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Cities, feds team up to jail felons with guns

July 13, 1999

Web posted at: 1:17 p.m. EDT (1717 GMT)

ATLANTA (CNN) -- To crack down on violent gun crime, the city of Atlanta has taken aggressive action to put repeat offenders caught with weapons behind bars. But critics say the program is a drain on federal investigative resources.

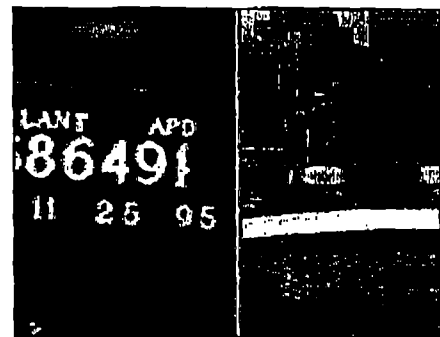
Through the "Face Five" program, Atlanta is bypassing state courts in favor of federal ones, which usually have harsher sentences, to prosecute felons possessing handguns, something forbidden by law.

"If you are a convicted felon, you're stopped at a routine traffic stop and you've got a gun, we're going to refer that case to the U.S. attorney," says Atlanta Mayor Bill Campbell. "We hope you do five years. It's that simple."

One example is Michael Withers. Atlanta police say the three-time felon tried to pawn a handgun. Now, in federal court, he faces prison with a mandatory punishment of at least five years without parole if convicted.

Atlanta officials and the U.S. attorney's office are focusing on armed repeat offenders because they committed 70 percent of the murders and aggravated assaults in Atlanta last year.

But legal critics say using federal authorities to prosecute these crimes is a waste.



Armed repeat offenders were responsible for 70 percent of the murders and aggravated assaults in Atlanta last year

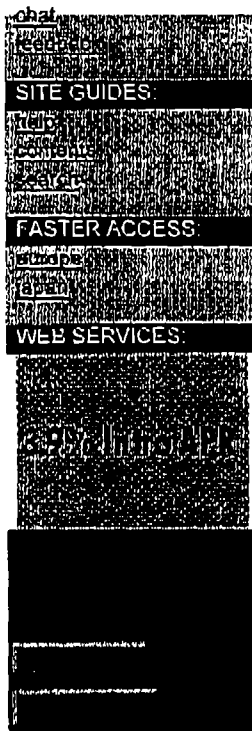
VIDEO

CNN's Brian Cabell reports on a new approach in Atlanta and other cities aimed at curbing gun violence (July 13)

Real	28K	80K
Windows Media	28K	80K

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Guns under fire



"What happens is you have agents who would be much better used on sophisticated crime or organized crime, doing street level crime," says defense attorney Jerry Froelich.

U.S. Attorney Richard Deane in Atlanta disagrees: "The point is the reduction of gun violence. That can be accomplished in two ways, by us prosecuting and incarcerating the repeat violent offenders, or that same person choosing not to carry the firearm."

Other cities have taken similar measures, including Richmond, Virginia. Authorities there attribute a 33 percent drop in their homicide rate over the past two years in part to the program.

President Bill Clinton and the National Rifle Association both have praised Richmond's "Project Exile."

NRA executive director Wayne LaPierre says his group has worked with local citizens, the police and the business community in Richmond to support the program.

"Every time you catch a criminal with a gun, a felon with a gun, a violent juvenile with a gun, one hundred percent of the time you prosecute the case. You don't put him out on bail," he told CNN on Tuesday.

Correspondent Brian Cabell contributed to this report.

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USA TODAY

June 10, 1999, Thursday, FINAL EDITION

SECTION: NEWS; Pg. 1A

LENGTH: 1985 words

HEADLINE: Are gun laws enforced? Laws already on books making a dent in crime

BYLINE: Dennis Cauchon; Gary Fields

BODY:

Jimmy Allen Cubello, a fugitive wanted on marijuana smuggling charges since 1993, returned to the United States in March after years of lying low in the border town of Reynosa, Mexico.

The 47-year-old U.S. citizen registered to vote, got a Texas ID and renewed his driver's license -- all without trouble. Then, on March 12, he tried to buy a gun at a pawnshop in McAllen, Texas. Big mistake.

The shop's owner called the FBI for an instant background check on the man who wanted to buy an \$ 800 Beretta .40-caliber pistol. Fifteen minutes after Cubello's name appeared on an FBI computer in West Virginia, federal marshal Gene Diaz arrested the surprised fugitive in front of the store.

"He knew he was wanted, but he didn't realize the arm of the law could be so fast," recalls Diaz, who was driving near the gun store when he got a call on his cellular phone.

The enforcement of existing gun laws -- such as the one that let the feds nab Cubello -- is central to the fate of the gun control bill set to be debated in the House next week. The bill, which has been passed by the Senate, expands background checks to all sales at gun shows and requires child-safety locks on all new handguns.

But the National Rifle Association argues that the nation already has enough gun laws, more than 20,000 at the federal, state and local levels. The problem, the NRA says, is that the laws have not been enforced, especially by the Clinton administration.

"They want a new group of federal gun laws when they don't even enforce the ones we have now," NRA executive vice president Wayne LaPierre says. "That spells hypocrisy with a capital H."

To step up enforcement, House Republicans have been pushing a proposal that would require each of the 94 U.S. attorneys to designate at least one assistant who would concentrate on prosecuting gun

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violations. To sweeten the deal, the GOP would offer \$ 50 million for salaries and expenses.

A USA TODAY examination of gun-law enforcement found that the NRA has advocated some of the most effective gun laws -- notably the instant background check -- over the opposition of many gun control advocates. But the NRA's accusations that the Clinton administration is soft on gun-law violators do not appear supported by the evidence.

Laws with teeth

Among USA TODAY's findings:

-- The instant background check might be the most effective piece of gun legislation ever. It not only has stopped nearly 300,000 illegal gun purchases since 1994, but it also has resulted in the arrests of hundreds of fugitives. It has essentially put teeth in a 1968 gun control law that banned felons and other potentially dangerous people from owning guns.

-- Gun laws are enforced more vigorously today than five years ago by nearly any measure. Prosecutions are more frequent than ever before; sentences are longer; and the number of inmates in prison on gun offenses is at a record level. The number of inmates in federal prison on firearm or arson charges (the two are lumped together) increased 51% from 1993 to 1998, to 8,979.

-- Longer prison sentences for gun offenders might have a greater effect on gun violence than efforts to ban specific types of weapons, such as assault rifles or small, cheap "Saturday night special" handguns. The NRA has been a crucial supporter of the most common way to punish a gun offense: extending the prison sentence when a gun is used in a crime.

Jack Levin, director of the Program for the Study of Violence at Northeastern University in Boston, says longer prison sentences imposed on firearms offenders have been a factor in the decline of violent crime. "In the '80s, we locked up larger numbers of people for drug offenses. In the '90s, we began locking up more violent people who carry firearms," he says.

The number of violent crimes nationwide (excluding rape) fell from 1.8 million in 1992 to 1.5 million in 1997. In addition, the portion of violent crimes committed with guns fell from 31% to 27% during that same period.

Gun rights advocates were crucial in creating instant background checks, which became national in November after being phased in since 1994. Most gun control advocates opposed the instant check in favor of a longer, drawn-out process that would have allowed more thorough checks and would have functioned as a waiting period.

But rather than seeing the instant check as a success that has stopped 300,000 illegal gun purchases, gun rights advocates say

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the system reveals lax prosecution because so few arrests are made.

Since 1968, it has been illegal for tens of millions of people to possess a gun. These "prohibited persons" include felons, fugitives, the mentally ill, drug users, illegal aliens and those dishonorably discharged from the military. In 1994, the prohibition was expanded to people who have misdemeanor domestic abuse convictions or are the subject of restraining orders in domestic disputes.

It is a federal felony punishable by up to 10 years in prison to lie on the background-check forms that are filled out by gun purchasers. But Rep. Bob Barr, R-Ga., a former federal prosecutor, says that crime has gone virtually unpunished in the federal system.

"The question is not so much what new laws can we pass, but why are we not enforcing existing laws better," Barr says.

LaPierre says the federal government should have prosecuted every case in which a person lied on the background check form, without exception. That would be 40,000 cases since November, more than the number of federal prosecutions during that period for all other crimes combined.

In response, the Justice Department and the Bureau of Alcohol, Tobacco and Firearms (ATF) say they do not have the resources to prosecute every case. Instead, their strategy is to have states pursue most gun violations while federal law enforcement handles the more serious cases.

"We've decided to prosecute smarter. We have used limited resources to go after those who are committing the most serious crimes," Deputy Attorney General Eric Holder says.

A U.S. Sentencing Commission analysis done for USA TODAY shows that lying on the background check form is prosecuted in federal court far more often than acknowledged.

From 1994 to 1998, 832 federal defendants were sentenced to prison for lying on the form, according to the Sentencing Commission. The average sentence for lying on the form was 19 months. When a defendant was simultaneously prosecuted with another crime, the average was 44 months.

Length of sentences

The prosecutions account for less than 1% of apparently illegal attempts to purchase guns. But the length of the average sentence seems to confirm that felons with more serious criminal pasts have been targeted for prosecution. A defendant with no serious criminal record would expect to get five months in prison upon pleading guilty, according to federal sentencing guidelines.

Total state and federal prosecutions for firearms offenses rose from 30,243 in 1992 to 36,370 in 1996, the most recent year for

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which the Bureau of Justice Statistics has complete statistics. Juvenile gun offenses, which are prosecuted mostly in local juvenile courts, are not included.

Agency is strapped

The ATF says it does not have the staff to handle every gun offense. Its 1,500 agents have been stretched thin over the past five years, investigating everything from church burnings to the explosion of TWA Flight 800. Still, the bureau brought 3,619 criminal cases involving 5,620 defendants in 1998. "How anyone can say we're not enforcing firearms laws is beyond my belief," ATF special agent Jeff Roehm says.

Of the 40,000 people who have been denied firearms since the instant check system took effect in November, 12,129 have been referred to field agents for investigations. So far, 156 cases have been turned over to prosecutors.

The investigations involve everything from obtaining fingerprints to conducting handwriting analysis. Even seemingly simple cases can take weeks.

In one case, Roehm says, the ATF declined to prosecute a black man who had been convicted of a felony 40 years ago in Mississippi. His offense: possession of playing cards that featured naked white women. "Is it worth the taxpayers' money to go after a person like this?" Roehm asks.

Three-fourths of gun purchases rejected under the Brady Law are turned down because the buyer has a felony record. But most of these crimes are old offenses and relatively minor felonies, such as writing bad checks.

The NRA has praised Project Exile in Virginia as a model of how to get felons with guns off the street by aggressively prosecuting them. But when federal prosecutors investigated the backgrounds of 100 felons who had tried to buy a gun, they didn't find violent criminals. "Our survey did not indicate a single murderer, rapist, armed robber, burglar within the last 10 to 15 years or a drug dealer of any recent vintage," says U.S. Attorney Helen Fahey of the eastern district of Virginia.

Fugitives caught

Several recent cases seem to confirm that federal prosecution for a firearms offense would be an unusual use of federal resources.

Cubello, the accused marijuana smuggler, faces a seven-to-nine-year sentence if convicted on racketeering charges for his role as the alleged middleman in smuggling 3,000 pounds of marijuana from Mexico in the late 1980s.

Cubello is scheduled for trial in a Denver federal court in September.

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He has not been charged with a gun crime, which would have to be prosecuted in Texas where the alleged gun offense occurred.

Jeff Edelman, Cubello's defense attorney, says his client is innocent of the marijuana charges and of any potential gun violation. Edelman says his client didn't know he was a fugitive. "How's a guy from Texas supposed to know he was indicted years ago and far away in Colorado for something he didn't do?" Edelman asks.

Another fugitive caught with the instant background check was Joseph Salisbury Jr. A landscaper from Monroe County, Mich., he was arrested May 11 at a local gun store when he tried to buy a SKS semi-automatic rifle, the Chinese version of the AK-47. Salisbury, 24, says he wanted it for hunting.

