

official, the Attorney General, and each such law enforcement agency shall take any appropriate action to ensure compliance.

(l) DEVELOPMENT AND AVAILABILITY OF REGISTRY MANAGEMENT AND WEBSITE SOFTWARE.—

(1) DUTY TO DEVELOP AND SUPPORT.—The Attorney General shall, in consultation with the jurisdictions, develop and support software to enable jurisdictions to establish and operate uniform arsonist registries and Internet sites.

(2) CRITERIA.—The software described in paragraph (1) should facilitate—
(A) immediate exchange of information among jurisdictions;

(B) access over the Internet to appropriate information, including the number of registered criminal arsonists in each jurisdiction on a current basis;

(C) full compliance with the requirements of this section; and

(D) communication of information as required under subsection (j).

(3) DEADLINE.—The Attorney General shall make the first complete edition of this software available to jurisdictions not later than two years after the date of the enactment of this Act.

(m) PERIOD FOR IMPLEMENTATION BY JURISDICTIONS.—

(1) DEADLINE.—To be in compliance with this section, a jurisdiction shall implement this section before the later of—

(A) three years after the date of the enactment of this Act; or

(B) one year after the date on which the software described in subsection (l) is made available to such jurisdiction.

(2) EXTENSIONS.—The Attorney General may authorize not more than two one-year extensions of the deadline under paragraph (1).

(n) FAILURE OF JURISDICTION TO COMPLY.—

(1) IN GENERAL.—For any fiscal year after the deadline described in subsection (m), a jurisdiction that fails, as determined by the Attorney General, to substantially implement this section shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).

(2) STATE CONSTITUTIONALITY.—

(A) IN GENERAL.—When evaluating whether a jurisdiction has substantially implemented this section, the Attorney General shall consider whether the jurisdiction is unable to substantially implement this section because of a demonstrated inability to implement certain provisions that would place the jurisdiction in violation of its constitution, as determined by a ruling of the jurisdiction's highest court.

(B) EFFORTS.—If the circumstances arise under subparagraph (A), then the Attorney General and the jurisdiction involved shall make good faith efforts to accomplish substantial implementation of this section and to reconcile any conflicts between this section and the jurisdiction's constitution. In considering whether compliance with the requirements of this section would likely violate the jurisdiction's constitution or an interpretation thereof by the jurisdiction's highest court, the Attorney General shall consult with the chief executive and chief legal officer of the jurisdiction concerning the jurisdiction's interpretation of the jurisdiction's constitution and rulings thereon by the jurisdiction's highest court.

(C) ALTERNATIVE PROCEDURES.—If a jurisdiction is unable to substantially implement this section because of a limitation imposed by the jurisdiction's constitution, the Attorney General may determine that the jurisdiction is in compliance with this section if the jurisdiction has made, or is in the process of implementing, reasonable alternative procedures or accommodations, which are consistent with the purposes of this section.

(D) FUNDING REDUCTION.—If a jurisdiction determined to be in compliance under subparagraph (C) does not comply with the alternative procedures or accommodations described in such subparagraph, then the jurisdiction shall be subject to a funding reduction as specified in paragraph (1).

(3) REALLOCATION.—Amounts not allocated under a program referred to in this subsection to a jurisdiction for failure to substantially implement this section shall be reallocated under that program to jurisdictions that have not failed to substantially implement this section or may be reallocated to a jurisdiction from which they were withheld to be used solely for the purpose of implementing this section.

(4) RULE OF CONSTRUCTION.—The provisions of this section that are cast as directions to jurisdictions or their officials constitute, in relation to States, only

conditions required to avoid the reduction of Federal funding under this subsection.

(o) ELECTION BY INDIAN TRIBES.—

(1) ELECTION.—

(A) IN GENERAL.—A federally recognized Indian tribe may, by resolution or other enactment of the tribal council or comparable governmental body, elect to carry out this subtitle as a jurisdiction subject to its provisions.

