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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 27, 1997

REMARKS BY THE PRESIDENT
IN SIGNING THE DRUG FREE COMMUNITIES BILL

The Roosevelt Room

12:32 P.M. EDT

THE PRESIDENT: Let me, first of all, say to you, Congressman Portman, and to Congressman Levin and Congressman Hastert, and in his absence, Congressman Rangel, and the senators who worked on this, this is a very important day for this legislation because it does reflect our commitment in Washington to behave in the way that people in communities behave when they do what works in fighting the drug problem. And I cannot thank you enough.

This is -- the fact that we did this in a bipartisan fashion, and we did it, to use Congressman Portman's words, based on trying to legislate nationally a system not only to empower people to do what we know works in some communities today already, but to give them the incentive to do more of it is I think a great thing. So I thank the congressmen for being here; I thank the members of the Cabinet for their support. I thank Jim Kopple, the President of the Community Antidrug Coalitions of America; Dick Bonnette, the Partnership for a Drug-Free America; and all the rest of you who are here.

Now, before I sign this bill, I have to make a couple of comments about -- this has been a very interesting week of momentous decisions by the Supreme Court. Today the Supreme Court issued a ruling on the Brady Bill. And since I have been so heavily identified with that for several years now, I'd like to make a few comments.

The decision struck down the requirement that local police officers conduct background checks, but left intact the Brady Bill's five-day waiting period. Since the Brady Bill passed, 250,000 felons, fugitives and mentally-unstable persons have been stopped from purchasing handguns. I don't think anyone can seriously question that it has made a major contribution to increasing the safety of the American people. And I'm going to do everything I can to make sure that we continue to keep guns out of the hands of people who should not have them.

These criminal background checks make good sense; they save lives. Now, 27 states, nine more than when the Brady Bill first passed, have state laws requiring them, and they will continue to do the background checks. Even in other states, criminal background checks will continue. The Brady law was drafted by our law enforcement community; they wanted it. Again, it was a community-based resolution of a difficult problem. So I know that these state and local law enforcement officials who asked us to pass the law will continue to do the background checks.

I've asked Attorney General Reno and Secretary Rubin to contact police departments across our country to make sure they know that the background checks can and should continue to be done by local police on a voluntary basis. And then the Attorney General and Secretary Rubin will immediately convene a meeting of law enforcement officers to review and develop recommendations, including appropriate

MORE

legislation, to ensure that we can continue to perform these background checks. It's my understanding that the Supreme Court actually made some suggestions about how we might proceed from here.

My goal is clear: No criminal background check, no handgun anywhere in America. No state should become a safe haven for criminals who want to buy handguns.

We know that -- again, I say, tremendous progress has been made. The idea that 250,000 of these sales and transfers have been stopped is a very impressive thing in just a few years, and I think it clearly contributed to the largest drop in violent crime in over 35 years last year -- murders dropping a stunning 11 percent in 1996.

So we've got to keep going on this. And even though I wish we didn't have to do this extra work, I think the framework of the Court decision makes it clear that we have done the right thing, that the five-day waiting period is legal. And let me remind you, as the Attorney General said, by November of 1998, which is not all that far away, we expect to have in place the technology and the capacity to do instantaneous background checks. Is that the date? So what we've got to do is figure out how to keep this system alive between now and November of '98. We are committed to doing it.

Let me just say another couple of words, if I might, about this legislation today and what it means to us. I think the congressmen said it's only a small part of our overall drug budget, but it clearly sends a signal that we are shifting emphasis not to diminish what we're doing on interdiction and the other work that we have to do about drugs beyond our borders, but to recognize that we will never get ahold of this problem unless we deal with the demand side here in America.

And we know that while casual drug use has plummeted over the last 15 years among adults, it has doubled among young people in just the last five years, and among 8th graders it has tripled. The fact that the percentage -- the total of people trying drugs at that age level is small is cold comfort when you look at the trends. And you ask yourself, how could these trends be running in direct contradiction to the fact that drug use is going down among people between the ages of 18 and 35. That is the real threat to our future. That is the problem we face today. And the quicker we face up to it the better off we're going to be.

A study by Columbia's Center for Addiction and Substance Abuse has shown, for example, that a young person who tries marijuana is 85 times more likely to try cocaine than peers who don't try marijuana in the first place. So a middle schooler or a high schooler who mistakenly decides that it's safe to try cocaine or heroine or LSD or methamphetamine or any of the so-called designer drugs, along with marijuana, is playing a dangerous game and we have to try somehow to do more than we have done in the past to stop this. And we know that the broadly-based community antidrug coalitions have been successful at driving down casual drug use. We know that they've been more successful than anyone else and than any other approach has been.

So what we're trying to do here is to find a way to support them, to encourage them to do more and to increase the number of such coalitions throughout our country. We know that this has got to be done person by person, family by family, community by community. That's what this legislation does. More than 4,300 communities in every state in America and our territories have organized themselves to deal with this -- to help parents, to help the teachers, the coaches, the principals, all the others who are fighting for drug-free schools and communities and a drug-free future for our children.

So this is the sort of partnership we need more of. Again, let me say I am immensely gratified by the bipartisan nature of this. I also would say if you focus on the problem, which is why juvenile drug abuse is going up while young adult drug use is going down, and the whole impact of the culture on that, I think it justifies the policy that General McCaffrey adopted that I have supported him on of having an unprecedented advertising campaign to try to get the message out to these young people. And I certainly believe it supports our juvenile crime strategy of having 1,000 after-school programs to give our young people positive things to do, because we know that a lot of the most difficult hours are those right after school closes for criminal activity and for casual drug use.

So the Drug-Free Communities Act of 1997 is not only a good thing, but I hope it is an indication of things to come.

The last point I'd like to make, just to echo what the Vice President said about the smoking issue, is I think that this settlement was a terrific achievement. It is the result of all the work that was done before then in the public health community, and the work that our administration had done. But we have to take a quick look -- I mean, a careful look at it, and we will take a careful look at it. Secretary Shalala and my Domestic Policy Adviser Bruce Reed are heading a group that will consult with the public health community, will look at it carefully, and we will offer our judgments on it.

My preliminary take is that we do not want to paralyze the capacity of the FDA to protect the American people. That, to me, is the critical thing. And that in no way minimizes the enormous achievement of the Attorneys General and the others who are involved in this in the public health community. And I have no final judgment on it. I just want to say that Secretary Shalala is going to take a serious look at it. We're going to work hard here in the White House. But if we can do more and more of these things together in a bipartisan way as we're doing today, I think this country is going to be much better off.

Thank you very much. (Applause.)

(The bill is signed.) (Applause.)

Q Mr. President, with the Supreme Court ruling today, will your administration, and can it legally, speed up the process of getting this instant background check system in place?

THE PRESIDENT: Well, that's one of the things the Attorney General and Secretary Rubin are going to tell me in the next day or two. We're going to look at what our options are. Obviously, we've been thinking about this. I think the important thing to point out is, the Supreme Court said it was constitutional for us to have a five-day waiting period; that we can have background checks, but that five of them did not believe we could require local officials to do it. They said we could have done what we've done in the past by tying federal funds of some kind to the willingness to do it, sort of a contractual arrangement.

We're going to look at what our options are and see where to go from here. But in the short run, I would just implore the officials in the 23 states that don't have their own state laws requiring this to keep on doing it, because there is no longer any serious debate here; no one who needs to get any kind of weapon has been seriously inconvenienced, and a quarter of a million people who had no business with them don't have them. It's a huge public policy success for the United States. It's a part of driving the crime rate down. And we'll come up with our options as quick as we can.

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Q It sounds like you like the tobacco agreement.

THE PRESIDENT: No, I don't think you should draw any conclusion one way or the other. I like the fact that they achieved it and that it has -- and the broad dimensions of it are quite staggering. I mean, even in Washington \$368 billion is a lot of money. (Laughter.) And I think that it's a real testament to all -- to the work the Attorneys General and the other parties did. But I would say that we have an obligation to look at it very carefully from the public health point of view.

Keep in mind, whenever -- in any settlement in any lawsuit, both sides think they're better off settling than not, or they're wouldn't be any settlement. I mean, by definition. So what we have to make -- we have to be sure that the things that made the tobacco companies believe that they did the right thing to settle don't compromise the long-term interests of the public health, and especially our attempts to stop children from smoking in the first place. That's all. And we're looking at it.

But I don't think -- you know, even if I were to render a negative judgment on it after Secretary Shalala and Bruce Reed finish their review, I would still be immensely impressed with the work that the Attorneys General and the others have done. It's quite a staggering thing. It's a long way from where we were just a couple of years ago when no one thought that any progress would ever be made on this issue.

Q Mr. President, what are your specific concerns about the FDA provisions in this agreement?

THE PRESIDENT: I want to wait until I get my review. I just want to make sure that they will still be able to do what is necessary to protect the public health and children's health based on the evidence that comes before them in the intervening period. Now, there is a period of years in which they cannot actually ban nicotine. But there are a lot of other options and issues which could come before them during that period, and that's what we're looking at, to make sure their jurisdiction has not been under any --

Q Sir, how do you resolve the rhetorical battle between Republicans and Democrats with the tax bill? There seems to be a stand-off going into yesterday over the income tax --

THE PRESIDENT: Oh, I think a lot of that is -- I think the best way to resolve it is, one, for everyone to say, we want a tax bill, we want a tax cut bill. We want a tax cut bill that does not explode in the out-years, does not bring the bad old days of the deficits back to us. We want one that is faithful to the agreement that was made. And I want one that, particularly within the confines of the agreement, that helps families to raise their children and that helps to fund greater education.

But you should expect a little of this skirmishing. We're going to do more and we're going to offer our thoughts on Monday about what should be in the tax bill, and then we're going to keep working. But I'm, frankly, quite optimistic. I wouldn't -- you would expect that all the parties would advance their views in the most vigorous way possible. But I think the issue is, are we likely to have a bill that meets those criteria, and I think the answer is, yes, we are quite likely to have one.

Q You feel stronger with a line-item veto, don't you?

THE PRESIDENT: Well, I think it's the right thing to do. I was pleased that the Supreme Court didn't strike it down, although they invited the first person who gets made enough to do so.

(Laughter.) So I guess we'll be back in court on that one. But let me -- I had a when I was governor -- most governors do -- I think it should be used with great care and discipline. You have to respect the congressional process. And my experience was after having used it a few times, that the great value of it was that it was a low -- it was just another part of the framework of fiscal discipline we're trying to effect. That is, when I was a governor, after a year or two, the most important thing about it was not when it was used, but that it existed in the first place, because it helped to keep us within a framework of fiscal responsibility. That's basically what I'm interested in.

Q Mr. President, what do you think of the Supreme Court's record on sending power back to the states, now that the term is almost over?

THE PRESIDENT: Well, I need to have time to evaluate all the things. Basically, you know, we sent a lot of power back to the states since I've been President. Since I used to be there I can hardly say it's a bad idea. I think the question is, what are the terms under which the power goes back; what is the framework; can the national interests still be protected? And that's how you have to evaluate all this.

But, in general, it's just like this bill here. This bill basically empowers communities within the framework of an agreed-upon national objective. Why? Because this is not a problem we can solve in Washington. And every Republican and every Democrat who has ever looked at it says the same thing. So what these members have done is to embody what seems to me to be a common-sense principle.

So I have no problem with that. I think that a lot of the operational work of life is better done where people live, at the grass-roots level. The only question I would have on any of these things is can we still pursue the national interests. If we had no capacity coming on line in '98 -- let's take the Brady Bill, for example -- if we have no capacity coming on line in '98 to do instantaneous background checks, then I would take the -- certainly would want to take the Supreme Court up on their offer to tie the receipt of some kind of federal money at least to the willingness to continue these background checks because I think that's a national interest issue.

But, on balance, I think the operations, doing more operationally at the state and local level is a good thing.

Q Would you use the first line-item veto on the tax bill?

THE PRESIDENT: You go back and read that legislation, that was a battle over legislation -- they were very artful, the Congress was, in kind of limiting the extent to which the President can use it on a tax bill. It's different. The options on spending are broader than the options on the tax bill. So I'll have to look at that.

I hope I don't have to use it at all. I hope we just make a good agreement; that's my goal.