Salisbury's name showed up in the FBI computer because he was wanted for fleeing police and as somebody banned from owning a gun because of a misdemeanor domestic abuse conviction. The computer did not show that the domestic abuse conviction, for a fight with his father, had been expunged from his record after he took anger-management classes.

The Monroe County sheriff's department charged Salisbury with felony fleeing and eluding in July 1997 after he allegedly failed to pull over while being followed for 3 miles by a police car with its lights on and siren blaring.

"The whole thing is a bunch of hogwash," Salisbury says. He says he wasn't fleeing; he was just too drunk to hear the siren or see the lights. "My blood alcohol was so high they said I should be dead. But they never charged me with drunk driving. They charged me with fleeing and eluding. I'm innocent."

System worked

Monroe County prosecutor Edward Swinkey says that although he considers fleeing from a police officer a serious offense, Salisbury probably will get probation.

The system worked by stopping Salisbury from getting a gun, the prosecutor says. "If he's not responsible enough to show up in court, how can he be responsible enough to own a gun?" Swinkey says.

Asked whether Salisbury should face federal gun charges, Swinkey says: "In the real world, there's not enough police, prosecutors, or room in prison to handle all of these cases. This is a local offense, not a federal one."

GRAPHIC: GRAPHIC, color, Genevieve Lynn, USA TODAY, Source:FBI Uniform Crime Report(Line graph); PHOTO, color

LANGUAGE: ENGLISH



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USA TODAY · MONDAY, JUNE 14, 1999 ·

LETTERS

Local officials effectively enforce gun-control laws

There is an additional important point to be made in connection with USA TODAY's excellent Cover Story about the gun-control issue ("Are gun laws enforced?" News, Thursday).

No matter how many more gun-control laws Congress passes, the federal government simply doesn't have the resources to deal with the gun crimes covered in those statutes — nor should it.

In the article, U.S. Deputy Attorney General Eric Holder admitted this, declaring that the feds only can go "after those who are committing the most serious crimes."

There are fewer than 100 U.S. attorneys, whose staffs already are stretched trying to cope with ever-mounting caseloads.

But there are almost 3,000 local prosecutors who are prosecuting more than 90% of the crimes in the USA, including gun laws.

The fact is, when both federal and state laws are involved in a gun violation, the federal prosecutor will defer — as he or she should — to the local prosecutor, who is better acquainted with the local situation, better staffed to handle it and frequently more experienced in prosecuting

criminal cases.

The feds move in when there's an obvious overriding federal issue, such as interstate trafficking.

The point is, contrary to the political rhetoric, gun-control laws are being enforced, prosecutions are increasing steadily and sharply, and local prosecutors are handling most of the cases and are progressively sending more violators to jail.

John R. Justice, president
National District Attorneys Association,
Solicitor, Sixth Judicial Circuit of
South Carolina, Chester, S.C.

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TO:

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Dea Witzleben

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FROM:

Susan Gmabing

SUBJECT:

ATF testimony

MESSAGE:

Remarks of Assistant Director of
Field Operations Andrew L. Vita
Bureau of Alcohol, Tobacco and Firearms

Joint Hearing Before the Subcommittees on
Youth Violence and Criminal Justice Oversight
Senate Committee on the Judiciary

On

"Review of DOJ Firearms Prosecutions"

Monday, March 22, 1999
2:00 p.m., Senate Dirksen 226

Distinguished members of the Senate Judiciary Subcommittees on Youth Violence and Criminal Justice Oversight. Good afternoon. My name is Andrew L. Vita, Assistant Director of Field Operations for the Bureau of Alcohol, Tobacco and Firearms.

For all too many communities in the United States, firearms violence is a daily fact of life. We send the men and women of law enforcement in harm's way to protect and serve. Believe me, we are all seeking practical solutions to gun violence. Police departments across the land are engaged in the fight to the extent where resources are often strained. Firearms violence is a grave national concern that must be addressed by the collaborative efforts of all levels of law enforcement. It is vital to take into consideration the different State laws and crime factors that can affect what the best strategy is for each community. ATF works closely with the offices of the U.S. Attorneys to devise the best approach in each locality.

The Bureau of Alcohol, Tobacco and Firearms has a vital role to play in the fight against firearms-related violent crime. Unlike any other law enforcement agency, we have the combined jurisdiction, expertise, and experience necessary to most successfully investigate gun trafficking and gun violence. ATF's unique assets, together with our renowned partnerships and cooperation with law

enforcement at every level make this true. With ongoing cooperation and the adequate resources, we can continue to build on our success.

A primary strategy that ATF is pursuing in conjunction with the U.S. Attorneys is to reduce violent crime and deny criminals access to firearms. To do so, we believe in working smart. Working smart entails recognizing the reality that as we take criminals off the street, more arise - necessitating the need to also reduce the illegal supply of crime guns. The criminal behind the criminal is the gun trafficker. We believe in attacking the problem from both ends and closing in the middle. Project Exile is one part of the full complement of ATF's Integrated Violent Crime Reduction Strategy. That strategy includes ensuring that licensed gun dealers are in compliance with Federal, State, and local laws, and supporting police departments in the process of crime gun tracing and continuing programs such as the Youth Crime Gun Interdiction initiative to identify and arrest illegal traffickers.

For example, Richmond, Virginia: Straw purchaser for gang at gun shows. A trafficker who was a gang member used a straw purchaser to buy firearms at gun shows for other gang members. This case involved the Charlie Boys street gang, linked to gang warfare involving numerous homicides over the previous three years. ATF, working with the Richmond Street Crimes Unit, has been able to document 11 such weapons, purchased over a five-month period, of which eight were recovered in crimes. Almost all the guns were bought from Federally licensed firearm dealers at gun shows. The trafficker acted as a straw purchaser for fellow gang members. In return for his plea to aiding and abetting the illegal possession, trafficking charges were dropped. The trafficker has been convicted and sentenced to 6 years and 6 months in Federal Prison. The trafficker's two co-defendants were also successfully prosecuted for their possession of the firearms provided by the trafficker. Each co-defendant received 5 years and 10 months for their participation with the guns provided by the trafficker. The gang leader was also successfully prosecuted separately and received 16 years and 3 months. These cases were made through vigorously

enforcing the firearm statutes in conjunction with Project Exile and Youth Crime Gun Interdiction Initiative (YCGII).

Typical of the success ATF can potentially have in a community where a local enforcement program has been designed for particular local circumstances is a project begun in Richmond, Virginia, in March 1997. Beset with an escalating siege of violence, Richmond had ranked in the top five cities in the per capita murder rate for several years. ATF, in cooperation with the U.S. Attorney's Office and the Richmond Police Department, developed Project Exile to break the cycle of violence.

It was a simple premise: "Anyone caught with an illegal gun in Richmond will go to Federal prison for the minimum mandatory sentence of 5 years. Period. This criminal forfeits the right to remain in the community and is 'exiled' for 5 years. Using existing Federal law, prosecute all felons-with-guns, guns-used-in-drug-trafficking, and gun/domestic violence cases in Federal court."

Because of the particular State laws and sentencing practices in Virginia, Project Exile provides stiffer penalties and quicker justice to its offenders. In a Virginia State court, for example, a convicted felon caught with a gun could be sentenced to between one and five years, with the possibility of early release. In Federal court, this same conviction carries a minimum of 5 years and a \$250,000 fine. Project Exile puts potential offenders on notice. If they don't learn by word of mouth, perhaps they are warned by one of the Project Exile billboards or public service announcements that were donated by local businesses to publicize the program.

The daunting prospect of serving time in a Federal facility is a deterrent to many offenders. In Richmond, officers have noticed a marked increase in the number of firearms being thrown on the ground by fleeing potential defendants. This demonstrates that the message of Project Exile is reaching the streets. It also results in more seizures of illegal guns.

As an example of the deterrent effect, one Richmond case is worthy of mention. A defendant was caught with a substantial quantity of drugs during the execution of a search warrant. Surprisingly, no guns were recovered during the search. It was the first time officers could remember a defendant with such a large quantity of drugs not being armed in any way. Later, when the prosecutor questioned the defendant extensively about where the guns were, the defendant continued to vehemently deny having any guns. He finally stated, "Haven't you heard, man? Five years!"

Now some hard statistics about Exile: Approximately 75% of Exile defendants are denied bond and held in jail while awaiting trial. Three-fourths of all Exile defendants plead guilty, with no deal.

Violent crime task forces staffed with ATF personnel are successful because they combine Federal agents, and Federal experience and resources with State or local officers and all their many assets. This is a powerful and effective alliance in confronting firearms violence. Such locally focused approaches as Project Exile, the Boston Gun Project, the Minneapolis Anti-Violence Reduction Initiative, Project CAGE in Chicago, and the Baltimore Youth Strike Force - all of which ATF works closely on with the U.S. Attorneys - are all tailored responses to particular local conditions. Each of them is a component of ATF's unique but collaborative comprehensive and fully integrated approach to combating firearms violence.

Thank you.

NRA says lack of enforcement is the real problem

Group counters gun summit with ads and its own proposals

By Wendy Koch
USA TODAY

WASHINGTON — On the eve of the first congressional debate this year on gun control, the powerful National Rifle Association accused the Clinton administration Monday of seeking new gun restrictions while failing to enforce existing ones.

The gun lobby, which was not invited to President Clinton's conference on youth violence, is running full-page ads this week in national newspapers, including USA TODAY, to argue that the problem is not a lack of gun laws but the administration's enforcement of them.

"People 'in the know' know no one is going to be prosecuted," Wayne LaPierre, the NRA's executive vice president, said at a press conference timed to coincide with the White House meeting two blocks away.

LaPierre said the number of federal prosecutions of felons using guns has fallen 47% since Clinton took office in 1993. And he said that of the 6,000 kids caught carrying guns to school in the past two years, only 13 have been federally prosecuted.

Brian Steel, a Justice Department spokesman, responded that it's not the federal government's role to prosecute every gun case.

"We're targeting the people who've

States' weapons convictions rise

States' convictions for weapons offenses increased from 1992 to 1996, offsetting a decline in federal convictions.

	'92	'94	'96
State	26,422	31,010	33,337
Federal	3,821	3,074	3,033
Total	30,243	34,084	36,370

Source: Bureau of Justice Statistics

done the most damage with guns," Steel said.

He acknowledged that the number of federal prosecutions of gun crimes dropped from about 6,000 in 1992 to 4,500 in 1997, and the number of convictions has also dipped. But he said the Justice Department has worked more with state and local officials to help them prepare their cases.

As a result, Steel said, the total number of prosecutions and convictions has risen, the time weapons offenders spend in prison has increased, and the crime rate has fallen.

"The NRA ignores the overall reduction in crime," said Steel, noting



By Mario Tama, Agence France-Presse

LaPierre: "People . . . know no one is going to be prosecuted," executive vice president of National Rifle Association says of federal gun laws.

that the nation's murder rate in 1997 was the lowest in three decades. He also argued that the NRA should be concerned about how 6,000 students got guns in the first place.

The back-and-forth between the gun lobby and the Clinton administration was a preview of this week's Senate debate and an example of how both sides can selectively use statistics to buttress their arguments.

One week after the Littleton school massacre, the administration suggested a package of restrictions on guns and explosives, many of

which had earlier been proposed by congressional Democrats.

This week, Senate Democrats plan to try to attach several of the measures to a pending juvenile justice bill by Sen. Orrin Hatch, R-Utah, which would try some violent juvenile offenders in adult courts.

The NRA ads express support for two of Clinton's proposals: a lifetime ban on gun ownership for juveniles who commit violent crimes, which is already part of Hatch's bill, and holding adults liable for not safely storing their guns. The NRA also calls for ze-

6-month lobby price tag: \$702 million

WASHINGTON — Lobbying is clearly a growth industry in Washington. New figures compiled for the last six months of 1998 show that companies, associations, labor unions and other interests spent \$702 million making their voices heard in the capital. That pushed the total for last year to about \$1.4 billion, up from \$1.2 billion in 1997.

"There are a lot more players out there than people realize," says Kent Cooper, whose consulting firm Public Disclosure put together a database from public disclosure files, and posted it on the Internet at www.tray.com.

