania. People will go on the Internet to a
4 dealer. People will see advertisements in national
5 magazines for a deal on a specific shotgun or a
6 specific firearm. To take advantage of that, what
7 they need to do and what those dealers know that they
8 have to do pursuant to federal law and Pennsylvania
9 law is they have to comply with both laws, federal
10 and Pennsylvania. They have to ship it to
11 Pennsylvania to a licensed dealer within Pennsylvania,
12 a Federal Firearms Licensed dealer in Pennsylvania,
13 hopefully close to where you live, and then you
14 would go, you would have to go through a Pennsylvania
15 Instant Check Background Check which would include
16 a national instant check and then you would be allowed
17 to possess that firearm. Within Pennsylvania it
18 could be mailed, I believe, to you so long as you
19 have gone through a background check and a Federal
20 Firearms Licensed dealer and a Pennsylvania licensed
21 dealer.

22 REPRESENTATIVE JOSEPHS: Which brings me to
23 my questions about the national database. When you
24 say national database, does that mean that if I
25 commit a crime in any state, forgetting for a minute

1 the problems about arrests ~~without~~ dispositions
2 and whether the crimes in any other state meet the
3 definition of crimes in our state and all of the
4 other things you talked about, but if I commit a
5 crime, convicted for a crime, in any other state
6 besides Pennsylvania, will that show up on the
7 national system?

8 MAJOR HACKENBERG: Yes, it will.

9 REPRESENTATIVE JOSEPHS: So, each one of the
10 other 49 states has a database that is picked up by
11 the system?

12 MAJOR HACKENBERG: Correct.

13 REPRESENTATIVE JOSEPHS: Are they all
14 uniformly back in time, a certain number of years,
15 or is that a variation or how does that work?

16 MAJOR HACKENBERG: No. They are governed
17 by -- we are governed by the Pennsylvania Criminal
18 Information Act as to what records we keep. Each
19 state would have their own.

20 MR. PLESCO: Each state by federal law has
21 to have a repository of a criminal record history
22 information and they have to make that repository
23 information, all of that criminal record history
24 information, that arrest information, available
25 through NCIC, the interstate identification index

1 that is kept by the FBI. That database isn't
2 particular to the national instant check system or
3 the gun check per se. Those databases have been
4 around for decades and it's something that the FBI
5 keeps. All of the states are required to send in
6 that information.

7 REPRESENTATIVE JOSEPHS: Are Protection From
8 Abuse orders on those systems as well?

9 MAJOR HACKENBERG: In Pennsylvania we have
10 our own database as you are aware. The federal
11 system has a database and Ron may tell us how many
12 but not all states participate in that.

13 MR. PLESCO: I'm not sure of the amount of
14 states. Whatever states have a database like
15 Pennsylvania and open their database up to the federal
16 system, those are the ones that participate. I'm not
17 sure of the number and I can get that for you and
18 send it to you, Representative.

19 REPRESENTATIVE JOSEPHS: Comparably with
20 civil commitments?

21 MR. PLESCO: Yes.

22 REPRESENTATIVE JOSEPHS: Same kind of
23 problems?

24 MR. PLESCO: Yes. Not all 50 states has a
25 system like Pennsylvania that looks at mental health

1 and has a mental health database. Those that do and
2 those that participate with the feds, do send civil
3 commitments information to the federal database.

4 REPRESENTATIVE JOSEPHS: Okay. There were --
5 I hope these are short. There were a couple of terms
6 that I think one or the other of you mentioned that
7 I'm not familiar with. Self-certified, what is that?
8 Who self-certifies? How does that work?

9 MAJOR HACKENBERG: In the context that it
10 was in the testimony is when they fill out these
11 forms, they certify that they have not been convicted
12 of the prohibiting offenses and they don't have any
13 other prohibiting reasons that they cannot purchase
14 this firearm. They sign and certify to that.

15 MR. PLESCO: On the Pennsylvania form, the
16 application for sales that applies only to the hand-
17 gun transaction and also on the federal form, it
18 applies to all firearms transactions, it's a ATF
19 4473 Form. Both the forms require the acknowledge-
20 ment certification signature in two places on the
21 Pennsylvania form by the purchaser that, one, they
22 are not convicted of any of these crimes or similar
23 crimes, et cetera, and two, that they acknowledge
24 that they have read this.

25 REPRESENTATIVE JOSEPHS: Then, if you have a

1 classification of that, you have a perjury count.

2 MR. PLESCO: Yes.

3 REPRESENTATIVE JOSEPHS: Against the person
4 as well as whatever else you come up with?

5 MR. PLESCO: Yes, ma'am.

6 REPRESENTATIVE JOSEPHS: What gun sales are
7 taxable and non-taxable? How are they taxed? You
8 said something about non-taxable gun sales. If
9 that's real complicated, I'll be happy to receive it
10 later.

11 MR. PLESCO: I'm remiss in not attending the
12 IRS's course in school, ma'am, but there is a federal
13 law and there is a specific federal section, chapter,
14 that deals with taxable events with firearms trans-
15 actions and I'll be more than happy to send a copy
16 to your office and to the Chairman, for the record.

17 REPRESENTATIVE JOSEPHS: Thank you very
18 much. Thank you for being here. You were very
19 helpful.

20 CHAIRMAN GANNON: Representative Seyfert?

21 REPRESENTATIVE SEYFERT: I want to go back
22 to the line of questioning that was said before in
23 terms of the sheriff's powers and it was asked or
24 said that the sheriff basically has total power
25 regardless to offer a license to someone on his

1 discretion or allow someone to obtain a dealer's
2 license on his own judgment call without any back-
3 ground checks or deny. Is that correct? Is that
4 what was being said?

5 MR. PLESCO: That is what is being said and
6 it is correct. The Chairman can deny for character
7 but the Chairman or, I'm sorry, not the chairman but
8 the sheriff. The sheriff can deny for character and
9 the sheriff can also deny for criminal records if
10 they choose to run a criminal record.

11 REPRESENTATIVE SEYFERT: Or, let me continue
12 and that's also the same case, is it not, with
13 issuing concealed handgun permits?

14 MAJOR HACKENBERG: Correct.

15 REPRESENTATIVE SEYFERT: Therefore, the
16 sheriff of any county has the total discretion that
17 if the person is the wrong color or if he parts his
18 hair on the wrong side or he has an earring in his
19 ear, the sheriff can say, in my judgment, he can
20 deny him this or, on the other hand, if he is a
21 buddy of the sheriff's, regardless of a criminal
22 record, he could issue. Is that not correct hypo-
23 thetically?

24 MR. PLESCO: Hypothetically, incorrect,
25 ma'am. Let me tell you where it's incorrect. There

1 are two different situations we are dealing with here.
2 One is the issuance of a license to carry a firearm
3 that the sheriff has the ability to issue. To get a
4 license to carry a firearm from a county sheriff, that
5 county sheriff by law has to run a background check,
6 a Pennsylvania Instant Check System check.

7 REPRESENTATIVE SEYFERT: To carry a concealed
8 handgun?

9 MR. PLESCO: Yes.

10 REPRESENTATIVE SEYFERT: He does by law have
11 to --

12 MR. PLESCO: -- has to run that background
13 check. In addition to that, that sheriff does have
14 45 days to research the person's background however
15 they see fit and they can deny for lack of good char-
16 acter. So, they have to do the background check.

17 REPRESENTATIVE SEYFERT: Well, again, if the
18 background check comes up that there is nothing in
19 the background, pure, then the sheriff can still deny
20 it upon his discretion?

21 MR. PLESCO: Yes, ma'am.

22 REPRESENTATIVE SEYFERT: Regardless of the
23 45 days. Bottom line is the sheriff can still deny
24 if he didn't like the person?

25 MR. PLESCO: I would hope that they don't do

1 that and that there is also an appeal process in
2 place.

3 REPRESENTATIVE SEYFERT: The appeal process
4 is what, how much the -- the individual that is
5 denied has to get an attorney and file it through
6 the courts and wait until that is determined there.

7 MR. PLESCO: I'm not sure if that's how
8 sheriffs work. We consider **sheriffs'** law enforcement
9 and we hope that they --

10 REPRESENTATIVE SEYFERT: Do you consider that,
11 and not that you have to be an expert on it but the
12 appeal process then would mean that the individual
13 would have to get an attorney or file it himself?

14 MR. PLESCO: They can file themselves. They
15 could get an attorney to represent them or whoever
16 wants to represent them.

17 REPRESENTATIVE SEYFERT: Really what we are
18 seeing here is a gap in criteria and it would be more
19 fair to everyone if there was an established policy
20 set statewide that the sheriffs have to follow as
21 well as other dealers?

22 MAJOR HACKENBERG: Let me say this,
23 particularly in regards to license to carry. Sheriffs
24 conduct an investigation on anyone who wants to carry
25 a firearm. They do conduct a PICS check and they are

1 required to conduct a PICS check. If that PICS check
2 shows that the person is not eligible, that's the
3 end of it right there but I think what the legislature
4 has said is that even though we have said by law that
5 you can purchase a gun and you can take it home,
6 before you carry it around concealed on your person,
7 we're giving the sheriff the authority to look further
8 and when the sheriff looks further and he finds, he
9 or she finds what they consider to be character
10 problems, many times that comes from law enforcement
11 agencies. Sometimes they revoke permits even though
12 the person has not been convicted of a prohibitive
13 offense. If a police department gets ahold of a
14 sheriff and says, we have a real problem with this
15 person and we feel that they are a danger to the
16 community, sometimes the sheriff will revoke that.
17 So, rather than say that they are not getting a
18 standard investigation, what this law really does is
19 allows the sheriff to do a more thorough investigation
20 before someone carries versus just purchases.

21 REPRESENTATIVE SEYFERT: And that gets to be
22 a double-edged sword. On the one side, giving the
23 sheriff the additional investigative power certainly
24 can be preventative. On the other hand, depending on
25 the sheriff, it can be discriminatory to the person

1 because there is no set criteria and quote unquote
2 character is, character stability is a very hard thing
3 to define. I don't think psychologists have really
4 defined it yet.

5 MR. PLESCO: The law provides, and I'll
6 grant you, the sheriff can deny an individual whose
7 character and reputation is such that the individual
8 would be likely to act in a manner dangerous to public
9 safety. So, it's character and reputation that make
10 them dangerous to the public safety. I think the
11 intent of giving this power to the sheriffs as law
12 enforcement is that sheriffs are on the county level
13 and they are in the best position to realize who
14 would be a threat to public safety were this license
15 to be issued.

16 MR. PRESK: Major Hackenberg, Mr. Plesco,
17 thank you very much.

18 (The following was submitted for inclusion
19 in the record.)
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21
22
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25

Effective November 22, 1995, 18 Pa.C.S. § 6105 (a) prohibits persons convicted of any of the following offenses under 18 Pa.C.S. from possessing, using, controlling, transferring, manufacturing, or obtaining a license to possess, use, control, transfer, or manufacture a firearm in the Commonwealth of Pennsylvania. A conviction includes a finding of guilty or the entering of a plea of guilty or nolo contendere, whether or not judgement has been imposed, as determined by the law of the jurisdiction in which the prosecution was held. The term does not include a conviction which has been expunged or overturned or for which an individual has been pardoned unless the pardon expressly provides that the individual may not possess or transport firearms.

Section 6105 (b):

§ 908	Prohibited Offensive weapons.	§ 3701	Robbery.
§ 911	Corrupt organizations.	§ 3702	Robbery of motor vehicle.
§ 912	Possession of weapon on school property.	§ 3921	Theft by unlawful taking or disposition, upon conviction of the second felony offense.
2502	Murder.		
2503	Voluntary manslaughter.	§ 3923	Theft by extortion, when the offense is accompanied by threats of violence.
2504	Involuntary manslaughter, if the offense is based on the reckless use of a firearm.	§ 3925	Receiving stolen property, upon conviction of the second felony offense.
2702	Aggravated assault.		
2703	Assault by prisoner.	§ 4912	Impersonating a public servant, if the person is impersonating a law enforcement officer.
2704	Assault by life prisoner.		
2709	Harassment and stalking, if the offense relates to stalking.	§ 4952	Intimidation of witnesses or victims.
		§ 4953	Retaliation against witness or victim.
2901	Kidnapping.	§ 5121	Escape.
2902	Unlawful restraint.	§ 5122	Weapons or implements for escape.
2910	Luring a child into a motor vehicle.	§ 5501	Riot, if the offense relates to a firearm or other deadly weapon.
3121	Rape.		
3123	Involuntary deviate intercourse.	§ 5515	Prohibiting of paramilitary training.
3125	Aggravated indecent assault.	§ 6110	Possession of firearm by minor.
3301.	Arson and related offenses.	§ 6301.1	Corruption of minors.
3302	Causing or risking catastrophe.	§ 6302	Sale or lease of weapons and explosives.
3502	Burglary.		
3503	Criminal trespass, if the offense is graded a felony of the second degree or higher.		Any offense equivalent to any of the above-enumerated offenses under the prior laws of this Commonwealth, or any offense equivalent to any of the above-enumerated offenses under the statutes of any other state or of the United States.

Section 6105 (c):

Effective November 22, 1995, 18 Pa.C.S. § 6105 (c) also prohibits the following persons from possessing, using, controlling, transferring, manufacturing, or obtaining a license to possess, use, control, transfer, or manufacture a firearm in the Commonwealth of Pennsylvania.

RE YOU A PERSON WHO:

is a fugitive from justice; or

has been convicted of an offense under the act of April 14, 1972 (P.L.233, No. 64), known as The Controlled Substances, Drug, Device and Cosmetic Act, that may be punishable by a term of imprisonment exceeding two years; or

has been convicted of driving under the influence of alcohol or controlled substance as provided in 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) on three or more separate occasions within a five-year period. For the purposes of this paragraph only, the prohibition of Section 6105 (a) shall only apply to transfers or purchases of firearms after the third conviction; or

has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under Section 302, 303 or 304 of the provisions of the act of July 9, 1976 (P.L.817, No. 143), known as the Mental Health Procedures Act; or

being an alien, is illegally or unlawfully in the United States; or

is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108 (relating to relief), which order provides for the confiscation of firearms during the period of time the order is in effect. This prohibition shall terminate upon the expiration or vacation of an active protection from abuse order or portion thereof relating to the confiscation of firearms; or

was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 (relating to adjudication) or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense under Sections 2502, 2503, 2702, 2703, 2704, 2901, 3121, 3123, 3301, 3502, 3701 and 3923; or

was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense enumerated in Section 6105 (b) with the exception of those crimes set forth in paragraph (7). This prohibition shall terminate 15 years after the last application delinquent adjudication or upon the person reaching the age of 30, whichever is earlier.

LOCK 30 INFORMATION: The term of imprisonment means if you are charged with a crime, the maximum term of imprisonment you could receive if convicted; or if you are convicted of a crime, the maximum term of imprisonment you could have received and not the actual disposition given.

CRIMES AND OFFENSES
Title 18

ARTICLE G
MISCELLANEOUS OFFENSES

Chapter

- 61. Firearms and Other Dangerous Articles
- 63. Minors
- 65. Nuisances
- 67. Proprietary and Official Rights
- 69. Public Utilities
- 71. Sports and Amusements
- 73. Trade and Commerce
- 75. Other Offenses

Special Provisions in Appendix. See section 4 of Act 334 of 1972 in the appendix to this title for special provisions relating to the applicability of the Statutory Construction Act to this article.

CHAPTER 61
FIREARMS AND OTHER DANGEROUS ARTICLES

Subchapter

- A. Uniform Firearms Act
- B. Firearms Generally
- C. Other Dangerous Articles

Enactment. Chapter 61 was added December 6, 1972, P.L.1482, No.334, effective in six months.

SUBCHAPTER A
UNIFORM FIREARMS ACT

Sec.

- 6101. Short title of subchapter.
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Special Provisions in Appendix. See the preamble to Act 17 of the First Special Session of 1995 in the appendix to this title for special provisions relating to legislative purpose.

Cross References. Subchapter A is referred to in section 6105 of Title 23 (Domestic Relations); section 2503 of Title 34 (Game).

§ 6101. Short title of subchapter.

This subchapter shall be known and may be cited as the Pennsylvania Uniform Firearms Act of 1995.
 (June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days)

§ 6102. Definitions.

Subject to additional definitions contained in subsequent provisions of this subchapter which are applicable to specific provisions of this subchapter, the following words and phrases, when used in this subchapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Commissioner." The Commissioner of the Pennsylvania State Police.

"Conviction." A conviction, a finding of guilty or the entering of a plea of guilty or nolo contendere, whether or not judgment of sentence has been imposed, as determined by the law of the jurisdiction in which the prosecution was held. The term does not include a conviction which has been expunged or overturned or for which an individual has been pardoned unless the pardon expressly provides that the individual may not possess or transport firearms.

"County treasurer." The county treasurer or, in home rule or optional plan counties, the person whose duties encompass those of a county treasurer.

"Crime punishable by imprisonment exceeding one year." The term does not include any of the following:

(1) Federal or State offenses pertaining to antitrust, unfair trade practices, restraints on trade or regulation of business.

(2) State offenses classified as misdemeanors and punishable by a term of imprisonment not to exceed two years.

"Firearm." Any pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or

any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable.

"Fund." The Firearm Ownership Fund established in section 6111.3 (relating to Firearm Ownership Fund).

"Law enforcement officer." Any person employed by any police department or organization of the Commonwealth or political subdivision thereof who is empowered to effect an arrest with or without warrant and who is authorized to carry a firearm in the performance of that person's duties.

"Loaded." A firearm is loaded if the firing chamber, the nondetachable magazine or, in the case of a revolver, any of the chambers of the cylinder contain ammunition capable of being fired. In the case of a firearm which utilizes a detachable magazine, the term shall mean a magazine suitable for use in said firearm which magazine contains such ammunition and has been inserted in the firearm or is in the same container or, where the container has multiple compartments, the same compartment thereof as the firearm.

"Sheriff."

(1) Except as provided in paragraph (2), the sheriff of the county.

(2) In a city of the first class, the chief or head of the police department.

(Dec. 19, 1988, P.L.1275, No.158, eff. 180 days; June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days; Nov. 22, 1995, P.L.621, No.66, eff. imd.)

1995 Amendment. Act 66 added the defs. of "law enforcement officer" and "loaded."

References in Text. The Firearm Records Check Fund, referred to in the def. of "fund," is now the Firearm Instant Records Check Fund.

Cross References. Section 6102 is referred to in sections 6106.1, 6111, 6111.1, 6113, 6121, 6141.1 of this title.

§ 6103. Crimes committed with firearms.

If any person commits or attempts to commit a crime enumerated in section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) when armed with a firearm contrary to the provisions of this subchapter, that person may, in addition to the punishment provided for the crime, also be punished as provided by this subchapter.

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days)

§ 6104. Evidence of intent.

In the trial of a person for committing or attempting to commit a crime enumerated in section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), the fact that that person was armed with a firearm, used or attempted to be used, and had no license to carry the same, shall be evidence of that person's intention to commit the offense.

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days)

§ 6105. Persons not to possess, use, manufacture, control, sell or transfer firearms.

(a) Offense defined.--

(1) A person who has been convicted of an offense enumerated in subsection (b), within or without this

Commonwealth, regardless of the length of sentence or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

(2) A person who is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm under paragraph (1) or subsection (b) or (c) shall have a reasonable period of time, not to exceed 60 days from the date of the imposition of the disability under this subsection, in which to sell or transfer that person's firearms to another eligible person who is not a member of the prohibited person's household.

(b) Enumerated offenses.--The following offenses shall apply to subsection (a):

- Section 908 (relating to prohibited offensive weapons).
- Section 911 (relating to corrupt organizations).
- Section 912 (relating to possession of weapon on school property).
- Section 2502 (relating to murder).
- Section 2503 (relating to voluntary manslaughter).
- Section 2504 (relating to involuntary manslaughter) if the offense is based on the reckless use of a firearm.
- Section 2702 (relating to aggravated assault).
- Section 2703 (relating to assault by prisoner).
- Section 2704 (relating to assault by life prisoner).
- Section 2709 (relating to harassment and stalking) if the offense relates to stalking.
- Section 2901 (relating to kidnapping).
- Section 2902 (relating to unlawful restraint).
- Section 2910 (relating to luring a child into a motor vehicle).
- Section 3121 (relating to rape).
- Section 3123 (relating to involuntary deviate sexual intercourse).
- Section 3125 (relating to aggravated indecent assault).
- Section 3301 (relating to arson and related offenses).
- Section 3302 (relating to causing or risking catastrophe).
- Section 3502 (relating to burglary).
- Section 3503 (relating to criminal trespass) if the offense is graded a felony of the second degree or higher.
- Section 3701 (relating to robbery).
- Section 3702 (relating to robbery of motor vehicle).
- Section 3921 (relating to theft by unlawful taking or disposition) upon conviction of the second felony offense.
- Section 3923 (relating to theft by extortion) when the offense is accompanied by threats of violence.
- Section 3925 (relating to receiving stolen property) upon conviction of the second felony offense.
- Section 4912 (relating to impersonating a public servant) if the person is impersonating a law enforcement officer.
- Section 4952 (relating to intimidation of witnesses or victims).
- Section 4953 (relating to retaliation against witness or victim).
- Section 5121 (relating to escape).
- Section 5122 (relating to weapons or implements for escape).

Section 5501(3) (relating to riot).

Section 5515 (relating to prohibiting of paramilitary training).

Section 6110.1 (relating to possession of firearm by minor).

Section 6301 (relating to corruption of minors).

Section 6302 (relating to sale or lease of weapons and explosives).

Any offense equivalent to any of the above-enumerated offenses under the prior laws of this Commonwealth or any offense equivalent to any of the above-enumerated offenses under the statutes of any other state or of the United States.

(c) Other persons.--In addition to any person who has been convicted of any offense listed under subsection (b), the following persons shall be subject to the prohibition of subsection (a):

(1) A person who is a fugitive from justice.

(2) A person who has been convicted of an offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, that may be punishable by a term of imprisonment exceeding two years.

(3) A person who has been convicted of driving under the influence of alcohol or controlled substance as provided in 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) on three or more separate occasions within a five-year period. For the purposes of this paragraph only, the prohibition of subsection (a) shall only apply to transfers or purchases of firearms after the third conviction.

(4) A person who has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under section 302, 303 or 304 of the provisions of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act. This paragraph shall not apply to any proceeding under section 302 of the Mental Health Procedures Act unless the examining physician has issued a certification that inpatient care was necessary or that the person was committable.

(5) A person who, being an alien, is illegally or unlawfully in the United States.

(6) A person who is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108 (relating to relief), which order provided for the confiscation of firearms during the period of time the order is in effect. This prohibition shall terminate upon the expiration or vacation of an active protection from abuse order or portion thereof relating to the confiscation of firearms.

(7) A person who was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 (relating to adjudication) or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense under sections 2502, 2503, 2702, 2703 (relating to assault by prisoner), 2704, 2901, 3121, 3123, 3301, 3502, 3701 and 3923.

(8) A person who was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 or under any equivalent Federal statute or statute of any other state as a result of conduct

which if committed by an adult would constitute an offense enumerated in subsection (b) with the exception of those crimes set forth in paragraph (7). This prohibition shall terminate 15 years after the last applicable delinquent adjudication or upon the person reaching the age of 30, whichever is earlier.

(d) Exemption.--A person who has been convicted of a crime specified in subsection (a) or (b) or a person whose conduct meets the criteria in subsection (c)(1), (2), (5) or (7) may make application to the court of common pleas of the county where the principal residence of the applicant is situated for relief from the disability imposed by this section upon the possession, transfer or control of a firearm. The court shall grant such relief if it determines that any of the following apply:

(1) The conviction has been vacated under circumstances where all appeals have been exhausted or where the right to appeal has expired.

(2) The conviction has been the subject of a full pardon by the Governor.

(3) Each of the following conditions is met:

(i) The Secretary of the Treasury of the United States has relieved the applicant of an applicable disability imposed by Federal law upon the possession, ownership or control of a firearm as a result of the applicant's prior conviction, except that the court may waive this condition if the court determines that the Congress of the United States has not appropriated sufficient funds to enable the Secretary of the Treasury to grant relief to applicants eligible for the relief.

(ii) A period of ten years, not including any time spent in incarceration, has elapsed since the most recent conviction of the applicant of a crime enumerated in subsection (b) or a felony violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(e) Proceedings.--

(1) If a person convicted of an offense under subsection (a), (b) or (c)(1), (2), (5) or (7) makes application to the court, a hearing shall be held in open court to determine whether the requirements of this section have been met. The commissioner and the district attorney of the county where the application is filed and any victim or survivor of a victim of the offense upon which the disability is based may be parties to the proceeding.

(2) Upon application to the court of common pleas pursuant to paragraph (1) by an applicant who is subject to the prohibition under subsection (c)(3), the court shall grant such relief if a period of ten years, not including any time spent in incarceration, has passed since the applicant's most recent conviction under subsection (c)(3).

(f) Other exemptions and proceedings.--

(1) Upon application to the court of common pleas under this subsection by an applicant subject to the prohibitions under subsection (c)(4), the court may grant such relief as it deems appropriate if the court determines that the applicant may possess a firearm without risk to the applicant or any other person.

(2) If application is made under this subsection for relief from the disability imposed under subsection (c)(6),

notice of such application shall be given to the person who had petitioned for the protection from abuse order, and such person shall be a party to the proceedings. Notice of any court order or amendment to a court order restoring firearms possession or control shall be given to the person who had petitioned for the protection from abuse order.

(3) All hearings conducted under this subsection shall be closed unless otherwise requested to be open by the applicant.

(4) The owner of any seized or confiscated firearms shall be provided with a signed and dated written receipt by the appropriate law enforcement agency. This receipt shall include, but not limited to, a detailed identifying description indicating the serial number and condition of the firearm. In addition, the appropriate law enforcement agency shall be liable to the lawful owner of said confiscated or seized firearm for any loss, damage or substantial decrease in value of said firearm that is a direct result of a lack of reasonable care by the appropriate law enforcement agency.

(g) Other restrictions.--Nothing in this section shall exempt a person from a disability in relation to the possession or control of a firearm which is imposed as a condition of probation or parole or which is imposed pursuant to the provision of any law other than this section.

(h) License prohibition.--Any person who is prohibited from possessing, using, controlling, selling, purchasing, transferring or manufacturing any firearm under this section shall not be eligible for or permitted to obtain a license to carry a firearm under section 6109 (relating to licenses).

(i) Firearm.--As used in this section only, the term "firearm" shall include any weapons which are designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

(j) Copy of order to State Police.--If the court grants relief from the disabilities imposed under this section, a copy of the order shall be sent by the prothonotary within ten days of the entry of the order to the Pennsylvania State Police and shall include the name, date of birth and Social Security number of the individual.

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days; Nov. 22, 1995, P.L.621, No.66, eff. imd.; Apr. 22, 1997, P.L.73, No.5, eff. 60 days; June 18, 1998, P.L.503, No.70, eff. imd.)

1998 Amendment. Act 70 amended subsec. (c)(4) and added subsec. (j).

1997 Amendment. Act 5 amended subsec. (f).

1995 Amendment. Act 66 amended subsecs. (a), (b), (c), (d) and (f).

Cross References. Section 6105 is referred to in sections 6103, 6104, 6109, 6111, 6111.1, 6115, 6117, 6118, 6123, 6301 of this title; section 6308 of Title 42 (Judiciary and Judicial Procedure).

§ 6106. Firearms not to be carried without a license.

(a) Offense defined.--

(1) Except as provided in paragraph (2), any person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license under this chapter commits a felony

of the third degree.

(2) A person who is otherwise eligible to possess a valid license under this chapter but carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license and has not committed any other criminal violation commits a misdemeanor of the first degree.

(b) Exceptions.--The provisions of subsection (a) shall not apply to:

(1) Constables, sheriffs, prison or jail wardens, or their deputies, policemen of this Commonwealth or its political subdivisions, or other law-enforcement officers.

(2) Members of the army, navy or marine corps of the United States or of the National Guard or organized reserves when on duty.

(3) The regularly enrolled members of any organization duly organized to purchase or receive such weapons from the United States or from this Commonwealth.

(4) Any persons engaged in target shooting with rifle, pistol, or revolver, if such persons are at or are going to or from their places of assembly or target practice and if, while going to or from their places of assembly or target practice, the cartridges or shells are carried in a separate container and the rifle, pistol or revolver is unloaded.

(5) Officers or employees of the United States duly authorized to carry a concealed firearm.

(6) Agents, messengers and other employees of common carriers, banks, or business firms, whose duties require them to protect moneys, valuables and other property in the discharge of such duties.

(7) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person, having in his possession, using or carrying a firearm in the usual or ordinary course of such business.

(8) Any person while carrying a firearm unloaded and in a secure wrapper from the place of purchase to his home or place of business, or to a place of repair or back to his home or place of business, or in moving from one place of abode or business to another or from his home to a vacation or recreational home or dwelling or back, or to recover stolen property under section 6111.1(b)(4) (relating to Pennsylvania State Police) or to a location to which the person has been directed to surrender firearms under 23 Pa.C.S. § 6108 (relating to relief) or back upon return of the surrendered firearm.

(9) Persons licensed to hunt, take furbearers or fish in this Commonwealth, if such persons are actually hunting, taking furbearers or fishing or are going to the places where they desire to hunt, take furbearers or fish or returning from such places.

(10) Persons training dogs, if such persons are actually training dogs during the regular training season.

(11) Any person while carrying a firearm in any vehicle, which person possesses a valid and lawfully issued license for that firearm which has been issued under the laws of the United States or any other state.

(12) A person who has a lawfully issued license to carry

a firearm pursuant to section 6109 (relating to licenses) and that said license expired within six months prior to the date of arrest and that the individual is otherwise eligible for renewal of the license.

(c) Sportsman's firearm permit.--

(1) Before any exception shall be granted under paragraph (b)(9) or (10) of this section to any person 18 years of age or older licensed to hunt, trap or fish or who has been issued a permit relating to hunting dogs, such person shall, at the time of securing his hunting, furtaking or fishing license or any time after such license has been issued, secure a sportsman's firearm permit from the county treasurer. The sportsman's firearm permit shall be issued immediately and be valid throughout this Commonwealth for a period of five years from the date of issue for any legal firearm, when carried in conjunction with a valid hunting, furtaking or fishing license or permit relating to hunting dogs. The sportsman's firearm permit shall be in triplicate on a form to be furnished by the Pennsylvania State Police. The original permit shall be delivered to the person, and the first copy thereof, within seven days, shall be forwarded to the Commissioner of the Pennsylvania State Police by the county treasurer. The second copy shall be retained by the county treasurer for a period of two years from the date of expiration. The county treasurer shall be entitled to collect a fee of not more than \$6 for each such permit issued, which shall include the cost of any official form. The Pennsylvania State Police may recover from the county treasurer the cost of any such form, but may not charge more than \$1 for each official permit form furnished to the county treasurer.

(2) Any person who sells or attempts to sell a sportsman's firearm permit for a fee in excess of that amount fixed under this subsection commits a summary offense.

(d) Revocation of registration.--Any registration of a firearm under subsection (c) of this section may be revoked by the county treasurer who issued it, upon written notice to the holder thereof.

(Oct. 12, 1973, P.L.283, No.81, eff. June 6, 1973; July 8, 1986, P.L.442, No.93, eff. July 1, 1987; Dec. 19, 1988, P.L.1275, No.158, eff. 180 days; Nov. 22, 1995, P.L.621, No.66, eff. imd.; Apr. 22, 1997, P.L.73, No.5, eff. 60 days)

1997 Amendment. Act 5 amended subsecs. (a) and (b).

1988 Amendment. Act 158 amended subsecs. (b)(4) and (c).

1986 Amendment. Act 93 amended subsecs. (b) and (c).

Cross References. Section 6106 is referred to in sections 913, 6106.1, 6107, 6108, 6118, 6122 of this title.

§ 6106.1. Carrying loaded weapons other than firearms.

(a) General rule.--Except as provided in Title 34 (relating to game), no person shall carry a loaded pistol, revolver, shotgun or rifle, other than a firearm as defined in section 6102 (relating to definitions), in any vehicle. The provisions of this section shall not apply to persons excepted from the requirement of a license to carry firearms under section 6106(b)(1), (2), (5) or (6) (relating to firearms not to be carried without a license) nor shall the provisions of this section be construed to permit persons to carry firearms in a vehicle where such conduct is prohibited by section 6106.

(b) Penalty.--A person who violates the provisions of this

section commits a summary offense.

(Dec. 7, 1989, P.L.607, No.68, eff. 60 days; June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days)

§ 6107. Prohibited conduct during emergency.

No person shall carry a firearm, rifle or shotgun upon the public streets or upon any public property during an emergency proclaimed by a State or municipal governmental executive unless that person is:

(1) Actively engaged in a defense of that person's life or property from peril or threat.

(2) Licensed to carry firearms under section 6109 (relating to licenses) or is exempt from licensing under section 6106(b) (relating to firearms not to be carried without a license).

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days)

§ 6108. Carrying firearms on public streets or public property in Philadelphia.

No person shall carry a firearm, rifle or shotgun at any time upon the public streets or upon any public property in a city of the first class unless:

(1) such person is licensed to carry a firearm; or

(2) such person is exempt from licensing under section 6106(b) of this title (relating to firearms not to be carried without a license).

§ 6109. Licenses.

(a) Purpose of license.--A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle throughout this Commonwealth.

(b) Place of application.--An individual who is 21 years of age or older may apply to a sheriff for a license to carry a firearm concealed on or about his person or in a vehicle within this Commonwealth. If the applicant is a resident of this Commonwealth, he shall make application with the sheriff of the county in which he resides or, if a resident of a city of the first class, with the chief of police of that city.

(c) Form of application and content.--The application for a license to carry a firearm shall be uniform throughout this Commonwealth and shall be on a form prescribed by the Pennsylvania State Police. The form may contain provisions, not exceeding one page, to assure compliance with this section. Issuing authorities shall use only the application form prescribed by the Pennsylvania State Police. One of the following reasons for obtaining a firearm license shall be set forth in the application: self-defense, employment, hunting and fishing, target shooting, gun collecting or another proper reason. The application form shall be dated and signed by the applicant and shall contain the following statement:

I have never been convicted of a crime of violence in the Commonwealth of Pennsylvania or elsewhere. I am of sound mind and have never been committed to a mental institution. I hereby certify that the statements contained herein are true and correct to the best of my knowledge and belief. I understand that, if I knowingly make any false statements herein, I am subject to penalties prescribed by law. I authorize the sheriff, or his designee, or, in the case of first class cities, the chief or head of the police department, or his designee, to inspect only those records or documents relevant to information required for this application.

(d) Sheriff to conduct investigation.--The sheriff to whom the application is made shall investigate the applicant's record of criminal convictions, shall investigate whether or not the applicant is under indictment for or has ever been convicted of a crime punishable by imprisonment exceeding one year, shall investigate whether the applicant's character and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety and shall investigate whether the applicant would be precluded from receiving a license under subsection (e)(1) or section 6105(h) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) and shall conduct a criminal background, juvenile delinquency or mental health check following the procedures set forth in section 6111 (relating to firearm ownership).

(e) Issuance of license.--

(1) A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle and shall be issued if, after an investigation not to exceed 45 days, it appears that the applicant is an individual concerning whom no good cause exists to deny the license. A license shall not be issued to any of the following:

(i) An individual whose character and reputation is such that the individual would be likely to act in a manner dangerous to public safety.

(ii) An individual who has been convicted of an offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(iii) An individual convicted of a crime enumerated in section 6105.

(iv) An individual who, within the past ten years, has been adjudicated delinquent for a crime enumerated in section 6105 or for an offense under The Controlled Substance, Drug, Device and Cosmetic Act.

(v) An individual who is not of sound mind or who has ever been committed to a mental institution.

(vi) An individual who is addicted to or is an unlawful user of marijuana or a stimulant, depressant or narcotic drug.

(vii) An individual who is a habitual drunkard.

(viii) An individual who is charged with or has been convicted of a crime punishable by imprisonment for a term exceeding one year except as provided for in section 6123 (relating to waiver of disability or pardons).

(ix) A resident of another state who does not possess a current license or permit or similar document to carry a firearm issued by that state if a license is provided for by the laws of that state, as published annually in the Federal Register by the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury under 18 U.S.C. § 921(a)(19) (relating to definitions).

(x) An alien who is illegally in the United States.

(xi) An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

(xii) An individual who is a fugitive from justice. This subparagraph does not apply to an individual whose

fugitive status is based upon nonmoving or moving summary offense under Title 75 (relating to vehicles).

(xiii) An individual who is otherwise prohibited from possessing, using, manufacturing, controlling, purchasing, selling or transferring a firearm as provided by section 6105.

(2) (Deleted by amendment.)

(3) The license shall bear the name, address, date of birth, race, sex, citizenship, Social Security number, height, weight, color of hair, color of eyes and signature of the licensee; the signature of the sheriff issuing the license; the reason for issuance; and the period of validation. The sheriff may also require a photograph of the licensee on the license. The original license shall be issued to the applicant. The first copy of the license shall be forwarded to the commissioner within seven days of the date of issue, and a second copy shall be retained by the issuing authority for a period of six years.

(f) Term of license.--

(1) A license to carry a firearm issued under subsection (e) shall be valid throughout this Commonwealth for a period of five years unless sooner revoked.

(2) At least 60 days prior to the expiration of each license, the issuing sheriff shall send to the licensee an application for renewal of license. Failure to receive a renewal application shall not relieve a licensee from the responsibility to renew the license.

(g) Grant or denial of license.--Upon the receipt of an application for a license to carry a firearm, the sheriff shall, within 45 days, issue or refuse to issue a license on the basis of the investigation under subsection (d) and the accuracy of the information contained in the application. If the sheriff refuses to issue a license, the sheriff shall notify the applicant in writing of the refusal and the specific reasons. The notice shall be sent by certified mail to the applicant at the address set forth in the application.

(h) ~~Fee.~~--The fee for a license to carry a firearm is \$19. This includes a renewal notice processing fee of \$1.50. This includes an administrative fee of \$5 under section 14(2) of the act of July 6, 1984 (P.L.614, No.127), known as the Sheriff Fee Act. No fee other than that provided by this paragraph or the Sheriff Fee Act may be assessed by the sheriff for the performance of any background check made pursuant to this act. The fee is payable to the sheriff to whom the application is submitted and is payable at the time of application for the license. Except for the administrative fee of \$5 under section 14(2) of the Sheriff Fee Act, all other fees shall be refunded if the application is denied but shall not be refunded if a license is issued and subsequently revoked. A person who sells or attempts to sell a license to carry a firearm for a fee in excess of the amounts fixed under this subsection commits a summary offense.

(i) Revocation.--A license to carry firearms may be revoked by the issuing authority for good cause. A license to carry firearms shall be revoked by the issuing authority for any reason stated in subsection (e)(1) which occurs during the term of the permit. Notice of revocation shall be in writing and shall state the specific reason for revocation. Notice shall be sent by certified mail, and, at that time, a copy shall be

forwarded to the commissioner. An individual whose license is revoked shall surrender the license to the issuing authority within five days of receipt of the notice. An individual whose license is revoked may appeal to the court of common pleas for the judicial district in which the individual resides. An individual who violates this section commits a summary offense.

(j) Immunity.--A sheriff who complies in good faith with this section shall be immune from liability resulting or arising from the action or misconduct with a firearm committed by any individual to whom a license to carry a firearm has been issued.

(k) Reciprocity.--The Attorney General may enter into reciprocity agreements with other states providing for the mutual recognition of each state's license to carry a firearm. (Apr. 17, 1986, P.L.82, No.28, eff. Jan. 1, 1987; Dec. 19, 1988, P.L.1275, No.158, eff. 180 days; June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days; Nov. 22, 1995, P.L.621, No.66, eff. imd.; Apr. 22, 1997, P.L.73, No.5, eff. 60 days; June 18, 1998, P.L.503, No.70, eff. imd.)

1998 Amendment. Act 70 amended subsecs. (e)(1)(xii) and (i).

1997 Amendment. Act 5 amended subsec. (a).

1995 Amendment. Act 66 amended subsecs. (a), (f) and (h).

Cross References. Section 6109 is referred to in sections 913, 6105, 6106, 6107, 6111, 6115, 6124 of this title; section 2325 of Title 34 (Game).

§ 6110. Persons to whom delivery shall not be made (Repealed)

1995 Repeal Note. Section 6110 was repealed June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, effective in 120 days.

§ 6110.1. Possession of firearm by minor.

(a) Firearm.--Except as provided in subsection (b), a person under 18 years of age shall not possess or transport a firearm anywhere in this Commonwealth.

(b) Exception.--Subsection (a) shall not apply to a person under 18 years of age:

(1) who is under the supervision of a parent, grandparent, legal guardian or an adult acting with the expressed consent of the minor's custodial parent or legal guardian and the minor is engaged in lawful activity, including safety training, lawful target shooting, engaging in an organized competition involving the use of a firearm or the firearm is unloaded and the minor is transporting it for a lawful purpose; or

(2) who is lawfully hunting or trapping in accordance with 34 Pa.C.S. (relating to game).

(c) Responsibility of adult.--Any person who knowingly and intentionally delivers or provides to the minor a firearm in violation of subsection (a) commits a felony of the third degree.

(d) Forfeiture.--Any firearm in the possession of a person under 18 years of age in violation of this section shall be promptly seized by the arresting law enforcement officer and upon conviction or adjudication of delinquency shall be forfeited or, if stolen, returned to the lawful owner.

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days; Nov. 22, 1995, P.L.621, No.66, eff. imd.)

1995 Amendments. Act 17, 1st Sp.Sess., added section 6110.1 and Act 66 amended subsec. (b).

CROSS References. Section 6110.1 is referred to in sections 6105, 6115 of this title.

§ 6111. Sale or transfer of firearms.

(a) Time and manner of delivery.--

(1) Except as provided in paragraph (2), no seller shall deliver a firearm to the purchaser or transferee thereof until 48 hours shall have elapsed from the time of the application for the purchase thereof, and, when delivered, the firearm shall be securely wrapped and shall be unloaded.

(2) Thirty days after publication in the Pennsylvania Bulletin that the Instantaneous Criminal History Records Check System has been established in accordance with the Brady Handgun Violence Prevention Act (Public Law 103-159, 18 U.S.C. § 921 et seq.), no seller shall deliver a firearm to the purchaser thereof until the provisions of this section have been satisfied, and, when delivered, the firearm shall be securely wrapped and shall be unloaded.

(b) Duty of seller.--No licensed importer, licensed manufacturer or licensed dealer shall sell or deliver any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer or licensed collector, until the conditions of subsection (a) have been satisfied and until he has:

(1) For purposes of a firearm as defined in section 6102 (relating to definitions), obtained a completed application/record of sale from the potential buyer or transferee to be filled out in triplicate, the original copy to be sent to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale, one copy to be retained by the licensed importer, licensed manufacturer or licensed dealer for a period of 20 years and one copy to be provided to the purchaser or transferee. The form of this application/record of sale shall be no more than one page in length and shall be promulgated by the Pennsylvania State Police and provided by the licensed importer, licensed manufacturer or licensed dealer. The application/record of sale shall include the name, address, birthdate, gender, race, physical description and Social Security number of the purchaser or transferee, the date of the application and the caliber, length of barrel, make, model and manufacturer's number of the firearm to be purchased or transferred.

(1.1) On the date of publication in the Pennsylvania Bulletin of a notice by the Pennsylvania State Police that the instantaneous records check has been implemented, all of the following shall apply:

(i) In the event of an electronic failure under section 6111.1(b)(2) (relating to Pennsylvania State Police) for purposes of a firearm which exceeds the barrel and related lengths set forth in section 6102, obtained a completed application/record of sale from the potential buyer or transferee to be filled out in triplicate, the original copy to be sent to the Pennsylvania State Police, postmarked via first class mail, within 14 days of sale, one copy to be retained by the licensed importer, licensed manufacturer or licensed dealer for a period of 20 years and one copy to be provided to the purchaser or transferee.

(ii) The form of the application/record of sale shall be no more than one page in length and shall be

promulgated by the Pennsylvania State Police and provided by the licensed importer, licensed manufacturer or licensed dealer.

(iii) For purposes of conducting the criminal history, juvenile delinquency and mental health records background check which shall be completed within ten days of receipt of the information from the dealer, the application/record of sale shall include the name, address, birthdate, gender, race, physical description and Social Security number of the purchaser or transferee and the date of application.

(iv) No information regarding the type of firearm need be included other than an indication that the firearm exceeds the barrel lengths set forth in section 6102.

(v) Unless it has been discovered pursuant to a criminal history, juvenile delinquency and mental health records background check that the potential purchaser or transferee is prohibited from possessing a firearm pursuant to section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), no information on the application/record of sale provided pursuant to this subsection shall be retained as precluded by section 6111.4 (relating to registration of firearms) by the Pennsylvania State Police either through retention of the application/record of sale or by entering the information onto a computer, and, further, an application/record of sale received by the Pennsylvania State Police pursuant to this subsection shall be destroyed within 72 hours of the completion of the criminal history, juvenile delinquency and mental health records background check.

(1.2) Fees collected under paragraph (3) and section 6111.2 (relating to firearm sales surcharge) shall be transmitted to the Pennsylvania State Police within 14 days of collection.

(1.3) In addition to the criminal penalty under section 6119 (relating to violation penalty), any person who knowingly and intentionally maintains or fails to destroy any information submitted to the Pennsylvania State Police for purposes of a background check pursuant to paragraphs (1.1) and (1.4) or violates section 6111.4 shall be subject to a civil penalty of \$250 per violation, entry or failure to destroy.

(1.4) Following implementation of the instantaneous records check by the Pennsylvania State Police on or before December 31, 1999, no application/record of sale shall be completed for the purchase or transfer of a firearm which exceeds the barrel lengths set forth in section 6102. A statement shall be submitted by the dealer to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale, containing the number of firearms sold which exceed the barrel and related lengths set forth in section 6102, the amount of surcharge and other fees remitted and a list of the unique approval numbers given pursuant to paragraph (4), together with a statement that the background checks have been performed on the firearms contained in the statement. The form of the statement relating to performance of background checks shall be promulgated by the Pennsylvania

STATE POLICE.

(2) Inspected photoidentification of the potential purchaser or transferee, including, but not limited to, a driver's license, official Pennsylvania photoidentification card or official government photoidentification card. In the case of a potential buyer or transferee who is a member of a recognized religious sect or community whose tenets forbid or discourage the taking of photographs of members of that sect or community, a seller shall accept a valid-without-photo driver's license or a combination of documents, as prescribed by the Pennsylvania State Police, containing the applicant's name, address, date of birth and the signature of the applicant.

(3) Requested by means of a telephone call that the Pennsylvania State Police conduct a criminal history, juvenile delinquency history and a mental health record check. The purchaser and the licensed dealer shall provide such information as is necessary to accurately identify the purchaser. The requester shall be charged a fee equivalent to the cost of providing the service but not to exceed \$2 per buyer or transferee.

(4) Received a unique approval number for that inquiry from the Pennsylvania State Police and recorded the date and the number on the application/record of sale form.

(5) Issued a receipt containing the information from paragraph (4), including the unique approval number of the purchaser. This receipt shall be prima facie evidence of the purchaser's or transferee's compliance with the provisions of this section.

(6) Unless it has been discovered pursuant to a criminal history, juvenile delinquency and mental health records background check that the potential purchaser or transferee is prohibited from possessing a firearm pursuant to section 6105, no information received via telephone following the implementation of the instantaneous background check system from a purchaser or transferee who has received a unique approval number shall be retained by the Pennsylvania State Police.

(7) For purposes of the enforcement of 18 U.S.C. § 922(d)(9), (g)(1) and (s)(1) (relating to unlawful acts), in the event the criminal history or juvenile delinquency background check indicates a conviction for a misdemeanor that the Pennsylvania State Police cannot determine is or is not related to an act of domestic violence, the Pennsylvania State Police shall issue a temporary delay of the approval of the purchase or transfer. During the temporary delay, the Pennsylvania State Police shall conduct a review or investigation of the conviction with courts, local police departments, district attorneys and other law enforcement or related institutions as necessary to determine whether or not the misdemeanor conviction involved an act of domestic violence. The Pennsylvania State Police shall conduct the review or investigation as expeditiously as possible. No firearm may be transferred by the dealer to the purchaser who is the subject of the investigation during the temporary delay. The Pennsylvania State Police shall notify the dealer of the termination of the temporary delay and either deny the sale or provide the unique approval number under paragraph (4).

(c) Duty of other persons.--Any person who is not a licensed importer, manufacturer or dealer and who desires to sell or transfer a firearm to another unlicensed person shall do so only upon the place of business of a licensed importer, manufacturer, dealer or county sheriff's office, the latter of whom shall follow the procedure set forth in this section as if he were the seller of the firearm. The provisions of this section shall not apply to transfers between spouses or to transfers between a parent and child or to transfers between grandparent and grandchild.

(d) Defense.--Compliance with the provisions of this section shall be a defense to any criminal complaint under the laws of this Commonwealth or other claim or cause of action under this chapter arising from the sale or transfer of any firearm.

(e) Nonapplicability of section.--This section shall not apply to the following:

(1) Any firearm manufactured on or before 1898.

(2) Any firearm with a matchlock, flintlock or percussion cap type of ignition system.

(3) Any replica of any firearm described in paragraph

(1) if the replica:

(i) is not designed or redesigned to use rimfire or conventional center fire fixed ammunition; or

(ii) uses rimfire or conventional center fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(f) Application of section.--

(1) For the purposes of this section only, except as provided by paragraph (2), "firearm" shall mean any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

(2) The provisions contained in subsections (a) and (c) shall only apply to pistols or revolvers with a barrel length of less than 15 inches, any shotgun with a barrel length of less than 18 inches, any rifle with a barrel length of less than 16 inches or any firearm with an overall length of less than 26 inches.

(3) The provisions contained in subsection (a) shall not apply to any law enforcement officer whose current identification as a law enforcement officer shall be construed as a valid license to carry a firearm or any person who possesses a valid license to carry a firearm under section 6109 (relating to licenses).

(4) (i) The provisions of subsection (a) shall not apply to any person who presents to the seller or transferor a written statement issued by the official described in subparagraph (iii) during the ten-day period ending on the date of the most recent proposal of such transfer or sale by the transferee or purchaser stating that the transferee or purchaser requires access to a firearm because of a threat to the life of the transferee or purchaser or any member of the household of that transferee or purchaser.

(ii) The issuing official shall notify the applicant's local police authority that such a statement has been issued. In counties of the first class the chief of police shall notify the police station or substation

closest to the applicant's residence.

(iii) The statement issued under subparagraph (ii) shall be issued by the district attorney, or his designee, of the county of residence if the transferee or purchaser resides in a municipality where there is no chief of police. Otherwise, the statement shall be issued by the chief of police in the municipality in which the purchaser or transferee resides.

(g) Penalties.--

(1) Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly or intentionally sells, delivers or transfers a firearm in violation of this section commits a misdemeanor of the second degree.

(2) Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly or intentionally sells, delivers or transfers a firearm under circumstances intended to provide a firearm to any person, purchaser or transferee who is unqualified or ineligible to control, possess or use a firearm under this chapter commits a felony of the third degree and shall in addition be subject to revocation of the license to sell firearms for a period of three years.

(3) Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly and intentionally requests a criminal history, juvenile delinquency or mental health record check or other confidential information from the Pennsylvania State Police under this chapter for any purpose other than compliance with this chapter or knowingly and intentionally disseminates any criminal history, juvenile delinquency or mental health record or other confidential information to any person other than the subject of the information commits a felony of the third degree.

(3.1) Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly and intentionally obtains or furnishes information collected or maintained pursuant to section 6109 for any purpose other than compliance with this chapter or who knowingly or intentionally disseminates, publishes or otherwise makes available such information to any person other than the subject of the information commits a felony of the third degree.

(4) Any person, purchaser or transferee who in connection with the purchase, delivery or transfer of a firearm under this chapter knowingly and intentionally makes any materially false oral or written statement or willfully furnishes or exhibits any false identification intended or likely to deceive the seller, licensed dealer or licensed manufacturer commits a felony of the third degree.

(5) Notwithstanding section 306 (relating to liability for conduct of another; complicity) or any other statute to the contrary, any person, licensed importer, licensed dealer or licensed manufacturer who knowingly and intentionally sells, delivers or transfers a firearm in violation of this chapter who has reason to believe that the firearm is intended to be used in the commission of a crime or attempt to commit a crime shall be criminally liable for such crime or attempted crime.

(6) Notwithstanding any act or statute to the contrary, any person, licensed importer, licensed manufacturer or licensed dealer who knowingly and intentionally sells or delivers a firearm in violation of this chapter who has

reason to believe that the firearm is intended to be used in the commission of a crime or attempt to commit a crime shall be liable in the amount of the civil judgment for injuries suffered by any person so injured by such crime or attempted crime.

(h) Subsequent violation penalty.--

(1) A second or subsequent violation of this section shall be a felony of the second degree and shall be punishable by a mandatory minimum sentence of imprisonment of five years. A second or subsequent offense shall also result in permanent revocation of any license to sell, import or manufacture a firearm.

(2) Notice of the applicability of this subsection to the defendant and reasonable notice of the Commonwealth's intention to proceed under this section shall be provided prior to trial. The applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and shall determine by a preponderance of the evidence if this section is applicable.

(3) There shall be no authority for a court to impose on a defendant to which this subsection is applicable a lesser sentence than provided for in paragraph (1), to place the defendant on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.

(4) If a sentencing court refuses to apply this subsection where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this subsection.

(i) Confidentiality.--All information provided by the potential purchaser, transferee or applicant, including, but not limited to, the potential purchaser, transferee or applicant's name or identity, furnished by a potential purchaser or transferee under this section or any applicant for a license to carry a firearm as provided by section 6109 shall be confidential and not subject to public disclosure. In addition to any other sanction or penalty imposed by this chapter, any person, licensed dealer, State or local governmental agency or department that violates this subsection shall be liable in civil damages in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well as reasonable attorney fees.

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days; Nov. 22, 1995, P.L.621, No.66; Apr. 22, 1997, P.L.73, No.5; June 18, 1998, P.L.503, No.70, eff. imd.)

1998 Amendment. Act 70 amended subsecs. (b)(1.1) intro. par. and (1), (1.4) and (3) and (g)(3) and added subsecs. (b)(7) and (g)(3.1).

1997 Amendment. Act 5 amended the entire section, effective immediately as to subsec. (b)(1.1) and 60 days as to the

REMAINDER OF THE SECTION.

1995 Amendment. Section 11 of Act 66 provided that until the amendatory provisions of subsec. (b) set forth by Act 66 take effect, the Pennsylvania State Police shall only apply the provision of subsec. (b)(1) as it existed on the day prior to the effective date of Act 66 to any firearm which meets the standards in the definition of "firearm" set forth in section 6102.

Cross References. Section 6111 is referred to in sections 6109, 6111.1, 6111.2, 6111.3, 6113 of this title.

§ 6111.1. Pennsylvania State Police.

(a) Administration.--The Pennsylvania State Police shall have the responsibility to administer the provisions of this chapter.

(b) Duty of Pennsylvania State Police.--

(1) Upon receipt of a request for a criminal history, juvenile delinquency history and mental health record check of the potential purchaser or transferee, the Pennsylvania State Police shall immediately during the licensee's call or by return call forthwith:

(i) review the Pennsylvania State Police criminal history and fingerprint records to determine if the potential purchaser or transferee is prohibited from receipt or possession of a firearm under Federal or State law;

(ii) review the juvenile delinquency and mental health records of the Pennsylvania State Police to determine whether the potential purchaser or transferee is prohibited from receipt or possession of a firearm under Federal or State law; and

(iii) inform the licensee making the inquiry either:

(A) that the potential purchase or transfer is prohibited; or

(B) provide the licensee with a unique approval number.

(2) In the event of electronic failure, scheduled computer downtime or similar event beyond the control of the Pennsylvania State Police, the Pennsylvania State Police shall immediately notify the requesting licensee of the reason for and estimated length of the delay. If the failure or event lasts for a period exceeding 48 hours, the dealer shall not be subject to any penalty for completing a transaction absent the completion of an instantaneous records check for the remainder of the failure or similar event, but the dealer shall obtain a completed application/record of sale following the provisions of section 6111(b)(1) and (1.1) (relating to sale or transfer of firearms) as if an instantaneous records check has not been established for any sale or transfer of a firearm for the purpose of a subsequent background check.

(3) The Pennsylvania State Police shall fully comply, execute and enforce the directives of this section as follows:

(i) The instantaneous background check for firearms as defined in section 6102 (relating to definitions) shall begin on July 1, 1998.

(ii) The instantaneous background check for firearms that exceed the barrel lengths set forth in section 6102 shall begin following notice published in the

Pennsylvania Bulletin on the date of implementation but no later than December 31, 1999.

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(4) The Pennsylvania State Police and any local law enforcement agency shall make all reasonable efforts to determine the lawful owner of any firearm confiscated by the Pennsylvania State Police or any local law enforcement agency and return said firearm to its lawful owner if the owner is not otherwise prohibited from possessing the firearm. When a court of law has determined that the Pennsylvania State Police or any local law enforcement agency have failed to exercise the duty under this subsection, reasonable attorney fees shall be awarded to any lawful owner of said firearm who has sought judicial enforcement of this subsection.

(c) Establish a telephone number.--The Pennsylvania State Police shall establish a telephone number which shall be operational seven days a week between the hours of 8 a.m. and 10 p.m. local time for purposes of responding to inquiries as described in this section from licensed manufacturers, licensed importers and licensed dealers. The Pennsylvania State Police shall employ and train such personnel as are necessary to administer expeditiously the provisions of this section.

(d) Distribution.--The Pennsylvania State Police shall provide, without charge, summaries of uniform firearm laws and firearm safety brochures pursuant to section 6125 (relating to distribution of uniform firearm laws and firearm safety brochures).

(e) Challenge to records.--Any person who is denied the right to receive, sell, transfer, possess, carry, manufacture or purchase a firearm as a result of the procedures established by this section may challenge the accuracy of that person's criminal history, juvenile delinquency history or mental health record pursuant to a denial by the instantaneous records check in accordance with procedures established by the Pennsylvania State Police. The decision resulting from a challenge under this subsection may be appealed to the Attorney General within 30 days of the decision by the Pennsylvania State Police. The decision of the Attorney General may be appealed to the Commonwealth Court in accordance with court rule.

(f) Notification of mental health commitment.-- Notwithstanding any statute to the contrary, judges of the courts of common pleas shall notify the Pennsylvania State Police on a form developed by the Pennsylvania State Police of the identity of any individual who has been adjudicated incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, or who has been involuntarily treated as described in section 6105(c)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms). The notification shall be transmitted by the judge to the Pennsylvania State Police within seven days of the adjudication, commitment or treatment.

(g) Review by court.--

(1) Upon receipt of a copy of the order of a court of competent jurisdiction which vacates a final order or an involuntary certification issued by a mental health review officer, the Pennsylvania State Police shall expunge all records of the involuntary treatment received under subsection (f).

(2) A person who is involuntarily committed pursuant to section 302 of the Mental Health Procedures Act may petition the court to review the sufficiency of the evidence upon which the commitment was based. If the court determines that the evidence upon which the involuntary commitment was based was insufficient, the court shall order that the record of the commitment submitted to the Pennsylvania State Police be expunged. A petition filed under this subsection shall toll the 60-day period set forth under section 6105(a)(2).

(3) The Pennsylvania State Police shall expunge all records of an involuntary commitment of an individual who is discharged from a mental health facility based upon the initial review by the physician occurring within two hours of arrival under section 302(b) of the Mental Health Procedures Act and the physician's determination that no severe mental disability existed pursuant to section 302(b) of the Mental Health Procedures Act. The physician shall provide signed confirmation of the determination of the lack of severe mental disability following the initial examination under section 302(b) of the Mental Health Procedures Act to the Pennsylvania State Police.

(h) Juvenile registry.--

(1) The contents of law enforcement records and files compiled under 42 Pa.C.S. § 6308 (relating to law enforcement records) concerning a child shall not be disclosed to the public except if the child is 14 years of age or older at the time of the alleged conduct and if any of the following apply:

(i) The child has been adjudicated delinquent by a court as a result of an act or acts which constitute any offense enumerated in section 6105.

(ii) A petition alleging delinquency has been filed by a law enforcement agency alleging that the child has committed an act or acts which constitute an offense enumerated in section 6105 and the child previously has been adjudicated delinquent by a court as a result of an act or acts which included the elements of one of such crimes.

(2) Notwithstanding any provision of this subsection, the contents of law enforcement records and files concerning any child adjudicated delinquent for the commission of any criminal activity described in paragraph (1) shall be recorded in the registry of the Pennsylvania State Police for the limited purposes of this chapter.

(i) Reports.--The Pennsylvania State Police shall annually compile and report to the General Assembly, on or before December 31, the following information for the previous year:

(1) number of firearm sales, including the types of firearms;

(2) number of applications for sale of firearms denied, number of challenges of the denials and number of final reversals of initial denials;

(3) summary of the Pennsylvania State Police's activities, including the average time taken to complete a criminal history, juvenile delinquency history or mental health record check; and

(4) uniform crime reporting statistics compiled by the Pennsylvania State Police based on the National Incident-based Reporting System.

(j) Other criminal information.--The Pennsylvania State Police shall be authorized to obtain any crime statistics necessary for the purposes of this chapter from any local law enforcement agency.

(j.1) Delinquency and mental health records.--The provisions of this section which relate to juvenile delinquency and mental health records checks shall be applicable when the data has been made available to the Pennsylvania State Police but not later than October 11, 1999.

(j.2) Records check.--The provisions of this section which relate to the instantaneous records check conducted by telephone shall be applicable 30 days following notice by the Pennsylvania State Police pursuant to section 6111(a)(2).

(j.3) Immunity.--The Pennsylvania State Police and its employees shall be immune from actions for damages for the use of a firearm by a purchaser or for the unlawful transfer of a firearm by a dealer unless the act of the Pennsylvania State Police or its employees constitutes a crime, actual fraud, actual malice or willful misconduct.

(k) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Firearm." The term shall have the same meaning as in section 6111.2 (relating to firearm sales surcharge).

"Physician." Any licensed psychiatrist or clinical psychologist as defined in the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act. (June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days; Nov. 22, 1995, P.L.621, No.66, eff. imd.; Apr. 22, 1997, P.L.73, No.5, eff. 60 days; June 18, 1998, P.L.503, No.70, eff. imd.)

1998 Amendment. Act 70 amended subsecs. (b)(3) and (e) and added subsec. (j.3).

1997 Amendment. Act 5 amended subsecs. (b)(2) and (k).

1995 Amendments. Act 17, 1st Sp.Sess., added section 6111.1 and Act 66 amended subsecs. (b), (d), (e), (f), (g), (h) and (i) and added subsecs. (j.1) and (j.2).

Cross References. Section 6111.1 is referred to in sections 6106, 6111 of this title.

§ 6111.2: Firearm sales surcharge.

(a) Surcharge imposed.--There is hereby imposed on each sale of a firearm subject to tax under Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, an additional surcharge of \$3. This shall be referred to as the Firearm Sale Surcharge. All moneys received from this surcharge shall be deposited in the Firearm Instant Records Check Fund.

(b) Increases or decreases.--Five years from the effective date of this subsection, and every five years thereafter, the Pennsylvania State Police shall provide such information as necessary to the Legislative Budget and Finance Committee for the purpose of reviewing the need to increase or decrease the instant check fee. The committee shall issue a report of its findings and recommendations to the General Assembly for a statutory change in the fee.

(c) Revenue sources.--Funds received under the provisions of this section and section 6111(b)(3) (relating to sale or transfer of firearms), as estimated and certified by the Secretary of Revenue, shall be deposited within five days of the end of each quarter into the fund.

(c) Definition.--As used in this section only, the term "firearm" shall mean any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosion or the frame or receiver of any such weapon. (June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days; Nov. 22, 1995, P.L.621, No.66, eff. imd.)

References in Text. The Firearm Instant Records Check Fund, referred to in subsec. (a), is now the Firearm Records Check Fund.

Cross References. Section 6111.2 is referred to in sections 6111, 6111.1, 6111.3 of this title.

§ 6111.3. Firearm Records Check Fund.

(a) Establishment.--The Firearm Records Check Fund is hereby established as a restricted account in the State Treasury, separate and apart from all other public money or funds of the Commonwealth, to be appropriated annually by the General Assembly, for use in carrying out the provisions of section 6111 (relating to firearm ownership). The moneys in the fund on June 1, 1998, are hereby appropriated to the Pennsylvania State Police.

(b) Source.--The source of the fund shall be moneys collected and transferred under section 6111.2 (relating to firearm sales surcharge) and moneys collected and transferred under section 6111(b)(3)...

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days; Nov. 22, 1995, P.L.621, No.66, eff. imd.; June 18, 1998, P.L.503, No.70, eff. imd.)

1998 Amendment. Act 70 amended the section heading and subsec. (a).

1995 Amendments. Act 17, 1st Sp.Sess., added section 6111.3 and Act 66 amended the section heading.

Cross References. Section 6111.3 is referred to in section 6102 of this title.

§ 6111.4. Registration of firearms.

Notwithstanding any section of this chapter to the contrary, nothing in this chapter shall be construed to allow any government or law enforcement agency or any agent thereof to create, maintain or operate any registry of firearm ownership within this Commonwealth. For the purposes of this section only, the term "firearm" shall include any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days)

1995 Amendment. Act 17, 1st Sp.Sess., added section 6111.4.

Cross References. Section 6111.4 is referred to in section 6111 of this title.

§ 6111.5. Rules and regulations.

The Pennsylvania State Police shall in the manner provided by law promulgate the rules and regulations necessary to carry out this chapter, including regulations to ensure the identity, confidentiality and security of all records and data provided pursuant hereto.

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days)

1995 Amendment. Act 17, 1st Sp.Sess., added section 6111.5.

§ 6112. Retail dealer required to be licensed.

No retail dealer shall sell, or otherwise transfer or expose for sale or transfer, or have in his possession with intent to sell or transfer, any firearm as defined in section 6113(d) (relating to licensing of dealers) without being licensed as provided in this chapter.

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days; Apr. 22, 1997, P.L.73, No.5, eff. 60 days)

Cross References. Section 6112 is referred to in section 6113 of this title.

§ 6113. Licensing of dealers.

(a) General rule.--The chief or head of any police force or police department of a city, and, elsewhere, the sheriff of the county, shall grant to reputable applicants licenses, in form prescribed by the Pennsylvania State Police, effective for three years from date of issue, permitting the licensee to sell firearms direct to the consumer, subject to the following conditions in addition to those specified in section 6111 (relating to sale or transfer of firearms), for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in this subchapter:

(1) The business shall be carried on only upon the premises designated in the license or at a lawful gun show or meet.

(2) The license, or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

(3) No firearm shall be sold in violation of any provision of this subchapter.

(4) No firearm shall be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of the purchaser's identity.

(5) A true record in triplicate shall be made of every firearm sold, in a book kept for the purpose, the form of which may be prescribed by the Pennsylvania State Police, and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the information required by section 6111. The record shall be maintained by the licensee for a period of 20 years.

(6) No firearm as defined in section 6102 (relating to definitions) shall be displayed in any part of any premises where it can readily be seen from the outside. In the event that the Commissioner of the Pennsylvania State Police shall find a clear and present danger to public safety within this Commonwealth or any area thereof, firearms shall be stored and safeguarded pursuant to regulations to be established by the Pennsylvania State Police by the licensee during the hours when the licensee is closed for business.

(7) The dealer shall possess all applicable current revenue licenses.

(b) Fee.--The fee for issuing said license shall be \$30, which fee shall be paid into the county treasury.

(c) Revocation.--Any license granted under subsection (a) of this section may be revoked for cause by the person issuing the same, upon written notice to the holder thereof.

(d) Definitions.--For the purposes of this section and section 6112 (relating to retail dealer required to be licensed)

only unless otherwise specifically provided, the term "firearm" shall include any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days; Nov. 22, 1995, P.L.621, No.66, eff. imd.; June 18, 1998, P.L.503, No.70, eff. imd.)

1998 Amendment. Act 70 amended subsecs. (a)(5) and (d).

1995 Amendment. Act 66 amended subsec. (a).

Cross References. Section 6113 is referred to in section 6112 of this title.

§ 6114. Judicial review.

The action of the chief of police, sheriff, county treasurer or other officer under this subchapter shall be subject to judicial review in the manner and within the time provided by 2 Pa.C.S. Ch. 7 Subch. B (relating to judicial review of local agency action). A judgment sustaining a refusal to grant a license shall not bar, after one year, a new application; nor shall a judgment in favor of the petitioner prevent the defendant from thereafter revoking or refusing to renew such license for any proper cause which may thereafter occur. The court shall have full power to dispose of all costs.

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days)

§ 6115. Loans on, or lending or giving firearms prohibited.

(a) Offense defined.--No person shall make any loan secured by mortgage, deposit or pledge of a firearm, nor, except as provided in subsection (b), shall any person lend or give a firearm to another or otherwise deliver a firearm contrary to the provisions of this subchapter.

(b) Exception.--

(1) Subsection (a) shall not apply if any of the following apply:

(i) The person who receives the firearm is licensed to carry a firearm under section 6109 (relating to licenses).

(ii) The person who receives the firearm is exempt from licensing.

(iii) The person who receives the firearm is engaged in a hunter safety program certified by the Pennsylvania Game Commission or a firearm training program or competition sanctioned or approved by the National Rifle Association.

(iv) The person who receives the firearm meets all of the following:

(A) Is under 18 years of age.

(B) Pursuant to section 6110.1 (relating to possession of firearm by minor) is under the supervision, guidance and instruction of a responsible individual who:

(I) is 21 years of age or older; and

(II) is not prohibited from owning or possessing a firearm under section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

(v) The person who receives the firearm is lawfully hunting or trapping and is in compliance with the provisions of Title 34 (relating to game).

(vi) A bank or other chartered lending institution

is able to adequately secure firearms in its possession.

(2) Nothing in this section shall be construed to prohibit the transfer of a firearm under 20 Pa.C.S. Ch. 21 (relating to intestate succession) or by bequest if the individual receiving the firearm is not precluded from owning or possessing a firearm under section 6105.

(3) Nothing in this section shall be construed to prohibit the loaning or giving of a firearm to another in one's dwelling or place of business if the firearm is retained within the dwelling or place of business.

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days)
§ 6116. False evidence of identity.

In addition to any other penalty provided in this chapter, the furnishing of false information or offering false evidence of identity is a violation of section 4904 (relating to unsworn falsification to authorities).

(Dec. 19, 1988, P.L.1275, No.158, eff. 180 days; June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days)
§ 6117. Altering or obliterating marks of identification.

(a) Offense defined.--No person shall change, alter, remove, or obliterate the manufacturer's number integral to the frame or receiver of any firearm which shall have the same meaning as provided in section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

(b) Presumption.--Possession of any firearm upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

(c) Penalty.--A violation of this section constitutes a felony of the second degree.

(d) Appellate review.--If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days;
Nov. 22, 1995, P.L.621, No.66, eff. imd.)

1995 Amendment. Act 66 amended subsec. (a).

§ 6118. Antique firearms.

(a) General rule.--This subchapter shall not apply to antique firearms.

(b) Exception.--Subsection (a) shall not apply to the extent that such antique firearms, reproductions or replicas of firearms are concealed weapons as provided in section 6106 (relating to firearms not to be carried without a license), nor shall it apply to the provisions of section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) if such antique firearms, reproductions or replicas of firearms are suitable for use.

(c) Definition.--As used in this section, the term "antique firearm" means:

(1) Any firearm with a matchlock, flintlock or percussion cap type of ignition system.

(2) Any firearm manufactured on or before 1898.

(3) Any replica of any firearm described in paragraph

(2) if such replica:

(i) is not designed or redesigned for using rimfire or conventional center fire fixed ammunition; or

(ii) uses rimfire or conventional center fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(July 16, 1979, P.L.116, No.47, eff. 60 days; Dec. 20, 1983, P.L.291, No.78, eff. imd.; June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days; Nov. 22, 1995, P.L.621, No.66, eff. imd.)

§ 6119. Violation penalty.

Except as otherwise specifically provided, an offense under this subchapter constitutes a misdemeanor of the first degree. (Dec. 7, 1989, P.L.607, No.68, eff. 60 days)

Cross References. Section 6119 is referred to in section 6111 of this title.

§ 6120. Limitation on municipal regulation of firearms and ammunition.

(a) General rule.--No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

(b) Definition.--For the purposes of this section, the term "firearms" has the meaning given in section 5515 (relating to prohibiting of paramilitary training) but shall not include "air rifles" as defined in section 6304 (relating to sale and use of air rifles).

(Oct. 18, 1974, P.L.768, No.260, eff. imd.; Dec. 19, 1988, P.L.1275, No.158, eff. 180 days; Oct. 4, 1994, P.L.571, No.84, eff. 60 days)

§ 6121. Certain bullets prohibited.

(a) Offense defined.--It is unlawful for any person to possess, use or attempt to use a KTW teflon-coated bullet or other armor-piercing ammunition while committing or attempting to commit a crime of violence as defined in section 6102 (relating to definitions).

(b) Grading.--An offense under this section constitutes a felony of the third degree.

(c) Sentencing.--Any person who is convicted in any court of this Commonwealth of a crime of violence and who uses or carries, in the commission of that crime, a firearm loaded with KTW ammunition or any person who violates this section shall, in addition to the punishment provided for the commission of the crime, be sentenced to a term of imprisonment for not less than five years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a crime subject to this subsection nor place him on probation nor shall the term of imprisonment run concurrently with any other term of imprisonment including that imposed for the crime in which the KTW ammunition was being used or carried. No person sentenced under this subsection shall be eligible for parole.

(d) Definition.--As used in this section the term "armor-piercing ammunition" means ammunition which, when or if fired from any firearm as defined in section 6102 that is used or attempted to be used in violation of subsection (a) under the test procedure of the National Institute of Law Enforcement and Criminal Justice Standard for the Ballistics Resistance of

Police Body Armor promulgated December 1978, is determined to be capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States Department of Justice and published in December of 1978.
(Dec. 21, 1984, P.L.1210, No.230, eff. imd.)

1984 Amendment. Act 230 added section 6121.

§ 6122. Proof of license and exception.

(a) General rule.--When carrying a firearm concealed on or about one's person or in a vehicle, an individual licensed to carry a firearm shall, upon lawful demand of a law enforcement officer, produce the license for inspection. Failure to produce such license either at the time of arrest or at the preliminary hearing shall create a rebuttable presumption of nonlicensure.

(b) Exception.--An individual carrying a firearm on or about his person or in a vehicle and claiming an exception under section 6106(b) (relating to firearms not to be carried without a license) shall, upon lawful demand of a law enforcement officer, produce satisfactory evidence of qualification for exception.

(Dec. 19, 1988, P.L.1275, No.158, eff. 180 days; Apr. 22, 1997, P.L.73, No.5, eff. 60 days)

1997 Amendment. Act 5 amended subsec. (a).

1988 Amendment. Act 158 added section 6122.

§ 6123. Waiver of disability or pardons.

A waiver of disability from Federal authorities as provided for in 18 U.S.C. § 925 (relating to exceptions; relief from disabilities), a full pardon from the Governor or an overturning of a conviction shall remove any corresponding disability under this subchapter except the disability under section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

(Dec. 19, 1988, P.L.1275, No.158, eff. 180 days; Nov. 22, 1995, P.L.621, No.66, eff. imd.)

Cross References. Section 6123 is referred to in section 6109 of this title.

§ 6124. Administrative regulations.

The commissioner may establish form specifications and regulations, consistent with section 6109(c) (relating to licenses), with respect to uniform forms control, including the following:

- (1) License to carry firearms.
- (2) Firearm registration.
- (3) Dealer's license.
- (4) Application for purchase of a firearm.
- (5) Record of sale of firearms.

(Dec. 19, 1988, P.L.1275, No.158, eff. 180 days)

1988 Amendment. Act 158 added section 6124.

§ 6125. Distribution of uniform firearm laws and firearm safety brochures.

It shall be the duty of the Pennsylvania State Police beginning January 1, 1996, to distribute to every licensed firearm dealer in this Commonwealth firearm safety brochures at no cost to the dealer. The brochures shall be written by the Pennsylvania State Police, with the cooperation of the

PENNSYLVANIA Game Commission, and shall include a summary of the major provisions of this subchapter, including, but not limited to, the duties of the sellers and purchasers and the transferees of firearms. The brochure or a copy thereof shall be provided without charge to each purchaser.
(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days;
Nov. 22, 1995, P.L.621, No.66, eff. imd.)

Cross References. Section 6125 is referred to in section 6111.1 of this title.

§ 6126. Firearms Background Check Advisory Committee.

(a) Establishment.--There is hereby established the Firearms Background Check Advisory Committee which shall consist of six members as follows:

- (1) The Governor or a designee.
- (2) The Attorney General or a designee.
- (3) The Majority Leader of the Senate or a designee.
- (4) The Minority Leader of the Senate or a designee.
- (5) The Majority Leader of the House of Representatives or a designee.
- (6) The Minority Leader of the House of Representatives or a designee.

(b) Duties.--To facilitate compliance with this chapter and the intent thereof, the Firearms Background Check Advisory Committee shall, as follows:

(1) Review the operations and procedures of the Pennsylvania State Police relating to the implementation and administration of the criminal history, juvenile delinquency and mental health records background checks.

(2) Advise the Pennsylvania State Police relating to the development and maintenance of the instantaneous records check system.

(3) Provide annual reports to the Governor and the General Assembly on the advisory committee's findings and recommendations, including discussions concerning conformance with the preamble of the act of June 13, 1995 (1st Sp.Sess., P.L.1024, No.17), entitled, "An act amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the possession of firearms; establishing a selected Statewide juvenile offender registry; and making an appropriation."

(c) Terms.--Members or their designees shall serve a term of office concurrent with the term of office for which the member was elected. Any vacancy shall be filled by the appointing authority.

(d) Chairperson.--The Governor shall appoint the chairperson of the advisory committee.

(e) Expiration.--This section shall expire July 1, 2001, or at the end of two years following the implementation of the instant records check, whichever is sooner.

(Nov. 22, 1995, P.L.621, No.66, eff. July 1, 1996)

1995 Amendment. Act 66 added section 6126.

SUBCHAPTER B
FIREARMS GENERALLY

Sec.

6141. Purchase of firearms in contiguous states (Repealed).

6141.1. Purchase of rifles and shotguns outside this Commonwealth.

§ 6141. Purchase of firearms in contiguous states (Repealed).

1997 Repeal Note. Section 6141 was repealed April 22, 1997, P.L.73, No.5, effective in 60 days.

§ 6141.1. Purchase of rifles and shotguns outside this Commonwealth.

Nothing in this chapter shall be construed to prohibit a person in this Commonwealth who may lawfully purchase, possess, use, control, sell, transfer or manufacture a firearm which exceeds the barrel and related lengths set forth in section 6102 (relating to definitions) from lawfully purchasing or otherwise obtaining such a firearm in a jurisdiction outside this Commonwealth.

(Apr. 22, 1997, P.L.73, No.5, eff. 60 days)

1997 Amendment. Act 5 added section 6141.1.

SUBCHAPTER C OTHER DANGEROUS ARTICLES

Sec.

6161. Carrying explosives on conveyances.

6162. Shipping explosives.

§ 6161. Carrying explosives on conveyances.

(a) Offense defined.--A person is guilty of a misdemeanor of the second degree if he enters into or upon any railroad train, locomotive, tender or car thereof, or into or upon any automobile or other conveyance used for the carrying of freight or passengers, having in his custody or about his person any nitroglycerine or other explosive, other than as freight regularly shipped as such.

(b) Powers of crew.--The conductor or person having charge and control of any railroad train, coach, or other conveyance for the carriage of freight or passengers, may arrest any person found violating the provisions of this section and detain such person until reaching some place, where such person may be delivered to a constable or other police authority.

(c) Venue.--It shall be lawful to prosecute such offenders in any county through which said public conveyance passes, without reference to the place where such offenders were arrested.

§ 6162. Shipping explosives.

(a) Offense defined.--A person is guilty of a misdemeanor of the third degree if he knowingly delivers, or causes to be delivered to any transportation company, or to any person engaged in the business of transportation, any explosive material adapted for blasting, or for any other purpose for which such articles may be used, under any false or deceptive invoice or description, or without informing the carrier at or before the time when such delivery is made, of the true nature of the same, and without having the keg, barrel, can or package containing the same plainly marked with the name of the explosive material therein contained, together with the word "dangerous."

ACT TO AMEND TITLE 18, UNITED STATES CODE, TO PROVIDE FOR BETTER CONTROL OF THE INTERSTATE TRAFFIC IN FIREARMS

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, THAT THIS ACT MAY BE CITED AS THE "GUN CONTROL ACT OF 1968"

**TITLE I—STATE
FIREARMS CONTROL
ASSISTANCE**

PURPOSE

Sec. 101. The Congress hereby declares that the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and 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, trapshooting, 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, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title

Chapter 44 Firearms

Sec.

- 921. Definitions.
- 922. Unlawful acts
- 923. Licensing
- 924. Penalties.
- 925. Exceptions: Relief from disabilities
- 925A. Remedy for erroneous denial of firearms.
- 926. Rules and regulations
- 926A. Interstate transportation of firearms
- 927. Effect on State law.
- 928. Separability
- 929. Use of restricted ammunition
- 930. Possession of firearms and dangerous weapons in Federal facilities

§ 921. Definitions

(a) As used in this chapter—

(1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company

(2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the

District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone)

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, (B) the frame or receiver of any such weapon, (C) any firearm muffler or firearm silencer, or (D) any destructive device. Such term does not include an antique firearm

(4) The term "destructive device" means—

(A) any explosive, incendiary, or poison gas—

- (i) bomb,
- (ii) grenade,
- (iii) rocket having a propellant charge of more than four ounces,
- (iv) missile having an explosive or incendiary charge of more than one-quarter ounce,
- (v) mine, or
- (vi) device similar to any of the devices described in the preceding clauses,

(B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter, and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon, any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device, surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes

(5) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger

(6) The term "short-barreled shotgun" means a shotgun having one or more barrels

less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six inches

(7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger

(8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches

(9) The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution, and the term "licensed importer" means any such person licensed under the provisions of this chapter

(10) The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution, and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter

(11) The term "dealer" means (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter

(12) The term "pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money

(13) The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Secretary shall by regulation define, and the term "licensed collector" means any such person licensed under the provisions of this chapter.

(14) The term "indictment" includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted

(15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding

(16) The term "antique firearm" means—

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap,

or similar type of ignition system) manufactured in or before 1898, and

(B) any replica of any firearm described in subparagraph (A) if such replica—

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade

(17)(A) The term "**ammunition**" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm

(B) The term "**armor piercing ammunition**" means—

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium, or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile

(C) The term "**armor piercing ammunition**" does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Secretary finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Secretary finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device

(18) The term "**Secretary**" or "**Secretary of the Treasury**" means the Secretary of the Treasury or his delegate

(19) The term "**published ordinance**" means a published law of any political subdivision of a State which the Secretary determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Secretary, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter

(20) The term "**crime punishable by imprisonment for a term exceeding one year**" does not include—

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less

What constitutes a conviction of such a crime shall be determined in accordance with the

law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms

(21) The term "**engaged in the business**" means—

(A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured,

(B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured,

(C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms,

(D) as applied to a dealer in firearms, as defined in section 921(a)(11)(B), a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms,

(E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported, and

(F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported

(22) The term "**with the principal objective of livelihood and profit**" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection. **Provided**, That proof of profit shall not be required as to a

person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this paragraph, the term "**terrorism**" means activity, directed against United States persons, which—

(A) is committed by an individual who is not a national or permanent resident alien of the United States,

(B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States, and

(C) is intended—

(i) to intimidate or coerce a civilian population,

(ii) to influence the policy of a government by intimidation or coercion, or

(iii) to affect the conduct of a government by assassination or kidnapping

(23) The term "**machinegun**" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b))

(24) The terms "**firearm silencer**" and "**firearm muffler**" mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication

(25) The term "**school zone**" means—

(A) in, or on the grounds of, a public, parochial or private school, or

(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school

(26) The term "**school**" means a school which provides elementary or secondary education, as determined under State law

(27) The term "**motor vehicle**" has the meaning given such term in section 10102 of title 49, United States Code.

(28) The term "**semiautomatic rifle**" means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge

(29) The term "**handgun**" means—

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand, and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled

(30) The term "**semiautomatic assault weapon**" means—

(A) any of the firearms, or copies or duplicates of the firearms in any caliber, known as—

(i) Nonco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models),

(ii) Action Arms Israeli Military Industries UZI and Galil.

- (iii) Beretta Ar70 (SC-70),
- (iv) Colt AR-15,
- (v) Fabnque National FN/FAL, FN/LAR, and FNC,
- (vi) SWD M-10, M-11, M-11/9, and M-12,
- (vii) Steyr AUG,
- (viii) INTRATEC TEC-9, TEC-DC9 and TEC-22, and

(ix) revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Strker 12,

(B) a **semiautomatic rifle** that has an ability to accept a detachable magazine and has at least 2 of—

- (i) a folding or telescoping stock,
- (ii) a pistol grp that protrudes conspicuously beneath the action of the weapon,
- (iii) a bayonet mount,
- (iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor, and
- (v) a grenade launcher,

(C) a **semiautomatic pistol** that has an ability to accept a detachable magazine and has at least 2 of—

- (i) an ammunition magazine that attaches to the pistol outside of the pistol grp,
- (ii) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrp, or silencer,
- (iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;
- (iv) a manufactured weight of 50 ounces or more when the pistol is unloaded, and
- (v) a semiautomatic version of an automatic firearm, and

(D) a **semiautomatic shotgun** that has at least 2 of—

- (i) a folding or telescoping stock,
- (ii) a pistol grp that protrudes conspicuously beneath the action of the weapon,
- (iii) a fixed magazine capacity in excess of 5 rounds, and
- (iv) an ability to accept a detachable magazine.

(31) The term "**large capacity ammunition feeding device**"—

(A) means a magazine, belt, drum, feed strnp, or similar device manufactured after the date of enactment of the Violent Crime Control and Law Enforcement Act of 1994 that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition, but

(B) does not include an attached tubular device designed to accept, and capable of operating only with, 22 caliber nmfire ammunition

(32) The term "**intimate partner**" means, with respect to a person, the spouse of the

person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person

(b) For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located

(Added Pub L 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 226, and amended Pub L 90-618, Title I, § 102, Oct 22, 1968, 82 Stat 1214, Pub L 93-639, § 102, Jan 4, 1975, 88 Stat 2217, Pub L 99-308, § 101, May 19, 1986, 100 Stat 449, Pub L 99-360, § 1(b), July 8, 1986, 100 Stat 766, Pub L 99-408, § 1, Aug 28, 1986, 100 Stat 920, Pub L 101-647, Title XVII, § 1702(b)(2), Title XXII, § 2204(a), Nov 29, 1990, 104 Stat 4844, 4857, Pub L 103-159, Title I, § 102(a)(2), Nov 11, 1993, 107 Stat 1539, Pub L 103-322, Title XI, §§ 110102(b), 110103(b), 110401(a), 110519, Title XXXIII, § 330021(1), Sept 13, 1994, 108 Stat 1997, 1999, 2014, 2020, 2150)

§ 922. Unlawful acts

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce, or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce,

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received, and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector,

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty, and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the

Commonwealth of Puerto Rico, or the possession were in fact a State of the United States,

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter,

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity,

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides, except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes,

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter,

(7) for any person to manufacture or import armor piercing ammunition, except that this paragraph shall not apply to—

(A) the manufacture or importation of such ammunition for the use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof,

(B) the manufacture of such ammunition for the purpose of exportation; and

(C) any manufacture or importation for the purposes of testing or experimentation authorized by the Secretary.

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, except that this paragraph shall not apply to—

(A) the sale or delivery by a manufacturer or importer of such ammunition for use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof,

(B) the sale or delivery by a manufacturer or importer of such ammunition for the purpose of exportation,

(C) the sale or delivery by a manufacturer or importer of such ammunition for the purposes of testing or experimenting authorized by the Secretary, and

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age,

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of

evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes.

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity, and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Secretary

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age, that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce, and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are
Signature _____
Date _____"

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance,

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by

the Secretary, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations, and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g)

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year,

(2) is a fugitive from justice,

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U S C 802)),

(4) has been adjudicated as a mental defective or has been committed to any mental institution,

(5) who, being an alien, is illegally unlawfully in the United States,

(6) who has been discharged from the Armed Forces under dishonorable conditions,

(7) who, having been a citizen of the United States, has renounced his citizenship, or

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate, and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child, or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector

who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped, except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year,

(2) who is a fugitive from justice,

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution,

(5) who, being an alien, is illegally or unlawfully in the United States,

(6) who has been discharged from the Armed Forces under dishonorable conditions,

(7) who, having been a citizen of the United States, has renounced his citizenship, or

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate

partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child, or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition, or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce

(l) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition, and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof, or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect

(p)(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm—

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar, or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component

(2) For purposes of this subsection—

(A) the term "firearm" does not include the frame or receiver of any such weapon,

(B) the term "major component" means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm, and

(C) the term "Security Exemplar" means an object, to be fabricated at the direction of the Secretary, that is—

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun, and

(ii) suitable for testing and calibrating metal detectors

Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Secretary shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously

prohibited under this subparagraph that are as detectable as a "Security Exemplar" which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology

(3) Under such rules and regulations as the Secretary shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Secretary shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology

(4) The Secretary shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection

(5) This subsection shall not apply to any firearm which—

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Secretary and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications, and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988

(q)(1) The Congress finds and declares that—

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem,

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs,

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Judiciary Committee of the House of Representatives and Judiciary Committee of the Senate,

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce,

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send

their children to school for the same reason,

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country,

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States,

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves, even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures, and

(I) Congress has power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection

(2)(A) It shall be unlawful for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone

(B) Subparagraph (A) shall not apply to the possession of a firearm—

(i) on private property not part of school grounds,

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtain such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license,

(iii) which is—

(I) not loaded, and

(II) in a locked container, or a locked firearms rack which is on a motor vehicle,

(iv) by an individual for use in a program approved by a school in the school zone,

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual,

(vi) by a law enforcement officer acting in his or her official capacity, or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities

(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to

discharge a firearm at a place that the person knows is a school zone

(B) Subparagraph (A) shall not apply to the discharge of a firearm—

(i) on private property not part of school grounds,

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program,

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual, or

(iv) by a law enforcement officer acting in his or her official capacity

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun-free school zones as provided in this subsection

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof, or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Secretary

(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless—

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

(i) the transferor has—

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3),

(II) verified the identity of the transferee by examining the identification document presented,

(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee, and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee, and

(ii)(l) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law, or

(ll) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law,

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee,

(C)(i) the transferee has presented to the transferor a permit that—

(l) allows the transferee to possess or acquire a handgun, and

(ll) was issued not more than 5 years earlier by the State in which the transfer is to take place, and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law,

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law,

(E) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986, or

(F) on application of the transferor, the Secretary has certified that compliance with subparagraph (A)(i)(III) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025,

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer, and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local record-keeping systems are available and in a national system designated by the Attorney General

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

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used,

(B) a statement that the transferee—

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year,

(ii) is not a fugitive from justice,

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act),

(iv) has not been adjudicated as a mental defective or been committed to a mental institution,

(v) is not an alien who is illegally or unlawfully in the United States,

(vi) has not been discharged from the Armed Forces under dishonorable conditions, and

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

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to—

(A) the chief law enforcement officer of the place of business of the transferor, and

(B) the chief law enforcement officer of the place of residence of the transferee

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

(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III)

and (IV) of paragraph (1)(A)(i) with respect to the statement

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III),

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection, and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section, or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun

(8) For purposes of this subsection, the term "chief law enforcement officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual

(9) The Secretary shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public

(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless—

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act,

(B)(i) the system provides the licensee with a unique identification number, or

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section, and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d)(1) of this title) of the transferee containing a photograph of the transferee

(2) If receipt of a firearm would not violate section 922(g) or (n) or State law, the system shall—

(A) assign a unique identification number to the transfer,

(B) provide the licensee with the number, and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

(A)(i) such other person has presented to the licensee a permit that—

(l) allows such other person to possess or acquire a firearm, and

(ll) was issued not more than 5 years earlier by the State in which the transfer is to take place, and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law,

(B) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986, or

(C) on application of the transferor, the Secretary has certified that compliance with paragraph (1)(A) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025,

(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer as defined in subsection (s)(8)), and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection

(g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Secretary may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than \$5,000

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section, or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce

(v)(1) It shall be unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon

(2) Paragraph (1) shall not apply to the possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed under Federal law on the date of the enactment of this subsection

(3) Paragraph (1) shall not apply to—

(A) any of the firearms, or replicas or duplicates of the firearms, specified in Appendix A to this section, as such firearms were manufactured on October 1, 1993,

(B) any firearm that—

(i) is manually operated by bolt, pump, lever, or slide action,

(ii) has been rendered permanently inoperable, or

(iii) is an antique firearm,

(C) any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition, or

(D) any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine

The fact that a firearm is not listed in Appendix A shall not be construed to mean that paragraph (1) applies to such firearm. No firearm exempted by this subsection may be deleted from Appendix A so long as this subsection is in effect

(4) Paragraph (1) shall not apply to—

(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty),

(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials,

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement, or

(D) the manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing experimentation authorized by the Secretary

(w)(1) Except as provided in paragraph (2), it shall be unlawful for a person to transfer or possess a large capacity ammunition feeding device

(2) Paragraph (1) shall not apply to the possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed on or before the date of the enactment of this subsection. *Sept 13, 94*

(3) This subsection shall not apply to—

(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty),

(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials,

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise

prohibited from receiving ammunition, of a large capacity ammunition feeding device transferred to the individual by the agency upon such retirement, or

(D) the manufacture, transfer, or possession of any large capacity ammunition feeding device by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary

(4) If a person charged with violating paragraph (1) asserts that paragraph (1) does not apply to such person because of paragraph (2) or (3), the Government shall have the burden of proof to show that such paragraph (1) applies to such person. The lack of a serial number as described in section 923(i) of title 18, United States Code, shall be a presumption that the large capacity ammunition feeding device is not subject to the prohibition of possession in paragraph (1)

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

(A) a handgun, or

(B) ammunition that is suitable for use only in a handgun

(2) It shall be unlawful for any person who is a juvenile to knowingly possess—

(A) a handgun, or

(B) ammunition that is suitable for use only in a handgun

(3) This subsection does not apply to—

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun,

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

(i) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor, or

(ii) with respect to ranching or farming activities as described in clause (i), a juvenile may possess

and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm,

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile, and

(iv) in accordance with State and local law,

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty,

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile, or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings

(B) The court may use the contempt power to enforce subparagraph (A)

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown

APPENDIX A

Centerfire Rifles—Autoloaders

Browning BAR Mark II Safari Semi-Auto Rifle
 Browning BAR Mark II Safari Magnum Rifle
 Browning High-Power Rifle
 Heckler & Koch Model 300 Rifle
 Iver Johnson M-1 Carbine
 Iver Johnson 50th Anniversary M-1 Carbine
 Marlin Model 9 Camp Carbine
 Marlin Model 45 Carbine
 Remington Nylon 66 Auto-Loading Rifle
 Remington Model 7400 Auto Rifle
 Remington Model 7400 Rifle
 Remington Model 7400 Special Purpose Auto Rifle
 Ruger Mini-14 Autoloading Rifle (w/o folding stock)
 Ruger Mini Thirty Rifle

Centerfire Rifles—Lever & Slide

Browning Model 81 BLR Lever-Action Rifle
 Browning Model 81 Long Action BLR
 Browning Model 1886 Lever-Action Carbine
 Browning Model 1886 High Grade Carbine
 Cimarron 1860 Henry Replica
 Cimarron 1866 Winchester Replicas
 Cimarron 1873 Short Rifle
 Cimarron 1873 Sporting Rifle
 Cimarron 1873 30" Express Rifle
 Dixie Engraved 1873 Rifle
 E.M.F. 1866 Yellowboy Lever Actions
 E.M.F. 1860 Henry Rifle
 E.M.F. Model 73 Lever-Action Rifle
 Marlin Model 336CS Lever-Action Carbine
 Marlin Model 30AS Lever-Action Carbine
 Marlin Model 444SS Lever-Action Sporter
 Marlin Model 1894S Lever-Action Carbine
 Marlin Model 1894CS Carbine
 Marlin Model 1894CL Classic
 Marlin Model 1895SS Lever-Action Rifle
 Mitchell 1858 Henry Replica
 Mitchell 1866 Winchester Replica
 Mitchell 1873 Winchester Replica
 Navy Arms Military Henry Rifle
 Navy Arms Henry Trapper
 Navy Arms Iron Frame Henry
 Navy Arms Henry Carbine
 Navy Arms 1866 Yellowboy Rifle
 Navy Arms 1873 Winchester-Style Rifle
 Navy Arms 1873 Sporting Rifle
 Remington 7600 Slide Action
 Remington Model 7600 Special Purpose Slide Action
 Rossi M92 SRC Saddle-Ring Carbine
 Rossi M92 SRS Short Carbine
 Savage 99C Lever-Action Rifle
 Uberti Henry Rifle
 Uberti 1866 Sporting Rifle
 Uberti 1873 Sporting Rifle
 Winchester Model 94 Side Eject Lever-Action Rifle
 Winchester Model 94 Trapper Side Eject
 Winchester Model 94 Big Bore Side Eject
 Winchester Model 94 Ranger Side Eject Lever-Action Rifle
 Winchester Model 94 Wrangler Side Eject

Centerfire Rifles—Bolt Action

Alpine Bolt-Action Rifle
 A-Square Caesar Bolt-Action Rifle
 A-Square Hannibal Bolt-Action Rifle
 Anschutz 1700D Classic Rifles
 Anschutz 1700D Custom Rifles
 Anschutz 1700D Bavarian Bolt-Action Rifle
 Anschutz 1733D Mannlicher Rifle
 Barret Model 90 Bolt-Action Rifle
 Beeman/HW 60J Bolt-Action Rifle
 Blaser R84 Bolt-Action Rifle
 BRNO 537 Sporter Bolt-Action Rifle
 BRNO ZKB 527 Fox Bolt-Action Rifle
 BRNO ZKK 600, 601, 602 Bolt-Action Rifles
 Browning A-Bolt Rifle
 Browning A-Bolt Stainless Stalker
 Browning A-Bolt Left Hand
 Browning A-Bolt Short Action
 Browning Euro-Bolt Rifle
 Browning A-Bolt Gold Medallion
 Browning A-Bolt Micro Medallion
 Century Centurion 14 Sporter
 Century Enfield Sporter #4
 Century Swedish Sporter #38
 Century Mauser 98 Sporter
 Cooper Model 38 Centerfire Sporter

Dakota 22 Sporter Bolt-Action Rifle
 Dakota 76 Classic Bolt-Action Rifle
 Dakota 76 Short Action Rifles
 Dakota 76 Safari Bolt-Action Rifle
 Dakota 416 Rigby African
 E A A /Sabatti Rover 870 Bolt-Action Rifle
 Auguste Francotte Bolt-Action Rifles
 Carl Gustaf 2000 Bolt-Action Rifle
 Heym Magnum Express Series Rifle
 Howa Lightning Bolt-Action Rifle
 Howa Realtree Camo Rifle
 Interarms Mark X Viscount Bolt-Action Rifle
 Interarms Mini-Mark X Rifle
 Interarms Mark X Whitworth Bolt-Action Rifle
 Interarms Whitworth Express Rifle
 Iver Johnson Model 5100A1 Long-Range Rifle
 KDF K15 American Bolt-Action Rifle
 Krico Model 600 Bolt-Action Rifle
 Krico Model 700 Bolt-Action Rifles
 Mauser Model 66 Bolt-Action Rifle
 Mauser Model 99 Bolt-Action Rifle
 McMillan Signature Classic Sporter
 McMillan Signature Super Varminter
 McMillan Signature Alaskan
 McMillan Signature Titanium Mountain Rifle
 McMillan Classic Stainless Sporter
 McMillan Talon Safari Rifle
 McMillan Talon Sporter Rifle
 Midland 1500S Survivor Rifle
 Navy Arms TU-33/40 Carbine
 Parker-Hale Model 81 Classic Rifle
 Parker-Hale Model 81 Classic African Rifle
 Parker-Hale Model 1000 Rifle
 Parker-Hale Model 1100M African Magnum
 Parker-Hale Model 1100 Lightweight Rifle
 Parker-Hale Model 1200 Super Rifle
 Parker-Hale Model 1200 Super Clip Rifle
 Parker-Hale Model 1300C Scout Rifle
 Parker-Hale Model 2100 Midland Rifle
 Parker-Hale Model 2700 Lightweight Rifle
 Parker-Hale Model 2800 Midland Rifle
 Remington Model Seven Bolt-Action Rifle
 Remington Model Seven Youth Rifle
 Remington Model Seven Custom KS
 Remington Model Seven Custom MS Rifle
 Remington 700 ADL Bolt-Action Rifle
 Remington 700 BDL Bolt-Action Rifle
 Remington 700 BDL Varmint Special
 Remington 700 BDL European Bolt-Action Rifle
 Remington 700 Varmint Synthetic Rifle
 Remington 700 BDL SS Rifle
 Remington 700 Stainless Synthetic Rifle
 Remington 700 MTRSS Rifle
 Remington 700 BDL Left Hand
 Remington 700 Camo Synthetic Rifle
 Remington 700 Safari
 Remington 700 Mountain Rifle
 Remington 700 Custom KS Mountain Rifle
 Remington 700 Classic Rifle
 Ruger M77 Mark II Rifle
 Ruger M77 Mark II Magnum Rifle
 Ruger M77RL Ultra Light
 Ruger M77 Mark II All-Weather Stainless Rifle
 Ruger M77 RSI International Carbine
 Ruger M77 Mark II Express Rifle
 Ruger M77VT Target Rifle
 Sako Hunter Rifle
 Sako Fiberclass Sporter
 Sako Safari Grade Bolt Action
 Sako Hunter Left-Hand Rifle
 Sako Classic Bolt Action
 Sako Hunter LS Rifle
 Sako Deluxe Lightweight
 Sako Super Deluxe Sporter
 Sako Mannlicher-Style Carbine
 Sako Varmint Heavy Barrel
 Sako TRG-S Bolt-Action Rifle
 Sauer 90 Bolt-Action Rifle
 Savage 110G Bolt-Action Rifle
 Savage 110CY Youth/Ladies Rifle
 Savage 110WLE One of One Thousand Limited Edition Rifle
 Savage 110GXP3 Bolt-Action Rifle
 Savage 110F Bolt-Action Rifle
 Savage 110FXP3 Bolt-Action Rifle
 Savage 110GV Varmint Rifle
 Savage 112FV Varmint Rifle
 Savage Model 112FVS Varmint Rifle
 Savage Model 112BV Heavy Barrel Varmint Rifle
 Savage 116FSS Bolt-Action Rifle
 Savage Model 116FSK Kodiak Rifle
 Savage 110FP Police Rifle
 Steyr-Mannlicher Sporter Models SL, L, M, S, S/T
 Steyr-Mannlicher Luxus Model L, M, S
 Steyr-Mannlicher Model M Professional Rifle
 Tikka Bolt-Action Rifle
 Tikka Premium Grade Rifles
 Tikka Varmint/Continental Rifle
 Tikka Whitetail/Battue Rifle
 Ultra Light Arms Model 20 Rifle
 Ultra Light Arms Model 28, Model 40 Rifles
 Voere VEC 91 Lightning Bolt-Action Rifle
 Voere Model 2165 Bolt-Action Rifle
 Voere Model 2155, 2150 Bolt-Action Rifles
 Weatherby Mark V Deluxe Bolt-Action Rifle
 Weatherby Lasermark V Rifle
 Weatherby Mark V Crown Custom Rifles
 Weatherby Mark V Sporter Rifle
 Weatherby Mark V Safari Grade Custom Rifles
 Weatherby Weathermark Rifle
 Weatherby Weathermark Alaskan Rifle
 Weatherby Classicmark No 1 Rifle
 Weatherby Weatherguard Alaskan Rifle
 Weatherby Vanguard VGX Deluxe Rifle
 Weatherby Vanguard Classic Rifle
 Weatherby Vanguard Classic No 1 Rifle
 Weatherby Vanguard Weatherguard Rifle
 Wichita Classic Rifle
 Wichita Varmint Rifle
 Winchester Model 70 Sporter
 Winchester Model 70 Sporter WinTuff
 Winchester Model 70 SM Sporter
 Winchester Model 70 Stainless Rifle
 Winchester Model 70 Varmint
 Winchester Model 70 Synthetic Heavy Varmint Rifle
 Winchester Model 70 DBM Rifle
 Winchester Model 70 DBM-S Rifle
 Winchester Model 70 Featherweight
 Winchester Model 70 Featherweight WinTuff
 Winchester Model 70 Featherweight Classic
 Winchester Model 70 Lightweight Rifle
 Winchester Ranger Rifle
 Winchester Model 70 Super Express Magnum
 Winchester Model 70 Super Grade
 Winchester Model 70 Custom Sharpshooter
 Winchester Model 70 Custom Sporting Sharpshooter Rifle
Centerfire Rifles—Single Shot
 Armsport 1866 Sharps Rifle, Carbine
 Brown Model One Single Shot Rifle
 Browning Model 1885 Single Shot Rifle
 Dakota Single Shot Rifle
 Desert Industries G-90 Single Shot Rifle
 Harrington & Richardson Ultra Varmint Rifle
 Model 1885 High Wall Rifle
 Navy Arms Rolling Block Buffalo Rifle
 Navy Arms #2 Creedmoor Rifle
 Navy Arms Sharps Cavalry Carbine
 Navy Arms Sharps Plains Rifle
 New England Firearms Handi-Rifle
 Red Willow Armory Ballard No 5 Pacific
 Red Willow Armory Ballard No 15 Hunting Rifle
 Red Willow Armory Ballard No 8 Union Hill Rifle
 Red Willow Armory Ballard No 45 Target Rifle
 Remington-Style Rolling Block Carbine
 Ruger No 1B Single Shot
 Ruger No 1A Light Sporter
 Ruger No 1H Tropical Rifle
 Ruger No 1S Medium Sporter
 Ruger No 1 RSI International
 Ruger No 1V Special Varminter
 C Sharps Arms New Model 1874 Old Reliable
 C Sharps Arms New Model 1875 Rifle
 C Sharps Arms 1875 Classic Sharps
 C Sharps Arms New Model 1875 Target & Long Range
 Shiloh Sharps 1874 Long Range Express
 Shiloh Sharps 1874 Montana Roughrider
 Shiloh Sharps 1874 Military Carbine
 Shiloh Sharps 1874 Business Rifle
 Shiloh Sharps 1874 Military Rifle
 Sharps 1874 Old Reliable
 Thompson/Center Contender Carbine
 Thompson/Center Stainless Contender Carbine
 Thompson/Center Contender Carbine Survival System
 Thompson/Center Contender Carbine Youth Model
 Thompson/Center TCR '87 Single Shot Rifle
 Uberti Rolling Block Baby Carbine
Drillings, Combination Guns, Double Rifles
 Beretta Express SSO O/U Double Rifles
 Beretta Model 455 SxS Express Rifle
 Chapuis RGExpress Double Rifle
 Auguste Francotte Sidelock Double Rifles
 Auguste Francotte Boxlock Double Rifle
 Heym Model 55B O/U Double Rifle
 Heym Model 55FW O/U Combo Gun
 Heym Model 88b Side-by-Side Double Rifle
 Kodiak Mk IV Double Rifle
 Kreighoff Teck O/U Combination Gun
 Kreighoff Trumpf Drilling
 Merkel Over/Under Combination Guns
 Merkel Drillings
 Merkel Model 160 Side-by-Side Double Rifles
 Merkel Over/Under Double Rifles
 Savage 24F O/U Combination Gun
 Savage 24F-12T Turkey Gun
 Springfield Inc M6 Scout Rifle/Shotgun
 Tikka Model 412s Combination Gun
 Tikka Model 412S Double Fire
 A Zoli Rifle-Shotgun O/U Combo
Rimfire Rifles—Autoloaders
 AMT Lightning 25/22 Rifle
 AMT Lightning Small-Game Hunting Rifle II
 AMT Magnum Hunter Auto Rifle
 Anschütz 525 Deluxe Auto
 Armscor Model 20P Auto Rifle

Browning Auto-22 Rifle
 Browning Auto-22 Grade VI
 Krico Model 260 Auto Rifle
 Lakefield Arms Model 64B Auto Rifle
 Marlin Model 60 Self-Loading Rifle
 Marlin Model 60SS Self-Loading Rifle
 Marlin Model 70 HC Auto
 Marlin Model 990I Self-Loading Rifle
 Marlin Model 70P Papoose
 Marlin Model 922 Magnum Self-Loading Rifle
 Marlin Model 995 Self-Loading Rifle
 Norinco Model 22 ATD Rifle
 Remington Model 522 Viper Autoloading Rifle
 Remington 552BDL Speedmaster Rifle
 Ruger 10/22 Autoloading Carbine (w/o folding stock)
 Survival Arms AR-7 Explorer Rifle
 Texas Remington Revolving Carbine
 Voere Model 2115 Auto Rifle

Rimfire Rifles—Lever & Slide Action

Browning BL-22 Lever-Action Rifle
 Marlin 39TDS Carbine
 Marlin Model 39AS Golden Lever-Action Rifle
 Remington 572BDL Fieldmaster Pump Rifle
 Norinco EM-321 Pump Rifle
 Rossi Model 62 SA Pump Rifle
 Rossi Model 62 SAC Carbine
 Winchester Model 9422 Lever-Action Rifle
 Winchester Model 9422 Magnum Lever-Action Rifle

Rimfire Rifles—Bolt Actions & Single Shots

Anschutz Achiever Bolt-Action Rifle
 Anschutz 1416D/1516D Classic Rifles
 Anschutz 1418D/1518D Mannlicher Rifles
 Anschutz 1700D Classic Rifles
 Anschutz 1700D Custom Rifles
 Anschutz 1700 FWT Bolt-Action Rifle
 Anschutz 1700D Graphite Custom Rifle
 Anschutz 1700D Bavarian Bolt-Action Rifle
 Armscor Model 14P Bolt-Action Rifle
 Armscor Model 1500 Rifle
 BRNO ZKM-452 Deluxe Bolt-Action Rifle
 BRNO ZKM 452 Deluxe
 Beeman/HW 60-J-ST Bolt-Action Rifle
 Browning A-Bolt 22 Bolt-Action Rifle
 Browning A-Bolt Gold Medallion
 Cabanas Phaser Rifle
 Cabanas Master Bolt-Action Rifle
 Cabanas Espronceda IV Bolt-Action Rifle
 Cabanas Leyre Bolt-Action Rifle
 Chipmunk Single Shot Rifle
 Cooper Arms Model 36S Sporter Rifle
 Dakota 22 Sporter Bolt-Action Rifle
 Krico Model 300 Bolt-Action Rifles
 Lakefield Arms Mark II Bolt-Action Rifle
 Lakefield Arms Mark I Bolt-Action Rifle
 Magtech Model MT-22C Bolt-Action Rifle
 Marlin Model 880 Bolt-Action Rifle
 Marlin Model 881 Bolt-Action Rifle
 Marlin Model 882 Bolt-Action Rifle
 Marlin Model 883 Bolt-Action Rifle
 Marlin Model 883SS Bolt-Action Rifle
 Marlin Model 25MN Bolt-Action Rifle
 Marlin Model 25N Bolt-Action Repeater
 Marlin Model 15YN "Little Buckaroo"
 Mauser Model 107 Bolt-Action Rifle
 Mauser Model 201 Bolt-Action Rifle
 Navy Arms TU-KKW Training Rifle
 Navy Arms TU-33/40 Carbine
 Navy Arms TU-KKW Sniper Trainer
 Norinco JW-27 Bolt-Action Rifle
 Norinco JW-15 Bolt-Action Rifle
 Remington 541-T

Remington 40-XR Rimfire Custom Sporter
 Remington 541-T HB Bolt-Action Rifle
 Remington 581-S Sportsman Rifle
 Ruger 77/22 Rimfire Bolt-Action Rifle
 Ruger K77/22 Varmint Rifle
 Ultra Light Arms Model 20 RF Bolt-Action Rifle
 Winchester Model 52B Sporting Rifle
Competition Rifles—Centerfire & Rimfire
 Anschutz 64-MS Left Silhouette
 Anschutz 1808D RT Super Match 54 Target
 Anschutz 1827B Biathlon Rifle
 Anschutz 1903D Match Rifle
 Anschutz 1803D Intermediate Match
 Anschutz 1911 Match Rifle
 Anschutz 54 18MS REP Deluxe Silhouette Rifle
 Anschutz 1913 Super Match Rifle
 Anschutz 1907 Match Rifle
 Anschutz 1910 Super Match II
 Anschutz 54 18MS Silhouette Rifle
 Anschutz Super Match 54 Target Model 2013
 Anschutz Super Match 54 Target Model 2007
 Beeman/Feinwerkbau 2600 Target Rifle
 Cooper Arms Model TRP-1 ISU Standard Rifle
 E A A /Weihrauch HW 60 Target Rifle
 E A A /HW 660 Match Rifle
 Finnish Lion Standard Target Rifle
 Krico Model 360 S2 Biathlon Rifle
 Krico Model 400 Match Rifle
 Krico Model 360S Biathlon Rifle
 Krico Model 500 Kricotronic Match Rifle
 Krico Model 600 Sniper Rifle
 Krico Model 600 Match Rifle
 Lakefield Arms Model 90B Target Rifle
 Lakefield Arms Model 91T Target Rifle
 Lakefield Arms Model 92S Silhouette Rifle
 Marlin Model 2000 Target Rifle
 Mauser Model 86-SR Specialty Rifle
 McMillan M-86 Sniper Rifle
 McMillan Combo M-87/M-88 50-Caliber Rifle
 McMillan 300 Phoenix Long Range Rifle
 McMillan M-89 Sniper Rifle
 McMillan National Match Rifle
 McMillan Long Range Rifle
 Parker-Hale M-87 Target Rifle
 Parker-Hale M-85 Sniper Rifle
 Remington 40-XB Rangemaster Target Centerfire
 Remington 40-XR KS Rimfire Position Rifle
 Remington 40-XBBR KS
 Remington 40-XC KS National Match Course Rifle
 Sako TRG-21 Bolt-Action Rifle
 Steyr-Mannlicher Match SPG-UIT Rifle
 Steyr-Mannlicher SSG P-I Rifle
 Steyr-Mannlicher SSG P-III Rifle
 Steyr-Mannlicher SSG P-IV Rifle
 Tanner Standard UIT Rifle
 Tanner 50 Meter Free Rifle
 Tanner 300 Meter Free Rifle
 Wichita Silhouette Rifle
Shotguns—Autoloaders
 American Arms/Franchi Black Magic 48/AL
 Benelli Super Black Eagle Shotgun
 Benelli Super Black Eagle Slug Gun
 Benelli M1 Super 90 Field Auto Shotgun
 Benelli Montefeltro Super 90 20-Gauge Shotgun
 Benelli Montefeltro Super 90 Shotgun

Benelli M1 Sporting Special Auto Shotgun
 Benelli Black Eagle Competition Auto Shotgun
 Beretta A-303 Auto Shotgun
 Beretta 390 Field Auto Shotgun
 Beretta 390 Super Trap, Super Skeet Shotguns
 Beretta Vittoria Auto Shotgun
 Beretta Model 1201F Auto Shotgun
 Browning BSA 10 Auto Shotgun
 Browning BSA 10 Stalker Auto Shotgun
 Browning A-500R Auto Shotgun
 Browning A-500G Auto Shotgun
 Browning A-500G Sporting Clays
 Browning Auto-5 Light 12 and 20
 Browning Auto-5 Stalker
 Browning Auto-5 Magnum 20
 Browning Auto-5 Magnum 12
 Churchill Turkey Automatic Shotgun
 Cosmi Automatic Shotgun
 Maverick Model 60 Auto Shotgun
 Mossberg Model 5500 Shotgun
 Mossberg Model 9200 Regal Semi-Auto Shotgun
 Mossberg Model 9200 USST Auto Shotgun
 Mossberg Model 9200 Camo Shotgun
 Mossberg Model 6000 Auto Shotgun
 Remington Model 1100 Shotgun
 Remington 11-87 Premier Shotgun
 Remington 11-87 Sporting Clays
 Remington 11-87 Premier Skeet
 Remington 11-87 Premier Trap
 Remington 11-87 Special Purpose Magnum
 Remington 11-87 SPS-T Camo Auto Shotgun
 Remington 11-87 Special Purpose Deer Gun
 Remington 11-87 SPS-BG-Camo Deer/Turkey Shotgun
 Remington 11-87 SPS-Deer Shotgun
 Remington 11-87 Special Purpose Synthetic Camo
 Remington SP-10 Magnum-Camo Auto Shotgun
 Remington SP-10 Magnum Auto Shotgun
 Remington SP-10 Magnum Turkey Combo
 Remington 1100 LT-20 Auto
 Remington 1100 Special Field
 Remington 1100 20-Gauge Deer Gun
 Remington 1100 LT-20 Tournament Skeet
 Winchester Model 1400 Semi-Auto Shotgun
Shotguns—Slide Actions
 Browning Model 42 Pump Shotgun
 Browning BPS Pump Shotgun
 Browning BPS Stalker Pump Shotgun
 Browning BPS Pigeon Grade Pump Shotgun
 Browning BPS Pump Shotgun (Ladies and Youth Model)
 Browning BPS Game Gun Turkey Special
 Browning BPS Game Gun Deer Special
 Ithaca Model 87 Supreme Pump Shotgun
 Ithaca Model 87 Deerslayer Shotgun
 Ithaca Deerslayer II Rifled Shotgun
 Ithaca Model 87 Turkey Gun
 Ithaca Model 87 Deluxe Pump Shotgun
 Magtech Model 586-VR Pump Shotgun
 Maverick Models 88, 91 Pump Shotguns
 Mossberg Model 500 Sporting Pump
 Mossberg Model 500 Camo Pump
 Mossberg Model 500 Muzzleloader Combo
 Mossberg Model 500 Trophy Slugstar
 Mossberg Turkey Model 500 Pump
 Mossberg Model 500 Bantam Pump

Mossberg Field Grade Model 835 Pump Shotgun
 Mossberg Model 835 Regal Ulti-Mag Pump
 Remington 870 Wingmaster
 Remington 870 Special Purpose Deer Gun
 Remington 870 SPS-BG-Camo Deer/Turkey Shotgun
 Remington 870 SPS-Deer Shotgun
 Remington 870 Manne Magnum
 Remington 870 TC Trap
 Remington 870 Special Purpose Synthetic Camo
 Remington 870 Wingmaster Small Gauges
 Remington 870 Express Rifle Sighted Deer Gun
 Remington 879 SPS Special Purpose Magnum
 Remington 870 SPS-T Camo Pump Shotgun
 Remington 870 Special Field
 Remington 870 Express Turkey
 Remington 870 High Grades
 Remington 870 Express
 Remington Model 870 Express Youth Gun
 Winchester Model 12 Pump Shotgun
 Winchester Model 42 High Grade Shotgun
 Winchester Model 1300 Walnut Pump
 Winchester Model 1300 Slug Hunter Deer Gun
 Winchester Model 1300 Ranger Pump Gun Combo & Deer Gun
 Winchester Model 1300 Turkey Gun
 Winchester Model 1300 Ranger Pump Gun

Shotguns—Over/Unders

American Arms/Franchi Falconet 2000 O/U
 American Arms Silver I O/U
 American Arms Silver II Shotgun
 American Arms Silver Skeet O/U
 American Arms/Franchi Sporting 2000 O/U
 American Arms Silver Sporting O/U
 American Arms Silver Trap O/U
 American Arms WS/OU 12, TS/OU 12 Shotguns
 American Arms WT/OU 10 Shotgun
 Armsport 2700 O/U Goose Gun
 Armsport 2700 Series O/U
 Armsport 2900 Tri-Barrel Shotgun
 Baby Bretton Over/Under Shotgun
 Beretta Model 686 Ultralight O/U
 Beretta ASE 90 Competition O/U Shotgun
 Beretta Over/Under Field Shotguns
 Beretta Onyx Hunter Sport O/U Shotgun
 Beretta Model SO5, SO6, SO9 Shotguns
 Beretta Sporting Clay Shotguns
 Beretta 687EL Sporting O/U
 Beretta 682 Super Sporting O/U
 Beretta Series 682 Competition Over/Unders
 Browning Citori O/U Shotgun
 Browning Superlight Citori Over/Under
 Browning Lightning Sporting Clays
 Browning Micro Citori Lightning
 Browning Citori Plus Trap Combo
 Browning Citori Plus Trap Gun
 Browning Citori O/U Skeet Models
 Browning Citori O/U Trap Models
 Browning Special Sporting Clays
 Browning Citori GTI Sporting Clays
 Browning 325 Sporting Clays
 Centurion Over/Under Shotgun
 Chapuis Over/Under Shotgun
 Connecticut Valley Classics Classic Sporter O/U
 Connecticut Valley Classics Classic Field Waterfowler

Charles Daly Field Grade O/U
 Charles Daly Lux Over/Under
 E A A /Sabatti Sporting Clays Pro-Gold O/U
 E A A/Sabatti Falcon-Mon Over/Under
 Kassnar Grade I O/U Shotgun
 Kneghoff K-80 Sporting Clays O/U
 Kneghoff K-80 Skeet Shotgun
 Kneghoff K-80 International Skeet
 Kneghoff K-80 Four-Barrel Skeet Set
 Kneghoff K-80/RT Shotguns
 Kneghoff K-80 O/U Trap Shotgun
 Laurona Silhouette 300 Sporting Clays
 Laurona Silhouette 300 Trap
 Laurona Super Model Over/Unders
 Ljutic LM-6 Deluxe O/U Shotgun
 Marocchi Conquista Over/Under Shotgun
 Marocchi Avanza O/U Shotgun
 Merkel Model 200E O/U Shotgun
 Merkel Model 200E Skeet, Trap Over/Unders
 Merkel Model 203E, 303E Over/Under Shotguns

Perazzi Mirage Special Sporting O/U
 Perazzi Mirage Special Four-Gauge Skeet
 Perazzi Sporting Classic O/U
 Perazzi MX7 Over/Under Shotguns
 Perazzi Mirage Special Skeet Over/Under
 Perazzi MX8/MX8 Special Trap, Skeet
 Perazzi MX 8/20 Over/Under Shotgun
 Perazzi MX9 Single Over/Under Shotguns
 Perazzi MX12 Hunting Over/Under
 Perazzi MX28, MX410 Game O/U Shotguns
 Perazzi MX20 Hunting Over/Under
 Piotti Boss Over/Under Shotgun
 Remington Peerless Over/Under Shotgun
 Ruger Red Label O/U Shotgun
 Ruger Sporting Clays O/U Shotgun
 San Marco 12-Ga Wildflower Shotgun
 San Marco Field Special O/U Shotgun
 San Marco 10-Ga. O/U Shotgun
 SKB Model 505 Deluxe Over/Under Shotgun
 SKB Model 685 Over/Under Shotgun
 SKB Model 885 Over/Under Trap, Skeet, Sporting Clays
 Stoeger/IGA Condor I O/U Shotgun
 Stoeger/IGA ERA 2000 Over/Under Shotgun
 Techni-Mec Model 610 Over/Under
 Tikka Model 412S Field Grade Over/Under
 Weatherby Athena Grade IV O/U Shotguns
 Weatherby Athena Grade V Classic Field O/U
 Weatherby Onon O/U Shotguns
 Weatherby II, III Classic Field O/Us
 Weatherby Onon II Classic Sporting Clays O/U

Weatherby Onon II Sporting Clays O/U
 Winchester Model 1001 O/U Shotgun
 Winchester Model 1001 Sporting Clays O/U
 Pietro Zanoletti Model 2000 Field O/U

Shotguns—Side by Sides

American Arms Brittany Shotgun
 American Arms Gentry Double Shotgun
 American Arms Derby Side-by-Side
 American Arms Grulla #2 Double Shotgun
 American Arms WS/SS 10
 American Arms TS/SS 10 Double Shotgun
 American Arms TS/SS 12 Side-by-Side
 Armeta Sidelock Double Shotguns
 Armsport 1050 Series Double Shotguns
 Anzaga Model 31 Double Shotgun
 AYA Boxlock Shotguns
 AYA Sidelock Double Shotguns
 Beretta Model 452 Sidelock Shotgun
 Beretta Side-by-Side Field Shotguns
 Crucelegui Hermanos Model 150 Double

Chapuis Side-by-Side Shotgun
 E.A A /Sabatti Saba-Mon Double Shotgun
 Charles Daly Model Dss Double
 Ferib Model F VII Double Shotgun
 Auguste Francotte Boxlock Shotgun
 Auguste Francotte Sidelock Shotgun
 Garbi Model 100 Double
 Garbi Model 101 Side-by-Side
 Garbi Model 103A, B Side-by-Side
 Garbi Model 200 Side-by-Side
 Bill Hanus Birdgun Doubles
 Hatfield Uplander Shotgun
 Merkel Model 8, 47E Side-by-Side Shotguns
 Merkel Model 47LSC Sporting Clays Double
 Merkel Model 47S, 147S Side-by-Sides
 Parker Reproductions Side-by-Side
 Piotti King No 1 Side-by-Side
 Piotti Lunik Side-by-Side
 Piotti King Extra Side-by-Side
 Piotti Piuma Side-by-Side
 Precision Sports Model 600 Series Doubles
 Rizzini Boxlock Side-by-Side
 Rizzini Sidelock Side-by-Side
 Stoeger/IGA Uplander Side-by-Side Shotgun
 Ugartechea 10-Ga Magnum Shotgun

Shotguns—Bolt Actions & Single Shots

Armsport Single Barrel Shotgun
 Browning BT-99 Competition Trap Special
 Browning BT-99 Plus Trap Gun
 Browning BT-99 Plus Micro
 Browning Recoilless Trap Shotgun
 Browning Micro Recoilless Trap Shotgun
 Desert Industries Big Twenty Shotgun
 Harrington & Richardson Topper Model 098
 Harrington & Richardson Topper Classic Youth Shotgun
 Harrington & Richardson N W T F Turkey Mag
 Harrington & Richardson Topper Deluxe Model 098
 Kneghoff KS-5 Trap Gun
 Kneghoff KS-5 Special
 Kneghoff K-80 Single Barrel Trap Gun
 Ljutic Mono Gun Single Barrel
 Ljutic LTX Super Deluxe Mono Gun
 Ljutic Recoilless Space Gun Shotgun
 Marlin Model 55 Goose Gun Bolt Action
 New England Firearms Turkey and Goose Gun
 New England Firearms N.W.T.F. Shotgun
 New England Firearms Tracker Slug Gun
 New England Firearms Standard Partner
 New England Firearms Survival Gun
 Perazzi TM1 Special Single Trap
 Remington 90-T Super Single Shotgun
 Snake Charmer II Shotgun
 Stoeger/IGA Reuna Single Barrel Shotgun
 Thompson/Center TCR '87 Hunter Shotgun.