Thank you. (Applause.) 1250

Date: 06/27/97 Time: 14:27

bNACOP Hails High Court's Brady Law Ruling

To: National Desk

Contact: Morton Feldman, 202-293-9088,
or Paul Scott Abbott, 954-962-2503 or pager 305-277-1065
both of National Association of Chiefs of Police

WASHINGTON, June 27 /U.S. Newswire/ -- The National Association of Chiefs of Police hailed today's U.S. Supreme Court ruling striking down mandatory background checks of prospective gunbuyers.

"The ruling is consistent with the beliefs expressed by police chiefs throughout the nation, and we commend the Supreme Court on its decision," said Morton Feldman, executive vice president of NACOP, a not-for-profit organization of more than 11,000 command-rank officers throughout the United States.

"For more than three years, understaffed and overworked local law enforcement agencies have been forced to devote millions of hours to background checks that can do little to keep guns from the hands of criminals," Feldman continued. "With the removal of this mandatory burden, officers will be able to return to patrols and solving and prevention of crimes."

NACOP surveys historically have shown little support for the Brady Law among law enforcement agency heads.

Preliminary results of NACOP's 10th annual national survey of 15,000 U.S. police chiefs and other law agency heads indicate that 88.3 percent do not believe the Brady Law has prevented any criminal in their area from obtaining a firearm from illegal sources. Complete results of this year's survey are slated for release in mid-July.

Final results of the group's 1996 survey showed 84.6 percent of respondents stating that the five-day waiting period had not prevented any local criminal from getting a gun. In 1995, 93.7 percent said they did not believe the law kept guns from criminals' hands, and, in 1994, when the law went into effect, 95.4 percent said they did not think the law would be effective.

"Because the vast majority of checks are on law-abiding citizens, it has been our opinion that a federal requirement of such checks is a mandate for ineffective employment of limited law enforcement resources," Feldman said. NACOP legal counsel Chris Mancini, noting as did the high court that the background-check requirement violated the 10th Amendment protection of state and local governments from federal interference, said the requirement was particularly offensive as it did not include federal funding for the checks. NACOP continues to support the rights of states to mandate their own gun control regulations.

Mancini said the requirement is similar to the amendment to the Gun Control Act of 1968 that prohibits the carrying of a gun by anyone -- including police officers -- ever convicted of a domestic violence misdemeanor. NACOP is about to test that law in federal court.

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Troopers dropping gun check

ERIN GIBSON

Arkansas Democrat-Gazette

Despite a plea from President Clinton, Arkansas State Police will stop conducting background checks on prospective handgun buyers today, state police director Col. John Bailey said.

"Based on conversations with the state police legal staff and attorney general's representative, we have no recourse but to stop the background checks and comply with this change in the Brady law as interpreted by the Supreme Court," Bailey said in a statement released Tuesday.

The background checks were required under the federal Brady law until Friday, when the U.S. Supreme Court ruled that the federal government could not force state and local law enforcement agencies to conduct the checks.

While 27 states have passed their own version of the Brady law -- which includes both the background check and a five-day waiting period for a handgun buyers -- Arkansas never did. Under the federal statute, Arkansas State Police began conducting background checks in February 1994.

But Arkansas officials re-evaluated the state's background check program after the court's ruling on a Brady law challenge filed by sheriffs from Arizona and Montana.

"It was a matter of sitting down and looking at the laws as they pertain to the state of Arkansas," state police spokesman Bill Sadler said Tuesday.

In a series of meetings that began Monday, Bailey, Sgt. Darrell Stayton (an attorney in the state police director's office) and representatives of the state attorney general's office discussed laws on whether the state should continue performing the checks.

Gov. Mike Huckabee was not involved in the decision to halt the checks in Arkansas, said Grant Tennille, a spokesman for the governor's office.

"In light of the court's decision, this office believes that the state police have made the right call, and we stand behind their decision," Tennille said.

Bailey's decision to stop the background checks clashed with requests from the president and several national police organizations to voluntarily continue them but excited some gun advocates in the state.

John Wallis, president of the Arkansas Pistol and Rifle Association, said Tuesday that he expected the state to discontinue the background checks after the Supreme Court decision but said he was still "extremely pleased."

"You can't force it if there's no state law," Wallis said.

Wallis said his organization and about 6,500 other members of gun clubs around Arkansas hoped the state Legislature would refuse any attempt to reinstate the background checks by rejecting any Brady-type bills during the next legislative session.

The absence of any state law left state police with no legal authority to continue conducting the Brady background checks after the Supreme Court decision, Sadler said. Before today, Arkansas conducted about 2,000 checks each month and charged potential gun buyers \$15 for each check, he said.

In the court's majority opinion released Friday, Justice Antonin Scalia wrote that the federal requirement for states to do the background check is "fundamentally incompatible with our constitutional system of dual sovereignty."

However, the court left the Brady law's five-day waiting period intact and ruled that states could continue to voluntarily conduct the checks until a national instant background-check

Troopers dropping gun check

<http://www.ardemga.../today/wchek2.html>

system is completed in November 1998.

Upon hearing the Supreme Court's decision, Clinton requested that law enforcement officials nationwide continue voluntary background checks. The president said he felt confident that "state and local law enforcement officials who asked us to pass the law will continue to do the background checks."

Bailey said state law requires police to continue background checks for those applying for a concealed weapons permit.

Federal law bans nine categories of people from buying handguns: those convicted or indicted on felony charges, those with mental illness, those dishonorably discharged from the military, fugitives from justice, those convicted of domestic abuse or under domestic violence restraining orders, illegal drug users, those who have renounced U.S. citizenship and illegal aliens.

When making the decision, state police did not consider the demand for the background checks or the percentage of people who apply for background checks but fail, Sadler said. Those statistics were not immediately available to police, he said.

The possible loss in revenue from halting background checks also was never discussed, Sadler said. State police raise an estimated \$380,000 annually from the background checks and completed 21,524 checks from August 1996 through May 1997.

Darren Taylor, owner of Midsouth Guns and Ammo, said only 10 of his customers have been turned down since the Brady law background checks began. Of those, nine were turned down by mistake and later allowed to buy the weapon, he said.

"I can't think of a single customer who would not be ecstatic about it," he said. "The people who come into the stores and buy the guns aren't the criminals anyway."

But national police organization officials, including International Association of Chiefs of Police President Darrell Sanders, said the background checks are an important tool to keep guns out of the hands of criminals.

In a statement released last Friday, Sanders said police "have known for decades that requiring handgun purchasers to undergo background checks and waiting periods is good policing and good crime prevention."

Sanders, chief of police in Frankfort, Ill., added, "I know that police chiefs around the country will continue to conduct these checks in large numbers, wherever and whenever they can."

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JUN-27-97 FRI 16:09



**Attorney General
Betty D. Montgomery**

FOR IMMEDIATE RELEASE

June 27, 1997

**CONTACT: Mark R. Weaver
Deputy Attorney General
at 614/466-3840**

To: Joe Sudbury

Statement from Ohio Attorney General Betty D. Montgomery

Over the last two years, the United States Supreme Court has continued a trend of striking down examples of the federal government over-reaching into traditional areas of state authority. Today, the Supreme Court struck down a portion of the federal Brady law that required local governments to conduct background checks on people who wish to purchase a handgun.

This decision leaves the Brady handgun check still in place, but effectively ends Ohio's involvement as the means to carry out that background check. That responsibility will now be taken back by the federal government. The federal government continues to work toward the 1998 nationwide Brady check system, when the purchase of all guns will require a background check.

As a result, today will be the last day that the Ohio Bureau of Criminal Identification and Investigation will accept Brady check calls from gun dealers. All checks received through today will be completed.

Over the last two years, the Ohio General Assembly has taken many steps to toughen penalties for gun-related crimes and as a former prosecutor, I will continue to support those measures.

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**Attorney General
Betty D. Montgomery**

NEWS STATEMENT

from Ohio Attorney General Betty D. Montgomery
For more information, contact Deputy Attorney General Mark R. Wesner at (614) 466-3800

TOPIC: THE U.S. SUPREME COURT'S ACTION IN STRIKING PORTIONS OF THE BRADY ACT

June 30, 1997

Big picture

Prior to last week's U.S. Supreme Court's decision about the Brady Act, there were two different categories of states that conducted background checks on handgun purchasers. More than half of all states already had background checks in place -- by order of their respective state legislatures. The remaining states (including Ohio) were states whose legislatures had not mandated a background check for handgun purchases.

When the Brady Act became effective in 1994, it intended that (in Ohio) county sheriffs would carry out the required background checks. Through an agreement between then-Attorney General Lee Fisher and sheriffs, it was decided that Ohio's Bureau of Criminal Identification and Investigation (BCI) would do the actual work. Without the mandate of the Brady Act, BCI would not have the authority to conduct these background checks and provide otherwise-confidential information to gun dealers.

Last Friday, the Supreme Court removed the portions of the Brady Act that ordered local law enforcement officials to conduct these checks. The court preserved the waiting period and confirmed that the federal government could conduct a background check during the waiting period. Because the Ohio state legislature has never authorized BCI or any sheriff to conduct a handgun purchase background check, at the moment the Supreme Court ruling was handed down, our state lost the legal authority to conduct these checks.

A few zealous gun control advocates have pointed to Ohio Revised Code Section 109.54 as creating the authority to do background checks on individuals without their permission. The statute actually only allows BCI to "aid and assist" a sheriff or police officer "in the investigation or solution of any crime or the control of any criminal activity." Handgun background checks have already been categorized by the U.S. Justice Department as a non-law enforcement check. Even if that weren't the case, a simple background check does not indicate any probable cause to believe that a crime or criminal activity has occurred. Therefore, checks done without authority could expose the state to significant legal liability. As a result, BCI was instructed to stop the checks the day the Supreme Court made its decision.

In 1996, 60,037 people went to licensed gun dealers to purchase handguns. Of that figure, 327 -- less than one half of one percent -- were denied handguns because of a disqualifying factor. Although I'm pleased that those 327 people didn't receive a handgun from a licensed gun dealer, we have no guarantee that each of these people didn't proceed to a pawn shop, a gun show, flea market, or the black market to purchase a handgun the very same day. Nearly a million dollars was spent in 1996 on this program, yet while we were able to keep 327 people from getting a handgun at point A -- each of them was able to purchase a rifle or handgun the very same day at point B.

To our knowledge, under the Brady Act, not a single one of the 327 people who falsified the form and tried to purchase a handgun illegally have been prosecuted by the U.S. Justice Department.

All of this is an interim concern. That's because, in 1998, the Brady Act calls for local governments to end the waiting period and background checks for handguns in favor of a nationwide "instant check" program for handguns and long guns. Those instant background checks will be done at the point of purchase and will be conducted by federal employees.

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Friday afternoon, officials from my office spoke with the U.S. Justice Department to explore options. Over the past weekend, several attorneys on my staff conducted research and discussed possibilities. On Saturday, I spoke personally with U.S. Attorney General Janet Reno and explained Ohio's concerns. President Clinton and Attorney General Reno hoped that Ohio and other states would continue to do background checks voluntarily. I explained that our state's voluntary inclusion in the federal program is a decision only the legislature can make. As an executive agency with limited authority, the Ohio Attorney General's Office carries out laws - we are not able to make up laws.

Unless a law properly directs us, we simply can't conduct background checks on private citizens and then provide that confidential and otherwise-protected information to another person. No one should expect Ohio's chief legal officer to take it upon herself to pre-empt the state legislature and invade individual privacy. Absent a criminal investigation prompted by probable cause, an individual would have to give his or her consent before such a background check could be done.