The communication and high-tech sectors topped the list of industry lobbying spending, with a total of \$94.3 million over the six-month period. Close behind were the financial and insurance sector, with \$91.8 million, and the health-care industry, with \$87.5 million.

The largest corporate spender was regional telephone company Bell Atlantic, which poured \$11.7 million into lobbying efforts. The U.S. Chamber of Commerce ranked second at \$8.9 million, and tobacco giant Philip Morris was third at \$8.6 million.

By Jim Drinkard

ro tolerance for guns at schools and \$50 million for expanding Project Exile, which jails for five years any violent felon caught with a gun.

Robert Delfay, president of the National Shooting Sports Council, announced Monday that his group could support three other Clinton proposals if drafted properly: instant background checks at gun shows,

mandatory child-safety locks and increasing the age for buying handguns from 18 to 21.

"We are not interested in politicizing the issue or in pointing blame at other groups or factions," said Delfay, whose group represents gunmakers, retailers, publishers and hunters.

► White House summit, 1D

Attacking Crime by Making Federal Case of Gun Offenses

By MICHAEL JANOFSKY

RICHMOND — Here on the streets of Virginia's capital, Melvin Douglas Smith was known for his luck as much as his troublemaking. For all the charges brought against him in state courts over a decade, from larceny and resisting arrest to illegal firearms and murder, none stuck. He never served a day in prison.

Then Mr. Smith's luck ran out. When a patrol officer pulled him over for a traffic violation in 1997, the officer looked in the car and found 12 grams of crack cocaine, a 12-gauge shotgun and a 9-millimeter semiautomatic pistol. The combination of guns and drugs was his undoing: Under a new program aimed at gun offenders called Project Exile, prosecutors were able to charge Mr. Smith in the tougher Federal system. He is serving 16½ years in a Federal prison.

As cities across the country sue the gun industry or buy back handguns as last resorts to get them off the streets, Project Exile is being credited for helping reverse a decade of rising crime rates in Richmond by moving gun offenses into the Federal system, where bond is less available, sentences are longer and convicts are sent out of state to serve their terms.

Officials in Richmond concede that other factors are contributing to an overall drop in violent crime. But as an experiment testing whether violent crime can be reduced by aggressively enforcing existing gun

laws, Project Exile is expanding to other cities, while the National Rifle Association is promoting it as the best alternative to more restrictive gun laws.

The Justice Department, long an adversary of the rifle association over gun control, has held back from recommending Project Exile as a cure-all, and a panel of Federal judges in Richmond has criticized it as a Federal intrusion into state matters. But Philadelphia and Rochester have adopted the program, and more than a dozen other cities are considering it.

While Project Exile's precise contribution has yet to be studied, the authorities in Richmond say it helped cut their rate of homicides by

Continued on Page A12

New Program in Richmond Is Credited for Getting Handguns Off Streets

Continued From Page A1

firearms by 36 percent last year, to 78 homicides from 122 in 1997, one of the steepest declines in any city, when homicide rates are falling across the country.

The program has also helped the authorities solve older cases. Once Mr. Smith was sentenced, for example, witnesses no longer afraid of him came forward with enough information to charge him with six murders, including two that could bring the death penalty.

"In Richmond, there has been an intense need for people to become believers in their own community," Mayor Timothy M. Kaine said. "High crime has been our psychological downer. But Project Exile is driving the crime rate down, and that is starting to make Richmonders believers again."

Patterned after Federal efforts to fight illegal drug activities, the program evolved from a determination by the United States Attorney's office in Richmond to prosecute gun charges in Federal courts, where the consequences are more severe than in state courts, even though Federal courts generally regard gun violations as low-level crimes.

Many gun offenses can be prosecuted in Federal or state courts. But Project Exile officials in Richmond have decided that certain gun offenses, like those involved with drugs or when the person arrested is a convicted felon, will be tried in Federal court.

As another key element of Project Exile, business and civic leaders have cooperated with the Richmond police by saturating the area with radio and television messages, billboards and posters, warning that anyone caught with an illegal weapon faces a jail term of five years.

Project Exile is so well known on the street, said David E. Boone, a criminal defense lawyer here, that "the first thing I hear now when I talk to a client is, 'Can you keep this from going Exile?' A lot of them can't add two and two, but they know a gun plus drugs equals five."

Some do, anyway. S. David Schiller, an assistant United States Attorney here who conceived the program, said the first two years of Project Exile have led to the recovery of 475 illegal guns, indictments against 404 people on gun charges — more than six times the annual average — a conviction rate of 86 percent



Photographs by Dean Hoffmeyer for The New York Times



through trials and plea bargains, and an average prison term of more than four and a half years.

And Richmond police officers say the program is convincing some would-be criminals to leave their weapons at home. "We're now finding more guns in houses than on the street," said Michael J. Shamus, an

acting lieutenant on the police department's Rapid Mobilization Team. "The streets are safer."

Still, not everyone is convinced that Project Exile is the appropriate means to attack the gun problem. In a recent court opinion, all three judges of the Federal District Court here characterized the program as

Two Richmond police officers, above, arrest a driver and a passenger under a program to curb guns and drugs. The program, called Project Exile, was conceived by S. David Schiller, left, an assistant United States Attorney.

"a substantial Federal incursion into a sovereign state's area of authority and responsibility."

And the Justice Department has remained reluctant to promote it as a national solution to gun violence.

Deputy Attorney General Eric Holder said recently that department officials "take issue with the notion that there is a cookie-cutter approach to reducing gun violence."

Mr. Holder also said the department had sent additional Federal marshals, agents and prosecutors "to make Exile a successful program."

Mr. Schiller conceded that more Federal agents had been sent to Richmond. But he insisted that the only Federal participants dedicated to Project Exile outside of the United States Attorney's office were two agents on loan from the Bureau of Alcohol, Tobacco and Firearms and one from the Federal Bureau of Investigation.

Others say the involvement of the N.R.A., which has opposed Federal gun control laws, has tempered the Justice Department's interest. The rifle association has contributed

\$125,000 to Richmond's efforts for advertising and marketing programs, and has lobbied Congress to get \$2.3 million for programs in Philadelphia and Camden, N.J.

Mr. Schiller's boss, Helen F. Fahy, the United States Attorney for the Eastern District of Virginia, said, "I can't answer that as a fact, but I suspect it is true."

Wayne R. LaPierre Jr., the association's executive director, minced no words. "They consider these nuisance cases, and the last thing Federal judges want are armed felony cases in their courts," he said. "That's shameful. Killing people is wrong, and regardless of the N.R.A., it needs to be changed. Every cop on the street knows it."

In Philadelphia, Mayor Edward G. Rendell led the effort to establish a Project Exile after a challenge last summer by the N.R.A. to "give us one major American city" to prove that aggressive law enforcement can make a bigger difference than more laws that restrict gun ownership. Several additional investigators and Federal prosecutors enabled city officials to announce 15 indictments just days after the program, called Operation Ceasefire, began.

In Rochester, after a gun task force of the local, state and Federal authorities began a program in September to supplement other new crime-fighting initiatives, no homicides were reported in November and just two in December.

"I can't say that everything is attributable to our Project Exile — it's a little early for that," said Denise E. O'Donnell, the United States Attorney for the Western District of New York. "But we're very enthusiastic about the program. We are seeing our crime rates come down."

Virginia lawmakers have been so impressed with Richmond's success that they are considering legislation that would bring state gun statutes more in line with Federal laws.

Police officers on Richmond's streets seem thankful for the help, no matter who provides it. When Jerry A. Oliver was hired as Chief of Police in 1994, Richmond had had a decade of increasing numbers of homicides, peaking that year at 160.

"We desperately needed a home run, something to celebrate," he said. "As police chief, I see Project Exile as one of those programs that is working."

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EMBARGOED UNTIL 2:00 P.M. EDT
Text as Prepared for Delivery
May 27, 1999

DRAFT

TREASURY UNDER SECRETARY (ENFORCEMENT)
JAMES E. JOHNSON
House Committee on the Judiciary
Subcommittee on Crime

Thank you Mr. Chairman, Representative Scott, and members of the Committee. It is a privilege to appear before you and with the Deputy Attorney General on behalf of the Administration and the Department of the Treasury as we review the issue of firearms violence and legislative proposals that we believe will enhance our ability to reduce it.

Today is a time to mark real progress and innovations in reducing the harm to communities caused by gun violence. It is also a harrowing time as we continue to witness violence in our streets and our schools. The violence that still takes place in many cities -- as well as the tragedies at schools in Littleton, Paduchah, Jonesboro, Springfield, and Pearl-- have showed us that while we may have made important gains in this battle, we have a long way to go. We simply must redouble our efforts to stop the misuse of firearms.

We've learned how to do this. Both enforcement and prevention strategies are vitally important to making our communities safer. Within this larger context, there are a series of other issues on which Americans agree: firearms should *not* be available to certain people -- not to felons, not to violent criminals, and not to unsupervised juveniles. Firearms must be bought and sold legally and responsibly. And finally, firearms must be stored safely and securely by their owners, in order to better prevent violent crime and access to guns by troubled youth and vulnerable children.

This consensus has greatly expanded in recent weeks, as reflected by last week's Senate votes, and the support expressed by Congressional leaders and important segments of the firearms industry.

This national consensus provides ample room for agreement on sensible legislation, and we thank the Chairmen and ranking members for holding this hearing to advance our discussion of this critical issue. Our joint statement covers these areas in greater detail. I will briefly highlight some of the most important.

As Treasury Under Secretary, my primary focus with regard to reducing violent crime is the development and implementation of the firearms enforcement mission of the Bureau of Alcohol, Tobacco and Firearms, which is the principal federal agency mandated by Congress to enforce the nation's firearms laws. ATF has the jurisdiction, expertise, and experience necessary to successfully investigate armed criminals and gun trafficking crimes. Under the able leadership of Director John Magaw, the dedicated men and women of ATF are providing essential and

innovative contributions to the fight against violent crime.

One of ATF's greatest achievements is its partnership with state and local authorities. As the Deputy Attorney General has noted, such a partnership, which also includes U.S. Attorneys and state prosecutors, has helped increase the overall number of prosecutions for gun violations over the past six years. Notable examples of this work, of course, include Richmond's Project Exile and Boston's Operation Ceasefire. ATF has been a key participant in these and numerous other locally designed efforts. The variety of approaches in different locations is consistent with ATF's mission and with effective law enforcement.

We can greatly assist the men and women in law enforcement if we provide them with tools they need to attack the illegal market in firearms that supplies criminals and juveniles who cannot legally buy guns from licensed dealers. To build on the success of the Brady law, we must do more to stop the criminal behind the criminal -- the illegal gun trafficker. Let me give you one example of the kind of trafficking I'm talking about and what ATF can do.

- In Philadelphia, PA in June 1998, a straw purchaser and a trafficker conspired to buy over 50 semiautomatic rifles, boxes of high powered ammunition, and accessories such as one hundred round drum magazines, high powered scopes and laser sights. Seven rifles -- some connected to drug activity -- were subsequently recovered by law enforcement. Ballistics tests linked one rifle to homicides. ATF traced the majority of the recovered firearms to the straw purchaser, who further investigation revealed had given them to a convicted felon. The purchaser and the felon operated in high crime areas of North Philadelphia and sold AK-47 type rifles to persons suspected of being local drug traffickers. One of the sales was made to a juvenile. The U.S. Attorney's Office in Philadelphia secured a conviction of the defendants on all counts, including firearms trafficking and possession of a firearm in a school zone.

Mr. Chairman, the Youth Gun Crime Enforcement Act of 1999, H.R. 1768, contains critical new tools for attacking the illegal gun market. It will close the gun show loophole by requiring background checks and tracing records for all gun show sales. It will require licensed dealers to assist law enforcement to trace used as well as new crime guns. It will increase the penalties on illegal gun traffickers and make it easier to prosecute straw purchasers. It will also double the size of ATF's Youth Crime Gun Interdiction Initiative launched by President Clinton in July 1996. This program targeting gun violations involving youth and juveniles assists local law enforcement in tracing all recovered crime guns, and identifying and arresting illegal gun traffickers and criminal users of firearms. Mr. Chairman, we are grateful for the strong support that Congress is providing to this and ATF's other firearms enforcement programs.