(Added Pub L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 228, and amended Pub L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1216, Pub L. 97-377, Title I, § 165(a), Dec. 21, 1982, 96 Stat. 1923, Pub L. 99-308, § 102, May 19, 1986, 100 Stat. 451, Pub L. 99-408, § 2, Aug. 28, 1986, 100 Stat. 920, Pub L. 100-649, § 2(a), Nov. 10, 1988, 102 Stat. 3816, Pub L. 100-690, Title VII, § 7060(c), Nov. 18, 1988, 102 Stat. 4404, Pub L. 101-647, Title XVII, § 1702(b)(1), Title XXII §§ 2201, 2202, 2204(b), Title XXXV, § 3524, Nov. 29, 1990, 104 Stat. 4844, 4856, 4857, 4924, Pub L. 103-159, Title I, § 102(a)(1), (b), Title III, § 302(a)-(c), Nov. 30, 1993, 107 Stat. 1538, 1539, 1545, Pub L. 103-322, Title XI, §§ 110102(a), 110103(a), 110106, 110201(a), 110401(b), (c), 110511, 110514, Title XXXII, §§ 320904, 320927, Title XXXIII, § 330011(f), Sept. 13, 1994, 108 Stat. 1996, 1997, 2000, 2010, 2014, 2019, 2125, 2131, 2145.)

§ 923. Licensing

(a) No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Secretary. The application shall be in such form and contain only that information necessary to determine eligibility for licensing as the Secretary shall by regulation prescribe and shall include a photograph and fingerprints of the applicant. Each applicant shall pay a fee for obtaining such a license, a separate fee being required for each place in which the applicant is to do business, as follows:

(1) If the applicant is a manufacturer—

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of \$1,000 per year,

(B) of firearms other than destructive devices, a fee of \$50 per year, or

(C) of ammunition for firearms, other than ammunition for destructive devices or armor piercing ammunition, a fee of \$10 per year.

(2) If the applicant is an importer—

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of \$1,000 per year, or

(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, or ammunition other than armor piercing ammunition, a fee of \$50 per year.

(3) If the applicant is a dealer—

(A) in destructive devices or ammunition for destructive devices, a fee of \$1,000 per year; or

(B) who is not a dealer in destructive devices, a fee of \$200 for 3 years, except that the fee for renewal of a valid license shall be \$90 for 3 years.

[(C) Repealed Pub L 103-159, Title III, § 303(4), Nov. 30, 1993, 107 Stat 1546.]

(b) Any person desiring to be licensed as a collector shall file an application for such license with the Secretary. The application shall be in such form and contain only that information necessary to determine eligibility as the Secretary shall by regulation prescribe. The fee for such license shall be \$10 per year. Any license granted under this subsection shall only apply to transactions in curios and relics.

(c) Upon the filing of a proper application and payment of the prescribed fee, the Secretary shall issue to a qualified applicant the appropriate license which, subject to the provisions of this chapter and other applicable provisions of law, shall entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce during the period stated in the license. Nothing in this chapter shall be construed to prohibit a licensed manufacturer, importer, or dealer from maintaining and disposing of a personal collection of firearms, subject only to such restrictions as apply in this chapter to dispositions by a person other than a licensed manufacturer,

importer, or dealer. If any firearm is so disposed of by a licensee within one year after its transfer from his business inventory into such licensee's personal collection or if such disposition or any other acquisition is made for the purpose of willfully evading the restrictions placed upon licensees by this chapter, then such firearm shall be deemed part of such licensee's business inventory, except that any licensed manufacturer, importer, or dealer who has maintained a firearm as part of a personal collection for one year and who sells or otherwise disposes of such firearm shall record the description of the firearm in a bound volume, containing the name and place of residence and date of birth of the transferee if the transferee is an individual, or the identity and principal and local places of business of the transferee if the transferee is a corporation or other business entity. **Provided**, That no other recordkeeping shall be required.

(d)(1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

(A) the applicant is twenty-one years of age or over,

(B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) and (n) of this chapter,

(C) the applicant has not willfully violated any of the provisions of this chapter or regulations issued thereunder;

(D) the applicant has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact, in connection with his application,

(E) the applicant has in a State (i) premises from which he conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time, or (ii) in the case of a collector, premises from which he conducts his collecting subject to license under this chapter or from which he intends to conduct such collecting within a reasonable period of time, and

(F) the applicant certifies that—

(i) the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premise is located,

(ii)(I) within 30 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of the business, and

(II) the business will not be conducted under the license until the requirements of State and local law

applicable to the business have been met, and

(iii) that the applicant has sent or delivered a form to be prescribed by the Secretary, to the chief law enforcement officer of the locality in which the premises are located, which indicates that the applicant intends to apply for a Federal firearms license.

(2) The Secretary must approve or deny an application for a license within the 60-day period beginning on the date it is received. If the Secretary fails to act within such period, the applicant may file an action under section 1361 of title 28 to compel the Secretary to act. If the Secretary approves an applicant's application, such applicant shall be issued a license upon the payment of the prescribed fee.

(e) The Secretary may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has willfully violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter. The Secretary may, after notice and opportunity for hearing, revoke the license of a dealer who willfully transfers armor piercing ammunition. The Secretary's action under this subsection may be reviewed only as provided in subsection (f) of this section.

(f)(1) Any person whose application for a license is denied and any holder of a license which is revoked shall receive a written notice from the Secretary stating specifically the grounds upon which the application was denied or upon which the license was revoked. Any notice of a revocation of a license shall be given to the holder of such license before the effective date of the revocation.

(2) If the Secretary denies an application for, or revokes, a license, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation of a license, the Secretary shall upon the request of the holder of the license stay the effective date of the revocation. A hearing held under this paragraph shall be held at a location convenient to the aggrieved party.

(3) If after a hearing held under paragraph (2) the Secretary decides not to reverse his decision to deny an application or revoke a license, the Secretary shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a de novo judicial review of such denial or revocation. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding whether or not such evidence was considered at the hearing held under paragraph (2). If the court decides that the Secretary was not authorized to deny the application or to revoke the license, the court shall order the Secretary to take such action as may be necessary to comply with the judgment of the court.

(4) If criminal proceedings are instituted against a licensee alleging any violation of this chapter or of rules or regulations prescribed under this chapter, and the licensee is acquitted of such charges, or such proceedings are terminated, other than upon motion of the Government before trial upon such charges, the Secretary shall be absolutely barred from denying or revoking any license granted under this chapter where such denial or revocation is based in whole or in part on the facts which form the basis of such criminal charges. No proceedings for the revocation of a license shall be instituted by the Secretary more than one year after the filing of the indictment or information.

(g)(1)(A) Each licensed importer, licensed manufacturer, and licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business for such period, and in such form, as the Secretary may by regulations prescribe. Such importers, manufacturers, and dealers shall not be required to submit to the Secretary reports and information with respect to such records and the contents thereof, except as expressly required by this section. The Secretary, when he has reasonable cause to believe a violation of this chapter has occurred and that evidence thereof may be found on such premises, may, upon demonstrating such cause before a Federal magistrate and securing from such magistrate a warrant authorizing entry, enter during business hours the premises (including places of storage) of any licensed firearms importer, licensed manufacturer, licensed dealer, licensed collector, or any licensed importer or manufacturer of ammunition, for the purpose of inspecting or examining—

(i) any records or documents required to be kept by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector under this chapter or rules or regulations under this chapter, and

(ii) any firearms or ammunition kept or stored by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector, at such premises.

(B) The Secretary may inspect or examine the inventory and records of a licensed importer, licensed manufacturer, or licensed dealer without such reasonable cause or warrant—

(i) in the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee,

(ii) for ensuring compliance with the record keeping requirements of this chapter—

(i) not more than once during any 12-month period, or

(ii) at any time with respect to records relating to a firearm involved in a criminal investigation that is traced to the licensee.

(iii) when such inspection or examination may be required for determining the disposition of one or more particu-

lar firearms in the course of a bona fide criminal investigation.

(C) The Secretary may inspect the inventory and records of a licensed collector without such reasonable cause or warrant—

(i) for ensuring compliance with the record keeping requirements of this chapter not more than once during any twelve-month period, or

(ii) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

(D) At the election of a licensed collector, the annual inspection of records and inventory permitted under this paragraph shall be performed at the office of the Secretary designated for such inspections which is located in closest proximity to the premises where the inventory and records of such licensed collector are maintained. The inspection and examination authorized by this paragraph shall not be construed as authorizing the Secretary to seize any records or other documents other than those records or documents constituting material evidence of a violation of law. If the Secretary seizes such records or documents, copies shall be provided to the licensee within a reasonable time. The Secretary may make available to any Federal, State, or local law enforcement agency any information which he may obtain by reason of this chapter with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition, and he may provide information to the extent such information may be contained in the records required to be maintained by this chapter, when so requested by any Federal, State, or local law enforcement agency.

(2) Each licensed collector shall maintain in a bound volume the nature of which the Secretary may by regulations prescribe, records of the receipt, sale, or other disposition of firearms. Such records shall include the name and address of any person to whom the collector sells or otherwise disposes of a firearm. Such collector shall not be required to submit to the Secretary reports and information with respect to such records and the contents thereof, except as expressly required by this section.

(3)(A) Each licensee shall prepare a report of multiple sales or other dispositions whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totalling two or more, to an unlicensed person. The report shall be prepared on a form specified by the Secretary and forwarded to the office specified thereon and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place,

not later than the close of business on the day that the multiple sale or other disposition occurs.

(B) Except in the case of forms and contents thereof regarding a purchaser who is prohibited by subsection (g) or (h) of section 922 of this title from receipt of a firearm, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall not disclose any such form or the contents thereof to any person or entity, and shall destroy each such form and any record of the contents thereof no more than 20 days from the date such form is received. No later than the date that is 6 months after the effective date of this subparagraph, and at the end of each 6-month period thereafter, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall certify to the Attorney General of the United States that no disclosure contrary to this subparagraph has been made and that all forms and any record of the contents thereof have been destroyed as provided in this subparagraph.

(4) Where a firearms or ammunition business is discontinued and succeeded by a new licensee, the records required to be kept by this chapter shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business is absolute, such records shall be delivered within thirty days after the business discontinuance to the Secretary. However, where State law or local ordinance requires the delivery of records to other responsible authority, the Secretary may arrange for the delivery of such records to such other responsible authority.

(5)(A) Each licensee shall, when required by letter issued by the Secretary, and until notified to the contrary in writing by the Secretary, submit on a form specified by the Secretary, for periods and at the times specified in such letter, all record information required to be kept by this chapter or such lesser record information as the Secretary in such letter may specify.

(B) The Secretary may authorize such record information to be submitted in a manner other than that prescribed in subparagraph (A) of this paragraph when it is shown by a licensee that an alternate method of reporting is reasonably necessary and will not unduly hinder the effective administration of this chapter. A licensee may use an alternate method of reporting if the licensee describes the proposed alternate method of reporting and the need therefor in a letter application submitted to the Secretary, and the Secretary approves such alternate method of reporting.

(6) Each licensee shall report the theft or loss of a firearm from the licensee's inventory or collection, within 48 hours after the theft or loss is discovered, to the Secretary and to the appropriate local authorities.

(7) Each licensee shall respond immediately to, and in no event later than 24 hours after the receipt of, a request by the Secretary for

information contained in the records required to be kept by this chapter as may be required for determining the disposition of 1 or more firearms in the course of a bona fide criminal investigation. The requested information shall be provided orally or in writing, as the Secretary may require. The Secretary shall implement a system whereby the licensee can positively identify and establish that an individual requesting information via telephone is employed by and authorized by the agency to request such information.

(h) Licenses issued under the provisions of subsection (c) of this section shall be kept posted and kept available for inspection on the premises covered by the license.

(i) Licensed importers and licensed manufacturers shall identify, by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Secretary shall by regulations prescribe, each firearm imported or manufactured by such importer or manufacturer. The serial number of any semiautomatic assault weapon manufactured after the date of the enactment of this sentence shall clearly show the date on which the weapon was manufactured. A large capacity ammunition feeding device manufactured after the date of the enactment of this sentence shall be identified by a serial number that clearly shows that the device was manufactured or imported after the effective date of this subsection, and such other identification as the Secretary may by regulation prescribe.

(j) A licensed importer, licensed manufacturer, or licensed dealer may, under rules or regulations prescribed by the Secretary, conduct business temporarily at a location other than the location specified on the license if such temporary location is the location for a gun show or event sponsored by any national, State, or local organization, or any affiliate of any such organization devoted to the collection, competitive use, or other sporting use of firearms in the community, and such location is in the State which is specified on the license. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or other disposition and shall be entered in the permanent records of the licensee and retained on the location specified on the license. Nothing in this subsection shall authorize any licensee to conduct business in or from any motorized or towed vehicle. Notwithstanding the provisions of subsection (a) of this section, a separate fee shall not be required of a licensee with respect to business conducted under this subsection. Any inspection or examination of inventory or records under this chapter by the Secretary at such temporary location shall be limited to inventory consisting of, or records relating to, firearms held or disposed at such temporary location. Nothing in this subsection shall be construed to authorize the Secretary to inspect or examine the inventory or records of a licensed importer, licensed manufacturer, or licensed dealer at any location other than the location specified on the license. Nothing in this subsection shall be construed to diminish in any manner any right to display, sell, or otherwise dispose of firearms or ammunition, which is in

effect before the date of the enactment of the Firearms Owners' Protection Act.

(k) Licensed importers and licensed manufacturers shall mark all armor piercing projectiles and packages containing such projectiles for distribution in the manner prescribed by the Secretary by regulation. The Secretary shall furnish information to each dealer licensed under this chapter defining which projectiles are considered armor piercing ammunition as defined in section 921(a)(17)(B).

(l) The Secretary of the Treasury shall notify the chief law enforcement officer in the appropriate State and local jurisdictions of the names and addresses of all persons in the State to whom a firearms license is issued. (Added Pub L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 231, and amended Pub L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1221, Pub L. 97-377, Title I, § 165(b), Dec. 21, 1982, 96 Stat. 1923, Pub L. 99-308, § 103, May 19, 1986, 100 Stat. 453, Pub L. 99-360, § 1(c), July 8, 1986, 100 Stat. 766, Pub L. 99-408, §§ 3-7, Aug. 28, 1986, 100 Stat. 921, Pub L. 100-690, Title VII, § 7060(d), Nov. 18, 1988, 102 Stat. 4404, Pub L. 101-647, Title XXII, § 2203(a) Title XXXV, § 3525, Nov. 5, 1990, 104 Stat. 4857, 4924, Pub L. 103-159, Title II, § 201, Title III, § 303, Nov. 30, 1993, 107 Stat. 1544, 1545, Pub L. 103-322 Title XI, §§ 110102(d), 110103(d), 110301(a), 110302-110307, Title XXXIII, § 330011(i), Sept. 13, 1994, 108 Stat. 1998, 1999, 2012, 2013, 2014, 2145.)

§ 924. Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), or (f) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter,

(B) knowingly violates subsection (a)(4), (f), (k), (r), (v), or (w) of section 922,

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l), or

(D) willfully violates any other provision of this chapter, shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922,

shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term

of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(5)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(i) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2), and

(ii) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both, and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1) Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking

crime, be sentenced to imprisonment for five years, and if the firearm is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, to imprisonment for ten years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to imprisonment for thirty years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried.

(2) For purposes of this subsection, the term "**drug trafficking crime**" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

(3) For purposes of this subsection the term "**crime of violence**" means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter. **Provided**, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned

forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title,

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.),

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title,

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition,

(E) any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title, and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to

in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined not more than \$25,000 and imprisoned not less than fifteen years, and, notwithstanding any provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term "**serious drug offense**" means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), for which a maximum term of imprisonment of ten years or more is prescribed by law, or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law,

(B) the term "**violent felony**" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another, and

(C) the term "**conviction**" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which—

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 802 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.),

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both

(h) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both

(i)(1)² A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection

(i)² A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life, and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section

(j) A person who, with intent to engage in or to promote conduct that—

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802), or

(3) constitutes a crime of violence (as defined in subsection (c)(3)),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both

(k) A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both

(l) A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both

(m) A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State

or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years

(n) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both, and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life

(Added Pub L. 90-351, Title IV § 902 June 19 1968 82 Stat. 233, and amended Pub L. 90-618 Title I, § 102, Oct. 22, 1968, 82 Stat. 1223, Pub L. 91-644, Title II § 13, Jan. 2, 1971, 84 Stat. 1889, Pub L. 98-473, Title II, §§ 223(a), 1005(a), Oct. 12 1984, 98 Stat. 2028, 2138, Pub L. 99-308, § 104(a), May 19 1986, 100 Stat. 456, Pub L. 99-570, Title I, § 1402, Oct. 27, 1986, 100 Stat. 3207-39, Pub L. 100-649 § 2(b), Nov. 10 1988 102 Stat. 3817, Pub L. 100-690, Title VI, §§ 6211 6212, 6451, 6460 6462 Title VII, §§ 7056, 7060(a), Nov. 18 1988 102 Stat. 4359, 4360, 4371, 4373 4374 4402, 4403, Pub L. 101-647 Title XI, § 1101, Title XVII, § 1702(b)(3), Title XXII, §§ 2203(d), 2204(c), Title XXXV, §§ 3528, 3527, 3528, 3529, Nov. 29, 1990, 104 Stat. 4829, 4845, 4857 4924, Pub L. 103-159, Title I, § 103(c), Title III § 302(d), Nov. 30, 1993, 107 Stat. 1541, 1545, Pub L. 103-322, Title VI, § 60013, Title XI, §§ 110102(c), 110103(c), 110201(b), 110401(a), 110503, 110504(a), 110507, 110510, 110515(a), 110517, 110518(a), Title XXXIII, §§ 330002(h), 330003(f)(2), 330011(i), (j), 330016(1)(H), (K), (L), Sept. 13, 1994, 108 Stat. 1973 1998, 1999, 2011, 2015 2016, 2018, 2019, 2020, 2140, 2141, 2145, 2147)

¹ Two subsections (a)(5) were enacted

² Two subsections (l) were enacted

§ 925. Exceptions: Relief from disabilities

(a)(1) The provisions of this chapter, except for provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof

(2) The provisions of this chapter shall not apply with respect to (A) the shipment or receipt of firearms or ammunition when sold or issued by the Secretary of the Army pursuant to section 4308 of title 10, and (B) the transportation of any such firearm or ammunition carried out to enable a person, who lawfully received such firearm or ammunition from the Secretary of the Army, to engage in military training or in competitions

(3) Unless otherwise prohibited by this chapter or any other Federal law, a licensed importer, licensed manufacturer, or licensed dealer may ship to a member of the United States Armed Forces on active duty outside the United States or to clubs, recognized by the Department of Defense, whose entire membership is composed of such members, and such members or clubs may receive a firearm or ammunition determined by the Secretary of the Treasury to be generally recognized as particularly suitable for sporting purposes and intended for the personal use of such member or club

(4) When established to the satisfaction of the Secretary to be consistent with the provisions of this chapter and other applicable Federal and State laws and published ordinances, the Secretary may authorize the

transportation, shipment, receipt, or importation into the United States to the place of residence of any member of the United States Armed Forces who is on active duty outside the United States (or who has been on active duty outside the United States within the sixty day period immediately preceding the transportation, shipment, receipt, or importation), of any firearm or ammunition which is (A) determined by the Secretary to be generally recognized as particularly suitable for sporting purposes, or determined by the Department of Defense to be a type of firearm normally classified as a war souvenir, and (B) intended for the personal use of such member

(5) For the purpose of paragraphs (3) and (4) of this subsection, the term "United States" means each of the several States and the District of Columbia

(b) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector who is indicted for a crime punishable by imprisonment for a term exceeding one year, may, notwithstanding any other provision of this chapter, continue operation pursuant to his existing license (if prior to the expiration of the term of the existing license timely application is made for a new license) during the term of such indictment and until any conviction pursuant to the indictment becomes final

(c) A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Secretary may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter, shall not be barred by such disability from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Secretary grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor

(d) The Secretary shall authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the firearm or ammunition—

(1) is being imported or brought in for scientific or research purposes, or is for use in connection with competition or training pursuant to chapter 401 of title 10,

(2) is an unserviceable firearm, other than a machinegun as defined in section 5845(b) of the Internal Revenue Code of 1954 (not readily restorable to firing condition), imported or brought in as a curio or museum piece,

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms, except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled, or

(4) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition

The Secretary shall permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection

(e) Notwithstanding any other provision of this title, the Secretary shall authorize the importation of, by any licensed importer, the following

(1) All rifles and shotguns listed as curios or relics by the Secretary pursuant to section 921(a)(13), and

(2) All handguns, listed as curios or relics by the Secretary pursuant to section 921(a)(13), provided that such handguns are generally recognized as particularly suitable for or readily adaptable to sporting purposes

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both

(Added Pub L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 233, and amended Pub L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1224, Pub L. 98-573, Title II, § 233, Oct. 30, 1984, 98 Stat. 2991, Pub L. 99-308, § 105, May 19, 1986, 100 Stat. 459, Pub L. 100-649, § 2(c), Nov. 10, 1988, 102 Stat. 3817, Pub L. 101-647, Title XXII, § 2203(b), (c), Nov. 29, 1990, 104 Stat. 4857)

§ 925A. Remedy for erroneous denial of firearm

Any person denied a firearm pursuant to subsection (s) or (t) of section 922—

(1) due to the provision of erroneous information relating to the person by any State or political subdivision thereof, or by the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act, or

(2) who was not prohibited from receipt of a firearm pursuant to subsection (g) or (n) of section 922,

may bring an action against the State or political subdivision responsible for providing the erroneous information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the erroneous information be corrected or that the transfer be approved, as the case may be. In any action under this section, the court, in its discretion, may allow

the prevailing party a reasonable attorney's fee as part of the costs

(Added Pub L. 103-159, Title I, § 104(a), Nov. 30, 1993, 107 Stat. 1543)

§ 926. Rules and regulations

(a) The Secretary may prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter, including—

(1) regulations providing that a person licensed under this chapter, when dealing with another person so licensed, shall provide such other licensed person a certified copy of this license,

(2) regulations providing for the issuance, at a reasonable cost, to a person licensed under this chapter, of certified copies of his license for use as provided under regulations issued under paragraph (1) of this subsection, and

(3) regulations providing for effective receipt and secure storage of firearms relinquished by or seized from persons described in subsection (d)(8) or (g)(8) of section 922

No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. Nothing in this section expands or restricts the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal investigation

(b) The Secretary shall give not less than ninety days public notice, and shall afford interested parties opportunity for hearing, before prescribing such rules and regulations

(c) The Secretary shall not prescribe rules or regulations that require purchasers of black powder under the exemption provided in section 845(a)(5) of this title to complete affidavits or forms attesting to that exemption

(Added Pub L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 234, and amended Pub L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1226, Pub L. 99-308, § 106, May 19, 1986, 100 Stat. 459, Pub L. 103-322, Title XI, § 110401(d), Sept. 13, 1994, 108 Stat. 2015)

§ 926A. Interstate transportation of firearms

Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle. **Provided,** That in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a

locked container other than the glove compartment or console

(Added Pub L. 99-360 § 1(a), July 8, 1986, 100 Stat. 766)

§ 927. Effect on State law

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together

(Added Pub L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 234, and amended Pub L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1226)

§ 928. Separability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby

(Added Pub L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 234, and amended Pub L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1226)

§ 929. Use of restricted ammunition

(a)(1) Whoever, during and in relation to the commission of a crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm and is in possession of armor piercing ammunition capable of being fired in that firearm shall, in addition to the punishment provided for the commission of such crime of violence or drug trafficking crime be sentenced to a term of imprisonment for not less than five years

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)

(b) Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this section, nor place the person on probation, nor shall the terms of imprisonment run concurrently with any other terms of imprisonment, including that imposed for the crime in which the armor piercing ammunition was used or possessed. No person sentenced under this section shall be eligible for parole during the term of imprisonment imposed herein

(Added Pub L. 98-473, Title II, § 1006(a), Oct. 12, 1984, 98 Stat. 2139, and amended Pub L. 99-308, § 108, May 19, 1986, 100 Stat. 460, Pub L. 99-408, § 8, Aug. 28, 1986, 100 Stat. 921, Pub L. 100-650, Title VI, § 6212, Title VII, § 7060(b), Nov. 18, 1988, 102 Stat. 4380, 4404)

§ 930. Possession of firearms and dangerous weapons in Federal facilities

(a) Except as provided in subsection (d) whoever knowingly possesses or causes

be present a firearm or other dangerous weapon in a Federal facility (other than a Federal court facility), or attempts to do so, shall be fined under this title or imprisoned not more than 1 year, or both

(b) Whoever, with intent that a firearm or other dangerous weapon be used in the commission of a crime, knowingly possesses or causes to be present such firearm or dangerous weapon in a Federal facility, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both

(c) A person who kills or attempts to kill any person in the course of a violation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, shall be punished as provided in sections 1111, 1112, and 1113

(d) Subsection (a) shall not apply to—

(1) the lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law,

(2) the possession of a firearm or other dangerous weapon by a Federal official or a member of the Armed Forces if such possession is authorized by law, or

(3) the lawful carrying of firearms or other dangerous weapons in a Federal facility incident to hunting or other lawful purposes

(e)(1) Except as provided in paragraph (2), whoever knowingly possesses or causes to be present a firearm in a Federal court facility, or attempts to do so, shall be fined under this title, or imprisoned not more than 2 years, or both

(2) Paragraph (1) shall not apply to conduct which is described in paragraph (1) or (2) of subsection (c)

(f) Nothing in this section limits the power of a court of the United States to punish for contempt or to promulgate rules or orders regulating, restricting, or prohibiting the possession of weapons within any building housing such court or any of its proceedings, or upon any grounds appurtenant to such building.

(g)¹ As used in this section:

(1) The term "**Federal facility**" means a building or part thereof owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties

(2) The term "**dangerous weapon**" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length

(3) The term "**Federal court facility**" means the courtroom, judges' chambers, witness rooms, jury deliberation rooms, attorney conference rooms, prisoner holding cells, offices of the court clerks, the United States

attorney, and the United States marshal, probation and parole offices, and adjoining corridors of any court of the United States

(g)¹ Notice of the provisions of subsections (a) and (b) shall be posted conspicuously at each public entrance to each Federal facility, and notice of subsection (d) shall be posted conspicuously at each public entrance to each Federal court facility, and no person shall be convicted of an offense under subsection (a) or (d) with respect to a Federal facility if such notice is not so posted at such facility, unless such person had actual notice of subsection (a) or (d), as the case may be

(Added Pub L. 100-690, Title VI, § 6215(a), Nov. 18, 1988, 102 Stat. 4361, and amended Pub L. 101-647, Title XXII, § 2205(a), Nov. 29, 1990, 104 Stat. 4857, Pub L. 103-322, Title VI, § 60014, Sept. 13, 1994, 108 Stat. 1973.)

¹ Two subsections (g) were enacted.

EDITOR'S NOTE:

Administration and Enforcement by the Secretary of the Treasury. Section 103 of Pub. L. 90-618 provided that: "The administration and enforcement of the amendment made by this title [Title I of Pub. L. 90-618 which amended this chapter] shall be vested in the Secretary of the Treasury."

Section 903 of Pub. L. 90-351 provided that: "The administration and enforcement of the amendment made by this title [Title IX of Pub. L. 90-351 which enacted this chapter] shall be vested in the Secretary of the Treasury."

1 MR. PRESK: At this point I'd like to do
2 two housekeeping measures. The first is to put
3 into the record of this hearing a letter that the
4 Committee received from Representative Dwight Evans
5 of Philadelphia and Representative T. J. Rooney from
6 Lehigh County. It's a letter of August 18, 1999
7 from the Common Sense Firearms Safety Caucus. We
8 will make that part of the record. In fact, I think
9 I provided a copy to the stenographer and also the
10 testimony of John Hohenwarter, the State Liaison
11 to the National Rifle Association. He is on a plane
12 on his way right here right now, but in case he was
13 not available to testify, I wanted to make sure that
14 his testimony was also included in the record.

15 (The following was submitted for inclusion
16 in the record:)

17 COMMON SENSE FIREARMS SAFETY CAUCUS

18 Mission:

19 Develop an education and legislative strategy
20 to increase safety and reduce the level of gun
21 violence in Pennsylvania.

22 August 18, 1999

23 The Hon. Thomas P. Gannon
24 Chairman
25 House Judiciary Committee
49 East Wing, Main Capitol Bldg.
Harrisburg, PA 17120

1 Dear Chairman Gannan:

2 Thank you for the invitation to make
3 a presentation before the House Judiciary
4 Committee on August 25. Unfortunately, a
5 prior commitment will prevent us from
6 participating.

7 Because we will not be able to
8 be there, we have attached our concerns,
9 which we request become part of the
10 official record of these hearings.

11 In addition, we encourage
12 you to schedule additional hearings
13 in other locations around the state
14 in order to gather information on local
15 concerns and perceptions. After all,
16 someone in Potter County would have
17 a different take on some of these
18 issues than someone living in Philadelphia
19 County, just as someone living in Adams
20 County may differ in his perspective from
21 that of someone living in Clearfield County.

22 Being concerned about the proliferation
23 and availability of handguns in Pennsylvania
24 is not necessarily a prelude to banning the
25 use of all guns and we need to continue to

1 seek a common sense strategy to reduce the
2 level of gun violence in Pennsylvania.

3 Again, thank you for scheduling the
4 hearing. If you have any questions, do
5 not hesitate to contact us.

6 Sincerely,

7 Dwight Evans

T. J. Rooney

8 Attachment

9 Rep. Dwight Evans & Rep. T.J. Rooney

10 Testimony

11 House Judiciary Committee

12 August 25, 1999

13 Among industrialized countries, the U.S.
14 ranks dead last in protecting our children
15 against gun violence.

16 Without stepping on anyone's legitimate right
17 to own a gun, something is wrong when deadly
18 weapons fall into the hands of our children and
19 we don't take simple steps to prevent it.

20 An average of 13 children die each day
21 from gunfire in America.

22 That is approximately one child every 111 minutes.
23 It means we lose the equivalent of a classroom
24 of children every two days.

25 According to the Children's Defense Fund and

1 the Centers for Disease Control and
2 Prevention, U.S. children under age 15 are:

3 * 12 times more likely to die from gunfire,

4 * 6 times more likely to be murdered
5 with a gun,

6 * 11 times more likely to commit
7 suicide with a gun, and

8 * 9 times more likely to die in a
9 firearms accident,

10 than children in 25 other industrialized
11 countries combined.

12 Lots of numbers.

13 What I hope to do is remind us all that
14 each of those numbers was a person.

15 What I hope to do is present what I believe
16 is a common sense approach to firearms
17 safety.

18 We need to listen to what the American people
19 are telling us -- including what gun owners
20 are telling us -- and not only enforce the
21 existing laws, but make the laws more
22 effective.

23 Common sense backed up by public opinion
24 points to the need to reduce the number
25 of guns purchased by an individual in a

1 30-day period. In a survey we conducted
2 this spring.

3 Even the proposal to limit the purchase of
4 handguns to no more than one a month
5 per person; requiring all handguns to be
6 "smart" guns; holding parents responsible
7 for gun crimes committed by their children;
8 allowing greater local control over gun laws,
9 and allowing individuals and cities to sue
10 manufacturers all register more than a
11 majority of support among survey respondents.
12 Gun owners are particularly supportive of
13 proposals that would limit young people's
14 access to guns, punish gun offenders, and
15 promote the safe use of firearms.

16 Gun owners also support banning anyone from
17 entering schools and other public places
18 with a gun, even if they have a concealed
19 weapon permit. A majority of gun owners
20 show intense support for prohibiting a
21 minor caught with a gun at school from
22 ever owning a gun.

23 Two-thirds of gun owners support banning
24 guns without safety locks, banning all
25 sales of semi-automatic weapons, and

1 creating a system of gun registration
2 and ID cards.

3 Even a survey conducted by the U.S. House
4 Republicans, found "rock-solid support of
5 roughly 80 percent for expanded background
6 checks for handgun purchases, safety locks
7 for guns, mandatory prison terms for
8 felons who commit crimes with guns and the
9 21-year age limit for handgun purchasers."

10 In surveys conducted by the New England
11 Journal of Medicine, 70 percent of all those
12 polled, and 52 percent of gun owners, wanted
13 the government to "do everything it can to
14 keep handguns out of the hands of criminals
15 even if it means that it will be harder for
16 law-abiding citizens to purchase handguns."

17 If the stories about the death, destruction
18 and the crippling effects of guns in the
19 hands of the wrong people don't move you,
20 perhaps the hard core economics of the issue will.

21 In these days of health-care cost-cutting,
22 it is appropriate to consider the costs
23 gun-related injuries and death add to the
24 national and state health care bills.

25 Gun injury is one of the most debilitating

1 and expensive medical problems facing the
2 United States today.

3 It costs more than \$14,000 to treat each
4 child wounded by gunfire -- enough to pay
5 for almost four full year's tuition at
6 a state system university.

7 According to The Washington Post, the average
8 total cost of a gun-related crime can be
9 as high as \$268,000. Most of the cost is
10 borne by the taxpayer.

11 The total lifetime cost of a gun-related
12 crime, including medical care, rehabilitation
13 of the injured and incarceration of the
14 assailant can run as high as \$1 million.
15 Again, most of this cost is borne by the
16 taxpayer.

17 I (Rep. Evans) represent a district in
18 Philadelphia. Philadelphia has the highest
19 gun-related homicide rate in the United States.
20 There were 340 homicides in Philadelphia in
21 1998 alone. According to the Philadelphia
22 Police Department, in 80 percent of them the
23 weapon of choice was a gun.
24 Children are killing children -- with guns.
25 That must change. It's past time for us to

1 get guns off our streets and out of our
2 schools.

3 The ocean of handguns may not be the only
4 cause of the more than 36,000 gun-related
5 homicides each year in our country, but it
6 is hard not to recognize the fact that
7 people with easily available handguns kill
8 people.

9 We must have safe schools, streets and
10 neighborhoods if we are going to keep and
11 attract the type of diverse population we
12 need to continue to help Pennsylvania flourish.
13 If, as Gov. Ridge has said, the safety and
14 protection of the citizens of the Commonwealth
15 is one of state government's core responsi-
16 bilities, then we must do more and do it now.

17
18 Testimony of John Hohenwarter
19 State Liaison, National Rifle Association
20 before the
21 Pennsylvania House of Representatives Judiciary
22 Committee

23 August 25, 1998

24 On behalf of the Pennsylvania membership of
25 National Rifle Association, I would like
to thank you for the opportunity to testify
today. The National Rifle Association was

1 formed more than 128 years ago to protect
2 and vindicate the Second Amendment to our
3 Constitution. We believe the individual,
4 personal freedom to choose to lawfully
5 own a firearm -- without permission from,
6 or apologies to, anyone -- is as clear and
7 intentional as the rest of the Bill of Rights.
8 All across this great country, you will find
9 a group of people who would compromise this
10 sacred right for a sense of false security.
11 They would compromise a right, given to us by
12 our Founding Fathers, to defend ourselves,
13 our families, and our country. That's wrong,
14 and Americans won't tolerate it.
15 However, it is not a right without Rational
16 regulations. And it's not for everyone.
17 Only the law-abiding majority of society
18 deserves the Second Amendment. Abuse it once
19 and lose it forever. That's the law. Un-
20 fortunately, the law is not always adequately
21 enforced.
22 We as gun owners believe that freedom should
23 never be diminished for those who abide by
24 the law. On the contrary, freedom should
25 be diminished only for those who break the law.

1 That is the principle upon which we stand
2 opposed to many of the made-for-TV legislative
3 proposals which have been introduced by a
4 few members of this General Assembly.
5 For example, we stand opposed to waiting
6 period proposals and one-gun-a-month schemes.
7 There is no evidence waiting period's work --
8 and if there is authority to say one gun a
9 month, there will eventually be authority
10 to say none. However, I will say this, we do
11 believe that felons should get no guns a
12 month.

13 Nobody -- nor any combination of entities you
14 care to add up -- has invested even a
15 measurable fraction of what we have invested
16 toward keeping safety and sanity central to
17 the lawful exercise of the Second Amendment.
18 And nobody is more committed than we are to
19 keeping guns out of criminals' hands.
20 That's obviously in our best interest.
21 However, the issue is whether you believe
22 you're more likely to keep guns and
23 criminals apart with new laws you write
24 and ignore, or with existing laws you
25 enforce.

1 Some seem to think our insistence on
2 enforcement is unreasonable. Others say
3 we oppose reasonable restrictions on gun
4 ownership. So let's talk about what's
5 reasonable.

6 We think it's reasonable that everyone of
7 you urge for zero-tolerance for the criminal
8 misuse of firearms. That means:

- 9 * zero tolerance for criminals who bring
- 10 guns illegally onto school property.
- 11 * zero tolerance for criminals who
- 12 illegally buy guns for juveniles.
- 13 * zero tolerance for criminals who sell
- 14 guns illegally.
- 15 * zero tolerance for those juvenile gang
- 16 bangers caught carrying guns.

17 You as state legislators must urge the full
18 enforcement of not only state firearm laws
19 but also the full enforcement of federal law
20 by the federal government. It is ridiculous
21 when the Justice Department claims that
22 federal gun laws are for the states to
23 enforce. Reasonable people know that
24 a case made in state court means plea bar-
25 gains, judge shopping, and no mandatory

1 minimum sentencing. Even Mayor Ed Rendell
2 of Philadelphia knows this, even if the
3 Justice Department does not. He said,
4 quote: "In state court, we average for
5 these types of gun violations a 4-month
6 prison sentence. The federal guidelines
7 are 59 months in prison. That's a 5-1/2
8 year difference. Incarcerating convicted
9 felons in possession of firearms for that
10 length of time will save lives. It will
11 save carnage. It will save people from
12 being maimed."

13 That's why the National Rifle Association
14 strongly supports Project Exile -- a zero-
15 tolerance prosecution project that began in
16 Richmond, Virginia. Project Exile proved
17 that murder and gun crime can be cut by nearly
18 half almost overnight. Law enforcement
19 officials have stated that they have never
20 seen such a dramatic immediate effect on
21 criminal violence.

22 The reason it works is simple; relentless,
23 no discussion, no excuses prosecution. Any
24 violent felon caught with a gun, whether he's
25 raping or resting, goes to jail for five years,

1 period. This sends a clear message to
2 criminals "if you can't do the time -- don't
3 do the crime."

4 We support what works, and our proud list is
5 long. From Project Exile to three-strikes-
6 you're out, to truth in sentencing, to ten-
7 twenty-life, to mandatory minimums -- what's
8 reasonable is what works; what's unreasonable
9 is what doesn't work.

10 What's reasonable is the further erosion
11 of privacy, further intrusion into private
12 transactions, and further government penalizing
13 of the law-abiding many instead of the law-
14 breaking few. America will not tolerate
15 further surrender of precious freedoms in
16 return for nothing but perceived and
17 fictitious promises that make none of us
18 safer.

19 This made-for-TV lawmaking has the same effect
20 on the population as made-for TV violence.

21 It entertains us, but harms us. And it's
22 dangerous, because criminals are emboldened
23 by a government that manufactures laws it
24 has little intention of enforcing.

25 I would like to ask the press and news media

1 to do their job. Demand probing, investigative
2 journalism that shines the cold light of day
3 upon this fraudulent process. Remember fraud
4 diminishes freedom. If a law is important
5 enough to pass, it's important enough to
6 enforce.

7 Finally, I would like to leave you with
8 one final thought. Benjamin Franklin once
9 said that "a nation cannot gain safety by
10 giving up freedom. This truth is older than
11 our country. Those who would give up
12 essential liberty, to purchase a little
13 temporary safety, deserve neither liberty
14 nor safety."

15 Once again, I thank you for the opportunity
16 to testify.

17 MR. PRESK: With that being done, the next
18 person on the agenda today is Judge Lalley-Green from
19 the Pennsylvania Superior Court. She is not able to
20 be with us this morning. However, Mayor Kip Allen
21 from the Borough of Edinboro has asked to testify. Is
22 Mr. Allen here this morning?

23 (No response.)

24 MR. PRESK: Seeing that he's not, next is
25 Mr. Mirowitz, J o n Mirowitz. Jon Mirowitz is the

1 President of the Pennsylvania Fish and Game
2 Protective Association. Mr. Mirowitz, do you have
3 something to hand out to the Committee?

4 MR. MIROWITZ: Yes. While I'm President
5 of the Pennsylvania Fish and Game Protective
6 Association which is the oldest conservation group
7 in the country, I'm here testifying on behalf of the
8 Unified Sportsmen of Pennsylvania. I should also
9 point out that I sat on the State Select Committee,
10 the Ryan Commission as it were or the Fumo Gun
11 Panel, depending on which part of the state you are
12 from, that studied this issue and from the work of
13 that panel, Act 17 of special sessions No. 1, 1995
14 was enacted. That's the current Uniform Firearms
15 Act subject to a few additional technical amendments.
16 When I came here today, I brought a fairly extensive
17 written statement which I'd like to submit for the
18 record. There were a few -- I was going to talk about
19 the interrelationship between forfeiture statutes,
20 specifically Sections 6801 and 2 of Title 42; the
21 minor's provision, Title 18, Section 6110.1; the
22 mandatory return of firearms under Section 6111(B)4
23 also of Title 18 but there were a few questions a
24 moment ago that I think deserve to be addressed.
25 There was great interest concerning the database use,

1 both the national database and the state database.
2 When I sat on the State Select Committee, law enforce-
3 ment representatives, both state and federal, testi-
4 fied that their databases were about 75 percent
5 accurate. My law practice is almost exclusively
6 firearms-related and I would say that 90 percent of
7 my time is spent correcting the databases. People
8 have forgotten the first rule of computers is garbage
9 in-garbage out. The person that is doing the data
10 entry is probably underpaid, overworked and has been
11 doing it all day. Their eyes get blurry, their
12 fingers get tired and they often hit the wrong key
13 stroke. I'd like to tell you about someone who I
14 encountered initially, unrelated to firearms.

15 At the national database which was set up
16 some time ago gathered information and put it into
17 these computers, sacrosanct computers. It seems that
18 this family many years ago, decades, was on a
19 vacation. They were driving from Philadelphia down
20 to Florida. They stopped in the Carolinas, went into
21 a convenience store. A young gentleman went into the
22 store to pick up some stuff. The rest of the family
23 is back in the van. He realized he didn't have enough
24 money. He put the stuff down, went back to the van,
25 got some more money from dad, came back to the store.

1 Unfortunately, he didn't put down a carton of
2 cigarettes. A bright-eyed bushy-tailed young
3 security guard said, uh-huh, I got you, shoplifting.
4 You took that carton of cigarettes out of the store.
5 They took him to the local judge. The local judge
6 basically said, why are you bothering me with this
7 stuff. This is crap. The procedure in the state was
8 called a prayer for judgment continued. The criminal
9 case against this young man which we would call a
10 minor, he was under 17 at the time, which we would
11 call a summary offense -- at the time, I think a
12 carton of cigarettes was less than five dollars down
13 there. Taxes are so wonderful. Anyway, the judge
14 continued the case indefinitely, gave it no return
15 date. Their procedure under a prayer for judgment,
16 the prayer for judgment continued, was that if the
17 defendant did not return into their criminal justice
18 system within seven years, the court clerk with no
19 further court action was authorized to destroy the
20 records. That's exactly what the court clerk did.
21 The records are gone. Unfortunately, during that
22 seven-year period, the federal government decided,
23 we need a computer. We want a national database.
24 Unfortunately for this young man, he is entered in
25 that national database as a result of this small minor

1 prayer for judgment continued matter as a felony
2 larceny. There is no way to correct the national
3 database unless the reporting state requests it.
4 The reporting state's position is, we don't got no
5 records anymore. We destroyed them. We no longer
6 have any information upon which to base a request
7 for a correction. This young gentleman has gone
8 through background checks for employment, for insur-
9 ance, firearms-related. I believe we have gone
10 through five of them so far. Computers don't forget
11 but they don't always get it right and when the
12 system, the governments, start relying solely on
13 computers and not on human beings who can reason, we
14 have situations like this young man. I enjoy his
15 company. He's a wonderful person. He has a very good
16 sense of humor and appreciates the irony in this
17 matter but I hope I never have to see him again about
18 this.

19 Pennsylvania's databases are almost as bad.
20 Pennsylvania, we used to have a thing called magis-
21 trate's court. Perhaps some of you remember it.
22 Under the magistrate's court, the magistrate was paid
23 a percentage of the fines and costs he collected.
24 He, therefore, had a financial interest in making
25 sure that everyone that came in front of him was

1 guilty. It's the only way he got paid. What happens
2 in that situation is called a denial of due process.
3 You have a right under the federal constitution to
4 an impartial judiciary. Any magistrate's case in
5 Pennsylvania was ostensibly unconstitutional as a
6 denial of that due process right. But those cases
7 still appear on the database. The database also
8 recognizes as disabling criteria New Jersey Municipal
9 Court cases. New Jersey Municipal Court cases cannot
10 be disabling criteria because New Jersey Municipal
11 Court has no criminal jurisdiction and no matter in
12 that court can be a criminal matter. It just doesn't
13 happen but the databases pick up. The databases have
14 also picked up the people who were complaining wit-
15 nesses. It picks up cases where there is an expunge-
16 ment order that for some reason law enforcement
17 ignores the expungement order. I have personally had
18 Pennsylvania Instant Check System tell me, we did
19 recognize the order. The judge signed it in the
20 wrong place. I then pointed out to them that in
21 Pennsylvania the only time you can get an expungement
22 is if there is an acquittal. The databases are
23 inaccurate, inadequate and insufficient. In point
24 of fact, to sustain a denial, the Pennsylvania Instant
25 Check System must produce a certified copy of the

1 court record certified by the Clerk of Courts. These
2 often don't exist. In the last three weeks I have
3 had two cases coming out of Philadelphia in which
4 the expungement order fortunately was still in the
5 clerk's office. I have had cases -- the expungement
6 order was there. The PIC System still denied it.
7 They just ignored the expungement order. The proce-
8 dure, I assume, would be a contempt of court citation
9 against the state police for ignoring the court
10 order. I mean, perhaps you can help me with that.

11 The system we have and all of this concern
12 over guns and gun crime is the epitome of sophistry.
13 Sophistry, it means when something seems to apply
14 but it really doesn't. The example, the current
15 example is a drunk driver gets in a car and plows
16 into a crowd of people at a bus stop. The gun
17 control advocate will come out and say, we have to
18 do something about these cars and get them off the
19 street and they will want to arrest the car. They
20 will ignore the drunk driver. The problem that we
21 have with this gun control issue is that the real
22 problem is the bad guys.

23 Now, as some of the representatives know,
24 the area of Philadelphia in which I live is rather
25 notorious. I can walk to Eighth and Butler from my

1 house. I can walk five minutes in any direction
2 from my home and I can buy drugs; I can buy guns; I
3 can buy stolen cars, anything. It doesn't make any
4 difference, and I can probably do it in more than
5 one language. In the area of Eighth and Butler I
6 was canvassing one day and there was a woman who
7 recognized me from the State Select Committee and she
8 said, tell me. Those drug dealers across the street
9 are there everyday, day in and day out. Their
10 customers are there everyday, day in and day out. The
11 police drive by everyday. The only reason they are
12 out there and not in my living room is they know I
13 have a gun in my nightstand. Now, why are they
14 trying to take my gun away and not take theirs away
15 from them and take them off the street? That's the
16 real problem. Philadelphia just had a big thing
17 about Operation Sunrise. Operation Sunrise was very
18 successful in chasing the drug dealers and bad guys
19 from one neighborhood in Philadelphia to another.
20 You either have zero tolerance for drugs and crime
21 or you don't. It's irrelevant. No matter what we
22 do, we can't put a cop on every corner and in every
23 room. From the example of the 39th District in
24 Philadelphia, I'm not sure we would want to but what
25 the real matter, issue is, in Pennsylvania a few

1 hundred years ago, before there was the United States,
2 we had some very intelligent people. They wrote a
3 provision which said, the right of the Commonwealth
4 citizens to bear arms in defense of themselves and
5 the Commonwealth shall not be questioned. It was
6 one of the bases for the second amendment. We have
7 some very intelligent people serving in the legis-
8 lature now. They recognize that as a fundamental
9 constitutional right and it's in the statute.
10 Fortunately, I know some of you voted for it and I
11 want to thank you for that. I had a very good friend
12 of mine. She was a nurse in Philadelphia; 20 years,
13 never late for work; never missed work. One night
14 she went to work as always but 15 minutes later,
15 work calls her husband. Her husband answers the
16 phone. They say, where is Carmen and he said, she
17 left here. I don't know. He tried calling the
18 Philadelphia Police. They wouldn't take a missing
19 person's report, 15 minutes, not long enough. They
20 wouldn't even take the information in case she was
21 broken down on the street to maybe find her, find
22 where she was, maybe help her. About an hour and
23 a half later they found her dead in Toukeny Creek
24 (phonetic) Park about two blocks from the house.
25 There were two young -- well, I'll be civil about it.

1 There were two young cretins who were bored one
2 night. So, they met her at the parking lot and they
3 kidnapped her, carjacked her, raped her and beat her
4 to death with a rock and left her face down in
5 Toukeny Creek. I'm sorry she didn't exercise her
6 right to defend herself. I'm sorry those cretins
7 had an arrest record as juveniles that probably ex-
8 tends longer than the table that the panel is sitting
9 behind. We are very good at coddling the bad guys
10 and, don't get me wrong, I'm all in favor of support-
11 ing people who have rehabilitated themselves. I
12 believe in rehabilitation but I think the Criminal
13 Justice System must be tough love, not bleeding heart
14 love and there is a difference to it.

15 Now, getting back to what I wanted to talk
16 about, Pennsylvania has a provision, Section 6115
17 in the Uniform Firearms Act. It governs the loan
18 of firearms. It said the gun owner may loan guns to
19 anyone as long as the gun stays within their home or
20 place of business. It is one of the two provisions
21 in the Uniform Firearms Act that does not refer to
22 the status of the recipient of the gun. It doesn't
23 make any difference whether they are prohibited under
24 law or not. Within the home or place of business the
25 gun owner can loan a gun to whoever he wants. It

1 doesn't go out of the home or place of business.
2 Unfortunately, some of our erstwhile prosecutors have
3 decided that this doesn't make any difference and
4 they have tried to forfeit gun owners' property under
5 the Forfeiture Statutes. There is a conflict between
6 the two statutes. I address it in my written
7 statement. It's rather arcane and it's very good
8 material to put even attorneys to sleep, but I wanted
9 to apprise the panel of the issue.

10 One of the other statements concerned with
11 the issuance of carry permits. After a very long and
12 hard fight enacting Act 17, part of it was a vote in
13 the senate that resolved the issuance of carry
14 permits, at least temporarily. It applied a uniform
15 statewide standard. Every part of the state of
16 Pennsylvania operates under the same system. The
17 individuals enforcing that system differ and they
18 have different outlooks. That's to be expected.
19 It's one of the reasons why the issuing agent is the
20 local sheriff who is elected. In Philadelphia they
21 wanted the Police Chief and the Police Department.
22 Don't get me wrong, I don't mean to be knocking
23 Philadelphia. I've said in print that Philadelphia
24 is playing it straight as far as this is concerned.
25 I disagree with them in the application but they are

1 not trying to sandbag people. They are not trying
2 to sneak things over. Be that as it may, we have a
3 uniform standard for the issuance of carry permits.
4 How that is operated, we can differ about. Reasonable
5 people can differ about reasonable things. But all in
6 all, the issuance of carry permits seem to be working
7 fairly well. In my law practice I have represented
8 people in numerous counties in the State of
9 Pennsylvania concerning carry permits, concerning
10 instant checks, and I have to give credit where
11 credit is due. Law enforcement agencies are trying
12 to abide by the law as they know it. Unfortunately,
13 they know their policy book, not necessarily the
14 statute. That's to be expected and it's the way
15 systems work. The policy changes when it's proven
16 wrong and you go on from there. The idea is that
17 the people get a fair shake. You no longer have a
18 twenty dollar handshake carry permit.

19 One of the statements from the State Police
20 as to what records they keep, I don't know what
21 records they keep as a general rule. Under the
22 Uniform Firearms Act they are supposed to establish
23 databases separate and distinct from anything else
24 relating to criminal histories, relating to juvenile
25 delinquent records, mental health records and

1 Protection From Abuse Act orders. Those databases
2 are basically a list of the bad guys. Everyone else
3 is presumed to be a good guy. Remember when I quoted
4 that Pennsylvania Constitution, the right to bear
5 arms in defense of self, that's supposed to be un-
6 questioned. You are supposed to be presumed to have
7 constitutional rights unless the state can show
8 otherwise. It is the burden of the state, whether it
9 has been a PICS check, Pennsylvania Instant Check
10 System, or in the issuance of a carry permit to show
11 that the applicant is prohibited. They have the
12 burden of proof. That's a very good thing. Unfor-
13 tunately, in some aspects they have held or they are
14 trying to uphold or they are arguing that on appeal
15 where they have denied a carry permit or they have
16 denied an Instant Check, that the appellant now has
17 the burden of proving that they are not disabled.
18 I find that rather unusual because the base of
19 records you have to look at, the court records, are
20 possessed by the state, oftentimes lost by the state.
21 The magistrate courts were notorious for not turning
22 in their records when we closed out the system;
23 records that are missing because of record retention
24 orders by the local courts; records that were trans-
25 ferred to microfilm but now the microfilm leader is

1 on the fritz; you can't get parts for it. So, in
2 effect, the microfilm record which is all that is
3 left is not usable because you can't read it. The
4 problems with the records are almost endless but the
5 burden of that, the responsibility for that has to
6 fall on the state.

7 One other thing I wanted to address was
8 revocation of carry permits. I believe it was last
9 year the state legislature amended Section 6109
10 regarding revocations and took the discretion out
11 of the local issuing authority, whether it was the
12 sheriff or police in Philadelphia. They made revo-
13 cations mandatory under certain conditions. They
14 erred on the side of caution. At least, that was
15 the argument. What I see now is revocations that are
16 based on cases that were not prosecuted, cases where
17 ARD, an Alternative Resolution Disposition was imposed.
18 I see revocations for cases where if you were con-
19 victed of the underlying case, you would not be
20 prohibited from having a gun or having a carry permit.
21 You would probably pay no more than a few hundred
22 dollar fine. Be that as it may, the decision is not
23 a local decision. The decision is made by the
24 statute. If there is anything that the panel would
25 like to ask about, I would be glad to answer questions

1 to the best of my ability.

2 CHAIRMAN GANNON: Thank you. Representative
3 Manderino?

4 REPRESENTATIVE MANDERINO: Thank you. Good
5 to see you, Jon.

6 MR. MIROWITZ: Thank you, Kathy.

7 REPRESENTATIVE MANDERINO: A question about
8 the denial and appeals process because I had a couple
9 of cases like this. I think I actually talked to
10 you about one of them but I thought there was an
11 appeal first to the Attorney General's Office before
12 you went to court.

13 MR. MIROWITZ: Okay. Okay. If we are
14 talking about Pennsylvania Instant Check appeal if,
15 by the way, Pennsylvania is a point of contact state.
16 So that, in effect, you are appealing not just to
17 Pennsylvania's database or decision but the federal
18 one also. The first -- get it turned down, a denial.
19 You file a form saying, why did you deny me.
20 Pennsylvania Instant Check comes back and says, this
21 is why we denied you and you can respond to that.
22 You have ten days to file the first form, why did
23 you deny me, and 30 days after the response to
24 respond to the basis the State Police gave. The
25 problem is you don't have enough time in that 40-day

1 period to pull the records because, as I said,
2 oftentimes the records are in archives; they are
3 missing; they are lost. It's a nightmare. But in
4 any event, you then respond. Most of the time, and
5 in the course of several hundred people who have come
6 to me concerning instant checks since last November,
7 by far most of them, you deal with it on a telephone
8 call. It's not a question of hiring an attorney
9 because you give them the information in a two-minute
10 phone conversation. They go out and knew what needs
11 to get done and the instant check denial is reversed.
12 Like I said, the system tries to play fair. In a
13 few instances you have to dig a little further. They
14 do have to hire an attorney and at times you take an
15 appeal up to the Attorney General's Office in which
16 case you appear before an administrative judge.

17 REPRESENTATIVE MANDERINO: Okay. Now, at
18 the Attorney General's offices, that's where, and
19 this is only on a denial under the Instant Background
20 Check?

21 MR. MIROWITZ: Right.

22 REPRESENTATIVE MANDERINO: That's where the
23 issue is, accuracy of the records and not the under-
24 lying --

25 MR. MIROWITZ: Right, correct. It's the

1 accuracy of the records.

2 REPRESENTATIVE MANDERINO: Nobody is making
3 a judgment call?

4 MR. MIROWITZ: By the statute.

5 REPRESENTATIVE MANDERINO: -- with regard to
6 the underlying offense.

7 MR. MIROWITZ: The statute says you are
8 challenging the accuracy of the records. However,
9 the Attorney General is entitled to establish his
10 own criteria due to an amendment enacted last year.
11 It removed the reference to the Criminal History
12 Records Act. So that the Attorney General is free
13 to address the issue. The real issue isn't just the
14 accuracy. For example, if you have a record and it's
15 accurate but incomplete or you have a record that
16 doesn't show compliance with Pennsylvania Rules of
17 Criminal Procedure, Rule 319, that's Pennsylvania's
18 due process requirement, that underlying whatever it
19 was becomes ostensibly unconstitutional as the denial
20 of due process. Federal cases have helped that
21 relying on an ostensibly unconstitutional conviction
22 is in itself unconstitutional at least in regard to
23 recidivist status and anytime we are looking at
24 something like that -- so, no, you are not addressing
25 the guilt or innocence, the merits of the underlying

1 case. What you are addressing is whether the
2 evidence of the underlying case is sufficient to
3 establish and support a disability.

4 REPRESENTATIVE MANDERINO: Okay. Let's go
5 back to the example you gave in the opening of your
6 testimony, the man who when he was a minor in another
7 state walked out of the store with a box of cigarettes
8 that cost less than five dollars and would have been
9 a summary offense if the judge in that state had done
10 anything, which he didn't do and now there are no
11 records.

12 MR. MIROWITZ: Right.

13 REPRESENTATIVE MANDERINO: What discretion
14 or ability in the appeals process, either at the
15 Attorney General level or if you have to go to the
16 next level, to the court, is there for anybody to use
17 discretion to cure that disability?

18 MR. MIROWITZ: Very very little. Fortunately,
19 because of the nature of that case, there were
20 no records available. So that the federal database
21 could not establish the records because they could
22 not produce a copy of the records certified as true
23 and correct by the custodian of records. The custodian
24 of records said, we ain't got no records. Now, what
25 happened in that case actually is a way of getting an

1 administrative determination. We went to the
2 county where the gentleman resided, applied for and
3 obtained a concealed weapon's carry permit under
4 Section 6100. One of the issues that we had to
5 address was the national database computer screen .
6 printout. We addressed that by getting a certified
7 letter from the Clerk of Courts from the Carolinas
8 saying, we have no record of this and eventually
9 what I ended up doing, I sent an investigator there.
10 We obtained what remains of the file. It is a three
11 by five file card which says the Court, the
12 gentleman's name, the date, PJC, Prayer for Judgment
13 Continued, special circumstances, see file. File
14 doesn't exist anymore.

15 REPRESENTATIVE MANDERINO: So, you were able
16 to cure the disability in that case?

17 MR. MIROWITZ: We were able to cure the
18 disability not so much because of what we did but
19 because the state, the federal government, was not
20 able to produce the necessary evidence to support
21 that.

22 REPRESENTATIVE MANDERINO: So, going back to
23 your original premise that databases may be incomplete
24 or inaccurate or not tell the whole story and putting
25 aside whether or not because we are here in a system

1 that has a background check that is at least first
2 level of screening information in databases. So,
3 that's where we are. But we have built in, even
4 though somebody doesn't like the process you have to
5 go through, we have built in a way to challenge those
6 inaccuracies?

7 MR. MIROWITZ: Right.

8 REPRESENTATIVE MANDERINO: I just want to
9 make sure that we did. We didn't leave people hanging
10 there with no ability to challenge those inaccuracies.

11 MR. MIROWITZ: Well, the process that you
12 have, and this gets back to that use of the word
13 accuracy and the limitation to the challenge for the
14 instant check to accuracy by statute, what you have
15 is a staircase made only of risers. So, yes, you are
16 going to get to the top but there is no place for you
17 to walk on while you are getting there. What you
18 need to do in the system is allow review as to the
19 sufficiency of the evidence to establish the dis-
20 ability. Don't get me wrong, there are people who
21 should not have guns and they should be caught. There
22 are people who have rehabilitated themselves and
23 despite an old record, for example, I have one
24 gentleman that we are trying to find a record from
25 1933. Since they have rehabilitated themselves, that

1 should be recognized but the system has to operate
2 somewhere. The job is to build a net that is fine
3 enough to catch the bad guy and not the good guy, but
4 what you do is you establish a review process but it
5 has to be -- the review process has to be broad enough
6 in the scope and in the relief that is available
7 through it to address this. One of the items I
8 mention in my statement is that if you have an
9 application for a carry permit and they do a PIC
10 check which they all do and the PIC check comes up as
11 denied, well, that permit application at that point,
12 you have 30 days to appeal it but it's going to take
13 you 40 days to deal with PICS just to find out what
14 it is they are saying you are denied for. So, because
15 you can't appeal timely, what happens is you were
16 barred from reapplying for a year. Fortunately, a
17 lot of the issuing agents basically take the applica-
18 tion for a carry permit and put it on hold. In
19 effect, they put it into that same limbo as that
20 young man has his PJC, so that the time deadline
21 doesn't expire while you are trying to deal with PICS.
22 There are situations, Mr. Stanko from the Attorney
23 General's Office, I don't understand how he was able
24 to function. I believe he is overworked and underpaid.
25 The system as far as reviewing carry permits, I know

1 in Philadelphia yesterday they had, I believe, 30
2 different carry permit appeals. Now, everywhere in
3 Pennsylvania carry permit appeals go directly to the
4 Court of Common Pleas. In Philadelphia they go to an
5 administrative panel, the Board of Licensing and
6 inspection review. The issue is that the process is
7 there to challenge it. The one thing that has to be
8 brought out is that when you apply for a carry permit,
9 the issuing agent can look at the PICS denial and
10 make a determination. Is this denial valid or not?
11 And they have a right in issuing that carry permit
12 to consider the PICS denial as one element. It's not
13 conclusive. For example, can you really expect a
14 Court of Common Pleas Judge to say, well, I can't
15 decide anything because the State Police made this
16 PICS decision and, by the way, I was the sitting
17 Judge in this case and this isn't what it said? It
18 could happen. Similar situations have happened. We
19 have to allow the judiciary to be judges. We can't be
20 bound by what a computer screen says. We have to
21 look at the real evidence. That's the biggest
22 limitation in the whole appeals process concerning
23 this right to keep and bear arms.

24 REPRESENTATIVE MANDERANO: Thanks, Mr.
25 Chairman.

1 CHAIRMAN GANNON: Representative Seyfert.

2 REPRESENTATIVE SEYFERT: Can you tell me
3 your position in regards to sportsmen's --

4 MR. MIROWITZ: I am a Life Member. I guess
5 I am an addicted volunteer. Dr. Boltiano (phonetic)
6 asked me if I could testify today.

7 REPRESENTATIVE SEYFERT: One of the things
8 in listening to you is what you are stating is your
9 concern and as a representative of the Unified
10 Sportsmen in Pennsylvania, their concern with
11 limitations placed on handgun carry permits and the
12 ability to buy or purchase handguns or rifles or
13 whatever and given that, my question to you is, have
14 you also looked further in terms of addressing or
15 investigating those limits placed by, and I'll give
16 you the example, the Game Commission on rights of
17 handguns, concealed handgun carriers, and we have
18 established here that anyone that obtains a concealed
19 handgun permit not only has to pass the background
20 investigation but also has to go through an addition-
21 al, be it by the sheriff or whatever criteria, to
22 show that they are of good and stable character,
23 correct?

24 MR. MIROWITZ: There is a two-level standard.

25 REPRESENTATIVE SEYFERT: That standard for

1 concealed weapons is higher which is basically the
2 bottom line here.

3 MR. MIROWITZ: Yes.

4 REPRESENTATIVE SEYFERT: And yet we have a
5 Game Commission that then takes that right away
6 from those people within their code by saying, you
7 cannot carry a handgun if you are spotting a deer
8 even if you have a concealed weapons permit. Now,
9 that seems to be a bit contradictory and also the
10 Game Commission has in that instance gone beyond the
11 statutory law and added their own law through their
12 code and put additional limits on the person that
13 has qualified to carry a handgun with a concealed
14 permit. You go back to that case, that horrible
15 case, where the woman was raped and murdered. Let's
16 take it now from out of the park but out in the
17 country and I live in a rural area as does, you know,
18 many women and many people and Representative Forcier.
19 I could not, okay, let's say I was going somewhere and
20 being denied, and we'll use the female gender here.
21 A female could not be out in the country, let's say
22 her work was out in the country somewhere and she
23 had a concealed handgun permit. She could not
24 utilize that and say on the way home she was an avid
25 deer hunter and it was late at night, she could not

1 either spot deer or take that concealed handgun with
2 her. To take that a little further, even that,
3 women often carry handguns with them due to the need
4 for us to do so and could not have their concealed
5 handgun with them even with a valid permit if they
6 were spotting deer. And to carry that one step
7 further, I don't know if the sportsmen here are aware
8 that if you turn around on a bad country road, the
9 Game Commission can accuse you of spotting deer with
10 headlights because they are part of the apparatus
11 that they consider valid spotting deer and this
12 happened to a man that he was stopped on a back
13 country road. He was turning around and he had his
14 concealed weapon there. So, I guess my question to
15 the Unified and other sportsmen's clubs is where are
16 you on that issue and have you addressed it?

17 MR. MIROWITZ: I don't think we have reached
18 a final decision. I can tell you what the people
19 in Unified that I have spoken with concerning that
20 issue -- I don't believe Unified has assumed a final
21 position. I don't believe Unified has assumed an
22 official position. I believe there is consensus
23 among the members. The idea of the prohibition on
24 spotting is all well and good. Jack-lighting deer
25 is not a sportsman activity. It's not ethical. It

1 has no element of fair chase. The idea of going
2 after someone with a carry permit for spot-lighting
3 deer by the Game Commission, let me just put it this
4 way. We are in mixed company. So, I won't refer to
5 those WCOs, real game wardens, who do things like
6 that and can't tell the difference between the good
7 guys and the bad guys. They are one of the reasons
8 why there is a barrier between law-abiding citizens
9 and law enforcement, especially between sportsmen and
10 game wardens. Be that as it may, one of the problems
11 with the Game Commission, the statute provides for a
12 sportsman provisional carry permit and that allows
13 you to hunt with that handgun. The Game Commission
14 in its own decision has said, we will recognize the
15 concealed weapon carry permit. Now, the problem
16 arises, concealed weapon's carry permit lets you
17 carry any firearm. Thus, you have to use a manually
18 operating repeater, either a single shot or a revolver.
19 You can't use a semi-automatic. The problem is, you
20 are out bird watching or you are walking or, today,
21 driving here, we came through game lands. If I'm
22 carrying a concealed weapon and it happens to be a
23 semi-automatic, I also have hunting license, am I
24 subject to harassment by a game warden because now
25 I'm on state gamelands; I'm possessing a semi-automatic.

1 Am I hunting? Is that part of the activity of
2 hunting because hunting isn't just limited to taking
3 game. There is scouting. There is watching and all
4 of the other activities. It's a problem. I grant
5 you, the issues you have raised, the things we have
6 just discussed, yes, they are real concerns. They
7 are real conflicts that have to be addressed. I
8 think they are either going to be addressed by the
9 legislature telling the Game Commission, wake up and
10 fly right guys or else they are going to be addressed
11 by the judiciary and that's basically what the job
12 of the judiciary is; when you have two conflicting
13 statutes, resolve the conflicts.

14 CHAIRMAN GANNON: Thank you, Representative
15 Seyfert. Representative Forcier?

16 REPRESENTATIVE FORCIER: I promise, Mr.
17 Chairman, to be brief. I just -- I have enjoyed
18 your testimony and I certainly do agree with a lot of
19 things that you have said. I notice you have been
20 very knowledgeable about Philadelphia and my curiosity
21 would be this. Do you believe that there is a way
22 to look at the minimum sentencing in Philadelphia,
23 a minimum five-year sentencing for a particular
24 crime, do you believe that there is a way to track
25 the sentencing to actually see if the sentences are

1 being followed through in Philadelphia the way they
2 should be or are the criminals just getting a slap
3 on the hand like we hear up here in the great north-
4 west? We truly have a concern that there are enough
5 laws on the books but they are not enforcing the
6 ones that we have.

7 MR. MIROWITZ: The real problem with the
8 enforcement, I'll grant you, there are some prose-
9 cutors who don't do their jobs. I think they are
10 few and far between. There are a lot of them who
11 are politically motivated as the easiest way to get
12 votes is to convict people but sometimes they go a
13 little too far. But the real problem is that the
14 bad guy starts out before they start school learning
15 that no matter what they do, nothing bad happens to
16 them. If they make trouble, all of a sudden they
17 become the center of adult attention. That works
18 all the way through the system. We are rearing a
19 generation after generation of people who say, what's
20 the down side with being a bad guy? They learn the
21 system. They learn how to play the system. The good
22 guys -- the guys who don't go into the system from
23 age 4, 5 or 6, don't know the system. They don't know
24 how to play it. They go in there thinking, hey,
25 there are a couple of guys. We are talking, we are

1 being friendly and they basically talk themselves
2 into a noose. I don't know if anybody watches NYPD
3 Blue. All of the activity, friendliness, the
4 different tactics that are used to get the suspect
5 to keep talking because as long as they are talking,
6 they are going to hurt themselves. Sooner or later
7 they are going to walk off the end of the plank. The
8 good guys don't know that. The bad guys know how
9 to play the system. They want to go up in front of
10 this arraignment judge or that arraignment judge or
11 they want to get this public defender or that public
12 defender because they have been through it all the
13 time. The good guys sit there and say, what did I do
14 wrong? I don't feel guilty and what do I need an
15 attorney for? Why should I exercise my rights?
16 Part of the problem is our public education system
17 that doesn't teach civics anymore.

18 REPRESENTATIVE FORCIER: Thank you very much.

19 CHAIRMAN GANNON: Thank you. Just a
20 question so I understand. I'm just a city boy. You
21 have to help me here. If I have a permit to carry
22 but I don't have a hunting license, and I'll give
23 you a hypothetical. I'm driving through the country.
24 I'm a salesman and trying to find a customer and I
25 get lost on a country road which happens to be on or

1 near gameland but I'm turning my car around, you are
2 saying that I can get stopped by the Game Commission
3 for spotting?

4 MR. MIROWITZ: That's what the represen-
5 tative said. I fully believe it. What I am firmly
6 convinced is law enforcement can do anything they
7 want on the street. There are more of them. They
8 have bigger guns than the individual. The individual's
9 place to fight law enforcement is in the courts.

10 CHAIRMAN GANNON: Let me finish that. So,
11 I turn my car around and I get stopped. There is a
12 Game Commissioner or a game warden there that says,
13 you were spotting deer. Does that affect my permit
14 to carry?

15 MR. MIROWITZ: It could.

16 CHAIRMAN GANNON: Even though I'm not hunting
17 or I don't even have a hunting license?

18 MR. MIROWITZ: Yep. That could come under
19 either an arrest, pending arrest, or it could come
20 under character and reputation. One of the problems
21 is character and reputation traditionally have been
22 referring to a course of conduct. It's something
23 that happens over time. A lot of times a single
24 incident is used to establish a character and
25 reputation denial or revocation or its attempt to

1 anyway. I think that is inappropriate. The real
2 problem you have with this scenario that you set out,
3 it doesn't make any difference whether you have a
4 hunting license or not if you are there. You can't
5 go anywhere in the State of Pennsylvania and not
6 encounter deer. I have deer within a stone's throw
7 of my house in Philadelphia. I have hunted, fished
8 or camped in every county in the State of Pennsylvania.
9 There are deer everywhere. There are too many of
10 them. Unfortunately, we don't have enough nimrods
11 out there who know how to hunt. Be that as it may,
12 Game Commissioners do an excellent job of managing
13 a deer herd for high numbers. You can argue what
14 their goals are their methods. When they go toward
15 enforcement, the WCO or the Game Warden or whatever
16 you want to call him has to have some element of
17 common sense. He has to sit there and realize that
18 the guy who is shining a light up looking for a street
19 sign because, for example, the State Gameland 56 in
20 Bucks County, there are street signs on the edge
21 of the state gamelands even though that is the game-
22 land, isn't out there looking for deer. Deer very
23 rarely are found in the trees. The guy who is out
24 there looking for deer is going to be handled
25 differently than the guy riding down the road.

1 REPRESENTATIVE SEYFERT: Just to get to the
2 bottom line, it's a little more than that. The real
3 question is, it would seem, should the game code
4 supersede statutory law when there is plenty of
5 protection when we give somebody a concealed weapon
6 permit to carry a handgun. The real question is
7 after all of that investigation, should we allow the
8 Game Commission to supersede that rather than we
9 question the spotting of deer or not.

10 MR. MIROWITZ: Well, I don't mean to tell
11 you your job but that is the determination of the
12 legislature. I don't think either of them supersedes
13 the constitutional provision.

14 REPRESENTATIVE SEYFERT: My question to you
15 is in terms of the sportsmen, but you did answer that.
16 Thank you very much.

17 CHAIRMAN GANNON: It's a hot topic and I
18 think he --

19 MR. MIROWITZ: It's a microcosm of the real
20 world.

21 CHAIRMAN GANNON: Subject to the continuation
22 of this meeting without the Game Commission with
23 respect to carry, that's why I asked the question the
24 way I did. However, I know many members have some
25 troubles with some of the Game Commission's interpre-

1 tation of statutes and how they enforce it.

2 MR. MIROWITZ: Hopefully, with the new
3 leadership, it won't be quite as adversarial.

4 CHAIRMAN GANNON: Hopefully, we can work
5 together and resolve our problems and make sure that
6 everybody is on the same page and in the same book.
7 Thank you very much for attending.

8 MR. MIROWITZ: My pleasure.

9 (The following was submitted for inclusion in the
record:)

10 PRESENTATION to the PENNSYLVANIA HOUSE OF REPRESENTA-
11 TIVES, JUDICIARY COMMITTEE

12 August 25, 1999 Cambridge Springs, PA
13 Unified Sportsmen of Pennsylvania,
14 by JON S. MIROWITZ, ESQ.

15 Introduction

16 The Pennsylvania Constitution has expressly
17 provided recognition of the right of the
18 Commonwealth since colonial times. Presently,
19 this right is expressed in Article 1,
20 Section 21, of the Pennsylvania Constitution.
21 It is recognized as an individual right.
22 Pennsylvania's provision pre-dates the
23 U.S. Constitution's Second Amendment right to
24 keep and bear arms and was one of the well
25 springs of that amendment.

26 In 1994, the prior state pre-emption
statute, 18 Pa. C.S. #6120, was amended.

1 The amended statute, as did its prede-
2 cessor, reserved the field of 'gun law'
3 in Pennsylvania to the state's legislature.
4 This pre-emption was upheld by the
5 Pennsylvania Supreme Court (Ortiz vs.
6 PA., 1996).

7 In 1995, there was an extensive
8 revision of the Pennsylvania Uniform
9 Firearms Act in 1995. (Act 17 of Special
10 Sessions on Crime No. 1 of 1995). This
11 new legislation recognized and declared
12 this individual right to keep and bear arms
13 as a fundamental constitutional right.
14 There have been several technical amendments
15 to various sections of the Act since the
16 1995 revision. The 1995 revision followed
17 the work of the House Select Committee to
18 investigate Automatic and Semi-automatic
19 Weapons Use in Crime in Pennsylvania. This
20 committee included representatives of what are
21 commonly considered pro- and anti- gun rights
22 groups, State Commissions, and representatives
23 of the Attorney General, and both the Senate
24 and the House. It should be stressed that
25 Act 17 was endorsed by both the National Rifle

1 Association and Pennsylvanians Against Hand-
2 gun Violence, Handgun Control, Inc.'s
3 Pennsylvania affiliate. Both groups were
4 assailed for their support of Act 17 by persons
5 and organizations whose views are more extreme
6 than those of either the NRA and HCI.

7 There are several federal statutes affect-
8 ing the right to keep and bear arms. The
9 statute most closely corresponding to
10 Pennsylvania's Uniform Firearms Act is the
11 Gun Control Act of 1968, as amended. The
12 federal and state provisions are generally
13 coordinated. The state statute specifically
14 refers to some aspects of the federal statute.
15 The federal statute specifically allows
16 concurrent jurisdiction between the states and
17 the federal government in relation to 'gun
18 law' (18 U.S.C. #927, et al). However, there
19 are some differences between the two, and
20 recent federal court decisions directly impact
21 some portions of the Pennsylvania statutory
22 scheme.

23 The issue of gun control is an area
24 charged with intense emotions. The two
25 statutory schemes, state and federal, and

1 their interaction are an area fraught with
2 unintended consequences and deeply involved
3 with the relationship of individual, state
4 and federal rights and rolls.

5 This presentation concentrates on the
6 Pennsylvania Uniform Firearms Act. Where
7 appropriate, their interaction with the federal
8 provisions will be addressed. Proposed amend-
9 ments to the Uniform Firearms Act will be
10 presented in the last section. The headings
11 of the various sections of the Uniform Firearms
12 Act appear in the appendix.

13 FUNDAMENTAL CONSTITUTIONAL RIGHT

14 As noted, in 1995, Act 17 recognized
15 and declared the right of the commonwealth
16 citizens to bear arms in defense of themselves
17 and the Commonwealth to be a fundamental con-
18 stitutional right. (This language was included
19 in the Act after lengthy debate by this
20 Committee.) A fundamental constitutional
21 right is entitled to the protection of 'strict
22 scrutiny' review by the courts. The ability of
23 the government to direct or control the free
24 exercise of a fundamental right is limited.

25 Generally, for a governmental action

1 to be constitutional, there must be a
2 governmental interest and the governmental
3 action must be reasonably related to the
4 interest. However, where there is a funda-
5 mental constitutional right involved, any
6 governmental action, whether state, local or
7 federal, affecting that fundamental right must
8 stand a 'strict scrutiny' or 'compelling state
9 interest' standard of review. To be constitution-
10 al, the government action must meet and
11 satisfy three tests: 1) Is there a compelling
12 state interest; 2) Is the government's action
13 narrowly tailored to meet that compelling
14 state interest; and 3) Does the governmental
15 action go no further than necessary to meet
16 that compelling state interest.

17 There has not been a court decision
18 addressing the applicable standard of review
19 under the Uniform Firearms Act. A recent U.S.
20 District Court case, U.S. v. Emerson (1999 WL
21 198865(N-D Tex.) from the Northern District of
22 Texas has reviewed some provision of the Gun
23 Control Act of 1968 and found them unconstitution-
24 al without specifically applying a compelling
25 state interest analysis. I believe that case

1 is presently pending appeal.

2 Of course, under #6120's provisions
3 local regulation of the right to keep and
4 bear arms 'in any manner' is pre-empted.
5 Therefore the question of the con-
6 stitutionality of a local regulation
7 becomes moot. The local regulation would fail
8 under the state pre-emption statute, #6120.

9 The present Pennsylvania Uniform Firearms
10 Act (Chapter 6 of Title 18, Pennsylvania
11 Consolidated Statutes, as amended) is a compre-
12 hensive scheme of statutory provisions
13 directly affecting this fundamental constitutional
14 right. The legislation was drafted and enacted
15 under the assumption that it would be subject
16 to a strict scrutiny standard of review.
17 The Act attempts to protect the individual
18 citizen's fundamental constitutional right to
19 bear arms while simultaneously providing for
20 regulations needed to meet the state's
21 compelling interests: disarming criminals and
22 those who have been involuntarily committed
23 to a mental health institution; supporting
24 court orders under the Protection from Abuse
25 Act; etc.

1 Whether this legislative scheme meets the
2 'strict scrutiny' or 'compelling state interest'
3 standard of review has not yet been decided
4 by the courts.

5 TRANSPORTATION

6 (#6106; #6106.1; #6107;(#6108)

7 Appropriately, there is no statutory
8 provision which specifically prohibits the
9 transportation of firearms or long guns,
10 (see definitions in #6102). However, there are
11 statutes which regulate the manner of transpor-
12 tation. Often these statutes use the word
13 'carry' which can create confusion, especially
14 for lay persons transporting guns for lawful
15 purposes.

16 The basic provision regarding the
17 transportation of guns is #6106. It prohibits
18 the carrying of a firearm, as defined in #6102,
19 in a vehicle or concealed on or about one's
20 person outside one's residence or place of
21 business without a license, #6106(A). It then
22 provides certain exceptions as to when a gun,
23 whether a firearm, rifle or shotgun, may
24 be transported without a license, #6106(B).
25 A violation of this statute may be a third

1 degree felony, #6106(A)(1) or a first degree
2 misdemeanor, #6106(A)(2). A person holding
3 a concealed weapons carry permit is, by
4 definition exempted from the sanctions of
5 #6106(A) in regard to a 'firearm'. However,
6 in regard to rifles or shotguns, such a carry
7 permit holder must conform to the provisions
8 of #6106(B) as to the manner of transportation.

9 There are 12 exemptions to #6106(A) pro-
10 vided in #6106(B). Generally, unless there is
11 an official or employment duty involved, the
12 gun must be transported in a secure wrapper and
13 unloaded. These specific exemptions relate
14 to law enforcement officers; members of the
15 military on active duty; members of any organi-
16 zation established to purchase or receive
17 weapons from the state or federal government;
18 persons involved in target shooting; officers
19 of the federal government authorized to carry
20 a concealed firearm; armed security agents;
21 gun manufactures, dealers and gunsmiths
22 operating in the course of business; persons
23 traveling between their dealers and gunsmiths
24 operating in the course of business; persons
25 traveling between their residence or place

1 of business and a vacation home or a place
2 of purchase or repair, or in the course of
3 retrieving property from or surrendering
4 property to law enforcement officials; duly
5 licensed hunters and trappers; dog trainers,
6 a person holding a concealed weapons carry
7 permit issued under the laws of the United States,
8 or any other state; a person whose concealed
9 weapons carry permit has expired within the
10 last 6 months and who is otherwise eligible for
11 renewal.

12 There are some significant problems en-
13 countered in this statute's provisions.
14 While #6106(B)(4) provides an exemption for'
15 ...any person engaged in target shooting with
16 a rifle, pistol or revolver..', the statute
17 is silent as to target shooters using shotguns,
18 c.g. skeet, trap and sporting clays, et al.
19 Shotguns should be included in the exemption
20 of #6106(B)(4).

21 The language of the #6106(B)(8)
22 exemption is extremely convoluted and con-
23 fusing, especially the use of the word 'moving'.
24 This subsection should be brought into
25 agreement with the federal statute (18 U.S.C.

1 #926A) to clarify that a person may transport
2 from a place where they may lawfully possess
3 to any other place where they may lawfully
4 possess, provided the weapon is unloaded and
5 in a secure container and is not readily
6 accessible.

7 Further, the penalty provisions of #6106(A)
8 may have draconian unintended consequences.
9 While the differentiation in grading of a
10 violation is based on the different statuses
11 of an individual under #6105; there is no
12 recognition of the different conducts which
13 may be a violation of this section. There is
14 a significant and qualitative difference between
15 a person transporting a weapon in furtherance
16 of a crime and a person who is transporting in
17 mere technical violation' (c.g. an unsecure
18 wrapper). As either is a first degree felony
19 or a first degree misdemeanor entails the
20 loss of the rights of citizenship, there should
21 be a provision applicable to the mere technical
22 violation which does not entail such severe
23 consequences as the loss of the rights of
24 citizenship.

25 The carrying of loaded guns, other than a
firearm as defined in #6102, in a vehicle is

1 proscribed by #6106.1. This section coordinates
2 with #6106. A violation of this section is
3 a summary offense.

4 In carrying of a rifle, shotgun or
5 firearm on public streets or property in a
6 declared emergency, unless actively involved
7 in defense of self or property; licensed to
8 carry under #6109; or exempted from such
9 license under #6106(B) is proscribed by #6107.
10 This section coordinates with #6106 and #6109.
11 As it applies only in times of declared emergency,
12 the affect of this section is minimal. No
13 grading is specified for a violation; therefore,
14 under #6119, a violation is a first degree mis-
15 demeanor. This may also have a draconian
16 effect, imposing a significant criminal penalty
17 for an innocuous act.

18 Section 6108 applies only to the public
19 streets or property of Philadelphia. It provides
20 for exemptions coordinated with #6106(B) and
21 #6109. As no grading is specified for a
22 violation, a violation is a first degree mis-
23 demeanor. As noted, due to the inadequacies of
24 the #6106(B) provisions, this section has the
25 potential for inappropriate application and

1 draconian consequences. Especially in view
2 of the significant number of Philadelphians
3 for whom English is not their primary language,
4 this statute's provisions are discriminatory
5 in practice.

6 Under #6106(B)(11), there is some provisions
7 made for a non-Pennsylvania resident who
8 possesses a valid out of state carry permit.
9 However, as many people come to Pennsylvania
10 for various activities involving the lawful
11 use of rifles, shotguns and/or handguns, the
12 statute should clearly address the situation
13 of the non-Pennsylvanian who does not have such
14 a carry permit traveling into or through the
15 Commonwealth. Interstate travel is dealt
16 with under the federal Gun Control Act of 1968
17 in U.S.C. #926A. That statute provides that a
18 person not prohibited from owning a gun may
19 transport from any place where that person
20 may legally possess a gun to any other place
21 where he or she may legally possess a gun,
22 provided gun is unloaded and neither the gun
23 nor the ammunition is readily accessible.
24 Amending #6106(B)(8) to conform to the
25 federal provision, as suggested above, would

1 address this issue.

2 A person holding a carry permit under
3 #6109 may face unnecessary confusion in
4 regard to transporting a rifle, shotgun or
5 firearm other than when concealed or in a
6 vehicle. The statute, #6109, provides that the
7 'purpose' of a license to carry is for 'carrying
8 a firearm concealed on or about one's person
9 or in a vehicle throughout this Commonwealth'.
10 A carry permit holder is excluded from the
11 provisions of #6106(A) by its own terms.
12 However, as the exemptions of #6106(B) apply
13 to other than firearms, the carry permit holder
14 must still comply with the requirements of
15 #6106(B). A carry permit does not apply to
16 weapons other than a 'firearm' as defined in
17 #6102.

18 (Note that 18 U.S.C. #922(Q)(2)(B)(iii)(11),
19 requires, among its other provisions, that
20 when transporting a gun within a 'school zone'
21 the gun must be in a locked rack. Pennsylvania
22 addresses schools under 18 Pa. C.S. #912, dis-
23 cussed below. Pennsylvania refers to a secure
24 wrapper, not a locked container or rack, (6106(B)).
25 A prior version of this federal provision,

1 the federal Gun Free School Zone Act, was held
2 unconstitutional. I have been informed and
3 therefore believe that this provision is
4 presently being reviewed by the federal courts.
5 As yet, I am not aware of any decision by the
6 courts. Both the federal statute and #912
7 provide exemptions for those who hold a concealed
8 weapons carry permit, among others.)

9 OWNERSHIP and POSSESSION

10 #6105 Disabilities:

11 The Uniform Firearms Act, in #6111.1(3)
12 recognizes the "... right to receive, sell,
13 transfer, possess, carry, manufacture, or
14 purchase a firearm...". This right is subject
15 to the disabilities imposed under, and the
16 other provisions of, #6105. This disability
17 was applied to all guns by Act 17, not just
18 firearms as under the prior statute.

19 Briefly, this disability applies to a
20 fugitive from justice; a person convicted under
21 the Controlled Substance, Drug, Device, and
22 Cosmetic Act of 1972; an illegal alien;
23 and several other classes of persons with more
24 expansive applications. These generally
25 correspond to disabilities under the federal

1 statute, 18 U.S.C. #922(G). However, they
2 are not identical.

3 A mental health disability is imposed
4 by The Uniform Firearms Act, #6105(C)(4) on
5 persons who have been involuntarily committed
6 to a mental health facility under #302, #303,
7 or #304 of the Mental Health Procedures Act.
8 This disability requires a judicial determination
9 that the individual presents a 'clear and present'
10 danger of suicide, self-mutilation, or risk
11 to others. The disability was not expanded
12 to include 'mental defectives' or voluntary
13 inpatients due to a concern that doing so would
14 dissuade those for whom some mental health care
15 may prove beneficial from seeking such care,
16 while not achieving any significant purpose.
17 The federal statute imposes a disability based
18 on an adjudication as a mental defective or
19 any commitment, whether voluntary or involuntary,
20 to inpatient mental health care. It is unclear
21 whether the federal provision may be applied
22 under #6105(B); it is enforced under #6111.1(B)(1).

23 A disability correlating to a current
24 Order under the Protection from Abuse Act
25 (23 Pa. C.S. #6108) was established in the

1 Uniform Firearms Act, #6105(C)(6). This
2 disability expires automatically with the
3 expiration, vacating or termination of the
4 underlying Protection from Abuse Act Order.
5 The federal statute imposes a similar disability
6 in 18 U.S.C. #922(D) and (G). There are
7 differences between the Commonwealth's and
8 the federal provisions. Most of these differences
9 center around the nature of the hearing and
10 the resulting Order. The federal statute
11 also provides for a disability based on any
12 conviction of a state or federal misdemeanor
13 of domestic violence, (18 U.S.C. #921).

14 A partial disability is imposed on
15 persons convicted driving under the influence
16 on 3 occasions within a 5 year period,
17 #6105(C)(3). Such a person may not acquire
18 additional guns, but is not required to dispose
19 of guns already owned. The disability expires
20 of its own accord. (However, under the
21 old Motor Vehicle Code, #1037 operating under
22 the influence of intoxicating liquors or
23 substances, carried a maximum penalty of
24 3 years incarceration. This penalty was
25 reduced by subsequent amendment.

1 And the present Motor Vehicle Code 75 Pa.,
2 C.S. #3731 applies a 2 year maximum penalty.
3 PICS has taken the position that a conviction
4 under #1037 where it provided for a maximum
5 penalty of 3 years incarceration is a disabling
6 criteria under #6105 and/or #6111.1. This issue
7 will be addressed in greater detail below.

8 Act 17 established a two-tiered system
9 for addressing those minors adjudicated as
10 delinquents, #6105(C)(7) and (8). The dis-
11 tinguishing criteria used is the nature of the
12 conduct involved. A person adjudicated delinquent
13 for commission of one of the prior statute's
14 'crimes of violence' is dealt with as if the
15 adjudication is an adult conviction, #6105(C)(7).
16 However, a person adjudicated delinquent
17 for commission of 2 or more of the other
18 specified crimes is disabled for a period of
19 15 years following the last adjudication or
20 upon reaching age 30, whichever occurs first.
21 This latter disability expires of its own
22 terms. There is no corresponding federal
23 disability based on an adjudication of
24 delinquency. However, an adjudication of
25 delinquency for an act which if committed

1 by an adult would be a 'violent felony' or
2 drug violation may be relied on to apply the
3 enhanced penalties (18 U.S.C. #924.

4 Prior to the enactment of Act 17, the
5 only state disability on the ownership,
6 possession or use of a firearm, i.e. a handgun,
7 was for conviction of the enumerated 'crimes
8 of violence'. Under Act 17, the disabling
9 criminal conviction criteria and the nature of
10 the disability were expanded. The list of
11 disabling crimes was expanded from the 12
12 'crimes of violence' of the prior statute to
13 the 36 specified crimes of the present one.
14 The disability now applies to firearms, rifles
15 and shotguns, not just firearms. The disabling
16 conviction may be in another state, in
17 Pennsylvania or a federal one. Under #6105(A)
18 a person who has been convicted of any of
19 the crimes specified in #6105(B), either
20 within or outside Pennsylvania, or in a federal
21 case, or who falls within the purview of
22 #6105(C) may not possess, use, control, sell,
23 transfer, or manufacture a firearm, rifle or
24 shotgun, or obtain a license to do so, in
25 Pennsylvania.

1 These criteria, under 6105(B), incor-
2 porate by reference the federal disabling
3 criteria (18 U.S.C. #922(G) and (N). Despite
4 the express provisions of #6105(B) as to the
5 specified crimes which result in the loss of
6 the right to bear arms under Pennsylvania's
7 law, this incorporation expands the disabilities
8 to include the broader federal provisions.
9 Conviction of any federal felony or a state
10 misdemeanor punishable by more than 2 years
11 incarceration, results in a loss of the right
12 to bear arms, without regard to the sanctions
13 actually imposed. Under Pennsylvania law,
14 18 Pa. C.S. #106, the demarcation line is a
15 first degree misdemeanor. A second degree
16 misdemeanor is punishable by up to 2 years
17 incarceration, and normally does not entail
18 any additional loss of rights.

19 It was the intent of the State Select
20 Committee and the Legislature in enacting
21 Act 17 that these new disabling convictions
22 be for a crime graded as a first degree
23 misdemeanor or higher. However, this qualifi-
24 cation was inadvertently omitted from the
25 legislation in regard to two of the specified

1 crimes, 18 Pa.C.S. #4952 and #4953, which
2 may be graded below the first degree misdemeanor
3 level. It is suggested that #6105(B) be
4 amended to reflect that only where the
5 conviction of either of these crimes, #4952
6 or #4953, is at a first degree misdemeanor
7 or higher level does the disability apply.

8 The expansion of the disabling criteria,
9 coupled with the retroactive application of
10 #6105, can have very significant consequences,
11 especially in regard to changes in a crime's
12 grading, plea agreements, Pennsylvania's prior
13 Magistrate's Courts, and due process require-
14 ments under both state and federal law. It
15 must also be noted that under #6105(A)(2), a
16 disabled person has 60 days in which to dispose
17 of any rifles, shotguns or firearms which
18 they may own. The person may dispose of
19 these guns to any eligible person who is not
20 a member of their household. This provision
21 crosses over into the realm of an unconstitutional
22 bill of attainder and works an impermissible
23 a corruption of the blood. These issues need
24 to be resolved legislatively. They and
25 related issues will be addressed more fully below.

POSSESSORY CRIMES

(18 Pa.C.S. #908; #9112; #913; #6106, #6106.1, #6107, #6108, #6110.1, #6119):

While we have addressed some of these statutes in relation to the transportation of firearms, rifles and shotguns, they also apply in cases of criminal possession, #6106, #6106.1, #6107, #6108, #6110.1. Additionally, #908, (prohibited offensive weapon); #912 (possession of a weapon on school property); and #913 (possession of a firearm or other dangerous weapon in a court facility) are applicable to possession. Possession by minors is addressed under #6110.1. The challenge in this area is to draw a net sufficient to snare the bad guy, but not so overly fine as to entangle the law-abiding citizen in the free exercise of a constitutionally protected right.

Under #6106(A)(1), carrying of a firearm, as defined in #6102, on or about one's person or in a motor vehicle is a third degree felony. Under #6106(A)(2), illegal possession of such a firearm by a person 'otherwise eligible to possess a valid license' 'and who has not committed any other crime' is a first

1 degree misdemeanor. The basic grading for a
2 Uniform Firearms Act violation is a first degree
3 misdemeanor, #6119. A conviction under any
4 of these results in the total loss of the
5 rights of citizenship, including the right to
6 bear arms under #6105, and GCA.

7 #922(G) (a state misdemeanor punishable by
8 more than 2 years). The reduction in grade
9 from a third degree felony to a first degree
10 misdemeanor is not sufficient to address the
11 difference in the two situations. Also this
12 often results in draconian consequences for
13 mere technical violations. There should be
14 provision to treat a technical violation
15 in a more appropriate manner, especially
16 where the person is not otherwise disabled
17 under #6105. A purely technical violation
18 of #6106, #6107, or #6108 should be no more
19 than a summary offense, as in the grading for
20 #6106.1, such a technical violation should not
21 be a disabling criteria under #6105, or #6109,
22 or the federal statute, 18 U.S.C. #922(G).
23 Nor should it support confiscation under the
24 various forfeiture statutes (18 P.C.S. #6110.1;
25 42 P.C.S. #6801, et al).

1 Additionally, the language of Act 5 of
2 1997 is confusing (#6106(A). It seems to
3 reduce the grading only for those defendants
4 who have absolutely no prior criminal
5 record, not even a summary offense (#6106(A)(2).
6 Finally, there is no provision, not even a
7 lesser included offense, to allow any other
8 disposition than these draconian sanctions
9 through plea agreements, even where the prose-
10 cutor or Court is so disposed.

11 It must be stressed that conduct, which
12 is a summary offense under #6106.1 (carrying a
13 loaded weapons other than firearms), is a first
14 degree misdemeanor under #6108 (carrying
15 firearms on public streets or public property
16 in Philadelphia). This is inconsistent and
17 discriminatory. It probably is unconstitutional
18 as a discriminatory denial of 'equal
19 protection', imposing 'cruel and unusual
20 punishment' and a violating the 'due process
21 clause',

22 The underlying concept of the Crimes
23 Code requires a voluntary act for there to be
24 a crime. The Crimes Code provides that
25 possession may be a voluntary act,

1 18 Pa. C.S. #301. But the policy blurs and
2 fails in relation to firearms. Most Court
3 decisions dealing with possession arise in
4 the context of drug cases; to preserve the
5 policy, the analysis must shift in relation to
6 firearms. A de facto presumption of possession,
7 based on physical proximity, is inappropriate
8 in regard to firearms. There is a qualitative
9 difference between drug addicts in a 'crack
10 house' and a family members in the family home.
11 While it may be appropriate to conclude
12 possession (constructive possession) of the drugs
13 in plain view on the table by the drug
14 addict seated in the room; it is inappropriate
15 to conclude such possession of the firearm
16 on display over the mantel or the guns locked
17 away in a safe or other facility by the child
18 at the dinner table. Where one family member
19 is prohibited or disabled from possession,
20 the prohibition or disability should not be
21 expanded to include other family members, (see
22 also discussion of forfeiture and #6115 below)

23 The other possessory crimes, #908
24 (prohibited offensive weapons), #912 (school
25 property), and #913(Court facilities), all

1 address, in one manner or another, the person
2 who possesses a valid concealed weapons
3 carry permit (CWCP), or is exempted from
4 such licensing requirement under #6106,
5 or is otherwise acting for a lawful purpose.
6 But the language of these statutes is unclear
7 as to where and how far their respective
8 exemptions apply. The legislature should
9 clarify that these statutory provisions and
10 defenses, (#908 "...possess for purposes not
11 prohibited by this commonwealth" and #912;
12 "...possessed for other lawful activity")
13 apply to a carry permit holder or any other
14 person lawfully carrying or possessing a
15 firearm under #6106(B).

16 Section 908 refers to 'except as
17 authorized by law' in #908(A) and) provides
18 that "...or under circumstances similarly
19 negating any intent or likelihood that
20 the weapon would be used unlawfully.' in
21 #908(B)(1). Further, #908(B)(3) excludes from
22 the statutes' application 'any person who
23 ...uses, or possesses a firearm for purposes
24 not prohibited by the laws of this
25 Commonwealth.'

1 Similarly, #912(C) provides, as a
 2 defense, that the weapon is possessed and used
 3 in conjunction with a lawful supervised school
 4 activity or course or is possessed for other
 5 lawful purposes.' But a carry permit holder
 6 or a person exempted from licensing under #6106
 7 (B) who is riding a common carrier which is
 8 also carrying children to school could be charged
 9 with a violation of #912.

10 In #913(E) there is provision requiring
 11 that facilities are available for the tem-
 12 porarily checking of firearms by persons
 13 lawfully carrying or possessing them under
 14 #6106(B) or #6109. But, while a carry permit
 15 holder may check a firearm under #913, there
 16 is no provision allowing a pocket knife, nail
 17 file or letter opener to be checked, whether
 18 by a carry permit holder or anyone else. This
 19 is ludicrous. The proposed clarifications
 20 would recognize the common practice of carrying
 21 a pen knife, even though one's normal activi-
 22 ties might entail entering within the statutory
 23 'court facility', or school.

24 Further, under the court facilities
 25 statute, 18Pa.C.S. #913, several counties

1 do not provide lock boxes for the District
2 Magistrate Courts, or in the County Courthouses.
3 But the District Magistrates and the County
4 Courthouse still prohibit the bringing of
5 guns into their court facilities. This
6 leaves legitimate carry permit holders and
7 others lawfully carrying a firearm in a quandary,
8 where to leave their guns while attending to
9 business in the court facility, or the
10 building in which it is located. The law-abiding
11 carry permit holder often is compelled to
12 leave his/her gun in their car, unreasonably
13 exposing them to theft. At times, the law-
14 abiding must go to another building, or a
15 distant location, to check their lawfully
16 possessed firearms. This amounts to a de
17 facto discrimination against the lawful exercise
18 of a constitutional right and a denial of
19 access to governmental facilities. Unless
20 the situation is addressed, it may allow
21 result in a civil rights action.

22 POSSESSION BY MINORS (#6110.1)

23 Special provisions are applied to
24 minors in regard to firearms, rifles and shot-
25 guns. Generally, a person under 18 years

1 may not possess any guns (#6110.1(A); a
2 person under 21 years may not possess a firearm
3 (18 U.S.C. #922(B)). However, both federal
4 and state statutes provide exceptions to
5 allow firearms, rifles, and shotguns to be
6 possessed by minors in appropriately super-
7 vised situations such as safety training,
8 competitions, hunting and trapping, etc.
9 However, a firearm, rifle or shotgun illegally
10 possessed by a minor is subject to forfeiture
11 #6110.1(D), unless it was stolen in which case
12 it is to be returned to its lawful owner.

13 POSSESSION and CARRY PERMITS (#6109)

14 Confusion exists as to where a carry
15 permit holder, or a person exempted from such
16 licensing requirement may carry or possess a
17 firearm, rifle or shotgun. It should be clari-
18 fied that a carry permit holder may not be
19 denied access to any location or facility
20 open to the public by reason of exercising
21 the right to carry a concealed firearm in
22 compliance with #6109; that hotel/motel
23 accommodations or parked recreational vehicles
24 and travel trailers are considered as a
25 temporary residence where a person may

1 lawfully possess a gun without a permit etc;
2 that possession of a carry permit or gun ownership
3 may not be used to discriminate against a
4 person in employment, housing, insurance,
5 access to government services, public or
6 private benefit, or other matters; that
7 government offices, other than court facilities
8 and prisons or other places of incarceration
9 or detention, may not bar persons lawfully
10 carrying concealed weapons.

11 And individuals should be allowed to
12 check a pocket knife when entering a
13 court facility whether or not they possess
14 a concealed weapons carry permit.

15 PENNSYLVANIA INSTANT CHECK SYSTEM (PICS)

16 Numerous problems have arisen in regard
17 to the Pennsylvania Instant Check System (PICS).
18 Erroneous denials, reversed denials that re-
19 occur, delays, unexplained 'down time',
20 failures to advise as to the duration of 'down
21 time', excessive duration of 'delayed for
22 research', this list of problems seems
23 endless. The most telling fact is the number
24 of denials, which are ultimately reversed
25 whether by PICS or under the challenge procedures.

1 In Act 17, the Legislature stated that the
2 purpose of the Uniform Firearms Act was not'
3 ...to discourage or restrict the private
4 ownership and use of firearms by law-abiding
5 citizens for lawful purposes, or to provide
6 for the imposition by rules or regulations
7 of any procedures or requirements other than
8 those necessary to implement and effectuate
9 the provisions of this act.' At present, the
10 operation and procedures of PICS do not comply
11 with this intent. However, there has been
12 improvement; and I believe PICS is making
13 an honest effort to comply with the Legislature's
14 intent. But at the present, there is still a
15 wide gap.

16 Under #6126, a Firearms Background Check
17 Advisory Committee is authorized and established.
18 The work product of this Committee should
19 prove most illuminating. As are the reports
20 from PICS required under #6111.1(1).

21 UNREASONABLE DELAYS:

22 Numerous dealers have reported being tied
23 up on the telephone doing a single PICS check
24 for extended periods while other customers go
25 unattended, sometimes walking out of the store.

1 PICS checks taking up to 2 hours have been
2 reported from multiple sources. This is most
3 serious for the smaller dealers. Once a PICS
4 decision is made, the purchaser or applicant
5 is often faced with inadequate, impractical,
6 and unrealistic time constraints.

7 It has been reported that transfers at
8 recent gun shows (c.g. March 13 and 14, 1999)
9 were effectively stopped when the PICS computers
10 went down from March 13 to 16, 1999. Dealers
11 were not informed by PICS that they could
12 complete transfers under #6111 in accord with
13 the pre-PICS procedures, #6111.1(B)(2).

14 A delay for research or referral beyond
15 the statutory 48 hour period is not authorized
16 in regard to a Pennsylvania record; only in
17 regard to the enforcement of portions of
18 U.S.C. #922. may PICS delay for reference
19 or research and then it must act as
20 'expeditiously as possible'. Absent a specific
21 time frame in which to decide, this is mean-
22 ingless. The Pa. State Police unilateral
23 adoption of progressively longer periods and
24 delays in regard to Pennsylvania records
25 clearly exceeds the statutory authorization.

1 Contrary to #6111.1(B)(2), PICS has
2 failed to advise of system failures or that
3 the system will be down in excess of 48 hours,
4 as required by #6111.1(B)(2). Dealers are
5 not informed that, in such situations, they
6 may complete transfers in accord with the
7 prior procedures relating to completion of an
8 application/record of sale document under
9 #6111.1(B)(2). Without notice of the failure
10 or down time which would trigger these pro-
11 visions, dealers are not aware that they may
12 proceed under the statute which they report
13 they have not been informed exists. This
14 effectively closes business at gun shows and
15 dealers. It is contrary to the stated purpose
16 and intent of The Uniform Firearms Act.

17 APPROVAL NUMBER LIMITATIONS:

18 A PICS approval number is required for
19 each individual gun transfer and must be used
20 on the date issued. This imposes a duplication
21 of effort where one person is simultaneously
22 purchasing more than one gun from a single
23 dealer. Especially where there was a delay
24 in issuing the approval number or the purchase
25 was to be at a gun show, it is often impractical,

1 if not impossible for the purchaser to return
2 to the dealer in time to utilize the approval
3 number on the date issued. The later use of
4 or reliance on a PICS "reversal letter" is an
5 inadequate remedy at best to the problem of
6 unreasonable delays.

7 Allowing one PICS check to apply to
8 the simultaneous transfer of more than one
9 gun from a single dealer will conserve PICS',
10 purchasers' and dealers' resources. Allowing
11 the approval number to be used within a
12 10 business days of issuance will end the de
13 facto harassment of prospective gun purchasers
14 and dealers. Both of these measures entail
15 minimal, if any risk that the background
16 check system would be circumvented; and would
17 conserve resources.

18 A PICS check must be completed for
19 each concealed carry weapons permit applicant.
20 But these PICS checks are not subject to the
21 same time practical constraints as a point
22 of purchase on another line to complete the
23 same check. This tied up 3 people, 3 computer
24 terminals, and 2 telephone lines. Several
25 Issuing Agents have requested that they be

1 able to 'batch' their carry permit
2 application PICS checks, receiving the PICS
3 determination the following day. This would
4 save time and more efficiently utilize resources.

5 BURDEN OF PROOF:

6 It must be clarified that the burden of
7 proof to establish a disability rests with
8 the state, whether PICS or the Issuing Agent,
9 or other entity, throughout the process.
10 The presumption must be in favor of the
11 constitutional right and against imposing the
12 disability, or upholding the denial. For a
13 PICS or a carry permit denial to stand requires
14 the production of copies of the Court records
15 certified as true and correct by the Clerk of
16 Courts or, the case of juvenile records or
17 Protection from Abuse Act Orders, other
18 appropriate records custodian.

19 At present, a PICS denial can be
20 challenged only for the accuracy of the records
21 under procedures established by the Pennsylvania
22 State Police, #6111.1(E). The records may be
23 accurate but still not be sufficient to establish
24 a disability. The Uniform Firearms Act does
25 not clearly provide a mechanism to contest the

1 denial itself, whether through PICS or
2 elsewhere. In effect, the mere allegation
3 of disability by PICS imposes the disability.
4 At the least, the appeal from PICS to the
5 Attorney General, and then to The Commonwealth
6 Court, must encompass the sufficiency of the
7 evidence and appropriateness of disability
8 as well as the accuracy of the records.

9 (The current practice attempts to address this
10 problem but needs statutory authorization,
11 jurisdiction, scope and structure.) PICS
12 must bear the burden of proof to sustain the
13 denial, i.e. PICS must prove not only that
14 the records are accurate but also that they
15 are sufficient to support the denial and that
16 the person is disabled.