As a former prosecutor, I want to take all legal and reasonable steps to keep guns out of the hands of criminals. To that end we have taken the following steps:

- Beginning in the next few days, we will provide every licensed gun dealer in Ohio with a waiver form that each potential handgun purchaser will be asked to sign. That waiver will ask the buyer to voluntarily allow BCI to conduct a background check and forward any disqualifying information to the gun dealer during the waiting period. We expect that the majority of handgun purchasers will agree to this waiver. Obtaining individual permission resolves the problem of our lack of legal authority to conduct a check.
- If a potential handgun purchaser refuses to sign a form that allows BCI to conduct a background check, BCI will forward all the pertinent information to the federal Bureau of Alcohol, Tobacco, and Firearms with that person's name and individual information. The federal government may then conduct the necessary background check during the waiting period. The Supreme Court has already said that this is an appropriate federal activity -- even without an individual's permission.
- To encourage handgun purchasers to voluntarily allow BCI to conduct the necessary background check, Ohio will complete the check in two days - a "Quick-Check" system. In 1998 the federal government will start an Instant Check system which will occur immediately at each point of purchase. Recent updates in our system and technology have allowed this to be possible. Legally this is possible because the Brady Act waiting period requirement is "up to five days." If there are no disqualifying offenses, a handgun purchaser will be able to receive his or her gun after 48 hours - less than half the time the federal check will likely take.
- We are also drafting legislation which would make it a felony offense for someone who has already been convicted of certain felonies to attempt to acquire a handgun. This will allow local law enforcement to prosecute those people who seek to violate the Brady Act by seeking to obtain weapons when they are not legally able to own them.

Gun-buyer checks become voluntary

Montgomery decides to restart program

The Columbus Dispatch
Tuesday
JULY 1, 1997 ■

By Alan Johnson
 Dispatch Statehouse Reporter

Background checks for Ohio handgun buyers will resume on a voluntary basis. Attorney General Betty Montgomery decided yesterday, four days after halting the program following a U.S. Supreme Court ruling.

"We expect that the majority of handgun purchasers will agree to this waiver," Montgomery said. "Obtaining individual permission resolves the problem of our lack of legal authority to conduct a check."

State "quick-check" voluntary background checks are expected to take two days, Montgomery said. If the gun buyer refuses, the check will be done by the federal Bureau of Alcohol, Tobacco and Firearms and

will take five days, she said.

Paperwork is expected to go out today to 3,500 gun dealers across the states.

Montgomery reversed her position on the Brady law checks after a weekend of research by her staff and a call from U.S. Attorney General Janet Reno.

But Kent Markus, counselor to Reno, said Montgomery's revised procedure has not been agreed to by federal officials "and may be deeply flawed." Markus said no arrangement had been worked out with ATF officials to do the checks.

The U.S. Supreme Court, by a 5-4 decision Friday, invalidated a critical section of the Brady law.

Please see **GUN CHECK** Page 2A

GUN CHECK from 1A

ruling the federal government cannot require states to do criminal background checks on would-be handgun purchasers as dictated by the 1994 federal law.

Montgomery immediately shut down the 3-year-old state program operated by the Bureau of Criminal Identification and Investigation in London, Ohio. She said that in view of the court's ruling, the state lacked authority to do the checks.

From Feb. 28, 1994, through June 9, the bureau conducted 206,905 background checks on would-be gun purchasers, rejecting 1,206 — about 0.5 percent. Her office said criminals bypass the system and get guns elsewhere.

After Friday's decision, Montgomery's staff talked with Justice Department staffers, Reno called Montgomery Saturday at home, and Montgomery's staff researched the issue over the weekend.

Ohio was among a handful of states that had decided not to perform Brady checks.

About half the states have their own Brady laws, and most of the others decided to continue on their own, which the Supreme Court said they could do.

The federal government plans

to take over background checks by year-end 1998.

Montgomery said her office is preparing legislation that would make it a felony for someone convicted of certain crimes to attempt to buy a handgun.

That would allow local prosecution of Brady law violators, which is not done at the federal level, Montgomery said.

None of the 327 people denied a handgun in Ohio in 1996 was prosecuted under the federal law, Montgomery said.

Montgomery's change of heart drew immediate fire from a Democrat who plans to run against her in 1998.

Richard Cordray, former state solicitor general under former Attorney General Lee Fisher, criticized Montgomery's "knee-jerk, shut-the-system-down" decision.

"It's hard to understand how Ohio's chief law enforcement officer would not be interested in keeping guns out of the hands of convicted felons," Cordray said.

Mark R. Weaver, deputy attorney general, dismissed those criticisms.

"We found a way to do the right thing, but to do it legally," he said.

Ohio rethinks gun-law stance

• Attorney general retreats a bit, says state will research firearm buyers who approve, won't those who object

The Beacon Journal
Tuesday, July 1, 1997

BY MARGARET NEWKIRK
Beacon Journal Columbus Bureau

COLUMBUS: Just days after announcing that the state would end background checks for handgun buyers in the wake of a U.S. Supreme Court decision, Ohio Attorney General Betty Montgomery backed off somewhat yesterday.

Her office will continue to do checks - but only for gun buyers who agree to them.

Buyers who don't agree, Montgomery said, will have their Brady law information forms turned over to the federal Bureau of Alcohol, Tobacco and Firearms, which "may then conduct the necessary

background checks during the waiting period."

The statement drew outrage from gun control advocates, derision from Democrats and laughter from the Ohio spokesman for the Bureau of Alcohol, Tobacco and Firearms, who said it was the first he'd heard of it.

ATF spokesman Pat Berarducci said he could not comment on Montgomery's plan until he speaks to the bureau's chief legal counsel to "determine whether this is legal."

On Friday, the high court ruled

See GUNS, Page A10

GUNS

• Ohio has been unique in centralizing checks

Continued from Page A1

4-3 that the federal government cannot compel state and local agencies to conduct background checks - prompting Montgomery to say the state's Bureau of Criminal Identification and Investigation would immediately stop accepting background check requests from gun dealers.

Deputy Attorney General Mark R. Weaver said Montgomery believed the state would be legally exposed if it ran checks on private citizens without a law specifically allowing them.

The decision attracted instant criticism from across the country. Montgomery was the only law enforcement official in the nation who immediately shut down the background check program.

"We expected maybe some small-town sheriff in Texas to do away with the checks," said Joe Sudbay, legislative director of Handgun Control Inc. in Washington. "We certainly didn't expect it from the whole state of Ohio. And we especially didn't expect it from an attorney general who purports

to be so tough on crime."

Montgomery's about-face followed a letter from U.S. Attorney General Janet Reno that urged law enforcement officials to continue background checks.

"We expect and hope that the vast majority of law enforcement agencies in America will continue to run these checks voluntarily," the Reno letter said. "We recognize that some chief law enforcement officers may still use the court's decision as an excuse not to conduct Brady background checks."

"It is just common sense that we all keep doing whatever we can to keep guns from criminals," Reno wrote.

Ohio's attorney general's office has been conducting background checks under the federal Brady handgun control law since 1994. Since then, the bureau has run checks on 206,868 handgun buyers, denying permits to 1,206 of them.

In her statement yesterday, Montgomery said she was pleased that disqualified people did not receive guns "from a licensed gun dealer."

But she said "We have no guarantee that those people didn't proceed to a pawnshop, a gun show, a flea market or the black market to purchase a handgun the very same day."

The Ohio attorney general's role in running the checks is unique among those states that

fell under the Brady Bill.

In most states, city police departments and county sheriffs are responsible for running the background checks. Ohio's system, with checking centralized under Montgomery's office, was set up at the request of former Ohio Attorney General Lee Fisher.

Bob Walker, the president of Handgun Control Inc., said the changes announced yesterday did little to alleviate his organization's worries about Montgomery's action, and said her proposal to turn nonvolunteers over to the Alcohol, Tobacco and Firearms bureau was both illegal and unworkable.

Both the state Democratic Party and Richard Cordray, Montgomery's only Democratic opponent in next year's attorney general's race so far, said Montgomery does have authority to continue background checks under current state law.

Cordray, who was solicitor general under Fisher, said state law allows the attorney general to assist local law enforcement agencies in investigating possible criminal conduct.

Weaver, the deputy attorney general, said the revised policy doesn't represent a flip-flop.

"She didn't change her mind," Weaver said. "We are still of the position that Ohio does not have the authority to require background checks."

Ohio to continue checking on gun buyers 'voluntarily'

By JOE HALLETT
PLAIN DEALER BUREAU

COLUMBUS — Stripped of its legal authority to conduct criminal background checks on gun buyers, Ohio this week will begin asking handgun buyers to voluntarily permit the state to conduct such checks.

Information on potential handgun buyers who refuse to sign an Ohio waiver will be forwarded to the federal Bureau of Alcohol, To-

bacco, and Firearms, which still has authority to conduct criminal background checks without a gun buyer's consent.

Ohio Attorney General Betty D. Montgomery, who outlined the new Ohio waiver system yesterday, said it should provide the necessary safeguards to keep guns out of the hands of criminals.

On Friday, the U.S. Supreme Court wiped out a section of the Brady law, ruling that the federal government could not force state and local police agencies to conduct criminal background checks on handgun buyers. The court, however, left intact the federal government's authority to conduct background checks.

In Ohio last year, 60,037 people attempted to buy handguns and 327 were denied after state-conducted background checks turned up records of felonies or other disqualifying information, according to Deputy Attorney General Mark R. Weaver.

After the Brady law became effective in 1994, the Ohio Bureau of Criminal Identification and Investigation, working with county sheriffs, provided criminal background checks on handgun buyers during a five-day cooling-off period mandated by the law.

Montgomery, who oversees the BCI, had said in the wake of the Supreme Court decision that the state's gun-check system would be shut down immediately. But after speaking with U.S. Attorney General Janet Reno over the weekend, Montgomery decided to continue voluntary checks.

Montgomery stressed that system would last only until the federal government next year begins computerized criminal background checks that can occur immediately at each point of handgun purchase.

Columbus attorney Richard Cordray, former state solicitor who had argued in support of the Brady law, contended that the state still had legal authority to do handgun background checks despite the court ruling.

Cordray, a possible Democratic opponent against Montgomery in 1998, also called the voluntary waiver system "useless," adding, "The law-abiding citizen will agree to sign, but the criminal will not."

THE PLAIN DEALER • TUESDAY, JULY 1, 1997

THE CINCINNATI ENQUIRER

METRO

TUESDAY • JULY 1, 1997

Ohio gun checks on again

Under fire,
attorney general
changes mind

BY MICHAEL HAWTHORNE
Enquirer Columbus Bureau

COLUMBUS — Attorney General Betty Montgomery, in abrupt about-face, announced Monday that Ohio will resume criminal background checks on prospective gun buyers.

Ms. Montgomery faced a torrent of criticism after cutting off the gun checks Friday following a U.S. Supreme Court decision

that struck down a key part of the Brady gun-control law.

Following discussions during the weekend that included a telephone conversation between Ms. Montgomery and U.S. Attorney General Janet Reno, Ms. Montgomery's office unveiled a new method that allows the background checks to continue.

Potential gun buyers now will be asked to sign a waiver allowing the state Bureau of Criminal Identification and Investigation to conduct a background check. If they refuse to sign the waiver, the buyer's personal information will be forwarded to the federal Bureau of Alcohol, Tobacco and Firearms.



Betty
Montgomery

The changes were prompted by a U.S. Supreme Court ruling that the federal government cannot require local law enforcement to determine whether buyers are fit to own handguns. Ohio

To encourage people to volunteer for the state check, Ms. Montgomery's office is guaranteeing the results will be back within two days. The Brady law imposes a waiting period of up to five days.

was one of 23 states that conducted the checks only because federal law required them to.

"No one should expect Ohio's chief legal officer to take it upon herself to pre-empt the state legislature and invade individual privacy," Ms. Montgomery said in defending her earlier decision to stop the checks.

The Brady law, which affects only licensed gun dealers, has kept pistols out of the hands of 1,206 felons and other prohibited handgun buyers in Ohio since 1994, according to the attorney general's office.

Ms. Montgomery said her office is drafting legislation that would make it a felony for a

convicted felon to attempt to acquire a handgun.

Gun-control advocates sharply criticized Ms. Montgomery for temporarily stopping the background checks, noting they continued in other states with no laws equivalent to the Brady law.

The state checks will be replaced with a federal system scheduled to go on line in 1998.

Democrats pounced on the potential political implications of Ms. Montgomery's decision.

"Keeping the background checks seemed like an easy call," said Columbus-area lawyer Richard A. Cordray, a Democrat who wants to challenge Ms. Montgomery in the 1998 elections.

- BRUCE
- ELENA
- LEANNE
- KAREN POPP
- BILL MARSHALL
- RAGHU

STEPHEN P. HALBROOK, PH.D.