Adoption of these common sense measures will help law enforcement to keep guns out of the hands of criminals and unsupervised juveniles. We must do more. Eighteen and 19 year olds are a high crime age group. Indeed, ATF traces more crime guns recovered from 18 and 19 year olds than any other age group. It makes sense, therefore, to set reasonable limits ~~therefore should be~~ ~~set~~ on gun possession by young people. We must raise the age of eligibility to possess a handgun from 18 to 21, and prohibit those under 21 from possessing ~~an~~ assault rifle and large capacity

ammunition feeding devices. In addition, dangerous juvenile offenders cannot be permitted to possess guns when they become adults.

We must also take steps to protect younger children. We should require that gun safety ~~locks or storage~~ devices be sold with firearms, and hold adults accountable for reckless storage resulting in a child causing death or serious bodily injury with a firearm.

Mr. Chairman, over the years I have worked closely with an undercover officer shot by narcotics dealers, I have spoken to mothers whose children fell victim to inner-city gun violence, I visited Columbine High School and saw how a vibrant school was stopped dead in its tracks by two murderers who should have never had bombs and never had guns. The victims ask us, all of us, to do all we can to prevent more loss. We are requesting more agents and developing strategies to enhance our enforcement efforts. We ask you to support law enforcement and help make our children safer: Pass HR 1768.

DRAFT

ORAL TESTIMONY OF DEPUTY ATTORNEY GENERAL

House Committee on the Judiciary

Subcommittee on Crime

Thursday, May 27, 1999

2:00 p.m.

Prepared by: Charles Simon (IGA), 514-3465

Reviewed by: Bea Witzleben (ODAG), Mathew Nosanchuk (OPD), Joe Graupensperger (OLA),
and Susan Ginsburg (Treasury)

Thank you Mr. Chairman, Representative Scott, and members of the Subcommittee. I very much appreciate this opportunity to appear before you. It's my pleasure to be here with my colleague, the Undersecretary of the Treasury for Enforcement, Jim Johnson.

This is a critical time in our ongoing effort to fight crime and gun violence, especially as they affect our children. The nation's violent crime rate, including violent crimes committed with guns, has dropped dramatically during this Administration. But, tragedies like the murders in Littleton, Colorado, and the

shooting in Conyers, Georgia, remind us that we must do more to reduce firearms violence even further.

We may never know all the reasons why incidents like these occur. Yet, if the young people who committed these crimes had a tougher time getting their hands on guns, these horrible crimes might have been prevented. We can – indeed we must – build upon the successes of existing state and federal laws to provide greater protections for our children and all of our citizens.

Last week, the Senate took a strong, bipartisan stand against firearms violence by adopting several firearms measures that embrace common sense and good public policy, and that are supported by an overwhelming majority of Americans. The juvenile justice bill passed by the Senate includes several key provisions. It requires child safety locks to be sold with every

new handgun. It bans violent juveniles from possessing a gun for the rest of their lives. It bans the importation of large capacity ammunition feeding devices.

And, to its credit, the Senate passed legislation that will close the dangerous gun show loophole once and for all. The Senate bill mandates background checks and crime gun tracing records for all guns that are sold at gun shows. Now, you have an opportunity to act quickly on these proposals.

In fact, you have an even greater opportunity. The Administration's "Youth Gun Crime Enforcement Act of 1999," which has been introduced by Representative Conyers as H.R. 1768, includes a number of other important public safety proposals. A mandatory 72-hour waiting period for all handgun purchases will help stop "heat of the moment" killing, and a proposed increase in the minimum age for handgun possession

(from 18 to 21) will get handguns out of the hands of the most crime-prone age group. I urge you to answer the call of the American people: pass a comprehensive bill to reduce gun violence, and send it to the President.

Why is new legislation necessary at all? The answer lies in our recent success. Our success over the past six years has taught us that reducing gun violence requires a coordinated approach that includes prevention and enforcement. Our achievements have also highlighted opportunities for improvement.

On the prevention side: we must learn from the successes of the Brady Bill, which requires background checks on gun purchasers. By imposing a minimal inconvenience on gun purchasers, the Brady Law has kept guns out of the hands of more than 300,000 felons and other prohibited people,

preventing untold crimes and violence. And the Brady Law has been used to catch fugitives who have tried to buy firearms.

Just two months ago, a fugitive wanted for aggravated assault with a deadly weapon was caught after pawn shop NICS check revealed his criminal history. We should capitalize on these accomplishments by extending Brady to gun shows, and stop criminals from getting guns with "no questions asked."

On the enforcement side, the Administration's strategy of building strong partnerships among federal, state and local law enforcement has resulted in a significant increase in the overall number of firearms prosecutions in this country. Since 1992, the combined number of federal and state firearms convictions is up sharply, and about 22 percent more criminals were incarcerated for state and federal weapons offenses in 1996 than

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in 1992. The number of federal cases in which the offender gets five or more years in prison is also up by more than 25 percent. Most importantly, violent crimes committed with firearms are down 27% since 1993.

In short, this Administration supports a comprehensive approach that addresses the illegal ^{transfer} acquisition, possession, and use of firearms, as well as the underlying causes and consequences of violence. Now, you have an historic opportunity to reduce gun violence further across the country by giving law enforcement the critical new tools that we need. I urge you to seize this opportunity. Thank you.

Fact Sheet on ATF Case Summaries

(Note: Still awaiting DOJ clearance)

The ATF case summaries are intended to serve as examples of the current enforcement efforts of ATF. They represent only a tiny sample of the thousands of firearms cases that ATF forwards for prosecution each year to federal, state, and local authorities. The case summaries address five types of cases that ATF investigates: sales or transfers of firearms to juveniles and youths; sales of firearms at gun shows and swap meets; sales involving pawn shops; sales at gun stores; and cases involving armed career criminals. These five case types demonstrate the variety of ways that it is possible to acquire and to traffic in firearms illegally.

- Sales or Transfers of Firearms to Juveniles and Youths

ATF agents learned that a 12-year old boy purchased a firearm at a grocery store in a remote area of Eastern Kentucky. ATF subsequently seized 154 firearms from the seller, four of which were identified as having previously been stolen. The seller admitted to dealing over 500 firearms illegally at local flea markets and at gun shows in Kentucky, Tennessee, Ohio, and Oklahoma. The seller pled guilty in February 1999 to dealing in firearms without a license. He is currently awaiting sentencing.

- Sales of Firearms at Gun Shows and Swap Meets

An El Paso, Texas individual bought and sold numerous firearms at gun shows throughout Texas, Arizona, Nevada, and New Mexico. The individual also conspired with Federal Firearms Licensees (FFLs) to supply him additional weapons by acting as straw purchasers. One of the straw purchaser FFLs provided the trafficker with over 800 firearms. The trafficker admitted to engaging in over 1600 firearm transactions, and stated that he had supplied over 1200 firearms to the Amado Carillo Fuentes narcotics trafficking organization which is based in Mexico. The trafficker pled guilty and was sentenced to 78 months in prison in March 1998.

- Sales of Guns Involving Pawn Shops

A New Jersey resident purchased 20 firearms from a pawn shop in Florida, and transported the weapons back to New Jersey for resale. The purchaser had used nine aliases to acquire the weapons. At least four of the firearms were used in violent crimes. One was used during a shootout with Newark, NJ police officers, and another was recovered during the investigation of the shooting of a New York City Police Captain. The purchaser pled guilty to the possession of a firearm as a fugitive from justice and to making false statements in the purchase of firearms. He was sentenced to 12 months in prison in September 1997.

- Sales of Guns at Gun Stores

In August 1997, a 22-year old Milwaukee, Wisconsin woman walked into a gun store and ordered six handguns as a straw purchaser. Federal authorities believed that the guns were intended for members of the 118th Street East Coast Crips gang, who were also involved in

shipping narcotics to Milwaukee and other cities from Los Angeles. The straw purchaser admitted that she had purchased the guns to a man to whom she owed money. When she could not repay her debt, the man asked her to purchase the firearms as a way to repay her debt. She was sentenced to 18 months in prison for making false statements in connection with the purchase of the firearms.

- Cases Involving Armed Career Criminals

Two previously convicted felons with extensive criminal records set-up a 15 year old to run a drug house in Fort Worth, Texas. The felons provided the 15 year old with firearms and narcotics, and instructed the youth in how to fire the weapon if someone attempted to rob him. The 15-year old shot and killed his 7-year old friend who surprised him by entering the back door. The adults were convicted of various offenses, including federal firearm violations, and were sentenced in October 1998 as armed career criminals to terms of 425 months and 295 months in prison.

FACSIMILE COVER SHEET
DEPARTMENT OF THE TREASURY
DEPUTY ASSISTANT SECRETARY
(ENFORCEMENT POLICY)

Phone: (202) 622-0300

Fax: (202) 622-7301

Date:

Page 1 of

TO:

Leanne

FAX:

456-7028

FROM:

SG

SUBJECT:

Holder
Johnson

MESSAGE:



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FAX COVER SHEET

DATE: 5/26

TO:

Leanne

PHONE NO.

FAX NO.

FROM:

JOE GRAUPENSPERGER

PHONE NO.

514-3951

FAX NO.

305-2643

NO. OF PAGES: 26 (EXCLUDING COVER)

COMMENTS:

Draft statement.

456-7028

Attended?

DRAFT - May 26, 1999 (5:47PM)

**JOINT TESTIMONY OF THE DEPARTMENT OF JUSTICE AND
THE DEPARTMENT OF THE TREASURY**

**Deputy Attorney General Eric Holder, Department of Justice, and
Undersecretary James Johnson, Department of the Treasury**

House Committee on the Judiciary

Subcommittee on Crime

Thursday, May 27, 1999

2:00 p.m.

Prepared by: Mathew Nosanchuk, 4-2456 (OPD)

Reviewed and Revised by: Eleanor Acheson (OPD), Bea Witzleben (ODAG), Nick Gess (ODAG), Robert Raben (OLA), Charles Simon (OIGA), Joe Graupensperger (OLA), Jay Hoover (OPD), Bruce Delaplaine (CRM), Jim Johnson (Treasury), Elizabeth Bresee (Treasury), Karen Wehner (Treasury), David Medina (Treasury), Steve McHale (Treasury), Susan Ginsburg (Treasury), Brad Buckles (ATF), and Raden (ATF)

We appreciate this opportunity to appear today before the Subcommittee to address vital issues relating to firearms. We recognize that a discussion of firearms legislation and enforcement addresses only a part of the issue. Before discussing the firearms issues specifically, we acknowledge the need to look closely at the building blocks of our communities and our lives, including our families, our neighborhoods, our schools, our faith communities, and our culture, because all of them have an important role to play in our effort to reduce gun violence. These other issues are reserved for another day. We come before you today at a critical moment in our ongoing effort to fight crime and gun violence, especially as they affect our children. Although the nation's violent crime rate, including violent crimes committed with guns, has dropped dramatically during this Administration, tragedies like the murders in Littleton, Colorado, and the shooting in Conyers, Georgia, remind us that we must do more to reduce firearms violence even further. And we should not only be concerned about suburban school shootings. The fact is that

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13 young people in America die every day from gunshot wound – 365 “Littletons” a year. While we may never fully understand all the reasons why incidents like these occur, it stands to reason that if the young people who committed these crimes had a tougher time getting their hands on guns, these horrible crimes might have been prevented. We can – indeed we must – build upon the successes of existing state and federal laws to provide greater protections for our children and all of our citizens.