17 Some Issuing Agents have taken the
18 position that once a carry permit application
19 is denied, the applicant has the burden to
20 prove that he is not disabled (proof by a
21 preponderance of the evidence). This is
22 contrary to our jurisprudence and the basic
23 premises of the Uniform Firearms Act, in-
24 cluding a 'mandatory shall issue' carry permit.
25 Unless PICS or an Issuing Agent, can prove the

1 disability, the presumption must be that
2 the purchaser or applicant is not disabled.

3 At present, the Issuing Agent is 'taken
4 out of the loop' by a PICS denial. The Issuing
5 Agent must be able to evaluate the PICS denial,
6 even overruling it where appropriate. This is
7 especially true where the denial of a carry
8 permit is appealed to the appropriate ad-
9 judicatory body (Court of Common Pleas,
10 Commonwealth Court, etc.).

11 The records and documents of the under-
12 lying cases are created and maintained by the
13 state, who's representatives have unique
14 access to them. The state, through PICS and
15 the Issuing Agents, are interpreting those
16 records. Often, old criminal records are
17 destroyed under local records retention
18 orders. Old records are often missing or not
19 available. Magistrate Court records are
20 frequently not available because they were
21 not transferred to the Clerk of Courts when
22 the Magistrate Court was replaced. It is no
23 more than fair that the state carry the burden
24 of proof to regarding the alleged disability.

25 PICS, LAW ENFORCEMENT OFFICERS, and
 CARRY PERMITS:

1 Initially, PaUFA provided a point of
2 transfer background check exemption for active
3 duty law enforcement officers, and carry permit
4 holders or persons to whom 'letter of need'
5 have been issued. This exemption did not result
6 in any significant problems. However, it was
7 not re-instated when PICS came on line. Law
8 enforcement officers, and carry permit holders
9 have already gone through a more intensive
10 background check that includes PICS, putting
11 them through PICS again wastes the resources
12 of the dealers and PICS and the individuals
13 involved. Issuance of a 'letter of need'
14 presupposes that the chief law enforcement officer,
15 or prosecutor or judge has determined that
16 there is much to be gained and little to be
17 risked by allowing the recipient to possess
18 a firearm. By re-instating these exemptions
19 the workload on the PICS system will be
20 reduced. (Where a carry permit is revoked,
21 the permit must be surrendered, there is
22 minimal risk that they would be able to take
23 advantage of this exemption improperly.)

24 TIME PERIODS:

25 There is a ten day window in which to

1 request the basis for a PICS denial, and a
2 30 day window to file a challenge to the
3 accuracy of the records, and/or submit proof
4 that the denial is erroneous. These time
5 constraints are not realistic. Obtaining the
6 court records can take months; they may not
7 be available at all. The appeal period for
8 a carry permit denial expires before the PICS
9 issues can be adequately resolved. And a new
10 carry permit application would be barred for
11 a year. PICS has been most generous in
12 applying these time periods and allowing a
13 challenge to the accuracy of the records to
14 include a contest of the sufficiency for the
15 denial. Similarly, some Issuing Agents have
16 allowing a carry permit application to remain
17 in administrative limbo pending resolution
18 of the PICS denial. But unless these issues
19 are addressed by legislation, this permissive
20 policy can change with a change in personnel
21 and/or the administration's policy. Without a
22 legislative authorization for these practices,
23 the situation devolves into a morass of
24 differing practices; and the benefits of uni-
25 formity of practice and procedure are lost.

DATABASES, EVIDENCE and CONSEQUENCES:

1
2 The PICS and the National Instant Check
3 System (NICS) databases are woefully inadequate
4 and incredibly inaccurate. PICS denials have been
5 based on non-criminal cases (e.g. NJ Municipal
6 Court cases, and Administrative Hearings
7 under the Uniform Code of Military Justice);
8 cases which never existed (arrests where prose-
9 cution was declined); cases that never went
10 to judgment (a nolle prosequi was granted, or
11 the prosecution was otherwise withdrawn or
12 terminated without a trial or conviction); cases
13 where the records are inconclusive, illegible,
14 'not available', or do not exist; cases involving
15 summary offenses erroneously entered as crimes
16 (misdemeanors and/or felonies); expunged cases
17 where expungement orders are ignored; cases
18 where an ARD or other alternative disposition
19 was entered; etc. (The old Magistrate Courts
20 are notorious for inadequate records, for not
21 surrendering their records when the Magistrate
22 Courts were abolished, for imposing fines and
23 costs even when the defendant was acquitted,
24 etc.) In cases involving out of state or
25 military records, the inaccuracy of the databases

1 is compounded by the need to determine the
2 corresponding Pennsylvania crime, if any,
3 and the maximum penalty possible; what the
4 disposition was; and obtaining the 'hard copy'
5 records, all within the time constraints
6 already mentioned. Where the denial is based
7 on military discharge status or records, it
8 must be noted that there was a fire in the
9 department of Defense archives which destroyed
10 many of the necessary documents. And it must
11 be emphasized again that only a dishonorable
12 discharge, not one of the four other types of
13 discharge, is a disabling criteria.

14 PICS and NCIC databases are apparently
15 keyed to arrest records, not court records.
16 They generally show the most serious charge
17 made by the police, not necessarily the
18 charges prosecuted or the crime of which the
19 individual was convicted. Often, no disposition
20 is reported at all, especially where there was
21 an acquittal. Expungement Orders are routinely
22 ignored by some police departments and do not
23 appear on either PICS nor NCIC databases,
24 even though the underlying expunged case still
25 does. Instances of inadequate identifiers

1 have resulted in PICS and carry permit
2 denials based on cases totally unrelated
3 to the purchaser or applicant.

4 Where a PICS denial is reversed,
5 the database is not updated appropriately,
6 so that improper denials have been
7 repeated. Presently, a purchaser must
8 return to the dealer, complete the
9 transfer (even if the gun is no longer
10 available), and have the dealer ask
11 for a supervisor when the PICS check
12 is performed to confirm the reversal of
13 the prior denial. A carry permit appli-
14 cant must take the PICS approval letter
15 to the Issuing Agent, assuming that there
16 is still an open carry permit application
17 to be considered. Obviously these
18 procedures are proving inadequate.
19 More effective means for correcting the
20 databases need to be implemented. (Correcting
21 the NCIS database is even more of a nightmare,
22 but is beyond the scope of this compilation.)

23 The affect of a denial on the denied
24 person's carry permit, other guns, hunting,
25 shooting and related activities is unclear.

1 Likewise, the effect of a person's denial or
2 disability on the rights of others with whom
3 that person may associate, even reside, is
4 unclear.

5 As noted, the mere allegation of disability
6 by PICS effectively imposes the disability
7 on the prospective purchaser or carry permit
8 applicant. PICS need do no more than point to
9 a computer screen and the person is disabled.
10 But an allegation is not proof of the disability.
11 (The Pa. Rules of Court and law of evidence
12 require that a certified copy of court records
13 be used to establish the underlying case and
14 its disposition. The computer record is not
15 definitive, is not even admissible evidence,
16 let alone proof, of the underlying case and
17 its disposition. Certified copies of the
18 court documents are required in carry permit
19 appeals, and at the Attorney General's hearing
20 of a PICS challenge. To conserve the finances
21 of the Issuing Agent and PICS, the practice
22 has been for the purchaser or applicant to
23 secure these 'hard copy' court records. This
24 places the burden of going forward with the
25 evidence, (if not the legal burden of proof),

1 and the costs, on them, in effect they must prove
2 that they are not disabled.) Passing in silence
3 the logical impossibility of proving a negative,
4 this contravenes basic jurisprudential concepts
5 such as the presumption in favor of constitutional
6 rights. It runs contrary to the underlying
7 presumption of the Uniform Firearms Act, that the
8 individual is presumed to be 'OK' unless the state
9 can prove otherwise. It must be clarified that the
10 state bears the legal burden of proving the
11 disability at all times; that the denied
12 person is not prohibited in any respect other
13 than the particular transfer or carry permit,
14 unless and until the disability is upheld by
15 an appropriate impartial adjudicatory body,
16 able to review the accuracy of the records and
17 the sufficiency of the evidence to support a
18 disability and other issues relating to the
19 imposition of the disability. And most
20 importantly, it must be clarified that other
21 individuals, with whom a denied or disabled
22 person may associate or even reside, do not
23 lose their constitutional rights or property
24 by reason of the association, or co-residence.
25 (The disability is not a contagious disease;
it does not work a 'corruption of the blood'

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nor carry similar aspects of an unconstitutional
'bill of attainder'.

MAGISTRATE COURT: GUILTY PLEAS;
and OTHER SPECIAL SITUATIONS:

Because of the retroactive application
of the Uniform Firearms Act and the Gun Control
Act of 1968, serious Constitutional issues and
questions are repeatedly being encountered.
Guilty pleas are Constitutionally permissible
only where they are made with the knowledge as
to their consequences. But no one can predict
that disabilities would be imposed because of
a guilty pleas years, even decades later.
Pennsylvania's Magistrate Court violated due
process rights (the right to an impartial
judiciary) because the magistrate was paid a
percentage of the fines and costs imposed,
i.e. there was a financial interest in finding
the defendant guilty.

Where the maximum possible criminal penalties
were reduced for the same conduct (the prior
Motor Vehicle Code #1037 provided for up to
3 years incarceration for OWI 'operating
while intoxicated' then the maximum sentence was
reduced to 2 years, then under the Vehicle

1 Code, #3731, also imposes a maximum sentence
2 of 2 years for DUI "driving under the influence
3 racing, under the prior Motor Vehicle Code,
4 MVC #1041 carried up to 3 years incarceration;
5 under the current Vehicle Code #3367 reduces the
6 applicable penalty to a summary offense) the
7 differing consequences for the same conduct also
8 raise due process (fundamental fairness) and
9 equal protection of the law questions.

10 Also, expanding one person's disability
11 to encompass others in their family or with
12 whom they may associate or reside, raises
13 serious issues of constitutionally prohibited
14 bills of attainder and corruption of the blood.
15 These questions arise under #6105(A)(2) disposition
16 provisions and whenever firearms are confiscated
17 from one person, because another, allegedly
18 disabled, person may have access to the firearms.
19 The later situation may directly contradict
20 #6115 provisions.

21 INADEQUACY OF INFORMATION

22 The information contained in the PICS
23 databases is often incomplete. It often lacks
24 dispositions and adequate identifiers. Cases
25 are cited as disabling criteria where the court

1 had no criminal jurisdiction (NJ Municipal
2 Court cases; Uniform Code of Military Justice
3 Administrative Hearings) or an alternative
4 resolution program were applied.

5 Additionally, out of state records are
6 even less accurate and more confusing. PICS
7 and Issuing Agent's personnel are often unable
8 to properly determine the correlation between
9 out of state records and crimes and Pa. records
10 and crimes.

11 Court records are often missing, lost
12 or destroy, especially under local Court
13 Records Retention Orders. Records reduced to
14 microfiche become unavailable when the equipment
15 necessary to read the microfiche no longer is
16 available. Computerized records are often
17 entered incorrectly or incompletely. Expunge-
18 ment Orders are routinely ignored by law
19 enforcement.

20 Often, records available do not contain
21 the documents normally expected, such as the
22 colloquy required under Pa Rules of Criminal
23 Procedure, Rule 319, or similar indicia of
24 compliance with due process requirements.

25 CARRY PERMIT ISSUING AGENTS and PICS:

1 A PICS check is one element of the carry
2 permit issuing process. It is not necessarily
3 determinative. A PICS denial must be subject
4 to full review by carry permit Issuing Agents,
5 and the Courts when hearing an appeal from
6 the denial of a carry permit. Such a review
7 needs the jurisdiction to determine not just
8 the 'accuracy of the records' but also the
9 sufficiency of the evidence and whether there
10 is a basis for upholding a PICS denial. In
11 such a setting, there is minimal, if any risk
12 that a proper PICS denial will be overturned, but
13 there is a significant possibility that an
14 improper one will be.

15 OWI and DUI

16 Prior law (Pa. Vehicle Code #1037) provided
17 that operating a motor vehicle under the
18 influence of intoxicating liquors or substances
19 (OWI) was a misdemeanor punishable by up to
20 three (3) years incarceration. This penalty
21 was later reduced to 2 years. The present Motor
22 Vehicle Code also imposes a maximum penalty of
23 2 years on a driving under the influence (DUI,
24 75 Pa. C.S. #3736) conviction. PICS and
25 therefore, issuing agents, are taking the

1 position that a #1037 conviction is a disabling
2 criteria under GCA '68 #922(G)(1) where the
3 statute provided for the 3 year penalty. The
4 defendants were often told that such OWI
5 conviction 'went away' after 7 years, as an
6 inducement to enter into a plea agreement.
7 Often such convictions pre-date the federal
8 Gun Control Act of 1968 and certainly they
9 pre-date the present Uniform Firearms Act. Now,
10 decades later, these convictions have not gone
11 away; they have increased in the severity of
12 their sanctions. This increases the penalties
13 for such a conviction and therefore violates
14 the constitutional requirements of due process
15 (fundamental fairness) equal protection and
16 may violate the ex post facto prohibition.
17 Additionally, as these cases were often heard
18 before magistrates, all of the problems attendant
19 thereto also apply. The #6105(C)(3) provisions
20 were intended to be the only disability
21 associated with a DUI conviction by agreement
22 in the State Select Committee and vote of the
23 Senate. It is suggested that 18 Pa. C.S.
24 #6105(C)(3) be amended to clarify that it is
25 the only consequence of a DUI conviction, not

1 withstanding any other statutory provision or
 2 absolving any #1037 conviction of any disability
 3 under #6105 or #6111.1.

4 CHALLENGES

5 A Challenge of a PICS denial is to the
 6 accuracy of the records only, #6111.1(D); The
 7 records may be accurate but still not establish
 8 an appropriate basis for a PICS denial. The
 9 Procedure for challenging a PICS denial is
 10 proving impracticable, especially in regard to
 11 carry permit applications. This 'challenge'
 12 to the 'accuracy' of records limits the scope
 13 of relief and remedies available. It also excludes
 14 questions of fact; and sufficiency of the
 15 evidence from appellate review. This imposes
 16 an undue restriction of the free exercise of
 17 a fundamental freedom without recourse to the
 18 courts for remedy. It violates substantive
 19 due process requirements.

20 RELIEF FROM DISABILITY and GOVERNOR'S
 21 PARDONS c
 (#6105(D) & (F); #6123; 18 USC #925)

22 The Uniform Firearms Act provides for
 23 relief from the disabilities it imposes, #6105(D)
 24 and (F); #6123). Also, the federal Gun Control
 25 Act of 1968 (18 U.S.C. #925) provides for

1 waiver of the disabilities it imposes. When
2 Act 17 was enacted, where they arose from
3 common ground, the two disabilities marched
4 hand in hand; to the extent that the state
5 disability was relieved, the corresponding
6 federal disability was waived. The Uniform
7 Firearms Act established a two-tiered system
8 for the restoration of the right to keep and
9 bear arms. It was compatible, with the prevailing
10 federal law. In June of 1998, this correlation
11 of state and federal provisions changed. The
12 U.S. Supreme Court ruled that unless the state
13 fully restored the right to keep and bear arms,
14 a corresponding federal disability remained,
15 even though there was a partial restoration of
16 rights by the state and both federal and state
17 disabilities rested on the same factual basis.
18 (Caron vs. U.S. No. 97-6270). Pennsylvania's
19 two-tiered system was nullified by that
20 decision. The basic #6105 disability is
21 partially relieved under #6105(D) or (F) or
22 by operation of its own terms; but a Governor's
23 Pardon is required to restore the remainder
24 of the right. Conversely, under #6123, a
25 Governor's Pardon is required to restore the

1 remainder of the right. Conversely, under
2 #6123, a Governor's Pardon relieves a disabled
3 person of all disabilities under the Uniform
4 Firearms Act, save those under #6105.

5 Thus, a disabled person to whom the right to
6 own, use and possess firearms, rifles and shot-
7 guns has been partially restored remains dis-
8 abled under 18 U.S.C. #922(G), et al, unless
9 and until both a #6105 relief from disability
10 and a Governor's Pardon are granted. This
11 disparity creates a trap for the unwary. A
12 single tiered system for relief of all dis-
13 abilities, complying with the Supreme Court
14 decision should be enacted.

15 RETROACTIVE APPLICATION OF DISABILITIES
16 (#6105)

17 In order to avoid questions of unconsti-
18 tutional application of The Uniform Firearms
19 Act, (ex post facto, due process, etc.), clarify
20 that disability applicable at time of conviction
21 carries forward but a new disability is
22 not imposed based on pre-Act 17 conviction,
23 especially in the case of a plea bargain, or
24 where no compliance with due process require-
25 ments can be shown. As previously noted,

1 convictions under the old Magistrate's system
2 are of questionable validity as the Magistrate
3 had a pecuniary interest in convicting the
4 defendant. This raises significant con-
5 stitutional issues (due process, both substantive
6 and fundamental fairness). Any convictions
7 under the old magistrate's system should not
8 give rise to #6105 or #6109 disabilities. Also,
9 imposing a #6105 or #6109 disability to the situ-
10 ation of convictions where the applicable
11 penalty was reduced to a non-disabling grade,
12 #1037 of the prior Vehicle Code as discussed
13 above, create equal protection as well as
14 due process of the law issues.

15 Constitutional due process and Pa. R.
16 Crim. P. Rule 319 (and its prior versions)
17 require that the Defendant be knowledgeable
18 as to the consequences of the plea agreement;
19 especially the applicable penalties. Defendants,
20 routinely are not advised as to the effects
21 of a guilty plea conviction on the right to keep
22 and bear arms. In such situations, imposing
23 a #6105 or #6109 disability is unconstitutional.

24 Old court records, as noted above, are
25 often incomplete. Some counties destroyed all

1 records when an expungement order was entered,
2 including the expungement order. However,
3 law enforcement agencies frequently ignore
4 expungement orders. What remains is a law
5 enforcement record, which is partial at best,
6 and no means of establishing either the dis-
7 position or the expungement. As the Pennsylvania
8 State Police have acknowledged, they must produce
9 Copies of the Court records certified as true
10 and correct by the Clerk of Courts to support
11 a PICS denial or otherwise establish a
12 disability. This evidentiary requirement should
13 be embodied in the Uniform Firearms Act.

14 EXPANDING DISABILITIES (#6105; #6111.1(B)
15 & #6115;

16 The disabilities under the Uniform Firearms
17 Act and the federal Gun Control Act of 1968
18 are based upon a person's conduct or mental
19 health condition. They are unique to the
20 person. Attempts have been made to deny second
21 person their fundamental constitutional rights
22 based on their association with a disabled
23 person. This is the situation under #6105(A)(2).
24 One person's disability is expanded to encompass
25 another, ostensibly non-disabled person. This

1 statutory provision is a Bill of Attainder
2 and unconstitutional.

3 Under #6115, within the home or place
4 of business, a gun owner may lend a disabled
5 person a firearm, rifle or shotgun provided
6 it is retained within the place of abode or
7 business. However, a person's firearms,
8 rifles and/or shotguns have been confiscated
9 because another person in the work place or
10 abode has access to them.

11 Several instances, both firearms confis-
12 cations and criminal prosecutions have arisen
13 wherein a carry permit holder or other lawful
14 possessor leaves a firearm in a motor vehicle
15 occupied by a non-CWCP holder, or another person
16 arguably disabled under #6105, only to have
17 the occupant arrested for unlawful possession
18 of a firearm, rifle or shotgun. Clarify that,
19 absent intent to actually transfer possession
20 of the firearm to the non-carry permit holder
21 or other person, such conduct is not a violation
22 of #6106, #6106.1; #6108; #6107 or #6111. This
23 may require a special provision in 18 Pa
24 C.S. #301(C) relating to possession as a
25 voluntary act, to exclude a presumption of

1 possession or prohibit constructive
2 possession, as discussed above.

3 These situations are contrary to
4 basic principles of American jurisprudence
5 and violative of constitutional requirements
6 of freedom of association, equal protect, and
7 due process, among other precepts. It must be
8 clearly specified that a disability imposed
9 upon one person does not expand to encompass
10 others with whom the disabled person resides,
11 works or otherwise has contact. The obvious
12 chilling effect on the free exercise of the
13 right to keep and bear arms of these types of
14 situations is clear and convincing evidence
15 that such governmental conduct 'goes too far'
16 under a 'strict scrutiny' standard of
17 constitutional review.

18 ANTI-HARASSMENT and ANCILLARY ACTIVITIES
19 (#6120)

20 Due to continuing collateral attacks on
21 gun owners, gun ranges, licensed dealers,
22 reloaders, hunters and shooters through local
23 regulations, including spurious litigation,
24 attempts to modify tort law, local taxation
25 and zoning ordinances directed at these

1 ancillary activities solely as disguised
2 prohibitions, the pre-emption statute, #6120,
3 needs to be addressed. Clarify that 18 Pa.
4 C.S. #6120 'in any manner' language is all
5 inclusive. Here must be sanctions imposed
6 for violation of #6120 and attacks on all
7 fundamental constitutional rights, especially
8 the right to keep and bear arms. The politically
9 correct do not need the protections of
10 Constitutional rights; the politically vulner-
11 able do. The current trend of sophist attacks
12 on the right to keep and bear arms, as with
13 similarly minded government sponsored attacks
14 on the rights of privacy (mandatory government
15 access to computer encryption programs; roving
16 wiretaps; etc.) evidence an alarming trend of
17 radical elitism. Pennsylvania lead the colonies
18 as a Commonwealth of citizens, creating a
19 nation of citizens. This radical elitism moves
20 us toward a country of subjects.

21 Additionally, property owner's or
22 business insurance coverage should not be
23 refused nor renewal denied because of the
24 presence of guns or related materials (ammunition
25 or ammunition components) on the property or

1 premises where no provision for coverage,
2 even as a rider at a reasonable extra cost, is
3 made available.

4 CONCEALED WEAPONS CARRY PERMITS (CWCP; #6109)

5 Prohibiting Criteria

6 #6109(E)(i) - Character and Reputation:

7 There have been numerous instances of Issuing
8 Agents denying the issuance of a CWCP or
9 revoking a CWCP under this criteria based on
10 a single incident. 'Character and Reputation'
11 by their nature imply a course of conduct or a
12 behavior pattern. Some courts have already
13 ruled that a single incident cannot be grounds
14 for a 'character and reputation' denial or
15 revocation. It is suggested that this sub-
16 paragraph be amended to require a showing of a
17 course of conduct or behavior pattern to
18 establish this criteria. This would preserve
19 the uniformity of the statutory provisions.

20 #6109(E)(ix) - Failure to Publish: The

21 application of this criteria is dependent on
22 the action of the Bureau of Alcohol, Tobacco
23 and Firearms (BATF) in publishing the
24 compendium referred to in the subsection.

25 While the publication is helpful, it should not

1 be a condition precedent for the application
2 of the subsection's provisions. Clarify
3 that failure to publish by BATF cannot be
4 used as a basis for denying a CWCP.

5 #6109(E)(xii) - Fugitive from Justice:
6 The 'Fugitive from Justice' disabling criteria
7 (#6109(E)(xii) has been charged as a scofflaw.
8 Carry permits were not intended to be used as
9 a collection procedure. To do so is contrary
10 to the intent of The Uniform Firearms Act.
11 This practice works an impermissible chilling
12 effect on the free exercise of a 'fundamental
13 constitutional right. There was an attempt to
14 clarify that 'fugitive from justice', #6109(E)
15 (xii), does not include outstanding traffic or
16 parking citations or 'scofflaw' charges in
17 Act 70 of 1998. However, as 'fugitive
18 from justice' is also a disabling criteria
19 under #6105(C)(1) it remains applicable to
20 carry permit issuance under #6109(3)(1)(xiii).
21 Therefore the term should be defined in #6102
22 to exclude traffic law and scofflaw or other
23 Title 75 (Motor Vehicle Code) matters.
24 This clarification will not adversely affect
25 the issuing authority's efforts to collect

1 traffic and parking fines; but will preserve the
2 integrity of the Uniform Firearms Act and
3 the carry permit issuance system.

4 #6109(E)(xiii) - Redundancy: The provision
5 of #6105 disabling criteria are applied to
6 carry permits under several redundant
7 provisions: #6105(H), #6109(E)(1)(ii), #6109
8 (E)(1)(iii), #6109 (E)(1)(iv), and #6109 (E)(1)
9 (xiii). This redundancy is unnecessary. One
10 application of the #6105 disabling criteria
11 should suffice.

12 #6109(G) - Grant or Denial of License:
13 Under this subsection, absolute accuracy in
14 regard to the information supplied by a carry
15 permit applicant. Permits have been denied
16 issuance based upon inaccuracy of information
17 supplied on the application, relying on the
18 subsection's language('...issue or refuse to
19 issue a license on the basis of the investigation
20 under subsection (d) and the accuracy of the
21 information contained in the application'),
22 so as to impose a stricter standard of
23 certification than specifically required by
24 the statute, #6109(C)('best of my
25 knowledge, information, and belief').

1 Applicants have been denied even though the
2 'inaccuracy' was not related to a disabling cri-
3 teria, or was the result of a good faith
4 error, transposition of numerals, or the
5 failure of a lay person to be conversant with
6 the law's technicalities, was otherwise de
7 minimis, and there was no intent to misrepresent
8 or mislead the issuing agent and no other
9 disabling criteria applied. It seems the
10 'inaccuracy' may even have resulted from the
11 Issuing Agent's investigator incorrectly
12 recording a verbal answer. A failure to know
13 of an error in the issuing agent's database
14 has been recognized as an inaccuracy in such
15 circumstances. This amounts to a return to
16 a discretionary carry permit system. This
17 position has been upheld by the Court of Common
18 Pleas Philadelphia County, although the Court
19 did indicate its willingness to revisit the
20 issue. This issue should be addressed by the
21 Legislature to preserve the uniformity of
22 carry permit procedures and practices.

23 Notice (#6109(G) and #6109(l): Attempts
24 have been made to raise additional reasons
25 for a denial or revocation of a carry permit not

1 specified in the notice of denial or
2 revocation. This negates these notice
3 requirements, and violates due process require-
4 ments. The statute should be amended to
5 provide that issues not specified are waived.

6 CARRY PERMIT REVOCATIONS #6109(1), #6105(G)

7 As amended by Act 1998-70, the revocations
8 provisions became mandatory where a disabling
9 criteria under #6109(E)(1) arises during the
10 term of a carry permit. However, this
11 provision has been used or abused, depending
12 on one's outlook, to revoke carry permits
13 where an arrest was for a non-disabling matter,
14 where an Alternative Resolution Disposition
15 was already in place; where a unsupported
16 allegation of 'character and reputation' was
17 made by some unidentified third party.
18 Additionally, by the time a revocation matter
19 is heard, an underlying criminal case is often
20 already disposed. There must be a sanction
21 available to protect against unwarranted,
22 or bad faith revocations.

23 Under #6105(G), a parole or probation may
24 impose as a condition, a disability on the right
25 to keep and bear arms, including a carry permit.

1 Where the underlying criminal conviction
2 amounts to a disabling criteria under #6105,
3 #6109 or the Gun Control Act of 1968,
4 this is appropriate. However, where the under-
5 lying case is not such a disabling criteria,
6 e.g. an ARD or a totally de minimis matter,
7 such a provision amounts to an excessive and
8 untoward penalty; abusing the statutory
9 provision. Such an application is contrary
10 to the stated intents and purposes of The
11 Uniform Firearms Act. This provision, #6105(G)
12 should be limited in its application to matters
13 in which the underlying crime would amount to
14 a disabling criteria. Under 42 Pa. C.S.
15 #9754(B)(7) probation order may specifically
16 allow the defendant to possess firearms.

17 SCOPE of REVIEW PICS and CARRY PERMITS
18 (#6105; #6109; #6111.1)

19 Due to present limitations on the
20 challenge of PICS denial (accuracy of records)
21 as discussed above, it is important that the
22 original understanding of the Select Committee
23 and the Legislature be effectuated, specifically
24 that a PICS denial would be subject to a full
25 review through and within the carry permit

1 issuance process, especially where the
2 matter comes before the courts. Such a review
3 should include the admissibility, adequacy,
4 and sufficiency of the evidence relied on by
5 PICS or the Issuing Agent, not merely the
6 'accuracy' of the records.

7 Federal case law has held that a conviction,
8 presumptively invalid as a violation of due
9 process requirements, may not be relied on to
10 establish recidivist status. (Thompson v.
11 Louisville, 362 U.S. 199 (1960); Burgett v.
12 Texas, 389 U.S. 109 (1967). Likewise,
13 reliance on a conviction, presumptively void
14 as a violation of due process requirements
15 (whether because the judge had a financial
16 interest in the outcome (the old Magistrate's
17 Court) or because the record is silent in regard
18 to compliance with Pa. R. Crim. P. Rule 319 or
19 the prior case law due process requirements to
20 support a PICS denial is in itself an un-
21 constitutional violation of due process require-
22 ments of Fourteenth Amendment to the U. S.
23 Constitution. However, under a PICS Challenge
24 there is no opportunity to review the
25 unconstitutionality of the underlying convictions.

1 Only where the issues can be addressed in full,
2 such as in a carry permit appeal or other
3 trial court proceeding, can such Constitutional
4 requirements be met. As noted above, #6114
5 (relating to judicial review) should be amended
6 to allow that merits of a PICS denial to be
7 redressed in a carry permit appeal or revocation,
8 especially when it is in the Court of Common
9 Pleas; and #6109 should be amended by adding
10 a subparagraph (K) to provide that Issuing
11 Agents have jurisdiction to review the merits
12 of a PICS denial; that an Issuing Agent's
13 determinations of non-disability overrules PICS'
14 denials; and that the merits of a PICS denial
15 is within the scope of review in an appeal of
16 a carry permit denial or revocation.

17 TRANSFERS AND ACQUISITIONS

18 Firearms and Long Guns #6111

19 Under the Uniform Firearms Act, fire-
20 arms, i.e. handguns, and non-firearms, i.e.
21 rifles and shotguns, are subject to different
22 provisions. All firearms, as defined in
23 #6102, must be transferred through a licensed
24 dealer or an issuing agent, #6111(A), #6111(C),
25 and #6111(F), and is subject to PICS background

1 check. Also, any transfer from a licensed
2 dealer is subjected to PICS check, whether
3 it involves a firearm, rifle or shotgun,
4 #6111(A) and #6111(B). However, the paperwork
5 applicable to the transfer of a rifle or
6 shotgun is greatly reduced, #6111(B)(1.4).
7 The transfer of a firearm, as defined in #6102,
8 requires the completion of an application/
9 record of sale, (a duplicate original of which
10 is supplied to the purchaser, another retained
11 by the licensed dealer for a period of 20 years,
12 and the third forwarded to the Pennsylvania
13 State Police. #6111(B)(1). The information
14 supplied by a prospective purchaser both through
15 the PICS instant check and the completed
16 application/record of sale is confidential
17 (#6111(1); and the application/record of sale
18 must be destroyed within 72 hours of its
19 receipt by the Pennsylvania State Police, and
20 the confidential information may not be
21 maintained in any form (#6111(B)(1)(1.1)(V)).
22 A breach of these confidentiality provisions is
23 a third degree felony, (#6111(GH)(3), and allows
24 recovery of punitive damages and attorney's fees,
25 (#6111(1)).

1 The private transfer of non-firearm
2 guns may be made without the auspices of a
3 licensed dealer or issuing agent, #6111(C).
4 However, the sanctions applicable to any
5 transfer which does not comply with the require-
6 ments of the Uniform Firearms Act, or for
7 criminal purposes still apply, (#6111(G)(1),
8 #6111(G)(2), #6111(G)(5), and #6111(G)(6).
9 The sanctions do have mens rea and scinter
10 aspects. Conversely, compliance with the
11 provisions of the Uniform Firearms Act regarding
12 a transfer 'shall be a defense...to any
13 criminal complaint...or other claim or cause
14 of action under this chapter arising from the
15 sale or transfer of a firearm', (#6111(D).
16 This defense is not absolute. It was the intent
17 of the State Select Committee and the Legislature
18 that complete criminal and civil immunity apply
19 to any charge or claim arising out of a transfer
20 made in compliance with the Uniform Firearms
21 Act, without regard to the basis of the
22 charge or claim, not merely those arising under
23 the Uniform Firearms Act. This error of omission
24 should be redressed.

25 OUT OF STATE ACQUISITIONS (#6141.1)

1 The Uniform Firearms Act allows a
2 Pennsylvanian to acquire a long gun outside
3 the confines of the Commonwealth. This
4 section corresponds and complies with the
5 federal provisions relating to acquisitions
6 of long guns, 18 U.S.C. #922(B)(3).

7 Minors; #6110.1; 18 Pa. C.S. #6302

8 As noted above, federal law generally
9 prohibits the possession of firearms by
10 persons under the age of 21, and non-firearm
11 guns by persons under the age of 18,
12 18 U.S.C. #922(B)(1). Pennsylvania also general-
13 ly prohibits the possession of a firearm
14 by a person under the age of 18, #6110.1.
15 Delivery of a firearm to a minor by an adult
16 is a third degree felony, #6110.1(C). There
17 are exceptions under #6110.1(B) apply and
18 allow for a minor's participation in appropriate
19 supervised firearms activities, e.g. firearms
20 safety training. However, the provisions of
21 #6110.1 do not fully agree with those of
22 18 Pa. C.S. #6302, relating to the sale or
23 lease of weapons to minors. The activity
24 lawful under #6110.1 may be a first degree
25 misdemeanor under the latter. A first degree

1 misdemeanor is a disabling criteria under
2 the federal Gun Control Act of 1968,
3 #922(G). This inconsistency must be
4 addressed.

5 Gun Shops and Shows; #6113

6 Under #6113(A) a state sealer's
7 license must be issued to qualified persons.
8 The federal dealers license (FFL) is governed
9 by the Uniform Firearms Act of 1968. A
10 Pennsylvania dealer may conduct business
11 on the business premises or at a lawful gun
12 show or meet, #6113(A)(1). The requirements
13 of #6113 as to the conduct of the business
14 are in addition to those under #6111.

15 Penalties relating to the State or Transfer
16 of Firearms; #6111(G) & (H)

17 In general, criminal sanctions apply
18 to the sale or transfer of any firearms,
19 rifle or shotgun not made in compliance
20 with the provisions of the Uniform Firearms
21 Act. A sale or transfer made 'knowingly or
22 intentionally' in non-compliance, is a
23 second degree misdemeanor, #6111(G)(1).
24 Where the sale or transfer is made 'knowingly
25 or intentionally' so as to provide a

1 firearm, rifle or shotgun to a 'unqualified
2 or ineligible' person, the penalty rises to
3 a third degree felony and entails a loss of
4 the license under #6113 for a period of 3 years,
5 #6111(G)(2). A person who 'knowingly and in-
6 tentionally' sells or transfers a firearms
7 rifle or shotgun to any other and who knows
8 or has reason to know that the weapon is
9 intended to be used in the commission of a
10 crime is criminally liable for such crime
11 or attempted crime, #6111(G)(5); and further,
12 such a seller or transferor is civilly liable
13 for damages incurred in the crime or attempted
14 crime, #6111(G)(6).

15 The problem concerning these criminal
16 sanctions arise under #6111(H). Under #6111(H)(1),
17 a second violation rises to a second degree
18 felony and entails the permanent loss of the
19 license under #6113. But in #6111(H)(2).
20 That section allows the prosecutor to
21 proceed under the provisions of #6111(G) and
22 (H) without advising the defendant at the
23 arraignment or preliminary hearing. The pro-
24 visions of #6111(H)(2) only require that the
25 intent to proceed under #6111(G) or (H) be

1 conveyed to the defendant prior to trial.
2 This is another due process violation.
3 Under due process requirements, a criminal
4 defendant is entitled to know the charges
5 against him and the applicable penalties,
6 and is entitled to mount a defense. These
7 provisions deny the defendant such information
8 and opportunity, #6111(H)(2), (3) and (4).
9 Additionally, the issues are to be heard not
10 at trial, but at sentencing, even though the
11 court is to consider the evidence from the
12 trial where the defendant was denied an
13 opportunity to mount a defense, #6111(H)(2).
14 While it is basic to our legal system that
15 criminal charges must be proven 'beyond a
16 reasonable doubt', under 6111(H)(2), the prose-
17 cutor need only prove the applicability of
18 #6111(H) by a preponderance of the evidence.
19 Further there is no authority for the court
20 to impose any sentence but that provided
21 under #6111(H)(1) and a refusal of the court
22 to apply #6111(H)(1) allows the prosecutor to
23 appeal to an appellate court which is bound
24 to apply #6111(H)(1). This subsection,
25 #6111(H), is an abomination and an anathema

1 under our system of justice.

2 Retention within Residence or Place
3 of Business: #6115

4 The Uniform Firearms Act prohibits the
5 use of a firearm as security for a loan, and the
6 loan of a firearm contrary to its provisions,
7 #6115(A). In #6115(B), there are exceptions
8 to this prohibition. Where the recipient is
9 licensed under #6109, or is exempt from
10 licensing under #6106, or where the recipient
11 is engaged in a hunter safety program, a
12 firearms training program or competition,
13 or where the loan is to a minor and is in
14 compliance with #6110.1, or where the
15 recipient is engaged in a hunter safety program,
16 a firearms training program or competition,
17 or where the loan is to a minor and is in
18 compliance with #6110.1, or where the
19 recipient is lawfully hunting or trapping, or
20 where the financial institution is not able
21 to adequately secure the firearm, rifle or
22 shotgun, #6115(B)(1). Under #6115(B)(2) a
23 testamentary or intestate transfer of a fire-
24 arm to an eligible recipient is specifically
25 authorized. Section 6115(B)(3) is somewhat

1 unique. There are only two provisions in
2 the Uniform Firearms Act where the recipient
3 of a transfer is not specifically required to
4 be eligible under #6105. They are #6110.1
5 relating to minors and #6115(B)(3) relating
6 to a fact situation in which the firearm,
7 rifle or shotgun is retained by the recipient
8 within the place of abode or business of the
9 transferor. This section was intended to
10 resolve the problem of expanding one person's
11 disability to encompass family members and
12 co-workers; and to allow a commercial shooting
13 range to provide firearms, rifles or shotguns
14 for its customers without constantly going
15 through PICS checks. That the exemption only
16 applied where the firearms, rifles or shotguns
17 were retained place of abode or business
18 reduced the risk to society to minimal levels.

19 PRIVACY

20 The exercise of a fundamental constitu-
21 tional right, of itself, does not make a
22 person into a public figure. Lists of
23 federally licensed firearms dealers have been
24 published by local papers. (This increased
25 the risk of theft and robbery of such legitimate

1 dealers, many of whom were law enforcement
2 officers working to turn an avocation into a
3 source of income for their retirement and
4 who were naturally reluctant to have their
5 home addresses appear in the local papers.)
6 There is a great concern over the implications
7 of gun and/or gun owner registration; and the
8 testimony before the State Select Committee
9 by both state and federal law enforcement
10 representatives showed registration to be of
11 no appreciable value to legitimate law
12 enforcement activities.

13 For the foregoing reasons, among others,
14 The Uniform Firearms Act establishes several
15 protections for the privacy of gun buyers and
16 owners and carry permit applicant. First, the
17 information provided by both a prospective
18 gun purchaser and an applicant for a concealed
19 weapons carry permit is protected by confident-
20 iality under #6111(1). Criminal and pecuniary
21 sanctions are imposed for breach of that
22 confidentiality under #6111(G)(3) and #6111(G)
23 (3.1). 'Firearms ownership registration' is
24 specifically prohibited under #6111.4. A
25 violation of this section is a first degree

1 misdemeanor under the general penalty
2 provisions of #6119. In addition, under
3 #611(B)(1)(1.3), a civil penalty of \$250.00
4 is applied to each instance of a failure to
5 destroy the records or information supplied
6 to the Pennsylvania State Police under #6111.

7 However, these sanctions notwithstanding,
8 various de facto registration schemes are
9 present. Some law enforcement agencies retain
10 records of carry permit holders who check
11 their firearms in compliance with #913.
12 Others, require their members to register
13 their privately owned firearms, rifles and
14 shotguns in violation of #6111.4.

15 Presumption of Criminal Intent (#6104)

16 Under #6104 a person charged with a
17 crime enumerated in #6105, that the defendant
18 was armed with a firearm but did not hold a
19 concealed weapons carry permit is deemed
20 evidence of criminal intent. This presumption
21 is inappropriate. There is no provision that
22 a carry permit was required in the situation
23 presented by the case, i.e. the incident
24 occurred in the defendant home or place of
25 business where no carry permit is required.

1 It is unclear whether the term firearm refers
2 to a #6102 definition firearm or a more
3 expansive definition. If the more expansive
4 definition, a carry permit does not apply to a
5 rifle or shotgun. This section should be
6 repealed as it creates an inappropriate and
7 misleading and prejudicial presumption of
8 criminal intent.

9 Self Defense

10 Right of Self Defense:

11 The current Pennsylvania statutes re-
12 lating to justification and self defense
13 (18 Pa.C.S. #505, 506, and 507) differentiate
14 between locations. On the public streets,
15 flight where feasible in safety, is required.
16 In the home or place of business, flight is not
17 necessarily required. The statutes are con-
18 fusing and require superhuman cool headed
19 deliberation in a moment of extreme intensity.
20 While no one wants to ponder the horrors of
21 a criminal assault, the Commonwealth should
22 recognize that the right of self-defense means
23 that the victim of crime is justified in using
24 any degree of force, including deadly force,
25 which the victim reasonably believes is

1 necessary, to resist or terminate the
2 criminal conduct. The requirements of surrender,
3 retreat or flights should be eliminated.
4 Because we see too many clerks and other victims
5 shot after the robber has taken the money
6 or other property, there should not be a
7 requirement that a person surrender to the
8 robber's demands before resisting. Because
9 flight and retreat invite pursuit and attack,
10 and, of necessity, involve substantial risks
11 (turning one's back on an assailant in the
12 midst of an assault), they cannot be assumed
13 to be possible or safe and therefore should
14 not be required at any time. This should also
15 apply to Peace Officers, Corrections Officers,
16 Constables, or any other law enforcement
17 officer acting in the line of duty.

18 Victim Protection

19 Provide civil immunity for injuries caused
20 by legitimate self-defense action against
21 criminal attacker, whether such injuries
22 are suffered by the criminal or another. (The
23 initial aggressor should be the one liable
24 for damages, not the intended victim who acts
25 in self-defense.) Concerns over the use of

1 excessive force can be addressed by excluding
2 'malicious use of excessive force in
3 retaliation' from the immunity.

4 Intervening Acts of Third Parties

5 Provision should be made for civil and
6 criminal immunity for lawful gun or
7 other property owner in regard to intervening
8 criminal acts of third party (i.e. the lawful
9 property owner should not be responsible for
10 subsequent criminal or other misuse of personal
11 property stolen, converted, embezzled, etc. from
12 the legitimate owner by the thief or others,
13 whether property is a gun, car, etc.)
14 Antiques and Black Powder Weapons (#6111(3); #6118)

15 Generally, antique weapons as defined by
16 statute are exempted from the Uniform Firearms
17 Act's provisions, #6118(A). There are two
18 exceptions to this general rule under #6118(B).
19 Where the antique is a concealed weapon under
20 #6106 the general rule exempting them is in-
21 applicable. And where the antique is 'suitable
22 for use', the provisions of #6105 still apply.

23 Under #6111(E) firearms manufactured
24 on or before 1898, those that use matchlock,
25 flintlock or percussion cap ignition systems

1 and replicas of the foregoing which do not
2 use rimfire or centerfire ammunition commonly
3 available in commercial trade are exempted
4 from the requirement of #6111 relating to their
5 transfer.

6 Firearms Safety and Law Brochures

7 Under #6125, the Pennsylvania State Police
8 are responsible for the preparation and dis-
9 tribution to each licensed firearms dealer of
10 a firearms safety brochure which outlines the
11 major provisions of the Uniform Firearms Act.
12 These brochures are not available according
13 to reports from numerous firearms dealers.

14 Return of Property and Forfeitures 15 (#6110.1; #6111.1(B)(4); and 42 Pa C.S. #6808 and #6802)

16 Under #6110.1 firearms confiscated from
17 minors are to be returned to their lawful
18 owners where they are stolen property; or
19 forfeited otherwise.

20 Under #6111(B)(4) law enforcement
21 agencies within the Commonwealth are mandated
22 to return firearms, rifles and shotguns to
23 their lawful owners and are subject to
24 liability for the attorney's fees and cost
25 where they fail to make reasonable efforts

1 to do so. Firearms are normally returned
2 by the courts but attorney fees are not
3 awarded. Also, under #6105(F)(4), law
4 enforcement agencies within Pennsylvania are
5 required to exercise reasonable care in regard
6 to any firearms in their care, custody and
7 possession. The form of the applicable
8 property receipt is specified. These provisions
9 are regularly ignored.

10 Under the Drug Forfeiture statutes,
11 42 Pa.C.S. #6801 and #6802, the courts recognize
12 two types of contraband. Contraband per se
13 and derivative contraband. Contraband per se
14 is prohibited by law, e.g. heroin or moonshine,
15 and is forfeited. Derivative contraband is
16 something which may be perfectly legal but
17 acquires a contraband status because of its
18 nexus to criminal activity.

19 There is a conflict between #6115's
20 provisions and the Drug and forfeiture statutes
21 as to where the demarcation of 'derivative'
22 status. The conflict is presently before the
23 courts.

24 **Judicial Review & Remedy; Rules of Construction**
25 **#6114**

Judicial Review and Remedy: De Novo

1 Judicial review must be available within the
2 whole field of fundamental constitutional rights,
3 especially in regard to the politically volatile
4 issue of the right to keep and bear arms;
5 transfers, dealer licensing, carry permits,
6 recovery of property, PICS. etc. Because the
7 issues involved herein are so controversial
8 and divisive, the Uniform Firearms Act and
9 the federal provisions so broad in scope and
10 application, and of necessity so intertwined;
11 because the Constitutional issues involved are
12 so basic and fundamental, and ultimately
13 because the potential for abuse and unintended
14 adverse consequences is so vast, the scope of
15 judicial review must be extensive enough and
16 the courts accessible enough to afford all
17 parties involved, especially the law-abiding
18 individual, suitable redress of grievances.
19 The courts must be allowed to fashion
20 appropriate remedies in the interests of
21 justice to effectuate the intent and purpose
22 of The Uniform Firearms Act.

23 Recovery of attorney fees is especially
24 important to insure access to judicial relief
25 and remedy in regard to PICS, carry permits,

1 and recovery of property; it can provide
2 the 'keys to the courthouse' for the indigent
3 and the common man or woman.

4 Rules of Construction:

5 All provisions, exemptions and defenses
6 under the Uniform Firearms Act should be broadly
7 construed to protect the fundamental
8 constitutional right to bear arms.

9 Clarify that there can be no constructive
10 possession of a firearm (18 Pa. C.S. #301(C);
11 that one person's disability cannot be expanded
12 to encompass others with whom the disabled
13 comes in contact by reason of family ties or
14 employment or social contact.

15 APPENDIX
16 Pennsylvania Uniform Firearms Act (topical index)

17 Title 18 Pennsylvania Consolidated Statutes,
18 Chapter 61
19 Sections:

20 6101 Title

21 6102 Definitions

22 6103 Crimes Committed with Firearms

23 6104 Evidence of Intent

24 6105 Persons Not to Possess, Use, Manufacture,
25 Control, Sell, or Transfer Firearms

6106 Firearms Not To Be Carried Without a License

6106.1 Carrying Loaded Weapons Other Than
Firearms

- 1 6107 Prohibited Conduct During Emergency
- 2 6108 Carrying Firearms on Public Streets or
Public Property in Philadelphia
- 3 6109 Licenses
- 4 6110 (Repealed)
- 5 6110.1 Possession of Firearm by Minor
- 6 6111 Sale or Transfer of Firearm
- 7 6111.1 Pennsylvania State Police
- 8 6111.2 Firearms Sales Surcharge.
- 9 6111.3 Firearms Instant Records Check Fund
- 10 6111.4 Registration of Firearms
- 11 6111.5 Rules and Regulations
- 12 6112 Retail Dealer Required to be Licensed
- 13 6113 Licensing of Dealers
- 14 6114 Judicial Review
- 15 6115 Loans On, or Lending, or Giving Firearms
Prohibited
- 16 6116 False Evidence of Identity
- 17 6117 Altering or Obliterating Marks of Identity
- 18 6118 Antique Firearms
- 19 6119 Violation Penalty
- 20 6120 Limitation On Municipal Regularion of
Firearms and Ammunition
- 21 6121 Certain Bullets Prohibited
- 22 6122 Proof of License and Exception
- 23 6123 Waiver of Disability and Pardon
- 24 6124 Administrative **Regulations**
- 25 6125 Distribution of Uniform Firearms Laws and
Firearms Safety Brochures

1 6126 Firearms Background Check Advisory Committee

2 6141 (Repealed)

3 6141.1 Purchase of Rifles and Shotguns Outside
4 the Commonwealth

5 6161 Carrying Explosives on Conveyances

6 6162 Shipping Explosives

7 CHAIRMAN GANNON: We are a little bit
8 behind schedule but I wanted to give the reporter
9 an opportunity to rest her fingers. We will have
10 Mr. Roger Miller of Sloandale Arms-Ammo and Mr.
11 Stanley Switzer and we will begin in about three
12 minutes.

13 (The hearing recessed at 12:27 p.m. and
14 reconvened at 12:35 p.m.)

15 CHAIRMAN GANNON: Call the meeting back to
16 order, please. Would everyone take their seats.
17 Our next witness is Mr. Roger Miller, owner of
18 Sloandale Arms and Ammo and Mr. Stanley Switzer.
19 Would you identify yourself?

20 MR. MILLER: Yes. My name is Roger Miller.

21 CHAIRMAN GANNON: Mr. Miller, is Mr. Switzer
22 here? Mr. Switzer. The microphone in front of you
23 are for television, the television cameras. We don't
24 have amplified mikes for the audience. So, when you
25 speak, you'll have to speak up so you can be heard
throughout the room and we are trying to get a

1 microphone for you soon. We'll give it to you.

2 In the meantime, a little housekeeping. I would like
3 to enter into the record a letter from Mr. John
4 Shaffer of Center Road in Venango, Pennsylvania who
5 could not be here today but asked that his testimony
6 be made part of the record and we'll do that right
7 now.

8 John A. Shaffer

9 20925 Center Road, Venango, PA 16440

10 To: Pennsylvania House of Representatives
11 Judiciary Committee, Rep. Thomas Gannon Chmn.

12 Topic: Existing Gun Laws and Regulation

13 Date: August 25, 1999

14 Dear Rep. Gannon,

15 Thank you for bringing your committee to
16 Northwestern Pennsylvania to solicit public
17 input on what we are led to believe is a volatile
18 public concern. However, I question holding
19 hearings on gun laws and regulations.

20 Do not fall into the mistaken belief
21 that it is your duty to find consensus here.
22 Do not take the democratic approach and attempt
23 to justify decisions about gun laws and
24 regulations based on testimonies. To do so is
25 not within your authority and is beyond your
affirmation.

1 Your authority is based in the
2 Constitution of the United States and this
3 Commonwealth. The exercise of that authority
4 is predicated on your affirmation of the oath
5 of office that (you) "will support, obey and
6 defend the Constitution of the United States
7 and The Constitution of this Commonwealth and
8 that (you) will discharge the duties of (your)
9 office with fidelity."

10 The Pennsylvania Constitution specifically
11 addresses The Right to Bear Arms in Article 1
12 Section 21 which is "recognized and UNALTERABLY
13 established" in the Declaration of Rights
14 as follows "The right of the citizens to bear
15 arms in defense of themselves and the State
16 shall not be questioned."

17 Any and every regulation that "questions"
18 citizens right to bear arms violates his
19 constitutional right which is unalterably
20 established. Every public official who takes
21 the oath of office affirms that they will
22 support obey and defend, with fidelity this
23 right.

24 Fidelity: Strict observance of
25 promises, duties, loyalty, adherence to fact.

1 Redefining terms, depending on court
2 precedence, creating special classes of "arms"
3 is not fidelity. The instructions are simple,
4 straightforward and direct. Why then these
5 hearings, when citizens' comments about
6 existing laws and regulations concerning the
7 right to bear arms has no bearing on your
8 responsibilities or authority as legislators
9 in this matter? You took an oath to fidelity
10 to the Constitution, not to consensus. This
11 is what makes us a republic and not a democracy.

12 If you were conducting inquiry into
13 whether the Constitution should be amended
14 then it could be argued that you are taking
15 the high road to deal with the authority in
16 question. However, this is not your stated
17 purpose for these hearings. If you are
18 considering laws or regulations which
19 question the citizen's right to bear arms
20 without amending the Constitution you are
21 in violation of your oath of office and
22 should be removed.

23 CHAIRMAN GANNON: With that, Mr.
24 Miller and Mr. ~~Switzer~~, you may proceed.
25 when you are ready.

1 MR. MILLER: Mr. Chairman and Board, Teresa,
2 I thank you for this opportunity to be part of this
3 hearing. Some of the testimony will probably co-
4 incide somewhat with the testimony that the State
5 Police gave because I already had this made up
6 before they had the testimony.

7 The first thing I'd like to talk --

8 CHAIRMAN GANNON: Mr. Switzer has a
9 microphone. Thank you. Sorry for the interruption.

10 MR. MILLER: We'll try that and see how
11 it works. The first thing that I would like to bring
12 up would be House Bill 564. To the people who are
13 not familiar with the 564, it's basically -- it
14 will exempt people from the instant background check
15 with the right to carry permit. Back when they used
16 to do the old part there, you'd have a right to
17 carry permit which is basically issued by your
18 sheriff of the county you reside in after an
19 extensive background check. Now, when I first got
20 my permit, it took about five weeks before I got it
21 and people would come in and they would hand me the
22 permit that they have and their driver's license and
23 we would fill out the proper paperwork and also
24 send in the proper paperwork to the State Police.
25 Now, a person with a right to carry permit would be

1 exempt from all of the background checks which in
2 turn would cut down on a lot of paperwork, unnecessary
3 time and complications. Now, I have a paper here,
4 the new Instant Background Check papers. It contains
5 somewhere in the neighborhood of fifty some entries
6 on here and the old type which would be this
7 (indicating) here, it's about half the information
8 but it's pertinent enough to the people and a sheriff
9 and everything and the State Police. That was the
10 old system. As the present background system, the
11 improvements that need to be made would be to make
12 it more of an instant check. Sometimes it takes too
13 long. It might take up to five minutes to 15 days.
14 Some people, the customers that come in, we would
15 call it in and they will in turn have to wait five
16 minutes or else I've had instances where they'd
17 call me back and said they need more time to do this,
18 which might possibly be two to three days and the
19 waiting time to pick up the gun, I believe, should be
20 made up to 15 days instead of the five. In an
21 instance there I had a customer come in. He went
22 through the Instant Background Check. A person
23 apparently had the same name and they asked me for
24 the address which that was an indication to me they
25 were having somewhat of a problem. Well, it took

1 approximately three days to get back to me and the
2 person, if you wish to go on vacation after that,
3 he would have to come back and go through the Instant
4 Background Check again because of the 5-day period.
5 Well, as far as I can see, that penalizes the person.
6 He's already been approved and he has to do it again.
7 And there is a lot of extra paperwork on there as
8 you can see and then also, if the person is exempt,
9 you have to fill out a surcharge remittance form
10 which there is another one that lists all of the
11 background checks and all of the numbers and the
12 numbers which in turn causes more undue paperwork
13 because they have the information basically anyhow.

14 And also sometimes I have been on the
15 phone as long as 15 to 20 minutes which definitely
16 ties up the phone lines waiting for a check. So,
17 the time frame, like I said, should be changed to
18 15 days.

19 And also the third part of my thing here,
20 it says follow the law and enforcement. I believe
21 that there's over 2,000 existing laws on the books
22 now and a lot of them is not being prosecuted. They
23 should have stiffer penalties and on juvenile crime,
24 I think 12-years-old, they should set a limit. A
25 person who is 12-years-old, they definitely know

1 what's right and what's wrong. They go in there and
2 they want to check different circumstances but I
3 don't believe the juvenile crimes are being punished
4 like they should. And also, you take and should
5 have in schools, they have sex education, they have
6 drivers education but they do not have any provisions
7 for safety education and I'm sure the school boards,
8 if they would like to do this, they have programs
9 with the NRA, which is called Betty Eagle. They
10 will come in and probably do this at no cost to the
11 school boards for the education of these children.
12 And you have your, like your ridiculous and con-
13 fusing laws, **lawsuits**.. They are trying to sue the
14 gun manufacturers, which I think is absolutely
15 wrong. There is more deaths killed by cars than
16 there are guns. Why don't they sue the car manu-
17 facturers? There is just too much of this frivolous
18 stuff that is going on, I believe, and I think here
19 they tried the law that a thousand feet in a school
20 district. Anybody has a firearm in that district or
21 within a thousand feet, they are an automatic
22 criminal. What if a person lives within that
23 thousand feet? They even tried, from what I under-
24 stand, they tried to have it school property, a
25 thousand feet from school property. The buses that

1 go by the person's house is school property. You
2 are automatically guilty. And also like the DUI
3 offenses. Now, I don't condone DUI by no means.
4 Take the case of Save the Friendly Town Drunk, his
5 wife picks on him. He goes to the bars. Comes home
6 and he gets arrested three different times. Okay.
7 He has to get rid of all his guns. He's not allowed
8 to purchase anymore guns. He goes to jail after the
9 third time. He gets rehabilitated and he wants to
10 take his grandson hunting. His grandson is 12-years-
11 old. He can't do it. DUI has nothing whatsoever to
12 do with gun control and I always said before, you
13 do the crime, you do the time and it's just basically
14 a lot of extra paperwork and I think HB564 is a real
15 good step in eliminating unnecessary time and money
16 because you have people tied up. Now, some of the
17 bigger people, the bigger gun dealers, they might
18 have five or six waiting in line. If they have the
19 permit which is from the sheriff, it's already had
20 a background check. It's exempt. It's always
21 worked in the past. They never really had any
22 problem with it because they went through an ex-
23 tensive background check to start with. And also,
24 one of the problems with the background check system
25 too is sometimes the computer is down. Sometimes I

1 had it as much as three hours and I have talked to
2 people. It's been down for eight hours. You're
3 tied up, you're done. There's nothing you can do.
4 And I haven't talked to one dealer or one person that
5 is against House Bill 564 and I think it should be
6 passed. It would save a lot of aggravation for
7 people. I just think it's a good thing for it to be
8 passed, through your committee or anybody else that
9 has anything to do with it.

10 CHAIRMAN GANNON: Thank you, Mr. Miller.
11 Mr. Switzer, Stanley Switzer.

12 MR. SWITZER: Mr. Chairman, members of the
13 Committee, I'd like to present and read it to you
14 a petition that was submitted to the Attorney General,
15 Commonwealth of Pennsylvania, Harrisburg in late
16 1998 and its related correspondence. References
17 made to the following: The Constitution of the
18 Commonwealth of Pennsylvania, Article 1, Declaration
19 of Rights, Section 1. Inherent rights of mankind.
20 All men are born equally free and independent, and
21 have certain inherent and indefeasible rights,
22 among which are those of enjoying and defending life
23 and liberty, of acquiring, possessing and protecting
24 property and reputation, and of pursuing their own
25 happiness.

1 Section 2. Political powers. "All power is
2 inherent in the people, and all free governments
3 are founded on their authority and instituted for
4 their peace, safety and happiness. For the
5 advancement of these ends they have at all
6 times an inalienable and indefeasible right to
7 alter, reform or abolish their government in
8 such manner as they may think proper."

9 Section 8. Security from searches and seizures.
10 "The people shall be secure in their persons,
11 houses, papers and possessions from unreasonable
12 searches and seizures, and no warrant to search
13 any place or to seize any person or things shall
14 issue without describing them as nearly as may
15 be, nor without probable cause, supported by
16 oath or affirmation subscribed to by the affiant."

17 Section 20. Right of petition. "The citizens
18 have a right in a peaceable manner to assemble
19 together for their common good, and to apply
20 to those invested with the powers of government
21 for redress of grievances or other proper
22 purposes, by petition, address or remonstrance."

23 Section 21. Right to bear arms. "The right of
24 the citizens to bear arms in defense of themselves
25 and the State shall not be questioned."

1 Section 25. Reservation of powers in people.

2 "To guard against transgressions of the high
3 powers which we have delegated, we declare
4 that everything in this article is excepted
5 out of the general powers of government and shall
6 forever remain inviolate."

7 Section 26. No discrimination by Commonwealth
8 and its political subdivisions. "Neither the
9 Commonwealth nor any political subdivision
10 thereof shall deny to any person the enjoyment
11 of any civil right, nor discriminate against any
12 person in the exercise of any civil right."

13 Article VI, Section 3. Oath of Office. "Senators,
14 Representatives and all judicial, State and
15 county officers shall, before entering on the
16 duties of their respective offices, take and
17 subscribe the following oath or affirmation
18 before a person authorized to administer oaths.

19 'I do solemnly swear (or affirm) that I will
20 support, obey and defend the Constitution of the
21 United States and the Constitution of this
22 Commonwealth and that I will discharge the duties
23 of my office with fidelity.' The oath or
24 affirmation shall be administered to a member
25 of the Senate or to a member of the House of

1 Representatives in the hall of the House to
2 which he shall have been elected. Any person
3 refusing to take the oath or affirmation shall
4 forfeit his office.

5 Article II, Section 15. Privileges of members.

6 "The members of the General Assembly shall in
7 all cases, except treason, felony, violation of
8 their oath of office, and breach or surety of
9 the peace, be privileged from arrest during their
10 attendance at the sessions of their respective
11 Houses and in going to and returning from the
12 same; and for any speech or debate in either
13 House they shall not be questioned in any other
14 place."

15 Based on the foregoing sections of the
16 Constitution of the Commonwealth of Pennsylvania,
17 it is hereby concluded that all members of the
18 General Assembly who voted for and Governor Ridge
19 who signed into law, Act 17, The Pennsylvania
20 Uniform Firearms Act of 1995 and the members who
21 have introduced House Bill 1484, Handgun Safety
22 Standards, have violated, not only their oath of
23 office, but several provisions of The
24 Constitution's Declaration of Rights.

25 Information contained in Article II,

1 Section 15, indicates that members of the
2 General Assembly can be arrested for violation
3 of their oath of office and in addition, anyone
4 may be arrested for violations of the
5 Constitution.

6 For too long the citizens of the Common-
7 wealth have endured laws that are unconstitutional.
8 Laws that have been created and passed by legis-
9 lators who have been either totally ignorant
10 of the provisions of the Constitution or by
11 their arrogance, or both, have disregarded the
12 rights of the citizens in their zeal to enact
13 useless legislation.

14 In view of the above stated grievance,
15 we demand the arrest of the legislators and
16 Governor who participated in the implementation
17 of Act 17 and the arrest of the legislators who
18 have crafted and presented H.B. 1484, Printers
19 No. 1776, for violating their oath of office
20 and for violating the stated Sections of
21 Article 1 of the Constitution of the Commonwealth
22 of Pennsylvania.

23 A signature sheet follows and I don't
24 know for sure how many thousand signatures were
25 collected and sent to the Attorney General's Office.

1 I personally sent in over 1200.

2 A response from the Attorney General's
3 Office by letter of January 6, 1999. It was written
4 to Mr. John Minich. Mr. Minich is the political
5 liasion committee chairman of our organization.

6 Dear Mr. Minich:

7 Reference is made to our previous
8 telephone conversations, as well as the
9 petitions submitted to the Office of the
10 Attorney General on behalf of your organization.
11 Most recently, I am in receipt of a petition
12 forwarded to me by Stanley R. Switzer, RR #1,
13 Box 263, Sligo, PA 16255-9405.

14 It is apparent from your correspondence
15 and our conversations that your organization
16 would like the Office of Attorney General to
17 "arrest all legislators and the Governor for
18 participating in the implementation of Act 17."
19 Moreover, you further would like the Office of
20 Attorney General to "arrest legislators who
21 have drafted and presented House Bill 1484,
22 Printer's Number 1776." It is your assertion
23 that by introducing the aforementioned legis-
24 lation, or voting for same, these members of
25 the General Assembly violated their oath of

1 office in that the provisions of said
2 legislation are unconstitutional.

3 While any variety of legal issues arise
4 with respect to your request, not the least
5 of which is a showing of criminal intent by
6 the aforementioned parties, it is quite obvious
7 that the first and foremost threshold
8 question is whether the legislation in
9 question is, in fact, unconstitutional. And
10 this, as I'm sure you are aware, can only clearly
11 be determined by the Supreme Court of
12 Pennsylvania -- who, as I understand it, have
13 not addressed this issue.

14 Additionally, I feel compelled to notify
15 you that, pursuant to the Commonwealth Attorney's
16 Act, 71 P.S. #732-201 et seq., it may very well
17 be the Office of Attorney General's Civil
18 Law Division which would litigate on behalf of
19 the statute's constitutionality should a
20 court ever address this issue.

21 I hope this information is of use to you.
22 While the Office of Attorney General is unable
23 to comply with your request, I nevertheless
24 thank you for contacting us.

25 Sincerely,

Deputy Attorney General
Criminal Prosecutions
Section

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A letter of January 27th to Mr. Cook.

Dear Mr. Cook:

Thank you for your letter of January 6, 1999 dealing with the previous Petition submitted to this Office of the Attorney General.

Your letter correctly points out that the first and foremost threshold questions is whether the Legislation in question is, in fact, unconstitutional. Your letter then proceeds to indicate that only the Supreme Court of Pennsylvania can determine such and that to your information the same has not been done. Additionally, your letter clearly specifies that the Office of Attorney General through the civil law division would have the responsibility to litigate the constitutionality of the Legislation in question.

Your letter failed to address the first and foremost threshold question of whether the Legislation in question is, in fact, unconstitutional. Please forward to me your written opinion on this first and foremost threshold question especially in light of the

1 fact this is the Office of the Attorney General's
2 responsibility to litigate the constitutionality
3 of the same. I will anxiously await your
4 written response.

5 Sincerely,

6 John Minich

7 April 6th, 1999, another letter to
8 Stephen Cook, Deputy Attorney General.

9 Dear Mr. Cook:

10 I wrote to you by letter dated January 27, 1999.

11 Enclosed is a copy of this letter.

12 It has now been two and one-half months and
13 I have received no response. As a concerned
14 taxpayer, I am requesting that you answer the
15 questions in my letter.

16 I am sending a copy to Representative McIlhattan
17 and Senator White's office to see if they
18 can help speed up this response.

19 Sincerely,

20 John Minich

21 cc: Fred McIlhattan
22 Mary Jo White

23 A letter dated April 14 from Senator
24 Mary Jo White's office.

25 Dear John:

1 Thank you for sending me a copy of your
2 letter to Deputy Attorney General Stephen Cook
3 regarding the constitutionality of certain
4 legislation. I appreciate your interest in
5 ensuring that the democratic process is pro-
6 tected and reflected in the legislation
7 considered by the General Assembly.

8 It is my understanding from your letter
9 that you were requesting a written, legal
10 opinion from the Attorney General regarding the
11 constitutionality of a law. Please understand
12 that the Attorney General is prohibited from
13 doing so by statute. The Commonwealth Attorneys
14 Act, which created the modern Office of Attorney
15 General, reserves the right to solicit legal
16 opinions from the Attorney General to only
17 the Governor or state government agency heads
18 (Section 204(a)(1), Act 164, 1980). This
19 advice includes the constitutionality of
20 legislation before the Governor for his review.

21 More notably, the Commonwealth Attorneys
22 Act places an affirmative responsibility on
23 the Attorney General to uphold and defend the
24 constitutionality of all statutes signed into
25 law so as to prevent their suspension or

1 abrogation (Section 204(a)(3), Act 164, 1980).
2 As the Attorney General's office indicated to
3 you previously, only the Pennsylvania Supreme
4 Court can render a constitutional opinion on
5 a statute that is legally binding to the
6 entire Commonwealth.

7 Thank you again for contacting me. I
8 hope this information is helpful to you. If
9 I may be of any further assistance regarding
10 any state-related matter, please do not
11 hesitate to contact my office.

12 Sincerely,

13 Mary Jo White
14 Senator, 21st District

15 cc: Stephen S. Cook, Deputy Attorney General
16 Stanley Switzer
17 Helen Gerlach

18 A letter dated July 29.

19 Dear Mr. Cook:

20 You had previously received phone calls from
21 me requesting that the Office of Attorney
22 General arrest all Legislators and the Governor
23 for participating in the implementation of
24 Act 17. Additionally, I have requested the
25 Office of the Attorney General to arrest
Legislators who have drafted and presented

1 House Bill 1484, Printer's No. 1776. It was
2 my assertion that any member introducing the
3 legislation or voting for the same violates
4 their oath of office because the said pro-
5 visions of the legislation are unconstitutional.
6 You wrote a reply dated January 6, 1999 indicating
7 that you were unable to comply with my request.
8 However, you never addressed the constitutionality
9 of this legislation.

10 I then wrote to you by letter dated January 27,
11 1999 pointing out that you had failed to indicate
12 whether or not the legislation was in fact
13 constitutional. I failed to receive any
14 acknowledgement of the receipt of my letter
15 or a response. I then again wrote to you by
16 letter dated April 6, 1999 again requesting
17 that you answer the questions in my letter
18 dated January 27, 1999. I also indicated that
19 I would be forwarding a copy of the same to
20 Representative McIlhattan and Senator White
21 for their review.

22 I have still not received a response from you.
23 Ironically, I did receive a response from
24 Senator White, who happens to be a lawyer,
25 detailing why it was impossible for you under

1 the Commonwealth Attorney's Act to render an
2 opinion on the constitutionality of the
3 legislation. I have reviewed those sections
4 of the law. Nowhere does it forbid the
5 Attorney General from rendering an opinion
6 to one of the taxpayers of Pennsylvania.
7 Additionally, contrary to the assertions of
8 Senator White, it does not prohibit you from
9 giving an opinion that a statute is unconstitution-
10 al because you have an affirmative responsibility
11 to uphold and defend the constitutionality
12 of all statutes. In essence, Senator White
13 would have me believe that you are forbidden
14 from indicating that a statute is unconstitutional
15 because you have the obligation to defend the
16 constitutionality of a statute. You obviously
17 are not going to defend the constitutionality
18 of a statute that you know is unconstitutional.
19 Based on the above, I am again requesting that
20 you issue to me a letter concerning my initial
21 requests and the constitutionality of the
22 statutes. I will await your response.

23 Sincerely,

24 John Minich

C: Senator Mary Jo White

25 Representative Fred McIlhattan

1 OTHER REFERENCES:

2 Court Decision

3 MURDOCK v. COMMONWEALTH OF PENNSYLVANIA (1942)
4 319 U.S. 105.

5 "A State may not impose a license, tax or fee
6 for the enjoyment of a Constitutionally
7 protected right."

8 LAW OF THE LAND

9 Sixteenth American Jurisprudence, Second Edition,
10 Section 256.

11 The general misconception is that any
12 statute passed by legislators bearing the
13 appearance of law constitutes the law of the
14 land. The U.S. Constitution is the supreme law
15 of the land, and any statute, to be valid, must
16 be in agreement. It is impossible for both
17 the Constitution and a law violating it to
18 be valid; one must prevail. This is succinctly
19 stated as follows:

20 The general rule is that an unconstitutional
21 statute, though having the form and name of
22 law, is in reality no law, but is wholly void,
23 and ineffective for any purpose; since un-
24 constitutionality dates from the time of its
25 enactment, and not merely from the date of

1 the decision so branding it. An unconstitutional
2 law, in legal contemplation, is as inoperative
3 as if it had never been passed. Such a statute
4 leaves the question that it purports to settle
5 just as it would be had the statute not been
6 enacted.

7 Since an unconstitutional law is void,
8 the general principles follow that it imposes
9 no duties, confers no rights, creates no
10 office, bestows no power or authority on anyone,
11 affords no protection, and justifies no act
12 performed under it....

13 A void act cannot be legally consistent
14 with a valid one. An unconstitutional law
15 cannot operate to supersede any existing valid
16 law. Indeed, insofar as a statute runs
17 counter to the fundamental law of the land,
18 it is superseded thereby.

19 No one is bound to obey an unconstitutional
20 law and no courts are bound to enforce it.

21 Thank you.

22 CHAIRMAN GANNON: Thank you Mr. Switzer.
23 Representative Manderino?

24 REPRESENTATIVE MANDERINO: No.

25 CHAIRMAN GANNON: Representative Josephs?

1 REPRESENTATIVE JOSEPHS: Mr. Miller, the
2 license to carry concealed weapons, is that renewable
3 or could I have gotten one of those 15 years ago
4 and still be holding the same license and nobody
5 ever looked at me to find out anything?

6 MR. MILLER: No. I can't remember the
7 exact date but I think it's been somewhere around
8 11 years ago, 1987, when they first started issuing
9 the right to carry permits. It's renewable every
10 five years.

11 REPRESENTATIVE JOSEPHS: What do people
12 look at when they renew it? Is it automatic or
13 what happens?

14 MR. MILLER: No, no. When I went to renew
15 my permit for the first time, they told me it would
16 take approximately the same amount of time to renew
17 it as I did to apply for it originally due to the
18 fact that they went through the background check but
19 not through the Instant Background Check but they
20 went and checked your records again and if they
21 found any discrepancy in that, they would not renew
22 your permit and the sheriff, he said to me one time,
23 he said, well, what if you commit a crime in between
24 that time and I said to him, well, I said the State
25 Police would notify you of any crime that I would

1 have committed and it would be your job to revoke
2 my permit. So, it's not just automatic that you get
3 renewed. When you go to reapply, they put you through
4 scrutiny again the same as they did when you first
5 applied for it.

6 REPRESENTATIVE JOSEPHS: Thank you. Thank
7 you, Mr. Chairman.

8 CHAIRMAN GANNON: Representative Forcier?

9 REPRESENTATIVE FORCIER: Chip, thank you
10 for your testimony and coming today. I'm very curious
11 to know how are you handling the Amish purchasers
12 of firearms as a dealer? The Pennsylvania State
13 Police testified today and we discussed that what
14 is happening with the form of identification is that
15 the federal law says there has to be a form of
16 identification and there is only one form and that
17 would be a valid driver's license with a photo.
18 Now, Pennsylvania law, I believe, says the same thing
19 but they will also accept some other form of identi-
20 fication. As a dealer, is there some other form of
21 identification or is there only going to be one
22 accepted form which is the valid photo driver's
23 license?

24 MR. MILLER: From what I understand,
25 Pennsylvania will accept any like utility bills or

1 anything, tax forms and stuff like that as identi-
2 fication but I haven't really -- I'm not real close
3 to the Amish population. So, I haven't had a chance
4 to deal with this but with the way Pennsylvania is
5 set up and my understanding is that they will accept
6 other forms of identification other than Photo ID's.

7 REPRESENTATIVE FORCIER: Good, because
8 that's been troubling me and I wasn't sure how the
9 dealers were handling that. As a follow-up on
10 Representative Joseph's question on carry permits, I
11 find it interesting that when the carry permit expires,
12 and this happened to me because one of the recent
13 laws was passed, if it expires and you do not renew
14 it and you do not realize that you have not renewed
15 it, you become a felon automatically. So, I thought,
16 oh my goodness. They do not send renewals out. So,
17 it's up to the individual to know when their permits
18 expire. So, I went out and pulled mine out and sure
19 enough, it was going to expire within a week or two.
20 So, I think individuals out there that have carry
21 permits have to realize they better know when they
22 expire because if they are not paying attention,
23 they are not going to get a renewal. One day after
24 it expires and you are carrying and you didn't
25 realize it expired, you will become a felon because

1 that is one of the last pieces of legislation that
2 was passed in Harrisburg.

3 MR. MILLER: Yes. I talked to our sheriff
4 about that and he said that he will try to work with
5 the people and put an advertisement in the papers,
6 in the media at different times of the year reminding
7 citizens to renew their permits at least 45 days
8 ahead of time before they run out, but I haven't seen
9 it in any papers, our paper, the bigger city papers
10 like Meadville and stuff like that. I have not seen
11 anything to that effect. So, it's wise for the
12 people to keep an eye on the time period of it
13 running out and take it on themselves like they
14 would do a driving thing, but they do send renewals
15 on that. The best thing for the person to do is
16 remember and keep track of that and do it on their
17 own.

18 REPRESENTATIVE FORCIER: Thank you, Chip.

19 CHAIRMAN GANNON: Just a question or two
20 about -- you are a dealer, correct?

21 MR. MILLER: Yes. I hold a federal firearms
22 license plus a state license to deal in firearms and
23 also a manufacturer of ammunition.

24 CHAIRMAN GANNON: In terms of your license
25 to be a dealer, how long is that good for?

1 MR. MILLER: Your state license and your
2 federal firearm's license is good for three years and
3 I just renewed mine the first of this month.

4 CHAIRMAN GANNON: That's the same process?
5 In other words, the renewal, it's like starting from
6 scratch; you have to go through the whole process?

7 MR. MILLER: Not exactly. They send you a
8 renewal form. They ask you quite a few questions but
9 when you apply for your FFL license, to start with
10 they put you under a microscope. I mean, you have
11 to send in fingerprints. You have to send in -- they
12 really go through your life and took me approximately
13 four and a half months to get my license and I went
14 through the sheriff's office to get my state license.

15 CHAIRMAN GANNON: Your dealer's license?

16 MR. MILLER: For Pennsylvania, yes.

17 CHAIRMAN GANNON: Now, can you get a state
18 license and not get a federal license?

19 MR. MILLER: When I got my federal firearm's
20 license, they told me I had to get a state license,
21 which I didn't know nothing about. I believe I went
22 through Teresa's office to help me on this matter
23 because at the time they did not tell me I needed a
24 state license. So, you fill out your proper paperwork
25 and send your fee and stuff into the sheriff's office

1 and he forwards it in there and that's basically,
2 I think, that's what they do -- what they do is
3 contact the ATF in correspondence with your FFL
4 license to get your state license.

5 CHAIRMAN GANNON: Okay. Now, with respect
6 to state license, do they do a background check on
7 that? How long does that take from the time you made
8 your application until the time you got your license?
9 What did they do?

10 MR. MILLER: As far as I know, they go
11 through a process. Somewhat like the background
12 check. They just don't hand them out to everybody.
13 Like I said, I think they get ahold of the ATF
14 and they correspond with them to find out, you know,
15 what the background of your character and everything
16 like that is.

17 CHAIRMAN GANNON: So, what you said is you
18 have to get the state license in order to get the
19 federal license or they won't give you a federal
20 license unless you have a state license?

21 MR. MILLER: No. I got my federal firearm's
22 license first and I found out later that I had to
23 have a state license.

24 CHAIRMAN GANNON: Okay. So, that's how you
25 got both?

1 MR. MILLER: Yes.

2 CHAIRMAN GANNON: What's the difference
3 between -- what can you do under a state license
4 that you can't do under a federal and vice versa?

5 MR. MILLER: Well, like some people come to
6 me and I try to get them a certain type of, not real
7 rare, but a certain type of firearm. They get it
8 off the Internet. They have these dealers like
9 throughout the whole country. See, the federal
10 firearm's license, you can deal basically in all 50
11 states and what this one person done, they contacted
12 these people out in Arizona through the Internet that
13 had a certain firearm that he wanted. Okay. What
14 they do in a case like that, they contact a dealer
15 out there in Arizona, send him the money, whatever
16 they want, and they in turn send the gun to me, a
17 licensed -- a federal licensed dealer. Then, the
18 people come to me and I put them through the back-
19 ground check and that's how they procure the gun from
20 out of state.

21 CHAIRMAN GANNON: That would be -- in other
22 words, if I wanted to purchase a weapon from somebody
23 in California, that is what I would have to do. I
24 would have to go to you and then you would get a
25 dealer in California?

1 MR. MILLER: You would contact the person
2 you are buying it from like the dealer in California.
3 They in turn would have to ship it to another
4 licensed dealer.

5 CHAIRMAN GANNON: Then, I would come down
6 and see you?

7 MR. MILLER: You would go to the dealer and
8 he would go through the Instant Background Check.
9 If this Bill 564, if you were to have a right to a
10 carry permit, you would be exempt from the Instant
11 Background Check. The Pennsylvania State Police and
12 the sheriff's office, they have all of the informa-
13 tion on the other part of the paperwork. Well, like
14 I said, the old type paperwork which still gives
15 them all of the information and this is what they've
16 done for years until the Instant Background Check,
17 the new one come about. It still gives you basically
18 the same information but a lot less paperwork and
19 it doesn't tie you up, like I say, the phone lines.
20 You cut down on man hours in the state through
21 Harrisburg. I believe myself it's a real good
22 proposal because it doesn't create anymore crime
23 whatsoever.

24 CHAIRMAN GANNON: Thank you very much for
25 attending the hearing today and presenting your

1 testimony, both you, Mr. Miller and Mr. Switzer.

2 Our next witness is Mr. Kim Stolfer, Vice
3 Chairman of the Legislative Committee, Allegheny
4 County Sportsmen's League. We are running behind and
5 we have a number of witnesses to go through. If you
6 have written testimony, what I would like you to do
7 is submit the testimony and we'll make that part of
8 the record and then your oral testimony, simply
9 summarize, if you could, your written testimony. We
10 are going to try to keep everybody as close to 25
11 minutes.

12 MR. STOLFER: Thank you, Mr. Chairman.

13 Members of the Committee, I am Kim Stolfer,
14 Vice Chairman of the Legislative Committee of
15 the Allegheny County Sportsmen's League. I
16 appreciate the opportunity to appear before
17 you today on Pennsylvania firearms laws.
18 The Allegheny County Sportsmen's League is a
19 non-profit, educational membership organization
20 representing sportsmen clubs and their members
21 in Allegheny County and the City of Pittsburgh.
22 Our county, as you may know, leads the nation
23 in the sale of hunting & fishing licenses. As
24 a result, we hold the honor and distinction of
25 being the voice of over 100,000 hunters and

1 gun owners. The combined membership of the
2 total of all of our member clubs makes the
3 Allegheny County Sportsmen's League one of the
4 largest countywide sportsmen organizations in
5 the state. We are larger than some statewide
6 groups.

7 Firearm laws are inseparably intertwined with
8 our Judicial System and Constitutional liberties.
9 Our search for answers has taken us not only
10 to libraries and government agencies but also
11 to hundreds of individual discussions with law
12 enforcement, academicians and average individuals
13 awash in the system. The documentation supplied
14 to the committee will, hopefully, demonstrate
15 the depth of our investigation that has been
16 pursued and serve as a source of information in
17 arriving at effective and responsible solutions.
18 As you are well aware, the signing of Special
19 Session House Bill 110 into law, now known as
20 Act 17, raised many concerns. In a memo, dated
21 October 18, 1995, to all House members
22 Representatives Phillips and Godshall correctly
23 pointed to the cause being -- "...problems
24 that affected your constituency were the result
25 of implementation by the responsible agency,

1 and others were a result of the language problems
2 within the Act." The memo went on to identify
3 corrective language that would address some
4 of the concerns. This package of amendments
5 would become Act 66 and demonstrated that the
6 legislature would act appropriately if educated
7 properly. Further welcome changes would come
8 in subsequent years as Act 5 and Act 70 that also
9 provided much needed improvements.

10 My testimony will focus on several sections
11 where problems remain within the Uniform
12 Firearms Act. Other speakers will cover
13 additional problem areas.

14 SALE OF FIREARMS - INSTANT CHECK

15 One of the serious legal issues is whether
16 persons licensed to carry concealed firearms or
17 law enforcement officers are required to undergo
18 a background check for the purchase of a firearm.
19 On September 3, 1998 two local gun dealers,
20 George Romanoff and Buddy Savage, met in
21 Harrisburg with Senator Fumo's representative,
22 Christopher Craig, and the State Police as a
23 follow-up to their informational mailing to
24 the entire legislature in regard to Implementation,
25 operational and systemic difficulties with the

1 Pennsylvania Instant Check System. Since this
2 meeting we have reviewed the law, with legal
3 counsel, and our position in this matter is
4 that current PA law, Title 18, does not
5 require, and specifically exempts, permit holders
6 or law enforcement officers to submit to the
7 background check system. Since these individuals
8 have already been investigated, it is a needless
9 waste of resources and unnecessary complication
10 to the purchase of a firearm for them to suffer
11 the additional delays and fees incurred.

12 Pennsylvania law reads in pertinent part:

13 #6111. Sale or Transfer of Firearms.

14 (a) Time and manner of delivery. --

15 (1) Except as provided in paragraph (2),
16 no seller shall deliver a firearm to the
17 purchaser or transferee thereof until 48 hours
18 shall have elapsed from the time of the applica-
19 tion for the purchase thereof, and, when
20 delivered, the firearm shall be securely wrapped
21 and shall be unloaded.

22 (2) Thirty days after publication in
23 Pennsylvania Bulletin that the Instantaneous
24 Criminal History Records Check System has been
25 established in accordance with the Brady Handgun

1 Violence Prevention Act, no seller shall
2 deliver a firearm to the purchaser thereof
3 until the provisions of this section have been
4 satisfied, and, when delivered, the firearm
5 shall be securely wrapped and shall be unloaded.

6 (f) APPLICATION OF SECTION.

7 (3) The provisions contained in subsection
8 (a) shall not apply to any law enforcement
9 officer whose current identification as a law
10 enforcement officer shall be construed as a
11 valid license to carry a firearm or any person
12 who possesses a valid license to carry a firearm
13 under section 6109, relating to licenses.
14 Since Pennsylvania has elected to become a
15 Point of Contact State, the connection with
16 Federal Law was also examined to determine the
17 procedures required to fulfill these regulatory
18 requirements. It is important to note that
19 concealed carry licensees must have their back-
20 ground check conducted through the National
21 Instant Check System. It is our understanding
22 that this procedural review is now done auto-
23 matically upon renewal or for all new applications
24 by the appropriate authorities through the
25 PA State Police and the National Instant Check

1 System. The Federal Regulations, as published
2 in the Federal Register, read in pertinent part:

3 Permits

4 The Brady law provides that a licensee
5 is not required to initiate a NICS
6 check where the purchaser presents a
7 permit that allows the purchaser to
8 possess or acquire a firearm. The
9 proposed regulations clarify that this
10 exception includes permits to carry con-
11 cealed weapons as well as permits
12 specifically authorizing the purchase
13 of a firearm.

14 NICS Checks in Conjunction With The
15 Issuance of Permits

16 The law provides that the permit must
17 have been issued not more than 5 years
18 earlier by the State in which the transfer
19 is to take place. Furthermore, the permit
20 is a valid alternative under the Brady
21 law only if the State provides that such
22 a permit is to be issued only after an
23 authorized government official has
24 verified that the information available
25 to such official does not indicate that

1 possession of a firearm by such other
2 person would be in violation of law.

3 Further, the FBI web page states, under NICS facts,
4 that Persons holding firearms permits which
5 qualify as alternatives under the permanent pro-
6 vision of the Brady Act will not be required to
7 undergo a NICS check.

8 Therefore, it is clear that Federal Law recog-
9 nizes CCW permits as valid instruments that
10 fulfill the Instant Check requirements as does
11 Pennsylvania Law. No additional legislative
12 authority appears necessary. The legislature
13 needs to instruct the PA State Police on the
14 proper, lawful interpretation, intent and
15 application of the law.

16 Privacy is another issue that is currently under
17 assault by the operational regulations of the
18 FBI and the PA State Police in the day to day
19 processing of Instant Checks on firearms pur-
20 chases. The procedures currently in place, for
21 both agencies, violate Federal law. Current
22 Federal Law states:

23 Title 18 #922(t)(2) provides:

24 If the receipt of a firearm would not violate
25 section 922(g) or (n) or state law, the

1 system shall --

2 (C) destroy all records of the system with
3 respect to the call, other than the
4 identifying number and the date of the
5 number was assigned, and all records of
6 the system relating to the person or
7 the transfer.

8 In the documents supplied to this committee is a
9 copy of a PA State Police letter that seeks
10 replacement copies of record of sale forms that
11 were inadvertently destroyed. Since these were
12 for approved sales, why are they needed? Further,
13 during the course of the meeting between the
14 gun dealers and state officials Corporal Pica
15 stated that the PA State Police are retaining
16 the record of sale forms for approved sales,
17 a clear violation of both State and Federal Law.
18 Since Pennsylvania is a Point of Contact state
19 and is enforcing both PA and Federal Law,
20 there does not appear to be ANY wiggle room for
21 bureaucratic interpretation. The obligations
22 of a Point of Contact state is clearly defined
23 as follows in the Federal Regulations:

24 28 CFR #25.9(d) states:

25 The following records of state and local law

1 enforcement units serving as POCs will be
2 subject to the Brady Act's requirements for
3 destruction:

4 (1) All inquiry and response messages,
5 regardless of media, relating to the
6 initiation and result of a check of the NICS
7 that allows a transfer that are not part of
8 a record system created and maintained pursuant
9 to independent state law regarding firearms
10 transactions; and

11 (2) All other records relating to the person
12 or the transfer created as a result of a NICS
13 check that are not part of a record system
14 created and maintained pursuant to independent
15 state law regarding firearms transactions.

16 Federal Law is even more specific in regard to the
17 possibility of an agency acquiring these records
18 for the creation of a registration list of gun
19 owners and reads as follows:

20 PROHIBITION RELATING TO ESTABLISHMENT OF
21 REGISTRATION SYSTEMS WITH RESPECT TO FIREARMS.
22 -- No department, agency, officer, or employee
of the United States may --

23 (1) require that any record or portion thereof
24 generated by the system established under this
25 section be recorded or transferred to a facility

1 owned, managed, or controlled by the United
2 States or any State or political subdivision
3 thereof; or

4 (2) use the system established under this
5 section to establish any system for the
6 registration of firearms, firearm owners, or
7 firearm transactions, except with respect to
8 persons, prohibited by section 922(g) or
9 Title 18, United States Code.

10 #621, Title VI of Public Law 105-277, signed by
11 the President into law on October 22, 1998,
12 provides:

13 Brady Handgun National Instant Check System
14 None of the funds appropriated pursuant to
15 this Act or any other provision of law may
16 be used for ... (2) any system to implement
17 18 U.S.C. 922(t) that does not require and
18 result in destruction of any identifying
19 information submitted by or on behalf of any
20 person who has been determined not to be
21 prohibited from owning a firearm.

22 It further provides that, if receipt of a firearm
23 would not violate the law, NICS shall assign a
24 unique identification number to the transfer,
25 provide it to the licensee, and destroy all

1 records of the system with respect to the call
2 other than the identifying number and the date
3 the number was assigned and all records of the
4 system relating to the person or the transfer.
5 This law prohibits funds from being used for
6 NICS to the extent that it does not require and
7 result in the destruction of any identifying
8 information submitted by or on behalf of any
9 person who has been determined not to be pro-
10 hibited from owning a firearm. These provisions
11 contain no grace period authorizing any
12 government agency, employee of said agency or
13 individual acting on its behalf to disregard
14 the information destruction requirement, which is
15 applicable to the agency and the firearm sale
16 process, once the ID number is provided to the
17 licensee.

18 It is clear and unambiguous language that defines
19 the actions and responsibilities of the agency's
20 overseeing the sale of firearms. What remains
21 to be seen is how accountable they are to it.

22 CONCEAL CARRY PERMITS and the PENNSYLVANIA STATE
23 POLICE

24 The issuance of Pennsylvania permits for the
25 carrying of a concealed firearm has been, up

1 until recently, the domain of the County Sheriff.
2 PA Title 18 Section 6109 is very clear on the
3 procedures and is as follows:

4 #6109. Licenses.

5 (d) Sheriff to conduct investigation --

6 The sheriff to whom the application is made
7 shall investigate the applicant's record of
8 criminal convictions, shall investigate whether
9 or not the applicant is under indictment
10 for or has ever been convicted of a crime
11 punishable by imprisonment exceeding one year,
12 shall investigate whether the applicant's
13 character and reputation are such that the
14 applicant will not be likely to act in a manner
15 dangerous to public safety and shall investigate
16 whether the applicant would be precluded from
17 receiving a license under subsection (e)(1)
18 or Section 6105(h) relating to persons not to
19 possess, use, manufacture, control, sell or
20 transfer firearms and shall conduct a criminal
21 background, juvenile delinquency or mental
22 health record check following the procedures
23 set forth in Section 6111, relating to fire-
24 arm ownership.

25 The Pennsylvania State Police have demanded that

1 no concealed carry permit be issued without
2 being cleared through them first. This is not
3 provided for in the law. Since the Sheriff is most
4 familiar with his community, it is in the best
5 interests of all Pennsylvanians that this process
6 be maintained. In addition, the PA State Police
7 are, once again, ignoring the law that requires
8 the denying agency to provide the reason for a
9 denial of a Conceal.Carry license. Accompanying
10 documents show the procedure that occurs as a
11 result of a denial by the Pennsylvania State Police
12 law reads in pertinent part:

13 #6109. Licenses

14 (g) Grant or denial of license. -- Upon the
15 receipt of an application for a license to
16 carry a firearm, the sheriff shall, within 45
17 days, issue or refuse to issue a license on
18 the basis of the investigation under subsection
19 (d) and the accuracy of the information con-
20 tained in the application. If the sheriff
21 refuses to issue a license, the sheriff shall
22 notify the applicant in writing of the refusal
23 and the specific reasons. The notice shall be
24 sent by certified mail to the applicant at the
25 address set forth in the application.

1 Documents supplied to this committee show that
2 1.) The Pennsylvania State Police has entered
3 into the field of Concealed Carry permit issuance
4 without legislative authority and 2.) The
5 Pennsylvania State Police violates Section 6109(g)
6 when an individual is denied, the specific reason
7 is not given. This situation can turn a law-
8 abiding citizen's life upside down and is contrary
9 to the thoughts espoused by Representatives Godshall
10 and Phillips in their memo to the legislature,
11 The Commonwealth's gun owners, gun dealers and
12 law enforcement officers deserve clarity in
13 direction and intent of the Uniform Firearms Act.
14 Once again, we ask that the legislature correct
15 this illegal usurpation of powers from our county
16 sheriff's.

17 Numerous additional concerns encompass the
18 following:

- 19 * The continued use of a mental health evalu-
20 ation, Section 302, as a discriminating
21 factor for the purchase of a firearm with no
22 provision for expungement. The BATF has
23 determined that the Pennsylvania Uniform
24 Firearms Act, Section 6105 and Mental Health
25 Procedures Act, Section 302, evaluation does

1 NOT disqualify an individual from owning
2 firearms under Federal Law due to the lack of
3 due process protection. In fact, the legis-
4 lature intended for the loss of Rights to
5 occur ONLY after an adjudication process
6 according to Representatives Godshall and
7 Phillips in their memo, A provision to ensure
8 that the prohibition of possession of firearms
9 for adjudications of mental incompetence does
10 not over-reach its intended purpose.

11 Another problem we see is the retention of
12 records with no mandate to correct obvious
13 errors in official records and requiring law-
14 abiding citizens to carry the denial-reversal
15 letter with them whenever they seek the pur-
16 chase of another firearm.

17 * The inability of citizens to review their
18 official records for completeness and accuracy
19 is another problem.

20 * The Utilization of Social Security numbers,
21 as part of the purchase process, is a vio-
22 lation of the Federal Privacy Act as is the
23 back door transfer of this data to federal
24 agencies.

25 * The State Police failure to adhere to the

1 regulations governing firearms sales and their
2 continuing efforts to rewrite these same regu-
3 lations on a day to day basis.

4 * Inadequate and unsafe guidelines for dealer
5 notification of the issuance of an immediate
6 intercept to local police for a potentially
7 illegal gun buyer while the individual is in
8 the store and the potential for violence is
9 unknown.

10 * Requesting that dealers try to recover guns
11 from individuals that have been wrongfully
12 approved by PICS.

13 * Erratic operation of the PICS system, with
14 long down times, sudden disconnects and over-
15 all inaccessibility by dealers at the busiest
16 times. Pennsylvania Section 6111.1(B)(2)
17 states that ...In the event of electronic
18 failure, scheduled computer downtime
19 or similar event beyond the control of
20 the Pennsylvania State Police, the
21 State Police shall immediately notify
22 the requesting licensee of the reason
23 for and estimated length of the delay.

24 This is not a procedure the Pennsylvania
25 State Police is following for they do not in-
form dealers of the reason for the delay nor the

1 estimated length of the delay.

2 * Firearms checks switched to operators far
3 in excess of State Police claims, according
4 to certain dealers, 60-80% of the time.

5 FIREARM VIOLENCE AND ENFORCEMENT

6 The purpose of these hearings is to examine the
7 status and extent of current firearm law. In-
8 cluded within this review must be an examination
9 of the enforcement of these very same laws.
10 Accountability for one's actions, as well as
11 swift and sure punishment for the use or attempted
12 use of lethal force, is an essential part of the
13 restoration of safety and security to our schools
14 and neighborhoods. Many remember the tragedy of
15 congressional candidate Mary Beth Hacke, whose
16 baby boy was killed by a recidivist criminal out
17 on bond. The killer had an extensive criminal
18 record that encompassed numerous violations of
19 the Uniform Firearms Act that were plea-bargained
20 away. In a strange dichotomy, Ryan Hacke's
21 killer, who had not received the five-year manda-
22 tory sentence for his earlier crimes, again side-
23 stepped the imposition of the five-year mandatory
24 sentence.

25 The Pennsylvania Commission on Sentencing reviewed

1 the enforcement of the five-year mandatory
2 sentence for the use of a gun in a crime and
3 their report states that, out of 50,000 con-
4 victions, this penalty was used only 312 times.
5 Additionally, the Courts have a tendency to
6 impose this sentence concurrently, rather than
7 consecutively, further negating any potential
8 benefit to our society.

9 Philadelphia continues to be the crime and
10 murder capitol of Pennsylvania and with good
11 reason: The system seems more concerned with
12 moving people through the system than actually
13 imposing the will of the people on those with most
14 violent of intentions. An article in the
15 Philadelphia Inquirer on May 10, 1998 synopsis
16 the problem by examining how firearm cases are
17 handled in the local court system. The following
18 quotes are excerpts from the main article and
19 reveal a great deal about Philadelphia's flourish-
20 ing crime rate:

21 * The two young men were a couple of nobodies
22 among the 1,500 adults charged last year
23 with illegally carrying guns in Philadelphia
24 -- and among the estimated 80 percent of
25 those who never saw jail time.

1 * Now, a review of his tangled history in the
2 Philadelphia courts reveals a system that
3 routinely tosses out firearms cases -- a
4 system where Davis' arrest was, in the words
5 of Judge Smith, "just a gun case."

6 * More serious gun cases are failing at the
7 same or even higher rates. More than half of
8 all gun assaults and gun robberies last year
9 resulted in trial acquittals, dropped charges
10 or judicial dismissals.

11 * Factor in this: FBI figures show that police
12 make arrests in only 20 percent of reported
13 city gun robberies in the first place.

14 * District Attorney Lynne Abraham blamed the
15 lost cases in state Supreme Court rulings
16 that restrict police, victims who are apathet-
17 ic or afraid to testify, and judges who
18 leave their common sense out of the courtroom.
19 "The problem," she said, "is that the system
20 doesn't work very well."

21 * You've got to get more serious," Brady said
22 of gun cases. "Volume wise, you get in an
23 awful spot. There's so darn many, it becomes
24 garden variety. You lose the importance
25 that the gun represents. How deadly it can
be."

1 Mayor Rendell has testified to the need for greater
2 regulation of firearms and yet the facts dictate
3 a different and troubling picture of official
4 indifference and bureaucratic bungling the likes
5 of which would land the average citizen in jail
6 for violations of the negligence laws. Has the
7 system become an accessory to the violence in
8 our society? At this juncture in time the
9 Pennsylvania Legislature is the only body that has
10 the power to effectively intervene in order that
11 the law of the people will be followed and obeyed.
12 Many will, and have, denounced the effectiveness of
13 strictly enforcing laws. Yet, every trial of this
14 concept has produced remarkable results. Project
15 Exile in Richmond, Virginia is another example
16 where a committed effort reduced gun homicides
17 from 140 last year to 34 so far this year. In
18 stark contrast is Pennsylvania where there were,
19 according to the Bureau of Alcohol, Tobacco and
20 Firearms, NO prosecutions for the violation of
21 Federal gun laws nor were there any recommendations
22 for prosecutions for juveniles with a gun for an
23 adult giving a gun to a youth, Section 922,x,1 or
24 Section 922,x,2. This includes Philadelphia where
25 two-thirds of Pennsylvania gun crime is committed.
The thrust of our argument is exactly what the

1 Boston and Richmond efforts have demonstrated --
2 criminals will avoid crime that results in stiff
3 unyielding punishment.

4 In 1994, Allegheny County District Attorney Bob
5 Colville spoke of a 1,192% increase in firearms
6 offenses by juveniles in Allegheny County. How
7 many of those juveniles caught with a gun in 1994
8 and shown compassion by the courts for some extran-
9 eous reason are today's murderers? How many of the
10 victims should be alive today if the courts had
11 enforced the violated laws? Recently, the
12 Pennsylvania Department of Education examined
13 school violence and weapons incidents with the
14 following conclusions. Schools in Pike County are
15 safest, with no firearms, knife or other weapons
16 violations reported for the 1997-98 school year.
17 Schools in Philadelphia County experienced the
18 greatest number of violent incidents, reporting
19 27 firearms violations, 786 incidents involving
20 knives and 400 other weapons violations. According
21 to the study, there were 5.64 weapons for every
22 1,000 students in Philadelphia schools.
23 Here's how five selected counties in Western
24 Pennsylvania stacked up:
25 WESTMORELAND: 4 firearm violations; 64 knife

1 violations;

2 FAYETTE: 7 firearm violations; 25 knife violations;

3 6 other weapons violations;

4 INDIANA: 1 firearm violation; five knife violat-

5 ions; 2 other weapons violations.

6 WASHINGTON: 0 firearm violations; 38 knife

7 violations; 85 other weapons violations;

8 ALLEGHENY: 18 firearm violations; 262 knife

9 violations; 242 other weapons violations.

10 Title 18, Section 912 defines a weapon as includ-

11 ing but not limited to any knife, cutting

12 instrument, cutting tool, nun-chuck stick, firearm,

13 shotgun, rife and any other tool, instrument or

14 implement capable of inflicting serious bodily

15 injury. A violation of this section of law

16 requires the imposition of a misdemeanor of the

17 first degree. How many of the above violations

18 were appropriately adjudicated according to the

19 law? In Boston, Massachusetts a police officer

20 and a probation officer put together a program,

21 in 1995, involving local, state and federal law

22 enforcement agencies and community groups that

23 would reduce the previous years juvenile homicide

24 rate of 47 to ZERO for two and one-half years.

25 How did this miracle happen? Aggressive prose-

1 cution, stiff punishment and elimination of plea
2 bargaining for violations of gun laws was in-
3 stituted, as well as adding flexibility to law
4 enforcement operations and publicizing this new
5 no-nonsense attitude through the media.

6 Many academicians have expressed deep concern about
7 the role of tabloid journalism in turning these
8 criminals into celebrities by focusing on these
9 events. I discussed these issues with Sociology
10 Professor Colleen Hyden of Washington & Jefferson
11 College. Professor Hyden, who also has a B.A. in
12 psychology, stressed the risks of allowing the
13 media to immortalize these troubled kids and how
14 the process actually empowers them to terrorize
15 their community and even the nation. In addition,
16 other kids who feel that no one cares watch these
17 tragedies unfold and seize upon this as a way of
18 striking out at people in general. According to
19 Professor Hyden, these troubled kids, and other
20 who copycat them, can derive great satisfaction
21 from watching news segment after news segment of
22 crying classmates and parents, funerals and
23 politicians and experts entering into national
24 discussion and debate over the tragedy he/she
25 has single-handedly caused. Dr. Hyden is extremely

1 critical of the entertainment industry and their
2 glorification of violence. Numerous studies have
3 shown that young minds are very easily influenced
4 and guided by violent messages within this venue.
5 Another factor for consideration is psychotropic
6 drugs and their role as aggravating factors in
7 violent situations. These drugs, such as Prozac
8 or Ritalin, can have an extreme effect on personal-
9 ity, especially when administered all too liberally
10 by the medical professions who are charged with
11 their oversight.

12 Law enforcement officers tell us that much more
13 can be done to combat violent crime. The key,
14 they tell us, lies not in sophisticated policies
15 but in a return to the basics. Prioritize the
16 Judicial system to focus on the small percentage,
17 6%, of violent, recidivist criminals that commit
18 the bulk, 70%, of violent crime. Robert E. Sanders,
19 former Assistant Director of Criminal Investi-
20 gations for the BATF has told us that gun control
21 is the ONLY solution to violent crime. Mr.
22 Sanders came to Pennsylvania, at our invitation,
23 on March 19, 1996 to convey that message in a
24 meeting with the Southwest Pennsylvania Legislative
25 Caucus. Retiring Pittsburgh BATF enforcement

1 supervisor John McIlwain has given us his view
2 that not one juvenile has been prosecuted for
3 Federal gun law violations locally, not even
4 gang members caught using sawed-off shotguns in
5 armed robberies. What message are we sending our
6 children?

7 What we have learned thus far is that laws and
8 blanket policies do not stop crime and that
9 police cannot be everywhere. Flexibility and
10 adaptability by law enforcement and redefining
11 the focus to the individuals responsible will yield
12 better results than brutish government efforts
13 at attenuating all citizens' rights. Sadly,
14 nothing can change the past. We can, however,
15 learn from it and build upon that which works and
16 discard that which doesn't.

17 The legislature has a golden opportunity to correct
18 the remaining flaws in the Uniform Firearms Act
19 and at the same time address the enforcement issues,
20 which will benefit ALL Pennsylvanians.

21 Thank you.

22 (Read by Mr. Stolfer as follows:)

23 PENNSYLVANIA STATE POLICE
24 Department Headquarters
1800 Elmerton Avenue
25 Harrisburg, PA 17110

October 20, 1997

Dear Dealer:

Due to an error in processing, Records of Sale for firearms were accidentally destroyed.

Please send us duplicate copies of the Record of Sale for the weapons listed on the attached sheet.

A self-addressed, stamped envelope is enclosed for your convenience. Your cooperation in this matter is greatly appreciated.

If we may be of assistance in this matter, please contact Mark Gregor, Supervisor, Firearm Records Unit (717) 783-5504 or direct correspondence to me at the above address.

Sincerely,

Captain Ernest R. Spittler
Director, Records and
Identification Division

CHAIRMAN GANNON: Thank you, Mr. Stolfer.

(The following was submitted for inclusion in the record:)

RECORD OF SALE OF FIREARMS

DEALER #1768

	<u>NAME</u>	<u>DATE</u>	<u>SERIAL #</u>
1			
2	_____	09-20-1996	_____
3		09-28-1996	
4		09-28-1996	
5		09-28-1996	
6		09-28-1996	
7		09-28-1996	
8		09-28-1996	
9		09-28-1996	
10		09-28-1996	
11		09-30-1996	
12		09-30-1996	
13		09-30-1996	
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PENNSYLVANIA STATE POLICE
DEPARTMENT HEADQUARTERS
1800 ELMERTON AVENUE
HARRISBURG, PA 17110

March 31, 1999

FILE NUMBER: 99-03-0678

JAMES THOMAS
3237 PIEDMONT AVE.
PITTSBURGH, PA 15216

Dear Mr. Thomas:

We are in receipt of your challenge request form SP4-197, which you submitted in response to a Pennsylvania Instant Check System (PICS) denial for a purchase/transfer of a firearm dated 3/30/99.

Please be advised that your denial is reversed. Your challenge has resulted in a finding that you are not prohibited from a purchase/transfer of a firearm. A copy of this decision will not be sent to the Dealer where the denial

1 originated.

2 If you decide to pursue the purchase/transfer of
3 a firearm, which was the basis of the denial,
4 present a copy of this letter to the Dealer.

5 The Dealer will be required to submit your
6 information through the PICS system for an approval
7 number to complete the transaction. The Dealer
8 should advise the operator that the applicant
9 has a denial reverse letter and should request
10 to speak with a PICS supervisor. Please keep
11 this letter and be ready to provide it to a
12 Dealer, upon request, to minimize delays when
13 processing future transactions.

14 This finding is based on information available
15 to the Pennsylvania State Police at the time
16 your challenge was received. Any subsequent
17 records entered into any one of the state or
18 federal databases, which would prohibit the
19 sale/transfer of a firearm, or the issuance of a
20 license to carry a firearm, will result in a
21 denial for future transactions.

22 Questions about the PICS Denial and Challenge
23 Process may be directed to Firearm Records
24 Unit-PICS Legal Section at 717-705-4540.

25 Sincerely,
Captain John K. Thierwechter
Director, Records and Identification Division

1 ACE SPORTING GOODS, INC.
724-222-5470

2 ACCOUNTS OF PICS PROBLEM SITUATIONS

3 Customer #28012

4 Customer made handgun purchases on 7/13/98
5 and 7/23/98. On both occasions his instant
6 check was switched to an operator. After 15 min.
7 on first occasion and 25 min. on second occasion,
8 he was approved.

9 Customer #28102

10 Customer was in our store approximately
11 11 AM. Customer's instant check was switched
12 to an operator. Was placed on pending status.
13 Customer left store and his wife called back
14 45 min. later saying her husband was very dis-
15 tressed because he could not think of anything
16 that would have caused the pending. Although I
17 tried to explain that it could be a clerical error
18 or computer problem, he was still concerned. I was
19 notified at 3:45 PM that day that his check had
20 been approved but I was told his approval number
21 was only good until midnight that day. I objected
22 that this would be a major inconvenience to the
23 customer as he lived 35 miles from the store and
24 had already made one trip that day. Now PICS was
25 telling me if he did not return that day the

1 approval would be voided. The operator trans-
2 ferred my call to a supervisor and I was told the
3 same thing. Again, I strongly objected about
4 this procedure and my call was transferred to
5 Major Hackenberry. Major Hackenberry was very
6 helpful and did explain that I did not have
7 to take the approval number at the time of initial
8 approval notification. I could tell the operator
9 to place it in the pending file and pick up the
10 number when the customer arrived to take
11 possession of his firearm. I was satisfied with
12 this response, but I was on the telephone for
13 almost an hour trying to resolve this issue.
14 The customer did come in that evening and take
15 receipt of the firearm.

16 Customer #28108

17 PICS call was initiated on 7/2/98. Instant
18 Check was switched to operator due to problems
19 with automated system. Customer was placed on
20 pending status. On 7/9/98 (the fifth business day)
21 at approximately 1 PM, I called to check on the
22 status of this check as I had been told PICS would
23 get back to us within 5 business days with a
24 result. I was told by the PICS operator that it
25 was still in research, but "by law, if we did not

1 hear from PICS by the end of the day, we could
2 proceed with the sale and if a problem was dis-
3 covered it would be the State Police's responsibility
4 to retrieve the gun." I was leery of this response
5 so I called Corporal Albert J. Picca's office to
6 verify this response and spoke with Diane. I in-
7 formed her of the operator's response and she
8 vehemently told me the PICS operator had not given
9 me the above response. I told Diane that the
10 above response was the very reason I was calling
11 her office for verification. Diane informed me
12 that if I did not hear from PICS by the end of the
13 day, I was to consider this sale an "automatic
14 denial". When I asked her for an explanation as
15 to how they could deny a person without reasonable
16 cause, she asked for our store and telephone
17 number. I was on the telephone with this situation
18 for approximately 45 minutes. Shortly thereafter,
19 I received a call from Trooper Petrone. I explain-
20 ed the situation of Customer #28108, the response
21 I was given by the operator, and my discussion with
22 Diane at Corporal Picca's office. Trooper Petrone
23 proved to be very helpful. On the operator's
24 incorrect response, he told me, "some of the
25 operators were misinterpreting the law and

1 procedures." He also informed me there was a
2 backlog in the research department because they
3 were not receiving timely information from instate
4 and/or out-of-state systems. Trooper Petrone
5 personally investigated this pending check and
6 called me back at 4:30 PM that afternoon with the
7 approval. He did tell me he had hunted for this
8 fellow's pending paperwork for over an hour only
9 to discover that the paperwork had never made it
10 to the research department. He had printed a new
11 set of information and discovered that this
12 customer had nothing in his file that should have
13 caused the pending status. Essentially, this
14 customer's instant check fell through the cracks.
15 If I had not been persistent, this customer would
16 have been an "automatic denial" because of cleri-
17 cal inefficiency.

18 Customer #28119

19 PICS call initiated on 7/9/98. Was switched
20 to an operator. The operator told our salesman
21 that there was a "hit" on the customer. When our
22 salesman inquired as to what would cause a "hit",
23 the operator informed him that people with "common
24 names" such as John Smith would always have an
25 automatic "hit". After being on the telephone for

1 20 minutes, this customer was approved.

2 Customer #28126 Mr. Richard E. Crimm

3 PICS call initiated on 7/11/98. Check was
4 switched to an operator and subsequently placed
5 on pending status. Customer had a valid License
6 to Carry Firearms that was issued 4/1/97. On
7 7/17/98 (the fifth business day), I contacted
8 PICS at approximately 1 PM to get a status report
9 on this pending. I was told it was still in
10 research and PICS would contact me by the end of
11 the day. At 2:30 PM, PICS called and the check
12 was denied. Customer #28126 sent in a Denial
13 Challenge form. On 8/7/98, he received a denial
14 reversal with no explanation as to why he was
15 denied in the first place. He was quite upset by
16 this whole incident and had contacted his
17 legislators about his situation.

18 Customer #28145

19 PICS call initiated on 7/24/98. Call was
20 switched to an operator. Our salesman was asked
21 for the customer's information from the Application/
22 Record of Sale form. The operator asked to repeat
23 the customer's race and our salesman informed him
24 the customer was white. While processing the
25 check, the operator asked our salesman 4 different

1 times if the customer was of Hispanic origin after
2 he was already been told the customer was white.
3 In fact, just by the customer's name, it is quite
4 obvious that this customer is of Italian origin
5 and could nowhere near pass for Hispanic.

6 Customer #28055 Mr. Gary Salada

7 Customer #28055 was issued his first License
8 to Carry Firearms permit through the Westmoreland
9 County Sheriff's Department on August 6, 1998.
10 On August 7, 1998, this customer decided to purchase
11 a handgun at our store. The PICS call was
12 initiated and was transferred to an operator. The
13 check was put on pending status 8/7/98. Both
14 myself and the customer were baffled as to why he
15 was issued a "Carry" permit the day before and
16 then given a pending status the next day. I con-
17 tacted PICS on 8/13/98 (the fifth business day) to
18 inquire on the status of this check. I was told
19 PICS would get back to me. PICS called 20 minutes
20 later and denied this customer. The customer on
21 his own checked with the Westmoreland County
22 Sheriff's office to be sure his permit appli-
23 cation was sent through the PICS system and the
24 sheriff's office confirmed that this was the case.
25 He also contacted his local legislator and they,

1 in turn, contacted the State Police PICS liaison.
2 The response received was that he might have been
3 denied because some numbers may have been reversed
4 somewhere in his file. He sent in the Denial
5 Challenge form and is waiting for a reply.
6 Customer #28175

7 PICS call initiated on 8/4/98. Was switched
8 to operator and placed on a pending status. On
9 Monday 8/10/98 at 8:30 AM, PICS notified us that
10 the check had been approved. This was the 4th
11 business day from initiation of the check. I in-
12 formed the operator that I would not accept the
13 approval number until I contacted the customer and
14 found out when he would be available to come in
15 and accept possession of the firearm. The
16 operator said that the customer had to come in that
17 day or the approval would be voided. When I pro-
18 tested this, he put a supervisor on the telephone.
19 The supervisor proceeded to tell me very adamantly
20 that they would only hold the approval until the
21 end of the fifth business day or the customer
22 would have to be run through another instant
23 check. Again, I protested and she insisted that
24 they would only hold the approval through the
25 next day. The customer was able to come in on

1 Monday afternoon and we called and accepted his
2 approval number. On Wednesday morning (the sixth
3 business day), another operator called wanting to
4 give me an approval number on this same instant
5 check. I informed this operator I had already
6 gotten the number two days before. When I question-
7 ed him on 1) why we were getting another call on a
8 check that was already completed and approval
9 number accepted and 2) why we were being informed
10 on the sixth business day when the previous super-
11 visor had insisted the approval number had to be
12 picked up by the fifth business day or it was null
13 and void, my call was directed to Supervisor Chris.
14 I explained the situation to Chris and he was
15 very helpful. He reconfirmed what Major Hackenberry
16 had told me previously about having the approval
17 numbers held in the pending file until the
18 customer was able to come in to our store to
19 complete the purchase. I suggested that he needs
20 to clarify this policy with his staff since there
21 seemed to be some confusion concerning the correct
22 procedure in handling the approved pending checks.
23 I also sent a letter to Corporal Picca's office on
24 8/13/98 asking for written clarification of the
25 procedure specifics concerning the pending checks

1 that are subsequently approved at a later date.

2 I have not received a reply as of yet.

3 Customer #28207

4 PICS call initiated on 8/13/98. Our sales-
5 man entered the customer's driver's license
6 number as necessary and the customer's last name,
7 social security number and birth date, was told
8 back to our salesman by the PICS computer and he
9 confirmed them as correct. The call was then
10 switched to an operator. Our salesman repeated
11 the customer's information from the Application/
12 Record of Sale form to the operator. The operator
13 placed our salesman on hold and subsequently
14 disconnected him. The operator called back
15 placed our salesman on hold and disconnected again.
16 The operator called back again and asked to re-
17 confirm the customer's birth date. The PICS system
18 computer was showing an incorrect birth date for
19 this customer. The operator put our salesman on
20 hold again and then, proceeded to put this check
21 on a pending status. On 8/17/98, PICS notified us
22 that this customer had been denied. The customer
23 has filed a Denial Challenge form and is waiting
24 for a reply from PICS.

25 Customer #28222

1 PICS call initiated on 8/17/98. Switched to
2 an operator and placed on pending status. At
3 9:30 AM Wednesday 8/19/98, PICS called and approved
4 this pending sale. I informed the operator I
5 could not accept the approval number until I
6 contacted the customer and to please hold it in the
7 pending file. At 4:30 PM, I received another call
8 from a different PICS operator informing me of the
9 approval on this same customer. It appears the
10 morning operator never noted the initial phone
11 call on the paperwork. On Thursday 8/20/98 at
12 9 AM, we received another call from still another
13 PICS operator trying to give us an approval number
14 on this same check. She said someone had placed
15 a note on this check to contact us again Thursday.
16 We informed her to again place it in the pending
17 file and we would accept the approval number when
18 the customer was able to come back to our store to
19 complete the sale.