ATTORNEY AT LAW

SUITE 404

10560 MAIN STREET

FAIRFAX, VIRGINIA 22030

TELEPHONE (703) 352-7276

FAX (703) 359-0938

JUL 8 1997

June 30, 1997

President Bill Clinton
The White House
Washington, D.C. 20500

Attorney General Janet Reno
U.S. Department of Justice
10th & Constitution Ave., N.W.
Washington, D.C. 20530

Re: "Voluntary" Background Checks Under Brady Act

Dear President Clinton and Attorney General Reno:

I am writing as counsel for Sheriff Jay Printz. As you know, on June 27, 1997, the Supreme Court in *Printz v. United States* declared the Brady Act's required background checks by chief law enforcement officers (CLEOs) unconstitutional. President Clinton responded in the news media that he would urge all law enforcement departments in the States where the Brady Act applied to do the background checks voluntarily.

I would respectfully draw your attention to the fact that, under the laws of most if not all of these States, CLEO involvement in firearms transactions is contrary to law or not authorized by law. As stated in *Printz*, Slip Opinion at 36 n. 18:

Both CLEOs before us here assert that they are prohibited from taking on these federal responsibilities under state law. That assertion is clearly correct with regard to Montana law, which expressly enjoins any "county . . . or other local government unit" from "prohibit[ing] . . . or regulat[ing] the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, [or] possession . . . of any . . . handgun," Mont. Code §45-8-351(1) (1995).

The Court added that "it is arguably correct with regard to Arizona law as well," citing Ariz. Rev. Stat. §13-3108(B) (1989). Similar preemption laws exist in most of the other States where the Brady Act applied. (See attached addendum.)

In addition to the preemption statutes, the general laws of

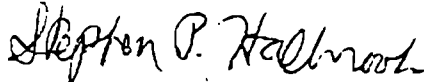
the states governing the duties of law enforcement do not encompass voluntary execution of federal law, and law enforcement departments are not authorized to expend funds on volunteer activities not sanctioned by State law. See, e.g., Mont. Code §7-32-2121 (duties of sheriff under State law), §§7-4-2110, 7-4-2203 (board of county commissioners supervise officials charged with the disbursement of public revenues and prosecute delinquencies). All of the other States also define law enforcement duties and prohibit use of funds for purposes unauthorized by State law.

The above limitations apply as much to departments of State police and Attorneys General as to local sheriffs and police chiefs. State officials are not authorized to expend funds for activities not sanctioned by State law any more than are local officials.

Certainly the Supreme Court's decision does not create a problem so urgent as would justify encouraging local law enforcement officials to violate the laws of their own States. In 1994, federal district courts in Montana, Mississippi, Arizona, Vermont, and Louisiana declared the Brady Act unconstitutional. The Brady Act has been inoperative in Texas, Mississippi, and Louisiana since March 1996, when it was declared unconstitutional in *Koog v. United States*, 79 F.3d 452 (5th Cir. 1996). Yet no one has suggested since then that a crisis was forthcoming in those States such as warranted acting outside of and in conflict with State law.

The above points to the necessity of putting on line the permanent provision of the Brady Act, the federal instant check. This task should be accomplished with all deliberate speed. Meanwhile, in urging CLEOs to execute the Brady law voluntarily, we urge you to inform them that you do not warrant that they may lawfully do so under the laws of their respective States, and that you warn them that expenditure of funds for unauthorized execution of federal law may be contrary to State law.

Sincerely,



Stephen P. Halbrook

cc: Honorable Walter Dellinger
Acting Solicitor General
Department of Justice
10th St. and Constitution Ave., N.W.
Washington, D.C. 20530

ADDENDUM

<u>State</u>	<u>Statute</u>
Alabama	Ala. Code § 11-45-1.1
Arizona	Ariz. Rev. Stat. Ann. § 13-3108(B)
Arkansas	Ark. Code Ann. § 14-54-1410
Kentucky	Ky. Rev. Stat. Ann. § 65.870
Maine	Me. Rev. Stat. Ann., tit. 25, Chap. 252-A, § 2011
Mississippi	Miss. Code Ann. § 45-9-51
Montana	Mont. Code Ann. § 45-8-351(1)
Nevada	Nev. Rev. Stat., Chaps. 244, 268, 269
New Mexico	Const. of N.M. Art. II, § 6
North Dakota	N.D. Cent. Code § 62.1-01-03
Oklahoma	Okla. Stat., tit. 21, § 1289.24
Pennsylvania	18 Pa. Cons. Stat. § 6120
Rhode Island	R.I. Gen. Laws § 11-47-58
South Carolina	S.C. Code Ann. § 23-31-510
South Dakota	S.D. Codified Laws Ann. § 7-18A-36; § 8-5-13; § 9-19-20
Texas	Local Gov't Code § 215.001
Vermont	Vt. Stat. Ann. tit. _____, § 2295
West Virginia	W.Va. Code § 8-12-5a
Wyoming	Wyo. Stat. § 6-8-401

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June 30, 1997

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The White House
Washington, D.C. 20500

Attorney General Janet Reno
U.S. Department of Justice
10th & Constitution Ave., N.W.
Washington, D.C. 20530

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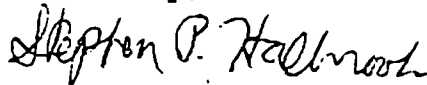
the states governing the duties of law enforcement do not encompass voluntary execution of federal law, and law enforcement departments are not authorized to expend funds on volunteer activities not sanctioned by State law. See, e.g., Mont. Code §7-32-2121 (duties of sheriff under State law), §§7-4-2110, 7-4-2203 (board of county commissioners supervise officials charged with the disbursement of public revenues and prosecute delinquencies). All of the other States also define law enforcement duties and prohibit use of funds for purposes unauthorized by State law.

The above limitations apply as much to departments of State police and Attorneys General as to local sheriffs and police chiefs. State officials are not authorized to expend funds for activities not sanctioned by State law any more than are local officials.

Certainly the Supreme Court's decision does not create a problem so urgent as would justify encouraging local law enforcement officials to violate the laws of their own States. In 1994, federal district courts in Montana, Mississippi, Arizona, Vermont, and Louisiana declared the Brady Act unconstitutional. The Brady Act has been inoperative in Texas, Mississippi, and Louisiana since March 1996, when it was declared unconstitutional in *Koog v. United States*, 79 F.3d 452 (5th Cir. 1996). Yet no one has suggested since then that a crisis was forthcoming in those States such as warranted acting outside of and in conflict with State law.

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Stephen P. Halbrook

cc: Honorable Walter Dellinger
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Wyoming	Wyo. Stat. § 6-8-401



U.S. Department of Justice
Office of Intergovernmental Affairs

Office of the Director

Washington, D.C. 20530

July 8, 1997

TO: Jose Cerda
456-7028

FROM: Nicholas M. Gess, Director
Office of Intergovernmental Affairs
U.S. Department of Justice, Room 1340 Main
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
(202) 514-3465 (office)
(202) 514-2504 (facsimile)
gessni@justice.USDOJ.gov (EMAIL)

SUBJECT: Brady Outline

PAGES: 2 (including cover sheet)

REMARKS: Jose - Please see attached.

TO: Jose Cerda
FROM: Nick Gess
SUBJECT: Brady Strategy Outline

Jose -- Please take a look and let me know if attached is OK as an outline. I will do a formal memorandum once you give me the go ahead.

A. **Immediate**

- I. Encourage CLEO's to continue to do Brady checks as they have done in the past.
- II. Where a CLEO won't do background check, ATF should try to locate a CLEO willing to do the check for the jurisdiction.

B. **Legislative Fix**

Some states won't do Brady checks and a state official may rule -- as they have done in Ohio and Arkansas -- that there is no authority to do a Brady check. In that instance, only a legislative fix will work. That fix should be:

- In the first instance, the CLEO of the purchaser's residence does the Brady check (current law);
- If the CLEO of the purchaser's residence will not do the Brady check, the FFL asks the CLEO of his own residence;
- If neither CLEO will do the check, then the FFL may ask any CLEO in the state to do the Brady check.
- CLEO's are authorized to conduct Brady checks unless expressly prohibited by state law.
- CLEO's are authorized to charge a reasonable fee to conduct Brady checks.

**U. S. Department of Justice****Office of Intergovernmental Affairs**

Washington, D.C. 20530

July 8, 1997

Memorandum to: Jose Cerda (Fax: 456-7028)
Beth Weaver (Fax: 622-1999)

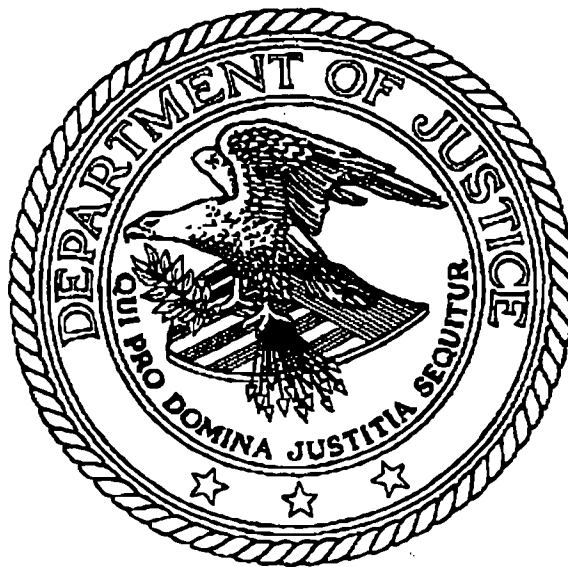
From: Matt Levine

Subject: **List of CLEOs for Brady States**

Per our conversation this afternoon, attached is a list of CLEOs for the Brady states which I culled from *Survey of State Procedures Related to Firearm Sales*, published as of April, 1996 by the Department's Bureau of Justice Statistics.

<u>State</u>	<u>CLEO(s)</u>
Alabama	The 67 local sheriffs
Alaska	State Department of Public Safety & [the] 34 local police agencies
Arkansas	State Police
Arizona	State Criminal Justice Center
Kansas	The 123 local sheriffs and police departments
Kentucky	State Police
Louisiana	The 58 local sheriffs and New Orleans Police Dept.
Maine	State Police and the 127 local police departments
Mississippi	State Dept. Of Public Safety, State Police in some unincorporated areas, and the 262 locals sheriffs
Montana	The 59 local sheriffs and police departments

Nevada	State Highway Patrol
New Mexico	The 111 local sheriffs and police departments, and State Police for some unincorporated areas
North Dakota	The 53 local sheriffs
Ohio	State Bureau of Criminal Investigation
Oklahoma	The 440 local sheriffs and police departments
Pennsylvania	The 66 local sheriffs and the Philadelphia Police Dept.
Rhode Island	The 39 local police departments
South Carolina	State Law Enforcement Division
South Dakota	The 66 local sheriffs
Texas	The 991 local sheriffs and police departments
Vermont	The 21 local sheriffs and police departments, and the State Police for some unincorporated areas [Note: per our discussion, is this info. up to date?]
West Virginia	State Police
Wyoming	The 40 local sheriffs and police departments



Office of Intergovernmental Affairs
United States Department of Justice
10th and Constitution Ave. NW
Washington, D. C. 20530

To: JOSE CERDA
BETH WEAVER

FROM: MATT LEWINE

456-7028
FAX: 622-1999

VOICE: 202-514-3465
FAX: 202-514-2504

Total Pages (excluding this cover): 2

Additional Message:



U.S. Department of Justice
Office of Intergovernmental Affairs

Office of the Director

Washington, D.C. 20530

July 11, 1997

MEMORANDUM

TO: Elena Kagan, 456-2878
Jose Cerda, 456-7028

FROM: Nick Gess

SUBJECT: Brady "advice"

Elena & Jose -- Attached is the first draft of a Brady advice letter which is now circulating within DoJ. Please let me know if you have any comments. Phone: 514-3465 / Fax: 514-2504.

Many thanks. Nick

A large, stylized handwritten signature, likely of Nick Gess, written in black ink. The signature is cursive and somewhat abstract, with a large loop at the bottom.