Last week, the Senate took a strong, bipartisan stand against firearms violence by adopting several firearms measures that reflect common sense and constitute good public policy, and which are supported by an overwhelming majority of Americans. The juvenile justice bill (S. 254) passed by the Senate closes the gun show loophole once and for all by mandating background checks and crime gun tracing records for all guns that are sold at gun shows; requiring child safety locks to be sold with every new handgun; banning violent juveniles from possessing a gun for the rest of their lives; banning the importation of large capacity ammunition feeding devices; prohibiting juveniles from possessing assault weapons; increasing penalties for those who traffic guns to juveniles; and strengthening the law regarding those who transfer firearms having reasonable cause to know that the weapon will be used in crime. And, the Senate ~~passed legislation that will~~. The House should act quickly in support of these proposals, that are included in the Administration’s “Youth Gun Crime Enforcement Act of 1999,” which was introduced by Representative Conyers as H.R. 1768, so that it can be conferenced, finally enacted in both chambers, and sent to the President for signature.

leg can become law
as soon as possible.

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Today we discuss these and other important legislative proposals to bring about further reductions in gun violence. The Administration's proposals would prevent guns from falling into the wrong hands, and strengthen our ability to enforce the law when they do. We cannot emphasize too strongly that our success over the past six years has taught us that reducing gun violence requires a coordinated approach that includes prevention and enforcement.

On the prevention side, over the last six years, Congress and the Administration have worked together to increase dramatically the effectiveness of current federal laws that are designed to prevent guns from falling into the hands of dangerous individuals such as felons, fugitives, and those who are under a restraining order or have been convicted of a domestic violence misdemeanor. Until 1993, federal law allowed gun sales to operate on the "honor" system. A licensed dealer would sell guns where buyers certified that they did not fall into any prohibited category, and no one checked to see if they were telling the truth. In 1993, Congress recognized that when it came to buying a gun, the honor system was not good enough and enacted the Brady Law to require background checks on gun purchasers. Through a simple background check, the Brady Law has kept guns out of the hands of an estimated 310,000 felons and other prohibited people, preventing untold crimes and violence, and with minimal inconvenience to gun purchasers and dealers.

On the enforcement side, we plan to build on the success that we have had over the past several years in bringing more violent criminals who use firearms to justice. Over the last few years, the Administration has developed and implemented a strategy of building strong partnerships among federal, state, and local law enforcement to catch and punish criminals and

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thereby reduce violent crime. These combined efforts are paying sizable dividends for public safety. Federal, state, and local law enforcement officials have worked together closely, and have significantly increased the overall number of firearms prosecutions in this country. Since 1992, the combined number of federal and state firearms convictions is up sharply, and approximately 25 percent more criminals were incarcerated for state and federal weapons offenses than in 1992. The number of federal cases in which the offender is sentenced to five or more years in prison is also up by more than ~~22~~ ^{25/30?} percent. Our strategy of increased collaboration among federal, state, and local law enforcement has resulted in: (1) a more efficient distribution of prosecutorial responsibilities, (2) a steady *increase* in firearms prosecutions on a cumulative basis, and most important, (3) a sharp decline in the number of violent crimes committed with guns. Indeed, violent crimes committed with firearms are down 27% since 1993. (See graph 1.)

In addition, with strong bipartisan support from Congress and from state and local law enforcement organizations, the Bureau of Alcohol, Tobacco and Firearms (ATF) has greatly strengthened its crime gun tracing system, designed to assist federal, state, and local law enforcement officials in evaluating their local crime gun problem, and identifying, investigating, arresting, and prosecuting illegal gun traffickers. Crime gun traces have grown from 55,000 in 1993, to 197,000 in 1998. Since 1996, ATF has investigated approximately 650 illegal federal and state trafficking cases involving juveniles and youth. These investigations involved nearly 26,000 illegally trafficked firearms. → line on trafficking cases

Of course, as the many victims of gun violence know all too well, the imposition of criminal sanctions after firearms have been used to injure or murder is no substitute for preventing

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such crimes from occurring in the first place. And just as we recognize that no single prosecution will undo the harm that has been caused by gun violence, we also recognize that no single law or initiative will prevent all acts of gun violence from occurring. That is why the Administration has supported a comprehensive approach that addresses the illegal transfer, acquisition, possession, and use of firearms, as well as the underlying causes and consequences of violence. Congress has an historic opportunity to reduce gun violence further across the country by giving law enforcement some additional necessary, practical and effective tools.

I. The Clinton Administration's Legislative Proposals in the 106th Congress

During the past six years, the Administration and the Congress have worked to put in place common sense measures such as the Brady Law, the Assault Weapons Ban, and expanded crime gun tracing, all of which have contributed significantly to the reduction in violent crime. The success of these measures has in turn led to a broader recognition among law enforcement, the American public, gun manufacturers, and gun owners that sensible measures to regulate firearms can and will make a difference in reducing gun violence and saving lives.

In developing legislative proposals for the 106th Congress, the Administration carefully examined our federal gun laws to see where critical gaps needed to be filled. The legislation contained in H.R. 1768, the Administration's Youth Gun Crime Enforcement Act, builds on this country's recent successes against gun violence without interfering with those sportsmen, hunters, and other law-abiding Americans who wish to buy and use firearms for legitimate activities.

we looked for ways in which we could build on our success

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The Youth Gun Crime Enforcement Act contains a number of practical and sensible measures designed to keep guns out of the hands of criminals and youth by preventing them from acquiring guns and imposing stiffer penalties when they do. The legislative package can be divided into five parts.

First, H.R. 1768 extends and strengthens the Brady Law, which has successfully prevented an estimated 310,000^{*} felons, fugitives and others from getting guns by, for example, closing the gun show loophole and prohibiting violent juveniles from getting guns when they become adults.

Second, the bill makes it more difficult for youth to gain inappropriate access to firearms by raising the minimum age for handgun and assault weapon possession to 21 - which is the minimum age to be able legally to buy a gun. *hand + child safety locks*

Third, the bill strengthens the assault weapons ban by prohibiting the importation of all large capacity ammunition feeding devices and prohibiting youth under 21 from possessing assault weapons. *certain*

Fourth, H.R. 1768 gives law enforcement additional tools to combat criminal misuse of firearms by increasing penalties on criminals who use guns in the commission of crimes.

Fifth, the bill combats illegal trafficking in guns to stem the flow of illegal guns to our streets through measures such as a restriction on handgun purchases to one a month. *FFL's?*

A. Extending and Strengthening the Brady Law

The Brady Law has dramatically increased the effectiveness of our Nation's gun laws that prohibit certain people - for example, felons, stalkers, and fugitives - from possessing firearms by requiring background checks on people who want to buy guns, and denying guns to those who

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are not allowed to possess them. During the first five years of the Brady Law, state and local law enforcement officials conducted Brady background checks on prospective gun purchasers and stopped an estimated 310,000 people who should not have guns from getting them. The cooperation of state and local law enforcement, which voluntarily conducted these checks in areas covering 99 percent of our population – and the willingness of gun buyers throughout the country to comply with this common sense provision – made the success of the Brady Law possible and undoubtedly saved lives and prevented crimes from occurring.

Since November 30, 1998, when the National Instant Criminal Background Check System (NICS), went into operation, the FBI has shared the responsibility for doing background checks with states that have agreed to serve as points of contact (POCs) for the system. In just under 6 months, NICS has processed more than 4 million background checks. Of these, our state partners acting as points of contact handled just over 2 million checks. In the vast majority of checks, legal gun buyers have completed their gun purchases within minutes. At the same time, the NICS Brady Law alone has stopped more than 48,000 felons and other prohibited persons from getting guns, and we estimate that our state partners have stopped about 48,000 more.

In addition, through the cooperation of federal, state, and local law enforcement officials, the NICS has been used to apprehend fugitives who have tried to acquire firearms. Two recent examples tell a compelling story. On March 12, 1999, the Texas Highway Patrol was able to apprehend a fugitive who had been wanted in Oscoda, Michigan, for eight years – for aggravated assault with a deadly weapon – after a NICS check at a pawn shop in Texas revealed the fugitive's criminal history when the fugitive attempted to redeem a pawned gun. And, on March

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27, 1999, a NICS check was run on an individual seeking to buy a gun in Salina, Kansas. The NICS located an arrest record for terrorist threats in 1992, and the transfer of the gun was therefore delayed. The disposition of the arrest was not available to the NICS in automated records, however, and the FBI was unable to track down the disposition of the arrest – to determine if a conviction had been obtained – during the 3-day period allowed by the Brady Law. As a consequence, a handgun was transferred to the individual after the 3-day period expired. A few days later, the FBI was able to learn that the individual had been convicted of felony attempted terrorist threats, and notified the Dodge City Kansas Police Department. Local authorities promptly arrested the individual, charged him with felony possession of a firearm, and recovered the gun.

1. *Closing the Gun Show Loophole*

The Administration is committed to building on the success of the Brady Law by expanding its protections in three key areas. First, we want to close the gun show loophole. Since last November, when President Clinton directed Treasury Secretary Rubin and Attorney General Reno to develop a plan to address the gun show problem, we have been working to achieve this goal. Today, licensed dealers are required to conduct background checks at gun shows, but unlicensed people who set up tables right alongside the licensees can sell guns at gun shows without doing background checks. And while licensees have recordkeeping requirements in connection with their gun sales, unlicensed sellers are not required to provide any documentation of gun show sales to assist law enforcement in tracing firearms if they subsequently are used in crimes. This is a significant public safety problem, because more than

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4,000 gun shows are held in America each year, and an estimated 25-50 percent of the vendors at these shows are unlicensed, and therefore not required to do background checks or keep records for crime gun tracing on any of the hundreds of thousands of buyers and transactions. A single gun show may have as few as 50 or as many as 2,000 tables, each displaying numerous guns (sometimes hundreds) for sale. Those barred from buying or possessing a gun seek out the unlicensed sellers, because they know that they can get guns "no questions asked." Also, because unlicensed sellers do not keep any records and because many of the guns sold at gun shows are used guns, there is often no way to trace a gun back to the person who sold or bought it if the gun later turns up in a crime scene. Because guns can be bought anonymously at gun shows, they are a significant source of guns for criminals. In fact, in an evaluation of 314 investigations related to gun shows, the firearms involved numbered more than 54,000. In one case, a convicted felon in Michigan used a false police identification to buy handguns at gun shows and resold the guns for profit. Among the firearms purchased were 16 new and inexpensive handguns. Local police recovered the guns in the course of investigating a domestic disturbance. The defendant pled guilty to numerous federal firearms violations and was sentenced to 27 months' imprisonment.

direct

In their January 1999 report to the President, Treasury Secretary Rubin and Attorney General Reno presented recommendations for closing the gun show loophole by adopting legislation that will require a background check and gun tracing records in connection with *all* firearms transfers at gun shows, even if the seller is unlicensed. This way, gun shows can continue to be a place for law-abiding citizens to gather to trade, buy, and sell firearms but will no

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*and Congressman Blagojevich***DRAFT - May 26, 1999 (5:47PM)**

longer be a "safe haven" where felons, fugitives, those convicted of domestic violence, and juveniles can buy guns. Senator Lautenberg introduced the legislation, *(S. 443 and H.R. 902)* that carries out the major recommendations made in the report. ~~Congressman Blagojevich has introduced this measure as H.R. 902.~~ Under Senator Lautenberg's amendment to S. 254, co-sponsored by Senator Bob Kerrey and passed last week, licensed dealers will conduct background checks on behalf of unlicensed dealers at gun shows. In addition, the licensed dealer will maintain and provide to the Secretary of the Treasury strictly limited information about the type of gun being transferred for the sole buy critically important purpose of being able to trace the gun if it is later used in a crime. No identifying information about the buyer will be provided to ATF. Rather, only the make, model, and serial number of the gun sold will be provided, so that ATF can contact the seller to assist with a crime gun trace when requested to do so by a law enforcement agency that recovers the firearm and submits it for tracing.

Now that the Senate has passed legislation that actually closes the gun show loophole, the House has the opportunity to consider this legislation. We strongly urge you to do this and resist efforts to re-open the loopholes closed by the Lautenberg-Kerrey Amendment.

Our experience with the Brady Law and with the NICS has shown that background checks impose a minimal inconvenience on lawful gun sellers and buyers and offer a high return for the rest of society. Under the NICS, more than 70% of the background checks are fully completed within minutes – often before the dealer requesting the check hangs up the phone – and waiting for a background check to be completed is a small price to pay for making our communities safer.