(B) IMPLEMENTATION.—If a tribe does not, within one year of enactment of this Act, make an election to take on these duties, it shall, by resolution or other enactment of the tribal council or comparable governmental body, enter into a cooperative agreement to arrange for a jurisdiction to carry out any function of the tribe under this Act until such time as the tribe elects to carry out this Act.

(2) COOPERATION BETWEEN TRIBAL AUTHORITIES AND OTHER JURISDICTIONS.—

(A) NONDUPLICATION.—A tribe subject to this subtitle is not required to duplicate functions under this subtitle which are fully carried out by another jurisdiction or jurisdictions within which the territory of the tribe is located.

(B) COOPERATIVE AGREEMENTS.—A tribe may, through cooperative agreements with such a jurisdiction or jurisdictions—

(i) arrange for the tribe to carry out any function of such a jurisdiction under this subtitle with respect to arsonists subject to the tribe's jurisdiction; and

(ii) arrange for such a jurisdiction to carry out any function of the tribe under this subtitle with respect to arsonists subject to the tribe's jurisdiction.

(3) LAW ENFORCEMENT AUTHORITY IN INDIAN COUNTRY.—Enforcement of this Act in Indian country, as defined in section 1151 of title 18, United States Code, shall be carried out by Federal, Tribal, and State governments under existing jurisdictional authorities.

(p) IMMUNITY FOR GOOD FAITH CONDUCT.—The Federal Government, jurisdictions, political subdivisions of jurisdictions, and their agencies, officers, employees, and agents shall be immune from liability for good faith conduct under this section.

(q) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts otherwise authorized to be appropriated, there are authorized to be appropriated to the Attorney General, to carry out subsections (h) and (i) of this section, such sums as may be necessary for each of the fiscal years 2008 through 2013.

SEC. 3. CRIMINAL ARSONIST MANAGEMENT ASSISTANCE PROGRAM.

(a) IN GENERAL.—The Attorney General shall establish and implement a Criminal Arsonist Management Assistance program (in this section referred to as the “Assistance Program”), under which the Attorney General may award a grant to a jurisdiction to offset the costs of implementing section 2.

(b) APPLICATION.—The chief executive of a jurisdiction desiring a grant under this section shall, on an annual basis, submit to the Attorney General an application in such form and containing such information as the Attorney General may require.

(c) BONUS PAYMENTS FOR PROMPT COMPLIANCE.—A jurisdiction that, as determined by the Attorney General, has substantially implemented section 2 not later than two years after the date of the enactment of this Act is eligible for a bonus payment. The Attorney General may make such a payment under the Assistance Program for the first fiscal year beginning after that determination. The amount of the bonus payment shall be as follows:

(1) In the case of a determination that the jurisdiction has substantially implemented such section by a date that is not later than the date that is one year after the date of the enactment of this Act, 10 percent of the total received by the jurisdiction under the Assistance Program for the preceding fiscal year.

(2) In the case of a determination that the jurisdiction has substantially implemented such section by a date that is later than one year after the date of the enactment of this Act, but not later than the date that is two years after such date of enactment, 5 percent of such total.

(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts otherwise authorized to be appropriated, there are authorized to be appropriated to the Attorney General, to be available only for the Assistance Program, such sums as may be necessary for each of the fiscal years 2008 through 2013.

SEC. 4. DEFINITIONS.

For purposes of this Act:

(1) CRIMINAL ARSONIST.—The term “criminal arsonist” means an individual who is convicted of any criminal offense for committing arson in violation of the laws of the jurisdiction in which such offense was committed or the United States.

(2) ARSONIST REGISTRY.—The term “arsonist registry” means a registry of criminal arsonists, and a notification program, maintained by a jurisdiction.

(3) CRIMINAL OFFENSE.—The term “criminal offense” means a State, local, tribal, foreign, or military offense (to the extent specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105–119 (10 U.S.C. 951 note)) or other criminal offense.

(4) EMPLOYEE.—The term “employee” includes an individual who is self-employed or works for any other entity, whether compensated or not.