20 7/1/98

21 On the initial day of the PICS interface to
22 the FBI NCIC computer was locked out due to an
23 interface test run by the NCIC computer system.
24 This occurred at approximately 11 AM that day
25 and the PICS system was unable to complete any

1 background checks until approximately 5 PM that
2 day. All instant checks that were initiated dur-
3 ing that time were given a pending status and it
4 took several days to get this backlog of pending
5 checks cleared.

6 7/14/98

7 At 6:20 PM, our salesman attempted to have
8 an instant check run. His check was switched to
9 an operator and he was placed on hold for 25 min-
10 utes, only to have the operator come back and inform
11 him that the FBI database was down therefore the
12 check could not be completed. Checks were
13 attempted on three more customers during that
14 time period and had the same results. All four
15 customers left the store. At 7:10 PM, an operator
16 from PICS call back and requested information on
17 the first customer as to whether he was in the
18 armed forces or not.
19 Our salesman told the operator the customer had
20 left the store so he could not supply that
21 information. The operator rather indignantly
22 told our salesman it was our responsibility to
23 obtain that information within 5 days or they
24 could not complete the background check. At
25 8:00 PM that same evening, our salesman receives

1 another call from PICS on this same customer and
2 is given an approval on the sale.

3 7/16/98

4 PICS delays several background checks as they
5 claim the FBI NCIC databases are not operating
6 again. These delays ranged from 2 to 6 hours and
7 some were not completed until the next day.

8 8/18/98

9 Attempted to run a PICS check. When we
10 called the PICS telephone number, we received a
11 recorded message that said, "Due to problems
12 with the Federal or State databases, the
13 Pennsylvania Instant Check System is unable to
14 process your call. Please try again later."
15 After several attempts over the next half-hour, we
16 were finally able to get through to an operator
17 and have the check completed. Time involved to
18 complete this check was approximately 1 hour.

19 8/19/98

20 Attempted to run a PICS check at 6:45 PM.
21 When we called the PICS telephone number, we
22 received the same recorded message as above.
23 After several redials over the next 10 minutes of
24 the PICS telephone number, we were able to get
25 through to an operator and complete the check.

1 Time involved in completing this check was 25
2 minutes.

3 MORE DEALER PROBLEMS WITH PICS

- 4 1. When the system was first instituted and put
5 on line, the dealers were told that 80% of
6 PICS checks would go through the automated
7 system and 20% would be switched to an operator
8 for processing. These figures ran true until
9 November 30, 1998 when the Federal NICS
10 system became operational. At present, my
11 in-house figures show 75% of our calls are
12 going to operators and 25% go through the
13 automated system. When a PICS check is switch-
14 ed to an operator, the phone call can last
15 anywhere from 15 minutes to 45 minutes.
16 This not only costs us employee time but in-
17 conveniences the customer. In one two-week
18 period at the end of January, the time
19 employees spent being on the telephone with an
20 operator at PICS amounted to 35 hours. In
21 essence, we paid one week's salary to on
22 hold on the telephone.
- 23 2. Due to system failures, we are losing sales.
24 On Saturday, March 13, 1999, the system was
25 down almost the entire day. We were only able

1 to get 5 sales approved the entire day. We
2 either were getting a busy signal or the record-
3 ing about "Due to problems with the State or
4 Federal databases, etc". When we finally did
5 get an operator later in the afternoon, she
6 stated that there were 6 gun shows across the
7 state and the system was not able to handle
8 the influx of calls. We have been told this
9 system was state of the art and would handle
10 1,000,000 plus calls per year. Due to the
11 non-functioning of the system that day, we
12 lost sales in excess of \$6,000. On Tuesday,
13 March 14, 1999, the system was down again for
14 the entire morning 9 AM to 12:30 PM, therefore
15 we could not do any business in firearms sales.
16 On Friday, March 19, 1999, the system had
17 problems again after 12:00 PM. The system
18 would let us enter the customer's info. It
19 would tell us we had been charged \$2.00,
20 would begin processing the check and then tell
21 us to hold while it switched us to an operator.
22 While we were on hold, the system was hanging
23 up on us. This happened for several calls, so
24 I attempted to call the administrative number
25 for the PICS system to find out why the PICS

1 system was cutting us off. I got an answering
2 machine that wanted me to leave my name and
3 number. Since I needed immediate assistance
4 with this problem, I called Ron Pleska,
5 attorney for Major Richard Morris, legislative
6 liaison for the PA State Police. Ron was kind
7 enough to listen my problem and he made a
8 personal trip down to PICS to find out what
9 the problem was. It seems it is with the PA
10 system and not one single call was going
11 through. He was kind enough to arrange for
12 a PICS operator to call us every 1/2 hour for
13 the rest of the day to help us complete our
14 PICS checks. On Monday, March 22, 1999, the
15 system was down from 11 AM until 2 PM. On
16 Tuesday, March 23, 1999, it was down again
17 from 2 PM until 3 PM. On Friday, March 26,
18 1999, the same problem as the previous Friday
19 with the system disconnecting us recurred
20 even though we had been told the problem had
21 been corrected.
22 Again, the system was down for several hours
23 because of this problem. As you can see,
24 this causes much frustration among our employees
25 and customers. It seems the system has been

1 seriously deteriorating since the third week
2 of January 1999. We have been told it is NICS
3 fault and PICS fault, one blaming the other.
4 This system has been operational for 9 months
5 now and the problems that are occurring are not
6 only old on-going problems but new situations
7 as well. There really is no excuse for these
8 types of major problems after this period of
9 time.

10 3. The efficiency level of the PICS system is
11 totally unacceptable. First, if the system is
12 down we get a recording: "Due to problems
13 with the State or Federal databases, we cannot
14 process your instant check." We are unable to
15 ascertain how long the system will be down,
16 because we cannot reach a live human voice.
17 We have continually complained about this
18 process since PICS was initiated. I have in-
19 quired as to what the computer operators do
20 when the system is down and have been told they
21 essentially do nothing until the system comes
22 back up. I have spoken with Captain
23 Theirwechter concerning this and suggested that
24 when the system goes down the calls should be
25 routed to the operators. They should hand

1 record the info necessary for the check and
2 complete the check when the system is again
3 operational. Even if this takes a few days
4 to get caught up, at least I can inform the
5 customer when we will have an answer. At
6 present, I can't even tell the customer if or
7 when the system will be operational, again
8 causing major frustration.

9 4. PICS administrators are making administrative
10 and procedural changes every day, but the
11 firearms dealers are not being informed of
12 these changes. We find out about a procedure
13 change when informed by a PICS operator. I
14 have requested several times for a written
15 procedure manual and other information, but
16 have never received one. The firearms dealers
17 are the persons who are ground zero in this
18 system and we are not being kept informed of
19 changes we need to make when using PICS. Two
20 primary examples are when the PICS adminis-
21 trators changed the Pending research period
22 for 5 days to 15 days and when we began long-
23 arm checks. On the first, I called on the
24 sixth day to check on a pending check and was
25 informed by the operator that the time frame

1 had been extended to 15 days. We never
2 received any notification of this change in
3 writing or otherwise. On the longarms check,
4 I contacted Corporal Albert J. Picca's office
5 on November 23, 1998, one week before the
6 startup concerning what type of procedure we
7 were to follow as far as paperwork, etc. I
8 was told I would be receiving something in
9 the mail shortly. When I had not received
10 anything by the following Monday, I called
11 Picca's office again about how we were to
12 perform the checks beginning November 30.
13 The secretary very curtly told me that I
14 should receive my info by the Monday initiation
15 date. Now the state offices were to be closed
16 from Thursday, Thanksgiving Day until Monday
17 AM for the holiday. I have 15 employees that
18 need to be informed of these changes and I
19 would be unable to contact anyone at Harrisburg
20 if I had any questions due to the holiday. I
21 again contacted Mr. Ron Pleska in Major
22 Morris's office and informed him of the
23 problem. Mr. Pleska sent the packet by
24 overnight mail. The information had a great
25 explanation on how we were to fill out the new

1 tally forms for sending in our surcharge
2 monies, but had absolutely no explanation as
3 to how we were to process longarms. (See
4 enclosed PA State Police letter dated 11/19/98.
5 The other area dealers did not receive these
6 packets until Tuesday, December 1, 1998 even
7 though this letter was dated 11/19/98.

8 5. Customers that receive pendings and/or denials
9 must jump through hoops to obtain their fire-
10 arms. Such was the case of Mr. David
11 Freeland, a customer of ours who has given
12 us permission to use his case as an example.
13 Mr. Freeland decided to purchase a firearm
14 on December 3, 1998. His PICS call was trans-
15 ferred to an operator and after 25 minutes, we
16 were informed that his check was being placed
17 on Pending status. On December 20, 1998,
18 PICS informed us that his purchase was denied.
19 This was 17 days from the initiation of his
20 check. Mr. Freeland picked up the PA State
21 Police Denial Challenge form the next day and
22 immediately filled out the necessary information
23 and mailed it by certified mail to Harrisburg.
24 The State Police received his paperwork on
25 12/31/1998, but he did not receive any response

1 until 1/31/99 even though the denial confirma-
2 tion letter was dated 1/23/1999. On the Denial
3 Challenge form, it states that the customer is
4 to receive a response from PICS within 5 days
5 of receipt of the challenge form. Again, this
6 was an additional 31 days bringing the total
7 to 48 days. The denial was based on an arrest
8 in 1992 for recklessly endangering -M2 and
9 disorderly conduct.

10 As you can see from the enclosed copies of
11 this situation, someone has handwritten
12 "Domestic related?" on the denial. Mr.
13 Frelander responded immediately to this
14 correspondence on February 1, 1999 and sent
15 another follow-up letter on February 8, 1999
16 with a copy of the dismissed charges from
17 the magistrate. On February 11, 1999, a denial
18 reversal letter was issued from PICS, but as
19 you can see by the envelope, the letter was not
20 postmarked until 2/18/99. Mr. Frelander
21 received this letter on 2/20/99. From start
22 to finish, it took Mr. Frelander 79 days to
23 receive permission to purchase his firearm.
24 When Mr. Frelander arrived at our store to
25 pick up his purchase, he had forgotten to

1 bring his denial reversal letter. We initiated
2 the PICS call to pick up his approval number,
3 but was told by the operator if we did not have
4 his denial reversal letter in hand PICS would
5 not give his approval number. The operator
6 stated that she could not look up Mr.
7 Freelander's record without the file number
8 from the reversal letter. At that point, our
9 store manager asked to speak with a PICS super-
10 visor. The supervisor, Cindy Fisher, reiterat-
11 ed the same thing; that it was PICS policy.
12 Upon pressing her, Cindy said she would
13 manually look for Mr. Freelander's record, but
14 it might take up to 2 hours. Obviously, Mr.
15 Freelander was very perturbed about having
16 to wait again for something he was already
17 approved for. Mr. Freelander called his home
18 and had the denial reversal letter faxed to
19 our store. When it arrived, the file number
20 on the letter was listed as N/A or not
21 acceptable. Our store manager called PICS
22 back and asked for Cindy Fisher. He was told
23 she was unavailable, but the operator would
24 have Cindy call us back.
25 After 30 minutes, our store manager called

1 PICS again. He was able to reach Cindy and
2 after informing her that the file number was
3 N/A, she stated that now she would be able
4 to locate the necessary record and we received
5 the approval number. This process of obtaining
6 the approval number took another 1-1/2 hours
7 of our time and Mr. Freeland's time.
8 Needless to say, Mr. Freeland contacted his
9 local legislator to complain about the treat-
10 ment he received from PICS throughout this
11 enduring process.

12 6. Another customer of ours, Mr. James Yordan,
13 a St. Clairsville, Ohio resident has had
14 numerous problems with clearing the PICS
15 system. On his initial firearms purchase in
16 December 1998, Mr. Yordan was placed on
17 pending. Two hours later, after Mr. Yordan
18 had left the store, PICS called and approved
19 his sale necessitating another return trip for
20 Mr. Yordan. Mr. Yordan has purchased 3 long-
21 arms since the initiation of longarm checks.
22 He has been placed on pending each time and
23 then approximately 2-3 hours later, PICS
24 calls us and informs us he has been approved.
25 On his last purchase, we even informed the

1 operator that he had been placed on pending
2 previously and then approved, but PICS still
3 placed his check on pending status. This
4 customer has approximately a 70-mile drive
5 one way to our store. Because of the PICS
6 pendings, this gentleman has had to make 3 extra
7 trips totaling 420 miles to purchase his
8 firearms.

- 9 7. If a customer is placed on pending, PICS has
10 15 business days within which to research on
11 the customers record before rendering a
12 decision. If the customer is approved, the
13 customer only has 5 days (not business days)
14 within which to complete his purchase using
15 that approval number. If PICS calls us on a
16 Monday afternoon, the customer only has until
17 close of business on Friday to pick up his
18 purchase. As we are closed on Sundays at this
19 time of year, if the approval is given in the
20 latter part of the week, the customer loses a
21 day if the 5 day period includes a Sunday.

22
23 PENNSYLVANIA STATE POLICE
24 DEPARTMENT HEADQUARTERS
1800 Elmerton Avenue
25 Harrisburg, PA 17110

1 May 6, 1999

File Number: 99-05-02443

2
3 ROBERT C. KUBIAK
4 200 SANTA FE DR
5 BETHEL PARK, PA 15102

6 Dear Mr. Kubiak:

7 We are in receipt of your challenge request form
8 SP4-197, which you submitted in response to a
9 Pennsylvania Instant Check System (PICS) denial
10 for a license to carry a firearm dated May 5, 1999.
11 Please be advised that your denial is reversed.
12 Your challenge has resulted in a finding that
13 you are not prohibited from obtaining a license
14 to carry a firearm. A copy of this decision will
15 not be sent to the sheriff where the denial
16 originated.

17 If you decide to pursue the license to carry, which
18 was the basis of the denial, present a copy of
19 this letter to the sheriff. The sheriff will be
20 required to submit your information through the
21 PICS system for an approval number to complete
22 the transaction. The sheriff should advise the
23 operator that the applicant has a denial reverse
24 letter and should request to speak with the PICS
25 supervisor. Please keep this letter and be ready
to provide it to a sheriff, upon request, to

1 minimize delays when processing future transactions.
2 This finding is based on information available
3 to the Pennsylvania State Police at the time your
4 challenge was received. Any subsequent records
5 entered into any one of the state or federal
6 databases, which would prohibit the sale/transfer
7 of a firearm, or the issuance of a license to
8 carry a firearm, will result in a denial for
9 future transactions.

10 Questions about the PICS Denial and Challenge
11 Process may be directed to Firearm Records
12 Unit-PICS Legal Section at 717-705-4540.

13 Sincerely,

14 Captain John K. Thierwechter
15 Director, Records and Identification Division

16
17 May 20, 1999

18 Captain John K. Thierwechter
19 Director, Records and Identification Division
20 Pennsylvania State Police
21 Department Headquarters
22 1800 Elmerton Avenue
23 Harrisburg, PA 17110

24 Dear Captain Thierwechter:

25 I received a denial for a license to carry a
firearm from the Sheriff's Office of Allegheny
County dated 4-15-99. This denial had been issued

1 YOUR APPLICATION FOR A LICENSE TO CARRY FIREARMS
2 HAS BEEN

3 *** DENIED ***

4 *** BY THE ***

5 PENNSYLVANIA STATE POLICE
6 FOR AN UNDISCLOSED REASON

7
8 Attached to this letter you will find a
9 Pennsylvania State Police Request for Denial
10 Information. Please complete and mail the
11 form to the proper authority.

12 DO NOT CALL THIS OFFICE. WE CAN BE OF NO HELP TO
13 YOU.

14 If you are subsequently cleared by the State
15 Police, please return to this office to complete
16 your application for a License to Carry Firearms.

17 Sincerely,

18 DENNIS SKOSNIK,
19 CHIEF DEPUTY SHERIFF
20 COUNTY OF ALLEGHENY

COMMONWEALTH OF PENNSYLVANIA
THE PENNSYLVANIA COMMISSION ON SENTENCING

Mr. Kim Stolfer
706 Dutch Hill Road
McDonald, PA 15057

June 9, 1993

I am responding to your request for information on crimes involving firearms. You have asked for a wide variety of information. Some of your requests we can respond to, but others we cannot address. First, you should be aware that, as the Commission on Sentencing, we receive reports of sentences handed down in the Courts of Common Pleas. We have no information on arrests. Also, the latest year of complete data we have is 1991. We cannot fill requests for data from 1992 until later in the summer. I will report statewide sentencing data; we do not receive enough cases on any of these items to make it worthwhile to break it down by county.

You asked for information on the 5-year mandatory, the Gun Control Act, and firearms violations.

I will provide what I can on the mandatory and firearms violations. Pennsylvania does not have a Gun Control Act. I don't know if you are referring to a federal law, but I cannot help you with regard to any Gun Control Act.

1 In Paragraph 2 of your letter you asked for
2 two items:

- 3 1. The number of times the 5-year mandatory
4 sentence law could have been used versus the
5 number of times it was actually imposed.
6 This is not possible to determine from our
7 data, but I will tell you what we can determine.
8 According to the reports we received for 1991
9 sentences, the 5-year firearm mandatory was
10 applied 312 times (see Table 1 below). We
11 also have information on 112 additional
12 sentences for crimes covered by this mandatory
13 in which a deadly weapon enhancement (for a
14 firearm) was applied. It seems that the
15 mandatory could have been applied for these
16 offenses. What we cannot tell is whether the
17 mandatory was applied and was not reported to
18 us, or whether it was not applied. We have no
19 other information on whether or not a firearm
20 was possessed during a particular crime and
21 therefore cannot assess whether the mandatory
22 could have been applied.
23 As the following table shows, for most of
24 the sentences in which the weapon enhancement
25 was applied and not the mandatory, the sentence

length is still close to what is called for by the mandatory. So, actually applying the mandatory may not make much difference.

TABLE 1

OFFENSE	<u>Mandatory Reported</u>		<u>Mandatory Not Reported</u>	
	Number	Min Sent	Number	Min Sent
Murder III	62	89.1	20	80.1
Volun.Manslaught.	20	60.0	4	51.0
Agg. Assault	77	70.3	15	64.7
Kidnapping	1	84.0	2	114.0
Rape	1	70.0	3	78.0
I.D.S.I.	2	66.0	1	60.0
Robbery	149	65.5	67	58.9
TOTAL	312	71.1	112	58.9

2. Were those sentences to run concurrently or consecutively, and was the original sentence reduced in any manner?

There is no reason to expect that the sentences should run concurrently or consecutively to anything. If the offense is one covered by the mandatory, then the sentence for the offense becomes the mandatory (at least 5 years), and need not be concurrent or consecutive to

1 anything else. The 5 year mandatory is not
2 "tacked on" to the sentence for the current
3 offense.

4 "Initial sentences" are not reduced (except
5 in extremely rare instances when cases are
6 sent back for resentencing by the Superior
7 Court). The offender is sentenced based
8 upon the offense of conviction. You may want
9 to know if initial "charges" are reduced --
10 which can often occur. Unfortunately, we have
11 no way of knowing the initial charges; we
12 receive reports only on the offense of
13 conviction.

14 In Paragraph 3 of your letter, you list 4 specific
15 requests for information:

16 1. The number of felons arrested for firearms
17 violations in 1991 & 1992.

18 We have no information on arrests.

19 2. The number of felons sentenced for firearms
20 violations in 1991 & 1992.

21 We received 603 sentences in 1991 for violation
22 of the Uniform Firearms Act. Of these, 54
23 were for Title 18, Section 6105 (Former convict
24 not to own a firearm, etc).

25 3. The number of times the sentence was not

1 imposed as the result of a plea bargain.

2 It is not quite clear to me exactly what you
3 mean with this question. There is always a
4 sentence imposed with a particular conviction.
5 It may be a probation sentence or the sentence
6 may have been influenced by a plea bargain,
7 but there is always a sentence imposed. For
8 the 54 former convicts mentioned in #2, above,
9 98% of those convictions were the result of a
10 plea, rather than a trial. But, you should be
11 aware that the vast majority of convictions
12 in the state (91% of all sentences reported
13 in 1991) were the result of pleas, rather than
14 going to trial.

15 4. The number of drug arrests and accompanying
16 firearms violations involving repeat offenders
17 and sentences imposed.

18 In almost 50,000 cases reported to us in 1991,
19 I find only 107 in which there is a
20 conviction for a drug offense and also a
21 conviction for either a violation of the
22 Uniform Firearms Act or a weapon enhancement
23 indicating a firearm was possessed in the
24 crime.

25 I hope this answers your questions satisfactorily.

Sincerely,

Carol A. Zeiss
Research Associate

MEMORANDUM

1
2 TO: JD
3 FROM: DS
4 RE: CRIMES COMMITTED WITH FIREARMS
5 DATE: SEPTEMBER 20, 1994

6 Per your request for information on the
7 enforcement of the mandatory 5 year penalty
8 for crimes committed with a firearm, the
9 following is a summary.

10 42 Pa. C.S.A. sec 9712(a) provides that
11 any person convicted in PA of one of the
12 following:

13 murder of the 3rd degree,
14 voluntary manslaughter,
15 rape,
16 involuntary deviate sexual intercourse,
17 robbery,
18 aggravated assault,
19 kidnapping, or
20 the attempt of any of these crimes
21 shall be sentenced to a minumum of 5 years
22 is in addition to the sentence provided for the
23 crime committed.

24 Committing a crime with a firearm is not
25 a crime in and of itself. It is an element
that is required to "tack on" the minimum

1 5 year penalty. Because it is not a
2 crime in and of itself, if an offender plea
3 bargains his original offense down to where
4 it is no longer an offense listed above, the
5 5-year minimum sentence disappears.

6 Additionally, in the letter from the
7 Commission on Sentencing they state that
8 they cannot determine which offenders were
9 sentenced under 42 Pa. C.S.A. sec 9712 and
10 which were sentenced under 18 Pa. C.S.A.
11 sec 6103 provides that a person who commits
12 or attempts to commit a crime of violence with
13 a firearm may be sentenced in addition to the
14 punishment provided for the crime.

15 These two sections seem to be competing
16 with each other, one being discretionary
17 with no set penalty and the other mandatory
18 with a 5 year penalty. However, both are
19 effected by the plea bargains that eliminate
20 the original punishable offense.

21 The letter from the Commission on
22 Sentencing also states that the "5 year
23 mandatory is not 'tacked on' to the sentence
24 for the current offense." The language in 42
25 Pa. C.S.A. sec 9712 states that the 5 year

1 sentence shall be imposed "notwithstanding
2 any other provision of this title or other
3 statute to the contrary."

4 Suggestions to correct the problem:

5 1. Expand the language in 42 Pa. C.S.A.
6 sec. 9712 to include any crime committed
7 with a gun. (This would prevent the 5 year
8 penalty from being dropped where the current
9 crime is plea bargained down).

10 2. Amend 42 Pa. C.S.A. sec. 9712 clarifying
11 that the 5 year penalty shall be in addition
12 to the penalty imposed for the crime committed.

13

14

SHOOTING BLANKS IN GUN CASES

15

Two charges. One dismissal. One parole.

16

One death at the Palestra.

17

By Craig R. McCoy
INQUIRER STAFF WRITER

18

19

It was business as usual one day last December
20 when Municipal Court Judge William A. Brady
21 threw out the gun case against the young man
22 from North Philadelphia with the "Outlaw" tatoo.
23 In an impatient few minutes at the beginning
24 of the court day, Brady tossed the case after
25 prosecutors said they couldn't find the

1 arresting officers.

2 Down the drain went hours of detective work
3 on a bloody shoot-out in Center City between
4 two careening cars.

5 And it was routine when, that same month,
6 Common Pleas Court Judge Gregory E. Smith
7 paroled a 20-year-old South Philadelphian
8 convicted of illegally carrying a 9mm handgun.
9 The two young men were a couple of nobodies
10 among the 1,500 adults charged last year
11 with illegally carrying guns in Philadelphia --
12 and among the estimated 80 percent of those
13 who never saw jail time.

14 For both men, jail would have been better
15 than freedom.

16 For, on March 1, prosecutors now allege, the
17 man whose case Judge Brady dismissed, Anthony
18 "Tupac" Davis, was shot to death by the man
19 Judge Smith paroled, Kyle McLemore.

20 A detailed exploration of how the courts
21 handled the two men's cases sheds light on a
22 critical dimension of the Philadelphia gun
23 epidemic -- how the justice system has failed
24 to check the city's firearms problem.

25 As Judge Brady said, "it really is unfortunate"

1 how things turned out.

2 Davis' very public death and the wounding of
3 bystanders from among a crowd on hand to
4 watch a basketball championship game on
5 the campus of the University of Pennsylvania
6 seemed to wake up a city grown callous to
7 gun violence.

8 The Inquirer has chronicled Davis' violent
9 lifestyle and his isolated and macho world,
10 a world steeped in firearms. Now, a review
11 of his tangled history in the Philadelphia
12 courts reveals a system that routinely tosses
13 out firearms cases -- a system where Davis'
14 arrest was, in the words of Judge Smith,
15 "just a gun case."

16 "Gun pinches" are the bottom rung in the
17 hierarchy of firearms cases. Prosecutors
18 lose half of them.

19 More serious gun cases are failing at the same
20 or even higher rates. More than half of all
21 gun assaults and gun robberies last year
22 resulted in trial acquittals, dropped charges
23 or judicial dismissals.

24 Factor in this: FBI figures show that police
25 make arrests in only 20 percent of reported

1 city gun robberies in the first place.

2 In court, firearms cases collapse in myriad
3 ways. Consider the defeats dealt prose-
4 cutors in their pursuit of McLemore and Davis:

5 Judge Smith twice gave McLemore nominally
6 tough sentences -- only to grant him immediate
7 parole. In one case, Smith paroled McLemore
8 after warning him, "You're going to jail."

9 Smith also acquitted McLemore of being a
10 narcotics dealer, an offense that carries a
11 mandatory one-year sentence. Police
12 testified that they watched McLemore sell
13 crack cocaine to two women and recovered 33
14 cocaine packets that he was seen tossing over
15 a fence when they chased him. After hearing
16 the case, Smith told McLemore: "You're a
17 drug dealer; that's all." Then Smith ruled
18 that he really did not know what McLemore
19 had sold -- and acquitted him.

20 Then-Common Pleas Court Judge Paul Jaffe
21 dismissed another drug-dealing charge against
22 McLemore last year. McLemore threw a gun
23 into a parked car containing 115 packets of
24 cocaine, according to prosecutors. But the
25 judge lectured the prosecutors, telling them,

1 "You have no proof" that McLemore did not,
2 by chance, throw his gun into a car that
3 happened to be storing drugs.

4 Municipal Court Judge John O'Grady, Jr.,
5 according to the District Attorney's Office,
6 helped Davis' case in the Center City
7 shoot-out by invoking a pro-defense law on
8 gun permits -- a law that had expired three
9 months earlier.

10 Underlying it all seems to be the Courts'
11 real priority: moving cases.
12 This puzzles the city's new police commissioner,
13 John F. Timoney.

14 "What's the rush?" Timoney asked. "I don't
15 understand this. I shall have to make an
16 appointment to visit these courts."

17 District Attorney Lynne Abraham blamed the
18 lost cases on state Supreme Court rulings
19 that restrict police, victims who are
20 apathetic or afraid to testify -- and judges
21 who "leave their common sense out of the
22 courtroom."

23 "The problem," she said, "is that the system
24 doesn't work very well."

25 Davis' death, on March 1, was the climax to a

1 year-long feud among ruthless young men
2 with guns. Their violence kept claiming
3 victims outside their insular world.
4 Detectives are still unraveling the violence
5 surrounding Davis, but his murder may have
6 come on the third attempt to kill him.
7 Despite the drug backgrounds of those involved,
8 the fight apparently was about a woman,
9 police say.

10 One camp included Davis, 22, and his brother,
11 Craig, 21, both of North Philadelphia, in-
12 vestigators say. The other, they say,
13 included South Philadelphians McLemore and
14 Nathaniel Ortiz, both with drug records and
15 born, as it happens, on the same day in 1977.
16 Ortiz has also been charged with Davis'
17 murder, Ortiz, who beat a 1997 robbery
18 charge when the victim twice failed to
19 show in court, is now a fugitive.
20 McLemore's lawyer, meanwhile, says his
21 client is innocent.

22 The first attempt to shoot Davis occurred
23 on Sept. 29 in a midnight gun battle between
24 the occupants of two cars on Market Street
25 in Center City that ended when Davis and a

1 companion, both wounded, stumbled into
2 the emergency room of Allegheny University
3 Hospitals/Hahnemann. The car carrying
4 those shooting at them got away.

5 The evidence against Davis was parked right
6 outside the ER; his black 1993 Acura, its
7 windows shattered by bullets, its interior
8 awash in blood and shards of glass. The
9 "Tupac" vanity license plate was pocked
10 with bullet holes.

11 Inside the car, police found a strange array
12 of items: a \$5,000 Swiss Rolex watch; a
13 target from a firing range, shot up; snapshots
14 of Davis and buddies brandishing cash.

15 Investigators also plucked two guns -- an
16 expensive 16-round Glock 9mm pistol,
17 stolen in 1992 in Delaware County, and a
18 cheap Lorcin .25-caliber pistol.

19 Davis and his passenger were arrested for
20 illegal gun possession when they left the
21 hospital about seven hours later. It was this
22 charge that Brady dismissed.

23 A second shooting came a week later, after
24 midnight on Oct. 4. Three gunmen, standing
25 in a parking lot at 19th and Chestnut Streets,

1 fired 30 or more shots at a quarry across
2 the street. A moonlighting cabbie,
3 Kemoh Kamara, 42, drove unwittingly into
4 the crossfire and was shot. His cab crashed
5 into Boyds men's store.

6 "The bullet went right through my brain,"
7 Kamara said in a halting voice.

8 Kamara, an immigrant from Sierra Leone who
9 had been driving a cab for two weeks, is
10 receiving speech therapy and other treatment
11 at Magee Rehabilitation Hospital. He has
12 not worked since the shooting. Detectives
13 say Davis showed up at Allegheny Hahnemann to
14 visit another young man grazed in the gunfire.
15 They suspect Davis was the target. No
16 arrests have been made.

17 James Corbett, 52, a city police officer for
18 30 years, is one of many detectives working
19 the shootings.

20 "It's wild that a lot of this is happening in
21 Center City," Corbett said. "In a case
22 like this, where an innocent cab driver gets
23 hurt -- and hurt extremely seriously --
24 that really bothers you."

25 A week before the shooting at the Penn campus,

1 Davis' side struck back, investigators
2 believe. The story of the Feb. 22 drive-by
3 shooting in South Philadelphia unfolded
4 recently in Family Court's Room B.
5 Carla Richards, 14, told a judge that she
6 and a few friends had been hanging out on
7 Sixth Street that Sunday when cars rolled up
8 with their windows down.
9 "The boys came by in two cars and started
10 shooting," she said.
11 Sixteen shots. Carla's 16-year-old friend
12 was struck in the right leg. A bullet grazed
13 a middle-aged man. Tears dripped from Carla's
14 face as she remembered the blood.
15 She stared straight ahead at a 1940 WPA mural
16 behind the bench. It depicts a gang of
17 ruffians shooting dice under a tenement.
18 One boy wears a beanie, another a pointed
19 paper hat that looks like something out of
20 an Archie comic. To the right, a penitent
21 lad in a suit and a tie stares up at a
22 kindly judge.
23 Could she identify any of the shooters, the
24 prosecutor asked.
25 Carla pointed at Craig Davis, 21, the man

1 in blue jeans and a teddy-bear sweatshirt.

2 Craig Davis was held for trial.

3 He is also awaiting trial on charges of

4 illegally carrying a Ruger 9mm pistol

5 and selling a codeine street drug known as

6 "pancakes and syrup."

7 The house chosen for the drive-by was the

8 last known address of Nathaniel Ortiz, who

9 detectives believe may have been in that

10 curbside crowd. Detectives are investigating

11 whether Anthony Davis also may have been in

12 one of the cars.

13 As an ironic reminder of how tough his job

14 is, Common Pleas Court Judge Gregory E. Smith

15 has an elegant crystal ball on his bench

16 inside Courtroom 1005 in the gleaming

17 Criminal Justice Center.

18 At 43, he is a relatively young man making

19 important decisions about the lives of the

20 even younger men who come before him -- men

21 like Kyle McLemore.

22 McLemore has lived on mean streets. At 17,

23 he shot and killed a man who demanded money.

24 The courts ruled it self-defense.

25 At 20, he repeatedly rode the elevator up

1 and down from Courtroom 1005. One trip
2 came last June. Police said they chased
3 McLemore and arrested him in South Philadelphia
4 after he exchanged plastic packets for
5 money with two women and tossed a bag over
6 a fence. This was the bag with the 33 packets
7 of cocaine.

8 At trial, McLemore testified that the police
9 were lying.

10 Judge Smith didn't buy it.

11 "Mr. McLemore," he told the defendant, "your
12 story makes no sense whatsoever. Get your
13 hands out of your pockets! You're a drug
14 dealer."

15 But then Smith conceded: "Your attorney does
16 make a good point: The court cannot speculate
17 what was handed to those females."

18 With that, the judge acquitted McLemore of
19 dealing drugs and convicted him of possession.

20 At sentencing a month later, Smith gave
21 McLemore a lecture and a year in prison --
22 then immediately paroled him.

23 Five months later, McLemore was back in
24 court for allegedly tossing a Jennings 9mm semi-
25 automatic into a Buick while trying to elude

1 police.

2 (It was the Buick that contained the cocaine
3 in the drug-dealing charges dismissed by
4 Judge Jaffe. Now in private practice,
5 Jaffe, 69, pointed out that detectives never
6 identified the car's owner.

7 "The police didn't do a good job here," he said.)

8 "All right," Judge Smith told McLemore last
9 December 12 after the defendant pleaded
10 no contest to having an illegal gun. "We are
11 going to keep a close eye on you for a while."
12 With that, Smith sentenced McLemore to 23 months
13 -- and, again, immediately paroled him.

14 Smith cares about gun violence. He is on the
15 board of the Father's Day Rally Committee,
16 which, for years, has fought against firearms-
17 related deaths.

18 "I got him for simply carrying a gun, not
19 using a gun," Smith said recently, explaining
20 the parole. "It's just a gun case. I'm
21 sorry to say that in Philadelphia ...because
22 we have so much of this, these cases generally
23 get probation."

24 His crystal ball was of no use with McLemore.

25 "I wish I could have foretold that Mr. McLemore

1 might have committed some alleged crime
2 later on."

3 In the Philadelphia courts, there has long
4 been a saying that three strikes and you're
5 out. That's for prosecutors, not defendants.
6 It means that, under a local court rule, the
7 District Attorney's Office gets three tries
8 to mount a case and that's it.

9 Six floors below Smith's courtroom, Anthony
10 Davis had his final encounter with a court
11 system that, had it imprisoned him, might
12 have saved his life. In his final case, the
13 first pitch was thrown on Oct. 3.

14 According to prosecutors' notes, the judge
15 at this hearing, Municipal Court Judge O'Grady,
16 demanded that the District Attorney's Office
17 prove that Davis had lacked a permit to
18 carry a concealed weapon. Having one would
19 have been a defense for Davis.

20 But state law had been changed three months
21 earlier to require the defense to produce any
22 permit.

23 Prosecutors say O'Grady apparently did not
24 know this.

25 O'Grady could not recall the case but said he

1 was aware the law had changed. The judge,
2 64, a former ward leader, was angered by
3 the prosecutors' complaints.

4 "They're trying to put this on me," he
5 complained hotly.

6 He insisted that his own notation -- "C/NR"
7 (Commonwealth/not ready) -- on the file
8 reflects what happened.

9 Whatever the reason, the effect was the same:
10 Strike One.

11 The next attempt to prosecute Davis came
12 a month later, on Nov. 5. O'Grady canceled
13 that hearing, too.

14 "They needed two officers on the case, and
15 they couldn't put it on," he said.

16 Prosecutors say the case failed because Davis'
17 lawyer was not there, a contention backed up
18 by a lawyer representing Davis' codefendant.
19 The record blames the prosecutors.

20 Strike two.

21 The third and last hearing, on Dec. 15, was
22 over in a flash.

23 Records show that the arresting officers
24 logged into the court-attendance room in
25 City Hall, across from the courthouse, at

1 8:26 a.m. and checked out at 8:49 a.m.

2 In the intervening 23 minutes, Davis beat
3 the entire case.

4 The problem: The prosecutors could not locate
5 the police to testify.

6 So where were they?

7 Detective Luis Velazquez said that he and
8 Officer Joseph Cooney walked into the courtroom
9 while the hearing was under way but that the
10 prosecutors did not see them.

11 "It wasn't our fault that any of this
12 happened," Velazquez said.

13 He and his boss wonder why the judge didn't
14 simply issue a second call for witnesses.

15 "In New York," said Commissioner Timoney,
16 an officer there for 29 years, "you have second
17 calls all the time." Brady, 75, the senior
18 judge who handled the final hearing, faulted
19 the prosecutors.

20 "There was no outcry," he said. "Chances are,
21 had there been, we would have let it go
22 with a continuance.

23 "You've got to get more serious," Brady said
24 of gun cases. "Volumewise, you get in an
25 awful spot. There's so darn many, it becomes

1 garden variety. You lose the importance
2 that the gun represents. How deadly it
3 can be."

4 At the same time, disposing of cases is
5 important, he said.

6 "Our court has really talked about that:

7 'Move it along. Move it along'"

8 And that's what he did.

9 Strike three.

10 Davis was freed of his charges on a Monday.

11 McLemore had walked the previous Friday.

12 Three months later, prosecutors say, the
13 pair met up at Penn.

14 McLemore fired many shots from a big, 40-caliber
15 pistol, authorities believe.

16 One hit Davis as he fled, and he fell dead.

17 Beneath him lay his stolen 9mm gun.

18

19 Inquirer staff writers, Clea Benson, Thomas
20 Ferrick, Jr., and Howard Goodman contributed
21 to this article.

21

22

23

BUREAU OF ALCOHOL, TOBACCO & FIREARMS
Office of Legislative Affairs
850 Massachusetts Avenue, NW, Washington, DC 20226
Ph: (202) 927-8490
Fax: (202) 927-8863

24

25

Visit our Web Site at www.atf.treas.gov
Working for a Sound and Safer America...

Date: 4-2-98 Number of Pages(w/cover): 3

Number of suspects in matters received by U.S. attorneys under 18 USC 922(a)(1) or 18 USC 922(a)(2)

Year	District	Department of Justice Program Category	Referring Agency	US Code
1996	Alabama, Southern	Operation Triggerlock, sentencing under 924(E) not requested	ATF	18 0922X
1996	Arizona	Operation Triggerlock, sentencing under 924(E) not requested	State, County, Municipal	18 0922X
1996	Iowa, Northeast	Operation Triggerlock, sentencing under 924(E) not requested	State, County, Municipal	18 0922X
1996	Montana	Operation Triggerlock, sentencing under 924(E) not requested	ATF	18 0922X2
1996	Montana	Operation Triggerlock, sentencing under 924(E) not requested	ATF	18 0922X2
1996	Montana	Operation Triggerlock, sentencing under 924(E) not requested	ATF	18 0922X7
1996	Montana	Operation Triggerlock, sentencing under 924(E) not requested	ATF	18 0922X2
1996	Montana	Operation Triggerlock, sentencing under 924(E) not requested	ATF	18 0922X2
1996	Montana	Operation Triggerlock, sentencing under 924(E) not requested	ATF	18 0922X2
1996	Oklahoma, Eastern	Indian Offenses	Indian Affairs Bureau	18 0922X
1996	Rhode Island	Operation Triggerlock, sentencing under 924(E) not requested	ATF	18 0922X
1996	South Dakota	Operation Triggerlock, sentencing under 924(E) not requested	ATF	18 0922X
1996	South Dakota	Indian Offenses	ATF	18 0922X.A
1996	Tennessee, Western	Operation Triggerlock, sentencing under 924(E) not requested	ATF	18 0922X2
1996	Tennessee, Western	Operation Triggerlock, sentencing under 924(E) not requested	ATF	18 0922X2
1997	Alabama, Northern	Operation Triggerlock, sentencing under 924(E) not requested	ATF	18 0922X
1997	Arizona	Indian Offenses	FBI	18 0922X
1997	Michigan, Western	Other Criminal Prosecutions	ATF	18 0922X1A
1997	Texas, Western	Operation Triggerlock, sentencing under 924(E) not requested	ATF	18 0922X

X1 = adult providing handgun to minor
 X2 = juv possession

44-111-1811-1-3
 9501-02-1-9509
 18-20
 MARK BUNDLES/TIKHNET
 FBI
 11-29-97 5:10:00PM
 2-23-98
 FBI

DA Colville: Let prosecutors decide where to try juveniles

By John Temple
TRIBUNE-REVIEW

7/17/94

The number of juvenile court cases handled in Allegheny County increased about 6 percent from 1990 to 1993, but that lone statistic doesn't reveal the brutal direction youth crime has taken.

The statistics pertaining to specific, violent crimes are much more telling, says Allegheny County Juvenile Justice Director Joe Daugerdas.

"From 1990 to 1993, aggravated assaults are up 88 percent," Daugerdas reads. "Rob-



Robert Colville

bery referrals are up 71 percent, crack related cases are up 72 percent, firearms offenses are up 1,192 percent."

As those numbers soar, Allegheny County District Attorney Bob Colville believes a fearful public is losing faith and patience with the juvenile justice system.

Last week, Colville and Philadelphia District Attorney Lynne Abraham urged their colleagues to support two pieces of legislation they believe could help mend the distrust.

PLEASE SEE JUVENILE/A2

DA Colville: Let prosecutors decide

JUVENILES FROM/A1

One would give prosecutors the ability to decide whether violent minors age 16 or older should be tried as adults. Under the present system, a prosecutor must petition a judge for such action. The proposed legislation would let the prosecutor decide how to handle the case, it would be up to defense lawyers to petition the court to stop a juvenile from being tried as an adult.

"The court would still have oversight over the case and the defense would have the right to petition the judge to have the case tried in juvenile court," Colville says. "This would only deal with violent crimes and with juvenile offenders 16 years old and above. These are serious crimes such as rape, robbery, aggravated assault, gun charges."

District attorneys currently have the right to ask the court to certify a minor as an adult. But many involved in the juvenile justice system say granting broader power to district attorneys would be harmful to the juvenile justice system.

"I think that's ludicrous," says attorney James Ecker, president of the Allegheny Trial Lawyers Association. "You might as well make the district attorney the judge and jury as well."

Allegheny County Public Defender Lester Nauhaus agrees. "That decision has to be made by the court," he says. "You can't have the prosecution making that decision because that's giving them too much control. They would be basically picking their own forum."

Juvenile court rarely holds hearings on homicide cases because Allegheny County district attorneys seldom have trouble convincing judges to certify juveniles facing homicide charges as adults.

"If they're real bad, they're usually certified as adults," says Deputy District Attorney Diane Berman.

One recent notorious case involved two North Side youths, Dorian Lamore, 16, and Phillip Foxx, 17, who were convicted last month of slaying a pizza delivery driver and shooting a second man during a robbery last fall. Though under the age of 18, Lamore and Foxx stood trial as adults and face mandatory life sentences.

Another proposal to open juvenile court proceedings to the scrutiny of the public also promises to become a heated issue among juvenile justice officials. While some say it would defeat the idea of the juvenile justice system, Colville believes such legislation would

reflect changes in society

The court system has traditionally viewed juvenile offenders as salvageable and has attempted to rehabilitate instead of punish them. Under current law, judges can decide who is allowed into the juvenile courtroom during any proceedings.

Nauhaus says opening proceedings to the public would destroy the non-criminal aspect of the system.

"Theoretically, the juvenile hearing is not so much a criminal hearing as much as a determination by professionals as to how best to put the juvenile on the right track," Nauhaus says.

Daugerdas says national reports show the juvenile system is more competent than the adult criminal system. Though Colville agrees that the juvenile system is effective, he says the public is losing faith in it.

"The advantage is that people could begin to see the problems these young people are having," Colville says. "There would be less concern, less fretting about how juveniles are being treated if people were let in. It doesn't behoove district attorneys and public defenders to be sitting around saying everything's fine if the public doesn't believe everything's fine."

Daugerdas does not believe opening juvenile court would deter youths from crime, but he agrees with Colville that the public might be more comfortable if they were allowed to see the proceedings.

Colville's proposal would allow judges to close particular cases if there were a compelling reason. Because of that loophole, Nauhaus believes such a law would not make much difference, at least as far as media coverage goes.

"The juvenile cases the media wants to cover are few and far between, and usually the sexy ones," Nauhaus says. "My guess is what would happen is that the sexy ones would be the ones the judge closes."

Abraham, Colville and other district attorneys developed the ideas in February and presented them to colleagues at the annual meeting of the Pennsylvania District Attorney Association last week. As legislative chairwoman of the association, Abraham will push state lawmakers to adopt the proposals.

Colville says many other states are considering similar changes in juvenile justice laws. "There's no absolute answers that are going to work jim dandy," Colville says. "But both from a public perception and a personal standpoint, we need to make some changes."

Pittsburgh Post-Gazette, Sunday, November, 1996
NATIONAL

BOSTON'S NEW TACTICS CUT TEEN DEATH

No one under 17 has been shot dead there since July '95

By Fox Butterfield
The New York Times

BOSTON -- At a time when experts are trying to understand why homicide rates in many cities are dropping, Boston has one of the most impressive statistics of all: not a single juvenile under 17 has been killed by gunfire since July 1995.

Given the complexity of the crime problem, no one can say definitely why so few young people have been killed here, and one or two years is too short a time to pronounce success. But police, public officials and criminal justice experts point to an innovative and inexpensive set of strategies that Boston has adopted in the last few years. First, the city gave a small number of probation officers enhanced power to make arrests by putting them in patrol cars with police. More recently, city officials have also intensified their focus on controlling gangs and guns after computer-aided research from Harvard found that three-quarters of juvenile killers and their victims had been

1 involved with gangs and that firearms
2 dealers who were illegally selling significant
3 numbers of guns to young people could be
4 identified.

5 The number of juveniles killed by firearms in
6 Boston has never been large -- the figure was
7 five in 1994, and the highest number recorded in
8 recent years was 10. But the drop to zero sur-
9 prises analysts nonetheless; the only juveniles
10 killed by any means in Boston since July 1995 have
11 been three young children beaten to death by
12 adult relatives. Moreover, the figures for
13 people 24 and younger are showing the same trend:
14 since the city put all the components of its new
15 plan into place in May, the homicide rate for
16 that age group has dropped 71 percent, police
17 statistics show, to just eight homicides, from
18 the 28 committed in the same five-month period
19 the previous year. For the entire year of 1995,
20 there were 46 people age 24 and younger murdered
21 in Boston.

22 While other cities have experienced drops in crime,
23 the decline in Boston among young people appears
24 to be the most dramatic. In New York City, for
25 example, the number of people age 24 and younger

1 killed by guns actually rose to 101 in 1994 from
2 89 in 1990.

3 Police chiefs and politicians in a number of
4 cities have been quick to attribute drops in
5 crime to their pet projects even when other
6 cities without similar programs have also
7 seen crime rates fall. But it is hard to find
8 critics of Boston's approach.

9 Jeremy Travis, the director of National Institute
10 of Justice, the research arm of the Justice
11 Department, said of the Boston Program, "This is
12 just a smarter approach to the problem of Juvenile
13 violence, and it is showing results." David
14 Kennedy, a senior researcher at the John F.
15 Kennedy School of Government at Harvard who helped
16 provide ideas for Boston's program, said he under-
17 stood the skepticism that some might have about
18 Boston's results. But the **drop** in the death toll
19 "is so big, there is nothing else that can account
20 for it" except the city's strategies, he said.
21 "The core idea behind Boston's plan sprang from
22 a casual conversation in a courtroom between a
23 probation officer, Bill Stewart, and a
24 City Detective, Robert Frataglia. They proposed a
25 simple but revolutionary step: letting the
probation officer ride in a police car so he

1 would be able to arrest young people he saw
2 violating the terms of their probation, like
3 being out of their homes after a court-imposed
4 8 p.m. curfew.

5 Though in theory Boston probation officers have
6 the legal right to take someone back to court to
7 have the person's probation revoked, they are
8 unarmed and in practice have seldom arrested
9 anyone.

10 Stewart was sickened by the failure of the juvenile
11 justice: 68 of the youths on his caseload were
12 shot to death from 1990 to 1994.

13 His idea was radical because traditionally
14 probation officers have been an arm of the
15 juvenile court, intended to be sympathetic social
16 workers, while police were part of the criminal
17 justice system and contemptuous of anything to
18 do with probation.

19 But a growing number of probation officers now
20 graduate from college with degrees in criminal
21 justice, and -- like police officers -- they have
22 been frustrated by what they see as a revolving
23 door that lets dangerous criminals go free.

24 Jerome Miller, the president of the National Center
25 on Institutions and Alternatives, said he was not

1 troubled by putting probation officers in cars
2 with police. "This sounds like a very good
3 program to me," said Miller, who has long argued
4 that children's rights have not been adequately
5 protected by the juvenile justice system." I
6 have never doubted that if you target kids in a
7 very focused way, you can get a good impact."
8 In fact, on the first night Stewart and Fratalia
9 drove together in 1992, they had not gone half a block
10 before they heard on their radio that a boy had
11 been shot nearby. The boy was one of Stewart's
12 cases, and as he looked around the shooting scene,
13 Stewart saw 35 others he recognized as being on
14 probation who should not have been out that late.
15 "They were amazed to see me out there at night
16 with the cops," Stewart recalled. "They tried to
17 cover their faces. They were really afraid. They
18 knew that, unlike the cops, I could recognize
19 them."
20 Many young people, he had come to learn, hate pro-
21 bation more than prison because they believe
22 it interferes with their lives more.
23 Fratalia was also amazed. Where normally bystand-
24 ers at a crime scene claim to have seen nothing,
25 Stewart was able to elicit information about the

1 shooting from young people who faced having
2 their probations revoked and going to jail, or --
3 just as bad -- spending more time on probation.
4 Since Boston began the joint patrols in 1992, the
5 number of young people picked up for violating
6 probation has tripled and rates of compliance with
7 court-ordered conditions of probation have risen
8 to 70 percent from 15 percent, said Paul Evans,
9 a Boston police commissioner.

10 The Boston program has also drawn on a finding by
11 researchers at Harvard that homicide among youths
12 in the city is largely a gang problem involving
13 repeat offenders. Using a database of all Boston
14 homicide victims younger than 21 who were killed
15 by a gun or knife in the previous five years and
16 the youths charged in those killings, the research-
17 ers found that both the victims and the killers
18 tended to have long criminal records.

19 In fact, 75 percent of both the victims and the
20 killers had already been arraigned in court at
21 least once, many of them 10 or more times; almost
22 half had previously been on probation; and one-
23 third had been incarcerated in a juvenile or adult
24 prison, said Kennedy, who led the team. Almost
25 three-quarters of the killers and their victims

1 were involved with gangs.

2 "These results were stunning and provided a very
3 powerful and simple strategy," Kennedy said, "It
4 meant that any time a gang does violence, you
5 can punish them" -- because the criminal records
6 of the gang members make them vulnerable.

7 The gang members are recognizable to probation
8 officers, and since they are probably on probation
9 or parole they can be picked up and incarcerated
10 without a new trial if they are in violation of the
11 terms of their release, Kennedy said. Unlike
12 police, probation officers do not need probable
13 cause to stop young people, or to enter a youth's
14 house or talk with his parents.

15 Armed with this new insight, Boston police
16 earlier this year proclaimed a "zero tolerance"
17 attitude toward gangs, and guns and began calling
18 gang members in for meetings to issue warnings.

19 To make the meetings more dramatic, they were also
20 attended by representatives of the U. S. attorney,
21 the county district attorney, the Federal Bureau
22 of Alcohol, Tobacco and Firearms, and the state
23 Department of Probation and Division of Youth
24 Service.

25 In a field where it had often taken a summit

1 meeting for the police commissioner just to talk
2 to the district attorney, such cooperation was
3 unusual, Boston police admit.

4 In August, after the Intervale gang one of Boston's
5 oldest and largest gangs, did not heed these warn-
6 ings and continued a series of shootings, the
7 law-enforcement agencies struck in a joint operation.
8 A total of 23 members, including all the gang's
9 leaders, were arrested, most on federal drug
10 charges.

11 To demonstrate the city's determination, police
12 had the National Guard bulldoze a vacant lot that
13 the gang used as its headquarters, knocking down
14 an oak tree on which members had tossed more
15 than 100 pairs of sneakers as a symbol of their
16 suzerainty.

17 Fratialis believes that another critical factor
18 has contributed to the city's success; the crack-
19 down on gangs and guns has provided an honorable
20 way out for many young people who were afraid not
21 to join a gang or have a gun.

22 *****

23 PSYCHIATRY AND THE CREATION OF
24 SENSELESS VIOLENCE

1 THE CONNECTION BETWEEN PSYCHIATRIC, MIND ALTERING
2 DRUGS AND ACTS OF RANDOM SENSELESS VIOLENCE

3 It is a horribly sobering realization that
4 Columbine, Colorado, while devastating in it's
5 consequences, is only the latest in a tragic
6 trail of incomprehensible acts of mayhem and
7 murder. One need only read a newspaper or watch
8 a television news broadcast to know that schools
9 are not the only place these assaults have taken
10 place. A review of media reports from the last
11 fifteen years reveals that these incidents are
12 also occurring on our highways, in restaurants,
13 post offices and homes and factories from coast
14 to coast. While the number of these incidents
15 continues to escalate, a more disturbing fact is
16 the increasingly bizarre nature of these pointless
17 murders and suicides.

18 Acts of criminal violence have been with
19 us since time immemorial but what we have been
20 witnessing over the last couple of decades
21 staggers the mind and assaults the senses.
22 Those grotesque acts, devoid of any possible
23 sense of moral decency strike us as completely
24 incomprehensible -- mothers blowing the brains
25 out of their small children, fathers slashing

1 their young children to pieces, employees "calmly"
2 walking through their offices or factories murder-
3 ing their fellow co-workers as they go and young
4 children going on maniacal shooting sprees in
5 school yards.

6 As each new incident is reported, we sit in
7 stunned horror in front of our television sets
8 and wonder what is happening to our way of life.

9 How can we be at the dawn of the twenty-first
10 century with technology snowballing us into a space
11 age future and yet continue to find ourselves
12 without a solution to the escalating number of
13 acts of random, senseless violence? The reason
14 is that we have been fed all manner of wrong
15 reasons for why these tragedies have taken place
16 and also they continue.

17 It is not guns that are the common denomin-
18 ator to these horrific events -- some occur with
19 knives, axes and even automobiles. Nor is it
20 clothing, age, gender or political orientation.
21 The fact missed by most, is that psychiatric,
22 mind altering drugs have been found to be the
23 common factor in an overwhelming number of these
24 acts of random senseless violence. These drugs,
25 on an ever increasing rise in society and amongst

1 school children, particularly over the last two
2 decades, are actually creating acts of violence.
3 In short, the rise in senseless violence in
4 America is date-coincident with the increased use
5 of psychiatric mind-altering drugs.

6 In the U.S. alone, there are now approximately
7 4 million children on the psychiatric drug Ritalin,
8 a drug which the Drug Enforcement Agency (DEA)
9 places in the same category (a schedule II narcotic)
10 as opium, morphine and cocaine.

11 Psychotic episodes and violent behavior are
12 associated with chronic Ritalin abuse, Ritalin is
13 the amphetamine-like drug widely prescribed to
14 children for the contrived mental disease,
15 "Attention Deficit Hyperactivity Disorder" (ADHD).

16 Even Ritalin's manufacturer warns that "frank
17 psychotic episodes can occur" with abusive use.
18 While the American Psychiatric Association's
19 Diagnostic and Statistical Manual of Mental
20 Disorders states that the major complication of
21 Ritalin withdrawal is suicide.

22 If this were not bad enough, over 909,000
23 children and adolescents between the ages of six
24 and eighteen are on psychiatric antidepressant
25 drugs.

1 And in this regard, it is important to
2 note that between 1988 and 1992, in just four years,
3 there were reports of over 90 children and adoles-
4 cents who had suffered suicidal or violent self-
5 destructive behavior while on the newer anti-
6 depressant Prozac, an SSRI (Selective Serotonin
7 Reuptake Inhibitor).

8 However, as the following will clearly show,
9 the connection between psychiatric drugs and
10 violence and suicide is far from being limited to
11 children.

12 PSYCHIATRIC DRUG STUDIES

13 It is not as if psychiatrists don't know.

14 The scientific research documenting the
15 connection between violence and suicide and
16 psychiatric drugs is overwhelming.

17 Perhaps most revealing at the outset is
18 the statement of Candace B. Pert, Research Profess-
19 or at Georgetown University Medical Center in
20 Washington, as published in the October 20, 1997
21 issue of Time Magazine, Professor Pert stated:

22 "I am alarmed at the monster that John
23 Hopkins' neuroscientist Solomon Snyder and I
24 created when we discovered the simple binding
25 assay for drug receptors 25 years ago -- The

1 public is being misinformed about the precision of
2 these selective Serotonin uptake inhibitors
3 when the medical profession over-simplifies their
4 action in the brain..."

5 Brief excerpts from some of the numerous
6 studies documenting the violence/suicide
7 connection follow:

8 (1) Testing revealed that Eric Harris, one
9 of the dead suspects in the Colorado incident,
10 had therapeutic levels of Luvox in his blood.
11 The following was reported on May 4th by the ABC
12 affiliate in Colorado citing the American Journal
13 of Psychiatry, article titled "Mania and
14 Fluvoxamine".

15 Luvox is the trade name for fluvoxamine,
16 which research shows can induce mania...
17 One symptom of mania can be 'aggressive' behavior."

18 ---A study by researchers at Hadassah-
19 Hebrew University School of Medicine in Jerusalem
20 published in the "Annals of Pharma-cotherapy"
21 concluded the following about Luvox: 'Our case
22 series suggests that fluvoxamine may have the
23 ability to induce or unmask manic behavior in
24 depressed patients. Clinicians are alerted to
25 monitor for this 'switching effect...'

1 (2) A psychiatrist and drug expert states:

2 "According to the manufacturer, Solvay, 4%
3 of children and youth taking Luvox developed mania
4 during short-term controlled clinical trials.
5 Mania is a psychosis which can produce bizarre,
6 grandiose, highly elaborated destructive plans,
7 including mass murder..."

8 (3) The New York Post reported on January 31,
9 1999, that they had obtained documents (through
10 Freedom of Information Law) that the New York
11 Psychiatric Institute was testing Prozac on
12 6-year-olds. The documents obtained by the Post
13 showed that under these drug trials the psychiatric
14 reserachers own documents noted that "Some patients
15 have been reported to have an increase in suicidal
16 thoughts and/or violent behavior." Another side
17 effect -- wild manic episodes -- was also acknowledged-
18 ed in the researchers' records.

19 (4) A study conducted at Yale University
20 School of Medicine and published in The Journal
21 of The American Academy of Child and Adolescent
22 Psychiatry in March, 1991, found that self-
23 injurious ideation or behavior started or intensi-
24 fied during treatment with an antidepressant in
25 six patients, ages 10 to 17 years old who were

1 were among 42 patients being studied.

2 (5) A study published in The Journal of
3 Forensic Science, in September, 1998, found that
4 of 392 youth suicides in Paris, between 1989
5 through 1996, 35% used to take psycho-active
6 drugs.

7 (6) A 1995 Nordic conference reported
8 that the new anti depressant drugs, in particular,
9 have a stimulating amphetamine-like effect and
10 consumers of these drugs can become "aggressive" or
11 "suffer hallucinations and/or suicidal thoughts."

12 (7) One Canadian research team which studied
13 the effects of psychiatric drugs on prisoners
14 found that "violent, aggressive incidents occurred
15 significantly more frequently in inmates who
16 were on psychotropic (psychiatric or mind altering)
17 medication than when these inmates were not on
18 psychotropic drugs". Inmates on major tranqui-
19 lizers were shown to be more than twice as violent
20 as they were when not taking psychiatric drugs,
21 (emphasis added).

22 (8) A paper published in The American Journal
23 of Psychiatry in 1964 found that major tran-
24 quilizers (Thorazine, Haldol, Mellaril etc.) can
25 produce an acute psychotic reaction in an individual

1 not previously psychotic" (emphasis added).

2 (9) In 1970 a textbook on the side effects
3 of psychiatric drugs pointed out the potential
4 for violence from these drugs stating, "Indeed,
5 even acts of violence such as murder and suicide
6 have been attributed to the rage reactions induced
7 by chlordiazepoxide (Librium) and diazepam
8 (Valium)."

9 (10) Valium was later replaced by Xanax as
10 the most widely prescribed minor tranquilizer.
11 According to a 1984 study of Xanax, "Extreme
12 anger and hostile behavior emerged from eight of
13 the first 80 patients we treated with alprazolam
14 (Xanax)."

15 (11) A 1985 investigation into Xanax, report-
16 ed in the American Journal of Psychiatry, claimed
17 that more than half (58 percent) of the treated
18 patients experienced serious "dyscontrol",
19 i.e. violence and loss of control compared with
20 only eight percent who were given a placebo.

21 (12) A 1975 paper described a negative effect
22 from the major tranquilizers called "akathisia"
23 (from the Greek a - meaning "without" or "not"
24 and kathisia meaning sitting) that was first
25 recognized as an inability of people taking the

1 drugs to sit still comfortably.

2 In his paper, "The Many Faces of Akathisia,"
3 researcher Theodore Van Putten reported nearly
4 half of the 110 persons in the study had experienced
5 akathisia. He described what happened to these
6 people after taking the drugs. One woman started
7 to bang her head against the wall three days after
8 an injection of a major tranquilizer. Another,
9 who had been given these drugs for five days
10 experienced "an upsurge in hallucinations,
11 screaming, even more bizarre thinking, aggressive
12 and also self-destructive outbursts, and agitated
13 pacing or dancing", while still another stated
14 that while on the drug she felt hostile and hated
15 everybody and heard voices taunting her.

16 (13) Dr. William Wirshing, a psychiatrist
17 at UCLA, reported at the American Psychiatric
18 Association's 1991 annual meeting that 5 patients
19 appeared to have developed akathisia from Prozac.
20 Dr. Wirshing believed the akathisia had "led them
21 all to contemplate suicide."

22 (14) In 1986, a study published in the
23 American Journal of Psychiatry found that patients
24 taking the drug Elavil, an antidepressant,
25 "...appeared progressively more hostile, irritable,

1 and behaviorally impulsive...The increase in
2 demanding behavior and assaultive acts was
3 statistically significant."

4 (15) A study of children taking Elavil
5 published in Psychosomatics in 1980 found that
6 some grew hysterical or hostile. One of the kids
7 began "exhibiting excessive irritability and
8 anger, pacing excessively and declaring that he was
9 not afraid anymore, that he was 'not chicken
10 anymore.'

11 (16) Another article published in the
12 American Journal of Forensic Psychiatry in 1985
13 described five cases of "extreme acts of physical
14 violence" due to akathisia caused by Haldol.
15 These cases included acts of extreme, senseless,
16 bizarre and brutal violence.

17 The Drugs Precede the Violence

18 The argument is sometimes made that acts of
19 violence occur because the individual was "not
20 taking his/her medication." This is a red herring
21 pushed in the media by psychiatric interests to
22 take attention off the drugs as a creator of
23 violence. It is the drugs themselves that create
24 these states, Several studies illustrate this
25 point.

1 (17) In February of 1990 Dr. Marvin
2 Teicher, a Harvard psychiatrist, reported in
3 The American Journal of Psychiatry, that 6 patients
4 who were depressed -- but not suicidal -- had
5 developed intense, violent, suicidal preoccupation
6 within weeks of taking Prozac. (emphasis added.)

7 Subsequent letters from doctors published in
8 The American Journal of Psychiatry and The New
9 England Journal of Medicine reported similar
10 findings. The report published in the New England
11 Journal of Medicine noted that the patients had not
12 been suicidal before taking the drug and that their
13 suicidal thoughts ended abruptly upon ceasing it's
14 use. (emphasis added)

15 (18) In 1995, nine Australian psychiatrists
16 urged SSRIs be sold with a warning after patients
17 had slashed themselves or became preoccupied with
18 violence when taking them. "I didn't want to
19 die, I just felt like tearing my flesh to pieces,"
20 one patient told them. Another said, "I got my
21 can cutters' knife in my right hand and wanted to
22 cut my left hand off at the wrist." The self
23 destructive harm started after the treatment began
24 or doses increased, and eased or ceased when the
25

1 drugs were stopped. (emphasis added)

2 (19) A 1988 study documented the tendency
3 of the major tranquilizer Haldol to increase
4 hostile and violent behavior. According to the
5 study, many persons who had no history of violence
6 prior to being placed on the drug "were significant-
7 ly more violent on haloperidol (Haldol)". In
8 this study, the researchers attributed the marked
9 increase in violence to akathisia. (emphasis added).

10 (20) A report published in The Journal of
11 the American Medical Association exemplified the
12 agitation which can accompany akathisia. Describ-
13 ing a man who had started taking Haldol four days
14 previously, the researcher noted that the man
15 "...became uncontrollably agitated, could not sit
16 still, and paced for several hours." After
17 complaining of violent urges to assault anyone
18 near him, the man assaulted and tried to kill his
19 dog. (emphasis added)

20
21 PSYCHIATRIC DRUG WITHDRAWAL AND VIOLENCE

22 Another little known fact is that withdrawal
23 from psychiatric drugs can turn people horrifically
24 violent. The fact that these drugs can create
25 this effect can be obscured because frequently

1 after a violent crime has been committed, psychia-
2 trists or their allied organizations such as the
3 pharmaceutical company-funded National Alliance
4 for the Mentally Ill (NAMI), blame the offending
5 person's violent behavior on his failure to continue
6 his medication, but the truth is that extreme
7 violence is a documented side-effect of withdrawal
8 from psychiatric drugs.

9 (21) In 1995, a Danish medical study reported
10 the following withdrawal symptoms from psychotropic
11 drug dependence: "Emotional changes: Fear, terror,
12 panic, fear of insanity, failing self-confidence,
13 restlessness, irritability, aggression, an urge
14 to destroy and, in the worst cases, an urge to kill."
15 (emphasis added)

16 (22) In 1996, The National Preferred Medicines
17 Center Inc., comprised of physicians in New
18 Zealand, issued a report on "Acute drug withdrawal,"
19 saying that withdrawal from psychoactive drugs
20 can cause 1) rebound effects that exacerbate
21 previous symptoms of a "disease," and 2) new symptoms
22 unrelated to the condition that had not been
23 previously experienced by the patient. The anti-
24 depressants can create "agitation, severe depression,
25 hallucinations, aggressiveness, hypomania and

1 and akathisia.

2 Janet, a teenager who was prescribed minor
3 tranquilizers and antidepressants said that while
4 withdrawing from these drugs, she had violent
5 thoughts and had to strain her aggressiveness,
6 including wanted to stab anyone who withheld the
7 decreasing drug dosage from her: "I had absolutely
8 no history of violence. These new feelings were not
9 part of the so-called 'mental illness' I was
10 supposed to have; I had never been aggressive before
11 being prescribed the drugs. Once safely and
12 gradually withdrawn from them, never experienced
13 uncontrollable violent urges again."

14 As noted earlier, even the American Psychiatric
15 Association euphemistically admits in their
16 Diagnostic and Statistical Manual that the major
17 "complication" of withdrawal from Ritalin, a
18 psychiatric drug currently being administered to
19 millions of children, is suicide.

20 Withdrawal effects from these drugs can be
21 severe and take intense medical supervision to
22 ensure the person safely detoxes, as an example:

23 Stevie Nicks, of the rock group Fleetwood
24 Mac talks about the intense difficulty of detoxing
25 from psychiatric drugs: "I'm the one who realized

1 that that's what was killing me (the psychiatric
2 drug, Klonopin)." It took her 45 days to withdraw
3 from the Klonopin, "I was in there sick for 45
4 days, really, really sick. And I watched generations
5 of drug addicts come in and go out. You know, the
6 heroin people, 12 days...and they're gone. And
7 I'm still just there."

8 Viewed against this research for the dramatic
9 increase in the use of mind altering drugs by
10 children and adults alike, the cause for the rise
11 of senseless violence becomes all too clear.

12 INCIDENTS OF SENSELESS VIOLENCE

13 CCHR International has a data base of
14 hundreds of cases of violence that cover the
15 last 15 years. The following are but a few
16 representative examples.

17 (1) On March 6, 1985, Atlanta postal worker,
18 Steven W. Brownlee, pulled a pistol from his
19 pocket and shot and killed a supervisor and a
20 clerk. Another clerk was wounded. Brownlee
21 had received treatment and psychotropic drugs
22 at the Grady Memorial Psychiatric Unit.

23 (2) On November 20, 1986, 14-year-old Rod
24 Mathews beat a classmate to death with a bat
25 in the woods near his home in Canton, MA. He had

1 been prescribed Ritalin since the third grade.

2 (3) William Cruse was charged with killing
3 six people in a shooting rampage on April 23, 1987
4 in Palm Bay, Florida. Cruse had been seeing
5 Kentucky psychiatrist and stated he had been
6 taking psychiatric drugs for several years.

7 (4) Bartley Dobben killed his two young
8 children on November 26, 1987 by casting them in a
9 1,300 degree foundry ladle. He had been placed on
10 a regimen of psychiatric drugs in 1985.

11 (5) On May 20, 1988, Laurie Dann walked into
12 a Winnetka, Illinois second grade classroom
13 carrying three pistols and began shooting innocent
14 little children, killing one and wounding five
15 others before killing herself. Subsequent blood
16 tests revealed that both lithium and the anti-
17 depressant anafranil were in her bloodstream at the
18 time the murders were committed.

19 (6) On September 26, 1988, 19-year-old James
20 Wilson took a .22 caliber revolver into an
21 elementary school in Greenwood, South Carolina and
22 started shooting schoolchildren, killing two 8-year-
23 old girls and wounding seven other children and
24 two teachers. Wilson had been in and out of the
25 hands of psychiatrists for years and within 8 months

1 of the killings he had been on several psychiatric
2 drugs which can generate violent behavior. Since
3 the age of 14, he had been given psychiatric
4 drugs, including Xanax, Valium, Thorazine and
5 Haldol.

6 (7) On January 17, 1989, Patrick Purdy
7 opened fire on a school yard full of young children
8 in Stockton, California. During his vicious and
9 unprovoked assault, Purdy killed five school
10 children and wounded 30 others. Purdy then killed
11 himself. During the two years prior to the
12 murders of the Stockton children, Purdy had been
13 on two strong psychiatric drugs of categories
14 known to cause violence.

15 (8) On April 28, 1992, Kenneth Seguin drugged
16 his two children, aged 7 and 5, took them to a
17 pond, slashed their wrists and dumped their bodies
18 in the water. He then drove home and killed his
19 wife with an ax while she slept. He was on Prozac
20 at the time.

21 (9) In November 1992, Lynwood Drake III, in
22 San Luis Obispo and Morro Bay, California, shot
23 and killed six people with a hand gun before he
24 killed himself. Metabolized Prozac and Valium were
25 both found in his system.

1 (10) In December 1993, Steven Leith of
2 Chelsea, Michigan, walked back into a school meet-
3 ing and fatally shot the school superintendent and
4 wounded two others including a fellow teacher.
5 He was on Prozac at the time of the shootings.

6 (11) 16-year-old Brian Pruitt who fatally
7 stabbed his grandparents in 1995 had a history of
8 psychiatric treatment and had been prescribed
9 psychiatric drugs.

10 (12) On November 3, 1995 Sergeant Steven B.
11 Christian, a 25 year commended veteran of the
12 Dallas police force drove to a police sub-station
13 and seriously wounded an officer outside in his
14 attempt to get inside and shoot others. Christian
15 was shot and killed by two fellow Dallas police
16 officers. The autopsy revealed high levels of an
17 anti-depressant in his blood.

18 (13) In Connecticut on March 6, 1998 Mathew
19 Beck, a lottery accountant, reported promptly to
20 his job, hung up his coat and methodically gunned
21 down 4 of his bosses, one of whom he chased through
22 a parking lot before he turned the gun on himself.
23 Beck had been seeing a psychiatrist and taking
24 three types of "medication."

25 (14) On May 28, 1998 Brynn Hartman murdered

1 her husband, comic Phil Hartman, then proceeded
2 to commit suicide. She had been prescribed and
3 had been taking the anti-depressant drug, Zoloft,
4 which the coroner found in her system along with
5 alcohol and cocaine.

6 (15) On February 19, 1996, 10-year-old
7 Timmy Becton, grabbed his 3-year-old niece as a
8 shield and aimed a shotgun at a Sheriff's deputy
9 who had accompanied a truant officer to his
10 Florida home. Becton had been taken to a
11 psychiatrist in January and had been put on a
12 psychiatric drug.

13 (16) While on vacation, on May 25, 1997, in
14 Las Vegas, 18-year-old Jeremy Strohmeier raped
15 and murdered a 7-year-old girl in the ladies rest
16 room in a casino. He had been diagnosed with ADD
17 and prescribed Dexedrine. He had begun taking
18 the drug a week before the killing.

19 (17) On September 27, 1997 16-year-old Sam
20 Manzie raped and strangled another boy to death.
21 The younger boy was selling candy door to door for
22 the local PTA at the time of the killing. Manzie
23 was under psychiatric "care" and was being "medicated."

24 (18) On May 21, 1998 14-year-old Kip Kinkel
25 shot and killed his parents and then went on a

1 wild shooting spree at his Springfield, Oregon
2 high school that left two dead and 22 injured. He
3 was reportedly taking Prozac and Ritalin and had
4 been attending "anger management" classes.

5 (19) On April 20, 1999 Eric Harris, one
6 of two Colorado high school seniors who went on
7 a deadly rampage, entered their school shooting
8 students and faculty and setting off explosives.
9 Twelve students and one teacher were killed, along
10 with the two gunmen who ended the rampage by
11 killing themselves, while 23 others were wounded.
12 A toxicology report revealed Luvox, an anti-
13 depressant in Harris' system.

14 (20) On May 4, 1999 Steven Allen Abrams
15 rammed his car into a preschool playground in
16 Costa Mesa, California killing two and injuring
17 five. He had been placed on probation in 1994
18 which required him to see a psychiatrist and take
19 Lithium.

20 CONCLUSION

21 Horror stories all. On the surface, the idea
22 of tranquilizers or antidepressants creating
23 hostility and violence may not make sense. After
24 all, they are supposed to make people calm and
25 quiet. But the reality is that they can and do

1 create this effect. The scientific evidence,
2 only a part of which is presented above, is over-
3 whelming.

4 Psychiatric drugs and treatments do create
5 violence and the sooner we recognize this and do
6 something about it, the sooner these kinds of
7 killings will stop.

8 These are facts that psychiatrists and the
9 National Alliance for the Mentally Ill (NAMI)
10 refuse to confront. Psychiatrists for obvious
11 reasons -- they could and should be held liable
12 for crimes committed by their toxically drugged
13 patients -- and NAMI because it "is awash in money
14 from drug companies" -- "\$3.2 million per year from
15 nine such companies" that manufacturer these often
16 mind crippling drugs.

17 The above is a small sampling of hundreds of
18 cases of murders, suicides, and senseless violence
19 documented in the files of The Citizens Commission
20 on Human Rights. Psychiatric drugs create violence.
21 Not everyone who takes a psychiatric drug commits
22 acts of violence, but clearly some do. The research
23 is unequivocal. How many more Littleton, Colorados
24 will there be before something is done?

25 CCHR urges that law enforcement bodies, armed

1 with the information contained in this report,
2 call for toxicology reports that specify a
3 testing for psychiatric drugs in any homicide or
4 suicide where it is suspected that such might be
5 the case, and if so shown, the psychiatrist
6 prescribing the drugs must be held accountable.

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1 CHAIRMAN GANNON: Our next witnesses are
2 Mr. Clayton Schulze, Pennsylvania Gun Owner's
3 Association and Mr. Roy Pittman, President,
4 Pennsylvania Gun Owner's Association.

5 MR. SCHULZE: Thank you, Mr. Chairman.
6 Before I get into my testimony, I'd like you to
7 know I'm the gentleman who brought this brochure to
8 you.

9 CHAIRMAN GANNON: I'm sorry, sir. Could you
10 identify yourself.

11 MR. SCHULZE: My name is Clayton Schulze.

12 CHAIRMAN GANNON: Is Mr. Pittman here?

13 MR. SCHULZE: I don't see him.

14 CHAIRMAN GANNON: Okay. He may be here. He
15 may have stepped out.

16 MR. SCHULZE: Well, sir --

17 CHAIRMAN GANNON: Just give a minute.

18 REPRESENTATIVE JOSEPHS: I do want to make
19 a comment about this testimony but let the testifier
20 proceed.

21 CHAIRMAN GANNON: Mr. Pittman, correct?

22 MR. PITTMAN: Correct.

23 CHAIRMAN GANNON: If you have any written
24 testimony, we can hand that up to the Committee
25 members and since we are falling behind here, if you

1 would like, if you can summarize what your testimony
2 is and that will give the Committee members time for
3 questions. We don't have but 20, 25 minutes. It's
4 up to you. Thank you. You may proceed when you are
5 ready.

6 MR. SCHULZE: Mr. Chairman, like I said, I'm
7 the gentleman who gave you the brochure on the
8 genocides. About the third page in you'll see a page
9 there that says, make sure you don't pay the price of
10 gun control as these victims did and because of gun
11 control there were 57 million people killed and just
12 on the next page beyond that you'll see, and there
13 are four of your people up there. Are you all
14 elected people?

15 CHAIRMAN GANNON: Yes.

16 MR. SCHULZE: Everybody is an elected
17 representative. Then, you have taken the oath of
18 office which is on that next page and the page
19 following that, of course, has to do with the
20 Constitution and my question to you at this time is
21 if you violate your oath of office and don't adhere
22 to the Constitutional laws, how do you expect citizens
23 to obey the laws that you want to pass?

24 With that, I'd like to get into my testimony.
25 As free people, our way of life depends upon certain

1 moral ideas.

2 As a matter of personal conscience, I believe
3 christianity most perfectly reflects those ideas.
4 However, since Americans come from so many different
5 religious backgrounds, we must seek ideals that are
6 acceptable to all people.

7 The declaration is more than just an asser-
8 tion of rights. It makes a very clear statement
9 about the ultimate source of authority which commands
10 respect for those rights, God the Creator.

11 Therefore, the effective prerequisite for
12 human rights is respect for God's authority and His
13 etermal laws.

14 If we accept the logic of our Declaration of
15 Independence, this reverence for God is not just a
16 matter of religious faith. It is the foundation of
17 justice and citizenship in our republic and this is
18 not a democracy, it is a republic.

19 Therefore, our freedom is derived from our
20 respect for all, especially the highest law, as the
21 Will of the Creator.

22 Thus freedom, rightly understood, cannot be
23 confused with mere licentiousness.

24 It first of all involves the duty to
25 respect its own foundation in the laws of nature and

1 nature's God.

2 That is why our rights are unalienable, which
3 means, we do not have the right to surrender or
4 destroy them by our choice or someone else's.

5 Indeed, if we make the judgment that our
6 rights are being violated, we have the duty to
7 resist and overthrow the power responsible.

8 This duty involves both judgment and the
9 moral and material capacity to resist tyranny.

10 It was a sad day in Columbine, Colorado when
11 15 students and teachers were shot. Nobody told you
12 about the drugs that were involved with those people
13 or the mental capacities of the two people who caused
14 this. I have been told that these students died,
15 not because of the shooting, but because the squat
16 team waited three hours before they moved in which
17 means those wounded people bled to death and the
18 government sealed their findings so the citizens
19 would not know the truth.

20 Human nature being what it is and man's
21 willingness to surrender to the corruption of power
22 have always dictated that the society that did not
23 restrain its government will soon want for both
24 justice and liberty.

25 The Constitution is the instrument through

1 which we execute the security of our God given
2 rights. These rights are the property of the
3 individual, not the government.

4 We are a nation of law, not of men. Our
5 rights are not privileges as granted by the govern-
6 ment.

7 These concepts constitute our character as
8 free people and it is our duty to maintain our
9 freedom.

10 Any politician who talks gun control is
11 violating their oath of office and is subject to the
12 criminal code, Chapter 53, abuse of office, Section
13 5301, official oppression, Sections (1) and (2).

14 We the people have three ways to maintain
15 control of our government: The ballot, the trial by
16 a fully informed jury, and the right to keep and
17 bear arms.

18 An assault weapon was not made for deer
19 hunting and every American citizen who enjoys their
20 freedom should have at least one, until something
21 better comes along. It is your right and duty. Just
22 pray you will never have to use it. Gun control has
23 killed more people than no gun control.

24 I'm going to give you some reasons why you
25 should own an assault weapon. When the President

1 lies to his people, specifically when under oath;

2 2. When the government lies to its people;

3 3. When the government wants to control
4 your firearms or ammunition;

5 4. When the elected officials violate their
6 oath of office and still remain in office;

7 When the justice, the judges, systems makes
8 their own perk laws and rules which violate our
9 Constitution;

10 When the DA's Office will not prosecute
11 those criminals who violate their oath of office;

12 When the government surveys are slanted;

13 When the government does not want the truth;

14 When the government controls what you should
15 know;

16 When the government thinks you cannot handle
17 the truth;

18 When the government does not allow you to
19 have a jury of your peers;

20 When judges are not elected, and elected
21 officials are allowed to serve more than two terms or
22 a maximum of 10 years;

23 When the Constitution, Declaration of
24 Independence and real history, as it happened, are no
25 longer taught in school.

1 The U. S. Supreme Court has already said,
2 a person has no Constitutional right of protection by
3 the police.

4 You have a God given right to protect your-
5 self, your possessions and your rights to life and
6 liberty and your pursuit to happiness. If our
7 government does not help secure these rights, God
8 help this one nation under God. I pray that we do
9 not have to repeat history and we seek our wisdom
10 from the past. For those who do not read or under-
11 stand history, they will surely repeat it. Thank
12 you, Mr. Chairman.

13 CHAIRMAN GANNON: Thank you, Mr. Schulze.
14 Mr. Pittman.

15 MR. PITTMAN: The colorful paperwork is from
16 me. I'm glad to hear I don't have to read it all.
17 I hope you will. I'm going to hit a few pieces of
18 this and I'll try to keep the time down.

19 To begin with, on behalf of the Pennsylvania
20 Gun Owner's Association and myself, we thank you for
21 this opportunity to address the Committee and hope
22 we can give you the open and honest input you are
23 asking.

24 Like many in this room, I feel there are
25 too many anti gun laws and, accordingly, we feel

1 there should be some changes in the law. We are
2 firmly convinced that much better ways exist to curb
3 crime, gun violence and accidents with guns.

4 We fully recognize the threat of criminals
5 with firearms close to the everyday life of both
6 people and police in some areas of the state. We
7 also know the reality of the areas we live in. Crime
8 seems to relate to political subdivisions and those
9 with the most deterrents see less crime.

10 I am aware that many would like to see the
11 legal gun owner made as rare as the unicorn. They
12 are misguided. According to the FBI reports, over
13 the last few years the legal gun owner has been
14 responsible for shooting criminal perpetrators at a
15 varying rate of between eight to one and now down to
16 five to one when compared to all law enforcement
17 officers in the United States. If the people in
18 this area were to give up their firearms, the greatest
19 deterrent would be gone. The outlaws would still
20 have their guns and the crime rate would climb.

21 Many of our current and pending gun laws
22 attempt to keep firearms from juveniles, criminals
23 and the insane. This goal the PGOA fully supports.
24 However, the collection and sharing of confidential
25 information from every firearm purchaser is a very

1 peculiar and unpopular method to use. We recall
2 both the state and federal governments losing
3 considerable trust over their past activities in the
4 computerized listing of all gun owners in Allegheny
5 County. The federal founding paperwork stated, this
6 was a proto-type project to be used throughout the
7 rest of the state. The PGOA is working on bills
8 that will drastically reduce any need for that type
9 of a record system, the expense that's involved and
10 the unnecessary risk to Pennsylvanians. We would
11 hope we could count on you to receive and act on our
12 proposals in the spirit in which they are submitted.
13 By late October we expect to submit a finished
14 proposal that will accomplish the following:

- 15 a. Simplify a overly complex system;
- 16 b. Protect individual privacy;
- 17 c. Calm the waters of suspicion between the
18 citizens and the government;
- 19 d. Cut the government costs;
- 20 e. Build an acceptable, more successful
21 method to keep firearms from individuals that have
22 lost their right to firearms, and
- 23 f. Preserve the individual's rights to
24 arms without question.

25 The original concept of keeping track of

1 every gun owner, every gun, and every gun traded,
2 sold or purchased has created one expensive nightmare
3 for us all. As it stands today, the State Police
4 may have to run a check on any number of 12 million
5 different residents in any day, and sometimes the
6 same people two days or a week later, and possibly
7 two or three more times later that year.

8 They must also issue a unique number for
9 each transaction, record, store, track and delete,
10 on schedule, all or parts of this information. This
11 also requires time from the buyer, dealer, and
12 sometimes separate seller and often there are extra
13 trips involved back and forth to the dealer to get
14 whatever questions asked and answered that may be
15 required.

16 I can't help wondering how we ever got
17 started off on this tangent. Does it make much more
18 sense, and dare I say practical, to keep track of
19 4 percent of the people that have been proven
20 guilty and lost their rights in court? Why should
21 96 percent of the population have their rights
22 whittled away because of outlaws that continue a
23 life of crime? Why should the 96 percent allow any-
24 one to take their heritage in a misguided effort to
25 stop outlaws with more law books?

1 I have received a number of proposed bills
2 that would place varied restrictions on the law-abiding
3 gun owner while claiming to help eliminate everything
4 from mass murders to accidental shootings. Although
5 the motives for these proposals may be an honest
6 attempt to resolve a problem, the proposals and a
7 number of the current gun laws fall extremely short
8 when compared to states that have tried and proven
9 less gun control leads to less crime. The documen-
10 tation is readily available via the Gun Owners of
11 America and the National Rifle Association as well
12 as other published sources.

13 Unfortunately for all, many continue to beat
14 the anti-gun drum loud and strong for yet more laws
15 that punish the law-abiding and fail to affect
16 criminals on the street.

17 There is a section here I do want to hit
18 and I'll start breaking this down for you. We believe
19 all legislators and the governors are remiss if you
20 fail to correct the situation the members of the
21 Amish church have been placed in. The federal
22 government has written and passed another firearm
23 law without constitutional authority or reasonable
24 considerations. This one mandates a photo ID of a
25 purchaser of any firearm from a dealer, and as their

1 religion does not allow the taking of photos, they
2 can no longer buy a firearm. It is a ridiculous and
3 unethical situation that has gone on too long and
4 should warrant a priority action by the Commonwealth
5 to protect their rights.

6 I wish I could tell you I had all of the
7 answers on all of the gun problems, but I do know
8 that we have worked on many of them and we have
9 something to offer. I don't see the -- we have been
10 working on this thing with the Amish with the federal
11 government and I don't know if it's going to get
12 fixed there. So, like a lot of times we have an over-
13 lap in authority here as far as the laws that we live
14 under goes. We have the state and we have the
15 federal government that are both pumping out a lot
16 of legislation that pertains to firearms and owner-
17 ship and transport and where you can and where you
18 can't and so forth. I don't see these things impact-
19 ing the criminal at all. I do see a lot of people
20 being caught up in a quagmire if they don't have a
21 funding to afford good attorneys. They are ending
22 up in a position they shouldn't be in. The Amish is
23 just one prime example. The use of some of these
24 records, some before 1950, that were in no way,
25 shape or form meant to deprive the people of their

1 rights at the time that they were "convicted of
2 petty larceny or whatever it may have been," this is
3 wrong. I mean, as representatives of the people,
4 we look to you to fix this. All we can do as a group
5 is offer our support and try to work with you on this.

6 I'd like to make a comment also on House
7 Bill 564. The PGOA is fully supportive of House Bill
8 564. It will bring Pennsylvania in line with the
9 federal law in the area of persons disallowed to
10 purchase firearms. Apparently now there is an area
11 that doesn't seem to work too well. You can buy it
12 under the federal law but you can't buy it under the
13 state or vice versa. I would recognize that if the
14 state feds say you can't have it, then the state
15 would also admit that you can't have it. The dealer
16 couldn't sell to them anyhow. It has to do with
17 purchase of the guns. It's only a paragraph long and
18 I hope you'll take time to read it and really consider
19 it hard because I think it will help in a lot of
20 situations because what it does do besides that is
21 that it brings the holder of a license to carry
22 a firearm in parallel with the holder of the
23 firearm in another state. They are accepted as a
24 license to purchase that other states have. Here
25 we wouldn't need that step. We don't need it if this

1 is passed and it eliminates someone who does
2 have a license which is a credible, certified license
3 issued, that you have passed all the background
4 checks, that you have all of your rights and that
5 there is no reason why you shouldn't be allowed to
6 carry a firearm. Well, if you should be able to
7 carry a firearm, it only makes sense that you would
8 be allowed to purchase and it does cut all of the
9 red tape and duplicative action thereby saving man
10 hours for the State Police, expenses from the
11 taxpayers and this backlog that does occur occasion-
12 ally. I'm not saying it's all the time as far as
13 getting the "in check" done. If you can eliminate
14 that -- if the people that are already licensed, if
15 that is accepted as enough background check, which is
16 more thorough than the instant check, having gone
17 through sheriff as well, it should just be recognized.
18 It's basically a one paragraph law that pretty much
19 does that.

20 I had some things submitted by Mr. Larry
21 Johnson who wasn't able to be here because of
22 medical problems. I'd like to touch on that for a
23 second. Based on a Supreme Court case, Murdoch
24 versus the Commonwealth of Pennsylvania, 1942,
25 319 U.S. 105. The decision of the Court stated, a

1 state may not impose a license, tax, or fee on the
2 pursuit of a constitutional right. Mr. Johnson
3 believes under both the state and federal consti-
4 tution as well as the findings of the Supreme Court
5 in that case, the current fee for the PICS charge,
6 the current three dollar gun surcharge, and the fee
7 for the carry license as well as the requirement for
8 a license to carry should all be revoked or done
9 away with. I'll add to that a comment that I have
10 here is that the PGOA 's proposal that will be
11 submitted in October would at least partially
12 address these concerns. We put quite a bit of time
13 in on this. It's been in the works for over three
14 years. We've had different members of the legis-
15 lature look at it, tell us they did like it. They
16 wanted something changed. They wanted more added,
17 but in the long run, we are going to put down what we
18 want. We'll leave it up to you.

19 There is a pretty good across-the-board
20 feeling among the people that I know and that I
21 talk to, and that's quite a few, that both the state
22 and the federal government is seen to be overstepping
23 their authorities as far as we can tell whenever it
24 comes to constitutionality of law and guns. I don't
25 understand exactly how a connection through inter-

1 state commerce gets you down to telling people
2 whether or not you can carry a firearm within a
3 thousand feet of a school. Judges in Missouri
4 decided the same thing and that provision from the
5 federal law has been canned. They, of course, passed
6 it in another version. So, this is the kind of
7 stuff that drives a wedge between the average people,
8 we the people, and government as it is or as we see
9 it, I suppose. One hand doesn't seem to be compli-
10 menting the other very well, at least not as far as
11 the guns go.

12 Today I would like to offer the input and
13 assistance of the Gun Owners Association on any
14 considered action or question involving our right to
15 keep and bear arms. Our membership is dedicated to
16 the preservation of this right and we trust you are
17 as well. Thank you.

18 CHAIRMAN GANNON: Thank you, Mr. Pittman
19 and Mr. Schulze for appearing before the Committee
20 today and offering your testimony.

21 MR. PITTMAN: Could I throw one P.S. on
22 there? I'm sorry, I had a note here that I didn't
23 want to slip up on. I don't know exactly -- I'm not
24 real familiar with how this works insofar as we
25 submit the paperwork and if it's just taken for the

1 gospel or what, just taken into consideration, but
2 there was some paperwork submitted before from
3 Representative -- I think it was Evans and Rooney.

4 CHAIRMAN GANNON: Yes.

5 MR. PITTMAN: Okay. One of the sentences
6 in that testimony reads, two-thirds of the gun owners
7 support banning guns without safety locks, banning
8 all sales of semi-automatic weapons and creating a
9 system of gun registration and ID cards. The problem
10 I have with that is our organization grows and
11 shrinks from time to time but we are an organization
12 that has been here for awhile. We are very serious.
13 People across the state do know who we are and can
14 find our address. I have yet to have one member of
15 our organization tell me that he was contacted with
16 any type of survey along this line and we do put
17 feelers out for it. Thank you.

18 CHAIRMAN GANNON: Thank you, very much.
19 Representative Josephs?

20 REPRESENTATIVE JOSEPHS: Thank you. I have
21 a comment, Mr. Chairman. This is not directed towards
22 any particular individual but I am an advocate of
23 responsible gun control. I'm old enough to remember
24 refugees from Nazi Germany with numbers on their
25 arms. I do not appreciate being compared to a Nazi

1 because of my stand on this issue and I can assure
2 you, ladies and gentlemen, that this has not convinc-
3 ed me to your side. I would respectfully ask that
4 you cease these comparisons because I find them
5 extraordinarily offensive.

6 MR. SCHULZE: May I comment on that?

7 CHAIRMAN GANNON: This is not a debate. This
8 is a formal meeting. I know everybody has a point of
9 view and we wanted to give everybody an opportunity
10 to put their point of view on the record and answer
11 questions and have a dialog and we all feel very
12 strongly about this issue and I would rather not get
13 into a debate back and forth on our position. I
14 know Mr. Pittman has made some comments about a
15 survey. I have not seen the questions that were
16 asked and neither has he. So, I think it's a fair
17 comment from your organization position on that
18 issue. I don't know how the question was asked or
19 how the questions were presented. So, I'm going to
20 reserve comment on both the presentation that was
21 presented by Representative Rooney and Representative
22 Evans and also your position. I do appreciate the
23 input and the comments.

24 (The following was submitted for inclusion
25 in the record:)

1 NOTICE TO ALL LEGISLATORS - HANDS OFF - NO COMPROMISES

2 THERE IS NOTHING WRONG
3 WITH OUR RIGHTS!

4 SOME LEGISLATORS JUST DON'T GET IT!

5 A number of events have unfolded since
6 our last news letter. From the tragedy at
7 Columbine High School, to the ongoing
8 Washington, D.C. legislative battle on how more
9 gun control law will fix all the crime, drug,
10 and warped individuals. Their latest offer-
11 ing is S 254, a real Sara Brady Special, with
12 a prison sentence for a lot of uninformed
13 people if they aren't really careful.

14 If any gun owner has questions as to
15 the strength of their legislator's spinal make-
16 up, this is good legislation to find out on.
17 Call them all, and tell them -- Gun control is
18 NOT acceptable, and gun control is NOT crime
19 control, Vote NO! on S 254 -- and all gun
20 control laws! Contact their local office
21 (Under government in your local phone book,
22 -- they are home on break to hear from their
23 constituents (that's us). Or you can call
24 their DC offices at 888-449-3511 or
25 202-224-3121, or both. Weigh in on this debate!

1 Keep it short and sweet.

2 SUCCESS, even without NRA support!

3 The Washington Times has reported that
4 the recent defeat of proposed gun control
5 legislation in the House was the result of
6 GRASSROOT PRESSURES ON THE REPRESENTATIVES!

7 Your calls do count! In the aforementioned
8 battle, President Clinton's henchmen told a
9 Representative they had "polled" his district
10 and the results were 77% in support of and
11 23% against the gun control legislation. The
12 Representative, Baron P. Hill of Indiana, chose
13 to believe his own set of numbers: His
14 offices received 1,100 calls against gun control
15 and only a "half dozen or dozen" in favor.
16 Rep. Hill was one of those Democrats that
17 broke ranks and help defeat that proposal at
18 that time. Will he next time? I guess it
19 depends on whether or not the gun owners in
20 Indiana get busy or lazy.

21 Now what about the rest of you
22 Pennsylvanians? If you won't write a letter
23 at least spend 15 minutes of your precious
24 time on the phone and tell your US Senators
25 and Representative what you want them to do!

1 Use the line above in the... We will have
2 to continue to fight as long as the same
3 shallow minds continue to buy into Gun Control
4 legislation being sold as "Crime Control,
5 Gun Safety Control, Terrorism Deterrent,
6 and Corrective Juvenile Legislation, etc, etc.
7 Our methods will improve in time, but for now
8 lets stick with what is working. Example:
9 If 50,000 of us call Senator Specter's
10 offices, he might even find a line in his
11 favorite Scottish law book that would advise
12 him to do what his constituents demand!

14 THE D.E.P. TAKES A SHOT AT GUN CONTROL

15 A draft copy of a proposed new
16 Department Environmental Protection "Policy"
17 recently appeared on my desk from an unknown
18 source. Then one came in as an e-mail. Two
19 more were handed to me as I walked to the break
20 room later that day, and nearly every direction
21 I turned for the next two days I encountered
22 someone with less than happy comments about it.

23 What could fire up that many elite
24 state employees, (AKA "Pod-People"), you ask.
25 Simple, the draft for a new Violence in the

1 Work Place Policy, or at least some of the
2 restrictions, (the forfeiture of rights),
3 from all D.E.P. workers, went over like a
4 lead balloon.

5 I'm sure legislation outweighs policy.
6 It's likely some court decisions on this
7 probably already exist, or will shortly if
8 it is imposed. It was extremely interesting
9 to see so many otherwise quiet people come
10 to life to oppose their employer's draft
11 policies. At least in the central and western
12 parts of the state, the draft is not considered
13 acceptable at all. As long as it oversteps
14 an individual's rights, it belongs in the
15 garbage with the paranoid that wrote it.

16 If proposed policy covers a lot of
17 distorted thoughts on more restrictions on the
18 honest guy while the criminal will not hesitate
19 to ignore it all. It does do a real good job
20 of making excellent targets out of most any DEP
21 offices and all of the employees, and strips the
22 law abiding of their rights at self-preservation.

23 Anyhow, the policies pretty much copy
24 the rules set forth at most maximum security
25 prisons, and are totally out of place in a

1 free society. Even if it just covered us
2 second class citizens (Civil Service Employees),
3 it's out of line, way out of line.

4 As we have in the last few newsletters,
5 we continue to invite other like minded groups
6 to join us as Associate Member Groups.
7 Several Clubs have and several others are mauling
8 it over in their minds. We are delighted to
9 see the inquires come in and the applications,
10 too. Individual membership numbers also
11 continue to grow as well. As we regain our
12 numbers, our reach and clout (political that is),
13 also grow.

14 I did attend and speak for our membership
15 at the Game Commissions Hearing on "Sunday
16 Hunting" last month in Cambridge Springs. At
17 their request, we will have a follow-up
18 questionnaire in this or the next newsletter.
19 When you receive it, read, answer, and return it.

20 Working with legislators isn't always
21 easy. It is possible to achieve positive
22 results through "spirited debate" one on one,
23 at working as a source of information, with
24 suggestions and support. Most legislators we
25 can at least work with. We try to never miss

1 a chance to directly express and receive the
2 ideas that form the two sides of any controversy
3 on proposed gun legislation. Once we hear what
4 the perceived problems and suggested corrections
5 are, we can know how accurate or realistic
6 the problem and proposed solution are.
7 Then we can accurately move as a group, to
8 help resolve whatever the problem is, without
9 stripping rights from the law abiding.

10 Far too often the media offers a
11 clearly biased report as pure fact, (sometimes
12 3 or 4 times a day for several days). Often
13 the story line tainted with anti-gun opinion.
14 The string of "reports" then generate the
15 perception of public pressures for more gun
16 control.

17 So knowing what some reporters present
18 as fact, and expecting the public response.
19 It isn't too hard to understand how anti-gun
20 elements waiting in the wings with more gun
21 control proposals and false promises, can
22 find the support for some pretty bizarre legis-
23 lation at a given time. Since they by-pass
24 the truth, receive free coverage from most
25 major TV networks, and have very deep pockets,

1 our battles are far from over.

2 If you believe you have rights and you
3 want to hand them down to your children, join
4 the PGOA! That's really what we are all about!

5 JOIN NOW!

6 PENNSYLVANIA GUN OWNER'S ASSOCIATION
7 Address: PGOA, PO BOX 116, CENTERVILLE,
8 PA 16404-0116

9 1999 Application for Membership-Individual
Date _____

10 Name _____ New Member ___ or Past Member _____

11 Address _____ *Male _____ *Female _____ *Age _____

12 _____ Phone _____

13 County _____ will you to assist in some way?
_____ Yes, or _____ no.

14 At least end this century right!
Special Second-Half of "99" Membership

15 1. Full membership with all benefits, offerings
16 and newsletters. (reg. \$25.00) now only \$10.00

17 Make checks payable to PGOA and note on
18 check: "for membership" or "donation".
Please use our address above.

19 NOTE: Benefits include 1 prepaid ticket on all
20 remaining gun raffles in 1999; Member Discounts
21 at events and on promotional items: Annual
22 Membership cards, All offerings and newsletters.

23 Your comments and help are always needed and
24 welcome, call: Voice Mail 814-337-4091;
25 Fax to 814-827-2053, or write to:
The PGOA Directors, at the address above.

1 WELCOME ABOARD, together we will, "Make
2 Pennsylvania Gun Owner Friendly Again!"

3 *Optional Information "WE AIM TO BE BETTER
4 CITIZENS"

5 Application available on request for
6 groups 10 to 10,000!

7 XX

8
9 LETTER TO ALL FRIENDS-An Invitation to Wake Up!

10 August 11, 1999

11 PGOA President, Roy D. Pittman
12 P.O. Box 116
13 Centerville, PA 16404
Home Ph. 814-827-1372

14 Dear Fellow Gun Owners,

15 I write to you as the President of PGOA,
16 to sincerely request your help. Not money,
17 or tying up your time in travel, nor meetings.
18 This may be rare, but we are soliciting your
19 support for a piece of proposed legislation
20 "HR 564", (on back), and for the groups of
21 people already working with us to make meaning-
22 ful improvements to Pennsylvania's gun laws.
23 It was formally introduced Feb. 10, 1999.
24 There are 15 sponsoring State Representatives,
25 (with more to be added).

1 I trust you are aware of the continual
2 loads and reservations being wrongfully placed
3 on the legal gun owners of Pennsylvania. No
4 matter what it's stated purpose (crime control,
5 terrorism deterrent, juvenile delinquency,
6 etc.), these laws add up to the taxing, and
7 taking of our rights! Whether the legislators
8 were misguided or pressured into their passage
9 is irrelevant.

10 What is most important at this time,
11 is for all legal gun owners in PENNSYLVANIA,
12 to wake up work together, and act in unison
13 with us and our allies in this fight. By
14 expanding our united base, improving
15 communications (networking through e-mail,
16 web page, fax, newsletters, etc.),
17 the ability to work together and respond in
18 short order from all parts of the state,
19 will gain us a strongly improved voice to
20 use on pending legislation. We will all be in
21 a much better position to both collect and
22 distribute information, formulate proper
23 actions, and utilize a united approach to
24 legislation from across the state.

25 If you are serious about helping to

1 preserve your rights to firearms (as a right
2 not a privilege), please contact us. We have
3 more legislative proposals that qualify for
4 the support of every serious pro-gun organi-
5 zation. We are currently working with many
6 clubs and organizations to get legislation
7 corrected.

8 HR 564 will stop the useless repeat
9 background checks, fees, and waiting periods
10 for all holders of a License to Carry Firearms,
11 (575,00+ residents of Penn.). This is the
12 first of our three step strategy to reach a
13 real solution that will both: protect our
14 rights, and lead to a more effective method
15 of keeping firearms away from criminals than
16 anything the anti-gun folks can ever offer.

17 This is a small step, but also an
18 honest and sound method to unravel the anti-
19 gun strangle hold on Pennsylvania's gun owners.
20 We hope you will choose to work with us to
21 bring about the first positive change in years.
22 The "supreme gumbo" Pennsylvania now has for
23 gun laws will only get worse if we don't
24 stand together and work for several needed changes!

25 Our bill, HB 564 has been copied on the

1 back of this page for you and your friends to
2 read. Copy both sides and pass on to other
3 friends, Everyone willing to pitch in and
4 lend some assistance, please contact us at
5 once.

6 Gratefully,

7 Roy D. Pittman, President,
8 Pennsylvania's Gun Owners
Association

9 PRINTER'S NO. 588

10 THE GENERAL ASSEMBLY OF PENNSYLVANIA

11 HOUSE BILL

12 No. 564 Session of 1999

13 INTRODUCED BY FORCIER, METCALFE, SEYFERT, WILT,

14 ARMSTRONG, LEH, McNAUGHTON, FAIRCHILD, LYNCH,

15 McILHINNEY, STABACK, STEVENSON, ROHRER,

16 GEIST AND BENNINGHOFF, FEBRUARY 10, 1999

17 REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 10, 1999

18 AN ACT

19 Amending Title 18 (Crimes and Offenses) of
20 the Pennsylvania Consolidated Statutes,
21 further providing for the purchase of
22 firearms.

23 The General Assembly of the Commonwealth of
24 Pennsylvania hereby enacts as follows:

25 Section 1. Section 6105(c) of Title 18

1 of the Pennsylvania Consolidated Statutes
2 is amended by adding a paragraph to read:
3 #6105. Persons not to possess, use, manu-
4 facture, control, sell or transfer firearms.

5 ***

6 (c) Other persons - In addition to any person
7 who has been convicted of any offense listed
8 under subsection (b), the following persons
9 shall be subject to the prohibition of
10 subsection (a):

11 ***

12 (9) A person who is prohibited from possess-
13 ing, using, controlling, selling or transferring
14 a firearm under the statutes of the United States.

15 ***

16 Section 2. Section 6111(b)(1.4) of Title 18,
17 amended December 3, 1998 (P.L. 933, No. (21), is
18 amended and the subsection is amended by adding
19 a paragraph to read:

20 #6111. Sale or transfer of firearms.

21 * * *

22 (b) Duty of seller - No licensed importer,
23 licensed manufacturer or licensed dealer shall
24 sell or deliver any firearm to another person,
25 other than a licensed importer, licensed
manufacturer, licensed dealer or licensed

1 collector, until the conditions of subsection
2 (a) have been satisfied and until he has:

3 * * *

4 (1.4) Following implementation of the
5 instantaneous records check by the Pennsylvania
6 State Police on or before December 31, 1998,
7 no application/record of sale shall be
8 completed for the purchase or transfer of
9 a firearm which exceeds the barrel lengths set
10 forth in section 6102. A statement shall be
11 submitted by the dealer to the Pennsylvania
12 State Police, postmarked via first class
13 mail, within 14 days of the sale, containing
14 the number of firearms sold which exceed the
15 barrel and related lengths set forth in
16 section 6102, the amount of surcharge and
17 other fees remitted and a list of the unique
18 approval numbers given pursuant to paragraph
19 (4), and the number of firearms sold for which
20 a background check was not required pursuant to
21 paragraph (8), together with a statement that
22 the background checks have been performed on
23 the firearms contained in the statement
24 unless a background check was not required
25 pursuant to paragraph (8). The form of the

1 statement relating to 19990H064B0588 performance
2 of background checks shall be promulgated
3 by the Pennsylvania State Police.

4 ***

5 (8) The provisions contained in paragraphs
6 (1.1), (3), (4), (5), (6) and (7) do not apply
7 to the sale or delivery of a firearm to any
8 person who possesses a valid license to
9 carry a firearm under section 6109 (relating
10 to licenses). Section 3, Section 6111.2 of
11 Title 18 is amended by adding a subsection
12 to read:

13 #6111.2. Firearm sales surcharge.

14 ***

15 (e) Exception - The surcharge imposed by
16 subsection (a) of this section would not apply
17 if the purchaser of the firearm possessed a
18 valid license to carry a firearm under
19 section 6109 (relating to licenses).

20 Section 4. This act shall take effect in
21 60 days.

22 B2L18JS/1999OH0564B0588

23 (End of HB#564)

24 HB#564 is the result of the labor of the
25 Pennsylvania Gun Owner's Association and a

1 number of State Representatives that realized;
2 a flaw in the law is like a cut in your finger.
3 If you don't take proper steps to heal the
4 wound, you could lose the hand.

5 A NOTE OF EXPLANATION: The underlined portions
6 are the proposed changes to the law.

7
8 NOTE: This is the opinion of the writer, and
9 not necessarily any other members.

10 POLITICS AS USUAL?

11 After a lot of years on the sideline,
12 rooting and cheering for pro-gun candidates,
13 I find it very disgusting that neither major party
14 really stands up to protect our Constitution.

15 The Democratic Party, (to which I once
16 belonged), appears to have been bought by anti-
17 gun and anti-American money. Why else would it
18 continue to promote legislation that is harmful
19 to our nation, and with Constitutional authority?
20 I would not trust them to raise the right flag
21 if they were in total control.

22 The Republicans on the other hand,
23 (the party I may soon be leaving with several
24 thousands of others), seem to be at least
25 slower to sell out our rights and give some

1 lip service to keep appearances up. Oh sure
2 they sometimes make a big show of standing
3 firm on a few points for a few days. Then
4 they usually cut a couple of nastier parts
5 out of a bill, and enough jump the fence and
6 pass it. Then they all claim to have made
7 our lives a little safer, (of course that's assum-
8 ing criminals will obey their new law).

9 Before I get too far off on a tangent,
10 let me state this real loud and clear. There
11 are a lot of really good Pennsylvanians in each
12 of those parties. There are also some of the
13 strongest supporters of our Constitution in
14 each of these parties. Unfortunately, some
15 isn't enough, and neither party seems to give
16 a hoot about anything except who they can
17 run that could win. I really expect a lot more
18 class and a much higher degree of responsibility
19 from all officials and both parties. Shame on
20 them both, and me, too! I do, on my own,
21 support candidates that are pro-gun, from all
22 parties. I have made donations in the past
23 to the major parties, but that ended a few
24 years ago with way too many bad laws getting
25 passed.

1 I wouldn't have gotten on this subject
2 except that I am scheduled to speak at a
3 Judiciary Committee Hearing in two days.
4 With all the work and time being spent by so
5 many people to get some laws straightened out,
6 it is likely we will have at best a half-hearted
7 attempt made by the Republicans to get
8 anything done. I'm sure the old fear tactics
9 will come again. You know, the one that goes
10 like this: If we open that can of worms the
11 legislators that have taken anti-gun money will
12 try to put in all kinds of stuff, and you may
13 have a lot of guns outlawed and confiscated!
14Just hold the phone there a minute Elmo!
15 If there was enough votes in the liberal anti-
16 gun camp and the Governor would sign it, those
17 guns would have been outlawed a long time ago!
18 On the other hand, if the supposedly conservative
19 majority with "their" Governor won't stick
20 up for our rights, we owe them nothing but
21 an unemployment check. I would think we should
22 all do our best to un-employ them at every
23 chance, and starting now not when the next
24 election is upon us. If these dogs won't hunt
25 lets get some that will!

1 If you want some prime examples look
2 at how the Republican Party treated Senator
3 Bob Smith in his fight to stop one Unconstitu-
4 tional anti-gun law from being passed. They
5 undermined his efforts, and started the compromise
6 and pass plan. Due out of committee soon,
7 another set of unneeded restrictions on
8 purchases and rights. Thank you very much both
9 major parties, and especially the Republicans
10 for undermining one of your own for showing
11 some guts. On a state level, lets just mention
12 the way Teresa Forcier was ostracized by the
13 dear Republican Party for having the guts to
14 stand up for her constituents rights, (also
15 both the state and U. S. Constitutions).

16 Yes the major parties do definitely
17 disgust me. One hint for legislators that
18 want to keep any gun owners on their side.
19 Get the original Ryan Report, (Not Phil
20 Krug's lame brain rendition). With it, the
21 State's Constitution and a little research,
22 you'll have enough ammo to blow the anti's
23 media blitz of half truth off the airways and
24 out of print. If legislators need help
25 just holler, we've got a lot to give. Stick

1 up for those that elected you! We will
2 remember in November of every year.

3 INTERNAL CHANGES WITH PGOA

4 The following is a number of updates
5 that were for the most part missed or passed
6 overdue to time or space available in the
7 newsletters.

8 Our new Treasurer Ed Mullans, received
9 all bills statements and checking materials
10 of the June meeting and is doing a fine job
11 in his new position.

12 At our July 15 meeting a presentation
13 was made by Andrew Hohol on the potential/
14 likelihood of the newest of computer problems
15 facing us all. Namely the newest bug is
16 called "B02K", and appears to be an on-call
17 virus and that there is presently no protection
18 for any computer. Unfortunately the developers
19 of this bug were kind enough to share the
20 knowledge of "how to" with a lot of other
21 super hackers. The end result could be, and
22 likely will be a major impact, (if not total
23 wipeout), to any targeted computers.

24 Mr. Hohol will pass on any further news
25 on this to us to forward on to you.

1 Our original WEB page is still down.
2 But replacement is in the works and expected
3 to be online within a month. Funds have been
4 approved to pay for all planned expenses.

5 Our meetings are being held at Gina's
6 Restaurant for the time being. It offers us
7 all we need in a relaxed fashion and has been
8 very good to us when our meetings run a little
9 over. It is located on State Route 8, 8 miles
10 north of Titusville, in Centerville. All
11 members are invited, but we request a call
12 before hand for agenda items and to secure
13 enough room for all.

14 We are more than willing to attend
15 meetings of other clubs with presentations or
16 to answer questions on the organization or
17 our efforts. We will also hold a meeting in
18 your area if requested. We work out of the
19 Centerville area as a matter of convenience,
20 but fully expect travel to be a part of our
21 workload.

22 August 19, 1999 notes --
23 The efforts of the Safety Tape Committee will
24 now be headed by Mr. Sam Switzer.
25 A fall gun-raffle, shoot, cook-out, and

1 meeting is being developed for the beginning/
2 mid-November, at Sparta Sportsmen's Club.

3 Volunteers are needed if we are to have a
4 number of activities and events.

5 We approved expenditures for renewal of our
6 small games of chance license for \$100.

7 Bunny Hohol is now willing to take on more
8 of the Secretaries chores, which will help in
9 a number of ways.

10 A number of promotional activities were discussed,
11 with Mr. David Parker now heading that newest
12 of Committees, I feel we will continue to grow
13 and improve in our community relations.

14 We will soon be sending out letters of acknowledge-
15 ment and appreciation to those we become
16 aware of that have helped in the fight to
17 save our rights. Members are to be encouraged
18 to bring candidates to our attention, they
19 need not be a member to receive one.

20 MR. Stan Switzer, agreed to put together a
21 running list of government office seekers
22 and their stands on the preservation of
23 the Constitution/2nd Amendment.

24 CONSTITUTIONAL RIGHTS

25 To hold gun manufacturers responsible for

1 unlawful or irresponsible usage of their
2 firearms is just plain insanity.

3 In 1820, in the case "Salem Bank v. Gloucester
4 Bank" 17 Mass 1, the Massachusetts Supreme
5 Court in it's decision, noted, "In all cases of
6 negligence which are the foundations of actions,
7 it is believed the injury complained of is the
8 direct and immediate consequence of the fault."
9 In other words, for the indirect and remote
10 consequences of an unlawful or irresponsible action
11 of a third party, this action cannot be
12 visited upon someone who has not taken direct
13 and intended aforethought in that unlawful
14 and irresponsible action. For example, as
15 used by the defense in this case: "Suppose a
16 man leaves his loaded gun exposed and another
17 takes it and wounds a third, would an action
18 lie against the owner?"

19 So, my fellow gun owners, there you have it.
20 A lawful business cannot be sued for unlawful
21 and irresponsible actions of another party!
22 Now, as to being charged a fee for the enjoyment
23 of your Constitutional Rights:
24 "A State may not impose a licensed, tax or fee
25 for the enjoyment of a Constitutionally

1 protected right," Murdock v. Commonwealth of
2 Pennsylvania (1942) 319 U.S. 105. This is
3 only true, though, if the U. S. Constitution
4 still has any standing in this nation.
5 Take the time to read and understand these
6 two court decisions. Then, perhaps, the
7 truth shall set you free.

8
9 THE PENNSYLVANIA GUN
10 OWNERS ASSOCIATION
11 August 11, 1999

12 NEWSLETTER

13 P.O. Box 116

14 CENTERVILLE, PA. 16404
15 Voice Mail 814-337-4091

16 Reported by ROY D. PITTMAN For General
17 Information to Members and the Public as an
18 educational source.

19 INFORMATION INCLUDED ON:

20 OUR Pa. House Bill #564, "push it hard"

21 Pennsylvania's DEP "Wants a shot at gun control!",

22 PENDING LEGISLATION - Federal,

23 S.254-phone in on this, it is not acceptable-

24 Gun Control is NOT Crime Control!;

25 A LETTER TO YOU AND YOUR FRIENDS:

Sunday Hunting-A Hearing with the Game Commission,
and a survey in the works;

1 A page from Clarion County Gun Owners Assoc. on
2 "CONSTITUTIONAL RIGHTS"

3 ANNOUNCEMENTS AND COMING EVENTS;
4 APPLICATION AND MORE - MUCH MORE!

5 For comments or information on Sept. meeting
6 call our - voice mail at, 814-337-4091!
7 Don't be shy!

8 "GUN CONTROL"

9 GATEWAY TO TYRANNY

10
11 THE NAZI WEAPONS LAW, 18 MARCH 1938
12 Original German Text and Translation,
13 with an Analysis that Shows
14 U.S. "GUN CONTROL" LAWS HAVE NAZI ROOTS.