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We need to assure that the only people getting guns at gun shows are those who are permitted to have them.

2. *Juvenile Brady*

Second, we want to ensure that when juveniles commit violent acts that would be serious felonies if committed by an adult, they are permanently barred from ever getting a firearm.

Today, juvenile adjudications – even for the most serious offenses, like murder – do not prevent juveniles from acquiring guns once they become adults. We have proposed an amendment to the Brady Law that would treat violent juveniles and violent adults in the same manner for purposes of determining whether they can possess a gun. If they have been convicted of an act that would have been a violent felony if committed by an adult, they will be barred for life from getting a gun regardless of their age when they committed the crime.

3. *Mandatory Waiting Period*

Third, our proposal imposes a mandatory 72-hour waiting period for all handgun purchases and gives law enforcement up to two additional business days to complete background checks. We believe that a mandatory waiting period of 72 hours for handgun transfers will save lives, because many gun crimes are committed within days of the time that the gun is purchased. A cooling-off period will prevent those murders and suicides that are committed in the heat or despair of the moment.

We also want to give law enforcement up to two additional days to complete a background check when further research is required to determine whether a person is prohibited. Although more than 70 percent of the Brady background checks are completed within minutes,

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some records are not yet fully automated, and therefore the background check requires further research and analysis. Allowing a maximum of five days for conducting the check – which was the original amount of time allowed in the Brady Law – will prevent guns from being transferred to prohibited people about whom definitive information is unavailable at the end of three business days.

B. Restricting Youth Access to Firearms

Keeping guns out of the hands of juveniles has been one of the Clinton Administration's top priorities. The Clinton Administration worked with Congress to pass legislation prohibiting the juvenile possession of handguns, and encouraging States to have "zero tolerance" for guns in schools. Also, in cooperation with local police departments, the Administration established ATF's Youth Crime Gun Interdiction Initiative (YCGII). H.R. 1768 seeks reauthorization for YCGII. Through comprehensive crime gun tracing, YCGII is helping to establish how the illegal market in firearms operates in specific jurisdictions and to identify and arrest individuals who illegally supply guns to juveniles and young people, as well as the young people who illegally possess guns. ✕

However, our current laws are still inadequate to protect our young people from gun violence. The recent school shootings, the death of 13 children every day from gunshot wounds, and the community violence of the past few years confirm this sad reality. The Clinton Administration has proposed four targeted measures to reduce inappropriate youth access to firearms.

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First, we propose to raise the minimum age that a young person can possess a handgun from 18 to 21. Today, although it is not legal for a licensed firearms dealer to sell a handgun to anyone under 21, it is legal for persons between the ages of 18 and 21 years to possess handguns and even to buy them from unlicensed sellers in their neighborhood or at a gun show. The ease with which 18 to 20-year-olds can get guns is especially troubling given that ATF crime gun tracing data shows that more crime guns are recovered from 18- and 19-year-olds than from any other age group.

We urge Congress to extend the provisions of the Youth Handgun Safety Act to young people between the ages of 18 and 21. Under our proposal, the same exceptions that apply to juveniles will apply to persons between the ages of 18 and 21. Under certain conditions, they could temporarily possess a handgun if they need it to hunt or farm or in connection with a job.

Second, we have proposed legislation to ban the possession by youth of all assault weapons. Although current law prohibits juveniles from possessing assault pistols, it allows them to possess assault rifles and large capacity ammunition feeding devices that were manufactured before the effective date of the assault weapons ban in 1994. The Administration's proposal closes this dangerous loophole by prohibiting the possession of all assault weapons and large capacity magazines by persons under the age of 21.

Third, H.R. 1768 includes a proposal – a version of which was included in the Senate's juvenile justice bill – that would require people who own guns to keep them stored safely, to prevent children and others from getting hold of the weapons. The Senate's juvenile justice bill includes a similar provision, but it is limited to handguns. Unfortunately, many children need look

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no further than their own home to get their hands on loaded and unlocked guns, as an estimated one-third of the some [*do we have a number?*] million privately-owned handguns are kept loaded and unlocked.

For *since 1997* several years, the Administration has called for the distribution of locking devices for firearms (also known as triggerlocks or child safety locks). Although *out 1997* some years ago a number of firearms manufacturers voluntarily agreed to provide a locking device with every gun sold by *hudson* ~~October 1998~~, this agreement does not cover the universe of new firearms sold. H.R. 1768 requires that licensed gun dealers provide a child safety lock or a secure gun storage box with every firearm sold.

Fourth, some 16 states across the country have recognized that adults have a responsibility to prevent children from obtaining unsupervised access to guns. "Child access prevention" (CAP) laws promote gun safety and responsibility by holding adults responsible if they allow children to have easy access to loaded firearms. According to one study published by the American Medical Association in 1997, CAP laws have helped reduce fatal unintentional shootings by an average of 23 percent.

However, too few states have CAP laws, and the laws in those states that do have them vary widely. Because youth gun violence is a serious national problem, H.R. 1768 includes a provision that will hold adults criminally responsible if they recklessly disregard the risk that a child will gain access to a gun which is used to cause death or serious injury.

C. Strengthening the Assault Weapons Ban

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In 1994, the Congress and the Administration worked together to enact the Assault Weapons Ban, banning the manufacture and importation of the 19 deadliest assault weapons, copies of those weapons, and large capacity ammunition clips that hold more than 10 rounds of ammunition. In response to the ban, some foreign manufacturers slightly redesigned certain assault weapons in order to circumvent the ban. Last year, the Administration banned the importation of approximately 59 modified assault rifles, because they did not meet the "sporting" test for importation.

Despite these efforts, a significant loophole remains. Although the assault weapons ban prohibits the importation of large capacity ammunition feeding devices that were manufactured after 1994, the ban is virtually unenforceable, because it is tremendously difficult to determine whether the devices that are shipped into this country were manufactured before the ban went into effect. As a result, it is virtually unenforceable. H.R. 1768 includes a proposal – that was also part of the Senate's juvenile justice bill – to ban all imported large capacity ammunition feeding devices that hold more than 10 rounds of ammunition, regardless of when they were manufactured.

D. Giving Law Enforcement Additional Tools to Combat Criminal Misuse of Firearms

When criminals use guns to commit crimes, they should not receive the same penalty as someone who carries out illegal activities unarmed. Therefore, H.R. 1768 gives law enforcement additional tools to crack down on criminals who misuse firearms.

First, the bill will make certain gang-related firearms offenses predicates for RICO. Criminal street gangs and guns go together all too often, and gang members use guns in carrying

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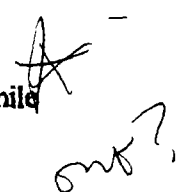
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out all aspects of their illegal activities. This proposal will add a number of firearms offenses to the RICO statute, which prohibits the illegal activities of criminal organizations such as street gangs.

Second, the legislation will increase penalties for firearms conspiracies by making conspiracies to violate the firearms laws punishable by the same maximum term as the underlying substantive offense that was the object of the conspiracy. In other words, if gang members agree to get guns illegally, and any one gang member takes steps to get guns illegally, *all* of the gang members who agreed to the plan can be punished as if they had actually gotten guns.

Third, H.R. 1768 makes gun convictions a predicate for the Armed Career Criminal Act (ACCA). Today, only violent felonies and serious drug offenses are predicate offenses under the ACCA, which imposes a 15-year mandatory minimum prison sentence and is aimed at recidivist violent offenders and narcotics traffickers. This proposal will add prior convictions for being a felon-in-possession to the ACCA when the violator has at least one prior conviction for a violent felony or serious drug offense, so that gun-carrying criminals will be subject to the ACCA's strict terms.

Fourth, H.R. 1768 makes juvenile drug trafficking convictions a predicate for the ACCA. Youthful offenders are increasingly involved in serious drug offenses, and there is a known association between drug crimes and violence. Under this proposal, an adjudication of juvenile delinquency for a serious drug trafficking offense will be a predicate act under the ACCA, subjecting the offender to the ACCA's mandatory minimum prison term of 15 years.



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Fifth, the bill increases the limitations period for National Firearms Act prosecutions.

Under current law, the statute of limitations for violations of the National Firearms Act, which prohibits the unlawful possession of explosive bombs and machineguns, is only three years. H.R. 1768 will extend the statute of limitations to five years, bringing it in line with the general statute of limitations for gun crimes.

Sixth, H.R. 1768 will permit federal law enforcement to forfeit guns that are used in crimes of violence and felonies. In addition, ATF will be able to forfeit additional items (such as drugs and property) that are used in the crimes. Both civil and criminal forfeitures will be available.

E. Combating Illegal Trafficking in Guns

The Clinton Administration has made targeting illegal gun traffickers a law enforcement priority. In 1996, the Administration launched the Youth Crime Gun Interdiction Initiative (YCGII) in 17 cities to trace all crime guns recovered in these cities, and to identify and arrest the traffickers who illegally supply firearms to young people. Since then, the Administration has added an additional 20 cities to the initiative and conducted more than 160,000 crime gun traces for federal, state, and local law enforcement in those cities.

These successes notwithstanding, illegal trafficking in guns remains a serious problem, and H.R. 1768 strikes at the heart of gun trafficking through tough, smart proposals to reduce the sources of illegal guns.

H.R. 1768 restricts handgun purchases to one a month as an effective means to combat demonstrated gun trafficking patterns. Gun traffickers stockpile handguns – which are the

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criminal's gun of choice – and transport them to areas where guns are difficult to obtain and where their sale is most profitable.

A federal one-gun-a-month law will establish nationwide what has been accomplished in the three states that presently restrict handgun sales to one a month. When the citizens of South Carolina, Virginia, and Maryland recognized that traffickers purchased handguns in their state and shipped them elsewhere, the state legislatures moved to limit handgun purchases to one a month. All three states have reported success with their one-handgun-a-month laws.

A federal one-gun-a-month law will eliminate the need for a piecemeal approach to stopping gun trafficking by imposing a uniform rule that will make handguns equally difficult for criminals to obtain in *every* community. Allowing a person to obtain one handgun a month – for a total of 12 handguns in a single year – will not overburden legitimate gun buyers. In those cases in which a person might on occasion have a legitimate need to obtain more than one handgun a month, H.R. 1768 provides exceptions, such as when a person seeks to replace a lost or stolen gun or wishes to acquire an existing collection of firearms.

H.R. 1768 will require licensed firearms dealers to store their firearms inventories securely. “Smash and grab” thefts and large scale burglaries by gun traffickers provide a significant source of firearms to the illegal gun market. To cut down on thefts of firearms from licensed dealers, H.R. 1768 will give ATF the authority to issue regulations requiring licensed dealers to store their firearms inventories securely, just as ATF presently requires explosives dealers to store explosives securely.

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Current law allows ATF to conduct only one inspection of a firearms dealer per year, in the absence of probable cause and a warrant. Limiting ATF in this way means that dealers, once they are inspected, have a "bye" from oversight for the remainder of the year. H.R. 1768 will allow ATF to conduct up to three inspections of firearms dealers annually to ensure that the dealers are complying with the federal background check and record-keeping requirements.

Because traffickers also steal guns when they are in transit and divert the guns to the illegal market, the legislation will require firearms thefts from common carriers to be reported. Specifically, H.R. 1768 will require common carriers to report the theft or loss of a firearm within 48 hours to give law enforcement the chance to prevent the diversion from being completed.

H.R. 1768 clarifies existing law by establishing liability when a firearm is transferred to commit a crime of violence. It is now illegal to transfer a gun to someone who uses it to commit a violent crime or a drug crime if the person transferring the gun "knows" that the gun will be used in a crime. This legislation clarifies that there is liability when the transferor "knows or has reasonable cause to believe" that the gun will be used to commit a violent crime or a drug crime.

H.R. 1768 will improve ATF's tracing ability by requiring federal firearms licensees to report the acquisition of used guns. New guns that are used to commit crimes already can be traced effectively, because the serial number of the gun enables ATF to get information about the retailer who received a new gun from the manufacturer and distributor. ATF can find out from the retailer who bought the gun. In contrast, it is much more difficult to trace used guns, because they often have been through many private transfers before being resold by a licensed retailer or pawnbroker. Under the legislation, licensed dealers will submit reports to ATF about used

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firearms that they acquire, to enable the guns to be traced if they are later used in crime. The information submitted by the dealers to ATF will not include identifying information about private individuals who sell used guns to, or buy them from, licensed dealers; rather, it will be restricted to information identifying the firearm.