7/11/97-9:30 AM

Dear Law Enforcement Colleague:

I am extremely encouraged by the reports I have received concerning the continued enforcement of the Brady Handgun Control Act in light of the recent decision of the United States Supreme Court. By all accounts, the vast majority of law enforcement officers are doing right and responsible thing by continuing to do background checks. Background checks are not done because they must be done, but because background checks make good law enforcement.

I am disturbed by the suggestion that certain local law enforcement lacks the authority to do these background checks because the laws of particular states do not expressly authorize them. This is a new and dangerous theory, one which erodes the historic authority of law enforcement.

As you are aware, law enforcement methods are generally not expressly authorized in specific state statutes. Rather, state statutes generally give local law enforcement broad-brush authority to enforce the law and to protect the public. Thus, there are generally no state laws which authorize law enforcement to conduct interviews, to take photographs at crime scenes, to operate radars to measure speed on highways or to increase drunk driving patrols in the vicinity of bars. But, it is beyond dispute that generally, law enforcement can do these things despite express authority to do so. Likewise, in the absence of an express statutory bar, law enforcement officers clearly may check records to prevent crime. It is a dangerous precedent indeed to suggest that law enforcement's authority to investigate and to prevent crime must be spelled out by statute.

Brady background checks make common sense. The reason for prohibiting felons, fugitives, military deserters and several other groups of individuals from possessing firearms is to protect the public from the dangers which these individuals pose. While it is all very well to have laws on the books which prohibit possession, it would be tragic to have the means to determine whether a person poses a danger to America from firearms possession, and then not to use those means and thus protect the public.

We know that the Brady Act works. It has already prevented

over a quarter million felons, fugitives, military deserters and others who should never have a gun from obtaining one. My advice remains the same. Unless you are expressly prohibited from preventing crime by the laws of your state, please continue to conduct these background checks.

GESSNICK\BRADY.303

STEPHEN P. HALBROOK, PH.D.

ATTORNEY AT LAW

SUITE 404

10560 MAIN STREET

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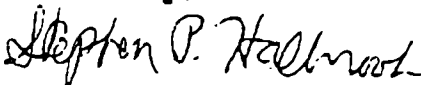
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Stephen P. Halbrook

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Alabama	Ala. Code § 11-45-1.1
Arizona	Ariz. Rev. Stat. Ann. § 13-3108(B)
Arkansas	Ark. Code Ann. § 14-54-1410
Kentucky	Ky. Rev. Stat. Ann. § 65.870
Maine	Me. Rev. Stat. Ann., tit. 25, Chap. 252-A, § 2011
Mississippi	Miss. Code Ann. § 45-9-51
Montana	Mont. Code Ann. § 45-8-351(1)
Nevada	Nev. Rev. Stat., Chaps. 244, 268, 269
New Mexico	Const. of N.M. Art. II, § 6
North Dakota	N.D. Cent. Code § 62.1-01-03
Oklahoma	Okla. Stat., tit. 21, § 1289.24
Pennsylvania	18 Pa. Cons. Stat. § 6120
Rhode Island	R.I. Gen. Laws § 11-47-58
South Carolina	S.C. Code Ann. § 23-31-510
South Dakota	S.D. Codified Laws Ann. § 7-18A-36; § 8-5-13; § 9-19-20
Texas	Local Gov't Code § 215.001
Vermont	Vt. Stat. Ann. tit. ____, § 2295
West Virginia	W.Va. Code § 8-12-5a
Wyoming	Wyo. Stat. § 6-8-401

INVITEES FOR RUBIN/RENO MEETING

July 16, 1997

Treasury:

Secretary Rubin
Under Secretary Kelly
Brad Buckles? Director Magaw?
staff

Justice:

Attorney General Reno
Kent Markus
Andy Fois
staff

Principal/Representative from the 14 national groups:

Federal Law Enforcement Officers Association, *Richard Gallo*
Fraternal Order of Police
International Association of Chiefs of Police, *Chief Darrel Sanders, Sean Kirkendall*
International Brotherhood of Police Officers
International Union of Police Associations
Major City Chiefs
National Association of Police Organizations, *Robert Scully*
National Organization of Black Law Enforcement Executives
National Sheriffs Association, *Bubby Moser, Executive Director*
National Troopers Coalition
Police Executive Research Foundation, *Commissioner Gil Kerlikowske, Chuck Wexler*
Police Foundation
National District Attorneys Association
National Association of Attorneys General

CLEOs from the 23 Brady States (1 per state): * indicates invite has gone out.

AL	Chief Harold Johnson NEED Sheriffs	Mobile PD
AR	Asst. Chief Randy Reed Chief Bill Nolan	Little Rock PD * N. Little Rock PD *
AZ	Chief Dave Brown Chief Dennis Garrett NEED Head of AZ DPS	Tempe PD * Phoenix PD *
KS	Chief Ellen Hansen	Lenexa PD *

KY	Lt. Col. Gary Rose Chief Doug Hamilton	KY State Police * Louisville PD *
LA	Chief Bart Schneider NEED Chief Pennington NOPD and Sheriffs	Vidalia PD
ME	Chief Michael Coty Chief Michael Chitwood NEED Head of State Police	Gardiner PD Portland PD
MS	Chief Robert Johnson NEED Head of State Police and Sheriffs	Jackson PD
MT	?	
ND	Chief Jerald Patterson	Jamestown PD
NV	Need Head of State Police	
NM	Chief Joseph Polisar	Albuquerque PD *
OH	Chief Michael Snowden Chief Gerald Galvin Chief Rocco Pollutro Chief James Jackson	Cincinnati PD * Toledo PD * Cleveland PD * Columbus PD *
OK	Chief Earl Shirley	Yukon PD *
PA	NEED Philadelphia Chief/Sheriffs	
RI	William DeVine Richard DeLyon	N. Providence PD * Pawtucket PD *
SC	Chief Reuben Greenberg NEED Sheriffs! Sheriff Johnny Mack Brown, Greenville County Jeff Moore SC Sheriffs Assn	Charleston PD????
SD	?	
TX	Chief Bruce Glasscock Chief Al Philippus	Plano PD * San Antonio PD *
VT	Comm. Jim Walton	VT State Police

Date: 06/27/97 Time: 11:45

bPSR Statement on Supreme Court Ruling on Brady Law

To: National Desk, Law Writer

Contact: Tracy Ann McCaffery, 202-898-0150, ext. 236, or

Katie Pate, 202-898-0150, ext. 247,

both of Physicians for Social Responsibility

WASHINGTON, June 27 /U.S. Newswire/ -- The following was released today by Physicians for Social Responsibility:

Physicians for Social Responsibility (PSR) is gravely concerned about the potential ramifications of today's Supreme Court ruling on the Brady Handgun Law. The court ruled that a portion of the law ran afoul of the Tenth Amendment by requiring states and localities to conduct background checks on potential handgun purchasers. An important lifesaving provision -- the five-day waiting period -- was not disputed. PSR has deemed the ruling detrimental to public health and calls on Congress to ensure adequate funding for complete background checks.

``It is a matter of public safety and health that gun violence be prevented. Congress must fund and local law enforcement must continue to conduct background checks,' ' PSR Board Violence Prevention Committee Chair Lee Francis, M.D., stated. ``Clearly, the Brady background check makes sense and has successfully stopped felons and others from illegally purchasing handguns.' ' According to February 1997 estimates by the Bureau of Justice Statistics, the Brady Law has prevented 186,000 illegal gun sales -- 72 percent of which involved persons convicted or indicted for felonies -- since it went into effect in 1994.

The court's decision was based on problems with the local background check requirement -- a violation of the Tenth Amendment --and not the constitutionality of the gun law itself. Dr. Francis added, ``Much is made by the gun-lobby regarding the supposed 'Second Amendment right to bear arms' -- the Second Amendment was not the basis for this decision and the court has never struck down a gun control measure on Second Amendment grounds.' '

The Brady Handgun Violence Prevention Act (P.L. 103-159) requires a five-day waiting period during which state or local law enforcement officials conduct a pre-sale background check for evidence of felony convictions or other disqualifying information. Brady is applicable to 26 states -- the other 24 states screen handgun purchasers through a permit system or other procedures that meet or exceed Brady's requirements.

``Criminal checks alone will not prevent felons from obtaining firearms, but they do help reduce dealer sales to disqualified persons and complement other crime control measures,' ' said PSR Associate Director of Policy for Violence Prevention Tracy Ann McCaffery. ``Public health depends upon the prevention of gun violence and the background check provision of the Brady Law is one piece of that preventive medicine.' '

Physicians for Social Responsibility is a leading physicians organization with nearly 20,000 members committed to the reduction of violence and its causes, the elimination of nuclear and other weapons of mass destruction and the achievement of a sustainable environment. For more information, see PSR's website at <http://www.psr.org>.

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/U.S. Newswire 202-347-2770/
APNP-06-27-97 1201EDT

Date: 06/27/97 Time: 11:27

SELF-DEFENSE LEADER SAYS SUPREME COURT BRADY RULING A

Turning Point in the Battle for Protection and Safety

WASHINGTON, June 27 /PRNewswire/ -- "The Supreme Court's landmark decision puncturing the Brady Law is a turning point in the struggle for personal protection and public safety," John Michael Snyder, Public Affairs Director of the Citizens Committee for the Right to Keep and Bear Arms, said here today. Snyder, designated "a champion of the right to self-defense" by THE WASHINGTON TIMES, was named "dean" of gun lobbyists by both THE NEW YORK TIMES and THE WASHINGTON POST.

For years, Snyder has opposed Brady's national mandated handgun purchase waiting period as an "interference with the right of law-abiding citizens to defend themselves and their loved ones from violent criminals."

He says "it undermines the right to self-defense. "It undercuts the right to life itself.

"It is not an effective crime-fighting tool. "An annual survey of Chiefs of Police and Sheriffs in the United States shows year after year that the Nation's command officers do not believe that the waiting period prevents criminals from obtaining handguns. So why have it?

"It makes more sense to proceed with implementation of the national, instantaneous, point-of-purchase criminal records check for handgun purchases.

"Now is the time for a truly positive public policy in support of the right to personal protection and the promotion of genuine public safety.

"Recent studies of FBI crime statistics, such as that conducted by Professor John R. Lott, Jr. of the University of Chicago School of Law, show state laws which permit the carrying of concealed handguns by law-abiding citizens correlate with reductions in violent crime rates.

"Now is the time for enactment of a federal law allowing a citizen who has a permit to carry a concealed handgun in any state to carry that firearm in any state.

"Now is the time for passage of the Personal Safety and Community Protection Act, H.R. 339, by Rep. Clifford Stearns of Florida, and S. 816, by Sen. Larry Craig of Idaho."

Snyder, Vice President for Public Affairs of the National Association of Chiefs of Police, also is Treasurer of the Second Amendment Foundation and Chairman of the St. Gabriel Possenti Society, Inc.
SOURCE Citizens Committee for the Right to Keep and Bear Arms

Date: 06/27/97 Time: 10:01
SWASHN: checks voluntarily

Scalia's opinion was joined by Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor, Anthony M. Kennedy and Clarence Thomas.

Dissenting were Justices John Paul Stevens, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer.

Writing for the four, Stevens said the background check requirement ``is more comparable to a statute requiring local police officers to report the identity of missing children to the Crime Control Center of the Department of Justice than to an offensive federal command to a sovereign state.

``If Congress believes that such a statute will benefit the people of the nation ... we should respect both its policy judgment and its appraisal of its constitutional power,'' Stevens said.

The ruling is further evidence of the conservative court's determination to shift the balance of power from the federal government toward the states.

Last year, the justices ruled that Congress cannot force states into federal court to settle disputes over gambling on Indian reservations. In 1995, the court said Congress could not ban gun possession near schools.

The Brady law was challenged in court by county sheriffs from Montana and Arizona.

The Clinton administration unsuccessfully defended the background check requirement as a lawful effort to curb the thousands of handgun murders nationwide each year.

The nationwide handgun-murder total dropped to 11,198 in 1995 after averaging 13,000 a year during the previous three years.

Also, the Justice Department estimated in February that police background checks since 1994 have blocked more than 186,000 illegal over-the-counter gun sales. In 72 percent of those cases, the prospective gun buyer had been convicted or indicted for a felony.