15 BY

16 JAY SIMKIN and AARON ZELMAN

17
18 LETHAL

19 LAWS

20 "GUN CONTROL" IS THE

21 KEY TO GENOCIDE

22 DOCUMENTARY PROOF:

23 ENFORCEMENT OF "GUN CONTROL" LAWS
24 CLEARS THE WAY FOR GOVERNMENTS TO COMMIT GENOCIDES

25 By

JAY SIMKIN, AARON ZELMAN and ALAN M. RICE

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RWANDA'S

GENOCIDE

1994

Supplement to

LETHAL LAWS

By

JAY SIMKIN, AARON ZELMAN and ALAN M. RICE

MAKE SURE YOU DON'T PAY THE PRICE OF "GUN CONTROL" AS THESE UNARMED VICTIMS DID

PERPETRATOR GOVERNMENT	DATE	TARGET	# MURDERED (ESTIMATED)	PERMIT OR REGISTRATION REQUIRED	DATE OF "GUN CONTROL" LAW	SOURCE DOCUMENT
Ottoman Turkey	1915-1917	Armenians	1-1.5 million	yes	1866 1911	Art 166, Penal Code Art 166, Penal Code
Soviet Union *	1929-1953	Anti-Communists Anti-Stalinists	20 million	yes	1929	Art 182, Penal Code
Nazi Germany ** & Occupied Europe	1933-1945	Jews, Gypsies, Anti-Nazis	13 million	yes	1928 1938	Law on Firearms & Ammunition, April 12 Weapons Law, March 18
China *	1949-1952 1957-1960 1966-1976	Anti-Communists Rural Populations Pro-Reform Group	20 million	yes	1935 1957	Arts 186-7, Penal Code Art 9, Security Law Oct 22
Guatemala	1960-1981	Maya Indians	100,000	yes	1871 1964	Decree 36, Nov 25 Decree 283, Oct 27
Uganda	1971-1979	Christians Political Rivals	300,000	yes	1955 1970	Firearms Ordinance Firearms Act
Cambodia	1975-1979	Educated Persons	1 million	yes	1956	Arts 322-8, Penal Code
Rwanda	1994	Tutsi	800,000	yes	1964	Law of 21 November 1964 on the Control of Firearms
		Total Victims:	57 million			

* The law(s) mentioned are part of an older and/or wider body of law on and regulation of private firearms ownership

** For a complete translation of these laws, including regulations specifically banning Jews from owning any weapons and a side-by-side comparison of the Nazi Weapons Law with the U S Gun Control Act of 1968, see "Gun Control" Gateway to Tyranny, J E Simkin & A Zelman, 1992, available from JPFO

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I _____ do
solemnly swear (or affirm) that I will
support, obey and defend the Constitution
of The United States, and the Constitution of
this Commonwealth, and that I will discharge
the duties of my office with fidelity.

1 In CONGRESS, July 4, 1776.

2 The unanimous Declaration of the
3 thirteen united States
4 of America

5 When in the Course of human events, it
6 becomes necessary for one people to dissolve
7 the political bands which have connected
8 them with another, and to assume among
9 the powers of the earth, the separate and
10 equal station to which the Laws of Nature
11 and of Nature's God entitles them, a decent
12 respect to the opinions of mankind requires
13 that they should declare the causes which
14 impel them to the separation.

15 We hold these truths to be self-evident,
16 that all men are created equal, that they
17 are endowed by their Creator with certain
18 inalienable Rights, that among these are
19 Life, Liberty and the pursuit of Happiness.
20 That to secure these rights, Governments
21 are instituted among Men, deriving their
22 just powers from the consent of the govern-
23 ed. That whenever any Form of Government
24 becomes destructive of these ends, it is the
25 Right of the People to alter or to abolish

1 it, and to institute new Government, laying
2 its foundation on such principles and
3 organizing its powers in such form, as to
4 them shall seem most likely to effect their
5 Safety and Happiness. Prudence, indeed,
6 will dictate that Governments long
7 established should not be changed for light
8 and transient causes; and accordingly all ex-
9 perience hath shown, that mankind are more
10 disposed to suffer, while evils are
11 sufferable, than to right themselves by
12 abolishing the forms to which they are
13 accustomed. But when a long train of abuses
14 and usurpations, pursuing invariably the
15 same Object evinces a design to reduce
16 them under absolute Depotism, it is their
17 right, it is their duty, to throw off such
18 Government, and to provide new Guards for
19 their future security. Such has been the
20 patient sufferance of these Colonies; and
21 such is now the necessity which constrains
22 them to alter their former Systems of
23 Government. The history of the present
24 King of Great Britain is a history of
25 repeated injuries and usurpations, all having

1 in direct object the establishment of an
2 absolute Tyranny over these States. To
3 prove this, let Facts be submitted to a
4 candid world.

5 He has refused his Assent to Laws, the
6 most wholesome and necessary for the
7 public good.

8 He has forbidden his Governors to
9 pass Laws of immediate and pressing im-
10 portance, unless suspended in their opera-
11 tion till his Assent should be obtained; and
12 when so suspended, he has utterly neglected
13 to attend to them.

14 He has refused to pass other Laws for
15 the accommodation of large districts of
16 people, unless those people would re-
17 linquish the right of Representation in the
18 Legislature, a right inestimable to them and
19 formidable to tyrants only.

20 He has called together legislative
21 bodies at places unusual, uncomfortable,
22 and distant from the depository of their
23 public Records, for the sole purpose of
24 fatiguing them into compliance with his
25 measures.

1 He has dissolved Representative
2 Houses repeatedly, for opposing with
3 manly firmness his invasion on the rights of
4 the people.

5 He has refused for a long time, after
6 such dissolutions, to cause others to be
7 elected; whereby the Legislative powers, in-
8 capable of Annihilation, have returned to
9 the People at large for their exercise; the
10

11 AMENDMENT 1.

12 Congress shall make no law respecting an
13 establishment of religion, or prohibiting the
14 free exercise thereof; or abridging the
15 freedom of speech, or of the press, or
16 the right of the people peaceably to assemble,
17 and to petition the Government for a redress
18 of grievances.

19 AMENDMENT II.

20 A well regulated Militia, being necessary
21 to the security of a free State, the right
22 of the people to keep and bear Arms, shall
23 not be infringed.
24

25 AMENDMENT III.

1 No Soldier shall, in time of peace be
2 quartered in any house, without the consent
3 of the Owner, nor in time of war, but in a
4 manner to be prescribed by law.

5
6 AMENDMENT IV.

7 The right of the people to be secure in
8 their persons, houses, papers, and effects,
9 against unreasonable searches and seizures,
10 shall not be violated, and no Warrants shall
11 issue, but upon probable cause, supported
12 by Oath or affirmation, and particularly
13 describing the place to be searched, and
14 the persons or things to be seized.

15
16 CONSTITUTION

17 of the

18 COMMONWEALTH OF PENNSYLVANIA

19 We, the people of the Commonwealth
20 of Pennsylvania, grateful to Almighty
21 God for the blessings of civil and
22 religious liberty, and humbly invoking
23 His guidance, do ordain and establish
24 this Constitution.

25

ARTICLE 1

DECLARATION OF RIGHTS

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE THAT --

INHERENT RIGHTS OF MANKIND

Section 1. All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

POLITICAL POWERS

Section 2. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and inalienable right to alter, reform or abolish their government in such manner as they may think proper.

RELIGIOUS FREEDOM

Section 3. All men have a natural and

1 indefeasible right to alter, reform or
2 abolish their government in such manner
3 as they may think proper.

4 RELIGIOUS

5 Section 3. All men have a natural and
6 indefeasible right to worship Almighty God
7 according to the dictates of their own
8 consciences; no man can of right be compelled
9 to attend, erect or support any place of
10 worship, or to maintain any ministry against
11 his consent; no human authority can, in
12 any case whatever, control or interfere
13 with the rights of conscience, and no preference
14 shall ever be given by law to any religious
15 establishments or modes of worship.

16 RELIGION

17 Section 4. No person who acknowledges the
18 being of a God and a future state of rewards
19 and punishments shall, on account of his
20 religious sentiments, be disqualified to hold
21 any office or place of trust or profit under
22 this Commonwealth.

23 ELECTIONS

24 Section 5. Elections shall be free and
25 equal; and no power, civil or military,

1 shall at any time interfere to prevent
2 the free exercise of the right of suffrage.
3 TRIAL by JURY

4 Section 6. Trial by jury shall as
5 heretofore and the right thereof remain
6 inviolate. The General Assembly may
7 provide, however, by law, that a verdict may
8 be rendered by not less than five-sixths
9 of the jury in any civil case.

10 FREEDOM of PRESS and SPEECH: LIBELS

11 Section 7. The printing press shall be
12 free to every person who may undertake to
13 examine the proceedings of the Legislature
14 or any branch of government, and no law
15 shall ever be made to restrain the

16
17 CONSTITUTION OF PENNSYLVANIA

18 Article 1 - DECLARATION OF RIGHTS
19 with the powers of government for redress of
20 grievances or other proper purposes, by
21 petition, address or remonstrance.

22 RIGHT TO BEAR ARMS

23 Section 21. The right of the citizens
24 to bear arms in defense of themselves and
25 the State shall not be questioned.

1 STANDING ARMY: MILITARY SUBORDINATE TO CIVIL
2 POWER

3 Section 22. No standing army shall, in
4 time of peace, be kept up without the consent
5 of the Legislature, and the military shall in
6 all cases and at all times be in strict
7 subordination to the civil power.

8 QUARTERING OF TROOPS

9 Section 23. No soldier shall in time of
10 peace be quartered in any house without
11 the consent of the owner, nor in time of war
12 but in a manner to be prescribed by law.

13 TITLES AND OFFICES

14 Section 24. The legislature shall not
15 grant any title of nobility or hereditary
16 distinction, nor create any office of the
17 appointment to which shall be for a longer
18 term than during good behavior.

19 RESERVATION of POWERS in PEOPLE

20 Section 25. To guard against trans-
21 gressions of the high powers which we have
22 delegated, we declare that everything in
23 this article is excepted out of the general
24 powers of government and shall forever
25 remain inviolate.

1 NO DISCRIMINATION by COMMONWEALTH and ITS
2 POLITICAL SUBDIVISIONS

3 Section 26. Neither the Commonwealth nor
4 any political subdivision thereof shall
5 deny to any person the enjoyment of any civil

6 ARTICLE 1, SECTION 9,

7 PARAGRAPH 3 -

8 United States Constitution

9 "No bill of Attainer or ex post facto

10 Law shall be passed"

11 1. BILL of ATTAINDER means:

12 Any law which will ... Stain a person's character
13 extinguish any persons' God-given, Rights ...
14 any law which will forfeit freedom, natural
15 rights or property of any person without
16 protection of trial by jury ... and any law
17 passed by the law makers which ATTAINTS any
18 person in any matter violates the U. S.
19 Constitution.

20 To Attaint any person is to: Accuse, Find
21 any person guilty of a law which does
22 NOT HURT or harm The life, liberty, or
23 property of any person.

24 ARTICLE 6 - "This Constitution ...

25 shall be the supreme Law of the Land ...

1 Judges in every State shall be bound thereby,
2 any Laws ... to the contrary notwithstanding ...
3 judicial Officers ... shall be bound by Oath
4 or Affirmation, to support this Constitution.
5 ART. 1 Sec. 9 Para. 3 - An "ex post facto law"
6 is any retroactive law. Observe that in 1953
7 Ohio was admitted as a state of the Union to
8 take effect in 1803 retroactively.

9 SPECIFIC OFFENSES

10 CHAPTER 53

11 ABUSE OF OFFICE

12 #5301. Official Oppression.

13 A person acting or purporting to act in
14 an official capacity or taking advantage of
15 such actual or purported capacity commits
16 a misdemeanor of the second degree if, knowing
17 that his conduct is illegal, he:

18 (1) subjects another to arrest, detention,
19 search, seizure, mistreatment, dispossession,
20 assessment, lien or other infringement of
21 personal or property rights; or

22 (2) denies or impedes another in the
23 exercise or enjoyment of any right, privilege,
24 power or immunity.
25

1 #5302. Speculating or Wagering on Official
2 Action or Information.

3 A public servant commits a misdemeanor
4 of the second degree if, in contemplation of
5 official action by himself or by a governmen-
6 tal unit with which he is associated, or in
7 reliance on information to which he has access
8 in his official capacity and which has not been
9 made public, he:

10 (1) acquires a pecuniary interest in any
11 property, transaction or enterprise which may
12 be affected by such information or official
13 action;

14 (2) speculates or wagers on the basis of
15 such information or official action; or

16 (3) aids another to do any of the foregoing.

17
18 Today it seems that the ballot is the only valid
19 option in too many people's minds. It is
20 becoming more apparent to me every passing
21 day that the ballot , by itself, is not up to the
22 challenge. And I shudder to contemplate the
23 consequences if our citizens decide to take up
24 arms against their government as they did at
25 this Nation's birth. A trial by a fully informed
jury would seem to be a prudent intermediate step.

8/25/99
existing laws
given legal authority
before
452

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LAW OF THE LAND

The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land. The U.S. Constitution is the supreme law of the land, and any statute, to be valid, must be in agreement. It is impossible for a law which violates the Constitution to be valid. This is succinctly stated as follows:

"All laws which are repugnant to the Constitution are null and void." Marbury vs. Madison, 5 US (2 Cranch) 137, 174, 176, (1803)

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." Miranda vs. Arizona, 384 US 436 p. 491.

"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed."

Norton vs. Shelby County
118 US 425 p. 442

The general rule is that an unconstitutional

1 statute, though having the form and
2 name of law, is in reality no law, but is
3 wholly void, and ineffective for any purpose;
4 since unconstitutionality dates from the
5 time of its enactment, and not merely from
6 the date of the decision so branding it.

7 "No one is bound to obey an unconstitu-
8 tional law and no courts are bound to enforce
9 it."

10 16 Am Jur 2d, Sec 177

11 late 2d, Sec 256

12 PURDON'S PENNSYLVANIA STATUTES AND CONSOLIDATED STATUTES

13 ANNOTATED

14 PURDON'S PENNSYLVANIA CONSOLIDATED STATUTES ANNOTATED

15 TITLE 18. CRIMES AND OFFENSES

16 PART II. DEFINITION OF SPECIFIC OFFENSES

17 ARTICLE E. OFFENSES AGAINST PUBLIC ADMINISTRATION

18 CHAPTER 53. ABUSE OF OFFICE

19 Current through the 180th Reg. Sess., Act
20 1996-133, apv. 10/30/96 and through 1996

21 Sp. Sess. No. 2 Act 10, apv. 7/11/96

22 #5301 Official oppression

23 A person acting or purporting to act in an official
24 capacity or taking advantage of such actual or
25 purported capacity commits a misdemeanor of the

1 second degree if, knowing that his conduct is
2 illegal, he

3 (1) subjects another to arrest, detention, search,
4 seizure, mistreatment, dispossession, assessment,
5 lien or other infringement of personal or property
6 rights; or

7 (2) denies or impedes another in the exercise or
8 enjoyment of any right, privilege, power or
9 immunity

10 CREDIT(S)

11 1983 Main Volume

12 172, Dec. 6, P.L. 1482, No. 334, #1, effective
13 June 6, 1973.

14 General Materials (GM) - References,
15 Annotations, or Tables

16 OFFICIAL COMMENT -- 1972

17 1997 Electronic Update

18 This section is derived from Section 243.1 of
19 the Model Penal Code.

20 Existing law does not contain a provision
21 specifically penalizing official oppression. The
22 provisions of The Penal Code of 1939 (18 P.S.
23 #4101 et seq.) apply to conduct of an official
24 as an individual.

25 This section creates a distinct crime which

1 extends to all official activities. It should
 2 be emphasized that clause (2) applies to the
 3 denial of any right or privilege or protection
 4 to which a person is legally entitled.

5 This section is intended to cover the use of
 6 official position to wrong another. If an official
 7 privately commits a wrong he, of course, will be
 8 subject to the same penalties as a private citizen
 9 who does so.

10 HISTORICAL AND STATUTORY NOTES

11 1983 Main Volume

12 Model Penal Code:

13 This section is similar to #243.1 of the
 14 Model Penal Code. See 10 Uniform Laws Annotated,
 15 Master Edition.

16 LIBRARY REFERENCES

17 1983 Main Volume

18 Officers and Public Employees K121.

19 C.J.S. Officers and Public Employees ##255 to 259.

20 P.L.E. Public Officers #81.

21 NOTES OF DECISIONS

22 In general 2

23 Defenses 4

24 Indictment and information 3

25 Limitations 6

1 Private right of action 8

2 Restitution 7

3 Sentencing 5

4 Validity 1

5

6 1. Validity

7 Term "mistreatment" in official oppression
8 statute was not unconstitutionally vague as
9 applied to judge charged with official oppression
10 based on alleged solicitation of woman who appeared
11 before him on driving under the influence charges,
12 despite defendant judge's allegations that victim
13 consented, since defendant's treatment of victim
14 was no less of an abuse of his office because she
15 may have consented in order to assure dismissal
16 of charges against her. Com. v. Checca, 491 A.2d
17 1358, 341 Pa.Super. 480, Super. 1985, appeal
18 denied.

19 Application of this section to deputy prison
20 warden who was alleged to have mistreated prison
21 inmates by striking and kicking them in the
22 course of disciplinary hearings was not unconsti-
23 tutional, despite the defendant's contention
24 that term "mistreatment" was impermissibly vague.
25 Com. v. Manlin, 411 A.2d 532, 270 Pa.Super. 1979.

1 2. In general

2 Anyone acting in an official capacity in
3 Pennsylvania, including a policeman, commits
4 a misdemeanor if, knowing his conduct is
5 illegal, he subjects another to arrest, detention,
6 search, seizure, mistreatment or other
7 infringement of personal or property rights or
8 denies or impedes another in exercise of any of
9 his rights, privileges, power or immunities.
10 Com. of Pa. v. Porter, C.A.3(Pa.)1981, 659
11 F.2d 306, certiorari denied 102 S.Ct. 3509,
12 458 U.S. 1121, 73 L Ed.2d 1383.

13 Bail bondsman, who apprehended his bail
14 jumping principal, transported him to
15 destination in trunk of car, and drove through
16 city with bail jumper tied to roof of car as an
17 example to others tempted to flee justice to
18 bail bondsman's financial detriment, had
19 authority to take bail jumper into custody, and
20 violated official oppression statute, 18
21 Pa.C.S.A. #5301, when he abused that
22 authority, notwithstanding fact that bail
23 bondsman was not public official. Com. v.
24 Russ, 503 A.2d 450, 349 Pa.Supr. 445, Super. 1986,
25 appeal denied 531 A.2d 429, 515 Pa. 621.

1 such evidence would not necessarily negate
2 element of crime of official oppression in that
3 such crime requires proof only that defendant
4 acted in his official capacity and, knowing his
5 conduct to be illegal, subjected another to
6 mistreatment. Com. v. Checca, 491 A.2d
7 1358, 341 Pa.Super. 480, Super. 1985, appeal
8 denied.

9 In order to constitute offense of "Official
10 Oppression," person acting in "official
11 capacity" must knowingly and illegally deny or
12 impede another in the exercise of some "right,"
13 "power" or "immunity" or must knowingly and
14 illegally subject another to arrest, detention,
15 search, seizure, mistreatment, dispossession,
16 assessment, lien or other infringement of
17 personal or property rights. Com. v. Eisemann,
18 453 A.2d 1045, 308 Pa.Super.16, Super. 1982.

19 For purposes of offense of "Official
20 Oppression," word "knowing" as used in
21 connection with knowingly and illegally
22 denying or impeding another in exercise of
23 some right, power or immunity, means that
24 accused must have been acting in "bad faith"
25 when he subjected the other to the proscribed

1 activities, Com.v. Eisemann, 453 A.2d 1045,
2 308 Pa.Super. 16, Super. 1982.

3 CONCEALED WEAPONS STOP CRIME

4 By: Robert Stacy McCain

5 Contrary to conventional wisdom, laws that
6 permit people to carry guns lower crime rates,
7 according to a study by a Chicago economist.

8 Want to prevent violent Crime? Pack heat,
9 advises economist John R. Lott Jr. Laws that
10 permit citizens to carry concealed weapons are a
11 deterrent to crime, a conclusion based on research
12 that forms the basis of his new book, More Guns,
13 Less Crime: Understanding Crime and Gun Control
14 Laws (University of Chicago Press. 220 pp).

15 "Obviously, bad things can happen with guns,
16 but guns can also keep bad things from happening."
17 says Lott. His research -- first published in the
18 Journal of Legal Studies in 1996 -- has come
19 under fire from gun-control advocates such as
20 Rep. Charles E. Schumer, New York Democrat. After
21 more than a year of additional research, however,
22 Lott stands by his initial findings. Guns prevent
23 crime.

24 In the largest study ever of the effects of
25 concealed-weapons legislation, Lott surveyed crime

1 statistics in states before and after the passage
2 of what he terms "nondiscretionary" laws, often
3 called "shall-issue" laws, that require law-
4 enforcement agencies to issue handgun permits to
5 all qualified applicants.

6 The results marked decreases in a wide range of
7 violent crimes, including murder, rape, robbery
8 and aggravated assault. Lott describes the drop
9 in the incidence of rape as "precipitous" after
10 the passage of concealed-carry laws.

11 Among his findings:

12 *States with the largest increases in gun
13 ownership also had the largest drops in violent
14 crime.

15 *Urban minority communities with high crime
16 rates "have the greatest reductions in violent
17 crime when law-abiding citizens are allowed to
18 carry concealed handguns."

19 *Women especially benefit from carrying
20 concealed handguns, having a murder-prevention
21 effect "3 to 4 times higher" than men with guns.

22 Lott's research impressed colleague John
23 DiIulio of Princeton University. "I think it's
24 impossible not to be impressed by the analysis
25 John Lott has done," said DiIulio, who moderated a

1 panel discussion of Lott's findings at the
2 American Enterprise Institute in Washington.
3 Another panelist, Daniel Polsby of Northwestern
4 University, called Lott's work "the best study to
5 date" of the effect of concealed-carry laws.

6 Nevertheless, the ferocity of attacks from
7 the gun-control lobby were surprising to Lott,
8 a professor at the University of Chicago. "I was
9 stunned...I had no way of anticipating it," he
10 says. Though he previously had contributed more
11 than 70 articles to academic journals, the 1996
12 paper was his first study dealing with guns and
13 crime.

14 When newspapers and television reported Lott's
15 findings, one gun-control activist called the study
16 "seriously flawed," and Schumer said the research
17 was "funded...by one of the nation's largest gun
18 manufacturers."

19 "The groups that made the charges knew they
20 were false before they made them," says Lott, "but
21 they're still making those charges and they're
22 still false."

23 Because of this research, Lott says he has
24 been "sensitized" to a number of myths about crime
25 and guns, such as the belief that gun owners are a

1 danger to their own friends or family. In fact,
2 he says, those with concealed weapons permits tend
3 to be "extremely law-abiding citizens."

4 Or as DiIulio said during the seminar; "The
5 notion that these laws would lead to a blood bath
6 ...has been proven wrong."

7 Insight 37

8

9 -U.S. v. MILLER-

10 The case continually cited by "gun control" advocat-
11 es as the Supreme Court's definitive ruling against
12 the individual's right to keep and bear arms is
13 U.S. v. Miller, 307 U.S. 174 (1939).

14 While such a decision was sought by the
15 Justice Department, which was the only party
16 presenting an argument in the case, the Court
17 decided only that the National Firearms Act of
18 1934 was constitutional absent the presentation
19 of evidence to the contrary.

20 The major flaw in the process which led to
21 the Miller decision was the fact that the defendants
22 -Miller and Layton-did not appear and were not
23 represented by counsel before the Supreme Court.
24 A lower federal court had released them from
25 custody and they had disappeared.

1 In his study, "Restoring the Balance: The
2 Second Amendment Revisited" (The Fordham Urban
3 Law Journal, Vol. V, No. 1, Fall 1976), attorney
4 David I. Caplan reasoned, "The Court did not
5 benefit from the vigorous presentation of conflict-
6 ing views which is considered a basis advantage
7 of our adversary system of justice. The case was
8 argued solely by the government attorneys who
9 failed to alert the Court to the existence of
10 several holdings clearly in favor of the Individu-
11 al's right to keep and bear arms.

12 Despite a one-sided presentation, the actual
13 decision in the case involved only the narrow issue
14 of whether a specific type of firearm—a sawed-off
15 shotgun—had been proven suitable for militia use
16 and was thus protected by the Second Amendment.
17 The court ruled only that:

18 "In the absence of (the presentation of) any
19 evidence tending to show that Possession of or
20 use of a 'shotgun having a barrel of less than
21 eighteen inches in length' at this time has some
22 reasonable relationship to the preservation of
23 efficiency of a well regulated milita, we cannot
24 say that the Second Amendment guarantees the right
25 to keep and bear such an instrument. Certainly it

1 is not within judicial notice that this weapon
2 is any part of the ordinary military equipment or
3 that its use could contribute to the common defense."

4 (Emphasis added.)

5 The burden was placed on the defense to show
6 that "sawed-off" shotguns were suitable military
7 weapons. But there was no representation of
8 the defense and the Court was unaware, when it made
9 its ruling, that some 30,000 short-barrelled
10 shotguns had been purchased by the U. S. Government
11 and used in World War I as "trench guns." And it
12 could not know that such guns would continue to be
13 used in World War II and through the Viet Nam War.

14 More importantly, however, the Supreme Court
15 implicitly recognized that the rights guaranteed
16 by the Second Amendment protected all individuals
17 and not merely those who are members of the militia
18 since it was completely unconcerned with whether
19 Miller or Layton were members of the militia.

20 SCHOOL VIOLENCE

21 The Psychiatric Drugs Connection

22 The massacre at Columbine High School in
23 Littleton, Colorado, took place on April 20, 1999.
24 Astonishingly, for eight days after the tragedy,
25

1 during thousands of hours of prime-time television
2 coverage, virtually no one mentioned the word "drugs".
3 Then the issue was opened. Eric Harris, one of the
4 shooters at Columbine, was on at least one
5 prescription drug.

6 The New York Times of April 29, 1999, and
7 other papers reported that Harris was rejected from
8 enlisting in the Marines for medical reasons. A
9 friend of the family told the Times that Harris
10 was being treated by a psychiatrist. And then,
11 several sources told the Washington Post that the
12 drug prescribed as treatment was Luvox, manufactur-
13 ed by Solvay. Two days later, the "drug issue"
14 was gone.

15 Luvox is of the same class as Paxil, Prozac
16 and Zoloft. They are labelled SSRIs (selective
17 serotonin reuptake inhibitors). They attempt to
18 alleviate depression by changing the brain levels
19 of the natural substance, serotonin. Luvox has a
20 slightly different chemical configuration from
21 Paxil, Prozac and Zoloft, and it was approved by
22 the FDA for obsessive-compulsive disorder, although
23 many doctors apparently prescribe it for depression.

24 Prozac is a wildly popular Eli Lilly anti-
25 depressant which has been linked to suicidal and

1 homicidal actions. It is now given to children.
2 Again, its chemical composition is very close to
3 Luvox, the drug that Harris took.

4 Dr. Peter Breggin, the eminent psychiatrist
5 and author (Toxic Psychiatry, Talking Back to
6 Prozac, Talking Back to Ritalin), told me: "With
7 Luvox, there is some evidence of a four percent rate
8 for mania in adolescents. Mania, for certain
9 individuals, could be a component in grandiose plans
10 to destroy large numbers of other people. Mania
11 can go over the hill to psychosis."

12 Dr. Joseph Tarantolo is a psychiatrist in pri-
13 vate practice in Washington, D.C. He is the
14 president of the Washington chapter of the American
15 Society of Psychoanalytic Physicians. Tarantolo
16 states: "...all the SSRIs (including Prozac and
17 Luvox) relieve the patient of feeling. He becomes
18 less empathic, as in "I don't care as much", which
19 means, "It's easier for me to harm you." If a
20 doctor treats someone who needs a great deal of
21 strength just to think straight and gives him one
22 of these drugs, that could push him over the edge
23 into violent behavior."

24 In Arianna Huffington's syndicated newspaper
25 column of July 9, 1998, Dr. Breggin states:

1 "I have no doubt that Prozac can cause or con-
2 tribute to violence and suicide. I've seen many
3 cases. In a recent clinical trial, six percent
4 of the children became psychotic on Prozac. And
5 manic psychosis can lead to violence."

6 Huffington follows up on this: "In addition
7 to the case of Kip Kinkel, who had been a user of
8 Prozac (Kinkel was the shooter in the May 21,
9 1998 school massacre in Springfield, Oregon),
10 there are much less publicized instances where
11 teenagers on Prozac or similar antidepressants
12 have exploded into murderous rages: teenagers
13 like Julie Marie Meade, from Maryland, who was
14 shot to death by the police when they found her
15 waving a gun at them, or Ben Barris, a 16-year-old
16 Baltimore who stabbed his counselor to death,
17 or Kristina Fetters, a 14-year-old from Des Moines,
18 Iowa, who stabbed her favorite great aunt in a
19 rage that landed her a life sentence."

20 Dr. Tarantolo also has written about
21 Julie Marie Meade. In a column for the ICSP
22 (International Center for the Study of Psychiatry
23 and Psychology) News headed "Children and Prozac:
24 First, Do No Harm", Tarantolo describes how
25 Julie Meade, in November 1966, called 911,

1 "...begging the cops to come and shoot her. And
2 if they didn't do it quickly, she would do it
3 herself. There was also the threat that she would
4 shoot them as well." Within a few minutes, the
5 police came -- "five of them to be exact, pumping
6 at least ten bullets into her head and torso".

7 Tarantolo remarks that a friend of Julie
8 said that Julie "...had plans to make the honor
9 roll and go to college. He (the friend) had also
10 observed her taking all those pills.: What pills?
11 Tarantolo called the Baltimore medical examiner
12 and spoke with Dr. Martin Bullock who was on a
13 fellowship at that office. Dr. Bullock said:
14 "She had been taking Prozac for four years."

15 On November 23, 1996, Washington Post
16 reported the Julie Meade death-by-shooting. The
17 paper mentioned nothing about Prozac. This was
18 left to a more penetrating newspaper, the local
19 PG County Journal from the Maryland county in
20 which the shooting took place.

21 Why did the Post never mention Prozac or
22 interview any of a growing number of psychiatrists
23 who have realized the danger of giving these
24 drugs to children (and adults)? Is it because
25 major media outlets enjoy considerable advertising

1 revenue support from pharmaceutical drug companies?
2 Is it because these companies have been running
3 successful PR campaigns to keep their drugs' names
4 quiet when suicides and murders are reported?

5 Another small paper, the Vigo Examiner
6 (Terra Haute, Indiana), looked into the May 21,
7 1998 murders in Springfield, Oregon. The shooter,
8 Kip Kinkel, was a 15-year-old freshman who had
9 been on Prozac. First he killed his parents, then
10 he walked into his school cafeteria and gunned down
11 his fellow students. He killed two and
12 wounded twenty-two. He is currently awaiting
13 trial.

14 Vigo Examiner reporter Maureen Sielaff
15 covered this story, showing straightforward inde-
16 pendence where many big-time reporters just don't.
17 Sielaff researched the book, Prozac and Other
18 Psychiatric Drugs, by Lewis A. Opler, M.D. She
19 writes: "The following side effects are listed
20 for Prozac: apathy, hallucinations, hostility,
21 irrational ideas, paranoid reactions, antisocial
22 behavior, hysteria, and suicidal thoughts." An
23 explosive cocktail of symptoms.

24 The Jonesboro, Arkansas, school shooting
25 took place on March 24, 1998. Mitchell Johnston,

1 13, and Andrew Golden, 11, apparently faked a
2 fire alarm at Westside Middle School. Then when
3 everyone came outside, the boys fired from the
4 nearby woods, killing four students and a teacher
5 and wounding 11 other people. Charged as juveniles,
6 the boys were convicted of capital murder and
7 battery. They can be held in jail until they are
8 21 years old.

9 Dr. Alan Lipman of Georgetown University,
10 who was one of the experts interviewed on network
11 television after the Littleton shootings, remarked
12 that at least one of the boys who committed murder
13 in Jonesboro had been "treated" before the incident,
14 for violent behavior. Treated how? With Prozac,
15 with Zoloft, with a combination of antidepressants?

16 The action of these drugs -- altering the
17 supply of the brain neurotransmitter, serotonin --
18 is touted by some people as a potential cure for
19 violence. The only problem is, there is no
20 acknowledged proof within the broad psychiatric
21 profession that serotonin is a causative factor
22 in violence. That is an unproven theory.

23 MORE EPISODES OF U.S. SCHOOL VIOLENCE

24 *May 1, 1992: Eric Houston, 20, killed four
25 people and wounded 10 at his former high school in

1 Olivehurst, California. Houston was sentenced to
2 death.

3 *January 18, 1993: In Grayhurst, Kentucky,
4 Scott Pennington, 17, entered Deanna McDavid's
5 English class at East Carter High School and shot
6 her in the head. He also shot Marvin Hicks, the
7 school janitor, in the stomach. Pennington was
8 sentenced to life, without the possibility of
9 parole for 25 years.

10 *October 30, 1995: Edward Earl Spellman,
11 18, shot and wounded four students outside their
12 high school in Richmond, Virginia.

13 *February 2, 1996: In an algebra class in
14 Frontier Junior High School in Mose Lake, Washington,
15 Barry Loukaitas, 14, killed his teacher and two
16 teenage boys with an assault rifle, and wounded a
17 girl. Loukaitas was sentenced to two mandatory
18 life terms.

19 *February 29, 1996: In St. Louis, Missouri,
20 Mark Boyd, 30, fired into a school bus when its
21 doors opened, killing a pregnant 15-year-old girl
22 and wounding the driver.

23 *On July 26, 1996: Yohao Albert, a high
24 school junior, shot and wounded two classmates in
25 a stairwell at his Los Angeles school.

1 *February 19, 1997: In Bethel, Alaska,
2 Evan Ramsey, 16, shot and killed his high school
3 principal, Ron Edwards, and one of his classmates,
4 Josh Palacios, and wounded two other students.
5 Ramsey was sentenced to two 99-year terms.
6 Authorities later accused two students of knowing
7 that the shootings were going to happen.

8 *October 1, 1997: Luke Woodham, 16,
9 started shooting in his school cafeteria in Pearl,
10 Mississippi. He killed two students, including
11 his ex-girlfriend and wounded seven others. He
12 also killed his mother. Woodham was sentenced to
13 life. Authorities later accused six friends of
14 conspiracy.

15 *December 1, 1997: At Heath High School
16 in West Paducah, Kentucky, Michael Carneal, 14,
17 found students coming out of a prayer meeting.
18 Using a stolen pistol, he shot eight of these
19 students, killing three. One of the wounded girls
20 is paralyzed.

21 *December 15, 1997: Joseph Todd, 14, was
22 arrested in the shooting of two students outside
23 their high school in Stamps, Arkansas. The
24 students recovered from their wounds. Todd faces
25 trial.

1 *April 24, 1998: Andrew Wurst, 14,
2 allegedly shot and killed his science teacher,
3 John Gillette, at an 8th-grade dance at the J.W.
4 Parker Middle School in Edinboro, Pennsylvania.
5 Two students and another teacher were wounded.
6 Wurst is awaiting trial.

7 *May 19, 1998: Several days before gradu-
8 ation, honors student Jacob Davis, 18, allegedly
9 shot and killed Robert Creson, a classmate at
10 Lincoln County High School in Fayetteville,
11 Tennessee. Creson was dating Davis's ex-girlfriend.
12 Davis awaits trial.

13 A CNN story, dated May 21, 1998, authored
14 by its Justice Department correspondent, Pierre
15 Thomas, offered the following statistics: "Ten
16 percent of the nations' schools reported one or
17 more violent crimes in the 1996-1997 school year,
18 including murder, suicide, rape, robbery and
19 fights involving weapons." Even if these CNN
20 figures are self-serving and overblown, they point
21 to a chilling landscape.

22 PROZAC LINKED TO AGGRESSIVE BEHAVIOR

23 The bulk of the American media appears
24 afraid to go after psychiatric drugs as a cause
25 of violent crime. This fear stems in part from the

1 sure knowledge that expert attack-dogs are waiting
2 in the wings, funded by big-time pharmaceutical
3 companies. There are doctors and researchers who
4 have seen a dark truth about these drugs in
5 the journals, but are afraid to stand up and speak
6 out. After all, the medical culture punishes no
7 one as severely as its own defectors, when defection
8 from the party line threatens profits, careers
9 and reputations, and when defection alerts the
10 public that deadly effects could be emanating from
11 corporate boardrooms.

12 And what of the Federal Government itself?
13 The US Food and Drug Administration (FDA) licenses
14 each drug released for public use and certifies it
15 as being safe and effective. If a real tornado
16 started at the public level, if the parents of the
17 young killers and young victims began to see a
18 terrible knowledge swim into view -- a knowledge
19 they hadn't imagined -- and they joined forces,
20 the Earth would shake.

21 Commenting on some of the adverse effects
22 of the antidepressant drug Prozac, psychiatrist
23 Peter Breggin notes: "From the initial studies, it
24 was also apparent that a small percentage of Prozac
25 patients became psychotic."

1 Prozac, in fact, endured a rocky road in
2 the press for a time. Stories on it rarely appear
3 now. The major media have backed off. But on
4 February 7, 1991, Amy Marcus's Wall Street Journal
5 article on the drug carried the headline, "Murder
6 Trials Introduce Prozac Defense". Marcus wrote:
7 "A spate of murder trials in which defendants claim
8 they became violent when they took the anti-
9 depressant Prozac are imposing new problems for the
10 drug's maker, Eli Lilly and Co."

11 Also on February 7, 1991, the New York Times
12 ran a Prozac piece headlined: "Suicidal Behavior
13 Tied Again To Drug: Does Antidepressant Prompt
14 Violence?"

15 In his landmark book, Toxic Psychiatry,
16 Dr. Breggin mentions that The Donahue Show
17 (Feb. 28, 1991) "put together a group of individuals
18 who had become compulsively self-destructive and
19 murderous after taking Prozac, and the clamorous
20 telephone and audience response confirmed the
21 problem".

22 Breggin also cites a troubling study by
23 Teicher et al, from the February 1990 American
24 Journal of Psychiatry (147:207-210), which reports
25 on "...six depressed patients, previously free of

1 recent suicidal ideation, who developed 'intense,
2 violent, suicidal preoccupations after 2-7 weeks
3 of fluoxetine (Prozac) treatment'. The suicidal
4 preoccupations lasted from three days to three
5 months after termination of the treatment. The
6 report estimates that 3.5 percent of Prozac users
7 were at risk. While denying the validity of the
8 study, Dista Products, a division of Eli Lilly, put
9 out a brochure for doctors, dated August 31, 1990,
10 stating that it was adding 'suicidal ideation' to
11 the adverse events section of its Prozac product
12 information."

13 An earlier study, by Joseph Lipiniski in the
14 September 1989 Journal of Clinical Psychiatry,
15 indicates that in five examined cases, people on
16 Prozac developed what is called akathisia.
17 Symptoms include intense anxiety, inability to
18 sleep, the "jerking of extremities", and
19 "bicycling in bed or just turning around and around."
20 Breggin comments that akathisia "... may also
21 contribute to the drug's tendency to cause self-
22 destructive or violent tendencies... Akathisia can
23 become the equivalent of biochemical torture and
24 could possibly tip someone over the edge into self-
25 destructive or violent behavior... The June 1990

1 Health Newsletter, produced by the Public Citizen
2 Research Group, reports: Akathisia, or symptoms
3 of restlessness, constant pacing, and purposeless
4 movements of the feet and legs, may occur in 10-25
5 percent of patients on Prozac."

6 The well-known publication, California
7 Lawyer, in a December 1998 article titled "Protect-
8 ing Prozac", details some of the suspect maneuvers
9 of Eli Lilly in its handling of suits against
10 Prozac. California Lawyer also mentions other
11 highly qualified critics of the drug. "David
12 Healy, MD, an internationally renowned psycho-
13 pharmacologist, has stated in sworn deposition
14 that 'contrary to Lilly's view, there is a plausible
15 cause and effect relationship between Prozac and
16 suicidal-homicidal events. An epidemiological
17 study published in 1995 by the British Medical
18 Journal also links Prozac to increased suicide
19 risk."

20 When pressed, proponents of these SSRI
21 drugs sometimes say, "Well, the benefits for the
22 general population far outweigh the risk", or
23 "Maybe in one or two tragic cases the dosage
24 prescribed was too high". But the problem will not
25 go away on that basis.

1 A shocking review-study, "Antidepressants
2 for Children", written by Rhoda L. Fisher and
3 Seymour Fischer and published in the Journal of
4 Nervous and Mental Diseases (184(2), 1996), con-
5 cludes: "Despite unanimous literature of double-
6 blind studies indicating that antidepressants are
7 no more effective than placebos in treating
8 depression in children and adolescents, such
9 medications continue to be in wide use".

10 There are other studies:

11 *In the Journal of the American Academy of
12 Child and Adolescent Psychiatry (vol. 30, 1991),
13 an article, "Emergence of self-destructive
14 phenomena in children and adolescents during
15 fluoxetine treatment", written by R. A. King,
16 R. A. Riddle et al., reports self-destructive pheno-
17 mena in 14 percent (6 out of 42) of children and
18 adolescents (10 to 17 years old) who had treatment
19 with fluoxetine (Prozac) for obsessive-compulsive
20 disorder.

21 *In the Journal of the American Academy of
22 Child and Adolescent Psychiatry, July 1991,
23 Hisako Koizumi, MD, describes a
24 13-year-old boy who was on Prozac as "full of
25 energy", "hyperactive" and "clown-like", but who

1 devolved into sudden violent actions which were
2 "totally unlike him".

3 *In the Journal of the American Academy of
4 Child and Adolescent Psychiatry, September 1991,
5 author Laurence Jerome reports the case of a 10-year
6 old who moved with his family to a new location.
7 Becoming depressed, the boy was put on Prozac by
8 a doctor. The boy was then "hyperactive, agitated
9 ...irritable" and made a "somewhat grandiose
10 assessment of his own abilities." He called a
11 stranger on the phone and said he was going to
12 kill him. The Prozac was stopped, and the symptoms
13 disappeared.

14 RITALIN: AMPHETAMINES FOR HYPERACTIVITY

15 On December 1, 1996 Cox News Service
16 newswire story by Gary Kane states: "Scores
17 of young men and women across the country are
18 learning that the Ritalin they took as teenagers
19 is stopping them from serving their country
20 or starting a military career."

21 Kane continues: "All branches of the
22 armed forces reject potential enlistees
23 who use Ritalin or similar behavior-modifying
24 medications... And people who took Ritalin
25 as teenagers to treat ADD, an inhibitor of

1 academic skills, are rejected from military
2 service, even if they no longer take the
3 medication."

4 Ritalin, manufactured by Novartis, is
5 the close cousin to "speed" and is given to
6 perhaps two million American school children
7 for a condition called Attention Deficit
8 Disorder (ADD) or Attention Deficit Hyper-
9 activity Disorder (ADHD). ADD and ADHD, for
10 which no organic causes have ever been found,
11 are touted as disease conditions that
12 afflict the young, causing hyperactivity,
13 unmanageability and learning problems. Of
14 course, when you name a disorder or a syndrome
15 and yet can find no single, provable organic
16 cause for it, you have nothing more than a
17 loose collection of behaviors with an arbitrary
18 title.

19 Correction: You also have a pharma-
20 ceutical bonanza.

21 Even Ritalin's manufacturer warns
22 that "frank psychotic episodes can occur"
23 with abusive use (Physicians Desk Reference,
24 Medical Economics Company, Inc., NJ, USA, 1998).

25 Dr. Breggin, referring to an official

1 directory of psychiatric disorders, the
2 DSM-III-R, writes that withdrawal from
3 amphetamine-type drugs, including Ritalin, can
4 cause "depression, anxiety and irritability
5 as well as sleep problems, fatigue and
6 agitation". Breggin then remarks: "The
7 individual may become suicidal in response to
8 the depression."

9 The well-known Goodman and Gilman's
10 Pharmacological Basis of Therapeutics reveals
11 a strange fact. It states that Ritalin is
12 "...structurally related to amphetamines...
13 Its pharmacological properties are essentially
14 the same as those of the amphetamines."

15 DRUG COMBINATIONS & ADVERSE SIDE-EFFECTS

16 In Toxic Psychiatry, Dr. Breggin dis-
17 cusses the subject of drug combinations:
18 "Combining antidepressants (e.g. Prozac, Luvox)
19 and psychostimulants (e.g., Ritalin) increases
20 the risk of cardiovascular catastrophe,
21 seizures, sedation, euphoria and psychosis.
22 Withdrawal from the combination can cause
23 a severe reaction that includes confusion,
24 emotional instability, agitation and aggression."

25 Children are frequently medicated

1 with this combination, and when we highlight
2 such effects as aggression, psychosis and
3 emotional instability, it is obvious that
4 the result is pointing towards the very real
5 possibility of violence.

6 In 1986, the International Journal of
7 the Addictions (21():837-841) published a
8 most important literature review by Richard
9 Scarnati, titled "An Outline of Hazardous Side
10 Effects of Ritalin (Methylphenidate)". Scarnati
11 listed over a hundred adverse effects of Ritalin,
12 and indexed published journal articles for
13 each of these symptoms.

14 For every one of the following
15 (selected and quoted verbatim) Ritalin side-
16 effects, then, there is at least one confirming
17 source in the medical literature:

18 *Paranoid delusions

19 *Paranoid psychosis

20 *Hypomanic and manic symptoms,
21 amphetamine-like psychosis

22 *Activation of psychotic symptoms

23 *Toxic psychosis

24 *Visual hallucinations

25 *Auditory hallucinations

- 1 *Can surpass LSD in producing bizarre
2 experiences
- 3 *Affects pathological thought processes
- 4 *Extreme withdrawal
- 5 *Terrified effect
- 6 *Started screaming
- 7 *Aggressiveness
- 8 *Insomnia
- 9 *Since Ritalin is considered an
10 amphetamine-type drug, expect
amphetamine-like effects
- 11 *Psychic dependence
- 12 *High-abuse potential, DEA Schedule II Drug
- 13 *Decreased REM sleep
- 14 *When used with antidepressants, one may
15 see dangerous reactions including hyper-
tension, seizures and hypothermia
- 16 *Convulsions
- 17 *Brain damage may be seen with amphetamine
18 abuse.

19 ATTENTION DEFICIT DISORDER: DOES IT EXIST?

20 Many parents around the country have
21 discovered that Ritalin-taking has become a
22 condition for their children continuing in school.
23 These are even reports by parents of threats
24 from social agencies. "If you don't allow us
25 to prescribe Ritalin for your ADD child, we

1 may decide that you are an unfit parent.
2 We may decide to take your child away."

3 This mind-boggling state of affairs
4 is fueled by teachers, principals and school
5 counselors, who do not have medical training.

6 Yet the very definition of the "illnesses"
7 for which Ritalin would be prescribed is in
8 doubt, especially at the highest levels of
9 the medical profession. This doubt, however,
10 has not filtered down to most public schools.

11 Commenting on Dr. Lawrence Diller's
12 book, *Running on Ritalin*, Dr. William Carey,
13 Director of Behavioral Pediatrics at the
14 Children's Hospital of Philadelphia, has
15 written: "Dr. Diller has correctly described,
16 ...the disturbing trend of blaming children's
17 social, behavioral and academic performance
18 problems entirely on an unproven brain
19 deficit..."

20 On November 16-18, 1998, the US National
21 Institute of Mental Health held the prestigious
22 NIH Consensus Development Conference on
23 Diagnosis and Treatment of Attention Deficit
24 Hyperactivity Disorder. The conference was
25 explicitly aimed at ending all debate about

1 about the diagnoses of ADD and ADHD, and about
2 the prescription of Ritalin. It was hoped that
3 at the highest levels of medical research and
4 bureaucracy, a clear position would be taken:
5 this is what ADHD is, this is where it comes
6 from, and these are the drugs it should be
7 treated with. This didn't happen, amazingly.
8 Instead, the official panel responsible for
9 drawing conclusions from the conference threw
10 cold water on the whole attempt to reach a
11 comfortable consensus.

12 Panel member Mark Vonnegut, a Massachusetts
13 pediatrician, said: "The diagnosis (of ADHD) is
14 a mess."

15 The panel essentially said it was not
16 sure ADHD was even a "valid" diagnosis. In
17 other words, ADD and ADHD might be nothing
18 more than attempts to categorize certain children's
19 behaviors -- with no organic cause, no clear-
20 cut biological basis, no provable reason for
21 even using the ADD or ADHD labels. The panel
22 found "no data to indicate that ADHD is due
23 to a brain malfunction (which malfunction had
24 been the whole psychiatric assumption in the
25 first place)".

1 The panel also found that Ritalin has
2 not been shown to have long-term benefits.
3 In fact, it stated that Ritalin has resulted
4 in "little improvement on academic achievement
5 or social skills".

6 Panel chairman David Kupfer, Professor
7 of Psychiatry at the University of Pittsburgh,
8 said "There is no current validated diagnostic
9 test (for ADHD)".

10 Yet at every level of public education
11 in America, there remains that can only be
12 called a voracious desire to give children
13 Ritalin (no other similar drugs) for ADD or
14 ADHD.

15 Nullifying the warnings, assurances
16 and prescriptions that doctors routinely
17 give to parents of children who have been
18 diagnosed with ADD or ADHD should be a
19 national goal.

20 The 1994 Textbook of Psychiatry, pub-
21 lished by the American Psychiatric Press,
22 contains this review by Popper and Steingard.
23 The pronouncement makes a number of things
24 clear. "Stimulants (such as Ritalin) do not
25 produce lasting improvements in aggressivity,

1 conduct disorder, criminality, education
2 achievement, job functioning, marital relation-
3 ships or long-term adjustment."

4 Parents should also wake up to the fact
5 that, in the aftermath of the Littleton,
6 Colorado, tragedy, pundits and doctors are
7 urging more extensive "mental health" services
8 for children. Fine, except whether you have
9 noticed it or not, for the most part this
10 no longer means therapy with a caring professional.
11 It means drugs. It means the drugs I am
12 discussing in this inquiry.

13 In December 1996, the US Drug Enforcement
14 Administration (DEA) held a conference on ADHD
15 and Ritalin. Surprisingly, it issued a sensible
16 statement about drugs being a bad substitute
17 for the presence of caring parents: "...the use
18 of stimulants (such as Ritalin) for the short-term
19 improvement of behavior and underachievement
20 may be thwarting efforts to address the
21 children's real issues, both on an individual
22 and societal level. The lack of long-term
23 positive results with the use of stimulants
24 and the specter of previous and potential
25 stimulant abuse epidemics give cause to

1 worry about the future. The dramatic increase
2 in the use of methylphenidate (Ritalin) in the
3 1990s should be viewed as a marker or
4 warning to society about the problems children
5 are having and how we view and address them."

6 The Brookhaven National Laboratory
7 has studied Ritalin through PET brain scans.
8 Lab researchers have found that the drug
9 decreased the flow of blood to all parts of the
10 brain by 20 to 30 percent. That is, of course,
11 a very negative finding. It is a signal of
12 danger. But parents, teachers, counsellors,
13 principals, school psychologists know nothing
14 about this. Nor do they know that cocaine
15 produces the same blood-flow effect.

16 In his book, Talking Back to Ritalin,
17 Peter Breggin expands on the drug's effects:
18 "Stimulants such as Ritalin and amphetamine
19 ...have grossly harmful impacts on the brain...
20 reducing overall blood flow, disturbing
21 glucose metabolism and possibly causing permanent
22 shrinkage or atrophy of the brain."

23 UNSETTLED OUT OF COURT

24 In the wake of the Littleton shooting,
25 we find that "the American people" and

1 lawyers, pundits and child psychologists
2 are pointing the finger at Hollywood, at
3 video games like Doom, at inattentive parents,
4 and at the availability of guns. We have to
5 wonder why almost no one is calling out these
6 drugs. Is it possible that the work of PR
7 people is shaping the national response?

8 An instructive article, "Protecting
9 Prozac" by Michael Grinfeld in the December 1998
10 California Lawyer, opens several doors.
11 Grinfeld notes that "in the past year, nearly
12 a dozen cases involving Prozac have disappeared
13 from the court record". He is talking about
14 lawsuits against the manufacturer, Eli Lilly,
15 and he is saying that these cases have
16 apparently been settled, without trial, in
17 such a quiet and final way, with such strict
18 confidentiality, that it is almost as if they
19 never happened.

20 The smoothness, this invisibility,
21 keeps the Press away and also, most importantly,
22 does not encourage other people to come out
23 of the woodwork with lawyers and Prozac
24 horror stories of their own, because they are
25 not reading about \$2 million or \$10 million or

1 \$50 million settlements paid out by Lilly.

2 Grinfeld details a set of maneuvers
3 involving attorney Paul Smith, who, in the early
4 1990s, became the lead plaintiff's counsel in
5 the famous Fentress case against Eli Lilly.
6 The case made the accusation that Prozac had
7 induced murder. This was the first action
8 involving Prozac to reach a trial and jury,
9 so it would establish a major precedent for a
10 large number of other pending suits against
11 the manufacturer. After what many people
12 thought was a very weak attack on Lilly by
13 Smith, the jury came back in five hours with
14 an easy verdict favoring Lilly and Prozac.

15 Grinfeld writes: "Lilly's defense
16 attorneys predicted the verdict would be the
17 death knell for (anti-) Prozac litigation."

18 But that wasn't the end of the Fentress
19 case, even though Smith, to the surprise of
20 many, didn't appeal.

21 "Rumors began to circulate that Smith
22 had made several (prior) oral agreements with
23 Lilly concerning the evidence that would be
24 presented (in Fentress), the structure of a
25 postverdict settlement, and the potential

1 resolution of Smith's other (anti-Prozac)
2 cases."

3 In other words, the rumors said:
4 This lawyer made a deal with Lilly to present
5 a weak attack, to omit evidence damaging
6 to Prozac, so that the jury would find Lilly
7 innocent of all charges. In return for this,
8 the case would be settled secretly, with Lilly
9 paying out monies to Smith's client. In this
10 way, Lilly would avoid the exposure of a
11 public settlement, and through the innocent
12 verdict would discourage other potential
13 plaintiffs from suing it over Prozac.

14 The rumors congealed. The Fentress
15 case Judge, John Potter, asked lawyers on
16 both sides if "money had changed hands".
17 He wanted to know if the fix was in. The
18 lawyers said no money had been paid, "without
19 acknowledging that an agreement was in place".

20 Judge Potter didn't stop there, In
21 April 1995, Grinfeld noted: "In court
22 papers, Potter wrote that he was surprised
23 that the plaintiff's attorneys (Smith)
24 hadn't introduced evidence that Lilly had
25 been charged criminally for failing to

1 report deaths from another of its drugs to
2 the Food and Drug Administration. Smith had
3 fought hard (during the Fentress trial) to convince
4 Potter to admit that evidence, and then un-
5 accountably withheld it."

6 In Judge Potter's motion, he alleged
7 that "Lilly (in the Fentress case) sought to
8 buy not just the verdict, but the court's
9 judgment as well".

10 In 1996, the Kentucky Supreme Court
11 issued an opinion on all this "...there was
12 a serious lack of candor with the trial court
13 (during Fentress) and there may have been
14 deception, bad faith conduct, abuse of the
15 judicial process or perhaps even fraud."

16 After the Supreme Court remanded the
17 Fentress case back to the state Attorney-
18 General's office, the whole matter dribbled
19 away, and then resurfaced in a different form
20 in another venue. At the time of the
21 California Lawyer article, a new action against
22 Smith was unresolved.

23 If Eli Lilly went to extreme lengths
24 to control suits against Prozac, it stands to
25 reason that drug companies could also try

1 to deflect legal actions by influencing how the
2 Press, lawyers and public view these school
3 shootings. For example, accusing video games
4 is acceptable, accusing guns is acceptable,
5 accusing bad parents is acceptable. In fact,
6 these causes, as I stated above, are legitimate.

7 INDUSTRY-FUNDED GROUPS PUSH DRUGS

8 In 1996, the PBS television series,
9 The Merrow Report, produced a program called
10 "Attention Deficit Disorder: A Dubious Diagnosis?"
11 The Educational Writers Association awarded
12 the program first prize for investigative
13 reporting in that year. I can recall no other
14 piece of television journalism since the
15 Vietnam War which has managed to capture,
16 on film, government officials in the act of
17 realizing that they have made serious mistakes.

18 John Merrow, the series host, explains
19 that, unknown to the public, there has been
20 "a long-term, unpublicized financial relation-
21 ship between the company that makes the most
22 widely known ADD medication (Ritalin) and
23 the nation's largest ADD support group". The
24 group is CHADD, based in Florida.

25 CHADD stands for Children and Adults

1 with ADD. Its 650 local chapters sponsor
2 regional conferences and monthly meetings,
3 often held at schools. It educates thousands
4 of families about ADD and ADHD and gives out
5 free medical advice. This advice features the
6 drug Ritalin.

7 Since 1988, when CHADD and Ciba-
8 Geigy (now Novartis), the manufacturer of
9 Ritalin, began their financial relationship,
10 Ciba-Geigy has given almost a million dollars
11 to CHADD, helping it to expand its membership
12 from 800 to 35,000 people.

13 Merrow interviews several parents whose
14 children are on Ritalin -- parents who have
15 been relying on CHADD for information. They
16 are clearly taken aback when they learn that
17 CHADD obtains a significant amount of its
18 funding from the drug company that makes Ritalin.

19 CHADD has used Ciba-Geigy money to
20 promote its pharmaceutical message through
21 a public service announcement produced for
22 television. Nineteen million people have seen
23 it. As Merrow says: "CHADD's name is on it,
24 but Ciba-Geigy paid for it."

25 It turns out that in all of CHADD's

1 considerable literature written for the public,
2 there is rare mention of Ciba-Geigy. In
3 fact, the only instance of the connection Merrow
4 could find on the record was a small-print
5 citation on an announcement of a single
6 CHADD conference.

7 In recounting CHADD's promotion of drug
8 "therapy" for ADD, Merrow says: "CHADD's liter-
9 ature also says psychostimulant medications
10 (like Ritalin) are not addictive."

11 Merrow brings this up with Gene Haslip,
12 a DEA official in Washington. Haslip is
13 visibly annoyed. "Well," he says, "I think
14 that's very misleading. It's (Ritalin's)
15 certainly a drug that can cause a very high
16 degree of dependency, like all of the very
17 potent stimulants."

18 Merrow reveals that CHADD received a
19 \$750,000 grant from the US Department of
20 Education in 1996 to produce a video,
21 Facing the Challenge of ADD. The video
22 doesn't just mention the generic name
23 Methylphenidate: it announces the drug by
24 its brand name, Ritalin. This, at government
25 (taxpayer) expense.

1 In the case of the school shootings,
2 has an attempt been made to mould media
3 response, to highlight various causes and omit
4 others?

5 When the national press is completely
6 silent on medical drugs, we have to question
7 the background on that. We have to. We
8 have to ask: Why should this horrendous
9 factor be eliminated altogether from reporting
10 to the nation?

11 Real action is going to have to come
12 from the public. Parents in Littleton and
13 Springfield and West Paducah and Jonesboro
14 are going to have to ask the hard questions
15 and become relentless about getting real
16 answers. They are going to have to learn
17 about these drugs. They'll have to learn
18 which violent children in the school shootings
19 were on these drugs. They are going to have
20 to throw off robotic obedience to authorities
21 in white coats. And they are going to have
22 to join together. If they do, many people
23 will end up standing with them.

24 Some sources of information:

25 *ADHD Action Group, telephone +1(212)769-2457.

1 *Dr. Peter Breggin, psychiatrist, author and
2 former full-time consultant with the National
3 Institute of Mental Health, website
4 [www.breggin.com].

5 *ICSPP News, telephone +1 (301) 652-5580,
6 website [www.icspp.org]. Note: ICSPP News
7 publishes the following warning in bold letters:
8 "Do Not Try to Abruptly Stop Taking Psychiatric
9 Drugs. When trying to withdraw from many
10 psychiatric drugs, patients can develop
11 serious and even life-threatening emotional and
12 physical reactions... Therefore, withdrawal
13 from psychiatric drugs should be done under
14 clinical supervision..."

15 *Dr. Joseph Tarantolo, psychiatrist, president
16 of the Washington Chapter of the American
17 Society of Psychoanalytic Physicians, telephone
18 +1 (301)652-5580.

19 *The Merrow Report: to order transcript or
20 videotape, telephone +1 (212) 941-8060.

21 *The Truth Seeker Foundation, PO Box 28550,
22 San Diego, California 92198, USA, telephone
23 +1 (619) 676-0430, fax (619) 676-0433, e-mail
24 [insradio aol.com]. The foundation sponsors
25 investigations into vital matters that have

1 not risen to the level of open public debate.
2 It believes that in order to solve serious
3 human problems, we must commit ourselves to
4 uncovering deeper strata of truth that under-
5 line public events, news and political discourse.
6 Only in this way can we all create a more
7 just future.

8 About the Author:

9 Jon Rappoport has worked as an investigative
10 reporter for 15 years. He has written
11 articles on politics, medicine and health for
12 Spin, Stern, Village Voice, In These Times and
13 a number of other magazines and newspapers in
14 the United States and Europe. In 1982, the
15 LA Weekly placed his name in nomination for the
16 Pulitzer Prize for his coverage of the military
17 takeover at the University of El Salvador.
18 Mr. Rappoport is the author of Oklahoma City
19 Bombing, Madalyn Murray O'Hair, and AIDS Inc.,
20 a widely praised critique of the original
21 research behind HIV.

22 Editor's Note:

23 Space constraints mean that we are unable to
24 include additional book/journal references
25 here, these can be obtained from the author on

1 request (see details on opening page).
2 Mi.li.tia non [Latin, military service,
3 from milit-, miles] (circa 1660)
4 1 a: a part of the organized armed forces of a
5 country liable to call only in emergency b; a
6 body of citizens organized for military service
7 2: the whole body of able-bodied male
8 citizens declared by law as being subject to
9 call to military service
10 mi-li-5ia.man (1780): a member of a militia
11 Nexus August - September 1999

13 DOPING KIDS

14 Though shocked by bizarre shootings in schools,
15 few Americans have noticed how many shooters
16 were among the 6 million kids now on psychotropic
17 drugs.
18 Just three weeks after Eric Harris and Dylan
19 Klebold went on their April 20 killing spree
20 at Columbine High School in Littleton, Colo.,
21 President Clinton hosted a White House conference
22 on youth violence. The president declared it
23 a strategy session to seek "the best ideas
24 from people who can really make a difference:
25 parents and young people, teachers and

1 religious leaders, law enforcement, gun
2 manufacturers, representatives of the enter-
3 tainment industry and those of us here in
4 government."

5 There was, however, complete silence
6 from the president when it came to including
7 representatives from the mental-health
8 community, whom many believe can provide
9 important insight about the possible connection
10 between the otherwise seemingly senseless
11 acts of violence being committed by school-age
12 children and prescription psychotropic drugs
13 such as Ritalin, Luvox and Prozac.

14 There are nearly 6 million children in
15 the United States between the ages of 6 and 18
16 taking mind-altering drugs prescribed for
17 alleged mental illnesses that increasing
18 numbers of mental-health professionals are
19 questioning.

20 Although the list of school-age children
21 who have gone on violent rampages is growing
22 at a disturbing rate - and the shootings at
23 Columbine became a national wake-up call -
24 few in the mental-health community have been
25 willing to talk about the possibility that

1 the heavily prescribed drugs and violence
2 may be linked. Those who try to investigate
3 quickly learn

4 (JUST SAY NO: Thousands picketed the American
5 Psychiatric Association's Washington
6 conference in May.)

7 Out of Control: students exit Columbine
8 High School in Littleton, Colo. under police
9 guard as two students on a shooting spree
10 kill 13.

11 that virtually all data concerning violence
12 and psychotropic drugs are protected by
13 the confidentiality provided minors. But
14 in the highly publicized shootings this spring,
15 information has been made available to the
16 public.

17 *April 16: Shawn Cooper, a 15-year-old
18 sophomore at Notus Junior-Senior High School
19 in Notus, Idaho, was taking Ritalin, the most
20 commonly prescribed stimulant, for bipolar
21 disorder when he fired two shotgun rounds
22 narrowly missing students and school staff.

23 *April 20: Harris, an 18-year-old
24 senior at Columbine High School, killed a
25 dozen students and a teacher before taking

1 his own life. Prior to the shooting
2 rampage, he had been under the influence of
3 Luvox, one of the new selective serotonin
4 reuptake inhibitor, or SSRI, antidepressants
5 approved in 1997 by Food and Drug Administration,
6 or FDA, for children up to the age of 12
7 for treatment of obsessive-compulsive disorder,
8 or OCD.

9 *May 20: TJ Solomon, a 15-year-old at
10 Heritage High School in Conyers, Ga. was being
11 treated with Ritalin for depression when he
12 opened fire on and wounded six classmates.

13 Two other high profile cases from last
14 year show a similar pattern.

15 *May 21, 1998: Kip Kinkel, a 15-year-old
16 at Thurston High School in Springfield, Ore.
17 murdered his parents and then proceeded to
18 school where he opened fire on students in
19 the cafeteria, killing two and wounding 22.
20 Kinkel had been prescribed both Ritalin and
21 Prozac. Although widely used among adults,
22 Prozac has not been approved by the FDA for
23 pediatric use.

24 *March 24, 1998: Mitchell Johnson, 13,
25 and Andrew Golden, 11, opened fire on their

1 classmates at Westside Middle School in
2 Jonesboro, Ark. Johnson had been receiving
3 psychiatric counseling and although infor-
4 mation about the psychotropic drugs that
5 may have been prescribed for him has not
6 been made public, his attorney, Val Price,
7 responded when asked about it, "I think
8 that is confidential information, and I don't
9 want to reveal that."

10 A great deal has been written about all
11 of these cases. There have, however, been
12 no indications that all of these children
13 watched the same TV programs or listened to
14 the same music. Nor has it been established
15 that they all used illegal drugs, suffered
16 from alcohol abuse or had common difficulties
17 with their families or peers. They did not
18 share identical home lives, dress alike or
19 participate in similar extracurricular activities.
20 But all of the above were labeled as suffering
21 from a mental illness and were being treated
22 with psychotropic drugs that for years have
23 been known to cause serious adverse effects
24 when given to children.

25 At the top of the list of so-called

1 "mental illnesses" among children is
2 attention-deficit hyperactivity disorder,
3 or ADHD, which is diagnosed when a child
4 meets six of the 18 criteria described in
5 the Diagnostic and Statistical Manual of
6 Mental Disorders, or DSM-IV, published by the
7 American Psychiatric Association, or APA.

8 ADHD was determined by a vote of APA
9 psychiatrists to be a "mental" illness and
10 added to the DSM-III-R in 1987. By definition
11 children with ADHD exhibit behaviors such as
12 not paying attention in school, not listening
13 when spoken to directly, failing to follow
14 directions, losing things, being easily
15 distracted and forgetful, fidgeting with hands
16 or feet, talking excessively, blurting out
17 answers or having difficulty awaiting turn.
18 The most common ADHD remedy among pediatricians
19 and representatives of the mental health
20 community is, as noted, Ritalin.

21 First approved by the FDA in 1955, Ritalin
22 (methylphenidate) had become widely used
23 for behavioral control by the mid-1960s.
24 It is produced by the Swiss pharmaceutical company
25 Novartis. According to the Drug Enforcement

1 Administration, or DEA, the United States
2 buys and uses 90 percent of the world's
3 Ritalin. A U.N. agency known as the
4 International Narcotics Control Board, or
5 INCB, reported in 1995 that "10 to 12 percent
6 of all boys between the ages of 6 and 14 in
7 the U.S. have been diagnosed as having ADD
8 [attention-deficit disorder, now referred to
9 as ADHD] and are being treated with methylphenidate."

10 But opponents are concerned about evidence
11 they say confirms a close relationship between
12 use of prescribed psychotropic drugs and subse-
13 quent use of illegal drugs, including cocaine
14 and heroin. While the United States has
15 spent more than \$70 billion on the war on
16 drugs, says Bruce Wiseman, president of the
17 Citizens Commission on Human Rights, a
18 California-based organization that investigates
19 violations of human rights by mental-health
20 practitioners, "if you think the Colombian
21 drug cartel is the biggest drug dealer in the
22 world, think again. It's your neighborhood
23 psychiatrist ... putting our kids on the
24 highest level of addictive drugs."

25 This complaint is not new and there is a

1 lengthy list of government agencies
2 connecting the prescribed psychotropic drugs
3 to use of illegal substances.

4 Twenty-eight years ago the World Health
5 Organization, or WHO, concluded that Ritalin
6 was pharmacologically similar to cocaine in
7 its pattern of abuse and cited Ritalin as a
8 Schedule II drug -- the most addictive in
9 medical usage. The Department of Justice
10 followed the WHO by citing Ritalin in Schedule II
11 of the Controlled Substances Act as having a
12 very high potential for abuse. As a Schedule II
13 drug, Ritalin joins morphine, opium, cocaine
14 and the heroin substitute methadone.

15 According to a report in the 1995 Archives
16 of General Psychiatry, "Cocaine is one of the
17 most reinforcing and addicting of the abused
18 drugs and has pharmacological actions that
19 are very similar to those of Ritalin." In
20 the same year the DEA also made the Ritalin/
21 cocaine connection, saying, "It is clear
22 that Ritalin substitutes for cocaine and
23 D-amphetamine in a number of behavioral
24 paradigms," expressing concern that "one
25 in every 30 Americans between 5 and 19 years

1 has a prescription for the drug."

2 Despite decades of warnings about the
3 potential for abuse of Ritalin, experts
4 continue to argue that the benefits far out-
5 weigh the consequences. Yet the INCB has
6 reported that "Methylphenidate's [Ritalin]
7 pharmacological effects are essentially the
8 same as those of amphetamine and methylphenidate
9 [Ritalin] can lead to tolerance and severe
10 psychological dependence. Psychotic episodes
11 [and] violent and bizarre behavior have been
12 reported."

13 These are, in fact, some of the same
14 symptoms exhibited by Eric Harris.

15 David Fassler, a child and adolescent
16 psychiatrist and chairman of the APA group on
17 Children, Adolescents and Their Families,
18 says he is unaware of any research to suggest
19 a correlation between the recent cases of
20 violent behavior in school-age children and
21 the widespread prescription of psychotropic
22 drugs. Fassler argues that the number of
23 school-age children suffering from mental
24 illnesses such as depression is "more than
25 earlier believed and it is important that there

1 now be a comprehensive evaluation by a
2 mental-health clinician trained in this area."
3 He stresses that "treatment should be
4 multimodal -- not left to medications alone."

5 Mike Faenza, president and chief executive
6 officer of the National Mental Health
7 Association, the country's oldest and largest
8 mental-health group, notes that "there is
9 little known about how the drugs affect brain
10 function." Faenza adds that "we do know that
11 a hell of a lot of kids commit suicide because
12 they aren't getting the help they need. It's
13 irresponsible not to give them the help just
14 because we don't know what causes the mental
15 illness."

16 Opponents are quick to capitalize on
17 this admission. "There is no such thing as
18 ADHD," declares Wiseman. It's not a
19 deficiency of 'speed' that makes a kid act
20 out. If you look at the criteria listed in
21 the DSM-IV for ADHD, you'll see that they are
22 taking normal childhood behavior and literally
23 voting it a mental illness. This is a pseudo-
24 science, entirely subjective. Unlike medical
25 conditions that are proved scientifically,

1 with these mental illnesses the only way you
2 know you're better is if the psychiatrist says
3 you're better. That's not science."

4 Pediatric neurologist Fred Baughman,
5 not only agrees that there is no such illness
6 as ADHD, but says "This is a contrived epidemic,
7 where all 5 million to 6 million children on
8 these drugs are normal. The country's been
9 led to believe that all painful emotions are
10 a mental illness and the leadership of the
11 APA knows very well that they are representing
12 it as a disease when there is no scientific
13 data to confirm any mental illness."

14 Peter Breggin, a psychiatrist and director
15 of the International Center for the Study of
16 Psychiatry and Psychology and author of Talking
17 Back To Prozac, Toxic Psychiatry and Talking
18 Back To Ritalin, for years has waged a war
19 with the APA about what he regards as its
20 cavalier diagnoses of mental illnesses.
21 "Psychiatry has never been driven by science.
22 They have no biological or genetic basis for
23 these illnesses and the National Institutes of
24 Mental Health are totally committed to the
25 pharmacological line." He is concerned that

1 "there is a great deal of scientific
2 evidence that stimulants cause brain damage
3 with long-term use, yet there is no evidence
4 that these mental illnesses, such as ADHD,
5 exist."

6 Breggin points out that the National
7 Institutes of Health, or NIH, admitted as
8 much at their 1998 Consensus Development
9 Conference on the Diagnosis and Treatment of
10 Attention Deficit Hyperactivity Disorder.
11 Thirty-one individuals were selected by NIH
12 to make scientific presentations to the panel
13 on ADHD and its treatment. The panel made the
14 following observations and conclusions: "We
15 don't have an independent, valid test for ADHD;
16 there are no data to indicate that ADHD is
17 due to a brain malfunction; existing
18 studies come to conflicting conclusions as to
19 whether use of psychostimulants increases or
20 decreases the risk of abuse, and finally after
21 years of clinical research and experience
22 with ADHD, our knowledge about the cause or
23 causes of ADHD remains speculative."

24 If so, there is little evidence to
25 support a scientific basis for classifying

1 ADHD as a mental illness. On the other hand,
2 there is an abundance of evidence that
3 stimulants such as Ritalin can produce
4 symptoms such as mania, insomnia, hallucinations,
5 hyperactivity, impulsivity and inattention.
6 And the DEA's list of potential adverse
7 effects of Ritalin includes psychosis,
8 depression, dizziness, insomnia, nervousness,
9 irritability and attacks of Tourette's or
10 other tic syndromes.

11 While Ritalin is the drug of choice for
12 treating ADHD, other mental illnesses such
13 as depression and obsessive-compulsive disorder,
14 or OCD, from which Columbine shooter Harris
15 suffered, are being treated with new SSRI
16 antidepressants. Harris' autopsy revealed
17 that he had used Luvox (Fluvoxamine), an
18 SSRI, prior to the shooting spree. And days
19 earlier he had been rejected by the Marine
20 Corps because he was taking the psychotropic
21 drug.

22 Luvox, a cousin of Prozac, has been
23 approved by the FDA for pediatric use, although
24 research shows that a small percentage of
25 patients experience adverse effects such as

1 mania, bouts of irritability, aggression
2 and hostility. But many physicians still
3 prescribe it to children.

4 More disturbing to those who believe
5 sufficient evidence exists that prescription
6 psychotropic drugs may play a role in the
7 violence being carried out by school-age children
8 is the response of physicians to the issue.
9 Rather than erring on the side of caution by
10 reducing the number of kids on mind-altering
11 drugs, physicians instead are prescribing psycho-
12 tropic drugs even to infants and toddlers.
13 The warning label states that "Ritalin
14 should not be used in children under 6 years,
15 since safety and efficacy for this age group
16 has not been established" and "sufficient data
17 is safety and efficacy of long-term use of
18 Ritalin in children are not yet available."

19 A report in the July 1998 issue of the
20 Clinical Psychiatric News revealed that in
21 Michigan's Medicaid program, 223 children 3
22 years old or younger were diagnosed with
23 ADHD as of December 1996. Amazingly, 57 percent
24 of these children, many of whom are not yet
25 capable of putting together a complete sentence,

1 were treated with one or more psychotropic
2 drugs including Ritalin, Prozac, Dexedrine,
3 Aventyl and Syban. Thirty-three percent were
4 medicated with two or more of these drugs.

5 But it is Ritalin that is being prescribed
6 to 6 million American children. Children's
7 Hospital in Washington has been running television
8 advertisements expressing concern. According
9 to spokeswoman, Lynn Cantwell, the ads were
10 part of a series covering many medical issues.
11 "We wanted to advocate that children get a
12 comprehensive evaluation because we are finding
13 that children were coming in who were taking
14 Ritalin who actually did not have ADHD."

15 Wiseman has suggested that the only way
16 to gain control of the situation is to expose
17 widespread "fraudulent diagnoses" of psychiatrists.
18 "Without the diagnoses, you can't get the
19 drugs," he says. Baughman's answer isn't
20 too far from Wiseman's. He says, "A big-time-
21 class-action lawsuit needs to be filed."

22
23 HYPERACTIVE CHILDREN IN AUSTRALIA ALSO BEING
24 DRUGGED

25 The Citizens Commission on Human Rights,

1 or CCHR, in Sydney, Australia, would like to
2 congratulate INSIGHT on a fine piece of
3 journalism ["Doping Kids," June 28].

4 "Insight" is no misnomer!

5 Australia, too, has an epidemic of
6 children being prescribed dangerous psychiatric
7 drugs, and the soaring crime and drug-abuse
8 statistics for our beleaguered youth are
9 testimony to that fact. During the last three
10 years in Australia, drug prescriptions for
11 hyperactivity have increased by 150 percent,
12 with an attendant 91 percent rise in violent
13 assaults on school playgrounds. We now have
14 32,500 children under the age of 14 on
15 selective reuptake inhibitors, although many
16 of these drugs have not been tested for use
17 on children. This constitutes illegal experi-
18 mentation of the most alarming magnitude.

19 Well done, again, for exposing this un-
20 acceptable situation. CCHR Australia will do
21 everything it can to make this article recognized
22 for the internationally significant piece it is.

23 Lyn Cottee
24 Citizens Commission
25 on Human Rights
Sydney, Australia

INTERVIEWEE REPHRASES QUOTE CONCERNING THE VATICAN

1 I must take strong exception to Catherine
2 Edwards' misrepresentation of my response to
3 a question she asked in an interview for her
4 article, "U.S. Plans Ways to Limit Births"
5 [June 21]. As someone who long has cherished
6 the First Amendment with its guarantees of
7 freedom of speech and religion, I most certainly
8 did not tell her that "the Vatican is 'shameful'
9 in making known its own convictions concerning
10 population control." What I do find shameful is
11 a religion's hierarchy taking advantage of
12 a preferential position in secular society
13 to impose its dogma on those who are not
14 members of its flock. The Holy See is recog-
15 nized by the United Nations as a "state,"
16 though it clearly is not a state but rather
17 the court or the authority of the Roman
18 Catholic Church. The United Nations recognizes
19 other religions by conferring upon them
20 "nongovernmental organization" status.
21 Though the Holy See delegation is permitted
22 to participate in U.N. deliberations with
23 the same standing as member nations, all
24 other religions have severely restricted access.
25

1 I do not dispute the Vatican's right to
2 express its convictions on any issue, including
3 modern contraception and voluntary family-
4 planning programs. But the promotion of
5 religious dogma is not a valid reason to hold
6 the rest of the world hostage -- as the Holy
7 See attempts to do time and again at every
8 major international-development meeting in
9 this decade. There are many forums where
10 religious missionary work may be appropriate;
11 the United Nations is not one of them.

12 Warner Fornos
13 President, The Population Institute
14 Washington

15 AUTHORITARIAN AYN RAND WAS NOT A REAL INDIVIDUALIST

16 It may strike people as odd that Ayn Rand,
17 who claimed to believe in individualism, demand-
18 ed complete obedience from her acolytes
19 [Rand's Story," May 31]. One example:
20 Murray Rothbard was cast out of "the
21 Collective" for marrying a Christian. But
22 Rand's life gives witness to the central in-
23 sight of the American people that you either
24 can freely obey God or be forced to obey
25 man. Even most atheists accept the role

1 religion plays in passing down the rules
2 that govern society. Without that truism,
3 those rules will be laid down only by the
4 powerful. If you reject "altruism" and the
5 role that "mysticism" plays in society, you will
6 have to accept the rule of the state, as
7 our Founding Fathers understood.

8 Don Schenk
9 Allentown, PA

10 (CORRECTION: In the sidebar to "Just What
11 is a War Criminal?" August 2, the Website
12 for the International Ethical Alliance was
13 printed incorrectly. The correct location
14 is www.iethical.org.)

15
16 A LETTER FROM THE EDITOR

17 Dear Readers,

18 Remembering old friendships, one reflects
19 on the treasure of each or begins to wonder
20 whether friends once considered close were,
21 upon examination, ever truly friends. Or
22 were they simply acquaintances with whom we
23 shared experiences.

24 What brings this to mind is this week's
25 cover story about men and women of another

1 generation and their instinct to serve
2 compared with us baby boomers and our children.
3 Nostalgia often is sweeter than reality but
4 Stephen Goode's remembrance of that generation
5 is pot-on, something to consider as we break
6 for vacations before the fall campaigns.

7 Now, consider China (once a friend) and
8 the latest revelations about her nuclear
9 capabilities -- this time concerning China's
10 possession of neutron bomb. An exclusive
11 report by Sam Cohen, the father of the bomb,
12 reveals how the red Chinese -- once seen as
13 our secret ally against Russia -- not only have
14 stolen various secrets of Armageddon but
15 actually may have been given those secrets --
16 and not just on Bill Clinton's watch! This
17 is shocking news on the heels of the Cox-
18 committee report and new threats aimed over
19 the Taiwan Strait and other South Pacific
20 regions of importance to the United States
21 and our allies.

22 As far as we can tell from talking with
23 members of Congress and intelligence sources,
24 the worst news has yet to emerge. The Republican
25 Congress, still timid when it comes to

1 challenging Clinton, must deal swiftly
2 with new threat assessments and get down to
3 the business of protecting our country from
4 our "friends."

5 Congress also must pass the appropriations
6 bills that strengthen not just our domestic
7 economy but our international military
8 capabilities now stretched thin by unchallenged
9 Clinton policies. There's much to do before
10 the next election, and what's done now well
11 may dictate the outcome at next year's polling.

12 Until next week then, God bless.

13 PAUL M. RODRIGUEZ
14 Managing Editor

15
16 HOW CAN WE BLAME IT ALL ON GUNS?

17 Paul Harvey read this Letter to the Editor
18 on his news cast a couple of weeks ago. It
19 was tracked down on the Internet through the
20 San Angelo Standard Times; give them full
21 credit for this article. 4/27/99

22 For the life of me, I can't understand
23 what could have gone wrong in Littleton,
24 Colorado. If only the parents had kept
25 their children away from the guns, we wouldn't

1 have had such a tragedy. Yeah, it must
2 have been the guns.

3 It couldn't have been because of half our
4 children being raised in broken homes.

5 It could have been because our children
6 get to spend an average of 30 seconds in
7 meaningful conversation with their parents
8 each day. After all, we give our children
9 quality time.

10 It couldn't have been because we treat
11 our children as pets and our pets as children.

12 It couldn't have been because we place
13 our children in day care centers where they
14 learn their socialization skills among their
15 peers under the law of the jungle while employees
16 who have no vested interest in the children
17 look on and make sure that no blood is spilled.

18 It couldn't have been because we allow
19 our children to watch, on the average, seven
20 hours of television a day filled with the
21 glorification of sex and violence that isn't
22 fit for adult consumption.

23 It couldn't have been because we allow
24 our children to enter into virtual worlds in
25 which, to win the game, one must kill as

1 many opponents as possible in the most
2 sadistic way possible.

3 It couldn't have been because we have
4 sterilized and contracepted our families down
5 to sizes so small that the children we do have
6 are so spoiled with material things that
7 they come to equate the receiving of the
8 material with love.

9 It couldn't have been because our children,
10 who historically have been seen as a blessing
11 from God, are now being viewed as either a
12 mistake created when contraception fails or
13 inconveniences that parents try to raise in
14 their spare time.

15 It couldn't have been because our school
16 systems teach the children that they are nothing
17 but glorified apes who have evolutionized out
18 of some primordial soup of mud by teaching
19 evolution as fact and by handing out condoms
20 as if they were candy.

21 It couldn't have been because we teach our
22 children that there are no laws of morality
23 that transcend us, that everything is relative
24 and that actions don't have consequences.
25 What the heck, the president gets away with it.

Nah, it must have been the guns.

KENNESAW, GEORGIA

1
2 In 1982, this suburb of Atlanta passed a
3 law requiring heads of households to keep at
4 least one firearm in the house. The residential
5 burglary rate subsequently dropped 89% in
6 Kennesaw, compared to the modest 10.4%
7 drop in Goergia as a whole.

8 Ten years later (1991), the residential
9 burglary rate in Kennesaw was still 72% lower
10 than it had been in 1981, before the law was
11 passed.

12
13 PEPSI DONATES OVER FIVE MILLION
14 DOLLARS TO HAND GUN CONTROL, INC.

15
16 NO REAL JUSTICE?

17 REVIVE THE DUEL

18 Customs are established when a society
19 decides it would be useful to institutionalize
20 a practice or habit, customs fade or are pro-
21 scribed when they no longer serve any purpose.
22 Customs can be revived, of course -- and it
23 may be time to reinstitute the duel.

24 Dueling has had a very long history.
25 Once Homo sapiens stood upright (this was

1 before the invention of television) and
2 we had passed the Hobbesian stage of "a
3 war of all against all," the notion of
4 adjudication to preserve social order came
5 into being. It was primitive, to be sure.
6 At an early point "trial by combat" was
7 invoked, in which it was presumed that the
8 loser was guilty -- a convenient judgment
9 but problematic.

10 As judicial sophistication evolved,
11 however, the system became severely distorted
12 by a tendency of principals to lie under oath
13 (has a sort of contemporary ring, doesn't it?).
14 As an alternative dueling as "the Judgment
15 of God" and under standardized rules was
16 considered superior to sworn mendacity.

17 No more regularized procedures evolved
18 to provide justice, dueling shifted to matters
19 of honor, notwithstanding increasing social
20 disapproval and legal proscription. However,
21 the practice endured well into the 19th century.
22 Numerous manuals were published on the pro-
23 tocols, the most famous the Irish code duel-
24 lo. Among its provisions: "No dumb firing
25 or firing in the air is admissible in any case."

1 No virtual reality there.

2 In the United States -- being as irredeem-
3 ably violent a nation as the professors of
4 women's studied tirelessly assert -- the
5 duel was a sanguinary affair. Alexis de
6 Tocqueville noted that in America duelists
7 fought "only to kill." As every school kid
8 knows, there have been some famous combats --
9 Alexander Hamilton killed by Aaron Burr is
10 probably the most notorious.

11 But occasionally these confrontations
12 could be wickedly wry. In Robert Baldrick's
13 history of dueling he details the meeting
14 of two prominent Californians during Gold Rush
15 days. The wife of one waited at a distance
16 to be informed by mounted messengers of her
17 husband's fate. After the first exchange of
18 pistol fire, a messenger rode up and announced
19 breathlessly, "Ma'am, first fire's over. Nobody
20 hurt."

21 "Thanks be to God," she murmured.

22 Moments later another messenger arrived
23 and told her, "Second fire, and both are safe,"
24 to which she responded, "Praise be ...". But when
25 the first messenger galloped up again and

1 announced, "The third fire's over -- nobody's
2 hurt and they've called it off," the wife
3 merely observed, "That's good."

4 A friend asked if she didn't think the
5 news was wonderful, "Yes," she said, "but
6 there's been some mighty poor shooting today."

7 As the administration of justice in the
8 waning months of the 20th century becomes
9 ever more contentious, with judges dredging
10 decrees out of their subjective notions of
11 the law and individuals becoming litigious
12 over hiccups, the resurrection of the duel
13 has a good deal to recommend it.

14 Of course it would be necessary to draw
15 up a contemporary code duello. Perhaps a
16 National Blue Ribbon Commission could handle
17 this -- we haven't had one for a while now.
18 The distinguished body would establish
19 "standing," similar to the criteria by which
20 it is determined who legitimately may bring a
21 lawsuit -- private citizen vs. private citizen
22 vs. government official, bureaucrat against
23 bureaucrate, corporate biggie vs. regulator
24 and so forth.

25 For one example, if a liberal member of

1 Congress would refer to a conservative member
2 as a "Nazi" -- as happened not long ago --
3 the recipient clearly would be authorized to
4 issue a challenge. Were a senator (Ted Kennedy
5 comes to mind) slanderously to describe a
6 Supreme Court nominee (Robert Bork, memory
7 suggests) as a vicious enemy of civil liberties,
8 why Bork clearly could call out the senator
9 -- which would be an amusing matchup and for
10 which Teddy uncharacteristically would have to
11 do his own heavy lifting.

12 The new dueling protocol would specify
13 the types of weapons permitted. At the most
14 innocuous level, pugil sticks might be chosen
15 -- the padded implements by which the Marine
16 Corps instructs recruits in bayonet fighting.
17 This would result in humiliation and bruises.
18 More lethally, the challenger would specify
19 knife or pistol. In past centuries, women
20 and the aged were exempt from challenge and
21 those exclusions would be maintained -- a way
22 partially to resuscitate traditional masculinity.

23 The new code would have to delineate
24 the levels of offense before dueling parties
25 could go at it, and insurance policies could

1 include "dueling disability" clauses.

2 The revival would be a boon for television,
3 to be sure; prime-time presentation of genuine
4 confrontations could be an antidote to the
5 noxious and pervasive theme-park syndrome that
6 devalues any experience not mediated by Disney
7 or Dream Works.

8 This may be an idea whose time had returned.
9 It's on the table for discussion, so let INSIGHT
10 hear from you.

11 By Woody West
12 Associate Editor

13 August 2, 1999

14 LIFE, LIBERTY and PROPERTY

15

16 By Thomas Sowell

17 HARVARD'S RICHARD PIPES EXPLORES THE RELATIONSHIP
18 BETWEEN PROPERTY RIGHTS AND OTHER FUNDAMENTAL
19 FREEDOMS IN HIS NEW BOOK.

20 Beginning with a review of various con-
21 ceptions of property that have existed over the
22 centuries, Richard Pipes builds a strong
23 historical case for the necessity of property
24 rights as a prerequisite for freedoms in general
25 in Property and Freedom: The Story of How
Through the Centuries Private Ownership Has

1 Promoted Liberty and the Rule of Law (New
2 York: Knopf, 328 pp., \$30).

3 A leading authority on Russian history,
4 Pipes demonstrates empirically the wider conse-
5 quences of that country's centuries - long
6 failure to develop property rights comparable
7 to those of Western Europe. In disregarding
8 property rights, the Communists were to some
9 extent following in the traditions of the
10 czars. Incidentally, both the czars and the
11 Communists understood that property rights
12 promoted economic progress and a higher
13 standard of living. But both regimes were
14 more concerned with maintaining their own
15 despotic power than with economics. Only
16 after Russia suffered humiliating defeats in
17 the Crimean War and then in the Russo-Japanese
18 War did it recognize the need to promote
19 economic growth through property rights and
20 industrialization.

21 Property and Freedom is particularly needed
22 today, when so many scholars and politicians
23 treat property rights as nothing more than a
24 special privilege for the land rich. Even
25 courts of law, especially since the New Deal era,

1 often have treated property rights as expendable
2 privileges of the few that must give way before
3 the rights or "needs" of the many. Some
4 economists have in recent times begun to show
5 how property rights promote the material well-
6 being of millions of people who are not property
7 owners, but Pipes' book may carry that much needed
8 message to historians and others who do not
9 keep up with the interdisciplinary field of
10 law and economics. Economic prosperity,
11 however, is not all that depends on property
12 rights.

13 Individual freedom cannot exist where
14 those who hold political power can confiscate
15 property at will or tell owners how they can
16 and cannot use it.

17 Perhaps the most frightening part of this
18 book is its account of the ease with which
19 property rights have been circumvented or
20 rendered meaningless in the 20th century --
21 often by arguments, or even mere rhetoric, of
22 unbelievable shallowness. The concept of
23 "rights," which for centuries had been recog-
24 nized as a necessary protection against the
25 tendencies of governments to expand their

1 powers at the expense of the people,
2 has been transformed into a means of facili-
3 tating that very expansion.

4 Unlike rights to life, liberty and the
5 pursuit of happiness, which safeguarded citizens
6 against government, new "rights" to a living
7 wage, affordable housing and other things
8 which can only be obtained at the expense of
9 other people require government not only to
10 extract money from people but also to subject
11 them to ever-growing regulations and ever
12 stiffer penalties for failing to live up
13 to these newly imposed obligations.

14 The Americans with Disabilities Act of
15 1990, which mandates that employers make allow-
16 ances for employees whose "mental illness"
17 renders them more troublesome and less efficient
18 employees, is one of the landmarks in this
19 trend. At one time, when property rights in-
20 cluded the right to free contract on mutually
21 agreed terms, no such issue would even have
22 arisen, much less led to such bizarre results.
23 Employment was a free choice on both sides and
24 could be ended whenever either side so chose.
25 Today, Big Brother has a big say in who is hired

1 and who is fired.

2 The rapid spread of forfeiture laws has
3 led to equally bizarre cases in which people's
4 cars, boats and other property have been confis-
5 cated without their having been convicted of
6 anything -- or even without their having been
7 charged with a crime. Indeed, the key Supreme
8 Court case in forfeiture law involved a yacht
9 on which the remains of a single marijuana
10 cigarette had been found.

11 But how many people own yachts? And of
12 course we are all in favor of laws against
13 drug dealers. What the Nazis proved half a
14 century earlier, however, was that the grossest
15 violations of the most basic rights would arouse
16 little opposition in the general population if the
17 targets of these violations had first been
18 demonized. These violations, once accepted,
19 then could be successively extended to other
20 groups as government power expanded.

21 Political rhetoric can bestow halos as
22 well as horns. Environmentalist invasions of
23 property rights have been justified by noble
24 purposes, even when they destroyed the value
25 of property for which people had worked a lifetime.

1 As the final chapter of Property and Freedom
2 notes, there has been belated awareness in
3 the courts that destroying half the value of
4 someone's property is the same as confiscating
5 half of it and is equally deserving of
6 compensation. But this is but one glimmer
7 of hope in a spreading darkness of political
8 destruction of a fundamental right.

9 In a sense, Pipes' book is also but one
10 glimmer of light. Good as it is, it needs
11 the support of many more other writings and
12 movements to spread an understanding of the
13 high stakes involved in the property-rights
14 struggle - a struggle that looks like a
15 special privilege of a few, but which is a
16 basic freedom of all.

17 Thomas Sowell, a nationally syndicated.

18
19 HALF OF AMERICANS SUFFER UNDER A SANTA CLAUS
20 VISION OF GOVERNMENT

21 By Walter E. Williams

22 I've discovered what might be the root
23 cause of many of the nation's problems. It
24 hurts me to my heart to own up to it, but a
25 large percentage of Americans either are

1 misinformed, stupid or both.

2 You say: "Whoa there, Williams. This
3 time you've gone too far!" Let's look at it.
4 Fox News Opinion Dynamics conducted a survey and
5 on July 16, the results were reported on its
6 Website by reporter Dana Blanton. One question
7 asked: "Some people say the government has
8 plenty of money of its own and it should be
9 spent on programs. Other people say that
10 the government has no money except that which
11 it takes from citizens in taxes. Which do
12 you believe?" Thirty-nine percent of the
13 respondents said the government has no money
14 except what it takes from citizens in taxes.
15 Eleven percent said neither or they weren't
16 sure. But get this: 50 percent said the
17 government has plenty of money of its own.

18 Since government can't spend what it
19 doesn't first take, the correct answer is
20 government has no money except what it takes from
21 its citizens in taxes. But what about 50 percent
22 of the American people who believe that
23 government has plenty of money of its own?
24 These are the people big-spending politicians
25 love.

1 Politicians can convince these people
2 that any elected official wanting to hold down
3 spending for Medicare, food stamps, welfare --
4 you name it -- is mean-spirited, uncaring,
5 niggardly and possibly a racist. After all,
6 if government has plenty of money of its own,
7 what else could explain why a politician would
8 want to limit or cut government spending?

9 This 50 percent of Americans always will
10 vote for the politician who calls for more
11 spending. That's even more probable considering
12 the fact that roughly 40 percent of all house-
13 holds pay no federal income taxes.

14 Let's speculate on how it is possible for
15 such a large percentage of Americans to have
16 a Santa Claus or Tooth Fairy vision of government.
17 The most flattering explanation has to do with
18 one of my criticisms of the Reagan administration,
19 when it boasted that its tax plan removed the
20 lowest of income-earners from the tax rolls,
21 I disagreed because doing so would create a
22 natural spending constituency for politicians.
23 After all, if you pay no federal income tax,
24 what do you care about federal spending? You
25 might just believe that since you're receiving

1 lots of government goodies -- and not paying
2 anything -- that, yes, the government does
3 have plenty of its own money.

4 A more worrisome explanation is that
5 there's a carefully crafted conspiracy. In
6 order to control people, they first must be
7 made dumb. These 50 percent of Americans,
8 who believe that the government has plenty of
9 its own money to spend for programs, demonstrate
10 just how successful our education establish-
11 ment has been in creating Americans who can't
12 or won't think.

13 I wouldn't be surprised at all if teacher
14 lesson plans promoted the idea that government
15 has plenty of its own money. Otherwise, how
16 is it possible for a person to have a high
17 school diploma or college degree and have a
18 Santa Claus vision of government? I'm an
19 optimist. I'm hoping that the Fox News survey
20 has chosen an unrepresentative sample of the
21 American people or made some other sampling
22 error. But that, I'm afraid, might be wishful
23 thinking.

24 Walter Williams is a professor of economics
25 at George Mason University in Virginia and is
a nationally syndicated columnist.

1 IMPRIMIS
2 27th year

3 845,000 subscribers

4 THE EVOLUTION -
5 AND DEVOLUTION -
6 of JOURNALISTIC ETHICS

7 Marianne Jennings
8 Professor of Legal and Ethical Studies
9 Arizona State University

10 Marianne Jennings is an award-winning
11 newspaper columnist and radio commentator,
12 director of the Joan and David Lincoln Center
13 for Applied Ethics, and professor of legal and
14 ethical studies at Arizona State University.

15 With undergraduate and law degrees from
16 Brigham Young University, Dr. Jennings has
17 written six textbooks and more than 130 articles.
18 Her column in the Arizona Republic has been
19 reprinted by the Wall Street Journal, the
20 Chicago Tribune, and other newspapers nationwide.
21 A collection of her essays, Nobody Fixes Real
22 Carrot Sticks Anymore, was published in 1994.

23 Journalists are the eyes and ears of
24 society. They gather, sift, and communicate
25 millions of pieces of information. But as
Marianne Jennings warns, some journalists believe
that the facts are less important than a

1 story that "sells" or that promotes a cause.

2 Professor Jennings delivered her remarks
3 at the February 1999 Center for Constructive
4 Alternatives seminar. "The Fourth Estate:
5 A History of Journalism," which was co-hosted
6 by Hillsdale's newly established Herbert D.
7 Dow II Program in American Journalism.

8 A lawyer by training and a newspaper
9 columnist by avocation, I teach ethics at a
10 business school. People tell me that's four
11 oxymorons in one sentence.

12 My unusual career choices have made me
13 realize that lawyers, businessmen, and journal-
14 ists wrestle with the same ethical concerns.
15 They not only have to decide whether to follow
16 a code of ethics personally but also whether
17 that code should apply to the stories and the
18 subjects they cover professionally.

19 There's an old joke about journalism that
20 bears repeating. Imagine that the Lord has
21 just given Moses the Ten Commandments, which
22 are the core of the ethical systems of
23 Judaism, Christianity, and Islam. As the old
24 Hebrew prophet descends from the mountain, the
25 reporters crowd around him for the inevitable

1 press conference. Then they report breathlessly
2 to their television and radio audiences:

3 "Ladies and Gentlemen, Moses has just returned
4 from Mount Sinai with Ten Commandments from
5 God, the two most important of which are ..."

6 Unfortunately, journalists often
7 regard ideas about right and wrong as
8 old-fashioned and outmoded. And they
9 often fail to live up to high ethical
10 standards. Consider this real-life
11 admission by a famous reporter.

12 Tales of lawsuits no court had
13 ever seen involving names no city
14 directory had ever known, poured
15 from me. Tales of prodigals returned,
16 hoboes come into fortune, families
17 driven mad by ghosts, vendettas that
18 ended in love feasts, and all of them
19 full of exotic plot turns involving
20 parrots, chickens, goldfish, serpents,
21 epigrams, and second-act curtains.

22 I made them all up.

23 Was it New Republic associate editor
24 Stephen Glass? He was fired in May 1998 for
25 making up out of whole cloth half a dozen

1 articles and fabricating portions of more
2 than 20 others. Or was it Boston Globe
3 columnists Patricia Smith and Mike Barnicle?
4 It was revealed in June 1998 that they were
5 allowed to keep on writing for years after
6 their editors suspected that they were making
7 up people and events. Or was it CNN's star
8 produced April Oliver? Oliver was booted from
9 the network in July 1998 after airing a false
10 story claiming that the U.S. military used
11 nerve gas in Laos.

12 Actually, it was Ben Hecht, the legendary
13 newspaperman who began his career at the
14 Chicago Journal. In 1910, as a cub reporter,
15 Hecht confessed to making up news stories and
16 was suspended for a week. He was never again
17 to write fiction as a journalist, but he did
18 go on to do so as a highly successful novelist
19 and Hollywood screenwriter. You may remember
20 seeing the original or one of the many remakes
21 of his most famous screenplay, *Front Page*, a
22 1928 comedy about -- what else? -- reporters
23 caught up in their own lies.

24 Journalists are tempted to fiddle with
25 the truth because they need to write sensational

1 stories that will sell newspapers. The
2 "scoop" was everything back in 1910, and it
3 still is today.

4 FREEDOM OF THE PRESS

5 In 1947, Henry Luce, the founder of Time,
6 Life, and Fortune magazines, commissioned a
7 report which concluded that the press:

- 8 *wields enormous power for its own ends;
- 9 *propagates its own opinions at the expense
10 of opposing views;
- 11 *allows advertisers to dictate editorial
12 content;
- 13 *resists social change;
- 14 *prefers the superficial and sensational;
- 15 *endangers public morals;
- 16 *invades privacy;
- 17 *is dominated by one socioeconomic class;
- 18 *interferes with the open marketplace of ideas.

19 Luce was livid when he read this report. He
20 feared that Congress would step in and take
21 control. Fortunately, Congress refrained, and
22 we still have freedom of the press as outlined
23 in the First Amendment.

24 A newspaper publisher was once confronted
25 by a prominent businessman who complained,

1 "I don't like what your reporters and
2 editors have been saying about my company."
3 The publisher wisely replied, "I'm sorry, but
4 I can't control these people." We should not
5 want to control "these people" through
6 government regulation. But we should expect
7 them to deal honestly and fairly with their
8 subjects, and we should hold them responsible
9 in the courts and in the marketplace.

10 RIGHTS WITHOUT RESPONSIBILITIES

11 The 18th-Century British conservative
12 statesman Edmund Burke called the press the
13 "fourth estate," implying that it was as important
14 and as influential as the three estates, or
15 branches, of government. His contemporary
16 and ideological foe, the French philosopher
17 Voltaire, came up with what (as it was later
18 paraphrased) became the rallying cry of the
19 press: "I disapprove of what you say, but
20 I will defend to the death your right to say
21 it." Both men would have agreed with former
22 U. S. President John Adams when he wrote in 1815:

23 If there is ever to be an amelioration
24 of the condition of mankind, philosophers,
25

1 theologians, legislators,
2 politicians, and moralists will
3 find that regulation of the press
4 is the most difficult, dangerous,
5 and important problem that they
6 have to resolve. Mankind cannot be
7 governed without it nor at the
8 present with it.

9 A free press is necessary for the effective
10 functioning of our republic. But it is also
11 an invitation to abuse.

12 Given all the scandals that have occurred
13 recently, journalists have been trying to
14 agree upon a professional code of ethics. The
15 American Society of Newspaper Editors and the
16 Society of Professional Journalists have each
17 published their own version. I have read them
18 with interest. They are all well crafted and
19 feature many sound ideas. But they err
20 gravely by focusing less on journalists'
21 conduct than on the "public's right to know."
22 In other words, they say a lot about the
23 rights and very little about the responsibilities
24 of the press.

25 As an ethics professor, I have also found

1 that those who rely most on written codes
2 of conduct are the most unethical among us.
3 They want a fancy document certify their
4 integrity that they can wave around, but
5 they do not want to be bound by it. It is
6 no wonder that one of America's most popular
7 journalists in the early to mid-20th century,
8 American Mercury founder H. L. Mencken, called
9 ethical codes for journalists "flap-doodish and
10 unenforceable."

11 VALUE BASED DECISIONMAKING

12 Many journalists are content to practice
13 what I call "Jurassic Park ethics." Have
14 you seen Jurassic Park? You should, if for
15 no other reason than because a lawyer is eaten
16 alive. In this movie, a wealthy businessman
17 finds a way to genetically engineer DNA so as
18 to revive extinct species. He uses this
19 ingenious process to create a theme park full
20 of live dinosaurs. He stands to make untold
21 millions, but his lawyers are afraid that the
22 park is unsafe. To allay their fears, the
23 developer invites a team of scientists to
24 investigate. One, a mathematician, states
25 his doubts, which go far beyond the question of

1 safety. He basically says, "The problem
2 that I have with what you have done here is
3 that you spent so much time asking whether
4 you could do this that you forgot to ask
5 whether you should do this."

6 Unless journalists grapple with the
7 "should" question, written codes of ethics
8 are meaningless.

9 Let me explain further by relating an
10 incident that happened recently in my class-
11 room. A student asked me, "Would you embezzle
12 one million dollars from your employer if
13 your mother needed it to pay for a lifesaving
14 operation?" My response was an emphatic "No!"
15 He was upset and cried, "Why, you heartless
16 wench! No wonder I'm getting a C in this
17 class." It never occurred to him that there
18 were other ways to phrase the question. If
19 he were to say, "Would you raise the money
20 for your mother's operation?" my answer would
21 be "Yes!" If he were to say, "Would you
22 pledge everything you owned for your
23 mother's operation?" my answer would again
24 be "Yes!"

25 This student, like a number of ethically-

1 challenged journalists today, doesn't seem
2 to realize the importance of value-based
3 decision making. First and foremost, you
4 should define the values that you hold most
5 dear. I propose that journalists be guided
6 by five important values. (I have borrowed
7 them from novelist Ayn Rand, but I could
8 have easily found them in the writings of
9 many thinkers.)

10 HONESTY

11 The first value is honesty. Journalists
12 should not invent **stories** or "fudge" facts.
13 Nor should they foster false impressions.
14 This last provision may be the most critical.
15 My son Sam would never tell an outright lie,
16 but he is willing to tell less than the
17 whole truth. His second grade teacher put his
18 name on the chalkboard if he failed to follow
19 the rules. My husband and I asked him every
20 day after school, "Did you get your name on
21 the board?" and he would answer truthfully.
22 When he was in the third grade, we asked the
23 same question, and the answer was always "No."
24 We were thrilled that his conduct had been
25 so exemplary.

1 Then we learned from his teacher that
2 she had changed the policy; names were no
3 longer written on the chalkboard but on
4 index cards. We went home from parent-teacher
5 conferences to confront our son: "Sam, you
6 lied to us. You told us that you were good."
7 Sam replied earnestly, "No, I did not lie to
8 you. You asked me if I got my name on the
9 board, and the answer was always 'no.'"

10 My husband looked at me and sighed.
11 "Dear," he said, "we are raising a president."

12 Likewise, it is wrong to exaggerate the
13 truth. In 1992, NBC's Dateline presented
14 an investigative report on GM trucks. There
15 is no question that there was a problem with
16 the gas tanks. But the show's producers
17 secretly detonated incendiary devices in a
18 staged crash. The editor of a popular car
19 magazine exposed the scandal, but it was not
20 until GM spent \$2 million on a full-scale
21 investigation that NBC admitted any wrong-
22 doing, and even then President Michael Gartner
23 insisted that the segment was "fair and accurate."

24 This is deeply troubling, especially
25 since television news is a primary source of

1 news in the world today. As syndicated
2 columnist Richard Reeves says, it is a form
3 of mass media that is fraught with ethical
4 problems since millions of viewers believe
5 the camera doesn't lie.

6 INDEPENDENCE

7 The second value is independence.
8 Journalists should avoid conflicts of interest.
9 One such conflict occurred in 1998, when the
10 Walt Disney Company, which owns Capital
11 Cities/ABC, Inc., killed an ABC television news
12 magazine series on lax security and pedophilia
13 in amusement parks. Another conflict occurred
14 when ABC anchor and celebrity interviewer
15 Barbara Walters ran a flattering profile of
16 composer Andrew Lloyd Webber just before
17 Sunset Boulevard opened in 1997. What Ms.
18 Walters failed to disclose and what the New
19 York Post revealed the following week was
20 that she had invested \$100,000 in the new
21 Broadway musical. Ironically, Ms. Walters
22 responded like the typical businessman who is
23 so often the target of 20/20 ambush interviews.
24 She said, in effect, "How could you ever think
25 that I would compromise my integrity for money?"

1 FAIRNESS

2 The third value is fairness. While it
3 could be argued that the truth by definition
4 is fate, the 19th-century British poet
5 William Blake was right:

6 A truth told with bad intent
7 Beats all the lies you can invent.

8 The "truth" in the January 25, 1999 issue
9 of People profile of Chief Justice William
10 Rehnquist was meant to wound: "Among the
11 controversies [surround Rehnquist] were reports
12 that covenants on his house in Phoenix and
13 a vacation home in Vermont prohibited their
14 resale to racial or ethnic minorities." A
15 parenthetical note followed: (Rehnquist
16 claimed he had been unaware of the covenants.)"

17 The obvious implication is that the Supreme
18 Court is led by a closet racist.

19 Now, one of my books is a real estate law
20 text (in its fifth edition), and I can assure
21 you that there are very few properties in the
22 United States that don't have racial covenants
23 hidden somewhere in their history. Such
24 covenants were declared unconstitutional in
25 the 1950s, but to require property owners or

1 clerks to physically strike them from all the
2 land records in the nation would be an under-
3 taking greater than trying to prepare for Y2K.
4 We don't have the resources, we don't have
5 the funds, and it is plain silly since the
6 covenants have been declared invalid. Furthermore,
7 covenants often appear only in chains of
8 title and not in the deeds. So property
9 owners are not likely to know that they
10 even exist.

11 Fairness is also endangered by personal bias.
12 A journalist may agree with the individuals,
13 organizations, and causes he is covering, so
14 it may be hard for him to report anything
15 negative. Similarly, he may disagree and
16 find it hard to say anything positive. Scan
17 any newspaper for stories about, say, the
18 environment, and you will quickly discover
19 that many journalists are predisposed to
20 consider environmental activists the
21 "good guys" and oil company presidents and
22 loggers the "bad guys." Or watch all the
23 junk science television news specials about
24 pesticides, food additives, breast implants,
25 nuclear power, and global warming. Reporters

1 are reputed to be natural-born skeptics, but
2 they almost never challenge the alarmists
3 on **these** important issues.

4 PRODUCTIVENESS

5 The fourth value is productiveness.
6 Journalists should do their own homework.
7 The secret of success in any field is plain
8 hard work, but in journalism it is also the
9 key to getting the story right. Some of the
10 best reporters are often referred to sneeringly
11 as "junkyard journalists," but that's because
12 they go where no one else is willing to go and
13 they check up on the little leads that appear
14 to be dead ends.

15 Doing your work means that you do not
16 accept the word of somebody else, you check
17 the facts yourself. That's what Rod Decker,
18 a local KUTV reporter, did in Salt Lake City
19 in 1998. He broke one of the biggest stories
20 of the year when he discovered that bribery and
21 widespread corruption influence the way Olympic
22 sites are chosen. Although most members of
23 the community were uncomfortable with his
24 revelations and some became hostile, Decker
25 persisted.

1 Then there is the enterprising, diligent,
2 and courageous reporting of Newsweek veteran
3 Michael Isikoff. As one source admits,
4 "Years from now, when we look back on the
5 Clinton impeachment scandal, Michael Isikoff's
6 name will be stamped on the story." Despite
7 his editors' strong disapproval, he painstakingly
8 investigated allegations of sexual misconduct
9 on the part of the president. He did so as a
10 serious reporter, not a tabloid sleazehound,
11 yet he is now branded as such by Clinton
12 supporters.

13 Isikoff has no regrets. He states that he
14 is glad that he pursued the truth. This puts
15 me in mind of an old adage that his critics
16 would do well to heed: "The truth is violated
17 by falsehood but outraged by silence."

18 PRIDE

19 The fifth value is pride. Permit me once
20 again to use an example from my own life.
21 Years ago when I was working in the U.S.
22 Attorney's Office, we did not have word
23 processors. One of the secretaries finished
24 making final copies of a 75-page brief for
25 an appellate case. At the last minute, I

1 discovered a typographical error. I went to
2 the senior attorney and said, "This is not
3 my fault. I corrected the typo on the last
4 draft, but the secretary missed it."

5 He looked at me and said, "Does it have
6 your name on it?" When I replied that it did,
7 he said matter-of-factly, "Then it is your
8 mistake."

9 It doesn't matter how many people help
10 a journalist on a story. When it appears in
11 print or on the air with his name on it, he
12 has to take responsibility for it. This is
13 a hard lesson that even veteran journalists
14 have difficulty learning. Remember the
15 dishonest CNN report I mentioned earlier about
16 alleged use of nerve gas in Laos? The "star
17 reporter" who presented that report to the
18 American public was Peter Arnett. Arnett
19 was not fired. He was reprimanded by the net-
20 work after insisting that he hadn't really
21 done any real reporting at all; he had just
22 read the script that was handed to him.
23 But he allowed his name to appear in the
24 credits for a story that turned out to be
25 false. Shouldn't he have held himself accountable?

1 Particularly in the context of how the media
2 are currently handling other awkward facts,
3 there is a pattern of concealment and denial
4 that is dishonest and dangerous.

5 The report we released in June was, to be
6 sure, not flattering to blacks. It noted,
7 for example, that they are at least 50 times
8 more likely to commit criminal acts of violence
9 against whites than the reverse, and that they
10 are as much more violent than whites as men
11 are more violent than women. It also found
12 that despite federal data-gathering methods
13 that exaggerate the number of "hate" crimes
14 committed by whites, blacks are still twice
15 as likely as whites to commit such crimes.
16 Other equally important findings were summar-
17 ized in the July issue of AR.

18 The figures in the report were based on
19 state and federal crime statistics that,
20 taken together, are unassailable evidence
21 that different racial groups in America commit
22 violent crimes at vastly different rates.
23 Because we knew these findings are so jarring
24 to conventional minds, we included as appendices
25 to the report facsimile pages from some of the

1 government documents from which we took
2 key figures.

3 In order to get maximum publicity for
4 The Color of Crime, we held a news conference
5 at the National Press Club to announce the
6 report's release. We publicized the conference
7 and the report as significant contributions
8 to the current controversy over "racial profiling,"
9 or the police tactic of stopping blacks more
10 often than whites, on the assumption that
11 blacks are more likely to be criminals.

12 Our efforts were successful. Even before
13 the report was released, many big news organi-
14 zations were asking for copies. The Associated
15 Pres, Time, CBS Evening News, National Public
16 Radio, Knight-Ridder, and the Washington Times
17 wanted advance copies rather than wait for
18 the news conference. A dozen other media
19 organizations, including the Washington Post,
20 picked up the report at the conference itself.
21 C-SPAN thought what we had to say was so
22 important it **broadcast** the news conference
23 live and then rebroadcast it several times.
24 On the day we released the report we arranged
25 to have it delivered to more than 450 news

1 organizations in the Washington, DC area.

2 What happened next? Almost nothing. With
3 one exception, everyone who had wanted the
4 report ahead of time decided to ignore it.
5 The Washington Times stood alone in running
6 a substantial news story, in which it inter-
7 viewed several prominent criminologists who
8 confirmed the accuracy of our numbers and
9 added that they were simply too inflammatory
10 to be discussed publicly.

11 Was this why everyone else decided to
12 kill the story -- because the facts were
13 too inflammatory? I do not claim to know
14 the motives of people I have never met. News
15 organizations have their own priorities,
16 and no one called to say, "Thanks for sending
17 us this fascination report, but it's just too
18 hot to handle."

19 However, other things were happening that
20 suggest what decisions were being made in the
21 newsrooms. One was the release of a different
22 report on crime by an organization called
23 Violent Free Duluth, in Duluth, Minnesota.
24 As we reported in the July "O Tempora" section,
25 this group studied a year's worth of gun crimes

1 in detail in an attempt to understand the
2 connection between firearms and violence.
3 They looked into such things as the type of
4 gun used, the role of alcohol and drugs, the
5 relationship between killer and victim, and
6 the age, race, and sex of the criminals. In
7 April, the group released its report, but
8 left one thing out: race of perpetrator.

9 Frank Jewell, who heads the organization,
10 said that minorities are perhaps just arrested
11 more often than whites, and explained that
12 "we didn't include it [the race data] because
13 it might be misinterpreted." Duluth's deputy
14 police chief Robert Grytdahl agreed with this
15 decision, saying that the race findings might
16 distract whites from the real problem: It's
17 a comfortable place for white people to park
18 the (gun crime) problem. It would be a
19 huge distraction, and we wanted to focus on
20 firearms."

21 What are these people really saying? By
22 claiming that information about race "might
23 be misinterpreted," Mr. Jewell is saying that
24 the people of Duluth cannot be trusted with
25 the truth -- that they are either evil or stupid

1 or both, and might draw unacceptable con-
2 clusions if they knew how much gun violence is
3 committed by non-whites. He, of course, is
4 a superior being and can be trusted with
5 difficult truths.

6 Mr. Grytdahl is just as contemptible.
7 According to the 1990 census, Duluth was
8 95 percent white. What if it turned out that
9 virtually all the gun crimes in the city were
10 committed by the other five percent? Is this
11 what Mr. Grytdahl means by "a comfortable
12 place for white people to park the problem,"
13 whereas he wants to "focus on firearms"?
14 Isn't he saying that if the truth got out
15 someone might conclude that Duluth has a
16 minority problem rather than a gun problem?

17 His views can be put this way. Let us
18 imagine the dawn of the automobile age, and
19 drivers are getting into lots of accidents --
20 so many, in fact, that some people want to
21 ban cars. A study finds that a large number
22 of accidents are caused by drivers under age
23 eighteen, and that the auto safety problem
24 would be largely solved if young people were
25 kept from behind the wheel. The anti-automobile

1 forces might want to suppress that information.
2 "It's a comfortable place for older people
3 to park the problem," they might say "It
4 would be a huge distraction and we wanted
5 to focus on automobiles."