Ⓐ Explosives?

II. The Clinton Administration's Law Enforcement Record

Our overall approach to firearms enforcement is based on the following two elements, which work in tandem. First, we have committed federal resources to preventing access to firearms by prohibited persons and deterring and incarcerating violent offenders. Second, we have developed partnerships with state and local authorities who more directly and regularly interact with both the law-abiding and criminal segments of our society, and who make the vast majority of arrests and prosecutions.

Since 1992, the nation's crime rate has dropped by more than 20 percent. Nationally, homicide rates have declined to levels last seen in the 1960s. In certain communities, the integrated efforts of federal, state, and local law enforcement and other community leaders have produced even more dramatic drops in the violent crime rate. In Boston, Massachusetts, for example, collaboration among law enforcement and community leaders through Operation Ceasefire reduced violence by youth gangs and brought down the number of youth homicides 64 percent in three years. In Minneapolis, Minnesota, effective law enforcement and prevention efforts conducted by public-private partnerships have reduced homicides by 30 percent and summertime homicides by 75 percent. And in Richmond, Virginia, effective and coordinated law

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enforcement, including stepped-up enforcement of gun crimes through the program known as "Project Exile," has reduced the homicide rate by more than 30 percent in the last year.

A. The Reduction in Violent Crimes Committed with Firearms

There has also been a sharp decline in the number of violent crimes committed with firearms nationwide. Between 1992 and 1997, there was an overall decrease of 27 percent in the estimated total violent crimes committed with firearms reported by state and local law enforcement agencies to the Federal Bureau of Investigation (FBI). This decrease is depicted in Graph 1. During this same period, homicide with firearms dropped 24 percent; robbery with firearms, 27 percent; and aggravated assault with firearms, 26 percent.

Despite this very good news with respect to firearms violence, the Justice Department and the Treasury Department view the continued reduction of violent crime – including violent crime committed with firearms – as a top priority. The number of people killed with firearms remains extraordinarily high, as more than 34,000 people, including 4,643 people under the age of 20, died as a result of firearms injuries in 1996. In addition, youth gun violence remains at historically high levels, and we must continue to focus special attention on that problem.

B. President Clinton's Directive on Firearms Enforcement

We will continue to work together, and with other federal, state, and local agencies to reduce gun violence. To replicate the best practices occurring throughout the country, we will be developing a coordinated firearms violence reduction strategy as outlined in the Directive issued by President Clinton in March of this year. Our strategy will draw on the proven measures and other innovative approaches being demonstrated by communities throughout the country.

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Through the continued leadership of the United States Attorneys and ATF, we will assure that federally licensed firearms dealers comply with all applicable laws; that crime gun information developed through comprehensive tracing, mapping and analysis is used strategically to identify illegal gun markets, gun hot spots, and illegal gun traffickers; and that illegal possessors, users and traffickers of guns receive appropriate sanctions. Many of the tough and effective crime-fighting strategies focusing on gun violence that have been put in place by local communities are highlighted in a new DOJ Report, entitled "Promising Strategies to Reduce Gun Violence," which was released by the President in March. The report, which is [described in the attached fact sheet, see Attachment C,] summarizes and analyzes 60 such local strategies, including those to which we refer in this statement. [refer to /attach helen and don's stmt from senate hg]

We believe that the most effective strategies will be *coordinated* efforts in which federal prosecutors and investigators team up with state and local prosecutors and investigators, as well as other community leaders, to determine what prevention and intervention methods will work best, and which available sanctions are most appropriate. Given the uniquely federal system of government in the United States, no crime reduction strategy can ignore the fact that the vast majority of the violent crime in our country falls within the jurisdiction of state and local agencies or that the vast majority of resources to fight crime are provided by state and local governments. Current federal enforcement strategies and programs are based on this understanding.

In some areas, of course, such as multi-district trafficking in drugs, weapons, or aliens, crime must be attacked primarily at the federal level. In most other areas, including where state and local governments have primary responsibility, the federal government is most helpful to the

Our unprecedented
level of resources
committed to
DOJ

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extent it provides leadership, support, statutory tools, and coordination. In the area of firearms enforcement, the federal government also has important responsibilities in the regulatory area, ensuring compliance with laws governing the manufacture, distribution, and sale of firearms.

C. Developing an Integrated Strategy on Firearms and Violent Crime

In the past few years, federal, state and local law enforcement have collaborated in numerous violent crime task forces and specially targeted initiatives. These collaborative efforts, including the Justice Department's Anti-Violent Crime Initiative (AVCI), provide for greater flexibility at the district level to develop firearms and violent crime prosecution strategies in coordination with state and local prosecutors, consistent with the enforcement and investigative programs that ATF has put in place to better support locally designed initiatives.

The Justice Department introduced the AVCI in 1994, broadening the national violent crime focus from one emphasizing firearms violations alone to one that strategically targets violent crime as manifested in local communities. The AVCI has generated an increased focus on gangs and other violent crime enterprises that frequently involve firearms violations. This expanded focus has yielded cases that are more difficult to develop but which can have a greater impact on community safety. For example, successful prosecutions have been brought against major gangs such as the Latin Kings in the East and the Gangster Disciples in the Midwest.

To provide a solid investigative base for prosecution strategies, ATF has developed an overall enforcement strategy that has three dimensions. First, ATF attacks armed violent crime through direct intervention, arresting criminals who misuse firearms. Second, ATF attacks violent crime on the supply side, by identifying and arresting individuals illegally supplying firearms to

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criminals and juveniles. Third, ATF seeks to forestall criminal diversion from the legal to the illegal market through regulatory enforcement measures. Each of these three components is essential. Removing the most violent offenders from society is a primary responsibility. Eliminating the flow of firearms to violent criminals, gang offenders, and juveniles will reduce the overall violent crime rate as well as the armed violent crime rate. Effective regulatory enforcement will lessen the burden on the criminal justice system.

To carry out these strategies, ATF relies on close working relationships with state and local law enforcement departments throughout the country as well as with United States Attorneys and local prosecutors. Close cooperation takes a variety of forms. For instance, state and local law enforcement are currently tracing nearly 200,000 crime guns annually with ATF, receiving back information on potential traffickers. The trafficking information then is analyzed and acted upon by joint task forces, in cooperation with U.S. Attorneys and local prosecutors. For example, in Philadelphia, a straw purchaser and gun trafficker conspired to purchase over 50 semiautomatic rifles, high-powered ammunition, and accessories. Through tracing, one of the rifles was linked to a homicide and the trafficker had given a number of the other guns to a convicted felon, drug dealers, and a juvenile. The defendant was convicted on all counts, including gun trafficking and possession of a firearm in a school zone. The felon-trafficker received a sentence of over 11 years, while the straw purchaser was sentenced to four years in prison.

The Justice Department and the Treasury Department expect to build on these successful strategies by helping more communities develop strategies and solutions that take into account the

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specific elements of the gun violence problem as experienced by those communities. Our United States Attorneys and ATF Special Agents in Charge will rigorously analyze their local crime problems and determine the most sensible and efficient allocation of their resources based on those problems. Because no single formula for combating gun violence works in all, or even most, settings, it would be a mistake for the Administration to mandate the use of any particular formula across the country, and such an attempt might significantly hamper the ability of the United States Attorneys and ATF to combat all the diverse aspects of violent crime.

Any effort that does not consider the appropriate roles of the respective levels of government runs the risk of shifting cases that can be handled effectively at the local and state level to the federal level, with significant opportunity and financial costs. Substantial opportunity costs are incurred when federal resources that could be used to combat uniquely federal crimes – like interstate gun trafficking – are used instead on cases that could be handled effectively by state and local authorities.

D. The Increase in Overall Firearms Prosecutions

On a combined basis, federal, state, and local firearms prosecutions have steadily increased since 1992, as the number of violent crimes committed with firearms has sharply declined. Although the total number of federal firearms cases decreased between 1992 and 1998, that decrease in federal cases does not mean that criminals are avoiding prosecution or receiving shorter sentences. The federal, state, and local law enforcement systems are coordinating more closely, and federal agents and prosecutors are focusing greater attention on higher-level firearms

*Do higher penalties
at state level?*

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offenders. At the same time, many states have increased enforcement efforts and/or penalties for firearms offenders.

Data from the Administrative Office of the U.S. Courts suggests that much of the decline in federal firearms prosecutions between 1992 and 1997 occurred among lower-level offenders who received sentences of probation up to imprisonment for less than 3 years, while the number of higher-level federal firearms offenders — those who received prison sentences of 5 years or more — has increased more than 25 percent. See Graph [whatever].

Between 1992 and 1996 — when most of the decline in federal firearms prosecutions occurred — state prosecutions of weapons offenders increased sharply, more than offsetting the federal decline. See [whatever] Moreover, most of the additional state weapons offenders received prison or jail sentences. See [whatever]

CONCLUSION

It is time for this nation to stand strong against gun violence. We must heed the voices of the local beat cop, the corner grocer, and parents of high school students, who have felt the devastating impact of gun violence. At the same time, we must take note of the children whose voices have been silenced by gun violence — in Littleton and throughout the country. The call to action and the deafening silence of the children combine to create a call to action. We can not afford to wait any longer.

Attachments

number 6 in attachment budget

**FIREARMS ENFORCEMENT IN AMERICA:
INCREASED COORDINATION AND MORE RESULTS**

Crime is down. There has been an historic reduction in crime over the past six years. Homicides have dropped by 30%. Violent crimes committed with guns - including homicides, robberies, and aggravated assaults - fell by 27% over the same period. The streets of America are safer than they have been in over three decades. However, the number of people killed with firearms and youth gun violence remain unacceptably high.

Firearms enforcement strategy. The significant reductions in crime that have been achieved resulted in part from a balanced law enforcement strategy focused on reducing violent crime and denying criminals access to firearms. We need to build upon this strategy, which involves a coordinated approach that includes both prevention and enforcement.

Prevention

- By keeping guns out of the hands of felons, juveniles and other prohibited persons, we stop gun violence from occurring in the first place. Effective prevention requires that we focus on methods to prevent firearms from being obtained by criminals. The Brady requirements are an important prevention tool. Since the Brady law first went into effect, over 250,000 individuals have been denied the opportunity to purchase a firearm.
- Currently, there is no requirement that background checks be performed or records of sales kept when unlicensed persons sell firearms at gun shows. There are more than 4,000 gun shows per year in the United States and 25 to 50 percent of the up to 2,000 vendors at these shows are unlicensed.
- By extending the background check requirement to all purchases made at gun shows, we will close a loophole available to felons who are attempting to purchase firearms.

Enforcement

- As a part of our enforcement approach, ATF has focused its investigative efforts on the firearms violations which have maximum impact: eliminating the flow of firearms to violent criminals, gang offenders and juveniles.
- To accomplish this, ATF investigates, arrests and refers for prosecution firearms traffickers and violent criminals who violate firearms laws, and also uses its regulatory enforcement authority to detect violations by Federal Firearms Licensees.
- As part of its enforcement efforts, ATF has:
 - increased the number of crime guns traced from 55,000 in 1993 to approximately 200,000 in 1998,
 - forwarded over 20,000 firearms cases involving over 34,500 defendants for Federal, state or local prosecution between 1994 and 1998,

- ▶ recovered over 91,000 guns used to commit crimes between 1994 and 1998,
 - ▶ provided assistance to countless Federal, state and local agencies in solving gun crimes,
 - ▶ developed the Youth Crime Gun Interdiction Initiative (YCGII) an innovative program now in 37 cities aimed at identifying the source of firearms to America's youth. Since 1996, ATF has investigated approximately 650 juveniles and youth-related illegal firearms trafficking cases involving approximately 26,000 illegally trafficked firearms.
- Firearms trafficking investigations have the greatest potential for reducing violent crime. By taking hundreds of guns at a time off the streets, the number of weapons available for sale to criminals who commit violent crimes is greatly reduced. Throughout the time that firearms traffickers are incarcerated they are not free to traffick more guns or commit more violent crimes. This multiplies the impact of the trafficking investigation and has the greatest potential for reducing violent crime.