MORE

APNP-06-27-97 1018EDT

Date: 06/27/97 Time: 11:40

SCourt strikes down key part of Brady gun law

WASHINGTON (AP) The Supreme Court today struck down a key part of the Brady gun-control law, saying the federal government cannot compel local police to determine if buyers were fit to own handguns.

The 5-4 ruling appeared to leave intact a required waiting period of up to five days before someone can buy a handgun. There would be no requirement for police to check a prospective purchaser's background during that period but they could do it voluntarily.

The ruling provided further evidence of the conservative court's determination to shift the balance of power from the federal government toward the states.

Last year, the justices ruled that Congress cannot force states into federal court to settle disputes over gambling on Indian reservations. In 1995, the court said Congress could not ban gun possession near schools.

The decision, concluding the court's 1996-97 term, wrapped up a dramatic week for the high court that also included major rulings on doctor-assisted suicide, smut on the Internet and religious freedom.

White House reaction to the Brady ruling came swiftly. President Clinton, who made the law a centerpiece of his tough-on-crime platform during the 1996 campaign, ordered Attorney General Janet Reno and Treasury Secretary Robert Rubin to remind local officers that they can still conduct background checks on their own until a national system for instant background checks is in place by late 1998.

Writing for the court majority, Justice Antonin Scalia said the federal government could not direct states to administer or enforce a federal regulatory program because ``such commands are fundamentally incompatible with our constitutional system of dual sovereignty.''

The law is named after former press secretary James Brady, who was seriously wounded in the assassination attempt on President Reagan. It was passed in 1993 after bitter congressional battles and was strongly opposed by the National Rifle Association.

``We feel vindicated by this decision,' ' said Wayne LaPierre, executive director of the NRA.

Scalia's opinion was joined by Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor, Anthony M. Kennedy and Clarence Thomas.

Dissenting were Justices John Paul Stevens, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer.

Stevens took the unusual step of reading for 18 minutes from his strongly-worded dissent.

He said the background check requirement ``is more comparable to a statute requiring local police officers to report the identity of missing children to the Crime Control Center of the Department of Justice than to an offensive federal command to a sovereign state.

``If Congress believes that such a statute will benefit the people of the nation ... we should respect both its policy judgment and its appraisal of its constitutional power,' ' Stevens said.

The Brady law was challenged in court by county sheriffs from Montana and Arizona.

The Clinton administration defended the background check requirement as a lawful effort to curb the thousands of handgun

murders nationwide each year.

The nationwide handgun-murder total dropped to 11,198 in 1995 after averaging 13,000 a year during the previous three years.

Also, the Justice Department estimated in February that police background checks since 1994 have blocked more than 186,000 illegal over-the-counter gun sales. In 72 percent of those cases, the prospective gun buyer had been convicted or indicted for a felony.

The background check provision required local officials to make a ``reasonable effort'' to find out if a prospective gun buyer had a felony record, a history of mental illness or drug use, or other problem that would make the sale illegal.

The law was challenged in federal court by Sheriff Jay Printz of Ravalli County, Mont., and by Sheriff Richard Mack of Graham County, Ariz. Mack left office in January after being defeated in a primary election.

Printz said his department was understaffed and that conducting the background checks would force him to take deputies off patrol and investigation duties. Mack said the Brady law shifted the primary enforcement burden onto local officials.

Federal judges in Montana and Arizona ruled that the federal government could not require local law enforcement officials to conduct the background checks.

The 9th U.S. Circuit Court of Appeals reversed, saying the requirement was a minor burden similar to the federal requirement that state officials report missing children or traffic fatalities. However, another appeals court ruled in a separate case that the law violated state sovereignty.

Today, the Supreme Court said the 9th Circuit court was wrong.

The cases are Printz vs. U.S., 95-1478, and Mack vs. U.S., 95-1503.
APNP-06-27-97 1156EDT

Date: 06/27/97 Time: 13:33

SCourt strikes down key part of Brady gun law

WASHINGTON (AP) The Supreme Court today struck down a key part of the Brady gun-control law, saying the federal government cannot compel local police to determine if buyers were fit to own handguns.

The 5-4 ruling left intact a required waiting period of up to five days before someone can buy a handgun. There would be no requirement for police to check a prospective purchaser's background during that period but they could do it voluntarily.

The ruling provided further evidence of the conservative court's determination to shift the balance of power from the federal government toward the states.

Last year, the justices ruled that Congress cannot force states into federal court to settle disputes over gambling on Indian reservations. In 1995, the court said Congress could not ban gun possession near schools.

Today's decision, concluding the court's 1996-97 term, wrapped up a dramatic week for the high court that also included major rulings on doctor-assisted suicide, smut on the Internet and religious freedom.

Today, the justices also:

Set the stage for a potentially pivotal ruling on affirmative action, agreeing to decide whether a New Jersey school board illegally laid off a white teacher rather than an equally qualified black teacher.

Refused to let Kansas publicly disclose the whereabouts of all sex offenders who are required to tell authorities whenever they move. The court let stand a Kansas Supreme Court ruling that said the disclosure rule cannot be applied to people whose crimes were committed before it took effect.

Turned down an appeal by a California landlord who cited her religious beliefs in refusing to rent to unmarried couples.

Ruled that Virginia's only black-majority congressional district is unconstitutional because it was drawn too heavily along racial lines.

White House reaction to the Brady ruling came swiftly. President Clinton, who made the law a centerpiece of his tough-on-crime platform during the 1996 campaign, told reporters, "I'm going to do everything I can to make sure we can keep guns out of the hands of people who shouldn't have them."

Noting that 27 states have their own Brady laws, the president added, "I know these state and local law enforcement officials who asked us to pass the law will continue to do the background checks."

Attorney General Janet Reno and Treasury Secretary Robert Rubin reminded local officers they can still conduct background checks on their own until a national system for instant checks is in place by late 1998.

"It's just common sense that we all keep doing whatever we can to keep guns from criminals," the officials said in a letter to law enforcement agencies.

Writing for the court majority, Justice Antonin Scalia said the federal government could not direct states to administer or enforce a federal regulatory program because "such commands are fundamentally incompatible with our constitutional system of dual sovereignty."

The law is named after former press secretary James Brady, who

was seriously wounded in the assassination attempt on President Reagan. It was passed in 1993 after bitter congressional battles and was strongly opposed by the National Rifle Association.

``We feel vindicated by this decision,'' said Wayne LaPierre, executive director of the NRA.

``This is a victory for the American people - not only firearms owners but persons who don't choose to own firearms,'' said Sheriff Jay Printz of Ravalli County, Mont., one of the sheriffs who challenged the law.

Brady's wife, Sarah, said she was ``somewhat disappointed'' the background-check provision was struck down but was ``very delighted that the rest of the law remains intact.''

Scalia's opinion was joined by Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor, Anthony M. Kennedy and Clarence Thomas.

Dissenting were Justices John Paul Stevens, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer.

Stevens took the unusual step of reading for 18 minutes from his strongly worded dissent.

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Federal judges in Montana and Arizona agreed with the sheriffs.

The 9th U.S. Circuit Court of Appeals reversed, saying the requirement was a minor burden. However, another appeals court ruled in a separate case that the law violated state sovereignty.

Today, the Supreme Court said the 9th Circuit court was wrong.

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APNP-06-27-97 1349EDT

Date: 06/27/97 Time: 13:09

Police Chiefs Will Voluntarily Conduct Brady Checks After Scotus Ruling

WASHINGTON, June 27 /U.S. Newswire/ -- The Police Executive Research Forum (PERF), in response to today's Supreme Court decision on the Brady law, announced that it will continue to support voluntary background checks of gun purchasers.

While the court ruled that the federal government could not mandate police chiefs to conduct checks on people who buy handguns from federally licensed dealers, many law enforcement leaders in affected states are already organizing to do them voluntarily.

According to PERF Executive Director Chuck Wexler, 22 PERF-member police agencies in eight of the 22 affected states have already committed to voluntarily continue background checks so long as the immunity provisions of the law still apply, they maintain access to the national criminal record system, and no other state or federal prohibitions apply. In some states such as Arkansas, Arizona, South Carolina, Kentucky and Ohio, a state agency conducts the Brady background checks for police agencies, which means chiefs will be waiting to see how those state agencies decide to act, except in the few instances in which local police have existing ordinances to conduct the checks on their own. Chiefs are, of course, counting on the federal government still mandating federally licensed firearms dealers to submit background requests to police.

"Compared with the resources required to conduct a gun-related homicide investigation -- not to mention the immeasurable human costs of gun violence -- the investment that police agencies must make to conduct background checks is very reasonable," remarked Chief Ellen Hanson of Lenexa, Kan. Hanson is a member of PERF's board of directors and one of the 22 PERF chiefs who have committed to continuing background checks.

PERF joined several other national police groups in an amicus brief to the court supporting the law because they know the decision has national impact beyond the 22 "Brady states." Police chiefs know that the Brady checks provide the kind of national approach needed to address a gun violence problem exacerbated by uneven responses among the states.

Evidence shows the Brady law's extraordinary success. According to the Justice Department, in the first 28 months after Brady was enacted, more than 186,000 illegal gun sales were blocked by background checks, and it is estimated that more than 70 percent of blocked purchase attempts each month involve indicted or convicted felons.

"Police know that it makes no sense to allow felons and purchasers ineligible because of mental illness, domestic violence convictions or other prohibitions to walk into a gun shop and get a gun -- no background check required," said Wexler. "Brady checks may not be a panacea for the nation's gun violence problem, but it is a tremendous step in the right direction -- a step police are unwilling to abandon."

----- PERF is a D.C.-based organization of progressive police chiefs and criminal justice professionals who serve more than 40 percent of the nation's population.

Brady
Follow-up

10 day to
2 weeks for
Cleo contact

① TREASURY

↳ ATF → No major metropolitan area
→ 2 states
→ almost all
→ Scattered counties; resources
+ probably haven't doing
checks before Prize.

Arkansas: AG wrote positive opinion.
↳ GOVERNOR REVIEWING.

Ohio: AG mty. — DOJ issued
7-page opinion on
why they can do
checks

↳ 1/3 per
2/3 consent

↳ OHIO OPTIONS

- ① Sign contract w/ Ohio for
ATF to do
- ② Change Brady form to
match Ohio consent
language

↳ By next wk: — Decide on Special Ohio
Brady reform?
↳ Want liability language

- Might find that they have the authority to do checks if requested by Law Enforcement.

- Ohio Sheriffs - ?

- ATF Director

- Already Reno + Rubin, what else?

- reach-out to Governor

- Cease to recognize Ohio as CLEO + instead use the local sheriffs

- Rhode Island

↳ Seems fine; but Patrick Kennedy wants special session to pass State Budget,

- Halbrook letter.

↳ Response by AG. / Used as Guidance.

↓

↓

- POC not necessary in permit states

- Some states

Mtg w/ Sally Katzen on
Brady + Reg

IMPACT OF BRADY

- ↳ Mostly DPC AGENCIES
- ↳ Broadly interpret policy for all AGENCIES (like ARARADO)

- ↳ "NOT WORKING GROUP" TONY SUTTON
- ↳ met ONCE
- ↳ RANDY (OLC²)

ORIGINS OF RADIOACTIVE WASTE ACT (NY)

- ↳ COMMANDERING OF STATE LEGISLATURE TO DO REDS PRIORITIES

- ↳ DIMINATION OF FEDERAL AUTHORITY

COMMENT - Reds take credit; States have responsibility

- language in Bill
- Nature of Check

PROBLEM SOLVER
H

- ↳ Sep. of Powers issue?

- ↳ Congress going to States to carry out law

- ↳ Problematic Paragraph

- ↳ SO: Feds can ~~being~~ require reporting of data
- ↳ Why this came out

* Conditional spending is the one way around this proposal is okay.

↳ Middleground is that there must be strong veries

Hth Circuit, Riley vs. Commonwealth
"unbridled delegation"

ORDER MAJOR OPTION: GIVE STATES OPTIONS
→ Clean Air EG.
→ We will totally regulate (if can preempt entire function); or
→ BLUE STATE OPTION TO DO ITSELF ACCORDING TO PROCEDURE

* ORDER: "WAITING IN THE WINGS", IF CLEAN AUTHORITY TO PREEMPT NO NEED TO GIVE OPTION?