6 To put it bluntly, Mr. Jewell and Mr.
7 Grytdahl wanted a dishonest study. They
8 knew in advance the conclusions they wanted
9 it to reach and deliberately suppressed infor-
10 mation that might lead to different conclusions.
11 They are not doing research; they are practicing
12 propaganda. They want to keep the people of
13 Duluth ignorant, because it is easier to tell
14 ignorant people what to think.

15 "Nobody Knows"

16 Something similar but more subtle took
17 place in the pages of the New York Times on
18 July fourth. In a long, front-page story
19 called "Reason is Sought for Lag by Blacks
20 in School Effort," reporter Pam Belluck wrote
21 about the persistent racial gap in academic
22 achievement. She wrote that educators are
23 dismayed to find out while students from
24 households with a family income of less
25 than \$10,000 a year get higher SAT scores than

1 black students from households that make more
2 than \$70,000. After hearing various not-very-
3 convincing explanations from teachers,
4 students, parents and researchers, she con-
5 cluded, "nobody claims to have clear answers."

6 Of course, there are plenty of people who
7 have clear answers, and Miss Belluck knows the
8 names of some of them. I telephoned her to
9 ask why she had not explored the IQ argument,
10 even if only to reject it. She became defen-
11 sive, saying that her article "reflected
12 everything that was told me." When I asked
13 if no one had mentioned a "bell curve"-type
14 explanation for low black achievement, she
15 said the purpose of the article was not to
16 promote anyone's book. She quickly ended the
17 conversation, saying "I'm not here to be inter-
18 viewed." Miss Belluck could easily have
19 expanded her story to include the only explanation
20 that makes sense, but she choose not to.
21 Today, if anyone tells you "no one has clear
22 answers" to questions about racial gaps in
23 achievement, he is either stupid or thinks
24 you are stupid. Miss Belluck apparently
25 thinks her readers are stupid.

1 To return to our report, The Color of
2 Crime, is it possible that editors decided
3 simply to suppress news that doesn't fit the
4 vision of America they want us to embrace? Is
5 it possible that like Frank Jewell in Duluth
6 they think the truth about race and crime
7 might be "misinterpreted"? Do they perhaps
8 think that the less we know the easier it
9 will be for them to tell us what to think?

10 The great irony is that we are told over
11 and over that our form of government requires
12 as informed electorate. Ignorant voters are
13 irresponsible voters. And yet would it be
14 going too far to suggest that some people
15 prefer that voters be ignorant--at least about
16 certain things--because if they were knowledgeable
17 they might not vote the way they should?
18 For people like Frank Jewell, who think that
19 the rest of us are incapable of dealing
20 responsibly with the truth, ignorant citizens
21 are better citizens.

22 Unfortunately for those who decide for us
23 what is worth knowing and what isn't, there are
24 many new ways to get information. The Internet

25 (If someone tells you no one knows the answer,
 he is either stupid or thinks you are stupid.)

1 is one, and it is significant that it is only
2 the left-and never the right-that worries
3 about the political views available on the
4 net. No one sees the Internet as a great
5 propaganda opportunity for people who want
6 big government, gun control, racial
7 egalitarianism, radical feminism, homosexual
8 rights, internationalism, and higher taxes.
9 But if "hate mongers" can use the net to seduce
10 young minds, why not socialists? The fact is,
11 the left doesn't need the net because the big
12 media are already in its hands. It fears
13 the Internet because it is an uncontrollable
14 alternative to the conventional media that
15 already echo its views.

16 The people who run National Public Radio
17 (NPR) recently got a slap on the wrist when
18 investigators found that several big public
19 radio stations had swapped donor lists with
20 the Democrats. It is no mystery why they
21 didn't swap with the Republicans (or with the
22 New Century Foundation); the broadcasting
23 network that is supposed to be "national" and
24 "public," and that receives support from the
25 taxpayer is pitching the same pop socialism

1 the Democrats do. And these are the same
2 people who insist that the media are not
3 liberal. Are they stupid or do they think
4 we are stupid? That a Republican majority
5 in Congress should continue to fund open
6 leftists is just one more sign of its
7 spinelessness.

8 But even if NPR is firmly in the hands of
9 the left, radio can be a good, alternative
10 news source. As we reported in the January
11 issue, conservative talk radio can sometimes
12 come close to being an exercise in real free
13 speech. The limits are narrower than on the
14 Internet but much broader than in the New York
15 Times or Washington Post. And, indeed, conser-
16 vative talk radio cannot get enough of The
17 Color of Crime. Over the years I have spoken
18 on hundreds of radio programs, but no other
19 subject has ever caught the attention of hosts
20 and listeners the way this one has. Never before
21 have I so often been asked to stay on the
22 program longer than scheduled. Never before
23 have hosts asked me to come back on the air a
24 week later because their callers are still
25 talking about race and crime. Never before

1 have I been on one radio station only to have
2 a competing station in the same city invite
3 me on because the subject caused such a stir.

4 I think I know why people like this subject.
5 Although it is still semi-taboo to discuss
6 crime rates and interracial crime in gruesome,
7 factual detail, it is a subject that directly
8 touches the lives of whites and one in which
9 they can take an interest without being too
10 explicitly "racial." Slowly-awakening whites
11 who cannot yet talk calmly about race and
12 IQ or the legitimacy of maintaining a white
13 majority can tuck right into the purely factual
14 aspects of crime rates. This reflects a latent
15 racial consciousness that can only develop
16 over time.

17 Needless to say, some listeners don't
18 want to hear that blacks commit murder and
19 robbery at ten times the white rate. A sur-
20 prising number of black callers insist we
21 have a "racist" white government that cooks
22 the statistics. Most white callers fall
23 into one of two camps; those who say I am a
24 "racist" and those who say I am brave. It is,
25 of course, a sorry day in America when one

1 is either brave or racist (somehow no one ever
2 suggests I am both) simply for reporting
3 crime statistics that the Department of
4 Justice has been collecting for decades.
5 There are two variants of the "racist" argument.
6 One is that what I am saying just isn't true
7 because the figures are false or I am lying.
8 The other is that even if the figures are true,
9 publicizing them will only give comfort to
10 "racists" and feed stereotypes. This is basically
11 the Frank Jewell argument: White people cannot
12 be trusted with the truth, ignorance is better
13 than knowledge, etc. This widespread
14 combination of obscurantism and contempt for
15 whites is the very essence of liberal thinking
16 about race.

17 The larger point, however, is that thanks
18 to talk radio, the Internet, the Washington
19 Times, and a few alternative publications
20 that have written about The Color of Crime,
21 many people are finding out the facts--and
22 they are well aware that they didn't read them
23 in the morning paper. Many radio hosts exult
24 in this: "And you didn't read about this in
25 the Baltimore Sun, did you? That's right, folks,

1 this is where you hear the news the papers
2 are afraid to print." Many callers are also
3 openly contemptuous of the racial double
4 standards the major media practice, and
5 point out that if whites were committing a
6 great deal of violence against blacks it
7 would be front-page news. It is plain how
8 little they trust television or newspapers.

9 Things cannot go on like this forever.
10 The big media continue to close ranks over
11 racial differences, immigration, the joys
12 of "diversity," gun control, etc., but fewer
13 people believe them. Politicians and commenta-
14 tors continue to mouth the cliches the press
15 feeds them, while more and more people stock
16 up on ammunition and stop voting.

17 The country is moving in two directions
18 at once. To someone who reads only the
19 Washington Post, America is joyfully getting
20 more liberal and multicultural all the time.
21 President Clinton welcomes the day when whites
22 become a minority. Immigration judges sagely
23 decide that African women are **refugees** because
24 they face genital mutilation back home. The
25 Postal Service issues a stamp commemorating

1 Malcolm X. New Hampshire does as it is told,
2 and now every state celebrates Martin Luther
3 King's birthday. Non-whites continue to pour
4 into the country without the slightest sign
5 Congress has noticed or cares.

6 At the same time, trust in government and
7 voter participation are at all-time lows.
8 Alternative publications that openly mock the
9 mainstream are gaining circulation. Despite
10 the boom-time economy, the country is in the
11 grip of a sense of crisis and foreboding that
12 has no equivalent in living memory. Probably
13 not since the secession crisis of the previous
14 century have a greater proportion of Americans
15 worried so much about the future. And probably
16 never before have so many citizens thought our
17 rulers were such selfish, unscrupulous men
18 promoting policies that are so obviously wrong.

19 One of the causes of this dissatisfaction
20 is the yawning gap in what Americans know to be
21 true and what they see on the evening news.
22 Politicians and newspaper editors will have
23 to start edging towards the truth or risk
24 losing yet more of their audience. They cannot
25 go on forever ignoring facts that ever-larger

1 numbers of Americans are learning in uncon-
2 ventional ways.

3 But they could go on for a long time.
4 The Soviet Union dragged on for years after
5 even the diehards ceased to believe the propa-
6 ganda. What's more, the Soviet people had an
7 important advantage in that the heavy, censoring
8 hand of the commissar was clear for all to see.
9 Everyone knew that it was the Communist Party
10 that told them what to think, and anyone with
11 a radio could tune into a different way of
12 thinking.

13 Things are not so simple for us. There
14 is no central censoring agency quite so obvious
15 as the Communist Party, and there are no
16 overseas radio broadcasts with a different
17 point of view. American censorship is the worst,
18 most cowardly kind; self-censorship. Every
19 editor and television commentator knows what
20 we are supposed to think, and dutifully curbs
21 his tongue. At the same time, there is brisk
22 public disagreement about subjects that are
23 not central to the prevailing ideology, which
24 gives the impression of freedom of expression.

25 AR and its readers are therefore subversives,

1 against several Republican members of Congress.
2 Allen P. Stayman, former director of the Office
3 of Insular Affairs and Policy Director David
4 North have been accused of violating the Hatch
5 Act for conducting illegal activities while on
6 the job against House Majority Leader Dick
7 Armev and Whip Tom DeLay of Texas, as well as
8 three other congressmen. Documents show Mr.
9 North drafted press releases for Democratic
10 candidates, provided derogatory information
11 about Republican members to campaigns and
12 reporters, and wrote letters to the editor for
13 constituents to submit to local papers. In a
14 memo addressed to the director of the Democratic
15 Congressional Campaign Committee (DCCC). Mr.
16 Stayman stated "[T]hose of us who are politicals
17 here at Interior want the DNC to repudiate
18 these scoundrels." In another memo, North
19 stated the reason was because they (Republican
20 members of Congress) have been giving the
21 Clinton Administration a hard time." Even
22 though contempt of Congress charges have been
23 threatened, no documents have been produced
24 by either the Interior or the DCCC.

Faxback Doc. 434

1 CLINTON CALLS FOR STRONGER EPA ENFORCEMENT

2 Last week Clinton announced that the
3 Environmental Protection Agency (EPA) would be
4 enforcing a provision of the 1972 Clean Water
5 Act that, according to the Administration, has
6 been "largely ignored." The new policy would
7 require states to take aggressive measures
8 "by focusing on bodies of water, instead of
9 individual discharges." This would give the
10 federal government the ability to penalize an
11 entire watershed instead of the alleged source
12 of pollution. Clinton said that about 40% of
13 the nation's waterways are not clean enough
14 for fishing or swimming. Clinton has ordered
15 the EPA to establish "total maximum daily loads"
16 that entitles will be allowed in daily runoff.
17 Those who exceed the limits could be fined up
18 to \$25,000 a day or jailed. This is a typical
19 technique of the Clinton Administration to
20 control and take away more private property
21 through watershed management.

22 Faxback Doc. 435

23 JUST WHEN YOU THOUGHT YOU HAD HEARD IT ALL

24 A few weeks ago the Arizona Daily Star
25 in Tucson reported that property owners now

1 have a new threat from environmentalists...
2 "nectar corridors". It's not enough that we
3 have to deal with wetlands, ESA, Heritage Corridors
4 and Scenic Byways to mention but a few, but now
5 ecologists are pining over "diminishing
6 populations of pollinators." This study is
7 being conducted by the Arizona-Sonora Desert
8 Museum. The Museum's director Gary Nabhan has
9 said that the factors causing the reduction in
10 pollinators are (can you guess?) land development
11 and ranching! The Museum has received a \$500,000
12 grant from the Turner Foundation to trail all
13 of these bats, hummingbirds and butterflies
14 to document the problem...they will later issue
15 conservation recommendations. Faxback Doc. 436
16 GRAND STAIRCASE ESCALANTE SUIT TO PROCEED

17 Against the desires of the environmentalists,
18 U. S. District Judge Dee Benson has refused to
19 dismiss a lawsuit filed by the Utah Association
20 of Counties over whether the president exceeded
21 his authority when he created the Grand Staircase-
22 Escalante National Monument. The designation of
23 the monument in 1996 not only locked up 1.9
24 million acres of land but sealed a possible
25 \$1 Trillion in clean burning coal deposits from

1 ever being used.

2 Faxback Doc. 438

3 GORE FACES FEC PROB OF "FLOODGATE"

4 Republicans have lodged a complaint with the
5 Federal Election Commission charging that Gore
6 received over \$8500,000 worth of water which
7 was "donated" for his canoe trip a few weeks ago
8 in New Hampshire. Faxback Doc. 437

9 FAXBACK DOCUMENTS

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15 CHAIRMAN GANNON: With that, our next
16 witness is Mr. Harry Schneider, Chairman of the
17 Pennsylvania Sportsmen's Association and Mr. Dennis
18 Pavlik, Vice Chairman, Legislative Affairs,
19 Pennsylvania Sportsmen's Association. Welcome,
20 gentlemen. You may proceed when you are ready.

21 MR. SCHNEIDER: Thank you, Mr. Chairman.
22 Mr. Chairman, Members of the Committee, my name is
23 Harry Schneider. I'm Chairman of the Pennsylvania
24 Sportsmen's Association. My colleague, Mr. Dennis
25 Pavlik, is a Research Scientist but we won't hold
that against him, and he is Vice-Chairman.

Just for the record, the Nazi Gun Control
Laws, there is a misunderstanding that Hitler enacted

1 very strong control laws and that enabled him to
2 take over the country. Actually, the strong gun
3 control laws were enacted in 1928 by the Weimar
4 Republic and the Nazis found those very useful and
5 kept them and in 1938, they simply modified them a
6 little bit to say that certain folks who are
7 allowed to have some guns no longer can but the
8 registration laws and so on were enacted pre-Hitler
9 and were simply used by the Fascist as they took
10 over control of the government. So, the good
11 intentions of the Weimar Republic turned around
12 to later bite them.

13 Again, I'm not -- just because somebody
14 advocates strong gun control certainly doesn't
15 mean that they are Nazi, just as we wouldn't say
16 that the members of the Weimar government that
17 enacted those strict gun control laws that the
18 Nazis used, they didn't intend that to help the
19 Nazis. It just had that consequence.

20 I'd like to talk about the interface
21 between federal and state law and also try to
22 clean up a few misunderstandings. What Representa-
23 tive Forcier said about carrying an expired permit
24 being a felony, that was true with the passage of
25 Act 17 of 1995, Special Act 17. We modified

1 that with Act 5 of 1997 and there is now a six-
2 month grace period after the expiration of a
3 permit. During that grace period, you could be
4 arrested but you cannot be convicted unless you
5 have done something that you would no longer be
6 eligible for issuance of a permit.

7 Also, we modified the law in an attempt
8 to draw a distinction between the gang banger who
9 is carrying a gun with the intent to harm somebody
10 and an innocent person. For example, the law
11 simply said, Act 17 simply said that if a person
12 is carrying a firearm, and firearms by default
13 definition in Pennsylvania means handgun. There
14 are six different definitions in the Crimes Code,
15 but the default definition, unless that section
16 alludes to a specific definition, it is essentially
17 a handgun and let's say I have a permit and I
18 carry a handgun in the console of my truck and
19 my wife does not have a permit and one day, I'm
20 blocking her in the driveway. She jumps into the
21 truck and she goes out to the store and she is
22 in an accident. A policeman goes in looking for
23 her ID to notify the ambulance, finds the gun;
24 says, do you know you have a gun there? She says,
25 oh, yes, that's my husband. Well, under Act 17

1 she had committed a felony and we didn't think
2 that was just. So, we modified it with Act 5 a
3 little bit to add an element of intent and
4 eligibility. If the person could have had a
5 permit for the asking, why make a felon out of them?
6 And we tried to make that a Class 3 Misdemeanor.
7 Unfortunately, during the legislative process, it
8 was converted to a Class 1 Misdemeanor which still
9 would prevent that innocent wife from ever owning
10 a firearm for the rest of her life and on the
11 floor Representative Merle Phillips commented that
12 he felt that it really should be a Class 3 Mis-
13 demeanor and I would hope that we could clean that
14 up one day and strike that Class 1 and make it a
15 Class 3.

16 What I'm trying to do is draw a distinction
17 between coming down hard on real criminals and not
18 coming down hard on innocent people. We have a
19 person about five miles from here right now that
20 is being prosecuted. He sold a handgun to his
21 next door neighbor. They've lived next to each
22 other for 30 years. They are best friends. One
23 day he sold this handgun just a few weeks ago to
24 his neighbor. The neighbor bought it during the
25 day, left it, went to work. His wife comes home,

1 finds the gun, doesn't know what this is all about
2 and calls the police -- I found a gun sitting on
3 the kitchen table. The police came out. The
4 gentleman comes home from work. Where did you get
5 the gun? Well, I bought it from my neighbor.
6 Goes over to the neighbor, did you sell him
7 that handgun? Yes, sir, I did. Well, are you
8 sure you really didn't like loan it to him or did
9 you show it to him? Oh, no, I sold it to him.
10 This gets into what Mr. Mirowitz was talking about
11 earlier, it's that good people don't know how to
12 defend themselves. So, the police officer charged
13 him with illegal sale of a firearm. Under federal
14 and state law you cannot sell a handgun without
15 going through a dealer. A lot of people don't
16 understand that. Now, this person intended no
17 harm. No one was hurt by this but he is being
18 prosecuted right now. The policeman didn't want
19 to prosecute him but a very young Deputy DA decided
20 that she could make an example of him and he is
21 being prosecuted. If he is successfully prosecuted,
22 he'll lose the right to own any gun for the rest
23 of his life. He's going to have an arrest record
24 for what? Now, at the same time, I have a friend
25 who is a police officer in the City of Pittsburgh

1 School District and he calls me up from time to
2 time and he is furious. He called me once, I
3 remember that I even called ATF in Pittsburgh.
4 I called the Regional Director and I said,
5 He's got a gangbanger wearing tan colors in a
6 City of Pittsburgh School with a shotgun that is
7 sawed down to pistol size and he's carrying it --
8 he had two Carhartt jackets and he had the
9 gun sealed in the elbow with two Carhartt jackets,
10 and his pockets were full with ammunition. He can't
11 get anybody to prosecute this guy. The state
12 doesn't want to touch him and the feds don't want
13 to touch him. It's a violation of everybody's
14 laws. What's the problem here?

15 See, now, this guy is easy to prosecute.
16 He's sitting in one spot. He's easy to get. He's
17 in a rural area where there is low crime. So, let's
18 nail him. Whereas, in the City of Pittsburgh, he's
19 too tough to deal with; he's a juvenile; he's a
20 gang member. As we move him through the process,
21 we're going to have a hard time finding him. So,
22 it's just not worth the effort. That's where we
23 seem to have disagreement here. We want to get
24 that gang banger. We don't want to get that poor
25 guy who did something that wouldn't harm anybody.

1 They could have easily gone down the street and
2 done it through a dealer if they had just known that.
3 They didn't know that. So, why prosecute him?

4 Now, one of the things that is really
5 shocking to me and what I've handed out, anybody
6 buys a gun, three of the questions are: Are you
7 under indictment or information in any court for a
8 crime for which the judge could imprison you for
9 more than one year? Have you been convicted in
10 any court where you could have been imprisoned
11 for more than one year? That's on the federal
12 form that I give you and right behind it is the
13 state form asking a similar question. That all
14 goes back to the U.S. Code which I have provided
15 which essentially says, if you are convicted in
16 any court where you could have gotten, even if you
17 got no jail time at all, if you could have gotten
18 more than a year, you are considered disabled because
19 you can't own a gun. Now, if you go to the
20 definition section of federal law, there are ex-
21 ceptions to that. Certain state crimes, it's a two-
22 year limit, if they are non-violent crimes and
23 certain white collar crimes aren't covered at all,
24 regardless. Those of you caught embezzling money,
25 it doesn't disqualify you. However, I was attending

1 a seminar conducted by ATF legal counsel in
2 Philadelphia a few years ago and the man said
3 something very startling. He said, this means
4 any court anywhere in the world at any time and I
5 put my hand up and I said, what do you mean, any
6 court anywhere in the world? He said, yes, just
7 what I said. That's what the law says. I said,
8 well, wait a minute. What if Sadaam Hussein
9 notifies you that he has convicted Norman Swartzkopf
10 (phonetic) of murder in Beirut. Would Norman
11 Swartzkopf be prohibited from having guns? He
12 said, yes. But I'm sure Norman Swartzkopf could
13 get a special Act of Congress to restore his gun
14 rights. I said, wait a minute, this is absurd.
15 I said, what about somebody that was waving an
16 American Flag in Tieneman Square and the Chinese
17 grabbed him and he was one of the lucky ones and
18 wasn't killed. Now he escaped from China. He's
19 in the United States. He's an American citizen and
20 wants to own guns but he has a conviction record in
21 China for waving -- he can't own guns. Is this not
22 going after the bad guys? You know, I'm sure if
23 somebody had explained this before Congress what
24 they were doing, I know a gentleman, I met in college,
25 who was involved in an illegal operation to smuggle

1 bibles into the Soviet Union and he used to tell
2 me, he had to get his teeth modified, get rid of
3 the good dentistry because they could spot him as
4 an American if he had good dentistry in the Soviet
5 Union. So, he had to have rotten teeth put in,
6 modified, to pass. If he got caught, the minimum
7 sentence he could expect was five years in the Gulag.
8 So, I asked the question, if that guy, those
9 missionaries, were caught smuggling bibles into the
10 Soviet Union, have they lost their right as an
11 American citizen to own firearms with no right of
12 appeal? The answer is yes. This is absurd. I
13 ask you, it was mentioned earlier today that about
14 the time this law was passed, which was in 1968,
15 Pennsylvania Crimes Code simply said all misdemeanors
16 punishable by three years, tripping that one or two
17 year limit. So, all misdemeanors which predate
18 when we got in and began to codify or break that
19 down further, all these old-timers, no matter what
20 they did, are ruined. A friend of mine was in a
21 similar trap in South Carolina, a very minor thing
22 in his youth. He owned about a hundred guns, very
23 prominent businessman, caught his secretary em-
24 bezzling money; went to the DA, filed charges
25 against her. She runs to the ATF and said he's got

1 machine guns. They raided his place of business,
2 took all of his guns. There were no machine guns,
3 nothing illegal. What they found was that as a
4 youth he had stolen an artillery stimulator when he
5 came home from basic training. It's a big fire-
6 cracker. The judge patted him on the back, wished
7 him good luck and fined him, I think, \$200. He
8 comes back from Vietnam, goes to the judge, can I
9 buy guns, yes; no problem. So, the guy becomes a
10 member of the Governor's Six on the South Carolina
11 Pistol Team, a very prominent shooter. He buys
12 his own guns, all the stuff. Well, they went
13 through the records and there was nothing in the
14 computer on this. They found this. They charged
15 him with a felon and possession. He spent a year
16 and a half in a halfway house and his life is
17 largely ruined. His business went down the tubes
18 over this. You folks can't fix all of this but I
19 want you to be aware of when we start ratcheting
20 up crimes. It's not what the person gets. It's
21 what he could have gotten with a maximum sentence.
22 Again, we want to get the bad guy, and not the good
23 guy. By destroying that man's life, nobody in
24 society benefitted.

25 One of the things that harms a lot of us is

1 reciprocity with concealed carry permits. I would
2 like to see concealed carry permits treated like
3 driver's licenses and indeed the state legislature
4 has authorized the Attorney General to do this.
5 He has not done this. I have given you a copy of
6 a typical letter that they said which says that
7 they can't do it. I have given you copies of the
8 New Hampshire Statute which is far less restrictive
9 than Pennsylvania Statute, much easier to get a
10 permit in New Hampshire than Pennsylvania. I have
11 a New Hampshire Permit. I have a New York Permit.
12 I have got permits from a variety of states.
13 New Hampshire aggressively seeks reciprocity as does
14 Georgia and Florida and Kentucky and several other
15 states and they all have reciprocity with each
16 other. So, if New Hampshire can get it, I think
17 it would be a great benefit to us to aggressively
18 pursue this. Sometimes the Attorney General says
19 he doesn't have the authority to do it because in
20 Florida, for example, most of these states say that
21 we will recognize anybody that recognizes us. He's
22 authorized to enter into negotiations for reciprocity.
23 He says he doesn't have the ability to grant
24 recognition. I'd like to see Pennsylvania do what
25 Florida and Kentucky did just recently and that is

1 have automatic recognition. Anybody that recognizes
2 us will recognize them.

3 With the Game Commission it was mentioned
4 earlier about spotlighting deer. I should also
5 mention that that applies to people who are bow
6 hunting with muzzle loader weapons. If they had a
7 concealed carry permit, the Game Commission takes
8 the position that even if your life requires you --
9 you've got a threat or danger -- years ago, I'd been
10 a reserve deputy sheriff for 27 years. At one
11 time in my life I was a private detective and I had
12 people that wanted to kill me and I had to carry a
13 gun all the time and I am not sure that their
14 regulations should take precedence over the Constitu-
15 tional Right to be armed and the permit which says
16 that this person meets all of the Constitutional
17 requirements to be armed. We had an interesting
18 event in Somerset about three years ago. A bear
19 hunter, or a deer hunter, through no fault of his
20 own, he's hunting with archery, was attacked and
21 mauled by a bear and he was sitting there, descented,
22 camouflaged, two cubs in front of him and the momma
23 grabs him from behind. There was nothing he could
24 do. If he had a handgun, he might have been able
25 to do something. The bear mauled him, almost blinded

1 him. A few minutes later he came to. He crawled
2 about 450 yards, was mauled a second time. Now, I
3 don't know if that person would have carried a
4 handgun or not, but he should have had the right
5 to do so. He shouldn't have had that right taken
6 away from him by an arbitrary game law. Now, if
7 he is bowhunting and he starts shooting at deer with
8 a gun, it's a whole different ballgame. That would
9 be a legitimate violation of game law and I feel
10 the person should be prosecuted.

11 In a few minutes Mr. Russ Laing is going
12 to speak about Section 302. He is a very prominent
13 victim of one of the unfortunate provisions of Act
14 17. There was some good things in Act 17 but a lot
15 of very problematic areas. Mr. Laing is a good
16 example of what happens when we very quickly draft
17 laws.

18 I'd also like to affirm what Mr. Kim
19 Stolfer of the Allegheny County Sportsmen's League
20 said. When you folks pass a law that says that
21 people that have concealed carry permits are exempt
22 from the instant check system and the federal law
23 says we are exempt from the instant check system and
24 the State Police are obligated to enforce the law
25 that you have made and the federal government has

1 made and they consistently violate that law and it's
2 an irony that that violation of the law carries a
3 default penalty of a Class 1 Misdemeanor which means
4 that the members of the Pennsylvania State Police
5 Firearms Records Unit which violates that law on an
6 hourly basis, any one of those violations, if they
7 were prosecuted, would result in a life long loss of
8 the right to own any firearm. You know, it creates
9 a disrespect for the law when they violate the law
10 and we all know they are violating the law and they
11 say, you know -- most State Troopers -- I have a
12 lot of friends who are State Troopers, good people,
13 and most the State Police Administrators are good
14 people and most people in the Firearms Records Unit,
15 I'm sure, are good people, but we cannot allow any
16 agency to make themselves above the law and that's
17 what is happening here. Any questions?

18 CHAIRMAN GANNON: Why don't we go on with
19 Mr. Pavlik.

20 MR. SCHNEIDER: Mr. Pavlik, okay.

21 MR. PAVLIK: Mr. Chairman, Members of the
22 Committee, my name is Dennis Pavlik, Vice-
23 Chairman of Legislative Affairs for the
24 Pennsylvania Sportsmen's Association. I am
25 honored and privileged to be given the

1 opportunity to appear before you today.
2 The intent of my testimony is to share with
3 you how some of Pennsylvania's firearms laws
4 and regulations are being implemented by
5 the various executive branches of government
6 and the impact that implementation has on the
7 lives of our citizens.

8 Our system of laws and law enforcement,
9 that's federal, state and local level, is a
10 complex dynamic system. Small changes to one
11 element can reverberate throughout the system
12 with totally unexpected, unintended and
13 sometimes disastrous results. Anytime an
14 individual runs afoul of the legal system their
15 live is forever changed. It is hard to have
16 sympathy for the violent predators who wantonly
17 destroy others lives. It is, however, very
18 sad to see otherwise law-abiding citizens'
19 lives destroyed by overzealous police and
20 prosecutors for an unintentional technical
21 violation of a vague or poorly written law.
22 Several of the other speakers have described
23 or will describe events relating to the mental
24 health provisions, instant check program,
25 and domestic violence statutes.

1 I originally intended to focus on the
2 effects of the various laws and regulations
3 relating to weapons on school property. But
4 there were a couple of points I wanted to clear
5 up that had occurred earlier just to show you
6 how complex and confusing these regulations
7 can be. Those were related to what is a
8 dealer in state of Pennsylvania.

9 The FFL License, when enacted in 1968,
10 was never a dealer's license. It was enacted
11 after the various assassinations of prominent
12 public people to prevent the purchase and
13 interstate transfer to mail order weapons.
14 So, the federal government said, we want to
15 do a check; we want to be able to say we will
16 have a license for anyone who is transferring
17 guns by the mail. As a consequence of that,
18 anyone who was in the business had to have a
19 FFL. So, there are a large number of FFLs
20 issued at that time. Since then, it is
21 becoming interpreted as being a dealer's
22 license and restrictions in terms of compli-
23 ance with state regulations have been added
24 upon that by regulation rather than by law.

25 However, relative to a state permit, if

1 you look at the blue book that was given you
2 by the State Police, and I believe it's also
3 in the back of their book, Page 38 defines
4 on how a dealer is licensed in this state
5 and it does put that relative to the sheriff
6 and it mainly deals with revenue enhancement,
7 how revenue comes in and how the license is
8 handled. In addition to that, it refers
9 to Page 67 which is persons not to possess,
10 use, manufacture, control, sell or transfer
11 firearms and when you look at that, a person
12 is not permitted to possess, use, control,
13 sell or transfer or manufacture firearms and
14 it has all of the prohibitions from any gun
15 ownership. It refers to that section. It's
16 also the one that is possession. So, anyone
17 who has violated Pennsylvania's Uniform
18 Firearms is not allowed to be a dealer.
19 The sheriff has the duty to check that out.
20 So, I wanted to clarify that for you. But
21 by the cross referencing of these various
22 sections you can see even sometimes State
23 Police become confused and what chance do
24 honest citizens have.

25 Back to the weapons on school property.

1 It is a timely topic considering that the
2 legislature is considering a number of
3 changes to the Pennsylvania Consolidated
4 Statute #912 regulating weapons on school
5 property. In particular HB 218 of this
6 session increases the penalty for possession of a #6102
7 firearm. See, we have all kinds of firearms
8 in this state. 6102 is kind of a handgun.
9 It's a short barreled rifle or shotgun as
10 opposed to a long gun -- from a 1st degree
11 misdemeanor to a 3rd degree felony that is,
12 of course, unless the person who commits the
13 offense is qualified to have a concealed
14 carry license in which case it remains a 1st
15 degree misdemeanor.

16 Unfortunately, conviction of a violation
17 of #912 is a prohibiting offense under the
18 provisions of Act 17. Being a prohibiting
19 offense, that means that the person is pro-
20 hibited from owning the firearm. They have
21 now gone into a different category by
22 having -- if they retain possession of those
23 firearms, and they are forever barred for
24 the right to possess any type of firearm or
25 to obtain a license to carry. The prohibition

1 can never be removed since at the federal
2 level, the federal government has stated that
3 once a person becomes a prohibited person in
4 a state or other locality, as Mr. Schneider
5 has discussed, they are now not allowed to --
6 they are prohibited at the federal level.
7 Being prohibited at the federal level, in
8 1992 the Secretary of the Treasury was able
9 to review cases and say, no, we really didn't
10 mean this. We will remove that disability
11 from you but Congress defunded the Secretary
12 of the Treasury and actually would make him
13 a criminal if he would try to review various
14 cases and remove those disabilities.

15 Colonel Sanders again, the Assistant
16 Director for the Bureau of Alcohol, Tobacco
17 and Firearms did make a presentation relative
18 to reviews of disabilities and said they have
19 never had a problem in the 25 years of service.
20 He did that both to the Congressional delegation
21 from Pennsylvania and also to the Southwest
22 Caucus back some years ago.

23 But in particular -- it's not just that
24 laws are poorly written. Sometimes they are
25 very clearly written but there is very poor

1 interpretation at the prosecutorial level.

2 The present constitution adopted by
3 convention in 1968 retained the right of
4 the citizens to keep and bear arms in defense
5 of themselves and the state in Article 1
6 Section 21. The weapons on school property
7 act revised in 1980 recognizes that weapons
8 may be possessed on school property for
9 supervised school activities or other lawful
10 purposes. When one looks at the offense
11 defined, in addition a person commits a mis-
12 demeanor of the first degree if he possesses
13 a weapon in the buildings of, on the grounds
14 of, or in any conveyance providing transpor-
15 tation to or from any elementary or secondary
16 publicly-funded educational institution, any
17 elementary or secondary private school,
18 parochial school for which the Department of
19 Education has charge.

20 It shall be a defense that the weapon
21 is possessed and used in conjunction with a
22 lawful school activity or course or is
23 possessed for other lawful purposes. So,
24 if it's used in a school activity and in
25 addition to that. That's the law. That's

1 how it reads.

2 However, a particularly egregious
3 example of a miscarriage of justice under
4 this act can be found in the arrest, prose-
5 cution, and conviction of one John Heidler
6 in Carlisle, Cumberland County, on October 4,
7 1996. He has since appealed to the Superior
8 Court. Superior Court has reversed the
9 decision.

10 On October 4, 1996, Mr. Heidler and his
11 girlfriend left their home in Columbia County
12 to pick up his son from the Lamberton Middle
13 School in Carlisle for a scheduled weekend
14 visitation. After leaving his residence, the
15 appellant gave his girlfriend his handgun,
16 which she put in her purse. Because he
17 didn't realize he had it initially. The girl
18 also carried a valid license to carry a concealed
19 firearm. At that point, he was illegal.
20 He parked his vehicle in the school parking
21 lot and went into the school while his girl-
22 friend remained in the vehicle. He was un-
23 aware that his estranged wife had filed a
24 complaint against him alleging a violation of
25 the Protection From Abuse Act. Once someone

1 alleges and files a complaint, there is an
2 automatic temporary restraining order issued
3 as a matter of course until a hearing can be
4 held. The estranged wife, knowing that he
5 was coming to pick up his children at the
6 school, called the police and said, you have
7 a man with a gun coming on school property.
8 The police, prosecutors, obliged what I can
9 only see a vindictive malicious act and
10 security personnel notified the police whenever
11 he arrived at the school. The police arrived,
12 served a copy of the PFA petition and the
13 temporary restraining order on Mr. Heidler.
14 Upon talking to his girlfriend, they found
15 out there was a handgun in her purse. They
16 confiscated the handgun, and charged him with
17 possession of a weapon on school property.
18 At bench trial under Judge Bayley, he was
19 convicted and sentenced to probation.

20 Unfortunately, the sentence is irrelevant
21 because he -- it still is a prohibiting offense
22 and he could never own a gun either under state
23 or federal law. This was appealed and it was
24 reversed on appeal when the Superior Court
25 decided that he did not really have possession

1 of the firearm. The Superior Court refused
2 to rule on the question of lawful purpose.

3 The Court did note, however, that pur-
4 suant to the District Attorney's broad
5 interpretation of the statute as conveyed
6 in its brief and at oral argument, it could
7 be interpreted to convict a carpenter with
8 his tools in his vehicle, or a mother with a
9 nail file in her purse, who is picking up or
10 dropping off a child on school property.
11 The Court further stated that: "We cannot
12 comprehend that the Legislature intended for
13 the statute to encompass this sort of innocent
14 conduct when the purpose of the statute was
15 clearly to deter school violence.

16 The actions of the arresting officers,
17 Cumberland County Assistant DA Keating,
18 and Judge Bayley, for the arrest, prosecution
19 and conviction of John Heidler are difficult
20 to understand, given:

21 *The constitutional provisions acknowledg-
22 ing the right to possess a firearm for
self defense;

23 *The fact that licenses to carry firearms
24 for protection are routinely issued to
25 individuals of good character who must
pass a background check and it's ostensibly
to carry a gun;

1 The obvious intent of the legislature
2 in enacting #912(c) acknowledges that a
3 lawful purpose other than school sponsored
4 events can be a defense to prosecution
5 under this act.

6 So, how can someone be convicted when
7 obviously if you have a handgun, you have a
8 handgun permit, you are carrying that permit.
9 Now, quite frankly, I never carry a gun to a
10 place where I think I'm going to need it. I
11 don't go. Unfortunately, with my carry permit,
12 I sometimes go to places where I may need it
13 and so the fact of the matter is we continue to
14 prohibit all of the places and destinations as
15 places where we can't carry a gun. Then, how
16 in God's name -- what use is the carry permit?
17 What is it for? In one case where Act 17/66
18 did do a good job was in the court buildings.
19 You force there to be metal detectors and you
20 force guns and you force the court's to provide
21 a lockup system where the guns are then trans-
22 ferred to a lock box and you can then retrieve
23 it on your way out. They are not forced to
24 leave it in a car where it can be stolen. I
25 consider that irresponsible. I think that was

1 a good provision. However, at the reversal
2 in this particular case, Chief Deputy District
3 Attorney Keating is quoted as saying "I guess
4 its open season on kids in school" and "This
5 panel, referring to the Superior Court, made
6 a good argument for home schooling." Perhaps
7 we are lucky that Mr. Keating is not the DA in
8 Erie where a man like John Heidler, Mr. Strand,
9 used his shotgun to stop the shooting of
10 Andrew Wurst at the Edinboro School dance,
11 or in Pearl Mississippi where Phil Myrick,
12 who used his gun that he had on school grounds
13 as a teacher in his vehicle to stop the school
14 shooting and until police arrived. Or the
15 myriad of Austin gun owners who pinned down
16 the shooter in the University of Texas Tower
17 back in the 60's, preventing him from taking
18 further lives. It appears that Mr. Keating
19 would have us cowering at the feet of assassins
20 like Colin Ferguson who deliberately went to
21 New York and shot up a subway train because
22 he knew no one would have a gun to stop him.
23 Or other recent events at schools where people
24 went there deliberately because they knew they
25 were unprotected and there were other places

1 that were more protected and they did not want
2 that type of individual. They wanted people
3 not to defend themselves.

4 How much time and money was spent by
5 Cumberland County to prosecute Mr. Heidler?
6 How many other real violent criminals had
7 their gun charges plea-bargained away during
8 his ordeal?

9 As a matter of fact, we are informed by
10 Mr. Heidler's attorneys that the prosecutor
11 has decided to appeal this Superior Court
12 Decision to the full Superior Court and,
13 furthermore, when asked by Judge Schiller,
14 and we were relayed this by the attorney,
15 would this mean when I come from a hunting
16 trip to pick up my son or daughter at school
17 because if my wife calls me that there is an
18 emergency, I would be prosecuted? The answer
19 was yes. It is reported that Judge Schiller
20 said, he ought to go home and talk to his
21 district attorney and after the weekend, come
22 back with an answer. He came back and said
23 the answer was still yes. When we look at
24 nail files and we look at carpenter tools, we
25 have only to look at England. England has

1 banned guns, banned all guns. Since then, their
2 shooting rate has doubled. Their home invasion
3 robberies are 44%. That means 44% of all
4 robberies in England occur where you invade the
5 people's homes. The United States, by contrast,
6 is 7%. Right now England has now banned knives.
7 They have banned any instrument, anything can
8 be a weapon much the same as -- as a matter of
9 fact, anything can be a weapon but they have
10 now made this illegal and such to police
11 discretion.

12 Two years ago a gentleman was arrested
13 for having box knives in his vehicle. He
14 parked his vehicle in a public place which
15 meant it could be searched. He had two of
16 those family razor blade knives. He was
17 prosecuted for possession of weapons. His job
18 was putting newspaper bundles in the newspapers
19 and he had to cut the ropes on them. The
20 Court Judge ruled that he had -- one of those
21 we'd buy it, two we won't. So, this is the
22 direction we are heading. A crime of aggravated
23 assault, rape, robbery and murder is double
24 the rate of the United States in England.
25 They don't -- and also, their shootings are up

1 and the ATF has issued a report just this
2 year on crime in England and Wales. They
3 also don't count Northern Ireland and Scotland
4 in their crime statistics and when the IRA
5 blows up a building, that's an act of war.
6 So, that's not counted in their crime statistics
7 either.

8 However, I hope when you consider modifying
9 Pennsylvania Code, Section 912, you make a
10 valid license to carry an exemption and that
11 you strengthen the lawful purpose definition
12 because it's obvious that certain prosecutors
13 don't know what they mean by lawful purpose.
14 Even in spite of the tragedy in Oregon, Washington
15 State still addressed the rights of people to
16 drop off their kids when they have carry permits.
17 If you had a valid carry permit, you could
18 drop off your kid and keep the gun with you
19 in the vehicle. I think this is common sense.
20 It makes sense and would urge that whenever
21 you do this -- I believe Representative Metcalf
22 has introduced some changes to the language
23 in that area. Thank you very much for your
24 time.

25 CHAIRMAN GANNON: Thank you, Mr. Pavlik.

1 Any questions from anybody?

2 (No response.)

3 CHAIRMAN GANNON: Thank you. Maybe
4 it's a rhetorical question but you had talked
5 about these two neighbors, a fellow had sold a
6 gun to his neighbor and when questioned about it,
7 he freely admitted it and it ends up as a prose-
8 cution as opposed to say somebody who -- drawing
9 a contrast of somebody down the street that sells
10 somebody a gun obviously was an illegal intent.
11 You have the same type of transaction, one ad-
12 mittedly an innocent transaction; the other
13 obviously a criminal transaction, both having
14 the same result, prosecution, possible jail time
15 and loss of permit or the right to own or carry
16 a weapon for life. If there was a procedure in
17 place where that would occur, there is a legal
18 term called nunc pro tunc which means it relates
19 back; that there would be a procedure that that
20 transaction could be modified to make it a legal
21 transaction. Do you understand what I'm saying?

22 MR. SCHNEIDER: Yes, I do, sir.

23 CHAIRMAN GANNON: You know, they would be
24 eligible to have a permit if they applied for one
25 in the type of situation where it's obviously

1 by all reasonable observations, to be an
2 innocent transaction, sale; be it illegal and
3 it could be made legal. You would make the one
4 that was illegal legal. Then we could have
5 something in place that could correct that and --

6 MR. SCHNEIDER: Precisely. The person
7 that is selling guns to gangbangers in the inner
8 city, they are not able, by virtue of age or
9 prior criminal conviction, they are disabled
10 anyway. So, there is no way to take that and
11 make it legal after the fact, but in this case,
12 there would be. I think that would be -- I
13 think that's a terrific idea and one I have not
14 heard before.

15 CHAIRMAN GANNON: Thank you. I just
16 wanted to throw that out because that thought
17 occurred to me.

18 MR. SCHNEIDER: You know, if we could
19 do things like that where we have assurance that
20 innocent people are not going to be caught in
21 traps intended for criminals, then we would have
22 less opposition to you tightening the constraints
23 to get the real criminals. We are not trying to
24 protect criminals at all. Nobody hates them more
25 than we do. We are just trying to protect the

1 good people and you have come up with a very
2 interesting idea, sir.

3 CHAIRMAN GANNON: Thank you. Thank you
4 for your testimony. We appreciate you being with
5 us.

6 (The following was submitted for inclusion
7 in the record:)

8 THE PSA

9 PENNSYLVANIA SPORTSMEN'S ASSN., INC.

10 HARRY SCHNEIDER, CHAIRMAN

11 2080 Ehrman Rd., Cranberry Twp., PA 16066

12 fax (724)-538-9406 or 538-3022

13 28 August 1999

14 INTERFACE BETWEEN FEDERAL AND STATE LAW
15 DISABILITY IS A KEY COMPONENT OF the Federal Gun
16 Control Act of 1968 - this component interfaces
17 with State law and impacts all Pennsylvania
18 residents who are gun owners.

19 SOUNDS GOOD - WHAT DOES IT MEAN

20 "ANY COURT" EMPOWERS ALL JURISDICTIONS -

21 FOREIGN AND DOMESTIC, PRESENT and PAST

22 (ex post facto) GRANTING THEM THE ABILITY TO

23 DEPRIVE PENNSYLVANIANS OF A RIGHT THAT IS

24 PROTECTED IN THE PENNSYLVANIA and UNITED

25 STATES CONSTITUTIONS.

1 PENNSYLVANIA LAW Our old crimes code said
2 that Misdemeanors were punishable for up to
3 three years.

4 IE: Drag racing.

5 SAFETY VALVE, RELIEF FROM DISABILITY HAS BEEN
6 EXPRESSLY DE-FUNDED SINCE 1992

7 MAXIMUM ENFORCEMENT:

8 YES to gun laws that impact real criminals -
9 NO to gun laws that make criminals of good people
10 As we have just seen some gun laws are un-
11 reasonable, unfathomable and probably
12 unconstitutional - we do not seek enforcement
13 of those laws.

14 RECIPROCITY - pistol permits should be
15 honored by the various states just like drivers
16 licenses. The legislature authorized our
17 Attorney General to enter into reciprocity
18 agreements with other states. He has not
19 done so.

20 PERMIT HOLDERS SHOULD BE EXEMPT FROM INSTANT
21 CHECK.

22 Permit holders exempt from instant check as
23 permitted under federal law and as occurred in
24 Pennsylvania during the iterim period before
25 instant check went into effect.

PENNSYLVANIA STATE POLICE
APPLICATION/RECORD OF SALE

STATE POLICE USE ONLY

<p>A INSTRUCTIONS</p> <p>1. TRANSFEREE/PURCHASER _____ COMPLETE SECTION B AT TIME OF APPLICATION COMPLETE SECTION C AT TIME OF SALE OR TRANSFER LICENSEE/SHERIFF _____ COMPLETE BLOCKS 1, 3 AND 4, AND SECTIONS D AND E TRANSFEROR/SELLER _____ (FOR PRIVATE SALES ONLY) COMPLETE SECTION F.</p> <p>NOTE: FORM MUST BE COMPLETED IN ITS ENTIRETY BY TYPING OR PRINTING IN BLUE OR BLACK INK.</p> <p>TRANSACTION SUBJECT TO SALES TAX <input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>2 TRANSACTION SERIAL NO 0175492</p> <p>3 STATE IDENTIFICATION NO.</p> <p>4 APPROVAL NO /DATE</p>
--	--

B TRANSFEREE'S/PURCHASER'S INFORMATION											
5 LAST NAME			6 JR. ETC	7 FIRST NAME			8 MIDDLE NAME		9 DATE OF BIRTH	10 AGE	
11 SEX	12 RACE	13 EYE COLOR	14 HAIR COLOR	15 WEIGHT	16 HEIGHT	17 SOCIAL SECURITY NO		18 COUNTY			
19 STREET ADDRESS					20 CITY			21 STATE	22 ZIP CODE		
23 EMPLOYER/BUSINESS NAME						24 OCCUPATION					
25 STREET ADDRESS					28 CITY			27 STATE	28 ZIP CODE		
29 HAVE YOU EVER BEEN CONVICTED OF A CRIME ENUMERATED IN SECTION 6105 (b), OR DO ANY OF THE CONDITIONS UNDER 6105 (c) APPLY TO YOU? (READ INFORMATION ON BACK PRIOR TO ANSWERING)										<input type="checkbox"/> YES	<input type="checkbox"/> NO
30 ARE YOU NOW CHARGED WITH, OR HAVE YOU EVER BEEN CONVICTED OF A CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR? (THIS DOES NOT INCLUDE FEDERAL OR STATE OFFENSES PERTAINING TO ANTITRUST, UNFAIR TRADE PRACTICES, RESTRAINTS OF TRADE, OR REGULATION OF BUSINESS, OR STATE OFFENSES CLASSIFIED AS MISDEMEANORS AND PUNISHABLE BY A TERM OF IMPRISONMENT NOT TO EXCEED TWO YEARS) (READ BLOCK 30 INFORMATION ON BACK PRIOR TO ANSWERING)										<input type="checkbox"/> YES	<input type="checkbox"/> NO
31. I verify the facts that I have set forth in blocks 5-30 of this form are true and correct to the best of my knowledge, information and belief. This verification is made subject to both the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. 4904) relating to unsworn falsification to authorities and the Uniform Firearms Act. I also understand that the making of any false written statement or the exhibiting of any false misrepresented identification with respect to this application is a crime punishable as a felony.											
SIGNATURE OF TRANSFEREE/PURCHASER: _____						DATE OF APPLICATION: _____					

C ACKNOWLEDGMENT											
32. I ACKNOWLEDGE RECEIPT OF THE FIREARM (HANDGUN/LONG-GUN) AND A SUMMARY OF THE UNIFORM FIREARMS ACT WHICH INCLUDES A SAFETY BROCHURE.											
SIGNATURE OF TRANSFEREE/PURCHASER: _____						DATE: _____					

D LICENSEE'S/SHERIFF'S INFORMATION <input type="checkbox"/> LICENSEE/SHERIFF <input type="checkbox"/> EMPLOYE/DEPUTY											
33 LAST NAME			34 JR. ETC	35 FIRST NAME			36 MIDDLE NAME		37 SIGNATURE		
38 BUSINESS NAME/SHERIFF'S DEPARTMENT					39 BUSINESS TELEPHONE NO ()			40 COUNTY OF LICENSEE/SHERIFF			
41 BUSINESS ADDRESS					42 CITY			43 STATE	44 ZIP CODE		
45 DATE OF TRANSACTION					46 TIME OF TRANSACTION						

E FIREARM INFORMATION											
47. DOES THIS PURCHASE INVOLVE A PISTOL OR REVOLVER WITH A BARREL LENGTH OF LESS THAN 15 INCHES, A SHOTGUN WITH A BARREL LENGTH OF LESS THAN 18 INCHES, A RIFLE WITH A BARREL LENGTH OF LESS THAN 16 INCHES, OR A FIREARM WITH AN OVERALL LENGTH OF LESS THAN 26 INCHES? <input type="checkbox"/> YES (COMPLETE BLOCKS 48-52) <input type="checkbox"/> NO (INFORMATION NOT REQUIRED)											
48 MAKE			49 MODEL			50 CALIBER		51 LENGTH OF BARREL		52 SERIAL NUMBER	

F TRANSFEROR'S/SELLER'S INFORMATION - FOR PRIVATE SALE ONLY											
53 LAST NAME			54 JR. ETC	55 FIRST NAME			56 MIDDLE NAME		57 SIGNATURE		
58 ADDRESS					59 CITY			60 COUNTY/STATE		61 ZIP CODE	

1 by Federal or State environmental or game
2 regulations for hunting purposes, a
3 frangible projectile designed for target
4 shooting, a projectile which the Secretary
5 finds is primarily intended to be used for
6 sporting purposes, or any other projectile
7 or projectile core which the Secretary
8 finds is intended to be used for industrial
9 purposes, including a charge used in oil
10 and gas well perforating device.

11 *(18) The term "Secretary" or "Secretary of
12 the Treasury" means the Secretary of the
13 Treasury or his delegate.

14 *(19) The term "published ordinance" means
15 a published law of any political subdivision
16 of a State which the Secretary determines to
17 be relevant to the enforcement of this
18 chapter and which is contained on a list
19 compiled by the Secretary, which list shall
20 be published in the Federal Register, revised
21 annually, and furnished to each licensee
22 under this chapter.

23 *(20) The term "crime punishable by imprisonment
24 for a term exceeding one year" does not
25 include-

1 (A) any Federal or State offenses per-
2 taining to antitrust violations, unfair
3 trade practices, restraints of trade, or
4 other similar offenses relating to the
5 regulation of business practices, or
6 (B) any State offense classified by the
7 laws of the State as a misdemeanor and
8 punishable by a term of imprisonment of
9 two years or less. What constitutes a
10 conviction of such a crime shall be deter-
11 mined in accordance with the law of the
12 jurisdiction in which the proceedings were
13 held. Any conviction which has been expunged,
14 or set aside or for which a person has been
15 pardoned or has had civil rights restored
16 shall not be considered a conviction for
17 purposes of this chapter, unless such pardon,
18 expungement, or restoration of civil rights
19 expressly provides that the person may not
20 ship, transport, possess, or receive firearms.

21 *(21) The term "engaged in the business" means -

22 (A) as applied to a manufacturer of firearms,
23 a person who devotes time, attention, and labor
24 to manufacturing firearms as a regular course
25 of trade or business with the principal

1 objective of livelihood and profit through
2 the sale or distribution of the firearms
3 manufactured;

4 (B) as applied to a manufacturer of ammunition,
5 a person who devotes time, attention, and
6 labor to manufacturing ammunition as a regular
7 course of trade or business with the principal
8 objective of livelihood and profit through
9 the sale or distribution of the ammunition
10 manufactured;

11 (C) as applied to a dealer in firearms,
12 as defined in section 921(a)(11)(A), a person
13 who devotes time, attention, and labor to
14 dealing in firearms as a regular course of
15 trade or business with the principal
16 objective of livelihood and profit through
17 the repetitive purchase and resale of firearms,
18 but such term shall not include a person who
19 makes occasional sales, exchanges, or purchases
20 of firearms for the enhancement of a personal
21 collection or for a hobby, or who sells all
22 or part of his personal collection of firearms;

23 (D) as applied to a dealer in firearms, as
24 defined in section 921(a)(11)(B), a person who
25 devotes time, attention, and labor to engaging

1 in such activity as a regular course of
2 trade or business with the principal objective
3 of livelihood and profit, but such term shall
4 not include a person who makes occasional
5 repairs of firearms, or who occasionally fits
6 special barrels, stocks, or trigger mechanisms
7 to firearms;

8 (E) as applied to an importer of firearms,
9 a person who devotes time, attention, and
10 labor to importing firearms as a regular
11 course of trade or business with the principal
12 objective of

13 (f)

14 * (1) It shall be unlawful for any common or
15 contract carrier to transport or deliver in
16 interstate or foreign commerce any firearm
17 or ammunition with knowledge or reasonable
18 cause to believe that the shipment transpor-
19 tation, or receipt thereof would be in
20 violation of the provisions of this chapter.

21 * (2) It shall be unlawful for any common or
22 contract carrier to deliver in interstate or
23 foreign commerce any firearm without obtain-
24 ing written acknowledgement of receipt from
25 the recipient of the package or other
container in which there is a firearm.

- 1 * (g) It shall be unlawful for any person -
2 * (1) who has been convicted in any court of,
3 a crime punishable by imprisonment for a
4 term exceeding one year;
5 * (2) who is a fugitive from justice;
6 * (3) who is an unlawful user of or addicted
7 to any controlled substance (as defined in
8 Section 102 of the Controlled Substances
9 Act (21 U.S.C. 802);

11 COMMONWEALTH OF PENNSYLVANIA

12 OFFICE OF ATTORNEY GENERAL

13 June 3, 1999

14 Mike Fisher
Attorney General

Criminal Prosecutions Section
16th Floor, Strawberry Square
Harrisburg, PA 17120
Telephone: (717) 783-9995
FAX: (717) 783-5431

17 William A. Duff, M.A.
Chairman
18 Keystone Firearms Coalition
Legislative Committee
19 PO Box 331
20 Southampton, PA 18966

21 RE: Pennsylvania Uniform Firearms Act

22 Dear Mr. Duff:

23 Your letter of May 26, 1999 addressed to the
24 Honorable Michael Fisher, Attorney General of
25 Pennsylvania has been referred to me for a reply.
In response to your question as to the possibility

1 of a reciprocity agreement due to the incom-
2 patibility of the law of Pennsylvania with the
3 law of the other states. For example, the cover
4 letter that came with the recent correspondence
5 from the state of Florida, which you referred to
6 in your letter, indicates that the new Florida
7 statute "does not authorize the Department of
8 State to enter into reciprocity agreements with
9 other states." Incidentally, we have replied
10 to the letter received from the state of Florida,
11 contrary to the information that you were given.

12 Your concern with the negotiation of
13 reciprocity agreements with other states on the
14 subject of concealed carry of firearms will
15 certainly be brought to the attention of the
16 Attorney General. Thank you for your correspondence
17 and for your interest in this matter. If you have
18 any further questions, please feel free to call me.

19 Sincerely,

20 GEORGE R. ZAIŠER
21 Senior Deputy Attorney General
22 Criminal Prosecutions
23 Tax Crimes Unit
24
25

1 Concealed Carry States

2

3 "CONCEALED CARRY" STATES

4 Updated August 5, 1999

5 The Division of Licensing has been seeking con-
6 firmation from the licensing authorities and
7 attorneys general in the other 49 states to
8 determine which states will acknowledge the
9 validity of Florida licenses, thereby allowing
10 mutual recognition of licenses under Florida's
11 new law. The following states have acknowledged
12 our inquiry.

13

Effective August 19, 1999

14

15 States
That WILL HONOR
Florida Licenses

16 * Arkansas (1)
17 * Georgia (1)
18 * Indiana (1)
19 * Kentucky
20 * Michigan
21 * New Hampshire
(1)
22 * Tennessee (1)
23 * Vermont (1,2)

14

15 States
THAT WILL NOT HONOR
Florida Licenses

16 *Alabama *Missouri
17 *Alaska *Nebraska
18 *California *New Jersey
19 *Colorado *New Mexico
20 *Connecticut *New York
21 *Delaware *North
22 *Hawaii Carolina
23 *Illinois *Ohio
24 *Iowa *Oklahoma
*Kansas *Oregon
*Maine *South
*Maryland Dakota
*Massachusetts *Utah
*Minnesota *Virginia
*Mississippi *Washington
(3) *Wisconsin

SPECIAL NOTES

(1) These states' laws allow for concealed carry of handguns only, NOT "WEAPONS" IN GENERAL.

(2) The State of Vermont does not issue weapons/firearms licenses. The law in Florida, however, is quite clear: an out-of-state resident must have in his or her immediate possession a valid license to carry a concealed weapon or concealed firearm issued to the nonresident in his or her state of residence. Therefore, residents from Vermont do not have the right to carry their concealed weapons/firearms in Florida, while Florida citizens do have that right in Vermont.

(3) This Web page had previously listed Mississippi as a "WILL HONOR" state. However, Florida and Mississippi have been unable to resolve various issues that will allow mutual recognition of concealed weapons/firearms licenses to take place. Representatives from these two states will continue to work toward reaching agreement.

PLEASE NOTE THE FOLLOWING PROVISIONS!!!

* Citizens from ONLY those states that have acknowledged our inquiry and have agreed to honor Florida licenses will be accorded the right of

1 carrying a concealed weapon/firearm in Florida.
2 Links to these states' firearm statutes have been
3 provided so that interested citizens can familiarize
4 themselves with the specific provisions of these
5 laws.

6 * Those states identified above under the heading
7 "States That WILL NOT HONOR Florida Licenses" are
8 the only states that have responded to the
9 Division's inquiry for confirmation and declined
10 to honor Florida licenses. HOWEVER, CITIZENS FROM
11 STATES THAT HAVE NOT ACKNOWLEDGED OUR INQUIRY ALSO
12 DO NOT HAVE CONCEALED-CARRY RIGHTS.

13 * In some states, licenses are issued by local
14 governments, municipalities, or boards. FLORIDA
15 WILL NOT HONOR THESE LICENSES UNLESS THE STATE IN
16 WHICH THOSE LOCAL **GOVERNMENT** , MUNICIPALITIES, OR
17 BOARDS ARE LOCATED ACKNOWLEDGES RESPONSIBILITY FOR
18 RECOGNIZING FLORIDA LICENSES. EXAMPLE: State
19 statutes in Michigan, Indiana, and New Hampshire
20 delegate the responsibility of concealed weapon/
21 firearm permit issuance to local government
22 entities. However, state law provides for the
23 recognition of out-of-state licenses.

24 * Florida law will honor ONLY those out of state
25 licenses issued to a nonresident by his or her

1 state of residence. EXAMPLE: If a resident of
2 New York possesses a license issued in New
3 Hampshire, that resident cannot carry a concealed
4 weapon/firearm in Florida, (unless, of course,
5 he possesses or obtains a Florida license.)

6 * The Division of Licensing is continuing its
7 efforts to reach those states that have not
8 responded to our initial inquiry. We will update
9 this Web page and continue to notify local law
10 enforcement in Florida as future developments
11 warrant.

12 TRAVEL ADVISORY TO FLORIDA CITIZENS

13 The Division of Licensing strongly urges concealed
14 firearm/weapon license holders from Florida to
15 exercise good judgment and caution when traveling
16 out of state with their concealed weapons. While
17 gun laws vary dramatically from state to state,
18 the states listed above can generally be assumed
19 to have gun laws that are at least basically
20 similar to Florida's.

21 However, some states' laws may be more or less
22 restrictive than others. Specific questions
23 about this matter should be directed to the
24 licensing authorities or the law enforcement
25 officials in the state of destination.

1 New Legislation Affecting The Rights Of
2 Concealed Weapons License Holders

3 IMPORTANT NEW LEGISLATION AFFECTING THE RIGHTS

4 OF CONCEALED WEAPONS LICENSE HOLDERS

5 Senate Bill 954, passed by the Florida Legislature
6 and signed into law by Governor in April 1999,
7 allows residents from other states who are licensed
8 to carry conceal weapons/firearms to carry their
9 weapons in Florida. The one provision, however,
10 is that those other states must be willing to
11 recognize and honor concealed weapon or firearm
12 licenses issued by the State of Florida so that
13 Florida licensees enjoy the rights and benefits
14 when they travel to those other states. The law
15 will take effect on July 1, 1999.

16 The Division of Licensing will be contacting the
17 licensing authorities in the other in the next few
18 weeks to determine which states will acknowledge
19 the validity of Fl licenses. The Division of
20 Licensing will maintain a list of the "concealed
21 carry" this Web page, and Florida law enforcement
22 agencies will be notified as to which out-of-state
23 travelers have the right to carry a concealed
24 weapon while **visiting** Florida.

25 Because weapons and firearms laws vary significantly

1 from state to state and can change quickly as
2 a result of government mandates and court decisions,
3 the Division of Licenses strongly recommends that
4 Florida citizens who are concealed weapon/firearm
5 licensed check with the licensing authorities
6 in other states when planning to travel with it.
7 The full text of Senate Bill 954 appears below.

8 An act relating to weapons and firearms;
9 providing that a nonresident who is a
10 United States citizen may carry a
11 concealed weapon or firearm in this
12 state if the nonresident has attained
13 a specified age and holds a valid
14 license to carry a concealed weapon
15 or firearm issued in another state;
16 providing that a nonresident is subject
17 to the same laws and restrictions as a
18 license in Florida; providing that
19 an out-of-state license to carry a
20 concealed weapon or firearm remains
21 in effect for a certain period following
22 the date on which the holder of the
23 license establishes legal residence
24 in this state; specifying how legal
25 residence is established; providing

1 applicability; providing an effective
2 date.

3 Be It Enacted by the Legislature of the State of
4 Florida:

5 Section 1. (1) Notwithstanding s.790.01,
6 Florida Statutes, a resident of the
7 United States who is a nonresident
8 of Florida may carry a concealed
9 weapon or concealed firearm while
10 in this state if the nonresident

11
12 (a) Is 21 years of age or older; and

13 (b) Has in his or her immediate
14 possession a valid license to
15 carry a concealed weapon or
16 concealed firearm issued to the
17 nonresident in his or her state
18 of residence.

19 (2) A nonresident is subject to the same laws and
20 restrictions with respect to carrying a con-
21 cealed weapon or concealed firearm as a
22 resident of Florida who is so licensed.

23 (3) If the resident of another state who is the
24 holder of a valid license to carry concealed
25 weapon or concealed firearm issued in another

1 state establishes legal residence in this
2 state by registering to vote, or making a
3 statement of domicile pursuant to section
4 222.17, Florida Statutes, or filing for
5 homestead tax exemption on property in this
6 state, the license shall remain in effect
7 for 90 days following date on which the
8 holder of the license established legal state
9 residence. This applies only to nonresident
10 concealed weapon or concealed firearm license-
11 holder from states that honor Florida concealed
12 weapon or concealed firearm licenses.

13 Section 2. This act shall take effect July 1, 1999.

16 TITLE 12

17 PUBLIC SAFETY and WELFARE

18 CHAPTER 159

19 Pistols and Revolvers

20 SECTION 159:6-d

21 #159:6-d Full Faith and Credit for Licenses From
22 Other States; Reciprocity. -

23 Notwithstanding the provisions of RSA 159:6, no
24 nonresident holding a current and valid license to
25 carry a loaded pistol or revolver in the state in

1 which he resides, shall be required to obtain a
2 license to carry a loaded pistol or revolver
3 within this state if:

4 1. Such nonresident carries upon his person the
5 license held from the state in which he
6 resides; and

7 II. The state in which such person is a resident
8 provides a reciprocal privilege for residents
9 of this state.

10 Source. 1993, 130:1, eff. Jan. 1, 1994.

12 TITLE 12

13 PUBLIC SAFETY and WELFARE

14 CHAPTER 159

15 Pistols and Revolvers

16 Section 159:6

17 #159:6 License to Carry. - The selectmen of a
18 town or the mayor or chief of police of a city
19 or some full-time police officer designated by
20 them respectively, upon application of any resident
21 of such town or city, or the director of state
22 police, or some person designated by such
23 director, upon application of a nonresident, shall
24 issue a license to such applicant authorizing the
25 applicant to carry a loaded pistol or revolver in

1 this state for not less than 4 years from the date
2 of **issue**, if it appears that the applicant has
3 good reason to fear injury to the applicant's
4 person or property or has any proper purpose,
5 and that the applicant is a suitable person to
6 be licensed. Hunting, target shooting, or self-
7 defense shall be considered a proper purpose. The
8 license shall be valid for all allowable purposes
9 regardless of the purpose for which it was
10 originally issued. The license shall be in
11 duplicate and shall bear the name, address,
12 description, and signature of the licensee. The
13 original shall be delivered to the licensee and
14 the duplicate shall be preserved by the people
15 issuing the same for 4 years. When required,
16 license renewal shall take place within the month
17 of the fourth anniversary of the license holder's
18 date of birth following the date of issuance. The
19 license shall issued within 14 days after
20 application, and, if such application is denied,
21 the reason for such denial shall be stated in
22 writing, the original of which such writing shall
23 be delivered to the applicant, and a copy kept
24 in the office of the person to whom the application
25 was made. The fee for licenses issued to residents

1 of the state shall be \$10, which fee shall be
2 for the use of the law enforcement department
3 of the town granting said licenses; the fee for
4 licenses granted to out-of-state residents shall
5 be \$20, which fee shall be for the use of the
6 state. The director of state police is hereby
7 authorized and directed to prepare forms for the
8 use of the state. The director of state police is
9 hereby authorized and directed to prepare forms
10 for the licenses required under this chapter and
11 forms for the application for such licenses and
12 to supply the same to officials of the cities and
13 towns authorized to issue the licenses. No
14 other forms shall be used by officials of cities
15 and towns. The cost of the forms shall be paid
16 out of the fees received from nonresident licenses.
17 Source. 1923, 118:6, PL 149:6, 1941, 172:1.
18 RL 179:6, 1951, 151:3, RSA 159:6, 1959, 100:1,
19 1967, 220:4, 1977, 563:76, 1979, 355:1, 1993.24:1;
20 203:1, 1994, 257:1, eff. Aug. 1, 1994; 257:2,
21 eff Jan. 1, 1995. 1996, 167:2, eff. Aug. 2, 1996.

22 (New Hampshire permit statute does not
23 impose requirements beyond Pennsylvania
24 statutes yet New Hampshire has reciprocity
25 with Georgia, Florida, Kentucky.)

1 The following states have advised that they will
2 recognize valid Kentucky carry concealed licenses:

- 3 1. Arkansas
- 4 2. Florida (eff. 7/1/99)
- 5 3. Georgia
- 6 4. Idaho
- 7 5. Indiana
- 8 6. Louisiana
- 9 7. Michigan
- 10 8. Mississippi
- 11 9. New Hampshire
- 12 10. Tennessee
- 13 11. West Virginia
- 14 12. Wyoming

15 Persons with a valid Kentucky carry concealed
16 license may apply individually to the United States
17 Virgin Islands Police Department for temporary
18 reciprocal recognition of a CCDW license while in
19 the Virgin Islands. This temporary recognition is
20 normally for ninety (90) days from the date of
21 issue. An application for temporary privilege
22 may be requested from: Office of the Commissioner,
23 Criminal Justice Complex, Charlotte Amalie,
24 St. Thomas, VI 00802.

25

1 The following states/territories have advised that
2 they will not recognize valid Kentucky carry
3 concealed licenses:

- 4 1. Alabama
- 5 2. California
- 6 3. Colorado
- 7 4. Connecticut
- 8 5. District of Columbia
- 9 6. Guam
- 10 7. Hawaii
- 11 8. Illinois
- 12 9. Iowa
- 13 10. Kansas
- 14 11. Maine
- 15 12. Maryland
- 16 13. Massachusetts
- 17 14. Minnesota
- 18 15. Missouri
- 19 16. Montana
- 20 17. Nebraska
- 21 18. Nevada
- 22 19. New Jersey
- 23 20. New Mexico
- 24 21. New York
- 25 22. North Carolina

- 1 23. Ohio
- 2 24. Oklahoma
- 3 25. Oregon
- 4 26. Pennsylvania
- 5 27. Puerto Rico
- 6 28. Rhode Island
- 7 29. South Dakota
- 8 30. Samoa Territory

10 May 6, 1999 - After Littleton: Antidepressants
11 In The Bloodstream

12 ARIANNA ONLINE

13 AFTER LITTLETON:

14 Antidepressants in the
15 Bloodstream

16 Filed May 6, 1999

17 In the aftermath of the Littleton massacre,
18 President Clinton has already proposed new laws
19 to restrict the marketing of guns to children,
20 and on Monday (May 10) he will host a conference
21 to examine the entertainment industry's marketing
22 of violence to children. But no one is planning
23 a conference or introducing laws to deal with a
24 third problem -- the marketing of mood-altering
25 prescription drugs to children.

1 Despite disturbing evidence of drug-induced
2 manic reactions, the number of antidepressant
3 prescriptions for children continues to soar,
4 reaching 1,664,000 in 1998. And buried in the
5 Littleton coverage was the announcement this week
6 that traces of Luvox, a sibling of Prozac, were
7 found in Eric Harris' bloodstream. The presence
8 of Luvox, the coroner said; "does not change the
9 cause and manner of death." Yes, but did it
10 change the cause and manner of Eric's life?

11 Luvox was approved by the FDA in 1997 for the
12 treatment of obsessive-compulsive disorders (OCD)
13 in children, but not for the treatment of depress-
14 ion. Indeed, no antidepressant -- Prozac, Zoloft
15 or Luvox -- has been approved for pediatric use.
16 Solvay, Luvox' manufacturer, declares it "safe and
17 effective." Yet the Physicians' Desk Reference
18 reports that during controlled clinical trials
19 manic reactions developed in 4 percent of children
20 on Luvox. Another clinical trial found that Prozac
21 caused mania in 6 percent of the children studied.

22 Mania is defined as "a form of psychosis
23 characterized by exalted feelings, delusions of
24 grandeur -- and overproduction of ideas." There
25 were plenty of delusional statements on Harris'

1 Web site. "My belief," he wrote, "is that if I
2 say something, it goes. I am the law. If you
3 don't like it, you die." This should have troubled
4 any doctor who was following Harris after he was
5 put on Luvox. Or was Harris one of the tens of
6 thousands of children cavalierly put on anti-
7 depressants without either a proper psychiatric
8 evaluation or ongoing monitoring of side effects?

9 The news that Harris had been on Luvox came
10 on the heels of the revelation last summer that
11 Kip Kinkel, the Oregon school shooter, had been
12 on Prozac. These antidepressants clearly did
13 not exorcise the teenagers' demons. The question
14 we should be urgently asking is: did they
15 embolden them?

16 At a congressional hearing on media violence
17 this week, we were reminded that 95 percent of
18 children are never involved in a violent crime.
19 Most children whose parents own guns do not steal
20 them, most children who watch "Natural Born
21 Killers" do not go on shooting rampages; and most
22 children on antidepressants do not kill their
23 schoolmates. But while there is saturation
24 coverage about the dangers of guns and media
25 violence, there is no debate about the dangers of

1 antidepressants on our most vulnerable children's
2 growing brains.

3 Dr. Leon Eisenberg of the Harvard Medical School
4 described the Prozac/Luvox family of antidepressants
5 as "potent medication that change nerve transmission."
6 "What happens," he asks, "after two to three years
7 of that?" But even mildly skeptical voices from
8 within the medical community are routinely ignored
9 as if they were attacks on scientific progress
10 itself.

11 We are in desperate need of more information --
12 not just more clinical studies but more data
13 released to the public about the medical histories
14 of children charged with acts of violence. For
15 starters, in the same way that kids are examined
16 for the presence of illegal drugs and alcohol in
17 their bloodstream, they should be routinely
18 examined for mood-altering legal drugs. "I have
19 testified as a medical expert," Dr. Peter Breggin,
20 author of "Talking Back to Prozac," told me,
21 "in three teenage cases of murder in which anti-
22 depressants were implicated in playing a role.
23 In one case where a 16-year-old committed murder
24 and tried to set off multiple bombs at the same
25 time, the comparisons with Littleton are obvious

1 and ominous."

2 The response from drug manufacturers echoes that
3 of gun manufacturers: "Prozac and Luvox don't
4 kill people, people kill people." And like gun
5 manufacturers, drug manufacturers are facing
6 growing legal challenges. Littleton was followed
7 by other shootings and bomb threats that closed
8 schools and evacuated students across the country.
9 Were any of the adolescents involved on anti-
10 depressants, and was that information made avail-
11 able to the authorities? Did, for example, the
12 probation officer who wrote a glowing report on
13 Harris after his arrest for breaking into a van
14 know if he had been diagnosed with OCD before he
15 was put on Luvox? And wouldn't it have been useful
16 for him then and for us now to know what he was
17 obsessive and compulsive about?

18 Following the news about Harris being on Luvox,
19 Rep. Dennis Kucinich (D-Ohio), who sits on the
20 Government Oversight Committee, sent a letter to
21 the FDA calling for "comprehensive clinical trials
22 by the pharmaceutical companies" to establish "the
23 behavioral effects of antidepressants on our
24 youth." How much Luvox and Prozac have to be found
25 in the bloodstreams of our child-killers before the

1 FDA takes action -- and the rest of us take
2 notice?

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9 From: api-errors@lists.best.com on behalf of
10 Charles Riggs

11 [dvnra45@dcr.net]

12 Sent: Monday, June 21, 1999 9:01 PM

13 To: api@lists.best.com

14 Subject: Fwd: GSL- Fw: Pol-Brilliant Lott article

15 WALL STREET JOURNAL

16 More Gun Controls? They haven't worked in the Past.

17 By John R. Lott

18 Everyone from President Clinton to the hosts of
19 the Today Show attributes the recent wave of
20 school violence to the greater accessibility of
21 guns. Gun-control groups claim that today "guns
22 are less regulated than toasters or teddy-bears."
23 Proposed solutions range from banning those under
24 21 from owning guns to imprisoning adults whose
25 guns are misused by minors. Today the House will
consider yet another measure, this one requiring
a waiting period and background check for anyone

1 wishing to make a purchase at a gun show.

2 Such legislation might make sense if guns had
3 indeed become easier to obtain in recent years.
4 Yet the truth is precisely the opposite. Gun
5 availability has never before been as restricted
6 as it is now. As late as 1967, it was possible
7 for a 13-year-old virtually anywhere in the U. S.
8 to walk into a hardware store and buy a rifle.
9 Few states even had age restrictions for buying
10 handguns from a store. Buying a rifle through the
11 mail was easy. Private transfers of guns to
12 juveniles were also unrestricted.

13 But nowhere were guns more common than at
14 schools. Until 1969, virtually every public high
15 school in New York City had a shooting club. High-
16 school students carried their guns to school on
17 the subways. in the morning, turned them over to
18 their homeroom teacher or the gym coach and
19 retrieved them after school for target practice.
20 The federal government even gave students rifles
21 and paid for their ammunition. Students regularly
22 competed in city-wide shooting contests, with the
23 winners being awarded university scholarships.

24 Since the 1960s, however, the growth of federal
25 gun control has been dramatic. Federal gun laws,

1 which contained 19,907 words in 1960, have more
2 than quadrupled to 88,413 words today. By
3 contrast, in 1930 all federal gun-control laws
4 amounted to only 3,571 words.

5 The growth in state laws has kept pace. By
6 1997 California's gun-control statutes contained
7 an incredible 158,643 words -- nearly as many as
8 the King James version of the New Testament --
9 and still another 12 statutes are being considered
10 in this legislative session. Even "gun friendly"
11 states like Texas have lengthy gun-control
12 provisions. None of this even begins to include
13 the burgeoning local regulations on everything
14 from licensing to mandatory gun locks.

15 The fatuity of gun-control laws is nowhere
16 better illustrated than in Virginia, where high-
17 school students in rural areas have a long
18 tradition of going hunting in the morning. The
19 state legislature tried but failed to enact an
20 exemption to a federal law banning guns within
21 1,000 feet of a school, as prosecutors find it
22 crazy to send good kids to jail simply because
23 they had a rifle locked in the trunk of their
24 car while it was parked in the school parking
25 lot. Yet the current attempts by Congress to

1 "put teeth" into the laws by mandating prosecutions
2 will take away this prosecutorial discretion
3 and produce harmful and unintended results.

4 But would stricter laws at least reduce crime
5 by taking guns out of the hands of criminals? Not
6 one academic study has shown that waiting periods
7 and background checks have reduced crime or youth
8 violence. The Brady bill, widely touted by its
9 supporters as a landmark in gun control, has
10 produced virtually no convictions in five years.
11 And no wonder: Disarming potential victims
12 (those likely to obey the gun laws) relative to
13 criminals (those who almost by definition will not
14 obey such laws) makes crime more attractive and
15 more likely.

16 This commonsense observation is backed by
17 the available statistical evidence. Gun-control
18 laws have noticeably reduced gun ownership in some
19 states, with the result that for each 1% reduction
20 in gun ownership there was a 3% increase in violent
21 crime. Nationally, gun-ownership rates throughout
22 the 1960s and '70s remained fairly constant,
23 while the rates of violent crime skyrocketed.
24 In the 1990s gun ownership has grown at the same
25 time as we have witnessed dramatic reduction in

1 crime.

2 Yet with no academic evidence that gun regulat-
3 ions prevent crime, and plenty of indications
4 that they actually encourage it, we nonetheless
5 are now debating which new gun control laws to
6 pass. With that in mind, 290 scholars from
7 institutions as diverse as Harvard, Stanford,
8 Northwestern, and UCLA released an open letter
9 to Congress yesterday [Wednesday June 16] stating
10 that the proposed new gun laws are ill-advised:
11 "With the 20,000 gun laws already on the books,
12 we advise Congress, before enacting yet more new
13 laws, to investigate whether many of the existing
14 laws may have contributed to the problem we
15 currently face."

16 It thus would appear that at the very least
17 gun-control advocates face something of a dilemma.
18 If guns are the problem, why was it that when
19 guns were really accessible, even inside schools
20 by students, we didn't have the problems that
21 plague us now?

22 _____
23 Mr. Lott, a fellow in law and economics at the
24 University of Chicago Law School, is author of
25 "More Guns, Less Crime" (University of Chicago
Press, 1998).

1 CHARLES RIGGS - Orange Gunsite - DVC!

2 "Stop Crime-Be Armed-Fight Back!"

3 KC3 - IDPA(KY) - GOA

4 <http://www.kc3.com/sheep.htm>

5 (a parable for our times)

6 <http://www.gunspot.com>

7 (firearms discussion forums)

8 CHAIRMAN GANNON: Our next witnesses are
9 Mr. Leroy Jackson and Mr. Russell Laing.

10 MR. LAING: My name is Mr. Russell Laing.

11 CHAIRMAN GANNON: Is Mr. Jackson -- nobody
12 has seen him here.

13 MR. LAING: Thank you, Mr. Chairman and
14 Members of the Committee, for allowing me to
15 testify here today. You have no idea how far I have
16 come to present this testimony. One of the most
17 urgent and important issues of firearms the law
18 concerns the definition of which particular circum-
19 stances I can give reasonable and compelling cause
20 for government to deny a citizen's right to keep
21 and bear arms. In recent years there has been a
22 pronounced trend towards expanding the definition of
23 individuals prohibited from gun ownership, and in
24 some cases it is getting into some pretty murky
25 territory which is not well defined and we are seeing

1 it in examples of federal laws concerning misdemeanor
2 acts of domestic violence. In 1995 under Pennsylvania
3 Act 17 it codified the list of individuals prohibited
4 from ownership or possession of a firearm to include
5 someone who has been contained for emergency mental
6 health observation under Section 302 of the
7 Pennsylvania Mental Health Act. A Section 302
8 detention may be affected by any law enforcement
9 officer on their own discretion, without the need
10 for a legal warrant of any kind, nor any consul-
11 tation with the County Mental Health Office.
12 Individuals detained under Section 302 do not have a
13 legal right to contemporaneously appeal that
14 detention and may be held up to five days. Only
15 after that five-day period, the institution holding
16 an individual may petition for a longer detention
17 period under Pennsylvania Mental Health Section 303,
18 which is the first point in this whole process
19 where there is any other required hearing or ad-
20 judication concerning the condition of the person.
21 Detained.

22 In early 1996 I was detained under
23 Section 302 by a local township police officer
24 who had entered my home without a warrant after
25 learning that my employer had contacted local

1 paramedics expressing concern that, in the
2 officer's own words, I had not reported to
3 work, nor called off sick using the normal
4 procedure. I was discovered asleep in my
5 bedroom, whereupon I was awakened and escorted
6 to a waiting ambulance. I was detained in
7 the psychiatric ward of a local hospital based
8 upon a member of the local police department
9 preparing an affidavit at the hospital in
10 which he declared his own opinion that I was
11 unable to care for myself.

12 After I was escorted from my home,
13 the police confiscated my valuable gun collection,
14 still locked in the metal safe where it had
15 been throughout the incident, even by their
16 own testimony. I have no criminal record,
17 and I was not charged with any crime in connect-
18 ion with this incident, nor was I alleged to
19 commit any violent act, made any kind of threat,
20 nor engaged in any kind of public disturbance
21 of any kind. After a brief detention of
22 several days at the hospital, I was released
23 without any hearing or other adjudication
24 process. The only document filed outside
25 of the hospital walls was a notice filed by

1 hospital personnel with the County Mental
2 Health Office on the second day of my
3 detention in which they canceled a Section 303
4 hearing that otherwise would have been held
5 to evaluate my mental status and document that.
6 In this filing, the hospital noted that the
7 cancellation of this hearing was predicated
8 on their very own finding that I was neither
9 mentally ill nor in need of inpatient care.

10 In seeking the return of my property,
11 a Judge of the Allegheny County Court of Common
12 Pleas initially granted an order directing the
13 return of my property, my gun collection.
14 This order was then rescinded after the County
15 District Attorney's Office argued that,
16 pursuant to Act 17, my constitutional right
17 to keep and bear arms had been permanently
18 forfeited by virtue of my being the subject
19 of a non-adjudicated detention under Section 302.
20 I then began a three-year process of seeking
21 an adjudication of the events surrounding my
22 detention under Section 302, that eventually
23 took the form of four separate petitions that
24 went through eight different court systems,
25 and included the opposing efforts of at least

1 three different criminal prosecuting
2 attorneys from the Allegheny County District
3 Attorney's Office. One of those opposing
4 prosecuting criminal attorneys was Kim
5 Berkeley Clark who also so happened to be the
6 prosecutor of the individual, the valid criminal,
7 who killed tragically the young boy, Ryan Hacke,
8 and you have no better medical work of the
9 nature of our gun control laws than to under-
10 stand that the very same prosecutor who failed
11 to invoke those laws in the case of Ryan Hacke's
12 tragic death by a violent criminal was very
13 successful in her efforts to prosecute Russ
14 Laing basically for the fact of his being
15 asleep in his bedroom of a home that was invaded
16 by a policeman without a warrant. Another of
17 these was Deputy District Attorney Daniel
18 Fitzsimmons, who characterized my gun collection
19 as a veritable arsenal which is noted in an
20 attachment that you have to the material that
21 I have handed out, and then later argued in
22 court that my constitutional right to keep and
23 bear arms was reserved only to the National
24 Guard and things of that nature and was not
25 an individual right.

1 In June of 1998, the Pennsylvania
2 legislature passed PA Act 70 of 1998 which
3 sought to correct the lack of due process
4 protections inherent in PA Act 17 by further
5 requiring that an examining physician at the
6 hospital must certify that an individual
7 detained under Section 302 was indeed severely
8 mentally ill and in need of inpatient treatment.
9 In introducing this bill, Rep. Bob Godshall
10 is noted on the Official Legislative
11 Transcript as making reference to my case.
12 While adding a confusing intermediate step to
13 the language of Act 17, this amendment still
14 failed to provide any due process protection
15 but merely requires an uncontested medical
16 opinion to form the basis for the forfeiture
17 of a fundamental constitutional right.

18 In August 1998, Allegheny County Common
19 Pleas Judge James McGregor ordered the re-
20 instatement of my PA License to Carry Firearms,
21 which had been revoked in 1996, exactly one
22 week after I filed a petition with the court
23 seeking a return of my property. Subsequent
24 to Judge McGregor's decision, which was
25 consented to by the Allegheny County Sheriff's

1 Office, my attorney received a written response
2 from the United States Department of Treasury,
3 Bureau of Alcohol, Tobacco and Firearms,
4 from whom I had requested a review as to whether
5 a Section 302 detention was sufficient to
6 activate a bar to gun ownership under Federal
7 statute. In their letter, which is also
8 attached, the BATF ruled that a detention
9 under Section 302 did not provide any due
10 process protections and would therefore not
11 suffice to meet the definition of an involuntary
12 commitment for the purpose of applying
13 Federal firearms statutes.

14 In June 1999 Judge Paul Zavarella of
15 Allegheny County Orphans' Court ruled that
16 my detention under Section 302 was invalid
17 due to insufficient evidence and a lack of
18 justification, and issued a court order which
19 both vacated the existence of that detention
20 and also directed that my record be expunged.
21 Concurrently, I learned that the police
22 officer who had ordered the confiscation of
23 my property had been fired from the police
24 department amidst 21 different charges,
25 including an allegation referred to as the

1 Laing charges and other allegations of filing
2 false and/or misleading reports against
3 other residents of the township. In July
4 1999, following a lengthy and contentious
5 hearing in which I was once again opposed by the
6 Allegheny County District Attorney's Office,
7 Common Pleas Judge David Cercone ordered the
8 return of my property.

9 It would be a travesty to view my case
10 as an isolated matter of police misconduct,
11 or even a matter of abuse of power by the
12 Allegheny County District Attorney's Office.
13 The horror and tragedy of my story did not
14 begin when an errant police officer entered
15 my home, without a warrant, but rather months
16 later when I entered a courtroom and encountered
17 a Pennsylvania firearms law that codified the
18 use of a nonadjudicated suspicion as a legal
19 means to forfeit a fundamental constitutional
20 right and result in the loss of lawfully owned
21 property.

22 The key element of my story is that,
23 under Act 17, an uncontested, non-adjudicated
24 suspicion on the part of a local police officer
25 was sufficient to permanently disbar a

1 fundamental constitutional right and cause
2 the forfeiture of lawfully owned property.
3 Under the provisions of Act 17, I was then
4 placed in the role of having to petition the
5 court to prove that I was sane, since the law
6 did not have any due process requirement for
7 the state to first adjudicate my mental condition
8 prior to removing my constitutional right to
9 bear arms. The permanent removal of any
10 fundamental right or freedom must always be
11 predicated only on an adjudication process
12 that affords the protection of due process
13 under the law. Legislation such as Act 17
14 sets an incredibly dangerous precedent for
15 presumptive, pre-emptive laws that authorize
16 the invasion of our lives based on loosely
17 perceived or surmised intent, rather than factual
18 evidence. And I would throw in **anecdotically**
19 that during my early court hearings, by far
20 the majority of the testimony concerned the
21 nature of my dangerous guns and what they
22 looked like and had nothing to do with my
23 behavior or any matter of factual evidence.

24 The passage of unconstitutional laws
25 such as PA Act 17 do not only open the door

1 for the abuse of power, but in fact actively
2 foster such abuses. So, we are left with a
3 law that by-passes rational due process,
4 which is then applied by a Deputy District
5 Attorney who substitutes emotional innuendo
6 in place of facts and evidence, in order to
7 defend the illegal seizure of property from
8 a law abiding citizen who is discovered sleeping
9 in his bedroom by a police officer who is
10 later fired for filing false reports.
11 And I am left with three years of my life spent
12 in court pleading for the right just to present
13 my side of the story, a story which never
14 would have happened had the law been constructed
15 to abide by the simple constitutional require-
16 ment of providing due process protection prior
17 to the imposition of a curtailment of fundamen-
18 tal rights. Indeed, at the first of my many
19 court hearings the Court Clerk was overheard
20 making the observation that mine was the first
21 case she had ever heard where someone had to
22 prove they were sane.

23 Pennsylvania's firearm statutes need
24 to be re-introduced to the constitutional
25 right of due process under the law, defined

1 as a hearing before a neutral party in which
2 opposing parties may both present testimony
3 and evidence. Likewise, in re-introducing
4 the principle of basic rationality to any
5 future changes to Pennsylvania firearm statutes,
6 we must resist the urge to lunge for hysteria-
7 driven, cosmetic restrictions that have no
8 basis in fact, such as reducing the size of
9 ammunition clips, or prohibiting other
10 **characteristics** of firearms that bear no
11 factual relationship to community safety or
12 criminal behavior. The lesson of my situation
13 is that when our legislative process promotes
14 irrational laws -- of any kind, the effect is
15 invariably to unleash a force far more terrify-
16 ing than any firearm ever made.

17 My children attend a school district
18 that suspended a five-year-old boy for coming
19 to his school Halloween party in a fireman's
20 outfit, complete with a four inch plastic
21 hatchet that violated their newly instituted
22 zero-tolerance weapons policy...is that a
23 parallel?

24 Rationality, not emotional hysteria.
25 We can accept nothing less for every one of

1 Pennsylvania's law -- abiding gun owners,
2 and indeed, every citizen who cherishes the
3 protection of rational due process under
4 the law.

5 Thank you.

6 CHAIRMAN GANNON: Representative Josephs?

7 REPRESENTATIVE JOSEPHS: I think it's more
8 of a comment. I spent some time in the late 80's
9 looking at the 302 process and two of us, there
10 were six of us on the task force. The two of
11 us made a tremendous dissent from the majority
12 who wanted to sweep away whatever rights there
13 were in that 302 process. I think it's very
14 questionable to begin with. I don't like it.
15 I think it needs to be surrounded by many more
16 due process and procedural kinds of safeguards
17 and I'm hoping that we move in that direction.

18 I also want to say that I'm not a big
19 fan of these gun-free zones either but I am
20 for some responsible gun safety and I will continue
21 to be. Thank you.

22 CHAIRMAN GANNON: Thank you very much,
23 Mr. Laing.

24 (The following was submitted for inclusion
25 in the record:)

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DEPARTMENT OF TREASURY
BUREAU OF ALCOHOL, TOBACCO and FIREARMS
U.S. Custom House, Room 607
2nd & Chestnut Streets
Philadelphia, Pennsylvania 19106

CC:PH-21,705
JKW:emk

Jon Pushinsky, Esquire
1808 Law & Finance Bldg.
429 Fourth Avenue
Pittsburgh, Pennsylvania 15219

Dear Mr. Pushinsky:

You asked if a person who had been involuntarily detained for an emergency mental health examination pursuant to 50 PA. CONS. STAT. #7302 would be prohibited from **possessing** firearms under 18 U.S.C. #922(g)(4). You stated that you believe such a person would not be prohibited. We agree.

Title 18 U.S.C. # 922(g)(4) makes it unlawful for a person who has been committed to a mental institution to possess a firearm.

The term "committed to a mental institution" is defined in 27 C.F.R. #178.11 as follows:

A formal commitment of a person

1 to a mental institution by a
2 court, board, commission, or
3 other lawful authority. The
4 term includes a commitment to a
5 mental institution involuntarily.
6 The term includes a commitment for
7 mental defectiveness or mental illness.
8 It also includes commitments for
9 other reasons, such as for drug use.
10 The term does not include a person
11 in a mental institution for observation
12 or a voluntary admission to a
13 mental institution.

14 27 C.F.R. #178.11, Federal Register, Vol. 62,
15 No. 124, p. 34639. (Emphasis supplied).

16 EXHIBIT 2

17 An involuntary detention under 50 PA. CONS.
18 STAT. #7302 does not constitute a commitment
19 to a mental institution within the meaning of
20 27 C.F.R. #178.11. Section 7302 provides
21 for temporary emergency measures and as such
22 falls short of the "formal commitment" described
23 in Section 178.11. Although Section 7302
24 provides for the immediate medical treatment
25 of person deemed by a physician to require it,

1 the apparent broader purpose of the statute
2 is to enable the authorities to observe
3 the subject and determine their options
4 within a 120 hour period.¹ One option is
5 to make an application to the Court of Common
6 Pleas for extended involuntary emergency
7 treatment pursuant to 50 PA. CONS. STATE. #7303.
8 Unlike a person detained pursuant to Section
9 7302, a person facing extended involuntary
10 treatment (up to 20 days) pursuant to Section
11 7303 is afforded a variety of due process
12 rights including counsel, notice, and hearing.
13 Pennsylvania also provides for longer periods
14 of commitment pursuant to 50 PA. CONS. STAT.
15 #7304 and 7305. These sections likewise provide
16 a panoply of due process rights for persons
17 who might be subject to them. In the context
18 of these provisions for formal commitments,
19 the distinction between a detention under
20 Section 7302 and a commitment, which would
21 meet the definition in 27 C.F.R. #178.11, is
22 clearer still.

23 Given the lack of due process provisions
24 afforded by 50 PA. CONS. STAT. #7302, the
25 limited duration of a detention pursuant

1 to it, the fact that its apparent primary
2 purpose is to provide mental health
3 officials time to observe a detainee and
4 make an assessment, and the existence of
5 more formal commitment procedures under
6 Pennsylvania law, we conclude that a
7 detention under 50 PA. CONS. STAT. #7302
8 does not constitute a commitment for
9 purposes of 18 U.S.C. #922(g)(4).

11 ¹ We note that Section 178.11 specifically
12 states that a person in a mental institution
13 for observation has not been committed.

15 If you have additional questions concerning
16 this matter, please do not hesitate to
17 call ATF Attorney Kevin White at
18 (215) 597-7183.

19 Sincerely yours,

20 Lawrence L. Duchnowski
21 Special Agent in Charge
22
23
24
25

MOTION FOR RECONSIDERATION

1
2
3 TO THE HONORABLE, THE JUDGES OF SAID COURT:

4 AND NOW, comes the Commonwealth of
5 Pennsylvania by its attorneys, ROBERT E.
6 COLVILLE, District Attorney of Allegheny
7 Count, and DANIEL E. FITZSIMMONS, Deputy
8 District Attorney, and respectfully represents
9 the following:

10 1. On April 12, 1996, officers of the
11 West Deer Township Police Department seized
12 a veritable arsenal of firearms, firearms
13 accessories, and ammunition from the residence
14 of Russell G. Laing. The firearms, etc. were
15 seized in connection with an incident wherein
16 the defendant was experiencing mental health
17 problems and was taken to Allegheny Valley
18 Hospital for Psychiatric evaluation. An
19 inventory of the firearms, etc. is included
20 in the record;

21 2. On August 5, 1996, counsel for Mr.
22 Laing filed a Motion for Return of Seized
23 Property. By that motion, Mr. Laing re-
24 quested that the firearms, etc. be returned
25 to him;

1 3. On September 4, 1996, the court
2 conducted a hearing on the Motion for
3 Return of Seized Property. The matter was
4 continued pending further psychiatric evalu-
5 ation of Mr. Laing;

6 4. On December 3, 1996, the court
7 conducted another hearing on the Motion for
8 Return of Seized Property. Counsel for
9 Mr. Laing presented a report related to a
10 psychiatric evaluation of Mr. Laing performed
11 by Dr. Paul M. Bernstein of Pennsylvania
12 Psychological Services. A portion of the
13 report indicates that Mr. Laing was
14 "involuntarily admitted to the psychiatric
15 unit of Allegheny Valley Hospital . . .
16 [and was] discharged after three days."
17 At the conclusion of the hearing, the court
18 entered an order requiring the West Deer
19 Township Police Department to return the
20 firearms, etc. to Mr. Laing;

21 5. The court's order of December 3, 1996
22 is improper and should be vacated because
23 Mr. Laing, as a result of having been
24 involuntarily committed to a mental insti-
25 tution under Section 302 of the Mental Health

1 Procedures Act, 50 P.S. #7302, is not
2 permitted by Pennsylvania law or Federal
3 law to possess firearms, firearms accessor-
4 ies, or ammunition. The applicable
5 Pennsylvania statute is Section 6105(c)(4)
6 of the Crimes Code, 18 Pa. C.S. #6105(c)(4).
7 The applicable Federal Statute is
8 Section 922(g)(4) of the Gun Control Act
9 of 1968, 18 U.S.C. #922(g)(4).

10 WHEREFORE, based upon the foregoing,
11 the Commonwealth respectfully requests that
12 this Honorable Court reconsider and vacate
13 its order of December 3, 1996 requiring
14 the West Deer Township Police Department
15 to return firearms, firearms accessories,
16 and ammunition to Russell Laing.

17 Respectfully submitted,

18 ROBERT E. COLVILLE
19 DISTRICT ATTORNEY

20
21 By: _____
22 DANIEL E. FITZSIMMONS
23 DEPUTY DISTRICT ATTORNEY

24 (The hearing recessed at 3:02 p.m. and
25 reconvened at 3:10 p.m.)

1 CHAIRMAN GANNON: Will the Committee please
2 come to order. If everyone will please take their
3 seats. Mr. Sisson and Mr. Rose. You may proceed
4 when you are ready. Once again, if you have any
5 written testimony and you would like to submit that
6 for the record and simply summarize it orally and
7 if the Committee has any questions, we can follow
8 with that. Go ahead, you may proceed.

9 MR. SISSON: I will do a little summarizing.
10 Ladies and gentlemen, my name is Jim Sisson. I
11 live in Girard Township in Erie County, Pennsylvania.
12 I am an NRA life member and a past president of the
13 Pennsylvania Gun Owner's Association. I am a
14 retired high school teacher having mainly taught
15 American History in 36-year career.

16 I congratulate you as a committee on
17 bringing the issue of firearms ownership and regu-
18 lations before the public for comment. As a person
19 who has read, studied and taught the United States
20 Constitution for many years, I emphasize that the
21 following statements are what I have come to
22 firmly believe. Here I am going to take the
23 Chairman's advice and just do a little trade. I
24 will do some condensing as I go along. I have
25 already made a few marks but I would like to say

1 this. We are in an era of political correctness.
2 You people are here from all over the state to
3 hear what primarily gun owners have to say about
4 their belief in a second amendment. That's a
5 tremendous task you have, to deal with political
6 correctness in America today. I think most of
7 the people sitting here think that our elected
8 political leaders are doing a very poor job of
9 handling political correctness. Our advice to you
10 is to read and reread the United States Constitution.
11 There is a thousand ways to go wrong in dealing with
12 this issue and I think most of us believe there is
13 only one right way and that is to get back to a
14 constitutional point of view that we don't have to
15 ever find more confusing language and more confusing
16 statistics that nobody seems to really understand.
17 We have to do that because if we keep going in this
18 direction, I know in my neighborhood back home, the
19 Borough of Fairview has dropped their police force.
20 The State Police are asked to pick that up, that
21 load. I would think that communities across
22 Pennsylvania are doing more than that. It saves
23 them, in this case, about a hundred thousand dollars.
24 Do I want to pay more taxes to develop bigger State
25 Police that is going to help register my firearms,

1 never. It's going to help criminals unless our
2 elected leaders can get together with the voters
3 and find a way where 95% of us can outwit 5%. If
4 we can't do that, we don't need committee meetings.
5 We don't need anything. We don't need to say, I'm
6 pro gun, I'm anti-gun, or I'm somewhere in the
7 middle. That is defeating immediately. That is
8 self-defeating and the criminals love it. We have
9 got to get away from that whole point of view.

10 Early in my paper I'm going to state that
11 I taught American History for 36 years and I was
12 sitting here watching you people carefully. You
13 remind me of lots of my eighth period classes at
14 the end of the day. I tell you the same thing I
15 told them. Stay focused. We'll get through this.
16 It's important.

17 Again, emphasizing what I have come to
18 firmly believe over 64 years of life, including
19 36 years of teaching American History, things I
20 firmly believe. I might quote somebody in here but
21 if I think they -- unless I am sure it's part of my
22 belief, then it won't be in here.

23 I believe the citizens of the Republic
24 of the United States of America live in the
25 greatest country to ever exist on this earth.

1 Our forefathers wrote a set of laws called
2 the Constitution of the United States of
3 America for our citizens to live by.

4 Shortly thereafter ten amendments, called
5 the Bill of Rights, were added. The Bill of
6 Rights was added to protect the people from
7 an oppressive, corrupt government. It is un-
8 imaginable that we, the people, should give
9 up any part or have any part of the Bill of
10 Rights taken away from us. I firmly believe
11 that the second of these amendments, the
12 Right to Keep Arms, is the glue that has kept
13 our Republic strong for over 200 years.

14 These same politically correct laws,
15 whether gun-oriented or otherwise, are dividing
16 this country into two groups, the so-called
17 right and left. The vast majority of citizens
18 are in the middle watching this struggle.
19 Many of them no longer vote. I believe they
20 are disgusted with the political process as
21 it is now occurring in America. I don't blame
22 them. I ask each of you to answer these
23 questions: Where is politically correct
24 lawmaking taking us? What is the plan for
25 the future of America? What I see scares me.

1 Our great Republic has worked wonderfully
2 for a long time. A great plan, the Constitution
3 of the United States of America, as amended,
4 has served us well. Why are we doing an
5 end-run around it? Will my children and
6 grandchildren have the freedoms I have enjoyed?
7 I believe the answer is NO!!

8 I believe our political leaders need
9 to reverse the laws passed that harass the
10 honest, law-abiding citizen. Our leaders need
11 to direct their efforts against the criminal
12 element in our society. When a criminal is
13 convicted of dozens of offenses and is still
14 free to shoot someone, it is not the fault of
15 the gun. It is the fault of some lawyers and
16 some judges. It is also the fault of some
17 political leaders who can't or won't do the
18 job as written in the United States Constitution.
19 All of our political leaders took an oath
20 of office to uphold the Constitution, either
21 state or United States. I believe some
22 turned and laughed afterward.

23 I personally know some of the members
24 of the Pennsylvania House of Representatives.
25 I believe some of them are doing a great job

1 and are true leaders. They refuse to vote
2 for legislation they believe infringes on the
3 rights of law-abiding citizens. Sadly,
4 others vote as they are told to.

5 I urge all of you to have the courage
6 to get out of the political correctness mode.
7 Read the U.S. Consttution. Talk to people
8 who fought for our country. Refuse to vote
9 for bills that harass honest citizens. I
10 believe there are endless wrong directions to
11 go in. The U.S. Constitution shows you the
12 right way. Politically speaking, we are
13 traveling down a very dangerous road.

14 The National Rifle Association has
15 endorsed a plan used by the city of Richmond,
16 Virginia. It is a plan that has reduced
17 serious crime by over a third in just a few
18 years. What is the plan? It is called
19 Operation Exile. How does it work?
20 IT ENFORCES EXISTING LAWS!!

21 The current president of the United
22 States, Bill Clinton, and his Attorney General,
23 Janet Reno, refuse to prosecute felons who
24 try to buy guns. How is this possible? Do
25 they want criminals out there to kill people,

1 especially with guns, to further their
2 anti-honest people agenda?? PLEASE, ENFORCE
3 EXISTING LAW!! It should have been done years
4 ago!

5 I thank you for the opportunity to speak.

6 CHAIRMAN GANNON: Thank you, Mr. Sisson.

7 Mr. Rose?

8 MR. ROSE: My name is Tom Rose. I live
9 in Mercer County, Springfield Township. My wife
10 and I raise cattle there. For the last 27, 28 years
11 we've run a little in-house publishing business and
12 also we have a monthly Constitutional Group Meeting
13 in our home where we study the Constitution of the
14 United States, as well as Pennsylvania. I'd like
15 to enter into the record my statement, also excerpts
16 from a gun control case. This is from U. S. versus
17 Timothy Joe Emerson where the District Federal Court
18 of the United States declared, this is a 1999 case
19 by the way, of August, where the District Court
20 declared that the citizens have an individual and
21 a personal right to own and bear arms and it's
22 not a collective right through the state. I would
23 like to introduce a book I've written, Reclaiming
24 The American Dream by reconstructing the American
25 Republic. The reason I mention this, it deals with

1 the principle of governmental interposition and
2 our State of Pennsylvania, as you as legislators
3 in the State of Pennsylvania and our governor are
4 in a position as intermediate magistrates to stop
5 the growing tyranny in Washington, D.C. I'll refer
6 to that.

7 Also for the record is an article,
8 Hidden Facets, Littleton, Colorado. It deals
9 with the crucial issue of gun control and some of
10 the unknown things that contributed to what
11 happened in Littleton, Colorado and then there is
12 another one entitled Hidden Facets #2, Kosovo,
13 what's going on there, and the two together will
14 help you gain a better understanding of the overall
15 picture of what is going on. There is also an
16 item entitled, Hero With a Gun. It shows how a
17 law-abiding citizen with a concealed permit was
18 able to stop some mayhem that was going on.
19 Only it did not hit the standard news media. Those
20 kinds of things never do. Lastly is a reprint
21 entitled Free Market Terrorists in what the author
22 of this book called Unintended Consequences like
23 John Ross does, he shows what would happen to
24 the First Amendment if the First Amendment were
25 treated by our judicial system and our law enforcement

1 officers as the Second Amendment or if they applied
2 the same principles that they are applying to
3 the Second Amendment to the First Amendment, what
4 would happen to the First Amendment rights.

5 I will shorten my testimony as requested
6 by the Chair. First, I want to make a little comment.
7 There is a wonderful lady accompanying me, my wife.
8 As we listened to the testimony of the two men from
9 the Records Identification of PA state, here is
10 what she wrote to me. She said, "We have heard
11 much today as to how great the PA control laws are
12 but by the Constitution of PA, they are all illegal
13 and unconstitutional and as I was listening to
14 their testimony, the thought came to me and the
15 thought was pure tyranny. These gentlemen,
16 however sincere they are, they make bureaucratic
17 tyranny sound so reasonable and comfortable but all
18 of the laws that have been passed are clearly un-
19 constitutional with both the PA Constitution and
20 the Second Amendments of the United States
21 Constitution.

22 I am deeply concerned about how the legis-
23 lature and **Governor** Ridge in Pennsylvania, as well
24 as the federal congress and President of these
25 United States of America **are** acting alone and in

1 concert to infringe on citizens' inalienable rights
2 as individuals to purchase, own and bear arms.
3 Frankly, and I say this from the bottom of my heart,
4 all the legislative congressional bills that have
5 been passed into so-called law, beginning with
6 congress' gun control acts of 1934 and 1968, and
7 all subsequent acts are patently unconstitutional
8 at both the state and federal levels. Accordingly,
9 we citizens have the full right and authority to
10 ignore such legislation because an unconstitutional
11 law is always null and void from its very beginning.
12 I'll go back to the statement of what the
13 Pennsylvania Constitution says in Article 1, Section
14 21, The Right of Citizens to Bear Arms in Defense
15 of Themselves and the state shall not be questioned.
16 What could be clearer than that?

17 Continuing, I point out here it has been
18 the malpractice of the courts, both at the state
19 and federal levels, to ~~abrogate~~ to themselves the
20 proper interpretation of the meaning of our State
21 and National Constitutions. Now, those instruments
22 were written so that anyone with ordinary high
23 school education or even less can understand that.
24 I know there is a rule for them but the courts
25 have been twisting the clear meaning of these

1 documents.

2 I'll skip on here. Please allow me to
3 add an important point here. Our founding fathers
4 had a deep fear, which I certainly share, and in
5 which the clear record of history shows to be
6 warranted. Their fear was that there is a natural
7 tendency for civil rulers, and that includes you,
8 ladies and gentlemen, to enslave the very people whose
9 freedom they are trusted by God to protect. This is
10 why we have a constitutional government in America.
11 It is why our forefathers attached a Bill of Rights
12 to the United States Constitution and it is why the
13 Commonwealth of Pennsylvania has a written Constitut-
14 ion to protect our God-given rights against the
15 tendency of the legislature and the governor to
16 **abrogate** undelegated powers to themselves.

17 The Second Amendment of the United States
18 Constitution and our own Constitution of Pennsylvania
19 in Article I, Section 21, which states, the right
20 of the citizens to bear arms in defense of themselves
21 and the state shall not be questioned, work together
22 to constitute citizens last line of defense against
23 the kind of unconstitutional, tyrannical government
24 that has been growing in America during most of the
25 Twentieth Century, and especially during the last

1 30 years or so. Those are strong words. They come
2 from my heart. Anyone connected with government
3 should have their eyes open enough to realize that we
4 are having an unconstitutional concentration of power
5 at our national level and the federal government
6 is buying the states off by inducements and so
7 forth to gain their cooperation and also at the
8 same time, our current administration and prior
9 administrations, both Democratic as well as Republican,
10 have been moving steadily toward doing away with
11 national sovereignty and turning us over to a one
12 world government and the gun controls that are being
13 passed are all related to this. We should recognize
14 this.

15 I will continue. We have not only observed
16 the frightening growth of an overly powerful
17 centralized government at the national level, along
18 with increased use of fear induced swat team
19 operations at all levels of government which now
20 openly assaults American citizens, even in their
21 own homes. But as I said before, we see this
22 concentration of moving from a centralized control of
23 the national level to the same thing at the inter-
24 national level.

25 I appeal to the Pennsylvania State

1 Legislature and Governor to adhere to their oath
2 of office to uphold our State and National
3 Constitutions and thereby to protect the people of
4 Pennsylvania from the enemies of freedom. I ask you
5 to "stand in the gap" and serve as an effective
6 guardian for Constitutional government. This is
7 your right and God-given duty to serve as the inter-
8 mediary between the growing tyranny at the national
9 level and the citizens of the State who God has put
10 you in a position to protect.

11 The full freedom of citizens to buy, own,
12 use and sell firearms is your own best assurance,
13 as legislators, that the people of our State will be
14 there in time of need to help you restore lost
15 freedoms and to preserve freedom in the future.
16 Thank you for the opportunity to talk to you. I
17 am open to any questions. I respect you all as
18 legislators. I know you have got a hard job but as
19 my friend here sitting to the left of me said, stick
20 to the Constitution. That is your oath.

21 CHAIRMAN GANNON: /Representative Forcier?

22 MR. SISSON: I'd like to add one thing. It
23 was in one of our local papers. It was too late to
24 put in mine. I think an expression I like, we, the
25 people. We, the people, have to do more. One thing

1 we can do more of that I saw in this newspaper
2 article just yesterday out of Cranesville,
3 Pennsylvania, Tracey Seyfert's area. We probably
4 are going to have to do more to avoid the really
5 high cost of crime, whether it's State Police expenses,
6 crime expenses, through something tied in with
7 neighborhood crime watch. That is someplace that
8 you and I, without spending any tax money, can do
9 something that may be of some help in our own
10 neighborhood. We all do things like that. Maybe
11 through a state endorsed program, it's a place where
12 we can all contribute without it costing us hopefully
13 too much money.

14 REPRESENTATIVE FORCIER: Thank you, Mr.
15 Chairman, I really appreciate you forcing the issue
16 of constitutionality because that is something
17 oftentimes on the House floor we talk about how very
18 important it is, something either is or is not
19 constitutional and I really appreciate your stand.
20 That's exactly what we legislators are trying to get
21 through also. John Schaeffer (phonetic) submitted
22 for the record some information. He's still here
23 and he's not only one of my constituents but a very
24 good friend and he also is firmly believing in the
25 Constitution and very much what you both talked about.

1 But at the very end, he said, if you are considering
2 laws or regulations which question the citizen's
3 right to bear arms without amending the Constitution,
4 you are in violation of your oath of office and
5 should be removed. We have heard that more than once
6 today. So, I think that is a very good issue that
7 you brought up and I want to thank you very much for
8 your testimony.

9 MR. ROSE: Thank you. If I may, one suggest-
10 ion, I know you are under tremendous pressures to
11 pass much legislation. I would urge you, don't ever
12 vote for anything that you have not fully read and
13 understood yourself. Be loyal to the people and
14 go like this (indicating). If in doubt, vote no.

15 CHAIRMAN GANNON: Thank you, Mr. Rose.

16 MR. SISSON: My last comment. One of the
17 saddest, scariest things I have had anybody say to
18 me in my life was said about six months ago by a man
19 from Conneautville, PA who fought in World War II.
20 He said it to me, the way America is going now, I
21 don't think I would fight for it again.

22 CHAIRMAN GANNON: Thank you.

23 (The following was submitted for inclusion
24 into the record.)
25

1 II. State and Federal Relations:

2 During the 20th Century there has been a
3 gross and constant arrogation of unconstitu-
4 tional powers by the federal government. The
5 clear provisions of the 9th and 10th Amendments
6 to the Constitution of the United States of
7 America have been ignored and overridden by
8 acts of the U.S. Congress and by President
9 Executive Orders. Some of these unconstitutional
10 acts have been achieved in spite of sporadic
11 opposition by the States, but other incursions
12 have occurred with the obvious complicity of
13 the States.

14 One example of this is the recent require-
15 ment of the Commonwealth of Pennsylvania to
16 force auto vehicle drivers to provide their
17 Social Security number to get or renew their
18 driver's license. This was done in cooperation
19 with the federal government when the U. S.
20 Congress passed legislation that awarded States
21 funds if they would cooperate with the federal
22 government's plans to mandate national identity
23 cards for citizens. Only totalitarian nations
24 require citizens to have and carry national
25 ID cards! Thus the Legislature and Governor

1 Ridge of our Commonwealth have clearly raped
2 the people of their right to "be secure in
3 their persons, houses, papers and possessions
4 from unreasonable searches and seizures"
5 (when and if we are stopped and required to
6 show an ID card). The members of the Legislature
7 and the Governor have thus engaged in collusion
8 with the federal government to foster tyranny
9 at the national level. You in the Legislature
10 have thus failed to live up to your oath to
11 uphold and defend the constitutions of the
12 Commonwealth of Pennsylvania and of these
13 United States of America!

14 I, therefore, urge you to re-read the
15 9th and 10th Amendments of the Constitution of
16 the United States of America and to do your
17 duty to uphold them. Protect us, the citizens
18 of Pennsylvania, from the growing tyranny at
19 the national and State levels of government.

20 One other item concerning the issuance of
21 drivers' licenses warrants mentioning: The
22 Pennsylvania Department of Transportation has
23 been secretly selling private information about
24 citizens to various private companies and also
25 sharing information about citizens (without

1 their knowledge) with federal agencies.
2 This is wrong! It is a betrayal of citizens'
3 trust in you and an invasion of our personal
4 privacy! It makes the State of Pennsylvania to
5 be an enemy of the very citizens whom the
6 State is mandated by the people to protect.
7 Stop this offensive practice! It leads to
8 tyranny and oppression of the people!

9 Finally, relative to the issue of
10 federal/State relations, I strongly recommend
11 that we try to attend our Pennsylvania Constitution
12 with the same words used in the October, 1998,
13 Amendment of the Constitution of the State of
14 Louisiana, thus:

15 The people of the Commonwealth of
16 Pennsylvania have the sole and exclusive
17 right of governing themselves as a free
18 and sovereign State; and do, and forever
19 hereafter shall, exercise and enjoy
20 every power, jurisdiction, and right
21 pertaining thereto, which is not, or
22 may not hereafter be, by them expressly
23 delegated to the United States in
24 Congress assembled.

25 Over the years, the federal government,

1 which was created by the joint compact of the
2 States, acting as a sovereign political entities,
3 has arrogated unconstitutional powers to
4 itself. In so doing it has effectively,
5 but wrongly, made the States to be like
6 independent political subdivisions of it.
7 Don't you think it is high time that the people
8 of the various States and their Legislators re-
9 stored the proper legal relationship, which
10 recognizes that the federal government is the
11 political creature of the sovereign States,
12 and not the other way around?

13 Lastly, relative to this section, efforts
14 should be made to rescind the 17th Amendment
15 to the Constitution of the United States of
16 America, thus restoring control of the U. S.
17 Senate to the Legislatures of the States.
18 This would restore the original plan of
19 balanced power in the U.S. Congress designed
20 by our Founding Fathers to have the people
21 represented in the U. S. House of Representatives
22 and the States, as political units, in the
23 U.S. Senate. Loss of this original balance
24 of power has, unfortunately, opened up the
25 Senate election process to gross forms of

1 demagoguery. It also turned the various States,
2 as political entities, into ineffective
3 political eunuchs. If we have any hope of
4 restoring the States to their proper role in
5 federal/State relations, the U. S. Senate
6 must be made to represent the States instead
7 of the people, who are already represented in
8 the U. S. House of Representatives. Doing
9 this will ensure the preservations of our
10 American Republic and stop the growth of
11 centralized power in Washington, D.C.