Firearms prosecutions are up. Federal state and local law enforcement authorities are working more closely than ever before to combat gun violence through comprehensive strategies that target the people who do the most damage, including gun traffickers.

- High-level firearms offenders (those sentenced to 5 or more years) are up by nearly 30 percent since 1992 (from 1,049 to 1,345).
- Combined Federal and state convictions are up dramatically - in 1997 nearly 25 percent more criminals were convicted on state and Federal weapons offenses than in 1992 (from 30,243 to 36,370).

Other Accomplishments

- The Assault Weapons Ban has cut off supplies of 19 different deadly automatic weapons.
- Over the last two years, under the Gun Free Schools Act, 6,000 students have been expelled from school and reported to the juvenile authorities for bringing firearms onto school property.

Results speak for themselves. In short, the increased collaboration among Federal, state and local law enforcement has resulted in: 1) a more efficient distribution of prosecutorial responsibilities; 2.) a steady increase in firearms prosecutions on a cumulative basis and, most importantly, 3.) a sharp decline in the number of violent crimes committed with guns.

Fact Sheet on ATF Case Summaries

(Note: Still awaiting DOJ clearance)

The ATF case summaries are intended to serve as examples of the current enforcement efforts of ATF. They represent only a tiny sample of the thousands of firearms cases that ATF forwards for prosecution each year to federal, state, and local authorities. The case summaries address five types of cases that ATF investigates: sales or transfers of firearms to juveniles and youths; sales of firearms at gun shows and swap meets; sales involving pawn shops; sales at gun stores; and cases involving armed career criminals. These five case types demonstrate the variety of ways that it is possible to acquire and to traffic in firearms illegally.

- Sales or Transfers of Firearms to Juveniles and Youths

ATF agents learned that a 12-year old boy purchased a firearm at a grocery store in a remote area of Eastern Kentucky. ATF subsequently seized 154 firearms from the seller, four of which were identified as having previously been stolen. The seller admitted to dealing over 500 firearms illegally at local flea markets and at gun shows in Kentucky, Tennessee, Ohio, and Oklahoma. The seller pled guilty in February 1999 to dealing in firearms without a license. He is currently awaiting sentencing.

- Sales of Firearms at Gun Shows and Swap Meets

An El Paso, Texas individual bought and sold numerous firearms at gun shows throughout Texas, Arizona, Nevada, and New Mexico. The individual also conspired with Federal Firearms Licensees (FFLs) to supply him additional weapons by acting as straw purchasers. One of the straw purchaser FFLs provided the trafficker with over 800 firearms. The trafficker admitted to engaging in over 1600 firearm transactions, and stated that he had supplied over 1200 firearms to the Amado Carillo Fuentes narcotics trafficking organization which is based in Mexico. The trafficker pled guilty and was sentenced to 78 months in prison in March 1998.

- Sales of Guns Involving Pawn Shops

A New Jersey resident purchased 20 firearms from a pawn shop in Florida, and transported the weapons back to New Jersey for resale. The purchaser had used nine aliases to acquire the weapons. At least four of the firearms were used in violent crimes. One was used during a shootout with Newark, NJ police officers, and another was recovered during the investigation of the shooting of a New York City Police Captain. The purchaser pled guilty to the possession of a firearm as a fugitive from justice and to making false statements in the purchase of firearms. He was sentenced to 12 months in prison in September 1997.

- Sales of Guns at Gun Stores

In August 1997, a 22-year old Milwaukee, Wisconsin woman walked into a gun store and ordered six handguns as a straw purchaser. Federal authorities believed that the guns were intended for members of the 118th Street East Coast Crips gang, who were also involved in

shipping narcotics to Milwaukee and other cities from Los Angeles. The straw purchaser admitted that she had purchased the guns to a man to whom she owed money. When she could not repay her debt, the man asked her to purchase the firearms as a way to repay her debt. She was sentenced to 18 months in prison for making false statements in connection with the purchase of the firearms.

- Cases Involving Armed Career Criminals

Two previously convicted felons with extensive criminal records set-up a 15 year old to run a drug house in Fort Worth, Texas. The felons provided the 15 year old with firearms and narcotics, and instructed the youth in how to fire the weapon if someone attempted to rob him. The 15-year old shot and killed his 7-year old friend who surprised him by entering the back door. The adults were convicted of various offenses, including federal firearm violations, and were sentenced in October 1998 as armed career criminals to terms of 425 months and 295 months in prison.

Total Pages: 8

LRM ID: REJ81

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, May 5, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference
OMB CONTACT: Ronald E. Jones
PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: JUSTICE Testimony on Firearms Offenses

DEADLINE: 5:00 PM Tuesday, May 6, 1997



In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This testimony is for a Senate Judiciary Committee hearing on Thursday, May 8th.
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LRM ID: REJ81 SUBJECT: JUSTICE Testimony on Firearms Offenses

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

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Branch-Wide Line (to reach legislative assistant): 395-3454

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 _____ (Telephone)

The following is the reponse of our agency to your request for views on the above-captioned subject:

Concur

No Objection :

No Comment

See proposed edits on pages _____

Other: _____

FAX RETURN of _____ pages, attached to this response sheet

DRAFT

TESTIMONY OF KEVIN DI GREGORY, DEPUTY ASSISTANT ATTORNEY GENERAL,
CRIMINAL DIVISION, DEPARTMENT OF JUSTICE
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY

Mr. Chairman and members of the Committee, my name is Kevin Di Gregory. I am a Deputy Assistant Attorney General in the Department of Justice Criminal Division. It is truly a privilege for me to appear before you today and I welcome the opportunity to discuss with you a number of issues relating to our ability to prosecute and punish dangerous offenders who abuse firearms, particularly those who employ firearms to effectuate violent criminal activities and drug distribution.

Title 18 U.S.C. § 924(c) makes subject to a mandatory minimum punishment beyond that imposed for the predicate crime whoever "uses or carries a firearm" during and in relation to a crime of violence or a drug trafficking crime. Prior to the Supreme Court's 1996 term, the federal appellate courts broadly construed the term "uses" in that statute to embrace not only instances where the defendant brandished, fired or displayed a firearm during a crime of violence or drug trafficking offense, but also those where the defendant kept a firearm available to provide security for the transaction, its fruits or proceeds, or was otherwise "emboldened" by its presence in the commission of the offense. Under this interpretation of the term, "use" could be inferred from the presence of a firearm in proximity to narcotics, drug proceeds or a drug trafficking transaction. Likewise, the strategic placement of a firearm in a room or building used as a drug distribution or processing center would constitute "use" within the meaning of

Section 924(c) under what some appellate courts termed the "drug fortress" theory.

In Bailey v. United States, 116 S.Ct. 501 (1995), the Supreme Court, reversing the en banc District of Columbia Circuit, rejected this line of analysis. Reasoning that such a broad construction of the term "uses" leaves no role for the "carries" prong of a § 924(c) offense, the Bailey Court concluded that Congress must have intended "uses" "to reach only situations where the firearm was actively employed during commission of the crime."

As a consequence of this narrow judicial construction, the "uses" prong of the statute now applies only to instances where a defendant brandishes, displays, fires or attempts to fire a firearm in the commission of a crime of violence or drug trafficking crime, uses a firearm as an item of barter or, perhaps, refers to the presence of a firearm to facilitate such an offense. As a result, the statute no longer embraces situations where the defendant employs a firearm to facilitate a drug trafficking crime by keeping it available to safeguard the transaction or its proceeds or otherwise to embolden him in the pursuit of his unlawful activities.

The Committee has asked me to discuss three legislative proposals, including an Administration proposal, that are now pending in the Senate to return the coverage of Section 924(c) to embrace such activities. All three -- which we support in principle -- share the common feature that they predicate culpability under that statute upon possession of a firearm in

relation to the underlying offense, and thus eliminate the requirement of the Bailey Court that the firearm be actively employed by the offender in some particular way.

Permit me briefly to comment upon each of these proposals and compare them to one another. The legislation proposed by the Administration (S.362) simply substitutes for the phrase "uses or carries" a firearm the phrase "possesses a firearm." In contrast, both the legislation proposed by Senator Hatch (S. 3) and the legislation proposed by Senators Helms and DeWine would add to the "uses or carries" formulation the term "possesses." Thus, the operative language would make punishable whoever "uses, carries, or possesses a firearm" during and in relation to a federal crime of violence or a drug trafficking offense.

In our view, the term "possesses" covers virtually all the situations to which the federal courts applied § 924(c) prior to Bailey. It is both broad in scope and well defined in federal firearms jurisprudence. It applies to both actual and "constructive" possession, that is instances where, although the defendant does not have actual possession of a firearm, he has the ability to exercise dominion and control over a firearm either directly or through others. The scope of "actual possession" is exemplified by decisions holding that a firearm found in the trunk of a defendant's automobile or at his residence was, for purposes of the felon in possession statute, in his possession. The courts have held that "constructive possession" of a firearm by a defendant includes instances in which he or she was capable of

exercising dominion or control over it through other participants in a criminal scheme. Given the expansive breadth of the term "possesses, we do not believe that, if the statute is amended to employ that term, it needs to contain the former terms "uses or carries" as well. Both are plainly embraced by the legal concept of possession. Furthermore, while the risk is not great, there is some possibility that, if the term "possesses" is contained as part of a series of other qualifying terms, some courts, applying a canon of construction known as "ejusdem generis," may construe it more narrowly than the law would otherwise permit.

The Administration proposal, as well as both the Helms and Hatch, proposals provide for a mandatory 10 year enhanced penalty beyond those for mere possession where a defendant actually discharges a firearm during the course of a crime. In addition, our proposal would impose an identical enhancement where a firearm is used to cause serious bodily injury, such as the not uncommon instances where a firearm is used as a club or a bludgeon. We commend this added feature for the Committee's consideration.

Permit me to comment briefly on several aspects of the identical sentencing provisions in the formulations submitted by Senator Helms and Senator Hatch, and the impact that have on current law. First -- and perhaps most significant -- under current law, the death penalty may be imposed for a violation of § 924(c) "if the killing is a murder as defined in 18 U.S.C. § 1111. See 18 U.S.C. 924(i)(1). Thus, in order for a federal offense that is committed by the use of a firearm and results in death to be

eligible for the death penalty, the government must be able to prove that the homicide would constitute premeditated murder or fall within the felony murder doctrine under 18 U.S.C. § 1111(a). In contrast, the revision to the sentencing structure under Section 924(c) proposed by Senators Helms and Hatch would permit imposition of the death penalty "if the death of any person results." In serious federal homicide cases perpetrated by means of a firearm, this formulation would relieve the government of the burden of proving premeditation or that the killing was committed during one of the felonies enumerated in Section 1111(a). While it is Department policy to carefully circumscribe the cases in which the death penalty is sought, this revision would furnish us a valuable sentencing tool in some particularly aggravated homicide cases that do not otherwise constitute capital murder. We also note that this formulation does not relieve the government of establishing one of the constitutionally-mandated states of mind for imposition of the death penalty. 18 U.S.C. § 3591 requires proof by the government of one of these mental states before a sentencer can further consider imposition of the death penalty.

Second, at present, under Section 924(c), a second offender is subject to a 20 year consecutive term. Both the Helms and the Hatch amendments would revise this mandatory term upwards to 25 years' imprisonment. We fully support this revision.

Finally, the extant version of Section 924(c) provides that recidivist offenders who commit a crime of violence or drug trafficking crime by means of a machinegun, destructive device or

a firearm equipped with a silencer will be sentenced "to life imprisonment without release." Both the Helms and Hatch formulations omit the phrase "without release." We do not, however, consider this as significant in view of the fact, under current sentencing law, life sentences mean almost literally that the defendant will spend the rest of his life in prison.

This concludes my prepared statement. I would be pleased to answer any questions that you may have.