ORDER: LIKE ELSA, don't target states?

* FINALLY - WOMANONY?

DOJ: law
enb. cannot out
for medical
records

How enforced?
→ states count
Fed Admin
Fed Court

- Not how read, but how do we
get around

→ offer databases — can require states to
give info, but not to
look into database

* No Admin. Statements But give Prince
a broad reading.

SEPTEMBER
MRS.
OF REG
WORKING
GROUP

* Federalism EO?

→ Person exa?
↳ try to do

↳ 8 principles on Reg. + Legis.



U. S. Department of Justice

Washington, D.C. 20530

FAX NOTE

TO: Rahm Emanuel, 456-2530
Jose Cerda, 456-7028
Kent Markus, 456-1724

FROM: Nicholas M. Gess, Director
Office of Intergovernmental Affairs
Department of Justice
(202) 514-3465 (office)
(202) 514-2504 (facsimile)

SUBJECT: Brady

PAGES: (including this page)

MESSAGE: Rahm & Jose (cc: Kent) -- Attached are talking points on the status of Brady checks, as well as a draft letter from Reno & Rubin which could be sent to the 104 small jurisdictions which aren't doing Brady checks. FYI: Arkansas is the only state where no checks are being done. Of the 104 small jurisdictions, the largest has a population of 165,000. Nick

12/02/97 TUE 18:01 FAX

11/13/97 THU 09:59 FAX 202 514 2504

JUSTICE INTERGOVERNMENTA

November 13, 1997

TO: Rahm Emanuel
Jose Cerda

FROM: Nick Gess

SUBJECT: Brady Update for 11/15/97 Radio Address

Rahm & Jose -- Here are the update items which you can include in the 11/15/97, radio address relating to Brady:

- On June 27, 1997, I called on law enforcement to continue doing Brady background checks despite the Supreme Court decision which held that Congress could not require local law enforcement to do them.
- On that same day, the Attorney General and Treasury Secretary wrote to the nation's chief law enforcement officers asking them to continue to do these background checks.
- The responses has been heartening. Immediately, over 90% of law enforcement agencies, covering over 97% of the population continued doing these checks.
- Yesterday, we reached an agreement with Ohio to reinstitute the background checks, moving us up over 98% of the population.
- This leaves Arkansas as the only state in the nation where no background checks are being done. There are also 104 other small jurisdictions, none with a population over 165,000, where the checks are not being done.
- This proves what we have said all along. The Brady law is good law enforcement. It saves lives, it prevents crime.
- I am today instructing the Attorney General and the Secretary of the Treasury to contact every one of these jurisdictions and encourage these each chief law enforcement officer to reconsider his or her decision and to find ways to continue the checks.

Date~

Official~
Address1~
Address2~
City, State, Zip~

Dear Salutation~:

The Brady Act is one of the few pieces of legislation in recent times which we know serves to reduce violent crime. Since February 1994, it has prevented the sale of firearms to over a quarter of a million felons, fugitives, military deserters and others prohibited by law from possessing firearms.

In June 1997, the Supreme Court ruled that the federal government cannot require state, county and local jurisdictions to conduct these background checks. Nonetheless, on the day the Supreme Court ruled, President Clinton called on law enforcement to continue to conduct these background checks on a voluntary basis. The results have been heartening. Over [99%?] of this country lives in jurisdictions where the background checks are voluntarily conducted and over 90% of the chief law enforcement officers in this country continue to conduct these checks on a voluntary basis.

We have been advised that Jurisdiction~ is not conducting these checks and we are writing to ask you to reconsider your decision. If we have been misinformed, please also let us know immediately. We are well aware that the decision is yours, not ours, and that there is nothing we can do to compel you to do the right thing in this instance. However, the consequences are so serious that we are appealing to you as your law enforcement colleagues to seriously consider conducting these checks once again.

Thank you in advance for your reconsideration. We stand ready, willing and able to work with you on this and so many other law enforcement initiatives which protect the public we serve together.

Rubin / Reno

GESSNICK\BRADY.100



Department of Justice

AG

FOR IMMEDIATE RELEASE
THURSDAY, DECEMBER 18, 1997

Myron Marlin, Justice (202) 616-2777
Beth Weaver, Treasury (202) 622-2960
Mark Weaver, Ohio AG (614) 466-3840

OHIO BACKGROUND CHECKS FOR HANDGUN PURCHASERS
TOTAL 100% WITH FEDERAL-STATE-LOCAL COOPERATIVE EFFORT

WASHINGTON, D.C. -- U.S. Attorney General Janet Reno, Secretary of the Treasury Robert E. Rubin, and Ohio Attorney General Betty D. Montgomery today announced an agreement to ensure that all prospective handgun purchasers in Ohio will again undergo a background check before being allowed to obtain a handgun from a firearms dealer. This agreement ensures background checks for the five to ten percent of Ohio handgun purchasers who are currently unwilling to agree voluntarily to such checks.

"Under today's agreement, the federal government and Ohio will work together to make sure that every person who seeks to buy a handgun from a firearms dealer will undergo a background check," said Rubin.

"This cooperative agreement recognizes that background checks are an important part of effective law enforcement. Ohio's 100 percent background check coverage will protect public

(MORE)

- 2 -

safety and assist our efforts to curb violent crime," said Reno.

Following the U.S. Supreme Court's June decision overturning the Brady Act's requirement that state or local officials conduct background checks, Ohio Attorney General Montgomery's office determined that she lacked the authority to conduct criminal background checks on handgun purchasers who refused to give consent. The Ohio Attorney General's office, through its Bureau of Criminal Identification and Investigation ("BCI&I"), resumed voluntary background checks within 48 hours, and now over 90 percent of prospective handgun purchasers have signed the necessary waiver to have their backgrounds checked.

"After the U.S. Supreme Court struck down the mandatory provisions of the Brady law, a different approach was required in Ohio to keep guns out of the hands of criminals," Montgomery said. "Our two-day check will continue to cover the majority of handgun purchasers who agree to a background check, while this federal-state-local cooperative agreement will check the backgrounds of the remaining five to ten percent."

Acting under the terms of a federal-state-local memorandum of understanding, BCI&I will forward to the Franklin County Sheriff the names of those few prospective handgun purchasers who do not consent to a background check. The Franklin County Sheriff will conduct a background check of non-consenting purchasers using national criminal history databases maintained by the Federal Bureau of Investigation. If this review yields

(MORE)

- 3 -

information indicating that a prospective handgun purchaser may be disqualified by law from receiving or possessing a firearm, the Franklin County Sheriff will immediately notify BCI&I. Since BCI&I would then have information that a crime may have been committed, BCI&I will review this information and take further appropriate steps if necessary.

According to Department of Justice surveys, background checks have prevented gun sales to over a quarter of a million felons, fugitives and others who are prohibited from receiving or possessing them. While, in Ohio, less than half of one percent of all background checks result in a handgun disqualification, Ohio background checks have blocked well over 1,000 criminals and other prohibited persons from illegally obtaining handguns from firearms dealers.

Although no longer required to perform background checks on prospective handgun purchasers under the Brady Act, over 90 percent of law enforcement officials in states affected by the U.S. Supreme Court's decision concerning the Brady Act nonetheless continue to perform these checks voluntarily, according to the Bureau of Alcohol, Tobacco, and Firearms. "The fact that the overwhelming majority of affected law enforcement agencies are doing background checks voluntarily, demonstrates that law enforcement believes these checks are a worthwhile crime prevention tool," said Reno.

"We are pleased to report that, with this agreement,

(MORE)

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approximately 98 percent of the United States population now resides in a jurisdiction where law enforcement officials continue to perform background checks on prospective handgun purchasers," Rubin continued.

"This agreement should encourage other states and localities that terminated background checks last June to resume them," said Reno.

Reno, Rubin and Montgomery said that the agreement was also important because it demonstrated that cooperation and sharing of resources among law enforcement officials can be highly effective in preventing and curbing crime.

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97-541



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What is NCIC 2000?

Since its development in the sixties, improvements and additions to National Crime Information Center (NCIC) have been implemented to satisfy new requirements and to keep pace with growing transaction volumes. NCIC 2000 is a new system being developed to replace NCIC. NCIC 2000 will perform the existing NCIC functions augmented with new capabilities. NCIC 2000 will increase capacity, update technology and add fingerprint and image processing functions. NCIC 2000 will provide increased flexibility to meet future user requirements and will be easier to maintain. New and improved capabilities associated with NCIC 2000 include:

- ☐ Addition of image processing (i.e., mugshot, signature, identifying marks),
- ☐ Addition of automated single-finger fingerprint matching,
- ☐ Automation of some NCIC functions that are currently manually performed (e.g., validation, collection of benefits data),
- ☐ Access to new databases (e.g., Convicted Person on Supervised Release),
- ☐ Addition of linkage fields, providing the ability to associate multiple records with the same criminal or the same crime,
- ☐ Access to external databases (e.g., the Canadian Police Information Center (CPIC) and the Federal Bureau of Prisons' "SENTRY" database), and;
- ☐ Automatic collection of statistics for system evaluation.

Implementation Schedule and Necessary Equipment

The FBI originally scheduled NCIC 2000 to be fully operational in December of 1995. Significant problems and addition of new requirements have delayed the implementation of this system. NCIC 2000 is now expected to be fully operational in the fall of 1999. Many Control Terminal Agencies (CTA) have already begun gearing up to take full advantage of this program. Although NCIC 2000 will support existing interfaces and equipment, it is recommended that agencies begin to replace existing NCIC terminals with newer equipment. To take advantage of all the features of NCIC 2000, the user will need a workstation at a centralized site and special equipment in the patrol car. Equipment needed at the workstation includes at least a 386 personal computer or compatible newer technology, a flat bed scanner, a livescan device, an image printer, and two-way radio equipment. The patrol car will need a mobile display, keyboard, a one-finger livescan, radio interface, and a camera. Of course, an agency does not have to have all of this equipment. An agency can have partial implementation of NCIC 2000 functionality but all agencies need to be able to receive NCIC 2000 text responses when NCIC 2000 is installed and need to be able to send NCIC 2000 transaction formats within three years of its initial implementation. Within that three year span, agencies must migrate from bisync protocols to one of the newer protocols (X.25, SNA, or TCP/IP). The FBI will make all its workstation design and software available for implementation and/or customization by the user. Hopefully, this will assist the agencies in quickly developing their interfaces. However, it should be noted that once you have customized the software, upgrades may be more difficult to integrate.

New Faces

NCIC 2000 project development and administration has moved from the Criminal Justice Information

NCIC 2000 project development and administration has moved from the Criminal Justice Information Services (CJIS) division of the FBI to the Information Resources Division (IRD). Ms. JoAnn Casteel, the new project manager, brings extensive experience in monitoring and administrating large projects. In addition, the FBI has hired or transferred system analysts, risk management personnel, and program administrators into the NCIC 2000 Program Office. The FBI is also in the process of hiring additional data processing professionals to keep this project on time and on budget. The FBI has sought out varied technical advice as well. MITRE and User Technology Associates, expert systems/software engineering firms, have personnel on site to assist with the technical oversight of the project development. The Illinois State Police (ISP) has temporarily assigned two staff members, a system analyst and an operational expert, to IRD for six months. The FBI has confidence that this new team will ensure the successful and timely development and implementation of the NCIC 2000 system.

Progress, Plans and Problems

As stated previously, NCIC 2000 has had significant design and implementation challenges. The following is a list of some problems with which the FBI is still wrestling with. Although this list is not all inclusive, it will provide you with the flavor of the problems encountered by NCIC 2000.