12
13 III. Comprehensive Annual Financial Reports:

14 The federal government, the 50 States
15 and their various political subdivisions are
16 all guilty of subterfuge by purposely mis-
17 leading the people about their financial incomes
18 and expenditures. And the main news media have
19 colluded with local, State, and federal politicians
20 and bureaucrats by failing to expose this
21 travesty to tax-paying citizens. Even some
22 legislators at the State and national levels
23 may be unaware of this planned duplicity.

24 In short, these levels of government
25 have been keeping two sets of financial records:

1 1) the various budgets which show all
2 expenditures but only some of the income, which
3 is made public and effectively (but incorrectly)
4 used to convince citizens of the "need" to
5 increase taxes, fees, and other means of dipping
6 into citizens' wallets.

7 2) The other set of financial records kept
8 by these various levels of civil government is
9 the carefully guarded C.A.F.R. (Comprehensive
10 Annual Financial Report), about which the
11 general populace is completely unaware.
12 This carefully sequestered report includes all
13 of the various sources of income as well as the
14 multi-billions of stock, bonds, and other
15 financial assets held by the federal government,
16 the States, and by the various State subdivisions
17 and agencies. A careful reading of the C.A.F.R.
18 (I'm using the State of New Jersey as an example,
19 but the same holds true for Pennsylvania) shows
20 billions and billions of dollars of income and
21 assets that are not contained in the general
22 budget. The income and assets are not revealed
23 to the **people** but could be used for expenditures
24 rather than raising taxes and fees, or they
25 could be returned to citizens.

1 There is no need for civil rulers to have
2 secret access to and control of such vast sums
3 of wealth. In matter of fact, it is downright
4 dangerous to the liberties of the people to
5 allow control of such wealth to rest in the
6 hands of our politicians and appointed bureaucrats!
7 I urge you to make the existence (and meaning) of
8 the Comprehensive Annual Financial Report widely
9 available to the people of Pennsylvania; and
10 I, as a citizen of the Commonwealth of Pennsylvania,
11 hereby make a formal request that you have a
12 copy of Pennsylvania's latest C.A.F.R. sent
13 to me for review.

14 In closing, members of the House Judiciary
15 Committee, I want to thank you for the
16 opportunity you have afforded me and others in
17 expressing our concerns and desires regarding
18 the governing of the citizens of the
19 Commonwealth of Pennsylvania.

20 I am enclosing a recent book I authored,
21 entitled Reclaiming the American Dream by
22 Reconstructing the American Republic. I urge
23 you to read it and then to adhere to your oath
24 of office to defend the Constitutions of the
25 Commonwealth of Pennsylvania and of the United

1 States of America, against all enemies, both
2 foreign and domestic.

3 In the Name of Christ and His Service, for
4 the cause of freedom,
5 Thomas G. Rose

7 EXCERPTS FROM a GUN-CONTROL COURT CASE

8 Presented to the
9 Full House Judiciary Committee of
10 The Commonwealth of Pennsylvania -
11 Public Hearing of Existing Firearms Laws
12 at

13 Cambridge Springs, Pennsylvania,

14 August 25, 1999

15 by TOM ROSE

17 U.S. DISTRICT COURT
18 for
19 NORTHERN DISTRICT OF TEXAS

20 San Angelo Division

21 U.S. v. Timothy Joe Emerson, Criminal Action
22 No. 6:98-CR-103-C

23 Background:

24 p. 2 - "...Emerson was indicted for possession
25 of a firearm while being under a restraining
order, in violation of 18 U.S.C. 922(g)(8) ('the Act')"

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1 p. 3 - "Emerson argues that 18 U.S.C.
2 922(g)(8) is an unconstitutional exercise of
3 congressional power under the Commerce Clause
4 and the Second, Fifth, and Tenth Amendments
5 to the United States Constitution."

6 p. 3 - "...Emerson cannot sustain a Motion
7 to Dismiss under a Commerce Clause challenge."

8 p. 4 - "...the Government claimed it is 'well
9 settled' that the Second Amendment creates a
10 right held by the States and does not protect
11 an individual right to bear arms."

12 Textual Analysis:

13 pp. 5-7 - "A textual analysis of the Second
14 Amendment supports an individual right to bear
15 arms..."

16 "The amendment reads "[a] well regulated
17 militia, being necessary to the security of a
18 free State, the right of the people to keep and
19 bear arms, shall not be infringed." (Underlining
20 added here and below.)

21 "...The plain language of the amendment,
22 without attenuate inferences therefrom, shows
23 that the function of the subordinate clause was
24 not to qualify the right, but instead to show
25 why it must be protected. Id. The right exists

1 independent of the existence of the militia.

2 If this right were not protected, the existence
3 of the militia, and consequently the security of
4 the state, would be jeopardized. Id. at 201."

5 "The Supreme Court (of the U.S.) recently
6 interpreted the text of the Second Amendment and
7 noted that the phrase 'the people' in the Second
8 Amendment has the same meaning in both the Preamble
9 to the Constitution and in the First, Fourth, Fifth,
10 and Ninth Amendments. United States v. Verdugo-
11 Urquidez, 494 U.S., 259, 265 (1990)."

12 "...The Court's construction of 'the people'
13 as used in the Second Amendment supports a holding
14 that the right to keep and bear arms is a
15 personal right retained by the people, as opposed
16 to a collective right held by the States. Thus,
17 a textual analysis of the Second Amendment clearly
18 declares a substantive right to bear arms
19 recognized in the people of the United States."

20 Historical Analysis:

21 p. 11 - "The individual right to bear arms,
22 a right recognized in both England and the
23 colonies, was a crucial factor in the colonists'
24 victory over the British army in the Revolutionary
25 War. Without that individual right, the colonists

1 never could have won the Revolutionary War. Without
2 that individual right, the colonists never could
3 have won the Revolutionary War. After declaring
4 independence from England and establishing a new
5 government through the Constitution, the American
6 founders sought to codify the individual right to
7 bear arms, as did their forebears (sic) one
8 hundred years earlier in the English Bill of Rights."

9 p. 12 - "Noah Webster similarly argued:"

10 Before a standing army can rule the
11 people must be disarmed, as they are
12 in almost every kingdom in Europe.
13 The supreme power in America cannot
14 enforce unjust laws by the **sword**, because
15 the whole body of the people are armed,
16 and constitute a force superior to any
17 band of regular troops that can be, on
18 any pretence (sic), raised in the United
19 States.

20 -"As 'M.T. Cicero' wrote to 'The Citizens of America'."

21 No free government was ever founded, or ever
22 preserved its liberty, without uniting the
23 characters of the citizen and the soldier in those
24 destined for the defence (sic) of the state...
25 Such are a well regulated militia, composed of

1 the freeholders, citizen and husbandman, who
2 take up arms to preserve their property, as
3 individuals, and their rights as freemen.

4 pp 12-13 - "George Mason argued the importance
5 of the militia and right to bear arms by reminding
6 his compatriots of England's efforts to 'disarm
7 the people; that it was the best and most effectual
8 way to enslave them...by totally disusing and
9 neglecting the militia.' Id. at 74 (citing 3
10 JONATHAN ELLIOT, THE DEBATES IN THE SEVERAL STATE
11 CONVENTIONS ON THE ADOPTIONS OF THE FEDERAL
12 CONSTITUTION 380 (2d ed. 1863)). He also clari-
13 fied that under prevailing practice the militia
14 included all people, rich and poor. 'Who are the
15 militia? They consist now of the whole people,
16 except a few public officers.' Id. (citing 3
17 ELLIOT at 425-26). Because all were members of
18 the militia, all enjoyed the right to individually
19 bear arms to serve therein."

20 "The framers thought the personal right to
21 bear arms to be a paramount right by which other
22 rights could be protected."

23 "The framers also saw an armed populace as
24 the safeguard of religious liberty." [Here the
25 Court cites a speech by Zachariah Johnson to the

1 Virginia convention. (It is not included due
2 to the constraints of space and time.)

3 pp. 13-14 - "Patrick Henry, also in the
4 Virginia convention, eloquently argued for the
5 dual rights to arms and resistance into oppression:
6 'Guard with jealous attention the public liberty.
7 Suspect everyone who approaches that jewel.
8 Unfortunately, nothing will preserve it but down-
9 right force. Whenever you give up that force,
10 you are ruined.' HALBROOK, supra at 73 (citing
11 3 ELLIOT at 45). Thus the federalists agreed
12 with Blackstone that an armed populace was the
13 ultimate check on tyranny. MALCOM, supra at 157."

14 p. 14 - "...In the Federalist No. 46, he
15 [James Madison] confidently contrasted the federal
16 government of the United States to the European
17 despotisms which he contemptuously described as
18 'afraid to trust the people with arms.' He
19 assured his fellow citizens that they need never
20 fear their government because of 'the advantage
21 of being armed....Many years later, Madison
22 restated the sentiments of The Federalist No. 46
23 by declaring: '[A] government resting on a
24 minority is an aristocracy, not a Republic, and
25 could not be safe with a numerical and physical

1 force against it, without a standing army,
2 an enslaved press and a disarmed populace.'Id.
3 (quoting RALPH L. KETCHAM, JAMES MADISON: A
4 BIOGRAPHY 64,640(1971))."

5 p. 14- "...Anti-Federalist Patrick Henry was
6 unequivocal on the individual right to bear arms.
7 During the Virginia ratification convention, he
8 objected to the Constitution's inclusion of
9 clauses specifically authorizing a standing army
10 and giving the federal government control of the
11 militia. He also objected to the omission of a
12 clause forbidding disarmament of the individual
13 citizen: 'The great object is that every man be
14 armed....[e]veryone who is able may have a gun.'
15 Id. at 229 (citing 3 J ELLIOT, supra, at 45)."

16 p. 15 - "...Samuel Adams proposed that the
17 Constitution"

18 [B]e never construed to authorize Congress
19 to infringe the just liberty of the press, or
20 the rights of conscience; or to prevent the
21 people of the United States, who are peaceable
22 citizens, from keeping their own arms; or to raise
23 standing armies, unless when necessary for the
24 defence (sic) of the United States, or of
25 some one or more of them; or to prevent the people

1 from petitioning, in a peaceable and orderly
2 manner, the federal legislature, for a redress
3 of their grievances; or to subject the people
4 to unreasonable searches and seizures.

5 pp. 16-17 - "When the first Congress convened
6 on March 4, 1789, James Madison, who had
7 previously advocated passage of the Constitution
8 without amendments, now pressed his colleagues
9 to act on a bill of rights....His version of what
10 would later be the second amendment read."

11 The right of the people to keep and
12 bear arms shall not be infringed; a
13 well armed, and well regulated militia
14 being the best security of a free country;
15 but no person religiously scrupulous of
16 bearing arms, shall be compelled to
17 render military service in person.

18 "That Madison envisioned a personal right
19 to bear arms, rather than merely a right for the
20 states to organize militias, is evident from his
21 desired placement of the right in the Constitution.
22 Madison's original plan was to designate the
23 amendments as inserts between specific sections
24 of the existing Constitution, rather than as
25 separate amendments added to the end of the

1 document. Hardy (sic), supra at 609 (citing 1
2 ANNALS OF CONGRESS 707-08 (Joseph Gales, ed.,
3 1789)). Madison did not designate the right to
4 keep and bear arms as a limitation of the militia
5 clause of Section 8 of Article 1. Rather, he
6 placed it as part of a group of provisions (with
7 freedom of speech and the press) to be inserted in
8 'Article 1st, Section 9, between Clauses 3 and 4,'
9 Id. (quoting 5 DOCUMENTARY HISTORY OF THE
10 CONSTITUTION OF THE UNITED STATES OF AMERICA 186-87
11 (1905)). Such a designation would have placed
12 this right immediately following the few individual
13 rights protected in the original Constitution,
14 dealing with the suspension of bills of attainder,
15 habeas corpus, and ex post facto laws. Thus
16 Madison aligned the right to bear arms with the
17 other individual rights of freedom of religion
18 and the press, rather than with congressional
19 power to regulate the militia. Id. This suggested
20 placement of the Second Amendment reflected
21 recognition of an individual right, rather than
22 a right dependent upon the existence of the militia."

23 p. 18 - "...Thus the American Bill of Rights,
24 like the English Bill of Rights, recognized the
25 individual's right to have weapons for his own

1 defense, rather than for collective defense. Id.

2 In this form, Congress approved the Second Amendment
3 and sent the Bill of Rights to the state legis-
4 latures for ratification. Id."

5 pp. 18-19 - "In his influential Commentaries
6 on the Constitution, Joseph Story emphasized
7 the importance of the Second Amendment. He
8 described the militia as the 'natural defence
9 (sic) of a free country' not only 'against sudden
10 foreign invasions' and 'domestic insurrections,'
11 but also against 'domestic usurpations of power
12 by rulers.' He went on to state that [t]he right
13 of the citizens to keep and bear arms has justly
14 been considered as the palladium of the liberties
15 of a republic; since it offers a strong moral
16 check against the usurpation and arbitrary power
17 of rulers; and will generally, even if these are
18 successful in the first instance, enable the
19 people to resist and triumph over them.' 3 J.
20 Story, Commentaries 1890, p. 746 (1833)."

21 p. 19 - "The structure of the Second Amendment
22 within the Bill of Rights proves that the right
23 to bear arms is an individual right, rather than a
24 collective one. The collective rights' idea
25 that the Second Amendment can only be viewed in

1 terms of state or federal power 'ignores the
2 implication that might be drawn from the
3 Second, Ninth, and Tenth Amendments: the
4 citizenry itself can be viewed as an important
5 third component of republican governance as
6 far as it stands ready to defend republican liberty
7 against the depredations of the other two
8 structures, however futile that might appear as
9 a practical matter.' Sanford Levinson, The
10 Embarrassing Second Amendment, 99 YALE L. J. 637,
11 651 (1989)."

12 "...Of the first ten amendments to the
13 Constitution, only the Tenth concerns itself
14 with the rights of the states, and refers to
15 such rights in addition to, not instead of,
16 individual rights. Id. Thus the structure of
17 the Second Amendment, viewed in the context of
18 the entire Bill of Rights, evinces an intent to
19 recognize an individual right retained by the
20 people."

21 Conclusion:

22 p. 33 - "Because 18 U.S.C. 922(g)(8) violates
23 the Second and Fifth Amendments to the United
24 States Constitution, the Court GRANTS Emerson's
25 Motion to Dismiss the Indictment. A judgment

1 shall be entered in conformity with this
2 opinion."

3 SO ORDERED.

4 Dated March 30, 1999.

5 Sam R. Cummings

6 United States District Judge

7 Tom Rose is retired professor of economics, Grove
8 City College, Pennsylvania. He is author of seven
9 books and hundreds of articles dealing with
10 economic and political issues. His articles have
11 regularly appeared in The Christian Statesman,
12 published by the National Reform Association,
13 Pittsburgh, PA; The Chalcedon Report, published
14 by the Chalcedon Foundation, Vallecito, CA;
15 The Freeman, published by the Foundation for
16 Economic Education, Irvington-on-Hudson, NY;
17 Christian Economics, published by the Christian
18 Freedom Foundation, Buena Park, CA; and in
19 many other publications. For ten years he wrote
20 a weekly syndicated column published by newspapers
21 such as: The Santa Ana Register (CA), The
22 Indianapolis Morning News (IN), The Manchester
23 Union Leader (NH), The Gazette-Telegraph (CO),
24 The Odessa American (TX), and others. He and his
25 wife, Ruth, raise registered Barzona cattle on a

1 farm near Mercer, PA, where they also write and
2 publish economic textbooks for use by Christian
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4 Rose's latest book is Reclaiming the American Dream
5 by Reconstructing the American Republic, published
6 by American Enterprise Publications, 177 N. Spring
7 Road, Mercer, PA 16137. Phone: 724-748-3726;
8 Fax: 724-748-5373.

11 HIDDEN FACETS #1:

12 LITTLETON, COLORADO

13 And for this cause God shall
14 send them strong delusion,
15 that they should believe a lie:
16 II Thessalonians 2:11

16 News of the tragic high school massacre
17 that occurred in Littleton, Colorado, came to
18 my attention while my wife and I were traveling
19 to a speaking engagement in Boise, Idaho. As we
20 **listen** to the news media "spin" and the "spin" that
21 emanated from the White House, I was reminded
22 of two things.

23 First, I thought of how a jeweler meticulous-
24 ly works on cutting a gem so that the desired
25 sparkles will spring forth from the hidden facets

1 which lie below its setting. People marvel at
2 how a gem glistens, but they are generally unaware
3 of the careful honing of facets that has been
4 done to make a particular gem glisten the way it
5 does.

6 Like the facets of the gem I envisioned,
7 there are a number of hidden facets about the
8 Littleton, Colorado, tragedy, as well as about
9 other recent school massacres, that freedom-
10 loving citizens should keep in mind. A general
11 failure to consider these hidden facets can
12 contribute to a "public mind set" that can
13 mentally and spiritually condition the American
14 public to be led astray by behind-the-scene forces
15 who are eager to use any real or concocted crisis
16 as a means of enslaving them.

17 Second, I remembered a quotation attributed
18 to President Franklin D. Roosevelt, "If it happens
19 in politics, you can be sure it was planned that
20 way!" I mention this quote because President
21 William J. Clinton is a long-time admirer of F.D.R.,
22 who was himself a master politician in his own
23 time. He was famous for his ability to mentally
24 and psychologically "massage" the American public
25 in the 1930s to convince them to go along with his

1 unconstitutional statis policies. There are
2 people who still remember his famous (infamous?)
3 "fireside chats." But times have changed, and
4 progress has been made over the decades in the
5 ability of politicians to psychologically manipu-
6 late and condition the public mind. Also great
7 advances have been made in electronics and the
8 techniques of psychological manipulation which
9 allow hidden forces to apply their advanced
10 "expertise" to condition individuals without
11 their even being aware that they have been made
12 into "ticking time bombs." Anyone who has studied
13 Mr. Clinton and compared him with F.D.R. cannot be
14 unaware that the statist-minded President of today
15 has far, far outdistanced that long-dead master
16 politician of the 1930s and 1940s. President
17 Clinton greatly surpasses F.D.R. in his smooth
18 chicanery and manipulative ability to turn almost
19 any event into a political "trump card."

20 HIDDEN FACETS WE SHOULD CONSIDER

21 What, then, are some of the hidden facts we
22 should consider about the Littleton tragedy and
23 other recent acts of violence? Here are some that
24 come to mind:

25 1) The two teenagers who did the killing were

1 open homosexuals who were angry at the "straight
2 students" who avoided them and derided their deviant
3 lifestyle. This underlying truth was briefly
4 mentioned in an early local news report, but it
5 was quickly squelched by the national news media.
6 Nor was this fact even once mentioned by President
7 Clinton, who was quick to pounce upon the tragedy
8 and opportunistically undermine public confidence
9 in the Second Amendment of the Constitution of the
10 United States of America. He did this as a means
11 to further his own perverse agenda of disarming
12 American citizens. Question: Why should a
13 President be so minded to take every opportunity to
14 disarm citizens? He and his anti-gun cohorts
15 know from long experience that disarming citizens
16 does not really eliminate crime. Rather, he and
17 they know that it only serves to foster more
18 widespread incidents of violence which, in
19 turn, generate a public frenzy to call on the
20 civil authorities to impose totalitarian measures
21 to "protect the public." Throughout history
22 tyrants have used the means of inciting a general
23 hysteria of terror to arrogate power to themselves.
24 In short, Mr. Clinton has used deception to make
25 political pawns of many Americans.

1 2) It is very unlikely that the massacres at
2 Littleton and other schools would have occurred at
3 all if school guards, administrators, and teachers
4 were allowed to practice their constitutional right
5 to carry arms. Indeed, a prior school shooting
6 at Jonesboro, Arkansas, was cut short with less
7 loss of life because one of the school adminis-
8 trators had, contrary to present unconstitutional
9 legislation, ready access to a handgun. After the
10 Littleton tragedy some teachers at Columbine
11 High School did call for the right to be armed so
12 that they would be in a position to stop such
13 mayhem. This shows that ordinary citizens have a
14 better grasp of how to prevent bloodshed than the
15 anti-gun people in Washington, D.C.

16 Recent unconstitutional federal legislation
17 has created a 1,000 foot "gun-free" area around
18 every school in the country. This has simply
19 served as an open invitation for evil-minded
20 people to commit future atrocities with a built-in
21 guarantee that no one on the premises will be
22 able to prevent them from the malicious shedding
23 of blood. All this under the specious cry of
24 "protecting the children!" This same perverse
25 anti-gun mentality has served to make the city

1 streets and homes of America less safe than they
2 were 50 years ago. It is a maxim that thieves
3 and robbers proceed with extremely great caution
4 in their illicit actions when they know that they
5 are likely to be confronted by arms-bearing
6 citizens! The news media did report that the
7 young killers had planned their murderous escapade
8 at Littleton for over a year; yet the media "spin"
9 was to focus on the lie that additional federal
10 laws to keep guns out of the hands of law-abiding
11 citizens will reduce the ability of evil-minded
12 miscreants to secure arms.

13 In truth, the teenage killers broke several
14 existing gun-control laws in order to commit their
15 foul deed. More anti-gun laws have never and will
16 never prevent such sad occurrences. But recent
17 studies have proven beyond a doubt that incidents
18 of violence, with or without guns, are greatly
19 deterred when law-abiding citizens are not inhibited
20 from practicing their right of self-defense which
21 is supposed to be guaranteed by the Second
22 Amendment.

23 3) Ever since tax-supported education gradually
24 gained its unfair ascendancy over private Christian
25 education in these United States, by following the

1 bad example of Massachusetts under the leadership
2 of Christ-hating Horace Mann in the late 1830s,
3 education in America has been on a downward slide,
4 both morally and culturally. With each succeeding
5 generation, the wholesome cultural-cleansing
6 emphasis of biblical Christianity in the tax-support-
7 ed sector of education has steadily dwindled until,
8 in recent generations, it has actually become
9 morally and culturally perverse.

10 In our recent lecture trip I was invited to
11 speak to the adult Sunday school of a large church
12 in Boise, Idaho. I warned the adults in attendance
13 that they should take their children out of tax-
14 supported schools as soon as possible, because the
15 end result of tax-supported education is to drive
16 a spiritual and generational wedge between children
17 and their parents.

18 The growing lawlessness in our society, in
19 general and in tax-supported schools especially,
20 is the direct result of each successive generation
21 being taught that the "human animal" is nothing
22 more than a chance development on the ladder of
23 organic evolution. This humanistic idea has more
24 than a chance development on the ladder of organic
25 evolution. This humanistic idea has culminated in

1 the recently legislated "Goals 2000" and "Outcome-
2 Based Education" programs that are being strenuous-
3 ly pushed by tax-supported educators at the
4 national, state and local levels. Let me repeat
5 a truth that I have been preaching for years and
6 years: Tax-supported education is America's most
7 widespread practice of socialism in action. It is
8 virtually impossible to teach young people the
9 ideals of biblical self-responsibility and
10 individual freedom in such an amoral statist
11 atmosphere. Parents who send their offspring to
12 be miseducated in such a humanistically oriented
13 and anti-Christian system are, in effect, throwing
14 their children to the wolves! And children are
15 the most precious possession God has given us!

16 Indeed, if man is truly a chance development
17 of organic evolution, as tax-supported schools
18 teach, then there is no God. Nor is there any
19 biblically mandated moral right or wrong. So why
20 should tax-supported educators complain when some
21 of their mental progeny commit mass murder and
22 mayhem? Such acts are nothing more than the
23 logical outcome of humanistically oriented mis-
24 education! No God! No moral right or wrong!
25 Why not murder other teenagers and adults if it's

1 acceptable to murder unborn babies?

2 I can remember when, as a young boy, I made
3 the sad transition from a private religious grade
4 school that based teaching on biblical morality
5 to a tax-supported high school. There I was intro-
6 duced to the morally corrupting idea that man is
7 the result of a biological evolutionary process.
8 That lie helped launch me into an era of lawless
9 thinking which didn't end until exposure of the
10 gospel of Christ ended in my salvation. The depth
11 of my lawlessness in external actions was largely
12 held in check because of the prior moral upbringing
13 I was exposed to at home, school, and church;
14 though the internal mental stress was quite strong.
15 But young people today who attend tax-supported
16 schools often lack the moral stabilizing influ-
17 ences that held their parents and grandparents in
18 check in prior generations. Does this help explain
19 the increasing violent episodes in tax-supported
20 schools today? I think it does. Truly, parents
21 who leave their children under the inherently
22 evil influence of tax-supported education are
23 playing "Russian roulette" with their children's
24 future!

25 4) Guns don't kill people; nor do bricks,

1 stones, clubs, knives, feet, hands or cars! It is
2 people who use these items and appendages to kill
3 others, either intentionally or by accident. There
4 is no way that outlawing objects can result in
5 fewer deaths. Preposterous! Evil-minded persons
6 can always find some object or another with which
7 to perpetrate evil. What we need to do is to
8 place the blame where it belongs, on the perpetra-
9 tors of crime, not on the articles that are used.
10 That is one facet of the solution. Another facet
11 of the solution is to guarantee to each citizen,
12 as a free and self-responsible individual, the
13 right to have the ready means at hand to defend
14 himself against lawless attackers. (For "The heart
15 is deceitful above all things, and desperately
16 wicked, who can know it?" Jer. 17.9) A third and
17 very important facet to eliminate mayhem in the
18 social sphere is to teach young people the bibli-
19 cal basis of self-government which produces a
20 wholesome control of one's internal passions.
21 ("...be ye holy; for I am the Lord your God. And
22 ye shall keep my statutes, and to them: I am the
23 Lord which sanctify you," Lev. 20:7 & 8.)

24 And, lest we forget, the right of citizens to
25 defend themselves, in this age of expanding

1 totalitarian civil government, must necessarily
2 include self defense against the now lawless "Swat
3 Team" agencies of civil government. Government
4 agencies that have such lawless "Swat Teams" are
5 the Drug Enforcement Agency (DEA), The Federal
6 Bureau of Investigation (FBI), the Bureau of
7 Alcohol, Tobacco, and Firearms (BATF), the Food
8 and Drug Administration (FDA), and others,
9 including the "Multi-Task Force" military teams
10 which now abound in our once free Republic. Many
11 members of the public have been mentally condition-
12 ed to accept such "Swat Team" activity as a
13 normal part of living in a free society. Nothing
14 can be further from the truth! Indeed, the very
15 existence of "Swat Teams" is clear evidence that
16 America as a country has succumbed to outright
17 government totalitarianism!

18 5) One very crucial hidden facet about the
19 Littleton massacre is the perverse impact of
20 Outcome-Based Education (OBE). It serves as
21 inescapable evidence that OBE is absolutely
22 perverse to historic American values, as well as
23 being quite deadly in its effect. The Reverend
24 Phil Vollman writes:

25 The government (public) schools are
wicked, social-gathering laboratories!

1 Their goal is to take your child and
2 make him/her over into the image of
3 John Dewey, the founder of modern
4 education. They enter school at
5 kindergarten loving their parents and
6 fearing God. They graduate twelve
7 years later as abortion-loving, sodomy-
8 loving, earth-worshipping, God-hating
9 socialists!

10 If the Christians in this nation would
11 just remove their children from these
12 wicked institutions, they would collapse
13 overnight....¹

14 A recent editorial in The Rocky Mountain
15 News (Denver, Colorado) was entitled "The Signs
16 Were All There." According to Anne Huff, the
17 editorial holds clues about what may have been
18 transpiring at Columbine High School.²

19 It was humanistic miseducation that set the
20 stage for the killing spree of Eric Harris and
21 Dylan Klebold on April 20, 1999. These misguided,

22
23 ¹E-mail from Rev. Phil Vollman, "OBE and
 Littleton," 13 May 1999.

24 ²Anne Huff, "How OBE Played a Part in Littleton
25 Tragedy," Times Examiner, 12 May 1999. E-mail
 from Rev. Phil Vollman.

1 hate-filled homosexual teenagers had produced
2 a video of their planned rampage for a class
3 assignment in the fall of 1998. "It starred
4 themselves firing weapons as they walked down
5 a hallway. Apparently other videos with similar
6 themes were found to be acceptable classroom
7 projects as well," stated Anne Huff.³

8 Also, as early as 1990, a Columbine High
9 School student, Tara Becker, explained that the
10 topic of death was integrated into many of her
11 courses. She stated that death was made to look so
12 glamorous that living was difficult, and that
13 reincarnation would solve students' problems.
14 Students were told they would always return after
15 death in a much better life-form. After one
16 student at Columbine did commit suicide, class
17 assignments were given for students to write their
18 own obituaries and suicide notes. They were told
19 to trust their own judgment in choosing whether
20 to live or die.⁴

21 For one of her classes Tara Becker helped

22
23 ³Ibid.

24 ⁴Ibid.

1 compile a booklet entitled Masquerade. It was
2 full of subliminal pictures and prose. She had
3 been taught to use hidden, double-meaning sub-
4 liminals. As a result, she devoted so much time
5 and attention to the subject of death that she
6 had even attempted suicide.⁵ Is it any wonder,
7 given the years that Columbine students were so
8 mentally and psychologically conditioned about
9 the "glory of death," that an incident of mass
10 murder finally reared its ugly head at Littleton?
11 The State of Colorado has for many years promoted
12 an OBE program of death and dying through tax-
13 supported schools with the knowing support and
14 acquiescence of local school boards and the
15 National Education Association (NEA). This
16 nefarious program was carried out insidiously
17 without the knowledge or permission of parents,
18 who are forced to support this perverse "education-
19 al system" with their hard-earned tax dollars.
20 Free-market education (i.e., voluntary, parent-
21 controlled education) would never have generated
22 such a tragedy! Don't blame guns for this travesty!

23 It is also reported that Jefferson County,
24 Colorado, where Columbine High School is located,

25 ⁵Ibid.

1 appointed a Universalist minister as chairman
2 of that county's Youth Suicide Prevention Task
3 Force. He lectures on modern witchcraft and
4 advocates the revival of pre-Christian goddess-
5 worship. Anne Huff writes:

6 Columbine has the symptoms of a
7 school involved in transformational
8 OBE, a school embracing transformational
9 New Age thought: Tolerance of alter-
10 native lifestyles, tolerance of videos
11 depicting death and violence, tolerance
12 of those obsessed with death and tolerance
13 of those who are intolerant of those who
14 claim to know the only way to eternal
15 life -- a belief in the one and only
16 living God.⁶

17 This type of perverse miseducation is the
18 final culmination of the secular humanistic
19 "education" that started in America with Horace
20 Mann in the late 1830s and which was further
21 fostered by John Dewey, the so-called "father of
22 modern education." This system of government-
23 coerced education, as stated earlier, is America's
24 most ubiquitous and widespread experiment in
25 socialism. It MUST be abandoned, and abandoned

⁶Ibid.

1 quickly, if parents have any hope of instilling
2 Christian values in their children to the building
3 of Christ's Kingdom. The survival of our American
4 Republic depends on it!

5 6) Another hidden facet is the long-continued
6 and determined intent of both the Democratic and
7 Republican presidential administrations to disarm
8 American citizens while, at the same time,
9 building up the military might of the United
10 Nations. (Remember State Department Document 7277,
11 published in 1961 under President John F. Kennedy,
12 whose outline for disarmament is still being
13 followed? I mentioned this in a previous article
14 entitled "The Many Faces of Tyranny.")

15 Less than two years ago I learned from a
16 trusted source that, under the Clinton Administrat-
17 ion, between 400,000 and 800,000 U.N. troops were
18 clandestinely stationed at various military bases
19 throughout our nation. Recently I received
20 information from another source that the number of
21 U.N. troops on American soil has risen to approxi-
22 mately 2 million. These foreign mercenary troops
23 are being trained in "riot control" maneuvers.
24 And who is to be controlled? American citizens,
25 of course! But why? Be warned that treason is

1 being planned and implemented in high places!

2 Just a few weeks ago it was reported on the
3 "Quinn in the Morning" radio program in
4 Pittsburgh, Pennsylvania, that thousands of
5 Chinese and Russians have been flown into the
6 Allegheny National Forest by private pilots and
7 sequestered at various sites.

8 These clandestine developments have all the
9 markings of a government-sponsored revolutionary
10 coup which can be more easily imposed on a dis-
11 armed citizenry. It appears that our constitutional
12 Republic is near its end unless a sleepy populace
13 is aroused in time!

14 7) The final hidden facet I will mention
15 (space limits the number I can readily deal with
16 in a short essay) concerns psychological mind
17 control. I have a report in my possession which
18 claims that the National Security Agency (NSA) of
19 the federal government has the technical ability,
20 not only to monitor all public and private
21 electronic communications (phones, e-mail,
22 computers, etc.), which the agency has been doing
23 for years, but also to influence the behavior of
24 individual citizens through electromagnetic
25 modulation (EMF). The claim, which came in the

1 This claim sounds too weird to be true to the
2 uninitiated, but the electronic technology is real,
3 and the disposition of traitorous leaders at the
4 national level is receptive to using such ungodly
5 tactics. Some of the recent violent massacre
6 episodes have the earmarks of possible psychologi-
7 cal mental conditioning, especially where the
8 killers self-destruct (Littleton) or act like
9 zombies (Oklahoma City).

10 Throughout history totalitarian rulers have
11 both fomented acts of violence and taken
12 advantage of acts of violence to strengthen their
13 control over citizens. Adolf Hitler used
14 government-generated fake crises to instill fear
15 and general unease among the German population.
16 He learned from Benito Mussolini, who used this
17 tactic in Italy ten years earlier. And Mussolini
18 learned from the Russian Communist revolutionary
19 Lenin. These political leaders did this to
20 motivate citizens to call upon the civil authority
21 to exert more overt authority to "preserve the
22 peace." The 1938 German gun-control legislation
23 (which served as a model for our gun-control
24 legislation of 1968) was an outgrowth of such
25 psychological manipulation of the public mind.

1 The Clinton Administration is following the
2 same tactics to undermine American constitutional
3 government, but with much more finesse and with
4 much more advanced technology at its disposal.
5 A small freedom-oriented remnant, among an increas-
6 ingly large psychologically not politically
7 manipulated population, may be the only effective
8 buffer between ultimate tyranny and the restoration
9 of godly freedom coupled with self-government in
10 our American Republic. To be forewarned is to be
11 forearmed!

12 WHAT CAN BE DONE?

13 The question to be raised is, "What can
14 Christian patriots do?"

15 First, we know that God is in control of the
16 destiny of nations as well as of the destiny of
17 individuals. While He may be bringing judgment
18 upon our nation, we know that He is a covenant
19 God who cares for His own. Let us pray that, in
20 the process of **wreaking** well-deserved judgment
21 for our mass murder of the unborn and for making
22 our civil government into a secular god, He
23 will have mercy on His people. God is the one who
24 sets up rulers and deposes them. Let us pray
25 daily that He will unseat the ungodly in our nation

1 and replace them with His own faithful followers.
2 Let us also elect Christians who are able to and
3 will apply biblical principles to the institution
4 of civil government, in general, and to our
5 Constitution in particular.

6 Second, in the short term, we must recognize
7 that our constitutional Republic is in dire peril
8 of gasping its last breath if the hidden forces
9 that are conspiring to "do it in" are left un-
10 checked. Peaceful political means are still
11 available to be taken if (and this is a big "if")
12 the American public can be awakened from its self-
13 induced stupor that has been induced from decades
14 and decades of humanistic secular education in tax-
15 supported schools. Failing this, let us remember
16 that the "founding fathers" of the American Republic
17 insisted on the Second Amendment so that the
18 people could, as a last defense against the loss
19 of freedom, resort to arms, not against foreign
20 enemies, but against their own tyrannical rulers.

21 Last, let us recognize that we as Christians
22 are, first and last, to be focused on our primary
23 job of building Christ's Kingdom until He returns
24 again, but this time in glory and power. To do
25 this we need to take a long-range view, for Christ

1 may tarry for thousands of years before He
2 returns in power and glory. The most effective
3 long-term way to build Christ's Kingdom is to
4 bring our children up in the fear and admonition
5 of the Lord. WE MUST GIVE THEM A CHRISTIAN
6 EDUCATION, either through home schooling or in
7 Christian schools. We MUST NOT hand our children
8 over to the secular, tax-supported educationists to
9 be indoctrinated in humanistic statism and anti-
10 biblical humanism, for this has been the downfall
11 of our once Christian Republic.

12 Tom Rose, 1999

13 Next: Hidden facets #2: Kosovo

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16 seven books and hundreds of articles dealing with
17 economic and political issues. His articles have
18 regularly appeared in The Christian Statesman,
19 published by the National Reform Association,
20 Pittsburgh, PA; The Chalcedon Report, published by
21 the Chalcedon Foundation, Vallecito, CA; The
22 Freeman, published by the Foundation for Economic
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24 Economics, published by the Christian Freedom
25 Foundation, Buena Park, CA; and in many other

1 publications. For ten years he wrote a weekly
2 syndicated column published by newspapers such as:
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4 Morning News (IN), The Manchester Union Leader (NH),
5 The Gazette-Telegraph (CO), The Odessa American (TX),
6 and others. He and his wife, Ruth, raise regis-
7 tered Barzona cattle on a farm near Mercer, PA,
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9 books for use by Christian colleges, high schools
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11 Reclaiming the American Dream by Reconstructing
12 the American Republic, published by American
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14 Mercer, PA 16137. Phone: 724-748-3726;
15 Fax: 724-748-5373.

HIDDEN FACETS #2

KOSOVO

INTRODUCTION:

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Earlier this year these United States of America, through its European "military front" known as NATO (the North Atlantic Treaty Organization) bombed and rained missiles on a politically sovereign nation (the former Yugoslavia) which posed not even the slightest military threat to our nation. NATO forces, led by high-level U.S. military generals, waged war mainly against the civilian population of Yugoslavia under the guise of unseating an alleged vicious dictator (Slobodan Milosevic). Millions of tons of expensive bombs and missiles were hurled at peaceful civilian sectors of that poor nation at the cost of thousands of innocent lives. In the process billions of dollars of high-tech military equipment was used up or destroyed, to be replaced at the expense of American taxpayers but to the financial benefit of the large multi-national corporations that produce the high-tech military equipment.

The American public was psychologically conditioned to believe a lie and thus to render

1 approval to such blatant international terrorism
2 through a carefully orchestrated program of
3 mental massaging and conditioning by the Clinton
4 Administration and the always-cooperative, left-
5 leaning mainstream news media. The lie had two
6 sides.

7 One lie was that Slobodan Milosevic (whom
8 the U.S. set up in power), the ruler of Yugoslavia,
9 is a modern-day totalitarian Adolf Hitler who was
10 in the process of ruthlessly exterminating a
11 peaceful ethnic group living in the Serbian
12 province of Kosovo. That ethnic group is the
13 Muslim Albanians, who recently migrated into
14 Kosovo and who now make up the majority.

15 The second lie was that the KLA (Kosovo
16 Liberation Army) is a peaceful organization intent
17 on protecting the peaceful Albanians from what was
18 referred to as a sadistic "ethnic cleansing."

19 The truth is somewhat different. Ethnic
20 hostility does exist between some present-day Serbs
21 and Albanians. The original hostility goes back
22 more than 600 years when hordes of invading Muslims
23 were waging a brutal religious war of mass killing,
24 raping, and enslavement against European Christians.
25 It was on the plains of Kosovo in 1389 that 80,000

1 Serbian Christians swore that they would turn back
2 the fanatic religious Muslims who were invading
3 their country or die in the attempt. That day the
4 Serbs were overwhelmed in battle. Eighty thousand
5 of them died on the battlefield; but their willing
6 sacrifice cost the invading Muslims a horrendous
7 loss of 170,000. That loss was so costly to the
8 invaders, that the Muslim invasion of Europe was
9 stopped, and the invaders returned to the Mideast.

10 Another facet of the truth that has been hidden
11 by the mainline news media is that the large
12 majority of Serbs and Muslims were living peace-
13 fully with each other in Kosovo before NATO's
14 unprovoked air-war attack on the province. What
15 caused Milosevic's attack on the KLA is the
16 carefully hidden fact that the KLA is a militant
17 group of criminal drug dealers who for years
18 have been importing drugs and arms into the Kosovo
19 province. The KLA's drug running goes back decades.
20 They are just like the Chinese "war lords" who
21 operated in China before Chiang Kai-shek attempted
22 to put them out of business in the 1920s and
23 1930s -- nothing but ruthless robbers and killers.
24 The KLA have long been known by the U.S. government
25 as international drug runners and terrorists.

1 The KLA were also importing arms and military
2 equipment into Kosovo and were actually engaging
3 in revolutionary war to **overthrow** the legitimate
4 Serbian government. It was President Milosevic's
5 wholly warranted military action against this threat
6 to the internal peace of Kosovo that led NATO
7 leaders to wage a terroristic bombing and missile
8 war against him under false pretenses.

9 The question to ask is "Why should the major
10 NATO countries and the Clinton Administration
11 side with the KLA and thereby get involved in a
12 religious war that goes back hundreds of years?"

13 Some critics claim that NATO's involvement
14 is just another attempt by President Clinton to use
15 "wagging the dog" tactics to divert attention from
16 his increasingly serious domestic problems in
17 America. These range from his notorious sexual
18 scandals involving both willing participants and
19 unwilling victims, use of confidential FBI files
20 for political purposes, use of Executive Orders
21 to subvert the Constitution, and finally to his
22 treasonous giving away of highly secret military
23 technology to Israel and Red China. Totalitarian
24 rulers throughout history have often **resorted to**
25 fomenting foreign wars as a means of distracting

1 public attention from growing problems at home
2 to alleged "enemies" overseas.

3 This is exactly what has been occurring right
4 before the eyes of American citizens today, but
5 many are too concerned with the challenges of
6 daily life to realize what is going on. However, a
7 growing number now seems to be awakening to reality.

8 The purpose of this essay is twofold:

9 The first is to help concerned Christian
10 patriots to understand how the unprovoked NATO
11 war on Kosovo fits into the plans of high-placed
12 world political leaders and their behind-the-scenes
13 supporters to repeat Nimrod's failed attempt to
14 establish a world-wide hegemony as recorded in
15 chapter 11 of the book of Exodus.

16 The second purpose is to motivate Christian
17 patriots to ask, "How might the Lord use me to
18 thwart the satanic plans of these rebellious civil
19 rulers and the hidden powers behind them who are
20 making war against the God of the universe?"
21 (Ephesians 6:12, Psalm 2.)

22 As you read this essay, keep these questions
23 in mind and consider how the Lord might use you
24 in building His Kingdom. We live in a perilous
25 time, for the government that the American people

1 have blindly trusted for generations has sided
2 with the forces of evil and is now intent on sub-
3 verting our Constitution and melding America,
4 "the home of the free and the brave" into the
5 coming one-world government.

6 GROWING IMPERIALISM IN AMERICA

7 The Revolutionary War was begun and won by
8 armed colonial citizens who refused to surrender
9 their personal supply of arms and ammunition to
10 the King's army. The American Republic was
11 established as a reaction against European
12 imperialism. When President Washington retired
13 from public office he, in his farewell address,
14 warned the American people against getting involved
15 in the endless wars of Europe. President John
16 Adams also urged Americans not to follow the
17 imperialist example of European nations by
18 attempting to impose their will on other nations,
19 but rather to spread the ideal of American freedom
20 by serving as a living example of a free people
21 which would be willingly emulated by foreigners.

22 For many years America did focus on its own
23 internal problems and challenges and refused to
24 don the military hat of imperialistic expansion
25 overseas (though there were often a small minority

1 who favored such a policy). America's anti-
2 imperialism policy ended when the Hearst newspapers
3 and certain interest groups incited our national
4 government to get involved in the Spanish-American
5 War in 1898. In that year these United States of
6 America became -- in essence, if not yet constitu-
7 tionally -- an imperialistic nation, just like
8 Great Britain, France and other European nations.

9 The entire 20th Century became nothing more
10 than a succession of foreign wars and military
11 engagements in which our country had no real
12 national interest. Our founding fathers would
13 never have tolerated our involvement in such wars
14 because it is contrary to the clear meaning of
15 our Constitution: World War I, World War II, the
16 Korean War, and the Vietnam War. This whole series
17 of wars and our recent "peace-keeping" interventions
18 all over the globe have brought us finally to the
19 Gulf Wars and the bombing and military invasion of
20 Kosovo. While these unconstitutional **foreign**
21 escapades have been going on, our national govern-
22 ment has also been waging war against its own
23 citizens at home: The brutal federal attacks on
24 Gordan Kahl in North Dakota, on Randy Weaver and
25 his family in Idaho, on the Branch Davidians in

1 Waco, Texas, and many other SWAT team attacks on
2 peaceful citizens which are too numerous to
3 mention. Our founding fathers would have called
4 for the impeachment of recent presidents for allow-
5 ing such unwarranted bloodshed and their failure
6 to uphold the clear provisions of the Constitution
7 of these United States of America. This is the
8 final result of a civil government that has
9 broken its covenant with God as Creator of the
10 universe, King of kings, and Ruler of all nations.

11 What am I attempting to point out? Simply
12 this: America's move into imperialism, and its
13 inevitable involvement in a whole series of
14 foreign wars and forceful interventions in
15 politically foreign countries, has served to build,
16 step by step, a highly centralized autocracy in
17 Washington, D.C. Critics of imperialism have
18 repeatedly pointed out that it is impossible for a
19 democratic republic to remain a republic and adhere
20 to constitutional government if it succumbs
21 to the lure of foreign imperialism. This is true!
22 We now have a powerful government at the national
23 level that unhesitatingly arrogates unconstitution-
24 al powers to itself. At the close of each foreign
25 war more States' rights and individual freedom have

1 been surrendered to the federal government that the
2 States created in the Constitution of 1787, and
3 which has become a "Frankenstein." In short, the
4 20th Century began with these United States of
5 America still being a vibrant democratic Republic,
6 a "Christian nation," as officially declared by the
7 U. S. Supreme Court in 1892. It has culminated
8 with our nation gradually being subverted into a
9 powerful unitary state that is ever-ready to
10 forcefully impose its will on less powerful nations
11 as well as on its own citizens. But that is not
12 all!

13 We have ended the 20th Century in a frantic
14 burst of nationalistic imperialism. But, with
15 Kosovo, we have also opened the door to move one
16 step further! We have entered a new era of one-
17 world totalitarianism, a recreation of Nimrod's
18 failed attempt to erect history's first world-
19 wide military regime! Kosovo marks the final step
20 in surrendering America's national political
21 sovereignty to the rule of an elitist international
22 cabal which is ready, able, and willing to override
23 the national interest of any country in the world,
24 including these United States of America. This is
25 right in line with the "new world" elitist program

1 for general disarmament outlined in the 1961
2 U.S. Department of State publication #7277 entitled
3 "FREEDOM FROM WAR, The United States Program for
4 General and Complete Disarmament in a Peaceful
5 World." Ironically, our country has been turned
6 into the most powerful military power on earth; but
7 this massive military capability is being used,
8 by melding it into the United Nations, as a means
9 of destroying our national sovereignty. Kosovo
10 amounts to the new version of "The shot heard
11 around the world." It is the New World Order's
12 unmistakable signal that the era of national
13 sovereignty for nations is ended and that a new
14 era of humanistically based internationalism has
15 begun.

16 Yugoslavia was the first nation to be sacri-
17 ficed on the altar of internationalism. It was a
18 brutal signal sent to the attention of every nation
19 in the world. The brutal bombing of civilians in
20 Kosovo and its subsequent occupation by so-called
21 "peace-keeping" troops says, in short, "This will
22 also happen to you and your nation if you don't
23 quickly acquiesce to the dictates of the New World
24 Order!

25 Let us now turn to the matter of collusion

1 between NATO, the civil rulers behind NATO, and the
2 mainline news media which served to "dumb down"
3 the public and gain their acquiescence.

4 MEDIA COVER-UP

5 Never in over 200 years of the existence of
6 the American Republic have citizens been subjected
7 to such blatant "media spin" as they have been
8 about Kosovo. Even before overt military action
9 began in Kosovo there was a carefully planned and
10 orchestrated collusion between various parties
11 who are philosophically oriented towards building
12 a "New World Order" which is designed to destroy
13 the concept of national sovereignty. The idea is
14 to build a one-world Utopia headed by an inter-
15 national elite. These parties are

16 1. The Clinton administration (and before it,
17 the Bush administration) with all of its "special
18 interest" appendages and followers,

19 2. The behind-the-scenes international
20 industrialists, bankers, and financiers which have
21 evolved from the "military-industrial complex"
22 that President Eisenhower warned Americans about
23 in the late 1950s. (Note: His warning 40 years
24 ago was about hidden special interests at the
25 national level. The 1950s version of Eisenhower's

1 warning of military-industrial collusion has,
2 during the 1980s and the 1990s, evolved and grown
3 into a ruthless international elitist cabal made
4 up of the leaders of civil government, large multi-
5 national corporations, and international bankers
6 and financiers, all of whom have not the slightest
7 loyalty or allegiance to any one nation. It is
8 important to recognize that the gradual development
9 of these hidden special interests has grown during
10 both Democratic and Republican administrations.)

11 3. The North Atlantic Treaty Organization
12 (NATO) which was established during the "Cold War"
13 era, allegedly to prevent world-wide expansion by
14 the communist regime in the Soviet Union. But in
15 reality, NATO is the military creature created by
16 the non-communist "one world" oriented parties.
17 Some critics of one-worldism claim that the same
18 power elite is behind both the communist and non-
19 communist one-world movements.

20 I have already pointed out that, long before
21 overt military action began in Kosovo, the American
22 public as well as the publics of other NATO nations
23 were propagandized to believe the lie that rabidly
24 hate-minded Serbs in Kosovo were dedicated to
25 brutally "cleansing" their province from the

1 "peaceful and benign" Muslims known as the KLA
2 (Kosovo Liberation Army). But we have seen that
3 the KLA has long been known as a corrupt, terrorist
4 drug-running organization. This fact has been
5 carefully kept from the American public by the
6 Clinton Administration and the mainline news media.
7 Those of us who receive news from short-wave radio
8 stations and alternative publications were, of
9 course, well aware of what has been going on.

10 We live in an age of pervasive news distortion
11 and massive government manipulation of the public
12 mind. Hitler's "big lie" technique was child's
13 play relative to what transpires today. Freedom-
14 loving Christians and patriots must guard against
15 this modern-day type of mind control. A few
16 specific examples regarding Kosovo will suffice.
17 (A full story would be much too long to report in
18 this essay.)

19 1. Bob Djurdjevic, in his Truth in Media
20 Global Watch Bulletin of 3/22/99 reported these
21 population figures for Kosovo: In 1929 Serbs con-
22 stituted 61% of Kosovo's population, ethnic
23 Albanians (Muslims) 33%, other ethnic groups 6%.
24 By 1961 ethnic Albanians had grown to 67% (mostly
25 by immigration) while the Serb population had

1 dropped to 27%; other groups remained at 6%. At
2 the present time Albanians (Muslims) represent 90%
3 of Kosovo's population. The major news media have
4 been completely silent about the massive immigration
5 of Muslim Albanians into the Kosovo province of
6 Serbia, nor have they told that the immigration
7 was a long-term plan by foreign Muslims to take
8 over Kosovo by a less militant invasion than the
9 Muslim invasion of 1388-89. Mr. Djurdjevic writes:

10 The American-supported Muslim and
11 Croat governments, for example, have
12 been encouraged to make enormous and
13 wrongful inroads upon the Serb's native
14 lands in the Balkans, and mass expulsions
15 of hundreds of thousands of Serbs on
16 a scale grievous and undreamed-of has
17 taken place. The fascist parties, which
18 were very small in all these European
19 states, have been raised to preeminence
20 and power far beyond their numbers, and
21 are seeking everywhere to obtain
22 totalitarian control (p.4).

23 2. The Sunday, October 25, 1998, issue of
24 The Washington Times carried an article by the
25 same Mr. Djurdjevic entitled "An ugly double

1 standard in Kosovo conflict?" In this article
2 Mr. Djurdjevic tells that on July 18-19, 1998, a
3 group of several hundred heavily armed foreign
4 mercenaries (mostly "mujahideens," Islamic "holy
5 warriors") invaded from **Albania** and frontally
6 attacked the Yugoslav Army border guards near the
7 Djeravici Mountain. The attack was successfully
8 repulsed. The Yugoslav Army impounded 10 tons of
9 weapons and more than 100,000 rounds of ammunition.
10 Included were 300 assault rifles, 60 heavy machine
11 guns, 10 recoilless cannons, and 10 heavy mortars.
12 He points out that, in the first 6 months of 1998,
13 Serbian border guards prevented 374 illegal cross-
14 ings at the Kosovo border.

15 Is it not interesting that **neither** the mainline
16 news media nor our own government has leaked even
17 one word about this? To do so would have spoiled
18 the "official spin" of lies that were used by
19 NATO and the Clinton Administration to woo public
20 support for the unprecedented bombing and missile
21 attack on a non-belligerent sovereign nation.

22 3. Early during NATO's aggressive military
23 aggression against Kosovo, a large massacre of
24 Muslim "civilians" was "discovered." Photos of
25 hundreds of dead and mutilated Muslim "civilians"

1 were broadcast all over the world by the mainline
2 news media. The objective was to show proof of how
3 brutal President Milosevic and his military machine
4 were. The truth, which was verified by European
5 reporters on the scene, is this: The so-called
6 Muslim "civilians" were actually rebel KLA soldiers
7 who had been killed in a military action against
8 the Serbian Army. Then after they were killed and
9 laid out for burial, pro-NATO propagandist forces
10 actually undressed the dead KLA revolutionaries and
11 then redressed them in civilian clothes and piled
12 them up in heaps to be photographed!

13 This type of propagandized "news" items has
14 been steadily fed to the publics of the various
15 NATO nations to gain popular support for the
16 vicious New World Order war that has been waged on
17 Kosovo. It is reminiscent of the alleged atrocities
18 that were blamed on Germany during WW I when
19 "brutal German Huns" were depicted throwing helpless
20 little babies into the air and catching them on the
21 bayonets at the end of their rifles. No such
22 thing ever occurred, of course, it was all false
23 "news" created by the Allied propaganda office
24 that was set up by the British in New York to
25 convince the American public of the "need" to enter

1 the war to come to the aid of Britain.

2 4. Anthony Wayne cites an April 14, 1999,
3 story that was buried deep in the Wall Street
4 Journal which shows that the Kosovo war was not
5 caused by the Serbs, but was a case of "carefully
6 planned and premeditated case of NWO (New World
7 Order) imperialism carried out by Bill Clinton for
8 the benefit of the American 'death merchants' and
9 their hanger-onere (sic) in other industries."

10 He quotes John Heard, a former major in the
11 U.S. Army who now works for Brown & Root Services
12 Company, as saying, that "the U.S. Army had in-
13 structed him to build a military infrastructure in
14 Macedonia that can operate for three to five years."
15 Brown & /Root is a subsidiary of Dallas-based
16 Halliburton Company, which has a five-year "life
17 cycle management" contract, worth almost \$1 billion
18 to support the U.S. Army in the region.

19 In an earlier essay I quoted FDR as saying,
20 "If it happens in politics, you can be sure it was
21 planned that way." Perhaps we can accurately
22 paraphrase the concept in today's world thus:
23 "When we see our American military personnel
24 rushing to put out 'unexpected brush fires' all
25 over the world, we can be sure that long-term

1 planning has gone into creating the so-called
2 'emergencies!'"

3 5. If we are to believe the steady stream
4 of military reports that emanated from NATO's
5 European headquarters during their 79-day attack
6 on Kosovo, the Serbian military was thoroughly
7 decimated. Nothing can be further from the truth!
8 Question: Why did the Russians rush in to occupy
9 the Pristina airport before the U. S. military got
10 there? At the time I watched the Russian military
11 take control of that airport in northern Kosovo on
12 a TV newscast I did not know their motivation. Now
13 I do! The answer is that they did so to retrieve
14 Russian MIGs that NATO claimed they had destroyed!

15 What happened during the 79-day bomb and
16 missile attack is that the Serbian forces used
17 old-style "dummy" tactics to evade most of the
18 destruction. They made "streets" and "highways"
19 out of rolls of black plastic, and they built
20 "tanks" and "planes" out of straw which fooled the
21 NATO forces. The London Times of June 24, 1999,
22 reports,

23 Close to the war's end, NATO claimed
24 that it had destroyed about 60% of the
25 Yugoslav Army's artillery and about 40%

1 of its main battle tanks.

2 Yet, after the war ended, it turned
3 out that hundreds of Serb dummies
4 managed to fool the NATO brass dummies
5 into believing they were bombing
6 hundreds of Serbian tanks and artillery.

7 NATO's 79-day bombing campaign against
8 Yugoslavia, which involved thousands of
9 sorties and some of the most sophisticated
10 precision weapons, succeeded in damaging
11 only 13 of the Serbs' 300 battle tanks
12 in Kosovo, despite alliance claims of
13 large-scale destruction of Belgrade's
14 heavy armor.

15 Before the NATO bombing started on
16 March 24, the Yugoslav Air Force had
17 a total of 16 MiG-29s, two of which were
18 not operational, according to expert
19 defense sources. For the 11 out of
20 the 14 operational Yugoslav MiG-29s to
21 take off from Pristina airport on June 12,
22 after the armistice was signed, was
23 nothing short of a miracle. And a
24 tremendous shock to the 'omnipotent'
25 Pentagon and NATO officials. Because,

1 the Yugoslav Air Force should have
2 had only three of the MIGS left....

3 Furthermore, NATO officials have
4 also claimed that only four Yugoslav Air
5 Force MiG-21s remained in Kosovo. On
6 June 12, scores of MiG-21s also took
7 off from Pristina's Slatina airport and
8 headed north, according to eyewitness
9 reports.

10 When the Serbs finally withdrew from
11 the province, at least 250 tanks were
12 counted out, as well as 450 armored
13 personnel carriers and 600 artillery
14 and mortar pieces. (Excerpted from
15 Truth in Media's Global Watch Bulletin,
16 99-06, July 9, 1999.)

17 Once again we see that the controlled "spin"
18 that emanates from high political and military
19 sources cannot be trusted. Patriots who value
20 their freedom must learn to seek trustworthy news
21 from the "underground" press, for, without accurate
22 information, how can we make the necessary
23 evaluations and final judgments which are necessary,
24 not only to protect freedom, but to restore lost
25 freedoms?

1 6. One necessary truth to focus on is that
2 the North Atlantic Treaty Organization's charter
3 specifically states that it is a defensive military
4 alliance. Thus, its charter does not allow it
5 to engage in offensive operations. How then was
6 NATO used for an offensive military attack against
7 a non-threatening sovereign nation? Answer: The
8 NATO charter was tossed aside by the political
9 leaders of the NATO nations and high-placed
10 military generals willing to be accomplices in
11 undermining the NATO constitution rather than doing
12 what they should have done, that is, to refuse to
13 be a party of outright totalitarianism! Instead
14 they collaborated with the unconstitutional aims
15 of the Clinton Administration and the hidden powers
16 behind it to ignore the NATO charter and bend that
17 treaty organization to their own ends. President
18 Clinton should be impeached for this, and the top
19 military brass that failed to uphold the
20 Constitution of the United States of America should
21 be court-martialed and dismissed without retire-
22 ment pay.

23 7. On March 15, 1999, Senator James M. Inhofe
24 (Oklahoms) spoke on a related matter that also
25 has been covered up by the mainstream news media.

1 He took a very courageous stand on the Senate
2 floor. He delivered a scathing statement entitled
3 "China's Theft of Nuclear Secrets." (His full
4 statement can be accessed at: [www.senate.gov/-](http://www.senate.gov/-Inhofe/F1031599.html)
5 [Inhofe/F1031599.html](http://www.senate.gov/-Inhofe/F1031599.html).) This essay is already too
6 long, so I urge readers to access his statement
7 or to request a copy from Senator Inhofe's office.
8 In short he accuses President Clinton of betraying
9 the American people and exposing them to nuclear
10 attack because he is responsible for the Red
11 Chinese now having America's most secret military
12 capability which enables Red China to rain down
13 multiple nuclear warheads on most of America's
14 cities. It is a frightening revelation which
15 has been carefully hidden by both the Clinton
16 Administration and the mainline news media.

17 CONCLUSION

18 This has been a difficult essay to write for
19 two reasons. First, because of the tremendous
20 amount of research and reading to complete. But
21 the second, and more important, reason is because
22 the result of my research shows how far the
23 destruction of our American Republic has proceeded
24 under the hands of traitorous rulers at the head
25 of our national government and the hidden special

1 interest groups behind our rulers. Have no doubt.
2 We are in the very last stages of passing from a
3 constitutional republic into a highly centralized
4 unitary state whose allegiance is unmistakably
5 centered in, and controlled by, an international
6 fascist cabal! Anyone with even half-open eyes can
7 see it.

8 The burning question now is, "What can Christian
9 patriots do to stop what seems almost inevitable?
10 There are a number of answers:

11 1. Let us remember that God is in control.
12 There is no doubt that He is bringing judgment
13 upon us as a nation because we have forsaken God's
14 clear precepts. We are like Old Testament Israel
15 when the Israelites forsook God and His covenant
16 promises. When that happened, God sent foreign
17 powers to enslave Israel. Today it seems that God
18 is setting us up to be enslaved by an international
19 power. But, let us remember the example of King
20 Hezekiah (II Chronicles 30-32) who called the
21 rebellious people back to God, "Now be ye not
22 stiffnecked, as your fathers were, but yield
23 yourselves unto the Lord, and enter into his
24 sanctuary, which he hast santified for ever: and
25 serve the Lord your God, that the fierceness of

1 his wrath may turn away from you" (II Chronicles
2 30:8). We know the glorious result! When God
3 raised up a good king that did right in the sight
4 of the Lord (II Chronicles 29:2) to lead the fallen-
5 away Israelites back to God through a spiritual
6 revival, God demolished the invading heathen army
7 and restored liberty for the people to once again
8 enjoy!

9 People deserve the kind of rulers God raises
10 up for them, either as a blessing or a curse.
11 Sadly, we, the American people deserve the grossly
12 evil rulers we are currently saddled with. We
13 need a spiritual revival in America! We need to
14 turn back to God and to be ruled by His precepts,
15 which is what our founding fathers understood as
16 "being ruled by law, and not by men." While the
17 idea is foreign to many Americans today, it is an
18 historical fact that the early political charters
19 of our nation (for example: First Charter of
20 Virginia, 4/10/1606; Mayflower Compact, 11/11/1620;
21 Declaration of Independence 7/4/1776; Articles of
22 Confederation, 3/1/1781; Northwest Ordinance,
23 7/13/1787; and many others not mentioned) clearly
24 refer to the Christ of the Bible. And the Trinity
25 Church ruling by the U. S. Supreme Court (1892)

1 explicitly states that the United States "is a
2 Christian nation." If we as a people recognize
3 Christ as King of kings and Lord of lords and
4 repent of our straying from His precepts, God
5 will have mercy and will heal our land by replacing
6 our present ungodly rulers with godly men of His
7 choice. This is what we need to pray for.

8 2. We can concentrate on electing godly
9 people to political office. The new Christian-
10 based American Heritage Party of the State of
11 Washington (affiliated with The U.S. Taxpayer's
12 Party) has a platform statement that will warm the
13 heart of any sincere Christian. This party provides
14 sincere Christians with a political avenue for
15 building Christ's Kingdom on earth.

16 3. If a peaceful political action becomes
17 impossible, we must remember the real intent of the
18 Second Amendment to the United States Constitution.
19 Our right to bear arms is not for the pleasure of
20 hunting or target shooting; it is our last line of
21 defense as a free people to assure that we have,
22 not only the right but also the ability to replace
23 unfit rulers with those whom we deem to be fit.
24 This is not a call for open rebellion, but rather
25 for a gun-backed guarantee of a peaceful return to

1 freedom rather than a continued slide into slavery
2 under a non-Christian, freedom-hating, international
3 fascist cabal.

4 One way of accomplishing this is for local
5 citizens or local militias to rally behind their
6 county sheriff and ask him to serve as their inter-
7 mediate magistrate (which he is) to stand against
8 those at the national level of government who are
9 intent on subverting our Constitution. (See my
10 Reclaiming the American Dream, which deals with the
11 concept of governmental interposition as a means of
12 protecting citizens from tyrannical rulers.) The
13 county sheriff is the chief law enforcement person
14 in the county, higher than the FBI, the BATF, or
15 any other federal agency. Recently some sheriffs
16 have ordered the FBI and the BATF not to go after
17 citizens in their counties without first getting
18 permission from the sheriff. This is a perfect
19 example of the biblical principle of governmental
20 interposition in action, and it is wholly legal!
21 A county sheriff not only has the power to defend
22 the people in this county against the growing
23 tyranny in America, he has the duty of doing so!
24 Your county sheriff may well be the last effective
25 power for preserving freedom in America. Let us

1 pray that God, in His mercy, will preserve lawful
2 peace and order in our country.

3 Tom Rose is retired professor of economics,
4 Grove City College, Pennsylvania. He is author of
5 seven books and hundreds of articles dealing
6 with economic and political issues. His articles
7 have regularly appeared in The Christian Statesman,
8 published by the National Reform Association,
9 Pittsburgh, PA; The Chalcedon Report, published by
10 the Chalcedon Foundation, Vallecito, CA; The
11 Freeman, published by the Christian Freedom
12 Foundation, Buena Park, CA; and in many other
13 publications. For ten years he wrote a weekly
14 syndicated column published by newspapers such as:
15 The Santa Ana Register, (CA), The Indianapolis
16 Morning News (IN), The Manchester Union Leader (NH),
17 The Gazette-Telegraph (CO), The Odessa American
18 (TX), and others. He and his wife, Ruth, raise
19 registered Barzona cattle on a farm near Mercer,
20 PA, where they also write and publish economic
21 textbooks for use by Christian colleges, high
22 schools and home educators. Rose's latest book is
23 Reclaiming the American Dream by Reconstructing
24 the American Republic, published by American
25 Enterprise Publications, 177 N. Spring Road, Mercer,
PA, 16137. Phone 724-748-3726; Fax 724-748-5373.

HERO WITH A GUN

1
2 Folks, a few weeks ago we watched in
3 horror as two boys killed 13 people in
4 Littleton, Colo. Night after Night as the
5 news focused in on that town, everyone
6 tried to fix the blame on someone or some-
7 thing. Of course the news and all the
8 talk shows' main objective was to demonize
9 "the gun." Our very own phone-sex
10 President perjurer Bill rolled out his
11 long litany of anti-gun proposals. This
12 man is always ready to take advantage of
13 a tragedy.

14 Well that same week another shooting
15 happened that I bet you didn't hear about
16 unless you read or watch the same news I
17 do. So I would like to share it with you.

18
19 A Phoenix, Ariz. policeman was fatally
20 shot by three heavily armed Mexican drug
21 traffickers. Rory Vertigan, an NRA mem-
22 ber and concealed weapons permit holder
23 was the sole witness to the shooting.
24 He pulled his own gun and gave chase in a
25 running gun battle. He wounded the

1 shooter, who was firing at him and
2 forced the getaway car to crash,
3 slowing the shooter's partners long
4 enough for pursuing police to seize them.

5 Awestruck Phoenix police declared
6 Mr. Vertigan a hero and gave him
7 \$500 and a new pistol for catching a
8 cop killer and running out of ammunition
9 in a gun fight with three heavily armed
10 men. The NRA gave him a life membership
11 and flew him to Denver for its annual
12 meeting. Now, folks, don't hold your
13 breath waiting for our liar and chief
14 boy Clinton to bring him to Washington
15 to honor him, even the liberal news
16 media would hate for this story to
17 get out. Now what does this prove?
18 That guns in the hands of law abiding
19 citizens do save lives and can be put
20 to good use. Like George Washington said,
21 "Guns deserved a place of honor and
22 respect with all that is good." For
23 you graduates of present academia,
24 George Washington was the father of
25 our country.

St. Maries (D) Gazette Record
LETTERS to the EDITOR, May 19, 1999

1 Copied with permission (by Thomas Gordon Rose)

2 JOHN ROSS, Unintended Consequences

3 Accurate Press, St. Louis, MO

4 ISBN 1-888118-04-0

5 FREE-MARKET TERRORISTS?

6 By Wilson M. Blair

7 This piece arrived at WSJ offices shortly
8 before the ATF press conference yesterday. We
9 believe it came either from Wilson Blair or from
10 someone who was at one time in close contact with
11 him. The Journal does not normally provide a
12 forum for those who commit violent crimes. In this
13 case, we have made an exception.

14 Since I first condemned ATF and explained my
15 intentions, media comment has taken three forms:
16 1) Outrage that any American might use systematic
17 murder to effect a paradigm shift; 2) Horror that
18 some American citizens do not share his outrage.
19 and 3) Speculation as to whether ATF Agent Wilson
20 Blair is really the one leading the charge. Con-
21 spicuously absent is a rational discussion of the
22 philosophy behind the killings or the fundamental
23 beliefs of the killers. The 'terrorists' are
24 invariably assumed to be either white supremacists,
25 paranoids who believe in massive government

1 conspiracies, or weird loners who would trade
2 their lives for the elusive fifteen minutes of fame.

3 The unspoken and unchallenged assumption
4 is that anyone who kills employees of the U. S.
5 Government is at best an irrational, paranoid,
6 right-wing fanatic, and at worst certifiably insane.
7 The idea that the killers might be logical people
8 acting in a reasoned manner is too horrible for
9 guardians of the status quo to contemplate. Un-
10 fortunately, dismissing a growing movement as
11 irrational and ignoring the basis for its
12 existence will not make it go away. Like it or
13 not, our leaders are going to have to examine the
14 reasons behind our actions.

15 There are a lot of promises in the Constitution,
16 but only one thing guarantees these promises:
17 The Second Amendment. A large number of people
18 in America believe that honest adults have a
19 fundamental right, which they possess by merely
20 drawing breath, to buy, sell, borrow, own,
21 transport, carry, lend, or give away whatever
22 small arms they want without any restrictions
23 whatsoever. It does not matter to them how long
24 the buttstock is, whether there are threads on the
25 barrel, how many shots the gun holds, or what date

1 the gun was made.

2 To these people, murder, robbery, and assault
3 are made no more or less despicable by dint of the
4 instrument used. A knifewielding murderer should
5 receive no less punishment nor less speedy trial
6 than one who uses a gun.

7 These people believe government has no more
8 authority to restrict their gun rights than it has
9 the right to ban the sale of automated printing
10 presses. For years, these people have grudgingly
11 submitted to ever more ludicrous measures, and
12 then been vilified as fanatics any time they tried
13 to say "enough!" Most importantly, when these
14 people disobey these laws they so detest, they do
15 not believe they are doing anything wrong.

16 The printing press parallel is not made idly;
17 If you want to really understand these people,
18 imagine your reaction if the government enacted the
19 same laws on books as it has on guns.

20 What if the government required every book to
21 have a serial number? What if it were a felony
22 for any person to sell a book at a profit without
23 a federal license? What if anyone (except
24 government agents) who bought a book from a
25 federally-licensed book dealer had to fill out a

1 federal form listing his name, address, and the
2 book's serial number, then wait five days before
3 taking possession? What if anyone (except govern-
4 ment agents) who wanted a book under a certain
5 size had to pay a \$200 federal tax, get finger-
6 printed and photographed, and wait months for
7 government approval, and the penalty for non-
8 compliance was 10 years and \$10,000? What if it
9 were a felony for anyone (except government agents)
10 to buy or sell books whose pages were made out of
11 anything other than a specific type of paper?
12 What if some states made it a felony (except for
13 government agents) to buy more than one book a
14 month, and banned outright (except to government
15 agents) books with more than a certain number of
16 pages? What if it was a common occurrence for
17 government agents to destroy someone's house, seize
18 all his property, and imprison him for suspected
19 violations of these book laws? What if government
20 agents planted banned books in people's homes and
21 shot the citizens or burned them alive?

22 You may think this comparison is crazy, and
23 that is your privilege. Like it or not, however,
24 millions of intelligent, rational people think
25 guns are exactly the same as books.

1 Any gun? you ask. What about an atomic
2 bomb? Should the people have those? The Federalist
3 Papers discussed this very issue. Freedom will
4 always be assured if the people have the same
5 basic arms as are issued to a soldier in a modern
6 military. In 1789, that was muskets but not field
7 pieces. Two centuries later, it's M16s, not nukes.
8 Prior to June of 1934, the federal government
9 understood this.

10 Who are these people that hold such radical
11 beliefs? Not white supremacists. State antigun
12 laws took root in the Jim Crow era after the Civil
13 War. White supremacists want to strengthen
14 their hold over hated minorities, not diminish it.

15 Nor are these people conspiracy theorists.
16 They don't think the world is run by the Trilateral
17 Commission -- they know it is all but impossible to
18 get a half-dozen egotists to agree on anything, let
19 alone keep their mouths shut about it. They
20 know there was no huge conspiracy when General
21 Douglas MacArthur burned indigent WW I vets out
22 of their D.C. camp in 1932. No secret 'master plan'
23 when U.S. government doctors conducted radiation
24 experiments on unwitting citizens in the 1940's,
25 and gave poor blacks with syphillis a placebo so

1 that they could be the 'control' group in a VD
2 experiment. No complex plot when the Philadelphia
3 mayor dropped a bomb on some irritating residents
4 and burned ten square blocks of his city to the
5 ground in 1985. No overarching scheme when federal
6 agents killed an Idaho man's wife and son
7 (over the length of a shotgun buttstock) in 1992,
8 or burned eighty citizens alive over a \$200 tax in
9 1993.

10 These events were all simply powerful govern-
11 ment officials exercising that power the way they
12 wanted to. The people who view guns like you view
13 books understand this. They understand Lord Acton's
14 simple, fundamental truth: Power corrupts, and
15 absolute power corrupts absolutely. Those in
16 power will always try to maintain and increase that
17 power, and try to crush anyone who challenges it.

18 The Constitution may enumerate the areas where
19 the government has no authority to pass laws, but
20 many legislators think a 51% majority vote negates
21 any basic human right. Americans want to live in a
22 free society. ATF jails them, seizes their
23 property, and even kills them over things that do
24 not merit even a one dollar fine. We have made
25 millions of reasonable citizens realize they have

1 nothing left to lose.

2 Final point: Some will continue to claim
3 that Wilson Blair, former ATF Supervisor, would
4 never say these things, and that this author is
5 really someone else. Rather than debate the
6 issue, ask yourselves this: Does it matter?
7 (Like it or not, millions of intelligent, rational
8 Americans think guns are exactly the same as
9 books.)
10 ([ATF] has made millions of citizens realize
11 that they have nothing left to lose.)

12 June 22

13
14
15 CHAIRMAN GANNON: Our next witnesses are
16 Mr. Luigi DeFransesco and Mr. Carl Fitch. You
17 may proceed.

18 MR. DeFRANSESCO: A little humor, so to speak,
19 because I believe a picture is worth a thousand words
20 and you can see some of the results of gun control.
21 This little cartoon was put out today in the
22 Washington Times, August 25th, 1999, and it shows a
23 little old lady doing her duty turning in her gun to
24 the police. She got money back in return and as
25 soon as she gets out of the police station, of course,

1 an individual who is supposed to turn in his weapon,
2 took her money. Besides the picture, I'd also like
3 to read the words that were printed back in the 1700's
4 and this was said by Cesare Beccaria, who is the
5 founder of the classical school of criminology and
6 he says, false is the idea of utility that sacrifices
7 a thousand real advantages for one imaginary or
8 trifling inconvenience; that would take fire from men
9 because it burns, and water because one may drown in
10 it; that has no remedy for evils, except destruction.
11 The laws that forbid the carrying of arms are of
12 such nature. They disarm those only who are
13 neither inclined nor determined to commit crimes.
14 Such laws make things worse for the assaulted and
15 better for the assailants; they serve rather to
16 encourage than to prevent homicides, for an unarmed
17 man may be attacked with greater confidence than an
18 armed man. This was back in the 1700's and here we
19 are discussing the same thing today.

20 I'd like to read now my statement. It won't
21 take long. First, I'd like to thank you for the
22 opportunity to let me express my opinion, fears,
23 and experiences along with the hope that American
24 Pennsylvania will be forever for our future generations.

25 My name is Luigi DeFransesco. I reside at

1 27502 State Highway 77 in Richmond Township. I am
2 a former immigrant who chose to become an American
3 35 years ago and proud of it up till now.

4 It was not easy for me to give up the land of
5 my forefathers and to adopt a new one. You must ask
6 yourself what makes an individual leave his native
7 country to embark into the unknown? I do not have to
8 go into detail of my personal decision because it
9 was not any different than those individuals who
10 landed on our shores, American shores, for the past
11 200 years.

12 The driving force for me was freedom, freedom
13 to be able to be the best I can be. Freedom to
14 voice my opinion without the fear of retribution.
15 Freedom to live in a place of my choice. Freedom
16 to take care of my family the way I see fit. Freedom
17 to defend my family the best way I can.

18 In the early days of my new residency I
19 learned that the best protection the American citizen
20 has is the Constitution of the United States of
21 America and of the Constitution of each state. I am
22 amazed to think that 200 years ago individuals who
23 found an entire new country thought more of the
24 rights of others than their own personal power. The
25 rights they come up with are found in the Bill of

1 Rights of the U. S. Constitution. This is what
2 brings me here today.

3 Article I of the Pennsylvania Constitution
4 is entitled, Declaration of Rights. Article I
5 Section 21 says: The right of the citizens to bear
6 arms in defense of themselves and the State shall not
7 be questioned. That's pretty clear to me.

8 The second Amendment to the United States
9 Constitution says: A well regulated militia, being
10 necessary to the security of a free state, the right
11 of the people to keep and bear arms shall not be
12 infringed.

13 What I have learned about America is that the
14 Constitution of the land and that of each state is
15 the absolute law of the land. No legislation can
16 override what the people have retained as a right.
17 A right to something that belongs to the people and
18 that cannot be taken away.

19 Why is it then that individuals and power, may
20 they be at the state or federal level, are doing
21 everything they can to take our rights away? Let me
22 give you an example which I personally witnessed.
23 I was a resident of New York City from 1964 until
24 1977. In the early '70s New York City required gun
25 registration. All the law-abiding citizens registered

1 their guns. These were mostly rifles because New
2 York City has strict gun controls that make it
3 impossible for an honest citizen to own a handgun.
4 Within a couple of years the City started confiscating
5 rifles under the pretext that either they were not
6 registered or the owners did not have any legitimate
7 use. The individuals that gave up their weapons were
8 honest citizens who feared the government more than
9 they feared the criminal element.

10 Another point of interest is the gun control
11 law that governs New York City, the Sullivan law. In
12 the late 1800's businessmen started carrying firearms
13 and using them against robbers and would be murderers
14 to defend themselves. Mr. Sullivan, a New York State
15 representative, introduced a gun control bill that
16 denied these businessmen the right. Needless to say
17 the winner was and has been the criminals ever since.

18 Now it seems that we have the same thing or
19 something very similar starting all over. There are
20 certain elements that are pushing to deny honest
21 citizens their civil rights. These people are
22 spreading rumors and fears among the population about
23 firearms in order to meet their political ends. I
24 have a list of myths about gun control that was
25 compiled by Morgan O. Reynolds of the Texas A&M

1 University, and another list compiled by Glen Otero
2 of the Claremont Institute. I am presenting these
3 lists, not as compelling facts to convince you not
4 to pass gun control laws, but to bring to your
5 attention the forces that are working in order to
6 deprive us of our rights sanctioned by both the
7 United States Constitution and the Pennsylvania
8 Constitution.

9 It is clear to me that the United States
10 Constitution gives every citizen the right to bear
11 arms. I have a copy of the U.S. District Court
12 decision of the Northern District of Texas, San
13 Angelo Division, United States of America versus
14 Timothy Joe Emerson. The judge's decision clearly
15 states that the Second Amendment does give us the
16 right to bear arms. As a note of interest: This
17 case originated from a divorce case, believe it or
18 not.

19 This brings another interesting point: What
20 does gun control really accomplish? It will turn
21 millions of honest citizens instantly into criminals.
22 Abuses will abound exponentially; the United States
23 of America versus Timothy Joe Emerson is just one
24 case. Mr. Emerson was arrested because he owned a
25 gun while a restraining order was imposed on him.

1 This is a case when possession of a gun became unlaw-
2 ful in the eyes of the local law enforcement officers.

3 Another case of interest is the Waco, Texas
4 incident. We all know that the people in the compound
5 at Waco did not have any illegal weapons and yet the
6 federal government, using an illegal standing farm, ,
7 destroyed women, children and everything in sight in
8 the name of gun control. And I want to make a
9 personal remark because I hope that if that ever
10 happens in Pennsylvania, the State of Pennsylvania
11 will have the guts to stand up to the threats that
12 would destroy any of the citizens of this State.

13 The point is that gun control laws generate
14 abuse from government or for people representing
15 the government. Gun control laws are a tool that
16 police can use against anyone anytime they choose.
17 For example, suppose you catch a rapist attempting to
18 rape your wife, daughter or granddaughter. You use
19 a pistol to stop the intruder. Afterward, you call
20 the police. When they show up, they arrest you
21 because you did not have the trigger lock on your
22 gun. Can it happen? Yes, it can. When I lived in
23 New York City, there were many cases when someone
24 used a gun to stop a would-be rapist, and the
25 individual who used the gun was the one charged with

1 with the hideous crime of possessing a gun. In
2 Meadville people used guns in self-defense within
3 the city limits and promptly were charged with
4 discharging a weapon within the city limits.

5 Another example were those laws that forbid
6 anyone to carry a gun within a set distance from a
7 building. This law definitely questions the right
8 of a Pennsylvanian to bear arms, and is a violation
9 of Article I Section 1, Section 1 says, all men are
10 born equally free and independent, and have certain
11 inherent and defeasible rights, among which are those
12 of enjoying and defending life and liberty, of
13 acquiring, possessing and protecting property and
14 reputation, and of pursuing their own happiness.
15 No father or mother should be told that their right
16 to defend their child's life stops a few hundred feet
17 from any building.

18 Our founding fathers knew that a government
19 should not dictate to the citizens how to live their
20 lives. Instead they gave us a document to protect
21 the people from abuses from government. This document,
22 however, is not worth the paper that it is written
23 on if you, our representatives, pass laws that
24 contradict the Bill of Rights.

25 In fact, you have the obligation to facilitate

1 our right to bear arms by providing access to an
2 education on the use and care of firearms. Lately,
3 they don't use the gun control anymore but they say
4 gun safety. Sounds better. If that's the case,
5 those people who want gun safety, then you are
6 obligated to set up forces to teach our kids to
7 safely use those firearms. Also, you have the
8 obligation to educate all those in law enforcement
9 in the understanding of the Bill of Rights. They
10 must understand that the Constitution is the supreme
11 law of the land and when orders are issued that would
12 clearly violate the peoples civil rights, they have
13 the responsibility to obey the Constitution first.
14 There should not be any laws written that contradict
15 the civil rights, none.

16 The worst thing that could happen is to have
17 America become another European country. In Europe
18 they don't need a habeus corpus to throw someone in
19 jail. You must carry a state-issued identification
20 card the minute you leave your residence. God forbid
21 they catch you with a gun, any gun. You have to
22 prove your innocence for just about everything. This
23 would take us back 200 years. Do you really want
24 that to happen? I think not. America must be
25 forever for us, for our children, and children's

1 children. All this is determined by what you will
2 do tomorrow. And that was my last paragraph and,
3 unfortunately on the testimony I heard today, I'm
4 afraid that already stuff like this is happening.
5 There is no reason why for the District Attorney,
6 for the sole purpose to show somebody, to make an
7 example of somebody, another citizen, spends all the
8 taxpayers' money to do everything to prosecute
9 somebody for a crime where nobody was hurt, where
10 civil rights was involved and my big suggestion, I
11 would like to make it to you right now. If you do
12 want to pass a law, pass a law that will hold
13 responsible the government officials, district
14 attorneys, the abuse of power and give the people the
15 right to sue them. If anything else, Europeans do
16 have those laws; that if they do have abuse of power
17 and bring people -- they charge people without con-
18 victing them, they are liable. They are liable and
19 they have to pay and rightfully so.

20 CHAIRMAN GANNON: Thank you, Mr. DeFransesco.

21 (The following was submitted for inclusion
22 in the record:)

23
24
25

1 MYTHS ABOUT GUN CONTROL
2 by
3 MORGAN O. REYNOLDS

4 Texas A&M University

5 and

6 W. W. CARUTH III

7 NCPA Policy Report No. 176

8 ISBN 0-943802-99-7

9 December 1992

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2 people killing friends or family
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12 protection because they can rely
13 on the police.
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15 al right.

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17 EXECUTIVE SUMMARY

18 Firearms are used to commit as many as 650,000
19 crimes each year. But firearms are also used to
20 prevent crimes as many as one million times each
21 year. In fact, criminals are three times more
22 likely to be killed by armed victims who resist
23 them than by the police. Would tougher gun con-
24 trol laws make our lives safer? Fair appraisal
25 of the issue requires us to put aside some
common myths.

*Myth No. 1: Guns cause crime. A careful
review of 18 academic studies shows that there
is no relationship between the number of guns

1 and the amount of crime in the United States.
2 International evidence tells a similar story.
3 *Myth No. 2: Gun control laws reduce crime. The
4 nation already has 20,000 gun control laws,
5 and the police arrest 220,000 people a year on
6 weapons violations. Yet the violent crime rate
7 is at an all-time high. Moreover, considering
8 that fewer than 1 percent of all guns are
9 involved in a crime and only 12 percent of all
10 violent crimes involve a gun, gun control laws
11 could have only a modest effect on crime --
12 even if they worked exactly as intended, which
13 they don't. For example, New Jersey, Hawaii
14 and Washington, D.C., experienced sharp murder-
15 rate increases after passing tough gun control
16 laws. Canada, Taiwan and Jamaica reported
17 similar experiences.

18 *Myth No. 3: Guns are of little help in defending
19 against criminals. In fact, guns are a big help.
20 Each year, potential victims kill from 2,000 to
21 3,000 criminals and wound an additional 9,000 to
22 17,000. And mishaps are rare. Private citizens
23 mistakenly kill innocent people only 30 times a
24 year, compared with about 330 mistaken killings by
25 police. Criminals succeed in taking a gun away

1 from an armed victim less than 1 percent of the time.
2 *Myth No. 4: Killing someone is the only reason to
3 buy a handgun. The vast majority of gun owners
4 cite protection from crime as one of the main
5 reasons they own a gun. And for good reason.
6 Americans use guns for self-protection about one
7 million times a year. In 98 percent of the cases,
8 they simply brandish the weapon or fire a warning
9 shot.
10 *Myth No. 5: People who buy guns are more prone to
11 violence and crime than are other people.
12 Violence and crime are higher among black than
13 white, lower-income than middle- or upper-income,
14 young than middle-aged, single than married, and
15 urban than rural individuals - all contrary to the
16 pattern of gun ownership.
17 *Myth No. 6: Criminals mainly have guns in order
18 to commit crimes. The number one reason criminals
19 acquire guns is for self-protection against other
20 criminals. Fewer than half of felons think hand-
21 guns are important for use in committing crimes.
22 *Myth No. 7: Killings and other violent crimes
23 were prevalent in the Old West because guns were
24 so plentiful. Much of the violence on the frontier
25 involved clashes with Indians, bandits and

1 foreighers. Even so, the frontier was a lot safer
2 than America is today. There was very little
3 ordinary crime - less than in most cities in the
4 East.

5 *Myth No. 8: Gun controls keep criminals from
6 obtaining guns. In surveys of prisoners, a
7 majority said that prior to imprisonment they
8 had owned a handgun. But fewer than one in six
9 guns had been purchased from a retail dealer.
10 Three-fourths of the felons said they would have no
11 trouble obtaining a gun when they were released,
12 despite legal prohibitions.

13 *Myth No. 9: Required waiting periods would pre-
14 vent some of the most vicious crimes. If the
15 Brady bill were law, it would not have saved Jim
16 Brady. Nor would it have prevented the Killeen,
17 Texas massacre or the slaughter at McDonald's in
18 Stockton, Calif. However, an instant records
19 check (to identify felons when they try to purchase
20 guns from retail dealers) and better enforcement
21 of existing laws (to turn criminals into convicted
22 felons) might well prevent some vicious crimes.

23 *Myth No. 10: Most murders are committed by
24 people killing friends or family members. The
25 actual number is about one out of five. Most

1 in-household killings are not crimes of passion.
2 They're the culmination of years of abusive
3 behavior, and often it is the abuser who is killed.
4 *Myth No. 11: The availability of guns contributes
5 to crimes of passion. In about 90 percent of
6 "crime-of-passion" domestic homicides, the police
7 had been called in previously to break up violence.
8 In half the cases, the police had been called in
9 five or more times. There is no evidence that a
10 significant number of homicides occur simply
11 because a lethal weapon is handy.

12 *Myth No. 12: Automatic rifles and so-called
13 assault weapons are too dangerous to be left in
14 private hands. Over the past 50 years no civilian
15 has ever used a legally owned machine gun in a
16 violent crime. And despite their repeated use by
17 drug dealers on "Miami Vice" and in the movies, no
18 Uzi has ever been used to kill a police officer.
19 Even gun control advocates concede that so-called
20 assault weapons play a minor role in violent
21 crime.

22 *Myth No. 13: Gun control laws are especially
23 needed to prevent the purchase of "Saturday Night
24 Specials." Inexpensive handguns are involved in
25 only 1 to 3 percent of violent crimes, and

1 criminals are no more likely to use one than any
2 other type of handgun.

3 *Myth No. 14: People don't need guns for self-
4 protection because they can rely on the police.
5 About 83 percent of the population will be victims
6 of violent crime at some point in their lives, and
7 in any given year serious crime touches 25 percent
8 of all households. Considering that, effectively,
9 there is only one police officer on patrol for
10 every 3,300 people, the odds are not likely to
11 improve. And the courts have ruled that government
12 has no duty to protect individual citizens from
13 crime.

14 *Myth No. 15: Gun ownership is not a constitutional
15 right. The Second Amendment reflects the founders'
16 belief that an armed citizenry (called the "general
17 militia") was a necessary precaution against
18 tyranny by our own government and its army. The
19 idea that government has a constitutional right to
20 disarm the general citizenry is totally foreign
21 to the intent of the Constitution's framers.

22 INTRODUCTION

23 The controversy over gun control laws is not new,
24 nor is it confined to the United States. Consider
25 Cesare Beccaria, an 18th-century economist,

1 writer and founder of the classical school of
2 criminology (1738-1794). Concerning arms control
3 laws, he wrote/

4 False is the idea of utility that sacrifices a
5 thousand real advantages for one imaginary or
6 trifling inconvenience; that would take fire from
7 the men because it burns, and water because one
8 may drown in it; that has no remedy for evils,
9 except destruction. The laws that forbid the
10 carrying of arms are of such a nature. They
11 disarm those only who are neither inclined nor
12 determined to commit crimes...Such laws make things
13 worse for the assaulted and better for the
14 assailants; they serve rather to encourage than to
15 prevent homicides, for an unarmed man may be
16 attacked with greater confidence than an armed man.
17 "Most gun control laws make no distinction between
18 law-abiding citizens and lawbreakers."

19 Most gun control laws make no distinction
20 between law-abiding citizens and lawbreakers.
21 They imply that anyone possessing a gun is likely
22 to use it to break the law, so they typically
23 attempt to limit possession to those who are able
24 to justify their specific need for a gun to govern-
25 ment officials. Controls, especially as

1 administered by ordinary people, give little
2 consideration to any benefits of gun ownership to
3 the possible need of law-abiding persons to resist
4 criminals. As in the case of efforts to control
5 people's use of illicit drugs, there are good
6 reasons to doubt government's ability to control
7 the possession of guns, even with intrusive in-
8 fringements on liberty.

9 Advocates of gun control laws contend, among
10 other things, that the easy availability of fire-
11 arms "particularly handguns" leads people to kill
12 friends or family members during disputes or
13 fights, that guns bear much of the responsibility
14 in cities with high murder rates and that guns used
15 for defense are often turned against the user.
16 They maintain that the high rate of serious crime
17 is related to the freedom to buy and own firearms.

18 Echoing those beliefs, the Journal of the
19 American Medical Association and C. Everett Koop,
20 a former U. S. Surgeon General, have called gunshot
21 wounds and deaths a public health epidemic.
22 They have called for the licensing of all gun
23 owners, requiring them to meet qualifications
24 similar to those for drivers' licenses. Others,
25 of course, would go much further.

1 Fifteen Myths about Gun Control

2 The intended effect of most 20th century
3 "gun crime" legislation has been to prevent
4 criminals from obtaining guns or from using the
5 guns they obtained. Yet the number of armed
6 criminals and the amount of armed crime has
7 increased during a period in which gun control laws
8 have proliferated. On the surface, it would appear
9 that the actual effects of legislation have not
10 been the intended ones.

11 "Sophisticated statistical models show that reduc-
12 ing gun ownership doesn't reduce crime."

13 Why then is there such strong support for laws
14 controlling firearms? Much of it may stem from a
15 belief in one or more myths about firearms and
16 laws governing their possession. This study
17 examines the most popular of these myths.
18 Myth No. 1: Guns cause crime.

19 The National Crime Survey estimates that 83
20 percent of Americans will be victims of violent
21 crime at some time in their lives. 2 Parties with
22 diametrically opposed views on gun control seize on
23 this estimate to support their positions. Those
24 favoring gun control laws claim that such laws
25 would keep more guns off the streets and out of

1 the hands of criminals in an increasingly violent
2 world. Opponents of new gun restrictions contend
3 that a firearm in the hands of a law-abiding person
4 is one of the best deterrents to crime, protecting
5 people with limited physical strength from
6 physically stronger criminals. Let's take a look
7 at the available evidence.

8 Domestic Studies.

9 Several sophisticated statistical models have
10 attempted to measure the net effect of firearms on
11 criminal violence. On balance, they show that
12 there is nothing to be gained from reducing the
13 general level of gun ownership. 3

14 * A thorough review of 18 studies of the effects
15 of gun availability among potential victims
16 and criminals found that the overall effect on
17 criminal violence was zero. 4

18 * In one study, researchers found no significant
19 differences in total robbery rates between
20 cities where guns were widely available and
21 cities where they were not; in cities with
22 fewer firearms, armed robbers simply used
23 other weapons. 5

24 * The best available evidence, based on at
25 least eight national surveys of the general

1 adult population, indicates that guns are
2 used about as often for defensive as for
3 criminal purposes. 6

4 This conclusion is especially true of handguns.
5 International Evidence.

6 The experience of other nations also provides
7 little support for the notion that guns cause
8 crime: 7

9 * Switzerland has one of the lowest murder rates
10 in the world, and it requires all able-bodied
11 males between the ages of 20 and 50 to have
12 a military-issued automatic weapon, ammunition
13 and other equipment in their dwellings. 8

14 * Israel, which has an extremely low crime rate
15 but is vulnerable to enemies including
16 terrorists, depends on the defensive value
17 of widespread civilian gun possession.

18 * Denmark and Finland also have high rates of
19 gun ownership and low crime rates.

20 The experience of these countries shows that
21 widespread gun possession is compatible with low
22 crime rates. On the other hand, nations like Japan
23 and England also have low crime rates but low gun
24 ownership. There is no simple relationship between
25 firearm availability and crime. 9

1 Crimes Involving Guns.

2 "Eighty-eight percent of violent crimes do not
3 involve firearms."

4 How many violent crimes involving guns are
5 committed each year? FBI data for 1990 show that
6 criminals used firearms in about 258,000 violent
7 offenses, or about 16 percent of the 1.6 million
8 crimes reported to the police. Fewer than half of
9 all violent crimes are reported to the police,
10 however. The National Crime Survey (NCS) estimates
11 that there are about 5.4 million violent crimes
12 (both reported and unreported) and that guns of all
13 types are involved in some 650,000 or 12 percent.
14 10 In other words, 88 percent of violent crimes
15 do not involve firearms. While certainly a very
16 large annual number, reported and unreported violent
17 crimes committed with guns remain relatively rare
18 events. Less than 2 percent of the estimated
19 36 million crimes of all types (in the National
20 Crime Survey) committed each year involve a gun.
21 A majority of gun crimes are assaults, but only
22 one in 42 handgun crimes involves a victim being
23 shot. While there is a lot of violent crime in
24 America relative to other industrial nations, an
25 overwhelming majority of the violence involves

1 knives, hammers, sticks, broken bottles, hands and
2 feet and other weapons besides firearms.

3 Guns are used in a majority of murders (from
4 59 percent to 66.3 percent in each of the past 10
5 years) and accounted for 14,265 deaths in 1991.
6 According to the FBI's Uniform Crime Reports,
7 53.1 percent of reported murders in 1991 were
8 committed with handguns, 5.2 percent with shotguns
9 and 3.4 percent with rifles, while miscellaneous
10 and unknown firearms accounted for the remaining
11 4.6 percent. (Long guns, although virtually
12 uncontrolled, were involved in only 8.6 percent
13 of homicides.) By contrast, firearms were used to
14 commit about 70 to 75 percent of homicides in the
15 1920s, a higher percentage than the average 60
16 percent rate during the 1980s. 11 Firearms were
17 the instrument of death in 60 percent of murders
18 in 1980 and 66 percent in 1991 "the highest
19 percentage in recent years "suggesting an upward
20 trend. Firearms were used in 40 percent of all
21 reported robberies but in only 11 percent of all
22 rapes. 12 percent of severe assaults and 12
23 percent of all violent crimes. (See Figure I.)
24 "Firearms were used in a higher percentage of
25 homicides in the 1920s than in the 1980s."

1 Guns Involved in Crimes.

2 No one knows what fraction of firearms ultimately
3 is used to commit crime, but the percentage is
4 almost certainly tiny. Even if the same gun were
5 never used more than once in committing a crime,
6 only one out of every 309 guns would be involved
7 in a crime in a given year. 12 Overall:

8 * Only one out of every 123 handguns (less
9 than 1 percent) and one out of every 1,247
10 long guns (less than one-tenth of 1 percent)
11 are used in crime in any given year. 13

12 * Even under very generous assumptions to
13 maximize the estimated percentage of guns
14 used in a crime, at most 6.7 percent of
15 handguns would ever be involved in a crime. 14

16 * If we realistically allow for repeated
17 criminal uses of the same weapons, the
18 fraction of all guns that are ever involved
19 in crime would be less than 1 percent, with
20 long guns under 0.5 percent and handguns
21 under 2 percent.

22 Gun control laws cannot possibly reduce the
23 crime rate unless they affect the 1 percent of guns
24 that are actually used in crimes. Even if the
25 laws did this, criminals would find it easy to

1 acquire new guns. The numbers by themselves
2 raise doubts about the efficacy of general restrict-
3 ions on gun ownership in decreasing the frequency
4 of gun use in violent crime.

5 Case Study: Killeen, Texas

6 George Hennard crashed a pickup truck through
7 the front of a Luby's Cafeteria in Killeen, Texas,
8 on October 16, 1991, got out with two semiautomatic
9 pistols and methodically killed 23 people in 10
10 minutes before police finally arrived and killed
11 him.

12 Dr. Suzanna Gratia, who watched as her mother
13 and father were shot to death by Hennard, said
14 later that she had left a pistol in her car out-
15 side the cafeteria because Texas law forbade
16 carrying a weapon. From where she lay, she said,
17 she had a clear shot at Hennard early on - and would
18 have taken it. "We were sitting ducks and that
19 just makes me so blasted mad," said Dr. Gratia,
20 a chiropractor. "I've got a right to protect
21 myself." 15

22 On that day, coincidentally, Congress was de-
23 bating a crime control bill. Congressman Chet
24 Edwards, in whose district the massacre occurred,
25 said the event convinced him to favor a ban on

1 so-called assault weapons (although assault weapons
2 were not used in the Killeen massacre).

3 Case Study: Anniston, Ala.

4 Two months later, two armed robbers herded 20
5 customers and employees in an Anniston, Ala.
6 Shoney's restaurant into a walk-in cooler and held
7 the manager outside at gunpoint. Then they spotted
8 Thomas Glen Terry, a customer, hiding under a table
9 and began shooting at him. Unlike the situation
10 in Texas, Terry, who had a permit, was carrying a
11 .45 caliber automatic handgun. He shot back,
12 killing one robber and wounding the other. The
13 manager and the hostages were released, unharmed. 16

14 Case Study: Los Angeles, Calif.

15 Rioters in Los Angeles in the spring of 1992
16 looted and burned a store owned by Korean-
17 Americans in Hollywood, even though they had to
18 break through steel roll-down doors with crowbars
19 and sledgehammers to get at it. But they spared a
20 similar business in Koreatown. The reason? The
21 rioters could see commandos with Uzi machine guns
22 on top of the Koreatown building. The merchants
23 later revealed that, although they did have a few
24 guns that they fully intended to use if necessary,
25 the "Uzis" were toys, and the "commandos" were

1 costumed merchants. 17

2 The looters and arsonists tended to leave
3 houses and apartment buildings in the riot area of
4 Los Angeles alone - not out of compassion, but
5 because, as a 13-year-old neighborhood resident
6 said, "They (the residents) got guns and everybody
7 knows that. Nobody's going to want to mess with
8 folks in houses." 18

9 Myth No. 2: Gun Control Laws Reduce Crime

10 Despite some 20,000 gun laws in the United
11 States, mostly at the state and local levels,
12 there is little evidence that any but the most
13 weakly motivated citizens have been discouraged
14 from gun ownership. And there is no evidence that
15 these gun control laws have made a dent in the
16 crime rate.

17 "Washington's murder rate has risen 135 percent
18 since its strict gun control law was enacted in
19 1976."

20 Domestic Evidence.

21 If gun control laws have any effect, it may be
22 to increase crime. For instance: 19

23 * New Jersey adopted what sponsors described
24 as "the most stringent gun law" in the nation
25 in 1966; two years later, the murder rate was

1 up 46 percent and the reported robbery rate
2 had nearly doubled.

3 * In 1968, Hawaii imposed a series of increasing-
4 ly harsh measures and its murder rate, then a
5 low 2.4 per 10,000 per year, tripled to 7.2
6 by 1977.

7 * In 1976, Washington D.C., enacted one of the
8 most restrictive gun control laws in the
9 nation. Since then, the city's murder rate has
10 risen 1.34 percent while the national murder
11 rate has dropped 2 percent.

12 Defenders of the Washington law say it isn't
13 working because criminals are getting guns in
14 Virginia, where the laws are more relaxed. But
15 just across the Potomac River, Arlington, Va., has
16 a murder rate less than 10 percent of that of
17 Washington (7.0 murders versus 77.8 per 100,000
18 population). Can the difference be explained by
19 the fact that Washington is a large city?
20 Virginia's largest city, Virginia Beach, has a
21 population of nearly 400,000, allows easy access
22 to firearms - and has had one of the country's
23 lowest murder rates for years (4.1 per 100,000
24 population in 1991).

25 An analysis of 19 types of gun control laws

1 [Table 1] concluded that not only do they fail
2 to reduce rates of violence, they even fail "to
3 reduce the use of guns or induce people to substitute
4 other weapons in acts of violence." 20

5 For example: 21

6 * When Morton Grove, Ill., outlawed handgun
7 ownership, fewer than 20 were turned in.

8 * After Evanston, Ill., a Chicago suburb of
9 74,000 residents, became the largest town to
10 ban handgun ownership in September 1982, it
11 experienced no decline in violent crime.

12 * Among the 15 states with the highest homicide
13 rates, 10 have restrictive or very restrictive
14 gun laws.

15 * 20 percent of U.S. homicides occur in four
16 cities with just 6 percent of the population.
17 New York, Chicago, Detroit and Washington, D.C.
18 - and 20 percent of the armed robberies. Even
19 more troublesome is the fact that the places
20 where gun control laws are toughest tend to
21 be the places where the most crime is committ-
22 ed with illegal weapons: 22

23 International Evidence.

24 Other countries have had similar experiences.
25 After Canada passed a gun control law in 1977,

1 the murder rate failed to decline but armed robbery
2 and burglary, crimes frequently deterred by gun
3 ownership, increased..23 (Canadian homicide rates
4 are slightly lower than those in states along the
5 U.S. border.) Violent crime accelerated in Taiwan
6 and Jamaica after handguns were banned. 24
7 "New York, with one of the most restrictive gun laws
8 in the nation, has 20 percent of all armed
9 robberies.

10 Why Gun Control Laws May Benefit Criminals.

11 An increase in violent crime that appears to
12 follow a tightening of controls on gun ownership
13 and use is consistent with economic reasoning. Gun
14 control laws are most likely to be obeyed by
15 people who are otherwise law-abiding if, indeed,
16 they are obeyed by anybody. Thus measures that
17 apply equally to criminals and noncriminals, if
18 they affect behavior at all, are almost certain to
19 reduce gun possession more among noncriminals.
20 As the popular slogan puts it: "If guns are out-
21 lawed, only outlaws will have guns."

22 Scholarly studies have not been able to demon-
23 strate any effect of gun control laws. But if
24 there is an effect, it is likely to benefit
25 criminals in two ways: fewer armed victims to

1 worry about and fewer criminal justice resources
2 to devote to prosecuting real criminals. If fewer
3 potential victims have guns for defense, the
4 balance of power tilts slightly toward criminals.
5 The overall crime rate tends to increase, although
6 guns may not be used in any more crimes because,
7 on average, victim resistance is lowered.

8 Because more police resources are spent on gun
9 registration, gun law enforcement and gun law
10 convictions, few resources are available to deter
11 real criminals. Arrests for weapons violations
12 already exceed 220,000 per year, 25 a nontrivial
13 load on the criminal justice system. A Chicago
14 judge from one of the two courtrooms exclusively
15 dedicated to trying gun law offenses in that city
16 testified a few years ago: 26

17 The most striking experience I can take away
18 from the Gun Court...is...the kinds of people that
19 appear there as defendants...This is their very
20 first arrest of any kind. Many of them are old
21 people, many of them are shopkeepers, persons who
22 have been previous victims of violent crime.

23 Although many of these "criminals" get probation,
24 the advocates of stricter gun laws press for
25 mandatory sentencing. Meanwhile, punishments meted

1 out for gun law violations not connected with
2 real crimes tend to depress citizens' respect for
3 law and the criminal justice system. As attorney
4 David B. Kopel puts it, "In a world where first-
5 time muggers often receive probation, it is morally
6 outrageous to imprison...everyone who carries a
7 firearm for self-defense." 27

8 Myth No. 3: Guns are of Little Help In Defending
9 Criminals

10 Over the years, police and other experts have
11 changed their recommendations about how to deal
12 with criminals. In the early and middle 1970s
13 they advised cooperating with robbers and rapists
14 to minimize chances of personal injury. Today,
15 some who gave that advice tacitly admit that it was
16 misguided. They now urge resistance in selected
17 instances, especially for rape victims. Studies
18 show that robbery and rape victims who resist with
19 a gun are only half as likely to suffer injuries
20 as those who put up no defense. 28

21 Why Guns Deter Criminals

22 Advocates of gun control have paid for several
23 studies, hoping to prove that guns are not useful
24 for self-defense. But every study has shown the
25 opposite. Handguns are used at least as often in

1 repelling crimes as in committing them and are
2 particularly successful as weapons of defense. 29
3 This is one reason why 88 percent of the nation's
4 command-rank police officials disagree with the
5 statement. "The banning of private ownership
6 of firearms will result in fewer crimes from
7 firearms." 30

8 In the 1960s a New York-based antigun group
9 printed signs for its members to post on their
10 homes, "THERE ARE NO GUNS IN THIS HOUSE,"
11 But the signs came down and the organization wither-
12 ed after a large number of those homes were robbed
13 or burglarized. 31 On the other hand, during a
14 1974 police strike in Albuquerque, N.M., armed
15 citizens patrolled the streets - and felonies
16 dropped sharply. 32

17 Americans use firearms for protection an esti-
18 mated one million times each year. Ninety-eight
19 percent of the time, they simply brandish the
20 weapon or fire a warning shot. 33 But not
21 always. 34

22 * Each year, gun-wielding citizens kill an
23 estimated 2,000 to 3,000 criminals in self-
24 defense, three times the number killed by
25 police.

1 * They wound another 9,000 to 17,000 criminals
2 each year.

3 "Criminals are three times more likely to be killed
4 by their victims than by the police."

5 Criminals may not read statistical studies, but
6 they are generally aware of the large number of
7 firearms in existence and of the fact that law-
8 abiding citizens own most of them. Although
9 violent crime and total crime reported to the
10 police is much higher in the United States than in
11 Western Europe. U. S. burglary rates are about
12 the same, or lower, probably because of the
13 deterrent effect of civilian firearms. 35 Burglars
14 say they spend an average of two hours "casing" a
15 house to establish that no one is home. 36 They
16 avoid late-night burglaries because "that's the way
17 to get shot." 37 Interviews with convicted felons
18 are especially revealing: 38

19 * As Figure II shows, a survey of 1,874 felons in
20 10 states found that most worry more about meet-
21 ing an armed victim than about running into
22 the police.

23 * 42 percent reported they had encountered a
24 victim armed with a gun, and 38 percent had
25 been scared off, shot at, wounded or captured

1 by an armed victim.

2 * A majority agreed that "a store owner who is
3 known to keep a gun on the premises is not
4 going to get robbed very often."

5 Adverse Results are Rare.

6 Despite stories of gun owners who mistake family
7 members for intruders and shoot them, and of
8 criminals harming victims with the victims' guns,
9 the fact is that defending oneself with a firearm
10 generally is safer than the alternatives. 39

11 * The accidental shooting of an innocent person
12 mistaken for an intruder occurs in fewer than
13 30 fatal firearm incidents a year, about 2
14 percent of all fatal firearms incidents.

15 * At a maximum, criminals take a gun away from
16 armed victims only 1 percent of the time
17 (while 10 percent of police who are shot with
18 their own guns).

19 * Interestingly, 70 percent of defensive gun
20 uses are against criminals who do not have a
21 gun.

22 A nationwide comparative study conducted by Don
23 B. Kates, Jr., at the St. Louis University School
24 of Law found that armed citizens were quite responsi-
25 ble in using handguns. 40 The vast majority of

1 people are not violent and use firearms only as
2 a last resort. When they do use them, firearms can
3 be effective: 41

4 "Defending oneself with a firearm generally is safer
5 than the alternatives."

6 * As noted above, private citizens kill about
7 three times as many criminals as do law
8 enforcement officials.

9 * And although only 2 percent of those involved
10 in civilian shootings are misidentified, 11
11 percent of individuals involved in police
12 shootings were later found to be innocents
13 misidentified as criminals.

14 Of course, police must enter situations in which
15 they are not personally involved, while the private
16 citizen is unlikely to be under attack and unlikely
17 to mistake the target, so there is a greater
18 likelihood that police might make a misidentificat-
19 ion.

20 Myth No. 4: Killing someone is the only reason to
21 buy a handgun.

22 Advocates of gun control frequently argue that
23 there is no defensible reason for innocent people
24 to own handguns, since the only function of such
25 weapons is to kill other people. Actually, there

1 are a number of legitimate reasons to own a handgun
2 - not the least of which is self-defense. Pistol
3 shooting (at inanimate targets) is a sport, and
4 some professionals in the sport have million-dollar
5 contracts. 42 And, contrary to antigun propaganda,
6 pistol hunting is also a sport. 43 More important,
7 as noted above, firearms are used one million times
8 a year to ward off criminals and most of the time
9 they are not discharged.

10 "Firearms are used a million times a year to ward
11 off criminals."

12 Who Owns Guns.

13 Surveys show that owning a gun is associated
14 with peace of mind. Those who own guns are less
15 fearful of walking in their neighborhoods. They
16 are less apt to be afraid at night in their homes,
17 less likely to have been burglarized or robbed
18 within the last year. They also are more likely
19 to be political conservatives and hunters. The
20 overall pattern of gun ownership has been relatively
21 stable over the past 30 years. The biggest single
22 predictor of whether a householder owns a gun is
23 whether he or she grew up in a household with a
24 gun. This helps to explain the deep-seated
25 cultural conflict between those who find gun

1 ownership wholesome and judicious and those who
2 find it abhorrent and in need of control. 44
3 Guns for Self-Protection.

4 Higher crime in an area sometimes stimulates
5 more people to buy firearms for protection. Twenty-
6 seven percent of gun owners say they have a gun
7 mainly for protection. Another 62 percent say
8 that protection from crime is at least one of the
9 reasons they own guns. 45 Of households with guns,
10 those with no adult male are twice as likely as
11 others to keep a loaded gun. Black gun owners are
12 four times as likely as white gun owners to keep
13 a loaded handgun. 46

14 Criminals vs. Noncriminals.

15 Survey data show that gun ownership among people
16 who are arrested is moderately higher than in the
17 general population, but the difference is modest
18 for handguns, the type most frequently involved
19 in violence. 47 Scattered evidence suggests that
20 during the period of fastest increase in violent
21 crime, from 1964 to 1974, gun possession grew more
22 rapidly among criminals than among law-abiding
23 citizens. 48 Perhaps the sturdiest evidence is
24 that the fraction of homicides, aggravated assaults
25 and robberies involving guns increased from 1964 to
1974.

1 Myth No. 5: People who buy guns are more prone to
2 violence and crime than are other people.

3 There is little association between gun ownership
4 and attitudes toward violence: 49

5 * Overall, gun owners disapprove of violence
6 to the same extent as or even more strongly
7 than those who do not own guns.

8 * However, gun owners are more likely to approve
9 of using defensive force against attackers. 50

10 * Those who exhibit "violent attitudes" - as
11 reflected in their approval of police brutali-
12 ty, violence against social deviants and
13 dissenters, and so on - are less likely to
14 own guns.

15 The traits associated with gun owners show
16 virtually no statistical association with criminal
17 or violent behavior. If anything, gun ownership is
18 inversely correlated with criminal characteristics.
19 Although crime and violence "as well as gun owner-
20 ship" are more frequent among males than females
21 and in the South (a region with a moderately higher
22 rate of violence), a closer look tells a different
23 story. Violence is higher among black than white,
24 young than middle-aged, single than married, lower-
25 income than middle- and upper-income and urban than

1 rural individuals - all contrary to the pattern of
2 gun ownership. In terms of crude statistical
3 association, violence and crime are higher in
4 locales and among populations with lower gun
5 ownership (cities) and lower in places and popu-
6 lations with higher gun ownership (rural). 51
7 These facts also cast doubt on the theory that
8 violence is impulsive and/or fostered by the
9 presence of guns. (See the discussion below.)
10 "If anything, gun ownership is inversely correlated
11 with criminal characteristics."

12 Myth No. 6: Criminals mainly have guns in order to
13 commit crimes.

14 The number one reason criminals acquire handguns
15 is not to commit crimes but, like noncriminals,
16 to protect themselves. 52 Criminals keenly feel
17 the need for self-protection because they associate
18 with other criminals and are likely to be victims
19 as well as victimizers. As Figure II shows:

20 * In a survey of imprisoned felons, 58 percent
21 said protection was a very important reason
22 for getting a handgun and 26 percent said it
23 was a somewhat important reason.

24 * Only 28 percent cited use in crime as very
25 important and 20 percent said it was somewhat
important.

1 Myth No. 7: Killings and other violent crimes were
2 prevalent in the Old West because guns were so
3 plentiful.

4 There was violence along the frontiers, but most of
5 it was related to clashes with Indians, bandits
6 or foreign nations. There was not a great deal of
7 "ordinary" crime. From 1870 to 1885, the era of the
8 wild West when "everybody wore a gun," arrest
9 rates per 100 residents were much lower in the West
10 than in eastern cities. 53 Moreover, "the Western
11 frontier was a far more civilized, more peaceful,
12 and safer place than American society is today." 54
13 Contrary to the impression left by movies and
14 Western novels, crime and homicides were rare.
15 For example: 55

16 * In 1880, wide-open towns like Virginia City,
17 Nev., Leadville, Colo., and Dallas had no
18 homicides.

19 * By comparison, Cincinnati had 17 homicides
20 that year.

21 * From 1870 to 1885, the five Kansas railheads
22 of Abilene, Caldwell, Dodge City, Ellsworth
23 and Wichita had a total of 45 homicides, or an
24 average of three per year - a lower homicide
25 rate than New York City, Baltimore and Boston.
56

1 * Sixteen of the 45 homicides were committed by
2 duly authorized peace officers, and only two
3 towns "Ellsworth in 1873 and Dodge City in 1876"
4 ever had as many as five killings in any one
5 year. 57

6 With a few legendary exceptions, law enforcement
7 officers in the Old West were rather ineffective.
8 Still, there were few robberies, thefts or burglar-
9 ies in western towns, primarily because almost
10 everybody carried or possessed firearms and was
11 willing to resist. "The citizens themselves, armed
12 with various types of firearms and willing to kill
13 to protect their persons or property, were evidently
14 the most important deterrent to larcenous crime,"
15 said one author. 58 Unlike "Gunsmoke's" Matt
16 Dillon, the much heralded western peace officer
17 actually faced fewer problems than his counterpart
18 elsewhere. The westerner, said one student of the
19 era, "probably enjoyed greater security in both
20 person and property than did his contemporary in the
21 urban centers of the East. "59" It's a fairly
22 recent idea that guns aren't a good thing," says
23 Jon Weiner, a professor of history at the University
24 of California. "The image of the lone man defend-
25 ing his homestead...is deeply embedded in the

1 American psyche." 60

2 "There was not much ordinary crime in the Old West,
3 primarily because almost everybody was armed."

4 Myth No. 8: Gun control laws keep criminals
5 from obtaining guns.

6 Because less than 1 percent of firearms is ever
7 involved in a crime and because felons acquire only
8 a small fraction of their guns through licensed
9 channels, all gun control measures suffer from a
10 "needle in the haystack" problem. New restrictions
11 could reduce the small number of guns that criminals
12 obtain through regulated dealers but probably would
13 have little effect on the total number of guns in
14 criminal hands. Where do criminals get their guns?
15 The previously cited survey of prisoners in 10 states
16 found that: 61

17 * Just over half of the felons (compared to one-
18 quarter of the general population) said that
19 they owned handguns.

20 * Fewer than one in six had purchased their guns
21 from a retail dealer.

22 * Three-quarters of the felons agreed that they
23 would have "no trouble" or "only a little
24 trouble" obtaining a gun when they were
25 released, despite the legal barriers to such

1 purchases.

2 * Half had stolen at least one gun in their
3 criminal careers; between 40 percent and 70
4 percent of the handguns these men possessed
5 most recently were stolen. 62 These were
6 incarcerated felons, likely to be among the
7 most active and strongly motivated criminals.
8 Advocates of gun control measures may believe
9 that weakly motivated, infrequent criminals
10 can be disarmed or prevented from acquiring
11 guns through regulation. However, even among
12 members of the general, noncriminal population,
13 about 36 percent of guns are acquired through
14 private parties, often as a give. 63 This
15 implies that of an estimated 8.6 million
16 firearms transactions each year, some 3.1
17 million are outside licensed retail sources.
18 While some jurisdictions try to regulate the
19 informal markets in gun trades, such trans-
20 actions are invisible to authorities. And
21 virtually all social scientists who have in-
22 vestigated the question have concluded that
23 gun control laws are ineffective in denying
24 guns to criminals because guns are so avail-
25 able on the underground market.

1 "About 3.1 million of the estimated 8.6 million
2 firearms transactions each year are outside
3 licensed retail sources."

4 Do Gun Laws Matter?

5 Existing studies find that current U.S. gun laws
6 have no substantial impact on gun ownership or
7 crime. Two possible exceptions are the 1934
8 federal machine gun ban and well-enforced pro-
9 hibitions on carrying guns - although 5 percent of
10 all U.S. adults regularly carry guns. 64 Overall,
11 restrictive gun laws raise the price of acquisition
12 and diminish the value of guns, but the impact on
13 both felons and nonfelons appears to be weak or
14 nonexistent.

15 Other Methods of Deterrence.

16 Harsher punishment of armed criminals by the
17 criminal justice system "such as mandatory prison
18 sentences for using a firearm in the commission of
19 a crime" appears to be one of the few effective
20 crime deterrents. Mandatory penalties appear to
21 reduce armed robbery rates, for example. 65 And
22 one study found that gun offenders receive harsher
23 treatment at all stages of court processing and,
24 when convicted, receive substantially longer prison
25 sentences. 66

1 Myth No. 9: Required waiting periods would prevent
2 some of the most vicious crimes.

3 One of the most popular forms of gun control is a
4 mandatory waiting period. For example, if the
5 Brady bill (named after Ronald Reagan's press
6 secretary, James Brady) were law, all U.S. citizens
7 would have to wait seven days before purchasing
8 a handgun. Do such laws make sense?

9 To generate support for waiting-period laws,
10 proponents frequently refer to the Brady case and
11 to other vicious crimes committed with guns. Un-
12 fortunately, the cure has nothing to do with the
13 disease. The Brady bill would not have saved Jim
14 Brady. Nor would it have prevented the Killeen,
15 Texas, massacre or the Stockton, Calif. massacre.
16 In each case, the predator still could have legally
17 obtained the weapon he used, because he had no
18 previous felony record.

19 Gun control proponents argue that, during the
20 waiting period, officials would have the opportuni-
21 ty to check out the criminal records of potential
22 purchasers. A waiting period does give them that
23 opportunity. But as a practical matter, most
24 criminal records are not kept where they are
25 accessible to gun dealers, police departments or

1 anyone else. In general, there is no national
2 reporting of criminal records and no computer
3 records system that can be tapped into. The Brady
4 bill would not have saved Jim Brady."

5 Without providing funding, Congress has asked
6 the U. S. Justice Department to bring its records
7 up to date and maintain them in easy-access form on
8 computers. A nationwide database system would
9 permit gun dealers to instantly check for a
10 purchaser's criminal record before selling a gun.
11 Of course, if instant record checks were possible,
12 there would be no need for a waiting period.

13 Myth No. 10: Most murders are committed by people
14 killing friends or family members.

15 A majority of murders involve strangers with
16 whom the killer is not well acquainted. Fewer
17 than a fourth of all murders involve family members
18 or friends, as shown in Table II. In particular,
19 only 12.5 percent of victims are members of the
20 same family. Of the 38.4 percent called "unknown"
21 in Table II, it is likely that relatively few of
22 the murderers are relatives or friends of the
23 victims.

24 The notion that most murders are committed by
25 friends killing friends (or family members) is

1 based on a flawed study and biased descriptions
2 of the study's findings. 67 The myth has been
3 reinforced by three other factors. First, the
4 media sensationalizes multiple-death family murders,
5 exaggerating public perception about their frequency.

6 Second, murders involving family members or
7 friends have been a declining share of all murders,
8 and perception has lagged behind the facts (murder
9 within the family was one-fourth of all murders in
10 1974 - twice its current level). Third, many
11 sociologists and criminologists tend to character-
12 ize criminal violence as impulsive, irrational
13 and unrelated to consequences. The third factor
14 fosters the belief that much criminal violence
15 occurs simply because someone becomes angry at
16 home and the means of lethal violence (a firearm)
17 is handy. Neither logic nor evidence supports
18 this belief.

19 "Only 12.5 percent of murder victims are members
20 of the killer's family."

21 Myth No. 11: The availability of guns contributes
22 to crimes of passion.

23 Are most murders, particularly of friends and
24 relatives, committed by otherwise peaceful citizens
25 who happen to have loaded guns available in a moment

1 of anger, and who make one slip? Rarely. Domestic
2 homicide usually is a terminal episode in a syndrome
3 of violence rather than an isolated event. When a
4 husband kills a wife, it usually is with his fists
5 or a bludgeon, and he has beaten her many times
6 before. Significantly, if a firearm is used when
7 one spouse kills another, it more often is the
8 wife who uses it in defense against her larger, more
9 aggressive male partner. 68 Most of these wives
10 are never indicted because they are legally defend-
11 ing themselves or their children. About 40 per-
12 cent of defensive gun uses are connected with
13 assaults in the home, 69 and most presumably are
14 cases of family violence. 70 But the notion that
15 much serious violence is accounted for by previously
16 nonviolent people in "crime-of-passion" domestic
17 homicides is wrong. 71 For example, in a Kansas
18 City study, in nine out of ten domestic "crime-of-
19 passion" homicides, police had responded to dis-
20 turbance calls at the same address within the
21 preceding two years an average (median) of five
22 times. 72 Moreover, it's not clear what difference
23 gun control laws would make. A large number of men
24 who kill in these circumstances have a previous
25 history of convictions and, as felons, are

1 forbidden by current law to have a gun. One crime
2 study concludes: 73 It is commonly hypothesized
3 that much criminal violence, especially homicide,
4 occurs simply because the means of lethal violence
5 (firearms) are readily at hand, and thus that much
6 homicide would not occur were firearms generally
7 less available. There is no persuasive evidence that
8 supports this view.

9 "In most domestic homicides, there is a pattern of
10 previous violence."

11 Myth No. 12: Automatic rifles and so-called assault
12 weapons are too dangerous to be left in private
13 hands.

14 On "Miami Vice" the weapons of choice among
15 drug dealers are Uzi machine guns and M-16 military
16 automatic fire weapons. Don Johnson, amazingly,
17 manages to prevail week after week using only a
18 handgun. Of course in real life, Don Johnson
19 wouldn't stand a chance against such superior fire
20 power. Fortunately, in real life criminals don't
21 carry machine guns.

22 Criminals overwhelmingly choose handguns for
23 their concealability and small size. 74 Guns that
24 are rare in the nonfelon population are also rare in
25 the criminal population. If a weapon is useful for

1 crime, it is also useful for legitimate purposes.
2 Even drive-by shootings involve mostly handguns and
3 shotguns. And, despite television and the movies,
4 most Florida police agencies have not come across a
5 single "assault weapon."

6 Automatic Rifles.

7 Since 1934 it has been unlawful for civilians
8 to possess automatic-fire weapons without special
9 permission of the U. S. Department of Treasury,
10 and since 1986 all importation and manufacture
11 of these weapons for private use have been prohibited.
12 Furthermore, no semiautomatic weapons sold to civil-
13 ians are readily convertible to automatic fire.
14 Nonetheless, it is fairly easy for a law-abiding
15 civilian to get permission to own one of these
16 weapons as a "collector" and about 103,000 are in
17 private hands.

18 Over the past 50 years, no civilian has ever used
19 a legally owned machine gun in a violent crime."

20 The existence of guns that are legally in
21 private hands has posed no threat to the rest of
22 us, however. Over the past 50 years, no civilian
23 has ever used a legally owned machine gun in a
24 violent crime. Even the illegal use of machine
25 guns by drug dealers and other violent criminals is

1 close to nonexistent. Since 1980, when the first
2 Uzi was imported into the United States, not one
3 police officer has been killed with an Uzi machine
4 gun.

5 Assault Weapons.

6 The official Department of Defense definition of
7 an assault rifle is one capable of "selective fire,"
8 that is, of both automatic fire (many shots per
9 trigger pull) and semiautomatic (one shot per
10 trigger pull). The media, however, have broadened
11 the term "assault rifle" to include any semiautomatic
12 rifle with a military appearance (e.g., plastic
13 stock instead of wood stock, loop for a lanyard and
14 dull instead of shiny surface). There is no
15 mechanical difference between these weapons and
16 those with different styling used for hunting and
17 target shooting. The only difference is cosmetic.
18 "Despite 'Miami Vice' - not a single police officer
19 has been killed with an Uzi machine gun."

20 Semiautomatic weapons are rarely used in crime.
21 When they have been used "as in Stockton, Calif."
22 they caused no more damage than easily could have
23 been caused by a garden-variety weapon. 75 In fact,
24 the death toll from a shotgun or full-power
25 hunting rifle probably would have been higher.

1 Overall:

2 * All rifles are involved in less than 3 percent
3 of homicides.

4 * Of 14,988 guns seized by police in Chicago
5 in 1988, only 3.1 percent were semiautomatics
6 of any kind.

7 * Of 217 homicides committed in Dade County
8 (Miami) Fla., in 1989, only three involved an
9 assault weapon. 76

10 The total number of felonious deaths of police
11 officers has been declining since 1980 and the
12 maximum number killed by an "assault rifle" was
13 11 during 1987. Even a spokesperson for Handgun
14 Control, Inc., the primary gun control lobby,
15 conceded that assault weapons "play a small role
16 in overall violent crime." 77

17 Cop-Killer Bullets.

18 The political debate changes periodically to
19 focus on other specific weapons, such as "cop-
20 killer" bullets and plastic guns. To the best of
21 our knowledge, teflon-coated bullets "which were
22 developed by and for the police" have never been
23 used in a crime. Nor are they the only danger faced
24 by police officers. An ice pick will also pierce
25 a bulletproof vest and kill the wearer.

1 In general, the piecemeal approach to weapons
2 control is ineffective because it overlooks sub-
3 stitute weapons. Success in getting rid of one
4 type of weapon would encourage criminals to use
5 another. For example, it is highly unlikely that
6 even extensive reductions in handguns would reduce
7 homicides because offenders would substitute long
8 guns, often sawed-off, which are as much as three
9 times deadlier than handguns. The circumstances of
10 most homicides imply that a long gun could easily
11 have been used.

12 Myth No. 13: Gun control laws are especially
13 needed to prevent the purchase of "Saturday Night
14 Specials". So-called Saturday Night Specials are
15 small caliber, inexpensive handguns. These have
16 been commonplace in the United States since the
17 19th century. Gun control advocates argue that
18 cheap handguns serve little or no legitimate purpose
19 and are used to commit most crime. These claims
20 are wrong. Only 10 percent to 27 percent of crime
21 involves handguns that fit the Bureau of Alcohol,
22 Tobacco and Firearms definition of a Saturday Night
23 Special (SNS). Since handguns are involved in only
24 10 percent of violent crime (another 2 percent
25 involve other firearms), SNSs are involved in only

1 1 to 3 percent of violent crime. Criminals are no
2 more likely to rely on SNSs than the share of SNSs
3 in the handgun stock (about one in five), and
4 therefore criminals cannot be said to prefer
5 Saturday Night Specials. Because they are less
6 expensive, most SNSs are probably owned by lower
7 income people for protection, and any laws to ban
8 them would disproportionately hurt the poor, who
9 are the most frequent victims of crimes.

10 "; 'Saturday Night Specials' are used in only 1 to 3
11 percent of all violent crimes.";

12 Myth No. 14. People don't need guns for self-
13 protection because they can rely on the police.

14 One of the most prevalent myths is that people
15 don't need firearms because law enforcement officers
16 can protect them. But just how much protection
17 against criminals can citizens expect?

18 Protection from Ordinary Crime.

19 There are about 500,000 police officers in the
20 United States. Adjusting for three shifts per day,
21 vacations, desk duty, etc., leaves about 75,000
22 police on a patrol at any moment to protect 250
23 million Americans. 78 That's one police officer
24 for every 3,360 potential victims. And experience
25 shows that's not enough. 79

1 * Every year nearly five million people are
2 victims of violent crimes - murder, rape,
3 robbery or life-threatening assault.

4 * 98 percent of the time, violent and serious
5 property crimes do not result in a prison
6 sentence.

7 * The median sentence actually served by state
8 prisoners declined from 21 months in the
9 1950s and early 1960s to 13 months in 1988.

10 * The expected punishment for all serious crimes,
11 taking into account the low probability of
12 going to prison, declined from an estimated
13 24 days in prison in 1950 to 8.5 days in 1990.

14 Riots and Civil Emergencies.

15 After the Los Angeles riots, Korean-American
16 merchants said they had no choice but to defend
17 their stores and, in some cases, shoot at looters.
18 Police, they said, ignored pleas for help that in-
19 cluded attempts to flag down patrol cars and
20 dozens of calls to the 911 emergency number. 80
21 Men with guns also defended Mann's Chinese Theatre
22 and nearby businesses through the first night of
23 rioting. At midnight the following night, a squad
24 of National Guardsmen arrived but, after talking
25 with the defenders and looking over what they were

1 doing, the commander concluded that his men could
2 be of greater use elsewhere, and they left. 81

3 After Hurricane Hugo devastated the U.S. Virgin
4 Island of St. Croix in 1989, National Guardsmen
5 and local police did nothing to stop the looting.
6 Some even took part in it. Only one shopping
7 center was spared - because the owner had heavily
8 armed men patrolling the roofs. 82

9 Lack of a Right to Government Protection.

10 Gun control laws implicitly assume that the
11 criminal justice system has the duty and the
12 ability to protect individuals. Our judges have
13 ruled otherwise. 83 For example, New York State's
14 highest court ruled in 1968 that a victim who was
15 attacked after seeking police protection to no
16 avail had no right to protection. The court refused
17 to create such a right, saying it would impose a
18 crushing economic burden on the government. 84

19 For the most part, federal courts have agreed.
20 The Supreme Court held in an 1856 case 85 that
21 local law enforcement officers had a general duty
22 to enforce laws, not to protect a particular person.
23 In 1982, 86 a federal court of appeals said:

24 ...[T]here is no constitutional right to be
25 protected by the state against being murdered by

1 criminals or madmen. It is monstrous if the state
2 fails to protect its residents against such predators,
3 but it does not violate the due process clause of
4 the Fourteenth Amendment or, we suppose, any other
5 provision of the Constitution. The Constitution is
6 a charter of negative liberties: it tells the state
7 to let people alone, it does not require the federal
8 government or the state to provide services, even
9 so elementary a service as maintaining law and
10 order.

11 These rulings are probably consistent with the
12 original intent of the founding fathers. Some legal
13 scholars argue that the framers of the U.S.
14 Constitution assumed that law-abiding people would
15 largely be responsible for their own safety. 87
16 They note that under English common law, which is
17 the basis for U. S. law, the sheriff's main jobs
18 were collecting taxes and enforcing government
19 decisions. Keeping public order was a secondary
20 duty.

21 Myth No. 15: Gun ownership is not a constitutional
22 right

23 A primary obstacle in the path of those who
24 seek to expand governmental control over private
25 ownership of firearms is the United States

1 Constitution's Second Amendment, which says:

2 A well-regulated Militia, being necessary to the
3 security of a free State, the right of the people
4 to keep and bear Arms, shall not be infringed.

5 Note that the right to bear arms is not granted
6 by the amendment. Instead its existence is
7 presumed, probably as part of the general right of
8 self-defense. Note also that since the founding
9 fathers made this right second on a list of ten,
10 they must have believed that it was especially
11 important.

12 Some people argue that the right to bear arms is
13 conditional upon the need to have an armed
14 citizenry as part of our national defense. Thus,
15 if the need were not there, the founding fathers
16 would not have asserted the right. In the modern
17 era, supposedly the need is not there. Does this
18 mean there is no longer any constitutional right?
19 At the time the Constution was written, "militia"
20 had two meanings. The "select militia" was the
21 forerunner of our modern national guard. The
22 "general militia" referred to all able-bodied men
23 with arms. Both are distinct from the "army." 89

24 The founding fathers strongly believed in the
25 right of ordinary "nonarmy" citizens to bear arms,

1 and not just for defense against foreigners. In
2 general, people feared the new federal government
3 and its standing army as much as they feared
4 foreign invaders. As James Madison explained in
5 the Federalist Papers, the primary check on
6 government tyranny and an abusive army was citizens
7 with their own arms. 90 As Tench Cox, a friend of
8 Madison, wrote at the time the Constitution
9 was being adopted: 91

10 As civil rulers not having their duty to the
11 people duly before them, may attempt to tyrannize
12 and as the military force which must be occasionally
13 raised to defend our country might convert their
14 power to the injury of their fellow citizens, the
15 people are confirmed by the next article [2nd
16 Amendment] in their right to keep and bear their
17 private arms. The founders' purpose was to
18 constitutionalize the right to arms, which they
19 knew from English common law and Enlightenment
20 political philosophy. Militia laws blended three
21 related purposes; opposition to standing armies,
22 dependence on militias and support of the armed
23 citizen and his willingness to defend himself and
24 his free society. Standing armies were considered
25 a threat to the development of the virtuous,

1 self-reliant citizen on whom the republic's vitality
2 rested.

3 "The founders wanted citizens to be able to defend
4 themselves against tyranny by their own
5 government."

6 All subsequent 18th- and 19th-century legal
7 interpretation understood the Second Amendment
8 right to arms as a guaranteed constitutional right.
9 It was among Blackstone's five "absolute rights of
10 individuals" at common law. The "right of the
11 people to keep and bear arms" was self-defining to
12 the founders. They felt that clarification was
13 unnecessary. Familiar to them in Colonial law,
14 derived from the earliest known English codes and
15 its Greek and Roman antecedents, proclaimed by
16 every commentator known to them, the right to bear
17 private arms not only was hailed as fundamental to
18 republican institutions and popular liberty but
19 was viewed as inherent in the natural law right
20 of self-defense.

21 It is also worth noting that the Revolutionary
22 War was sparked by the British attempt to confis-
23 cate the patriots' privately owned arms at
24 Lexington and Concord. Thus the notion that the
25 founding fathers, or for that matter anyone alive

1 at the time, thought that the government had a
2 Constitutional right to disarm peaceable citizens
3 is ludicrous.

4 Conclusion

5 Although firearms are used in about 12 percent
6 of violent crimes, it is unlikely that any kind of
7 gun control legislation could remove more than a
8 handful of those firearms from felons' hands - and
9 there is no evidence that the disarmed criminals us-
10 ing them would not then turn to other weapons.
11 Most criminals do not obtain firearms through
12 conventional sources. Thus, as opponents of gun
13 control correctly contend, gun control measures
14 in the United States, if anything, contribute to
15 increased criminal violence because they deny guns
16 to honest citizens but not to criminals. They
17 might accurately be called victim disarmament
18 laws.

19 "Gun control laws might be accurately called
20 victim disarmament laws."

21 Armed citizens pose a risk of punishment to
22 criminals - perhaps more so than does the
23 criminal justice system. Gun ownership may exert
24 as much deterrent effect on violent crime and
25 burglary as the criminal justice system does. The

1 battle over gun control is not about inanimate
2 objects; it is about controlling people. To extend
3 gun controls would make the nation better for
4 criminals and worse for the rest of us.

5 NOTE: Nothing written here should be construed as
6 necessarily reflecting the views of the National
7 Center for Policy Analysis or as an attempt to aid
8 or hinder the passage of any bill before Congress.

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5
6 TEN MYTHS ABOUT GUN CONTROL

7 By Glen Otero, PhD

8
9 #1999-60

10 January 6, 1999

11 INTRODUCTION

12 For about a generation now, crime has run
13 rampant in America. Since the 1960s our rates
14 of violent assault, murder, and rape have led the
15 industrialized world. More recently we have been
16 able to cut these violent acts sharply back by a
17 return to an older policy: strong punishment for
18 violent offenders. This policy emerged from data
19 discovered in the 1980s[1] and it is proving a
20 powerful remedy to one of society's chief ills.

21 Even as this policy has been vindicated by the
22 clearest evidence, opponents of tough criminal
23 justice laws deny its efficacy.[2] Instead, a
24 competing idea has grown up to explain violence
25 among us. And with that idea has grown up a new

1 policy to combat crime. This policy seeks to
2 displace tough punishment of the guilty. Indeed it
3 does not even address itself directly to those who
4 commit crimes. Rather it addresses a tool that
5 criminals, as well as millions of law abiding
6 citizens, sometimes use.

7 This new policy is gun control. Across our
8 country a new regime of gun control is emerging
9 in a dozen forms. The movement exploits every
10 celebrated act of violence to advance its agenda.
11 The attention given to these incidents overwhelms
12 the hundreds of thousands of offsetting cases in
13 which guns are used as defensive weapons to save
14 the lives and property of the innocent.

15 At Claremont Institute, we are devoted to the
16 Constitution, and we take seriously therefore its
17 Second Amendment: "A well-regulated Militia,
18 being necessary to the security of a free State,
19 the right of the people to keep and bear Arms shall
20 not be infringed."

21 In many things today, we are too ready to think
22 that the principles of the American Revolution are
23 relics of an irrelevant past. Neglect and defiance
24 of the Second Amendment is one of the worst examples.
25 But before we consign the right to keep and bear

1 arms to the ash heap of history, let us look at
2 some contemporary facts that suggest that the
3 founding principles reflect truths that have not
4 died..

5
6 LARRY P. ARNN
President
The Claremont Institute
7

8 Notes to Introduction

9 [1] See "Ten Myths on Crime," by Joseph Bessette,
10 The Claremont Institute, 1992(GSP#13).

11 [2] Consider the puzzled tone of New York Times
12 reporter Fox Butterfield, in an article this
13 August: "The nation's prison population grew by
14 5.2 percent in 1997," Butterfield wrote, "even
15 though crime has been declining for six straight
16 years." The headlin read: "Prison Population
17 Growing Although Crime Rate Drops," New York Times,
18 August 9, 1998, p 18(emphases added).

19 Myth 1: The proliferation of guns in this country
20 is responsible for an increase in the violent crime
21 rate.

22 This is arguably the most pervasive untruth
23 associated with firearms. It is true that there
24 is a great deal of gun-related violent crime in
25 this country, including homicide, robbery and

1 assault. Additionally, the proliferation of
2 firearms in this country has been steadily increas-
3 ing. These two facts have led many to believe
4 that the increase in guns in this country is
5 responsible for the increase in violent crime.
6 However, decades of data collecting and analysis
7 reveal that nothing about a guns/crime relation-
8 ship is self-evident.

9 In 1978 the National Institute of Justice
10 initiated a study to examine the relationship
11 between firearms and violence. Upon reviewing the
12 criminological research to date, the authors of the
13 study concluded that there were no strong causal
14 connections between private gun ownership and the
15 crime rate. Furthermore, they added that there
16 was no good evidence supporting the idea that
17 homicide occurs just because guns are readily
18 available, or its corollary, that many homicides
19 would not occur were guns less available.

20 Since 1978, criminological studies examining
21 the relationship between violent crime and private
22 gun ownership have typically found no significant
23 positive effect of gun ownership on the violent
24 crime rate. Some studies actually find a negative
25 relationship. In other words, areas with high gun

1 ownership experienced less crime than comparable
2 areas with lower firearm ownership. Studies that
3 draw a causal inference from a gun/homicide
4 correlation usually fail to take into account the
5 possible reverse relationship. That is, these
6 studies do not address the possibility that high
7 crime rates may have stimulated higher gun
8 ownership, and not just the reverse.

9 The national homicide, gun homicide, robbery
10 and gun robbery rates, as well as the percentage
11 of guns involved in aggravated assault, have not
12 significantly increased from what they were in
13 1974. However, the number of firearms in this
14 country increased 75 percent between 1974-1994,
15 for a total of nearly 236 million guns. While the
16 number of guns steadily increased in this country
17 between 1974-1994, half of that time the homicide
18 and robbery rates were decreasing, the other half
19 they were increasing, resulting in no net change.
20 The proliferation of firearms during this period
21 cannot be held responsible for an increase in
22 the violent crime rate when in fact there has been
23 no such increase. Furthermore, since 1994, the
24 homicide rate has continued to drop, hitting a
25 low in 1996 not seen since 1969.

1 A simple calculation demonstrates that a very
2 small fraction of the existing guns are actually
3 involved in any crime. The criminologist Gary
4 Kleck estimated the percentage of circulating
5 guns actually involved in a crime for 1993. Let us
6 assume, as he did, that each of the 1,134,102 fatal
7 and nonfatal gun-related incidents in 1993 were
8 committed with a different gun. This is a conserva-
9 tive assumption that undoubtedly overestimates
10 the actual number of guns involved in violent
11 crime. This number, divided by 228,660,966, the
12 number of guns in circulation that year, means that
13 less than 0.5 percent of all guns were used in a
14 crime. Adjusting the calculations to accommodate
15 crimes involving only handguns yields a little
16 over 1 percent of the circulating handguns in 1993
17 being involved in a crime. Further analysis by
18 Kleck estimates that less than 1 percent of all
19 guns will ever be used in a crime. Approximately
20 99 percent of all guns are never involved in any
21 crime.

22 Sources: Gary Kleck, Targeting Guns: Firearms
23 and Their Control, (New York: Walter de Gruyter,
24 Inc., 1997). "Murder and Nonnegligent Manslaughter."
25 FBI Uniform Crime Reports for the United States,

1 1996-1997. Available:

2 <http://www.fbi.gov/ucr/CIUS/96CRIME/96CRIME.PDF> -

3 (26 October 1998). Lisa D. Bastian and Patsy A.

4 Klaus, "Criminal Victimization in the United

5 States: 1973-92 Trends," U.S. Department of

6 Justice, 1994. J. Wright, P. Rossi, and K. Daly,

7 Under the Gun: Weapons, Crime and Violence in the

8 United States, (New York: Aldine, 1983).

9 Myth 2: The proliferation of gun ownership in

10 this country is responsible for an alarming

11 increase in fatal gun accidents involving children.

12 In 1995, Robert Walker, a lobbyist for Handgun

13 Control Inc., claimed that 1,400 children are

14 killed as a result of fatal gun accidents each

15 year. But that shocking claim is contradicted

16 by the National Center for Health Statistics

17 (NCHS) and the National Safety Council (NSC).

18 According to these agencies, 181 children 0-14

19 years of age were victims of fatal gun accidents

20 in 1995. Since 1970, the first year data is

21 available from the NSC and the NCHS, fatal gun

22 accidents involving children under fifteen have

23 not even approximated one half the number Walker

24 claimed.

25 Statistics quoted as representative of gun

1 accidents involving preadolescents (children
2 under fourteen) are often inflated by including
3 adolescent and young adult incidents as well.
4 This is a serious error since adolescents and young
5 adults are the highest risk categories for firearm
6 accidents. Lumping together children and adults
7 seriously distorts the incidents attributed to pre-
8 adolescent children and infants. After properly
9 separating children from adults, one finds that
10 while the number of guns increased 75 percent
11 between 1974 and 1994, the number of fatal gun
12 accidents involving children ages 0-14 years
13 decreased 65 percent over the same period.

14 Understandably, fatal gun accidents involving
15 children tend to generate heavy publicity. This
16 disproportionate press coverage often implies that
17 the majority of accidental deaths of children is
18 caused by firearms. In reality however, between
19 1993-1996, fatal gun accidents accounted for less
20 than 4 percent of all the accidental deaths
21 involving children under fifteen. Furthermore,
22 firearm accidents involving children under age 10
23 constituted just over 1 percent of accidental
24 children deaths in this age group from 1993-1995.
25 Sources: David B. Kopel, ed. *Guns, Who Should Have*

1 Them? (Amherst: Prometheus Books, 1995). "10
2 Leading Causes of Death, United States 1993-95."
3 Available: -[http://www.cdc.gov/ncipe/osp/leadcaus/](http://www.cdc.gov/ncipe/osp/leadcaus/ustable.htm)
4 [ustable.htm](http://www.cdc.gov/ncipe/osp/leadcaus/ustable.htm) - (4 May 1998). "Deaths Due to
5 Unintentional Injuries, 1996 Type of Event and Age
6 of Victim." Accident Facts .22 Sept. 1997.
7 Available: -[http://www.nsc.org/Irs/statinfo/afp08.](http://www.nsc.org/Irs/statinfo/afp08.htm#H-)
8 [htm#H-](http://www.nsc.org/Irs/statinfo/afp08.htm#H-) (22 October 1998). Gary Kleck, Targeting
9 Guns: Firearms and Their Control, (New York:
10 Walter de Gruyter, Inc., 1997).
11 Myth 3: The proliferation of guns is responsible
12 for an increase in suicides.

13 The availability of guns is often presumed to
14 increase the suicide rate. In fact, our suicide
15 rates are higher than our homicide rates. Nonethe-
16 less, between 1974-1994, while the civilian gun
17 stock increased 75 percent, the total suicide rate
18 in this country fluctuated very little and amounted
19 to 12 deaths per 100,000 persons in 1974 and 1994.
20 Evidently, the remarkable increase in the number
21 of guns in this country has not increased the rate
22 of suicide.

23 If gun availability does influence suicide, one
24 would have to explain why countries with strict gun
25 control laws, such as West Germany, France, Austria,

1 Finland, Belgium, Denmark, Hungary, Luxembourg,
2 Norway and Canada, have higher suicide rates
3 than the U.S. If we group the suicides and homi-
4 cides together as an indicator of handgun availabil-
5 ity, the U. S. falls below the international median
6 in this statistic. The view that gun availability
7 has a direct effect on total suicide rates, here
8 and abroad, is not supported by any empirical
9 evidence or technically sound studies.

10 It is worth noting, however, that the rate of
11 suicides committed with guns, or the gun suicide
12 rate, increased slightly from 6.7 to 7.2 deaths
13 per 100,000 persons in the last twenty years.
14 Similarly, the percentage of suicides committed
15 with guns increased slightly from 55.4 percent in
16 1974 to 60.3 percent in 1994. The slight increase
17 in the rate and percentage of gun suicides demon-
18 strates that increased gun availability does
19 correlate with an increase in the number of
20 suicides committed with guns. Additionally, nine
21 of thirteen studies conducted between 1984 and 1993
22 also found a positive association between gun
23 levels and the gun suicide rate. However, only
24 one of the studies found a direct correlation
25 between gun levels and the total suicide rate,

1 and there is reason to believe that this study
2 is flawed technically, having used an invalid
3 method to measure gun availability. A study of
4 state level data in 1990 also found a direct
5 correlation between gun levels and gun suicides but
6 not total suicides.

7 It should be reemphasized that the increases
8 in the number of suicides committed with guns and
9 the gun suicide rate represent firearms being
10 chosen more often in suicides, and not an increase
11 in total suicides. So, while people in this
12 country are more frequently choosing firearms as
13 the means of self-destruction, the number of total
14 suicides remains relatively unchanged.

15 Sources: Gary Kleck, Targeting Guns: Firearms
16 and Their Control, (New York: Walter de Gruyter,
17 Inc., 1997). Don B. Kates Jr. and Gary Kleck,
18 The Great American Gun Debate: Essays on Firearms
19 and Violence, (San Francisco: Pacific Research
20 Institute for Public Policy, 1997).

21 Myth 4: Strict gun control laws have been success-
22 ful in lowering crime in the UK and Canada

23 Comparing the U.S. to the low guns/low crime
24 societies of the United Kingdom or Canada is one
25 of the most common arguments among gun control

1 advocates. In rebuttal, gun control opponents
2 typically reference high guns/low crime nations
3 such as Switzerland and Israel. However, these
4 comparisons miss the mark. The futility of
5 pairwise comparisons between nations' crime rates
6 relative to their gun ownership becomes apparent
7 once one realizes that there are countries with
8 every permutation: the US (high guns/high crime);
9 Switzerland and Israel (high guns/low crime);
10 Japan (low guns/low crime); and Mexico (low guns/
11 high crime). Any two countries can be compared
12 or contrasted to make any point desired.

13 A simple thought experiment will illustrate
14 this point: Three countries, X, Y and Z have very
15 strict anti-gun laws. Should we assume their
16 homicide rates to be very low? In fact, X, Y and Z
17 have homicide rates 100-150 percent greater than
18 the U.S. (compare the U.S. homicide rate at 9.5
19 people killed/100,000 to X's 19.7/100,000 in
20 1993). Should we suppose that X, Y and Z have one
21 common feature that is responsible for their
22 homicide rates? Since X, Y and Z are low
23 guns/high crime societies, should we assume that
24 guns are not causing the homicides? If so, why not?

25 X, Y and Z are actually Russia, Taiwan and

1 South Africa throughout the past and present,
2 is responsible for their homicide rates? Attempt-
3 ing to distill the cause of homicide down to one
4 factor such as guns, in each of these very diverse
5 countries, is difficult if not impossible.

6 Gun control advocates claim that the crime rate
7 is low in the UK because the British have fewer
8 guns than Americans. But European countries have
9 always had lower violent crime rates than the U.S.,
10 even before strict gun control laws were passed.
11 Moreover, many violent crime rates in Europe and
12 elsewhere are increasing faster than in the U.S.
13 right now.

14 Furthermore, the logic of the low guns/low
15 crime rate fails when one considers that the UK's
16 homicide rate is lower for non-gun homicides as
17 well. Clearly, fewer homicides committed with
18 knives, sticks, etc. cannot be attributable to
19 gun control.

20 Very little can be concluded from international
21 studies focused on the guns/crime relationship.
22 Not surprisingly, most of the research is techni-
23 cally weak. The best available homicide and suicide
24 data collected from 36 countries by the Centers
25 for Disease Control and Prevention, when analyzed

1 by Gary Kleck, demonstrates that there is no
2 significant correlation between gun ownership and
3 homicide.

4 To summarize, there is no consistent global
5 correlation between gun availability and violent
6 crime rates.

7 Sources: Gary Kleck, Targeting Guns: Firearms
8 and Their Control. (New York: Walter de Gruyter,
9 Inc., 1997). Don B. Kates Jr. and Gary Kleck,
10 The Great American Gun Debate: Essays on Firearms
11 and Violence. (San Francisco: Pacific Research
12 Institute for Public Policy, 1997).

13 Myth 5: Criminals prefer 'assault weapons' and
14 cheap handguns sometimes called 'Saturday Night
15 Specials'.

16 In an attempt to identify and isolate 'bad' guns,
17 monikers like 'assault weapon' and 'Saturday
18 Night Special' were created. In fact, the term
19 'assault weapon' does not exist in firearms techni-
20 cal literature, but was created by gun control
21 advocates no earlier than 1985. An 'assault
22 weapon' is loosely defined as a semi-automatic
23 firearm with a 'military appearance'. Many semi-
24 automatic rifles, pistols and even shotguns can
25 fit this vague description. Other weapons having

1 a hi-tech or a futuristic look, although not
2 related to any military firearm, may also be
3 considered 'assault weapons'. Assault rifles,
4 on the other hand, are clearly defined in the
5 Defense Department's Defense Intelligence Agency
6 manual Small Arms Identification and Operation
7 Guide as 'short, compact, selective-fire weapons
8 that fire a cartridge intermediate in power between
9 submachine gun and rifle cartridges'. In short,
10 assault rifles are military issue combat rifles
11 that can fire automatically. These military
12 assault rifles and other machine guns have been
13 tightly regulated ever since 1934, with the passage
14 of the National Firearms Act. None of the current
15 'assault weapon' laws applies to these long-prohibit-
16 ed firearms.

17 The inability clearly to define an 'assault
18 weapon' led to the banning of several specific
19 makes and models of firearms in California as a
20 result of the Roberti-Roos Assault Weapon Control
21 Act in 1989. However, the legislation did not
22 include several firearms similar to the 75 that
23 were banned, and it contained a provision that
24 allowed the Attorney General to add firearms to the
25 list with a judge's approval. These shortcomings

1 in the legislation were deemed unconstitutional
2 and struck down by the California Third Appellate
3 Court of Appeals under the precept that they
4 violated the principle of equal protection under
5 the law. The court went so far as to say that the
6 whole law may be unconstitutional and has asked
7 a lower court to review it further. Part of the
8 1994 federal Crime Bill included the Public Safety
9 and Recreational Firearms Use and Protection Act,
10 a.k.a. the Clinton Assault Weapon Ban. That act
11 is plagued with similar legislative shortcomings
12 and is being challenged in a U.S. Circuit Court of
13 Appeals . Since 1994, President Clinton has taken
14 advantage of the vague definition of an 'assault
15 weapon' and the ambiguity of the legislation, in an
16 attempt to ban more firearms. He recently issued
17 an order that bars the import of several other
18 'assault weapons' that comply with the 1994 law.
19 The 'assault weapon' debate is by far the most
20 publicized and most controversial firearm-related
21 topic to date. But a few examples will suffice
22 to demonstrate that 'assault weapons' are not
23 preferred by criminals:

24 Los Angeles: A study of drive-by shootings in
25 Los Angeles indicated that out of 583 documented

1 incidents, in only one was an 'assault weapon' used.
2 Only 3 percent of the guns recovered by police in
3 Los Angeles in 1988 were classified as 'assault
4 weapons'.

5 San Francisco: 2.2 percent of the guns confiscated
6 in 1988 were military style semi-automatic firearms.
7 Oakland: 4.3 percent of the guns recovered by
8 police in Oakland between 1985-1990 were of the
9 'assault weapon' category, while 'assault weapons'
10 involved in gun-related homicides in that city
11 amounted to 3.7 percent in 1991.

12 San Diego: Only 0.3 percent of the guns recovered
13 by police in San Diego between 1988-1990 were
14 classified as 'assault weapons'.

15 California: In California, just over 3 percent of
16 the guns recovered from homicides, aggravated
17 assaults and drug dealers in 1990 were 'assault
18 weapons'.

19 Nationwide: Analysis of guns recovered by police
20 nationwide between 1980-1994 demonstrates that on
21 average, less than 2 percent of the guns used in
22 crime are 'assault weapons'. Just over 2 percent
23 of all the felons in the United States incarcerated
24 up until 1991 for committing violent crimes with
25 a firearm used an assault rifle or 'assault weapon'.

1 Less than 1 percent of homicides are committed
2 using an assault rifle. During the years 1975-1992
3 only 1 percent of police officers murdered in the
4 line of duty were shot with firearms considered
5 'assault weapons' by California law.

6 Just as 'assault weapons' are not preferred by
7 criminals, neither are 'Saturday Night Specials'.
8 Like the term 'assault weapon', the label 'Saturday
9 Night Special' is also vague. For all intents and
10 purposes, a 'Saturday Night Special' is an inexpen-
11 sive, low caliber handgun, with a barrel that is
12 under three inches long. Like 'assault weapons',
13 the characteristics that define 'Saturday Night
14 Specials' are cosmetic in nature. However, 'Satur-
15 day Night Specials', thus defined, are involved in
16 less than 3 percent of violent crime, and only
17 about 2 percent of all 'Saturday Night Specials'
18 will ever be used in a violent crime. In support
19 of this statistic, felons interviewed by Wright
20 and Rossi admitted to actually preferring larger
21 caliber handguns. These are not much harder to
22 conceal and are considerably more powerful than
23 'Saturday Night Specials'. The heated debate and
24 copious legislation surrounding these 'bad' guns
25 is striking, considering they are not the guns most

1 utilized by criminals.

2 Sources: David B. Kopel, ed., Guns, Who Should Have
3 Them?, (Amherst: Prometheus Books, 1995) Gary
4 Kleck, Targeting Guns: Firearms and Their Control,
5 (New York: Walter de Gruyter, Inc., 1997). Wright,
6 J., and Peter H. Rossi, "The Armed Criminal in
7 America: A Survey of Incarcerated Felons,"
8 National Institute of Justice, 1985.

9 Myth 6: Few people actually use guns for self-
10 defense.

11 The National Crime Victimization Survey (NCVS)
12 predicted in 1987 that 83 percent of people in
13 this country would be a victim of violent crime
14 during their lifetime. Considering the violent
15 crime rate has not changed significantly, about
16 80 percent of the citizenry, in possession of over
17 230 million guns, with nearly half the households
18 having a gun, are going to come face to face with
19 a violent criminal one day. This situation makes
20 one think that there would be many instances of
21 defensive gun use in this country. In fact,
22 thirteen studies conducted between 1976 and 1994
23 estimated that there were between 770,000 and 3.6
24 million civilian defensive gun uses per year.

25 The National Self-Defense Survey (NSDS), conducted

1 by Gary Kleck and Marc Gertz in 1993, has yielded
2 the most accurate estimate of defensive gun use
3 to date. While designing this landmark study, the
4 authors corrected many flaws found in several
5 previous surveys. In doing so, the authors con-
6 structed the first survey ever specifically de-
7 signed to tally the number of defensive gun uses
8 in this country. The survey revealed that between
9 1988-1993 civilians used guns in self-defense
10 2.2-2.5 million times per year, saving between
11 240,000-400,000 lives each year. Based on their
12 results, Kleck and Gertz estimated that the number
13 of defensive gun uses is three to four times that
14 of illegal gun uses.

15 While 2.2-2.5 million defensive gun uses per
16 year compares favorably with the results obtained
17 in the thirteen previous studies, it is roughly
18 35 times higher than the 65-80,000 defensive gun
19 uses documented by the National Crime Victimization
20 Surveys (NCVS for the years 1979-1990. In address-
21 ing the disparity between the NSDS, the NCVS, and
22 the results obtained with either survey, Kleck
23 has pointed out several reasons why the NCVS, while
24 a good survey for determining the number of
25 criminal victimizations in this country, was very

1 poorly designed to document the number of
2 defensive gun uses. (The NCVS relies on question-
3 ing, conducted without anonymity, by the U.S.
4 Census Bureau for the U.S. Department of Justice.
5 One can understand the unwillingness of respondents
6 to report the use of firearms - even if entirely
7 justifiable - to the highest law enforcement agency
8 in the country.)

9 Sources: Gary Kleck, Targeting Guns: Firearms
10 and Their Control, (New York: Walter de Gruyter,
11 Inc., 1997). Don B. Kates Jr. and Gary Kleck,
12 The Great American Gun Debate: Essays on Firearms
13 and Violence. (San Francisco: Pacific Research
14 Institute for Public Policy, 1997). Michael R.
15 Rand, :Guns and Crime: Handgun Victimization,
16 Firearm Self Defense, and Firearm Theft," U.S.
17 Department of Justice, 1994.

18 Myth 7: Gun control laws take guns out of the hands
19 of criminals and lower violent crime.

20 Gun control as a whole has not worked to reduce
21 violent crime rates in this country. A large
22 amount of the research on gun control measures,
23 particularly that referenced by gun control advocacy
24 groups, is technically poor. Out of the 21 most
25 accurate studies, 17 found that gun control laws

1 did not reduce violent crime rates; two studies
2 resulted in ambiguous results and two studies
3 indicated a negative (inverse) effect on violent
4 crime rates. Furthermore, of the 21 studies,
5 the most comprehensive one tested the effects of
6 19 different gun control laws on six categories of
7 violent crime. The researchers found that of 102
8 direct tests, only three demonstrated definitely
9 that a particular measure worked in reducing the
10 rate of a particular violent crime. Fifteen tests
11 yielded ambiguous results; the remaining 84 tests
12 yielded negative results. The authors concluded
13 that the various gun control laws have no overall
14 significant effect on violent crime rates.
15 Summarily, the body of research on the effects of
16 gun control laws cannot be considered supportive
17 of their efficacy.

18 A gun control law that has spawned a lot of
19 controversy is the Brady Handgun Violence
20 Prevention Act or Brady Bill. The Brady law
21 requires a mandatory five-day waiting period
22 between the purchase and acquisition of a handgun
23 from a federally licensed dealer. During this
24 waiting period it is determined whether the
25 prospective purchaser of a handgun is a person

1 prohibited ownership of handguns by any State or
2 Federal law. Despite research demonstrating that
3 waiting periods do not lower violent crime
4 (see above), the Brady Act went into effect on
5 February 28, 1994.

6 When the Brady Bill was signed into law, eighteen
7 states and Washington D.C. were automatically
8 exempt from the law because they already had
9 stricter gun control laws. These exempt states and
10 D.C. accounted for 63 percent of the nation's
11 violent crimes and 58 percent of the nation's
12 murders. Two of the originally exempt states,
13 California and New York, have the highest and
14 second highest number of murders and violent crimes,
15 respectively. By 1997, ten more states had become
16 exempt from the Brady Bill. The 28 exempt states
17 and D.C. accounted for 75 percent of all violent
18 crimes and 70 percent of the murders in the nation.
19 In fact, California and New York have more violent
20 crimes than the remaining 22 states subject to the
21 five-day wait.

22 The Clinton Administration is constantly mis-
23 quoting the Bureau of Justice Statistics regarding
24 the number of persons denied handgun purchases
25 under Brady. The numbers compiled by the Bureau of

1 Justice Statistics need to be viewed with skepticism,
2 since they often do not take into account states
3 that have become exempt under Brady. Despite the
4 number of persons claimed by the President to have
5 been denied handgun purchases under Brady, the
6 actual number is 3 percent, or less, of prospective
7 owners per year. This means that 97 percent of
8 persons attempting to purchase handguns from feder-
9 ally licensed dealers are law-abiding citizens.
10 The actual number is undoubtedly higher since a
11 study conducted by the General Accounting Office
12 (GAO) determined that half of the denials in the
13 first year of Brady enforcement were wrongly
14 dispensed due to clerical errors and other techni-
15 calities, and later revised.

16 Using crime rate data for all 3,054 counties in
17 the U.S. between 1977 and 1994, John Lott completed
18 an analysis of the Brady law's impact during its
19 first year. His research demonstrated that the
20 law had no significant effect on murder or robbery
21 rates, while rape and aggravated assault rates
22 experienced significant increases.

23 The GAO also determined that in the first 17
24 months of Brady enforcement, only seven individuals
25 were convicted of illegal attempts to purchase a

1 handgun, and only three of these were sent to
2 prison.

3 Additionally, the part of Brady that incorpor-
4 ates local police forces to do the federal govern-
5 ment's bidding has been ruled unconstitutional.
6 Yet, the current administration wants to keep the
7 five-day waiting period in effect even though that
8 provision of the bill expired on November 30th of
9 last year. Although the administration claims
10 that it deters crime, the only thing Brady does for
11 sure is criminalize the law-abiding citizen.

12 Sources: Gary Kleck, Targeting Guns: Firearms and
13 Their Control, (New York: Walter de Gruyter, Inc.,
14 1997). David B. Kopel, ed. Guns, Who Should Have
15 Them', (Amherst: Prometheus Books, 1995). Donald A.
16 Manson and Darrell K. Gilliard, "Presale Handgun
17 Checks, 1996," U.S. Department of Justice, 1997.
18 Donald A. Manson and Darrell K. Billiard, "Presale
19 Handgun Checks, 1997," U.S. Department of Justice,
20 1998. Don Manson and Gene Lauver, "Presale
21 Firearm Checks," U.S. Department of Justice, 1997.
22 Sarah Brady, "Statement of Sarah Brady Re: New DOJ
23 Report on Brady Law Success." Handgun Control,
24 Inc. News Releases. (21 June 1998). Available:
25 -<http://www.handguncontrol.org/e-main.htm>- (30 June

1 1998). "The 'Brady Handgun Violence Prevention
2 Act' Does It Live Up To Its Name?" ILA Research &
3 Information Division Fact Sheet. (1 May 1997).
4 Available: -<http://www.nra.org/research/fsbrady.html>-
5 (June 1998). John R. Lott Jr., More Guns, Less
6 Crime, (Chicago: The University of Chicago Press,
7 1998).

8 Myth 8: You, and your family and friends, are
9 43 times more likely to be shot by a gun kept in
10 the home than is a criminal intruder.

11 The infamous study that yielded this illogical
12 statistic is just one of many that litter the
13 public health and medical literature. Serious
14 shortcomings in rationale and methodology plague
15 the study. Nevertheless, the 43:1 ratio is
16 arguably the gun control advocate's most cited
17 statistic.

18 The study's authors start from the presumption
19 that the effectiveness of gun ownership for self-
20 defense can only be ascertained by contrasting
21 dead intruders with dead innocents. Nothing could
22 be further from the truth. Similar to police
23 forces and other household security measures, the
24 real benefits of gun ownership, demonstrated in
25 the NSDS, are to be counted not in corpses but in

1 lives saved and crimes deterred. In no way do the
2 authors address this. In fact, the study, only
3 counted homes in which a homicide or suicide took
4 place, ignoring gun-containing households that may
5 have successfully defended themselves from criminal
6 victimization with a firearm or had no incidents
7 occur at all.

8 In an attempt to conjure up a risk factor due
9 to having a gun in the home, the authors tallied
10 the gun related deaths in the homes studied. In
11 doing so, the authors included suicides. Of the
12 43 gun related deaths included in the study, 37
13 were suicides. The inclusion of suicides as gun
14 related deaths would be reasonable if gun avail-
15 ability does not influence suicide rates. The
16 suicides would almost certainly have occurred by
17 some other means in the absence of a gun. Addition-
18 ally, the authors excluded many cases of lawful
19 self-defense homicide. So, in deriving their
20 risk factor of gun related deaths vs. self-defense
21 homicides, the authors used an inflated numerator
22 and an under-representative denominator.

23 Moreover, the Seattle-based homes investigated
24 were not the average American households. The
25 study group was teeming with high-risk households

1 that contained a disproportionate number of people
2 with histories of arrests, drug abuse and domestic
3 violence. By studying these high-risk homes, one
4 cannot make sweeping generalizations regarding
5 the rest of this country.

6 Sources: Gary Kleck, Targeting Guns: Firearms
7 and Their Control, (New York: Walter de Gruyter,
8 Inc., 1997). David B. Kopel, "The 43:1 Fallacy."
9 Independence Feature Syndicate Opinion-Editorial.
10 1998. Available:

11 -[http://www.i2i.org/SuptDocs/Crime/43_to_1_fallacy.](http://www.i2i.org/SuptDocs/Crime/43_to_1_fallacy.htm)
12 htm- (31 July 1998).

13 Myth 9: Ordinary citizens (non-police, non-military)
14 cannot effectively use firearms for self-defense
15 and are more likely to get injured using a gun
16 for self-defense than not.

17 The utility of defensive gun use can be deter-
18 mined by referencing the NCVS database and analyzing
19 crime incidents that occurred between 1979-1985.
20 These files are the most detailed and representa-
21 tive account of the defensive actions of victims.
22 According to the information in the database, guns
23 are the most effective weapon and means of self-
24 defense, 83 percent of robbery victims and 88
25 percent of assault victims were not injured.

1 Furthermore, only one in four victims using a
2 gun in self-defense was even attacked during a
3 robbery or assault. These rates were by far the
4 lowest compared to other weapons, bodily force,
5 or nonviolent actions used in self-defense.
6 Additional support for defensive gun use can be
7 garnered from the NSDS. The NSDS, which has
8 yielded the most detailed information on defensive
9 gun use to date, concluded that only 5.5 percent
10 of victims using guns in self-defense were injured.

11 Despite the impression fostered by films and
12 TV, the majority of confrontations are not very
13 dramatic. According to the NSDS, 76 percent of
14 the incidents were resolved without the victim
15 firing a shot. In only 16 percent of the incidents
16 did the victim attempt to shoot the criminal, with
17 no more than 8 percent of all incidents resulting
18 in the wounding or death of the criminal. In fact,
19 only 18 percent of the gun defense victims faced a
20 criminal in possession of a gun, and only 3 percent
21 of the incidents resulted in both parties shooting
22 at each other.

23 Contrary to the popular fear that a criminal
24 is likely to seize the victim's gun and use it
25 against him, this situation occurred in about 1

1 percent of the incidents recorded in the NCVS.
2 Furthermore, less than 2 percent of fatal gun
3 accidents are defendants mistaking someone for an
4 intruder.

5 Sources: Gary Kleck. Targeting Guns: Firearms and
6 Their Control, (New York: Walter de Gruyter, Inc.,
7 1997). Don B. Kates Jr., and Gary Kleck. The
8 Great American Gun Debate: Essays on Firearms and
9 Violence. (San Francisco: Pacific Research Institute
10 for Public Policy, 1997).

11 Myth 10: Law-abiding citizens cannot be trusted to
12 safely carry concealed weapons in public.

13 Most Americans who believe that more guns mean
14 more crime are particularly afraid of people carry-
15 ing handguns in public places and believe that
16 carrying guns in public would escalate and foster
17 violent conflict, turning fender-benders and other
18 minor grievances into gunfights. In reality, a
19 landmark study by John Lott and David Mustard has
20 concluded that concealed handguns in the hands of
21 law-abiding citizens deter violent crime while
22 producing no significant increase in gun related
23 accidents.

24 In an extensive and exhaustive study, Lott and
25 Mustard used county level crime rate data for all

1 3,054 U.S. counties between 1977 and 1992. During
2 that time, ten states adopted non-discretionary
3 right-to-carry laws. That is, once an individual
4 meets certain criteria for carrying a concealed
5 handgun, a permit must be issued. The research
6 accounted for many variables including income,
7 poverty and unemployment levels, as well as arrest
8 and conviction rates, prison term lengths and
9 changes in handgun laws (e.g. waiting periods).
10 The researchers discovered that when a county
11 adopted a right-to-carry law, murder fell by
12 8 percent, rape fell by 5 percent and aggravated
13 assault fell by 7 percent. At the same time,
14 handgun accidents did not increase significantly.
15 It was estimated that if states without non-
16 discretionary right-to-carry laws had adopted them
17 in 1992, these states would have experienced 1,400
18 fewer murders, 4,200 fewer rapes, 12,000 fewer
19 robberies and 60,000 fewer aggravated assaults.
20 These reductions in violent crime would have
21 saved victims over \$5 billion.

22 Demographically, urban counties adopting
23 right-to-carry laws experienced the largest drops
24 in violent crime. Counties issuing the most
25 concealed carry permits also experienced the

1 largest drops in violent crime. According to
2 Lott and Mustard, women and minorities benefited
3 the most from right-to-carry permits.

4 Thirty-one states now have non-discretionary
5 concealed carry laws that allow law-abiding citizens
6 to carry concealed handguns for protection in
7 public.

8 Sources: John R. Lott Jr., and David B. Mustard,
9 "Crime, Deterrence, and Right-to-Carry Concealed
10 Handguns," Journal of Legal Studies 26 (1997):
11 1-68, John R. Lott, More Guns, Less Crime.
12 (Chicago: The University of Chicago Press, 1998).

13 Concluding Remarks

14 Scholarly analysis of decades of firearm-related
15 data and research consistently demonstrates that
16 guns do not cause crime. Yet, many Americans have
17 a different opinion. How does such a gap between
18 the truth in gun ownership and public opinion arise?
19 MediaWatch, a media watchdog organization, examined
20 every gun control policy story on four evening
21 shows (ABC's World News Tonight, CBS Evening News,
22 CNN's The World Today, and NBC Nightly News) and
23 three morning broadcasts (ABC's Good Morning
24 America, CBS This Morning, and NBC's Today) between
25 July 1, 1995 and June 30, 1997. MediaWatch calcu-

1 lated that in those two years 157 pro-gun control
2 stories were aired compared to 10 stories opposed
3 to gun control, while another 77 stories were
4 neutral. This approximate 16:1 ratio in favor of
5 gun control hardly depicts an unbiased media.
6 Therein lies a major obstacle to spreading the
7 truth about gun ownership. While adopting a
8 decidedly biased anti-gun stance, the media also
9 fails to promote firearm safety and education.

10 And judging from the depth and breadth of gun
11 related myths in circulation, a firearm education
12 is one thing this country desperately needs...and
13 deserves.

14 Sources: "Gun Rights Forces Outgunned on TV:
15 Networks Use First Amendment Rights to Promote
16 Opponents of Second Amendment Rights." MediaWatch .
17 July 1997. Available: -[http://www.mrc.org/news/
18 mediawatch/1997/mw19970701_stud.html-](http://www.mrc.org/news/mediawatch/1997/mw19970701_stud.html)
19 (30 Oct. 1998).

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24 and Immunology from UCLA.
25

1 dates of marriage and separation, and the
2 "insupportability" of the marriage. The application
3 for a temporary restraining order - essentially a
4 form order frequently used in Texas divorce
5 procedure - sought to enjoin Emerson from engaging
6 in various financial transactions to maintain the
7 financial status quo and from making threatening
8 communications or actual attacks upon his wife
9 during the pendency of the divorce proceedings.

10 On September 4, 1998, the Honorable John E.
11 Sutton held a hearing on Mrs. Emerson's application
12 for a temporary restraining order. Mrs. Emerson
13 was represented by an attorney at that hearing,
14 and Mr. Emerson appeared pro se. Mrs. Emerson
15 testified about her economic situation, her needs
16 in the way of temporary spousal support and child
17 support, and her desires regarding temporary
18 conservatorship of their minor child.

19 During the hearing, Mrs. Emerson alleged that
20 her husband threatened over the telephone to kill
21 the man with whom Mrs. Emerson had been having an
22 adulterous affair. However, no evidence was
23 adduced concerning any acts of violence or threaten-
24 ed violence by Mr. Emerson against any member of
25 his family, and the district court made no findings

II.

ANALYSIS

1
2
3 As stated above, Emerson was indicted for
4 possession of a firearm while being under a
5 restraining order, in violation of 18 U.S.C. #922
6 (g) (8) ("the Act"). This statute states that:

7 (g) It shall be unlawful for any person--

8 (8) who is subject to a court order that--

9 (A) was issued after a hearing of which such
10 person received actual notice, and at which
11 such person had an opportunity to participate:

12 (B) restrains such person from harassing,
13 stalking, or threatening an intimate partner
14 of such person or child of such intimate
15 partner or person, or engaging in other
16 conduct that would place an intimate partner
17 in reasonable fear of bodily injury to the
18 partner or child; and

19 (C) (i) includes a finding that such person
20 represents a credible threat to the
21 physical safety of such intimate partner
22 or child; or

23 (ii) by its terms explicitly prohibits
24 the use, attempted use, or threatened use
25 of physical force against such intimate

1 partner or child that would reasonably
2 be expected to cause bodily injury....
3 18 U.S.C. # 922(g)(8).

4 Emerson argues that 18 U.S.C. #922(g)(8) is an
5 unconstitutional exercise of congressional power
6 under the Commerce Clause and the Second, Fifth,
7 and Tenth Amendments to the United States
8 Constitution. The Court will address these
9 arguments seriatim.

10 A.
11 Commerce Clause

12 Emerson first argues that 18 U.S.C. #922(g)(8)
13 is an unconstitutional exercise of congressional
14 power under the Commerce Clause of the United
15 States Constitution. U.S. CONST. art. I, #8,
16 cl. 3. Pursuant to the Supreme Court's holding
17 in *United States v. Lopez*, 514 U.S. 549(1995),
18 Emerson argues that the Act is unconstitutional
19 because it does not regulate commercial activity.

20 However, the Fifth Circuit Court of Appeals
21 has examined the validity of 18 U.S.C. #922(g)(8)
22 under a Commerce Clause challenge and has held
23 that the Act is constitutional.
24 *United States v. Pierson*, 139F.3d 501 (5th Cir.
25 1998). Accordingly, Emerson cannot sustain a

1 Motion to Dismiss under a Commerce Clause
2 challenge.

3 B.

4 Second Amendment

5 Emerson claims that 18 U.S.C. #922(g)(8)
6 violates his rights under the Second
7 Amendment of the United States Constitution.
8 The Second Amendment states that:

9 A well regulated Militia, being necessary
10 to the security of a free State, the
11 right of the people to keep and bear
12 Arms, shall not be infringed.

13 U.S. CONST. amend. II

14 Only if the Second Amendment guarantees Emerson
15 a personal right to bear arms can he claim a
16 constitutional violation. Whether the Second
17 Amendment recognizes an individual right to keep
18 and bear arms is an issue of first impression
19 within the Fifth Circuit. Emerson claims
20 that he has a personal right to bear arms which
21 the Act infringes, while at oral argument
22 on the Motion to Dismiss, the Government claimed
23 it is "well settled" that the Second Amendment
24 creates a right held by the States and does
25 not protect an individual right to bear arms.

1. 1

2 Second Amendment Schools of Thought

3 Two main schools of thought have developed
4 on the issue of whether the Second Amendment
5 recognizes individual or collective rights. These
6 schools of thought are referred to as the "states"
7 rights, or "collective rights," school and the
8 "individual rights" school. The former group
9 cites the opening phrase of the amendment, along
10 with subsequent case law, as authority for the
11 idea that the right only allows states to
12 establish and maintain militias, and in no
13 way creates or protects an individual right to
14 own arms. David E. Johnson, Note, Taking a
15 Second Look at the Second Amendment and Modern
16 Gun Control Laws, 86 Ky. L.J. 197, 198
17 (197-98) (citing Andrew D. Herz, Gun Crazy:
18 Constitutional False Consciousness and Dereliction
19 of Dialogic Responsibility, 75 B.U.L. Rev. 57
20 (1995)). Due to changes in the political climate
21 over the last two centuries and the rise of
22 National Guard organizations among the states,
23 states' rights theorists argue that the Second
24 Amendment is an anachronism, and that there is
25 no longer a need to protect any right to private

1 gun ownership.

2 The individual rights theorists, supporting
3 what has become known in the academic literature
4 as the "Standard Model," argue that the amendment
5 protects an individual right inherent in the
6 concept of ordered liberty, and resist any
7 attempt to circumscribe such a right. Id.
8 (citing Glen Harlan Reynolds, A Critical
9 Guide to the Second Amendment, 62 Tenn.L.Rev.
10 461, 464-88(1995); Robert Dowlut, The Right to
11 Keep and Bear Arms: A Right to Self-Defense
12 Against Criminals and Despots, 8 Stan.L.&POL'Y
13 REV. 25 (1997)).

14 2.

15 Textual Analysis

16 A textual analysis of the Second Amendment
17 supports an individual right to bear arms. A
18 distinguishing characteristic of the Second
19 Amendment is the inclusion of an opening clause
20 or preamble, which sets out its purpose. No
21 similar clause is found in any other amendment.
22 Stanford Levinson, The Embarrassing Second
23 Amendment, 99 Yale L.J. 637, 644 (1989).
24 While states' rights theorists seize upon this
25 first clause to the exclusion of the second, both

1 clauses should be read in pari materia, to give
2 effect and harmonize both clauses, rather than
3 construe them as being mutually exclusive.

4 The amendment reads "[a] well regulated Militia,
5 being necessary to the security of a free State,
6 the right of the people to keep and bear Arms,
7 shall not be infringed." U.S. CONST. amend. II.
8 Within the amendment are two distinct clauses,
9 the first subordinate and the second independent.
10 If the amendment consisted solely of its independ-
11 ent clause, "the right of the people to keep and
12 bear Arms, shall not be infringed," then there
13 would be no question whether the right is individual
14 in nature. David E. Johnson, Note, Taking a Second
15 Look at the Second Amendment and Modern Gun
16 Control Laws, 86 Ky.L.J. 197, 200 (1997-98).

17 Collective rights theorists argue that
18 addition of the subordinate clause qualifies the
19 rest of the amendment by placing a limitation on
20 the people's right to bear arms. Id. However, if
21 the amendment truly meant what collective rights
22 advocates propose, then the text would read "[a]
23 well regulated Militia, being necessary to the
24 security of a free State, the right of the States
25 to keep and bear Arms, shall not be infringed."

1 However, that is not what the framers of the
2 amendment drafted. The plain language of the
3 amendment, without attenuate inferences therefrom,
4 shows that the function of the subordinate clause
5 was not to qualify the right, but instead to show
6 why it must be protected. Id. The right exists
7 independent of the existence of the militia. If
8 this right were not protected, the existence of the
9 militia, and consequently the security of the state,
10 would be jeopardized. Id. at 201.

11 The Supreme Court recently interpreted the text
12 of the Second Amendment and noted that the phrase
13 "the people" in the Second Amendment has the same
14 meaning in both the Preamble to the Constitution
15 and in the First, Fourth, Fifth and Ninth Amend-
16 ments. United States v. Verdugo-Urquidez,
17 494 U.S. 259, 265 (1990). The Court held that the
18 phrase "the people" seems to have been a term of
19 art employed in select parts of the Constitution."

20 The Second Amendment protects "the right
21 of the people to keep and bear Arms,"
22 and the Ninth and Tenth Amendments provide
23 that certain rights and powers are retained
24 by and reserved to "the people." While
25 this textual exegesis is by no means con-
 clusive, it suggests that "the people"
 protected by the Fourth Amendment, and
 by the First and Second Amendments...refers
 to a class of persons who are part of a

1 national community or who have otherwise
2 developed sufficient connection with this
3 country to be considered part of that
community. See *United States ex rel.*
Turner v. Williams, 194 U.S. 279, 292 (1904).

4 The Court has also held that given their con-
5 temporaneous proposal and passage, the amendments
6 of the Bill of Rights should be read in pari
7 materia, and amendments which contain similar
8 language should be construed similarly. *Patton v.*
9 *United States*, 281 U.S. 276, 298 (1930), cited
10 by David Harmer, *Securing a Free State: Why the*
11 *Second Amendment Matters*, 1998 *BYU L.Rev.* 55, 61
12 (1998). The Court's construction of "the people"
13 as used in the Second Amendment supports a
14 holding that the right to keep and bear arms is
15 a personal right retained by the people, as opposed
16 to a collective right held by the States. Thus,
17 a textual analysis of the Second Amendment clearly
18 declares a substantive right to bear arms recog-
19 nized in the people of the United States.

20 3.

21 Historical Analysis

22 "[T]here is a long tradition of widespread
23 lawful gun ownership by private individuals in this
24 country." *Staples v. United States*, 511 U.S. 600,
25 610 (1994). A historical examination of the right

1 to bear arms, from English antecedents to the
2 drafting of the Second Amendment, bears proof
3 that the right to bear arms has consistently been,
4 and should still be, construed as an individual
5 right.

6 a.

7 English History

8 A review of English history explains the
9 founders' intent in drafting the Second Amendment.
10 As long ago as 690 A.D. Englishmen were required
11 to possess arms and to serve in the military.

12 David T. Hardy, *Armed Citizens, Citizen Armies*:
13 *Toward a Jurisprudence of the Second Amendment*,
14 9 *Harv. J.L. & Pub. Poly'y* 559, 562 (1986) (citing
15 I John J. Bagley & Peter B. Rowley, *A DOCUMENTARY*
16 *HISTORY OF ENGLAND 1066-1540*, at 152 (1965)).

17 This obligation continued for centuries, requiring
18 nobility, and later commoners, to keep arms and
19 participate in the militia. *Id.* at 563-65. The
20 obligation to keep arms was not simply to provide
21 military service in the king's army; English
22 citizens were also required to provide local
23 police services, such as pursuing criminals
24 and guarding their villages. CLAYTON E. CRAMER,
25 *For the Defense of Themselves and the State: The*

1 Original Intent and Judicial Interpretation
2 of the Right to Keep and Bear Arms 24-]5 (1994);
3 Joyce Lee Malcolm, To Keep and Bear Arms: The
4 Origina of an Anglo-American Right 2 (1994).

5 By the middle of the seventeenth century,
6 however, the sovereign jeopardized the individual
7 right to bear arms. Charles II, and later James II,
8 began to disarm many of their Protestant subjects.
9 Hardy, *supra*, at 574-79. James II was an unpopular
10 king whose policies stirred great resentment
11 among both the political and religious communities
12 of England. David E. Murley, *Private Enforcement*
13 *of the Social Contract: Deshaney and the Second*
14 *Amendment Right to Own Firearms*, 36 *Duq.L.Rev.* 15,
15 19 (1997). Eventually, James II fled England
16 during what was later termed the Glorious Revolut-
17 ion. Hardy, *supra*, at 579. In the aftermath of
18 the Glorious Revolution, Parliament passed the
19 English Bill of Rights in 1689, codifying the
20 individual right to bear arms. *Id.* at 580. The
21 Bill of Rights provided that "the subjects which
22 are Protestant may have arms for their defense
23 suitable to their conditions and as allowed by law."
24 *Id.* at 581.

b.

The Colonial Right To Bear Arms

The American colonists exercised their right to bear arms under the English Bill of Rights. Indeed, the English government's success in luring Englishmen to America was due in part to pledges that the immigrants and their children would continue to possess "all the rights of natural subjects, as if born and abiding in England." Malcolm, *supra*, at 138. As in England, the colonial militia played primarily a defensive role, with armies of volunteers organized whenever a campaign was necessary. *Id.* at 139. Statutes in effect bore evidence of an individual right to bear arms during colonial times. For example, a 1640 Virginia statute required "all masters of families" to furnish themselves and "all those of their families which shall be capable of arms... with arms both offensive and defensive." *Id.* (citing *The Old Dominion In The Seventeenth Century: A Documentary History of Virginia, 1606-1689*, at 172 (Warren M. Billings ed., 1975)). A 1631 Virginia law required "all men that are fittinge to beare armes, shall bring their pieces to church ...for drill and target practice." Hardy, *supra*,

1 at 588 (quoting 1 William W. Hening, The Statutes
2 of the Legislature in the Year 1619, at 173-74
3 (reprint. 1969) (1823). These laws served the two-
4 fold purpose of providing individual self-defense
5 while giving England a reserve force available
6 in time of war. Murley, supra, at 20.

7 Following the French and Indian War, England
8 increased taxes and stationed a large army in the
9 colonies. On April 3, 1769, the Boston Evening
10 Post announced that colonial authorities urged
11 the citizenry to take up arms. In reply to the
12 claim that this request was unlawful, the newspaper
13 observed that:

14 It is certainly beyond art and sophistry,
15 to prove the British subjects, to whom
16 the privilege of possessing arms as
17 expressly recognized by the Bill of Rights,
18 and who live in a province where the law
19 requires them to be equipped with
20 arms, are guilty of an illegal act,
21 in calling upon one another to be
22 provided with them, as the law directs.

23 Hardy, supra, at 589-90 (quoting Oliver M.
24 Dickerson, Boston Under Military Rule 61 (1936).
25 Shortly after the "Boston Tea Party," British

1 soldiers, led by General Gage, attempted to
2 disarm the colonists. Malcolm, supra, at 144.
3 The British Parliament banned all exports of mus-
4 kets and ammunition to the colonies and began
5 seizing the colonists' weapons and ammunition. Id.
6 The British efforts to disarm the colonists harden-
7 ed American resistance. At that point, the
8 colonists began to form the "minutemen," a nation-
9 wide select militia organization. Hardy, supra at
10 890. In February 1775, a colonial militia pre-
11 vented the British from seizing weapons at an
12 armory in Salem, Massachusetts. Two months later,
13 the colonists defeated British troops at Concord.
14 Id. at 591. Distinguished colonial leaders, such
15 as George Washington and Samuel Adams, strongly
16 influenced the organization of these local militias.
17 Stephen P. Halbrook, *That Every Man Be Armed: The*
18 *Evolution of a Constitutional Right* 60-61 (1984).

19 The "militia" which won the Revolutionary War
20 consisted of all who were treated as full citizens
21 of the community. George Mason stated, "Who are
22 the militia? They consist now of the whole people."
23 Sanford Levinson, *The Embarrassing Second*
24 *Amendment*, 99 *Yale L.J.* 637, 647 (1989) (citing
25 statement of George Mason (June 14, 1788), in 3

1 Jonathan Elliott, Debates in the General State
2 Conventions 425 (3d ed. 1937). Similarly, the
3 Federal Farmer referred to a "militia, when
4 properly formed, [as] in fact the people them-
5 selves." Id. (quoting Richard Henry Lee, Observations
6 Leading to a Fair Examination of the System of
7 Government Proposed by the Late Convention; Letters
8 from the Federal Farmer to the Republican 123
9 (Walter H. Bennett ed., 1978)).

10 The individual right to bear arms, a right
11 recognized in both England and the colonies, was
12 a crucial factor in the colonists' victory over
13 the British army in the Revolutionary War.
14 Without that individual right, the colonists never
15 could have won the Revolutionary War. After
16 declaring independence from England and establishing
17 a new government through the Constitution, the
18 American founders sought to codify the individual
19 right to bear arms, as did their forebears one
20 hundred years earlier in the English Bill of Rights.

21 c.

22 The Ratification Debates

23 A foundation of American political thought
24 during the Revolutionary period was the well
25 justified concern about political corruption and

1 governmental tyranny. Even the federalists,
2 fending off their opponents who accused them of
3 creating an oppressive regime, were careful to
4 acknowledge the risks of tyranny. Against that
5 backdrop, the framers saw the personal right to
6 bear arms as a potential check against tyranny.
7 Theodore Sedgwick of Massachusetts expressed this
8 sentiment by declaring that it is "a chimerical
9 idea to suppose that a country like this could
10 ever be enslaved...Is it possible...that an army
11 could be raised for the purpose of enslaving
12 themselves or their brethren? or, if raised whether
13 they could subdue a nation of freedom, who know
14 how to prize liberty and who have arms in their
15 hands?" Malcolm, *supra* at 157 (citing 2 Jonathan
16 Elliot, *The Debates in the Several State Conventions*
17 *on the Adoption of the Federal Constitution* 97
18 (2d ed. 1863). Noah Webster similarly argued:

19 Before a standing army can rule the
20 people must be disarmed; as they are
21 in almost every kingdom in Europe.
22 The supreme power in America cannot
23 enforce unjust laws by the sword;
24 because the whole body of the people
25 are armed, and constitute a force

1 superior to any band of regular troops
2 that can be, on any pretence, raised in
3 the United States.

4 Id. (citing Noah Webster, An Examination Into The
5 Leading Principles Of The Federal Constitution (1787),
6 reprinted in Pamphlets on the Constitution of the
7 United States, published during its Discussion by
8 the People, 1787-1788, at 56 (Paul L. Ford, ed.
9 1971) (1888)). Richard Lee Henry's view that a
10 well regulated militia was the entire armed popu-
11 lace rather than a select body of men was
12 reiterated by proponents to a bill of rights. As
13 "M.T. Cicero" wrote to "The Citizens of America":

14 Whenever, therefore, the profession of
15 arms becomes a distinct order in the
16 state...the end of the social compact
17 is defeated...

18 No free government was ever founded,
19 or ever preserved its liberty, without
20 uniting the characters of the citizen
21 and the soldier in those destined for
22 the defence of the state....Such are a
23 well regulated militia, composed of
24 the freeholders, citizen and husbandman,
25 who take up arms to preserve their

1 property, as individuals, and
2 their rights as freemen.

3 Halbrook, supra at 72 (citing State Gazette
4 (Charleston), Sept. 8, 1788).

5 George Mason argued the importance of the militia
6 and right to bear arms by reminding his compatriots
7 of England's efforts "to disarm the people; that
8 it was the best and most effectual way to enslave
9 them...by totally discussing and neglecting the
10 militia." Id. at 74 (citing 3 Jonathan Elliott, the
11 Debates in Several State Conventions on the
12 Adoption of The Federal Constitution 380(2d ed. 1863)).
13 He also clarified that under prevailing practice
14 the militia included all people, rich and poor.
15 "Who are the militia? They consist now of the
16 whole people, except a few public officers." Id.
17 (citing 3 Elliot at 425-26). Because all were
18 members of the militia, all enjoyed the right to
19 individually bear arms to serve therein.

20 The framers thought the personal right to bear
21 arms to be a paramount right by which other rights
22 could be protected. Therefore, writing after the
23 ratification of the Constitution, but before the
24 election of the first Congress, James Monroe
25 included "the right to keep and bear arms" in a

1
2 list of basic "human rights" which he proposed to
3 be added to the Constitution. Halbrook, supra at
4 223 n. 145 (citing James Monroe Papers, New York
5 Public Library (Miscellaneous Papers of James
6 Monroe)).

7 The framers also saw an armed populace as the
8 safeguard of religious liberty. Zachariah
9 Johnson told the Virginia convention their liber-
10 ties would be safe because

11 the people are not to be disarmed of their
12 weapons. They are left in full possession
13 of them. The government is administered
14 by the representatives of the people,
15 voluntarily and freely chosen. Under
16 these circumstances should anyone attempt
17 to establish their own system [of religion],
18 in prejudice of the rest, they would
19 be universally detested and opposed,
20 and easily frustrated. This is the
21 principle which secures religious
22 liberty most firmly. The government
23 will depend on the assistance of the
24 people in the day of distress.

25 Malcolm, supra at 157 (citing 3 Elliot 646)).

1 Patrick Henry, also in the Virginia convention,
2 eloquently argued for the dual rights to arms
3 and resistance to oppression: "Guard with jealous
4 attention the public liberty. Suspect everyone who
5 approaches that jewel. Unfortunately, nothing
6 will preserve it but downright force. Whenever
7 you give up that force, you are ruined." Halbrook,
8 supra at 73 (citing 3 Elliot at 45). Thus, the
9 federalists agreed with Blackstone that an armed
10 populace was the ultimate check on tyranny.
11 Malcolm, supra at 157.

12 While both Monroe and Adams supported ratifi-
13 cation of the Constitution, its most influential
14 framer was James Madison. In The Federalist No.
15 46, he confidently contrasted the federal govern-
16 ment of the United States to the European despotisms
17 which he contemptuously described as "afraid to
18 trust the people with arms." He assured his fellow
19 citizens that they need never fear their govern-
20 ment because of "the advantage of being armed."
21 Don B. Kates, Jr., Handgun Prohibition and The
22 Original Meaning of The Second Amendment, 82 Mich.
23 L. Rev. 204, 228 (1983) (quoting The Federalist
24 No. 46, at 371 (James Madison) (John C. Hamilton
25 ed., 1864)). Many years later, Madison restated

1 the sentiments of The Federalist No. 46 by
2 declaring: [A] government resting on a minority
3 is an aristocracy, not a Republic, and could not be
4 safe with a numerical and physical force against
5 it, without a standing army, an enslaved press,
6 and a disarmed populace." Id. (quoting Ralph L.
7 Ketcham, James Madison: A Biography 64, 640
8 (1971)).

9 Although on the other side of the ratification
10 debate, Anti-Federalist Patrick Henry was unequivocal
11 on the individual right to bear arms. During
12 the Virginia ratification convention, he objected
13 to the Constitution's inclusion of clauses specifically
14 authorizing a standing army and giving the
15 federal government control of the militia. He
16 also objected to the omission of a clause forbidding
17 disarmament of the individual citizen:
18 "The great object is that every man be armed...
19 [e]veryone who is able may have a gun." Id. at
20 229 (citing 3 J. Elliott, *supra*, at 45).

21 By January of 1788, Delaware, Pennsylvania,
22 New Jersey, Georgia and Connecticut ratified the
23 Constitution without insisting upon amendments.
24 Several specific amendments were proposed, but
25 were not adopted at the time the Constitution was

1 ratified. The Pennsylvania convention, for example,
2 debated fifteen amendments, one of which concerned
3 the right of the people to be armed, another with
4 the militia. The amendment on the right to bear
5 arms read:

6 That the people have a right to bear
7 arms for the defence of themselves and
8 their own State, or the United States,
9 or for the purpose of killing game; and
10 no law shall be passed for disarming the
11 people or any of them, unless for crimes
12 committed, or real danger of public
13 injury from individuals; and as standing
14 armies in time of peace are dangerous to
15 liberty, they ought not to be kept up;
16 and that the military shall be kept under
17 strict subordination to and be governed
18 by the civil power.

19 MALCOLM, *supra* at 158 (citing PENNSYLVANIA AND THE
20 FEDERAL CONSTITUTION, 1787-1788, at 422).

21 The Massachusetts convention also ratified the
22 Constitution with an attached list of proposed
23 amendments. *Id.* In the end, the ratification
24 convention was so evenly divided between those for
25 and against the Constitution that the federalists

1 agreed to amendments to assure ratification. Id.
2 Samuel Adams proposed that the Constitution
3 [B]e never construed to authorize
4 Congress to infringe the just liberty
5 of the press, or the rights of conscience;
6 or to prevent the people of the United
7 States, who are peaceable citizens,
8 from keeping their own arms; or to
9 raise standing armies, unless when
10 necessary for the defence of the United
11 States, or of some one or more of them;
12 or to prevent the people from petition-
13 ing, in a peaceable and orderly
14 manner, the federal legislature, for a
15 redress of their grievances; or to
16 subject the people to unreasonable
17 searches and seizures. Id. (citing
18 Debates and Proceedings in the Convention of the
19 Commonwealth of Massachusetts, held in the year
20 1788, at 198-99 (Bradford Pierce and Charles Hale,
21 ed., 1856)).

22 Other states which had not yet ratified the
23 Constitution followed the Maryland convention's
24 practice of ratifying the Constitution while
25 submitting proposed amendments. The New Hampshire

1 convention, for example, adopted the nine
2 Massachusetts amendments and added three others:
3 one to limit standing armies, a second to ensure
4 an individual right to bear arms, and a third to
5 protect freedom of conscience. *Id.* The proposed
6 amendment on freedom to bear arms read: "Congress
7 shall never disarm any Citizen unless such as are
8 or have been in Actual Rebellion." *Id.* at 158-59
9 (citing 2 DOCUMENTARY HISTORY OF THE CONSTITUTION
10 OF THE UNITED STATES, 1787-1870, at 143 (1894)).

11 d.

12 Drafting the Second Amendment

13 When the first Congress convened on March 4,
14 1789, James Madison, who had previously advocated
15 passage of the Constitution without amendments,
16 now pressed his colleagues to act on a bill of
17 rights. *MALCOLM*, *supra* at 159. When his initial
18 efforts failed to produce any response, he drafted
19 his own version of a bill of rights and presented
20 them to members of Congress on June 8 of that
21 year. *Id.* He explained to Jefferson that he
22 deliberately drafted the amendments to be unexcept-
23 tional and therefore likely to win approval. *Id.*
24 (citing RONALD RUTLAND, *THE BIRTH OF THE BILL OF*
25 *RIGHTS* 209 (1991)). His version of what would later

1 be the second amendment read:

2 The right of the people to keep and
3 bear arms shall not be infringed; a
4 well armed, and well regulated militia
5 being the best security of a free
6 country; but no person religiously
7 scrupulous of bearing arms, shall be
8 compelled to render military service in
9 person.

10 MALCOLM, supra at 159.

11 That Madison envisioned a personal right to
12 bear arms, rather than merely a right for the
13 states to organize militias, is evident from his
14 desired placement of the right in the Constitution.
15 Madison's original plan was to designate the
16 amendments as inserts between specific sections
17 of the existing Constitution, rather than as
18 separate amendments added to the end of the
19 document. Hardy, supra at 609 (citing 1 ANNALS
20 of CONGRESS 707-08 (Joseph Gales ed., 1789)).
21 Madison did not designate the right to keep and
22 bear arms as a limitation of the militia clause
23 of Section 8 of Article i. Rather, he placed it
24 as part of a group of provisions (with freedom of
25 speech and the press) to be inserted in "Article 1st,

1 Section 9, between Clauses 3 and 4." Id. (quoting
2 5 DOCUMENTARY HISTORY OF THE CONSTITUTION OF THE
3 UNITED STATES OF AMERICA 186-87 (1905). Such a
4 designation would have placed this right immediately
5 following the few individual rights protected in
6 the original Constitution, dealing with the
7 suspension of bills of attainder, habeas corpus,
8 and ex post facto laws. Thus Madison aligned the
9 right to bear arms along with the other individual
10 rights of freedom of religion and the press,
11 rather than with congressional power to regulate
12 the militia. Id. This suggested placement of the
13 Second Amendment reflected recognition of an
14 individual right, rather than a right dependent
15 upon the existence of the militia.

16 At that point, the Senate took up the Bill of
17 Rights. Unfortunately, Senate debate on the issue
18 was held in secret, and therefore no record exists
19 of that body's deliberations. Cramer, supra at 58
20 (citing HELEN VEIT ET AL., CREATING THE BILL OF
21 RIGHTS: THE DOCUMENTARY RECORD FROM THE FIRST
22 FEDERAL CONGRESS xix (1991)). The Senate form of
23 the second amendment now described the militia not
24 as "the best security" of a free state, but as
25 "necessary to the security" of a free state, an

1 even stronger endorsement than Madison's original
2 description. MALCOLM, supra at 161. The Senators
3 also omitted the phrase describing the militia
4 as "composed of the body of the people." Elbridge
5 Gerry's fear that future Congresses might expand
6 on the religious exemption clause evidently convinc-
7 ed the Senate to eliminate that clause as well. Id.
8 Even more important, however, was the Senate's
9 refusal of a motion to add "for the common defense"
10 after the phrase "to keep and bear arms." Id.
11 (citing HALBROOK, supra at 81, n 167). Thus the
12 American Bill of Rights, like the English Bill of
13 Rights, recognized the individual's right to have
14 weapons for his own defense, rather than for
15 collective defense. Id. In this form, Congress
16 approved the Second Amendment and sent the Bill of
17 Rights to the state legislatures for ratification.
18 Id.

19 In retrospect, the framers designed the Second
20 Amendment to guarantee an individual's right to
21 arms for self-defense. Such an individual right was
22 the legacy of the English Bill of Rights. American
23 colonial practice, the constitutional ratification
24 debates, and state proposals over the amendment all
25 bear this out. Id. at 162. The American Second

1 Amendment to guarantee an individual's right to
2 arms for self-defense. Such an individual right
3 was the legacy of the English Bill of Rights.
4 American colonial practice, the constitutional
5 ratification debates, and state proposals over
6 the amendment all bear this out. Id. at 162.
7 The American Second Amendment also expanded upon
8 the English Bill of Rights' protection; while
9 English law allowed weapons "suitable to a
10 person's condition" "as allowed by law," the
11 American right forbade any "infringement" upon
12 the right of the people to keep and bear arms. Id.

13 In his influential Commentaries on the
14 Constitution, Joseph Story emphasized the impor-
15 tance of the Second Amendment. He described the
16 militia as the "natural defence of a free country"
17 not only "against sudden foreign invasions" and
18 "domestic insurrections," but also against "domestic
19 usurpations of power by rulers." He went on to
20 state that "[t]he right of the citizens to keep
21 and bear arms has justly been considered as the
22 palladium of the liberties of a republic; since it
23 offers a strong moral check against the usurpation
24 and arbitrary power of rulers; and will generally,
25 even if these are successful in the first instance,

1 enable the people to resist and triumph over them."
2 3 J. Story, Commentaries #1890, p. 746 (1833).

4.

Structural Analysis

5 The structure of the Second Amendment within the
6 Bill of Rights proves that the right to bear arms
7 is an individual right, rather than a collection
8 one. The collective rights' idea that the Second
9 Amendment can only be viewed in terms of state or
10 federal power "ignores the implication that might
11 be drawn from the Second, Ninth, and Tenth Amend-
12 ments; the citizenry itself can be viewed as an
13 important third component of republican governance
14 as far as it stands ready to defend republican
15 liberty against the depredations of the other two
16 structures, however futile might appear as a
17 practical matter." Sanford Levinson, The Embarrass-
18 ing Second Amendment, 99 Yale L.J. 637, 651 (1989).

19 Furthermore, the very inclusion of the right to
20 keep and bear arms in the Bill of Rights shows that
21 the framers of the Constitution considered it an
22 individual right. "After all, the Bill of Rights
23 is not a bill of states' rights, but the bill of
24 rights retained by the people." David Harmer,
25 Securing a Free State: Why The Second Amendment

1 Matters, 1998 BYUL. Rev. 55, 60(1998). Of the
2 first ten amendments to the Constitution, only the
3 Tenth concerns itself with the rights of the
4 states, and refers to such rights in addition to,
5 not instead of, individual rights. Id. Thus the
6 structure of the Second Amendment, viewed in the
7 context of the entire Bill of Rights, evinces an
8 intent to recognize an individual right retained
9 by the people.

10 5.

11 Judicial Interpretations

12 The Court notes that several other federal courts
13 have held that the Second Amendment does not
14 establish an individual right to keep and bear
15 arms, but rather a "collective" right, or a
16 right held by the states. See, e.g., Hickman v.
17 Block, 81 F.3d98, 100-01 (9th Cir. 1996) (holding
18 that plaintiff lacked standing to sue for denial
19 of concealed weapons permit, because Second
20 Amendment does not protect possession of weapons
21 permit, because Second Amendment does not protect
22 possession of weapon by private citizen; right
23 to bear arms is held by the states); Love v.
24 Pepersack, 47F.3d 120, 124 (4th Cir. 1995) (holding
25 that Second Amendment guarantees a collective

1 rather than an individual right; fact that an
2 individual citizen, like all others, may enroll
3 in state militia does not confer right to possess
4 submachine gun); *Cases v. United States*, 131 F.2d
5 916, 920-23 (1st Cir. 1942) (holding that federal
6 government may limit the keeping and bearing of
7 arms by a single individual); *Hamilton v. Accu-Tek*,
8 935 F.Supp. 1307, 1318 (E.D.N.Y. 1996) (holding
9 that Second Amendment right to bear arms establishes
10 a collective rather than an individual or private
11 right).

12 However, the only modern Second Amendment case
13 from the Supreme Court is *United States v. Miller*,
14 307 U.S. 174 (1939). Jack Miller was charged
15 with moving a sawed-off shotgun in interstate
16 commerce in violation of the National Firearms Act
17 of 1934. Among other things, Miller had not
18 registered the firearm, as required by the Act.
19 The court below dismissed the charge, accepting
20 Miller's argument that the Act violated the Second
21 Amendment.

22 The Supreme Court reversed unanimously, with
23 Justice McReynolds writing the opinion. Interestingly
24 enough, he emphasized that there was no evidence
25 showing that a sawed-off shotgun "at this time has

1 some reasonable relationship to the preservation
2 or efficiency of a well regulated militia." Id. at
3 178. And "[c]ertainly it is not within judicial
4 notice that this weapon is any part of the ordinary
5 military equipment or that its use could contribute
6 to the common defense." Id. at 178(citation omitted).
7 Thus, Miller might have had a tenable argument
8 had he been able to show that he was keeping or
9 bearing a weapon that clearly had a potential
10 military use. Justice McReynolds went on to
11 describe the purpose of the Second Amendment as
12 "ASSUR(ing) the continuation and render[ing] possible
13 the effectiveness of [the Militia]." Id. at 178.
14 He contrasted the Militia with troops of a standing
15 army, which the Constitution indeed forbade the
16 states to keep without the explicit consent of
17 Congress. "The sentiment of the time strongly
18 disfavored standing armies; the common view was
19 that adequate defense of country and laws could be
20 secured through the Militia - civilians primarily,
21 soldiers on occasion." Id. at 179. McReynolds noted
22 further that "the debates in the Convention, the
23 history and legislation of Colonies and States,
24 and the writings of approved commentators [all][s]
25 how plainly enough that the Militia comprised all

1 males physically capable of acting in concert for
2 the common defense." Id.

3 It is difficult to interpret Miller as rendering
4 the Second Amendment meaningless as a control on
5 Congress. Ironically, one can read Miller as
6 supporting some of the most extreme anti-gun
7 control arguments; for example, that the individual
8 citizen has a right to keep and bear bazookas,
9 rocket launchers, and other armaments that are
10 clearly used for modern warfare, including, of
11 course, assault weapons. Under Miller, arguments
12 about the constitutional legitimacy of a prohibition
13 by Congress of private ownership of handguns or,
14 what is much more likely, assault rifles, thus
15 might turn on the usefulness of such guns in
16 military settings. Sanford Levinson, *The*
17 *Embarrassing Second Amendment*, 99 *Yale L.J.* 637,
18 654-55 (1989).

19 Miller did not answer the crucial question of
20 whether the Second Amendment embodies an individual
21 or collective right to bear arms. Although its
22 holding has been used to justify many previous
23 lower federal court rulings circumscribing Second
24 Amendment rights, the Court in Miller simply chose
25 a very narrow way to rule on the issue of gun

1 possession under the Second Amendment, and left
2 for another day further questions of Second Amend-
3 ment construction. See *Printz v. United States*,
4 521 U.S. 898, 937-38 & n.1,2(1997) (Thomas, J.,
5 concurring).

6 This Court has not had recent occasion
7 to consider the nature of the substantive
8 right safeguarded by the Second Amendment.²
9 If; however, the Second Amendment is read
10 to confer a personal right to "keep and
11 bear arms," a colorable argument exists
12 that the Federal Government's regulatory
13 scheme, at least as it pertains to the
14 purely intrastate sale or possession of
15 firearms, runs afoul of that Amend-
16 ment's protections.³

17
18 2

19 "Our most recent treatment of the Second Amendment
20 occurred in *United States v. Miller*, 307 U.S. 174
21 (1939), in which we reversed the District Court's
22 invalidation of the National Firearms Act, enacted
23 in 1934. In *Miller*, we determined that the Second
24 Amendment did not guarantee a citizen's right to
25 possess a sawed-off shotgun because that weapon had
not been shown to be 'ordinary military equipment'
that could 'contribute to the common defense.' *Id.*,
at 178. The Court did not, however, attempt to
define, or otherwise construe, the substantive
right protected by the Second Amendment."

3

"Marshaling an impressive array of historical evidence,
a growing body of scholarly commentary indicates that
the 'right to keep and bear arms' is, as the Amend-
ment's text suggests, a personal right. See, e.g.,
J. Malcolm, *To Keep and Bear Arms: The Origins of an
Anglo-American Right* 162

6.

Prudential Concerns

1
2
3 Some scholars have argued that even if the
4 original intent of the Second Amendment was to
5 provide an individual right to bear arms, modern-day
6 prudential concerns about social costs outweigh
7 such original intent and should govern current
8 review of the amendment. However, there is a
9 problem with such reasoning. If one accepts the
10 plausibility of any of the arguments on behalf
11 of a strong reading of the Second Amendment, but,
12 nevertheless, rejects them in the name of social
13 prudence and the present-day consequences of an
14 individual right to bear arms, why do we not apply
15 such consequentialist criteria to each and every
16 part of the Bill of Rights? Levinson, *supra* at 658.

17 As Professor Ronald Dworkin has argued, what it
18 means to take rights seriously is that one will
19 honor them even when there is significant social
20 cost in doing so. Protecting freedom of speech,
21 the rights of criminal defendants, or any other part
22 of the Bill of Rights has significant costs --
23 criminals going free, oppressed groups having to
24 hear viciously racist speech and so on --
25

1 (1994); S. Halbrook, *That Every Man Be Armed, The*
2 *Evolution of a Constitutional Right* (1984); Van
3 *Alstyne, The Second Amendment and the Personal Right*
4 *to Arms*, 43 *Duke L.J.* 1236(1994); Amar, *The Bill of*
5 *Rights and the Fourteenth Amendment*, 101 *Yale L.J.*
6 1193(1992); Control U Diamond, *The Second Amendment:*
7 *Toward an Afro-Americanist Reconsideration*, 80 *Geo.*
8 *K,H*, 398(1991); Levinson, *The Embarrassing Second*
9 *Amendment*, 99 *Yale L.J.* 637(1989); Kates, *Handgun*
10 *Prohibition and the Original Meaning of the Second*
11 *Amendment*, 82 *Mich. L. Rev.* 204(1983). Other
12 scholars, however, argue that the Second Amendment
13 does not secure a personal right to keep or bear
14 arms. See, e.g., Bogus, *Race, Riots, and Guns*, 66 *S.*
15 *Cal. L. Rev.* 1365(1993); Williams, *Civic Republican-*
16 *ism and the Citizen Militia: The Terrifying Second*
17 *Amendment*, 101 *Yale L.J.* 551(1991); Brown, *Guns,*
18 *Cowboys, Philadelphia Mayors, and Civic Republican-*
19 *ism: On Sanford Levinson's The Embarrassing Second*
20 *Amendment*, 99 *Yale L.J.* 661(1989); Cress, *An Armed*
21 *Community; The Origins and Meaning of the Right to*
22 *Bear Arms*, 71 *J. of Am. Hist.* 22 (1984). Although
23 somewhat overlooked in our jurisprudence, the
24 Amendment has certainly engendered considerable
25 academic, as well as public, debate."

1 consequences which we take for granted in defending
2 the Bill of Rights. This mind-set changes, however,
3 when the Second Amendment is concerned. "Cost-
4 benefit" analysis, rightly or wrongly, has become
5 viewed as a "conservative" weapon to attack liberal
6 rights. Yet the tables are strikingly turned when
7 the Second Amendment comes into play. Here "con-
8 servatives" argue in effect that social costs are
9 irrelevant and "liberals" argue for a motion of the
10 "living Constitution" and "changed circumstances"
11 that would have the practical consequence of
12 erasing the Second Amendment from the Constitution.
13 Levinson, *supra* at 657-58.

14 Other commentators, including Justice Scalia,
15 have argued that even if there would be "few tears
16 shed if and when the Second Amendment is held to
17 guarantee nothing more than the state National
18 Guard, this would simply show that the Founders were
19 right when they feared that some future generation
20 might wish to abandon liberties that they considered
21 essential, and so sought to protect those liberties
22 in a Bill of Rights. We may tolerate the abridge-
23 ment of property rights and the elimination of a
24 right to bear arms; but we should not pretend that
25 these are not reductions of rights." Sanford

1 Levinson, *Is the Second Amendment Finally Becoming*
2 *Recognized As Part of the Constitution? Voices from*
3 *the Courts*, 1998 BYUL.Rev. 127,132 (1998) (quoting
4 Antonin Scalia, *Common-Law Courts in a Civil-Law*
5 *System: The Role of United States Federal Courts*
6 *in Interpreting the Constitution and Laws, in a*
7 *Matter of Interpretation: Federal Courts in*
8 *Interpreting the Constitution and Laws, in a Matter*
9 *of Interpretation: Federal Courts and the Law* 3, 43
10 (Amy Gutmann, ed. 1997).

11 In response to arguments propounded by Professor
12 Laurence Tribe and others describing the Second
13 Amendment as being simply "seemingly state-militia-
14 based" rather than "supporting broad principles"
15 of private ownership of guns, Justice Scalia pointed
16 out that it is incorrect to assume that the word
17 "militia" refers only to "a select group of citizen-
18 soldiers...rather than, as the Virginia Bill of
19 Rights of June 1776 defined it, 'the body of the
20 people, trained to arms.'"

21 Antonin Scalia, *Response*, in *A Matter of Interpre-*
22 *tation*, supra at 129, 136 n.13 (quoting Joyce Lee
23 Malcolm, *To Keep and Bear Arms* 136, 148 (1994)).

24 Justice Scalia also notes that "[t]his was also
25 the conception of 'militia' entertained by James

1 Madison," citing The Federalist No. 46 for support.
2 Id. "It would also be strange," he goes on to say,
3 "to find in the midst of a catalog of the rights
4 of individuals a provision securing to the states
5 the right to maintain a designated 'Militia.'
6 Dispassionate scholarship suggests quite strongly
7 that the right of the people to keep and bear arms
8 meant just that." Id. at 137 n. 13 (citing Joyce
9 Lee Malcolm, To Keep And Bear ARms, 43 Duke L.J.
10 1236 (1994)).

11 Justice Scalia concludes by stating that "[i]t is
12 very likely that modern Americans no longer look
13 contemptuously, as Madison did, upon the governments
14 of Europe that 'are afraid to trust the people with
15 arms,' The Federalist No. 46; and the...Constitution
16 that Professor Tribe espouses will probably give
17 effect to that new sentiment by effectively eliminat-
18 ing the Second Amendment. But there is no need to
19 deceive ourselves as to what the original Second
20 Amendment said and meant. Of course, properly
21 understood, it is no limitation upon arms control
22 by the states." Id.

23 Thus, concerns about the social costs of enforc-
24 ing the Second Amendment must be outweighed by
25 considering the lengths to which the federal courts

1 have gone to uphold other rights in the Constitution.
2 The rights of the Second Amendment should be as
3 zealously guarded as the other individual liberties
4 enshrined in the Bill of Rights.

7.

Constitutionality of 18 U.S.C. #922(g)(8)

6
7 18 U.S.C. #922(g)(8) is unconstitutional because
8 it allows a state court divorce proceeding, without
9 particularized findings of the threat of future
10 violence, to automatically deprive a citizen of
11 his Second Amendment rights. The statute allows,
12 but does not require, that the restraining order
13 include a finding that the person under the order
14 represents a credible threat to the physical safety
15 of the intimate partner or child. 18 U.S.C. #922
16 (g)(8)(C)(i). If the statute only criminalized gun
17 possession based upon court orders with particular-
18 ized findings of the likelihood of violence, then
19 the statute would not be so offensive, because
20 there would be a reasonable nexus between gun
21 possession and the threat of violence. However,
22 the statute is infirm because it allows one to be
23 subject to federal felony prosecution if the order
24 merely "prohibits the use, attempted use, or
25 threatened use of physical force against [an]

1 intimate partner." 18 U.S.C. #922(g)(8)(C)(ii).

2 However, prosecution based on such an order
3 would be tautological, for #922(g)(8)(C)(i)
4 merely repeats in different wording the requirement
5 in subsection (B) that the order "restrains such
6 person from harassing, stalking, or threatening an
7 intimate partner of such person or child of such
8 intimate partner or person, or engaging in other
9 conduct that would place an intimate partner in
10 reasonable fear of bodily injury to the partner or
11 child." #922(g)(8)(B). All that is required for
12 prosecution under the Act is a boilerplate order
13 with no particularized findings. Thus, the statute
14 has no real safeguards against an arbitrary abridge-
15 ment of Second Amendment rights. Therefore, by
16 criminalizing protected Second Amendment activity
17 based upon a civil state court order with no
18 particularized findings, the statute is over-broad
19 and in direct violation of an individual's Second
20 Amendment rights.

21 By contrast, #922(g)(8) is different from the
22 felon-in-possession statute, 18 U.S.C. #922(g)(1),
23 because once an individual is convicted of a felony,
24 he has by his criminal conduct taken himself outside
25 the class of law-abiding citizens who enjoy full

1 exercise of their civil rights. Furthermore, the
2 convicted felon is admonished in state and federal
3 courts that a felony conviction results in the loss
4 of certain civil rights, including the right to bear
5 arms. This is not so with #922(g)(8). Under this
6 statute, a person can lose his Second Amendment
7 rights not because he has committed some wrong in
8 the past, or because a judge finds he may commit
9 some crime in the future, but merely because he is
10 in a divorce proceeding. Although he may not be a
11 criminal at all, he is stripped of his right to
12 bear arms as much as a convicted felon. Second
13 Amendment rights should not be so easily abridged.

14 It is absurd that boilerplate state court
15 divorce order can collaterally and automatically
16 extinguish a law-abiding citizen's Second Amendment
17 rights, particularly when neither the judge issuing
18 the order, nor the parties nor their attorneys are
19 aware of the federal criminal penalties arising
20 from firearm possession after entry of the restrain-
21 ing order. That such a routine civil order has
22 such extensive consequences totally attenuated from
23 divorce proceedings makes the statute unconstitution-
24 al.

25

1 C.

2 Fifth Amendment

3 Emerson also contends that 18 U.S.C. #922(g)(8)
4 violates his Fifth Amendment due process rights.
5 He argues that the perfunctory, generic temporary
6 orders issued in his divorce proceedings expose him
7 to federal criminal liability for engaging in
8 otherwise lawful conduct.

9 Firearm possession is a valuable liberty interest
10 imbedded in the Second Amendment to the United
11 States Constitution. "[T]here is a long tradition
12 of widespread lawful gun ownership by private
13 individuals in this country." *Staples v. United*
14 *States*, 511 U.S. 600, 610 (1994). Thus, Emerson
15 has a protected liberty interest in firearm possess-
16 ion under the Fifth Amendment.

17 "It is wrong to convict a person of a crime if
18 he had no reason to believe that the act for which
19 he was convicted was a crime, or even that it was
20 wrongful. This is one of the bedrock principles
21 of American law. It lies at the heart of any
22 civilized system of law." *United States v. Wilson*,
23 159F.3d280,293(7th Cir. 1998) (Posner, C.J., dissent-
24 ing). It offends both substantive and procedural
25 due process for Emerson to be convicted of a crime

1 he did not know existed. Because 18 U.S.C. #922(g)
2 (8) is such an obscure criminal provision, it is
3 unfair to hold him accountable for his otherwise
4 lawful actions.

5 The conduct this statute criminalizes is malum
6 prohibitum, not malum in se. In other words, there
7 was nothing inherently evil about Emerson possess-
8 ing a firearm while being under a domestic re-
9 straining order. His conduct was unlawful merely
10 because the statute mandated that it be. Wilson,
11 159F.3d at 294 (Posner, C.J., dissenting). Section
12 922(g)(8) is one of the most obscure of criminal
13 provisions. Here, Emerson owned a firearm, and
14 knew or should have known that if, for example, he
15 was convicted of a felony, he would have to
16 relinquish ownership of his firearm. If by chance
17 he did not know this, the sentencing judge or the
18 probation officer would have informed him of the
19 law. Nevertheless, when Emerson was made subject
20 to the restraining order telling him not to harass
21 his wife, Emerson could not have known of the
22 requirement to relinquish his gun unless the presid-
23 ing judge issuing the order told him. In this case,
24 the state district judge did not tell Emerson
25 about the requirement. Emerson's attorney did not

1 tell him either, because Emerson did not have a
2 lawyer. The fact that the restraining order
3 contained no reference to guns may have led Emerson
4 to believe that since he complied with the order,
5 he could carry on as before. Id. at 294-95.

6 Chief Judge Posner of the Seventh Circuit aptly
7 explains the dilemma between the maxim "ignorance
8 of the law is no excuse" and the inherent unreason-
9 ableness of criminal prosecutions involving obscure
10 violations of law:

11 We want people to familiarize themselves
12 with the laws bearing on their activities.
13 But a reasonable opportunity doesn't mean
14 being able to go to a local law library
15 and read Title 18. It would be prepos-
16 terous to suppose that someone from [the
17 defendant's] milieu is able to take ad-
18 vantage of such an opportunity. If none
19 of the conditions that make it reasonable
20 to dispense with proof of knowledge of
21 the law is present, then to intone
22 "ignorance of the law is no defense" is
23 to condone a violation of fundamental
24 principles for the sake of a modest
25 economy in the administration of criminal
justice.

1 Id. at 295.

2 Section 922(g)(8) is also one of those "highly
3 technical statutes that present...the danger of
4 ensnaring individuals engaged in apparently innocent
5 conduct," of which the Supreme Court spoke in
6 Bryan v. United States, 524 U.S. 184, 118S. Ct. 1939,
7 1946-47, 141 L.Ed.2d 197 (1998). Emerson's case
8 differs from Bryan because the statute in this case
9 is easy to understand, but it is hard to discover,
10 which in the end compels the same result as
11 demonstrated by Lambert v. California, 355 U.S. 225
12 (1957).

13 In Lambert, a Los Angeles ordinance make it a
14 crime for a convicted felon to remain in the city
15 for more than five days without registering. Mrs.
16 Lambert, a felon, failed to register. The Supreme
17 Court held that the ordinance violated due process
18 when applied to a person who had no notice of a
19 duty to report. Id. at 229. The Court found that,
20 while a legislative body may eliminate the mens
21 rea from the elements of an offense, the
22 constitutional requirement of due process of law
23 places limits on this practice. Id. at 228.
24 "[T]he existence of a mens rea is the rule of,
25 rather than the exception to, the principles of

1 Anglo-American criminal jurisprudence." Staples,
2 511 U.S. at 605 (citing United States v. United
3 States Gypsum Co., 438 U.S. 422, 436-37 (1978)).
4 However, eliminating the mens rea requirement is
5 such a fundamental departure from longstanding
6 principles of criminal law that courts have demanded
7 an indication of legislative intent to do so.
8 Staples, 511 U.S. at 606. Due process requires
9 some adequate, meaningful form of a fair warning
10 or notice to a respondent to a protective order
11 that he will be committing a crime if he possesses
12 a firearm.

13 Because #922(g)(8) is an obscure, highly techni-
14 cal statute with no mens rea requirement, it violates
15 Emerson's Fifth Amendment due process rights to be
16 subject to prosecution without proof of knowledge
17 that he was violating the statute. Accordingly,
18 Emerson's Motion to Dismiss the indictment as
19 violative of the Fifth Amendment is granted.

20 D.

21 Tenth Amendment

22 Emerson's last argument claims that 18 U.S.C.
23 #922(g)(8) violates the Tenth Amendment. The
24 Tenth Amendment provides that:

25 The powers not delegated to the

1 United States by the Constitution,
2 nor prohibited by it to the States,
3 are reserved to the States respectively,
4 or to the people.

5 U.S. CONST. amend. X.

6 In *New York v. United States*, 505 U.S. 144 (1992),
7 the Court noted that Tenth Amendment issues can be
8 resolved in one of two ways. The court can first
9 inquire whether an Act of Congress is authorized
10 by one of the powers of Article I of the
11 Constitution. *Id.* at 155 (citing, e.g., *Perez v.*
12 *United States*, 402 U.S. 146 (1971); *McCulloch v.*
13 *Maryland*, 4 Wheat 316 (1819)). In other cases the
14 court determines whether the Act of Congress
15 invades the province of state sovereignty reserved
16 by the Tenth Amendment. *Id.* (citing *Garcia v.*
17 *San Antonio Metro. Transit Auth.*, 469 U.S. (1985);
18 *Lane County v. Oregon*, 7 Wall. 71 (1869)).

19 "If a power is delegated to Congress in the
20 Constitution, the Tenth Amendment expressly dis-
21 claims any reservation of that power to the States;
22 if a power is an attribute of state sovereignty
23 reserved by the Tenth Amendment, it is necessarily
24 a power the Constitution has not conferred on
25 Congress." *New York*, 505 U.S. at 156 (citations

1 omitted).

2 Because the Fifth Circuit has held that Congress
3 acted pursuant to its enumerated Commerce Clause
4 power under Article I, Congress therefore enacted
5 18 U.S.C. #922(g)(8) pursuant to a valid grant
6 of power in conformity with the Tenth Amendment.
7 *United States v. Pierson*, 139 F.3d 501 (5th Cir.
8 1998). As mentioned previously, the court in
9 *Pierson* held that by creating a nexus between
10 illegal firearm possession and interstate commerce,
11 Congress exercised its delegated power under the
12 Commerce Clause to reach a "discrete set of
13 firearm possessions that additionally have an
14 explicit connection with or effect on interstate
15 commerce." *Id.* at 503. Therefore, under the first
16 line of inquiry set forth in *New York*, the statute
17 is constitutional under the Tenth Amendment.

18 The Court now turns to the second line of inquiry,
19 whether the "Act of Congress invades the province
20 of state sovereignty reserved by the Tenth Amend-
21 ment." *New York*, 505 U.S. at 155. In *New York*,
22 the Court held that the Low-Level Radioactive
23 Waste Policy Amendments Act of 1985 unconstitution-
24 ally "commandeer[ed] the legislative processes of
25 the States by directly compelling them to enact and

1 enforce a federal regulatory program." Id. at 176
2 (quoting Hodel v. Virginia Surface Mining &
3 Reclamation Ass'n, Inc., 452 U.S. 264, 288 (1981)).

4 In 1997, the Court refined this analysis by
5 holding in Printz v. United States that Congress
6 may act pursuant to its Commerce Clause powers and
7 still violate principles of state sovereignty
8 under the Tenth Amendment, 521 U.S. 898, 933
9 (1997). In Printz, the Brady Act commandeered
10 state law enforcement officers to perform back-
11 ground checks on prospective handgun owners. The
12 Court held unconstitutional this asserted power
13 of the Federal Government "to impress into its
14 service - and at no cost to itself - the police
15 officers of the 50 states." Id. at 922.

16 By passing 18 U.S.C. #922(g)(8), however,
17 Congress did not violate the Tenth Amendment the
18 way it did in New York and Printz, because here
19 the federal government is not requiring state
20 legislatures to pass specific laws, nor is it
21 "commandeering" state governments into federal
22 government service. Emerson argues, however, that
23 #922(g)(8) interferes with the ability of state
24 judges to carry out their state's domestic
25 relations laws, thus impermissibly regulating an

1 area reserved for the states. It is true the
2 Supreme Court has noted that family law is
3 traditionally an area of state concern. Hisquierdo
4 v. Hisquierdo, 439 U.S. 572, 581 (1979). And
5 while it is arguable that #922(g)(8) may offend
6 general Tenth Amendment principles of federalism,
7 because Congress was acting through an enumerated
8 power in drafting the law, and the law does not
9 command state activity in support of it, this
10 statute does not clearly violate the Tenth
11 Amendment under the Supreme Court's holdings in
12 New York and Printz. Accordingly, Emerson's
13 Tenth Amendment challenge to the statute fails.
14

15 III.

16 CONCLUSION

17 Because 18 U.S.C. #922(g)(8) violates the
18 Second and Fifth Amendments to the United States
19 Constitution, the Court GRANTS Emerson's Motion
20 to Dismiss the Indictment. A judgment shall be
21 entered in conformity with this opinion.

22 SO ORDERED.

23 Dated April 7, 1999.

24 SAM R. CUMMINGS
25 UNITED STATES DISTRICT
JUDGE

1 CHAIRMAN GANNON: Mr. Fitch?

2 MR. FITCH: Did I wake you up? What's it
3 (indicating) look like?

4 CHAIRMAN GANNON: It looks like copying done.

5 MR. FITCH: To a kid, that's a Glock or an
6 Uzi or Tech 9. Seven, eight and nine-years old are
7 using a caulking gun for a play weapon. I don't know
8 where they are getting them. This is what we have to
9 look after.

10 Good afternoon ladies, gentlemen and members
11 of the House Judiciary Committee.

12 My name is Carl Fitch. My residence is
13 31130 State Highway 77, Townville, Pennsylvania.

14 I am not going into a lot of details, figures
15 or Constitutional rights. We have too many gun laws
16 and other laws that do not mean a thing.

17 Everyone ignores something when there is too
18 much or too many. We have reached this point in gun
19 control now.

20 Every person in this room is the cause of the
21 misuse of guns, automobiles, drugs, etc. because we
22 think if a law is passed it will cure the problem

23 The problem is our spineless legislators who
24 take bribes to help special interest groups,
25 legislators who give the person who commits a violent

1 crime a pampered prison sentence. Put these
2 people in military type concentration facilities
3 with none of the luxuries. Give them access
4 to guns and drugs. They will eliminate 75% of the
5 problem themselves.

6 You legislators and the judicial system has
7 coddled the violent criminal. Last week a judge
8 sentencing a convicted murder, called the criminal
9 a good person.

10 You legislators and judicial system, give the
11 schools the right to expel students; you legis-
12 lators, give the teacher control of the class
13 room; you legislators, give the teachers the same
14 protection as law enforcement officers and other
15 public employees have. You, the legislators, give
16 the parents and their unruly brats the same jail
17 time and conditions.

18 When we get back to the respect we had 20 or 30
19 years ago, we won't need any more gun laws. Enforce
20 the laws we have now. You, the legislators and
21 judiciary, need to come up with something to
22 control the violent television news broadcasts
23 to stop glorifying this violence. When a baby
24 is brought home from the hospital, it is placed
25 in front of the television where violence is

1 non stop from so called cartoons to soap operas
2 to prime time. The kid is brainwashed with
3 violence and doesn't understand the consequences
4 of his or her actions.

5 The people that wrote the United States
6 Constitution or our State Constitution didn't
7 have a wall full of BS, MBA's, PHD's etc. or the
8 political master of bullshit degree. They had
9 common sense, the belief that 99.9% of the people
10 were honest and those that weren't were hung.

11 I come across an article on the back. It's
12 published in the Summer's Summary. It's timely
13 and thought-provoking. The date was 1959.

14 Here it is '99. The Red Rules:

15 A. Corrupt the young; get them away from religion.
16 Get them interested in sex. Make them superficial;
17 destroy their ruggedness.

18
19 B. Get control of all means of publicity,
20 thereby:

21 Get people's minds off their government by
22 focusing their attention on athletics, sexy
23 books and plays and other trivialities.

24 Divide the people into hostile groups by
25 constantly harping on controversial matters of

1 no importance.

2 Destroy the people's faith in their natural
3 leaders by holding the latter up to contempt,
4 ridicule and disgrace.

5 Always preach true democracy, but seize
6 power as fast and as ruthlessly as possible.

7 By encouraging government extravagance,
8 destroy its credit, produce fear of inflation
9 with rising prices and general discontent.

10 Incite unnecessary strikes in vital industries,
11 encourage civil disorders and foster a lenient
12 and soft attitude on the part of the government
13 toward such disorders.

14 By specious argument cause the breakdown of
15 the old moral virtues, honesty, sobriety,
16 self-restraint, faith in the pledged word,
17 ruggedness.

18 C. Cause the registration of all firearms on some
19 pretext, with a view to confiscating them and
20 leaving the population helpless.

21 That was quite a list, wasn't it? Now stop
22 and think! how many of these rules are being
23 carried out in this Nation today? I don't
24 see how any person can truthfully say
25 that the Communists do not have any part in
the chaos that is upsetting our Nation.

1 Now, this piece was wrote in 1959. Here it is
2 '99. A vit, I don't think so. This is written
3 by J. B. Webster in the Waterville Advance.

4 Face the facts, we are where we are because
5 we are greedy and willing to accept the bribes by
6 special interests of the welfare of our citizens.
7 Thank you.

8 CHAIRMAN GANNON: Thank you very much, Mr.
9 Fitch. Thank you very much for coming to the hearing
10 today, Mr. DeFransesco and Mr. Fitch and presenting
11 your testimony to the Committee. We appreciate it.
12 There being no further witnesses, this meeting is
13 adjourned. Thank you. Thank you, ladies and
14 gentlemen for attending this hearing.

15 (The hearing terminated at 4:00 p.m.)
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I hereby certify that the proceedings
and evidence taken by me in the above-
entitled matter are fully and accurately
indicated in my notes and that this is a
true and correct transcript of same.


Nancy J. Grega, RPR/mma

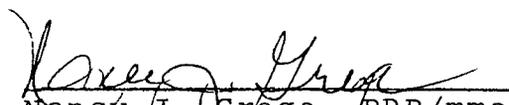
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