- ❑ Harris Corporation, the company that is developing NCIC 2000, has submitted Change Order Proposal (COP) 8 which contains their technical approach to complete development of NCIC 2000. In addition, it includes the cost and schedule estimates to finish the effort. After intense negotiations, the FBI has accepted a modified COP 8.
- ❑ The Advisory Policy Board (APB) has levied new requirements, such as the Violent Gang/Terrorist Organization File, the Protective Order File and the Deported Felon file, that will be implemented into the current NCIC in 1996. These new files will also be operational in the NCIC 2000 environment.
- ❑ Preliminary design is incomplete for new functionality such as On-Line Special Requests (SPRQ), delayed query and data extracts.
- ❑ The FBI was just recently provided with the Workstation (WS), MIU and Computer Based Training (CBT) software for product evaluation. Hands-on review may uncover unforeseen problems. This newsletter will keep you posted on how the FBI's review progresses.
- ❑ The images captured by the patrol car segment are gray scale, but are not the ANSI/NIST standard. The size of ANSI/NIST standard fingerprint images prohibits transmission over mobile radio frequency networks. If an agency wants to submit an image to the local or state Automated Fingerprint Identification System (AFIS), it will have to develop modifications in the Mobile Imaging Unit and the Workstation software.

APB Meeting Update

At the APB meeting in December, the APB had three recommendations for the NCIC 2000 program. One recommendation requires the NCIC 2000 program staff to write an impact document on cessation of all work on the MIU and the WS. Another recommendation requires the NCIC 2000 program office to study the feasibility of integrating NCIC 2000 and Integrated Automated Fingerprint Identification System (IAFIS) imaging by adopting the same format and compression standard. The NCIC 2000 staff was to develop a contingency plan in the event that negotiations with Harris Corporation failed or if Harris is unable to meet discrete milestones.

STATE YOUR OPINION

This space is provided for authorized criminal justice agencies to provide commentary, questions, or suggestions. We will provide an answer to all questions. If you would like to submit an article, send it to:

**Federal Bureau of Investigation
Attn: Ms. Katina Mackall
Room 9504
NCIC 2000 Program Office
935 Pennsylvania Avenue, NW
Washington, DC 20535**

This first article was submitted by the Illinois State Police.

Each state eagerly anticipates the new functions that NCIC 2000 will bring to the local agency and the individual police officer. Illinois is no different. In this highly mobile world, it is even more imperative that officers know with whom they are dealing. The functionality that will be available through NCIC 2000 is much needed by the law enforcement community. Getting information to the officer in the car, having photographic images available and using single fingerprint technology to provide immediate positive identification will ensure increased officer safety while minimizing the risk of detaining the wrong individual. As such, Illinois has several initiatives underway that fit under the umbrella of providing NCIC 2000 type functionality to police officers.

One of these initiatives involves upgrading and expanding the ALERTS mobile data network. Currently, the ALERTS network, which was created and is managed by the Illinois Criminal Justice Information Authority, provides mobile data service to over 200 law enforcement agencies in an 18 county area. In March 1995, the Illinois State Police formed a partnership with the Authority for the purpose of expanding and enhancing the ALERTS network. Since that time, a number of other agencies, realizing the benefits the new network can provide, have joined the partnership and will be providing funding to make Phase I of the project a reality. The goal of this cooperative, three-phased project is to upgrade the existing system so that it is a statewide, high speed network capable of transmitting images and meeting state and local agencies' mobile data needs now and in the future.

The Illinois State Police is also releasing an image-based Violent Crime Tracking and Linking system application called VITAL that provides photographic images of known gang members. While currently being used as an intelligence tool, the true value of such technology will come when the officer is capable of receiving these images in the vehicle. ISP is also completing the groundwork necessary to rewrite our 26 year old statewide data network known as LEADS. Once completed, it will be a WAN based network capable of supporting applications such as VITAL.

Another objective is the positive and rapid identification of those arrested for reportable crimes by upgrading our AFIS and adding single print identification. Illinois is also reviewing use of single fingerprint technology for visitor control in maximum security prisons. As the state pursues these initiatives, one of the primary goals is to ensure images are compatible in all systems. Therefore, the Illinois State Police is urging the use of the IAFIS approved ANSI/NIST standards. If these standards are adopted, states, such as Illinois, will be able to link photos to positive identification of individuals and share information across systems.

Our two primary concerns in implementing NCIC 2000 are the need for standards and funding. Illinois is looking to the NCIC 2000 project to continue setting federal standards for positive identification technology and the exchange of criminal history information. We encourage the meshing of standards between the IAFIS and NCIC 2000 projects. Standards defined at the federal level have a rippling effect throughout state and local government. The leadership exercised in the NCIC 2000 project will benefit all levels of law enforcement if the program is given proper support and commitment from law enforcement agencies across the country.

Implementation of NCIC 2000 will require each state to update its law enforcement network. This will be a major expense for each state and many large cities and counties. A unified and aggressive effort is needed within each state and across the country to ensure necessary funding is provided for each level of government. With federal funding agencies moving toward block grants and perhaps a decreased role for state planning agencies in awarding these funds, care must be taken to ensure NCIC 2000 is developed as a system with each component -- federal, state and local -- being developed and supported in concert

with one another.

NCIC 2000

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NCIC 2000 Newsletters



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NATIONAL CRIME INFORMATION CENTER: 30 YEARS ON THE BEAT

THE INVESTIGATOR
DECEMBER 96 / JANUARY 97 ISSUE

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By the end of 1967, just about one year after the National Crime Information Center (NCIC) became operational, NCIC had handled a total of two million transactions.

Sounds impressive. Some 30 years later, NCIC is still handling almost two million transactions--this time in one day.

Now, that's impressive!

How NCIC came into being

NCIC came on-line in January of 1967. Its pre-1967 history, although brief, is consistent with the FBI's mission of assisting Federal, state, and local law enforcement agencies with their own investigations.

In response to an increasing crime rate in 1965, the FBI recognized that law enforcement officers all over the country had a critical need for instant access to the steadily increasing pool of criminal data. The Bureau took the initial steps towards the development of a nationwide electronic center which would provide that data quickly:

Working with the Committee on Uniform Crime Reports and the International Association of Chiefs of Police, the Bureau established an advisory group of local and state law enforcement personnel to develop nationwide standards for the new system;

Working with the Commerce Department, the Bureau sponsored a survey of existing telecommunications systems in order to find one that would best support a nationwide computerized system.

By January 1967--with national standards in hand and a telecommunications network in place--the high-speed computers which form the heart of the NCIC began operating with 15 on-line state and metropolitan area terminals tying into the FBI's central computer.

One of NCIC's first successes occurred in May of that same year--a New York City police officer, suspicious of a parked car, radioed in a request for a NCIC search of the license plate. Within a minute and half, the patrolman was notified that the car had indeed been stolen a month earlier in Boston. It's been said that the last words of the patrolman over his radio were, "It works! It works!"

By 1971, all 50 states and the District of Columbia were hooked up to NCIC. Today, the system has grown to more than 80 thousand law enforcement and criminal justice agencies. An NCIC Advisory Policy Board made up of state and local law enforcement representatives is responsible for making sure the needs of state and local police are being met.

NCIC: What's inside

When NCIC first went on-line, it contained about 95,000 records in five databases, or files: Stolen Autos, Stolen License Plates, Stolen or Missing Guns, Other Identifiable Stolen Articles, and Wanted Persons. The FBI entered an additional 5,000 records of Federal fugitives.

All NCIC records were entered into the system by the agency with the investigative jurisdiction--that way, everyone knew the records were valid. No one could update or clear any records except for the original agency. (That policy remains in effect today.)

Over the years, existing NCIC files have been expanded, and new ones have been added. Today, there are some 17 files containing more than 10 million records, plus 24 million criminal history records contained in the Interstate Identification Index (accessible through NCIC). Some of the more notable file additions include:

- * The Missing Persons File, added in 1975. It was created to provide a centralized computerized system to help law enforcement agencies locate individuals--including juveniles--who are not "wanted" on any criminal charges but who are simply "missing" (and who fit under one of four categories.)
- * The Unidentified Persons File, established in 1983. It provides a way to cross-reference unidentified bodies against records in the Missing Persons File.
- * The Interstate Identification Index, added in 1983. It gives law enforcement officers quick access to criminal history information.
- * The U.S. Secret Service Protective File, also added in 1983. It maintains names and other information on individuals who are believed to pose a threat to the President.
- * The Foreign Fugitive File was added in 1987. It was in response to the increasing international nature of crime and of law enforcement.
- * The Violent Gang/Terrorist File became operational in 1995. It was established to help identify criminal gangs and their members to local, state, and Federal law enforcement.

NCIC: How it works

The NCIC computer is currently housed at FBIHQ. Connecting terminals are located throughout the United States, Canada, Puerto Rico, and the U.S. Virgin Islands in police departments, sheriff's offices, state police facilities, Federal law enforcement agencies, and other criminal justice agencies.

NCIC users access the NCIC computer through these state computer systems known as "control terminal agencies." For example:

- * A police officer on the beat, stopping a car that's been weaving in and out of traffic erratically, can radio back to his or her dispatcher at the police station to have an NCIC check run on the driver. (The officer may be fortunate enough to have a mobile terminal mounted in the squad car, and he or she can perform his/her own search.)
- * The dispatcher will send the request to the state computer system--if there's no "hit" at the state level, then the search request goes on to the main NCIC terminal.
- * Almost instantly, NCIC will respond with either a "hit" or a "miss." Almost instantly, the police officer has a pretty good idea of who he or she is dealing with--whether the individual should be considered dangerous, or just a bad driver!

Here's an interesting note: FBI usage of the NCIC system accounts for only about one percent of all its transactions (FBI field office personnel access NCIC through their individual state computer systems.) That means 99 percent of all NCIC inquiries emanate from other Federal, state, and local agencies.

Is it effective?

Is it effective?

Does NCIC really make that much of a difference in the business of law enforcement? A recent survey on the benefits of NCIC clearly shows that it does. During a one-year period:

* 81,750 "wanted" persons were found; * 113,293 individuals were arrested; * 39,268 missing juveniles and 8,549 missing adults were located; * 110,681 cars valued at over \$570 million were found.

NCIC is an important law enforcement tool, and law enforcement officers recognize that--NCIC averages about 20 inquiries a second. And it can be--and has been--used for virtually any type of investigation. Two of the most well-known cases involving NCIC were the Oklahoma City bombing and the assassination of Dr. Martin Luther King, Jr.

* Federal investigators, after running Oklahoma City bombing suspect Timothy McVeigh's name through NCIC, discovered that an Oklahoma state trooper had stopped and run an NCIC search on an individual by the name of Timothy McVeigh a little more than an hour after (and about 88 miles away from) the site of the explosion. (He was still in custody and was consequently held for further questioning.)

* In 1968, a search of NCIC's Wanted Persons File was undertaken to identify fugitives whose prints might match a latent fingerprint taken from the gun that killed Dr. King with fugitives. The search resulted in 1,200 possibilities; a closer look by FBI fingerprint personnel picked out an exact match--James Earl Ray, the man subsequently convicted for the murder.

What the future holds: NCIC-2000

It can be said, however, that the current NCIC system--while still performing adequately--is a victim of its own success. NCIC is using software designed in the 1960s while struggling to keep up with 1990s-style crime. Its first-year figure of 2 million transactions is dwarfed by the projected 600 million transactions that are expected to flow across the NCIC network by the end of 1996.

That's why--several years ago--the FBI began planning an upgraded NCIC, with state-of-the-art hardware and software that will allow for even more changes down the road as technology evolves. With critical input from the NCIC Advisory Policy Board as to what state and local law enforcement needed, the Bureau set out to make NCIC-2000--the enhanced NCIC--a reality.

NCIC-2000 will continue to do everything the current NCIC system does, but it will do it better. It will also offer more--including the electronic transmission of photographs, mugshots, photographs of stolen property, and fingerprint data. It will have an automated fingerprint matching system which will identify someone based on a right index fingerprint when the subject presents no identification or is suspected of presenting a false I.D.

A main feature of NCIC-2000 will be a mobile imaging unit installed inside police squad cars. This unit will consist of:

--a personal computer, --a hand-held fingerprint scanner, --a hand-held digital camera, --and a small printer.

The FBI will provide the NCIC-2000 custom-developed software free of charge, but police departments have to obtain their own hardware and some additional commercial software.

Other planned NCIC 2000 features? Expanded fields that will allow for additional information. Improved name search techniques. Capability to link all records relating to the same crime. And improved security through encryption, network management, and intrusion detection.

All of this will help law enforcement officers make more accurate identifications of criminals. It will also better protect officers in potentially dangerous situations.

NCIC 2000 is expected to be up and running by July 1999 at the FBI's new facility in Clarksburg, West Virginia.



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