(5) FIRE SAFETY OFFICER.—The term “fire safety officer” means—

(A) a firefighter, as such term is defined in section 1204 of the Omnibus Crime Control and Safe Street Act of 1968 (42 U.S.C. 3796b); or

(B) an individual serving in an official capacity as a firefighter, fire investigator, or other arson investigator, as defined by the jurisdiction for the purposes of this Act.

(6) JURISDICTION.—The term “jurisdiction” means any of the following:

(A) A State.

(B) The District of Columbia.

(C) The Commonwealth of Puerto Rico.

(D) Guam.

(E) American Samoa.

(F) The Northern Mariana Islands.

(G) The United States Virgin Islands.

(H) To the extent provided and subject to the requirements of section 2(o), a Federally recognized Indian tribe.

(7) LAW ENFORCEMENT OFFICER.—The term “law enforcement officer” has the meaning given such term in section 1204 of the Omnibus Crime Control and Safe Street Act of 1968 (42 U.S.C. 3796b)).

(8) RESIDES.—The term “resides” means, with respect to an individual, the location of the individual’s home or other place where the individual habitually lives.

(9) STUDENT.—The term “student” means an individual who enrolls in or attends an educational institution (whether public or private), including a secondary school, trade or professional school, and institution of higher education.



Mr. SCOTT. According to the United States Fire Administration, arson is the leading cause of fire in the United States, causing over 2,000 injuries and 400 deaths annually. This also results in an annual \$1.4 billion in property damage.

It is one of the most difficult crimes to prosecute, with only 16 percent of the cases resulting in arrest and only 2 percent resulting in a conviction.

Although arson places a tremendous cost in property and lives every year, there is no national registry requiring convicted arsonists to notify law enforcement of their residence, place of employment or other information that would aid law enforcement in identifying offenders with a demonstrated proclivity to committing arson offenses.

To aid law enforcement in identifying criminal activity related to arson, the gentlelady from California, Ms. Bono, introduced H.R. 1759, the “MATCH Act of 2007,” which would establish a comprehensive nationwide network registry database maintained by the attorney general that would track convicted arsonists.

The bill has 52 co-sponsors with broad bipartisan support and would mandate convicted arsonists to register in each jurisdiction

in which he or she resides, as an employee or as a student at an educational institution.

Proponents of 1759 believe that with such information law enforcement authorities would be able to identify those who have a demonstrated proclivity toward arson and are residing, working or studying in the area in which an arson fire occurs.

In turn, law enforcement authorities could solve more arson crimes and possibly prevent them because potential arsonists would know that they are registered with the local authorities and would immediately fall under suspicion.

The result would presumably be a reduction of the toll on property and on lives that arson takes on the United States.

On the other hand, opponents of H.R. 1759 object to the bill on a number of constitutional and policy-based grounds. First, opponents find that the bill violates separations of power by impermissibly delegating legislative authority to the attorney general.

Opponents also find that H.R. 1759 could lead to violations of the ex post facto clause of the Constitution, and the bill would exceed Congress' authority under the commerce clause.

Further, they believe that the bill would be an improper exercise of Congress in spending power; and finally, that the bill is broader than necessary to accomplish the valid law enforcement purposes.

And without objection, I would like to introduce into the record a letter written to the full Committee by Federal public defender Thomas Hillier of the Western District of Washington, that details the opposition concerns.

[The information referred to follows:]

**FEDERAL PUBLIC DEFENDER
Western District of Washington**

*Thomas W. Hillier, II
Federal Public Defender*

November 5, 2007

House Judiciary Committee

John Conyers, Jr., Chair
Lamar S. Smith, Ranking Member
Robert C. Scott, Chair, Subcommittee on
Crime, Terrorism and Homeland Security
J. Randy Forbes, Ranking Member,
Subcommittee on Crime, Terrorism and
Homeland Security

House of Representatives

Nancy Pelosi, Speaker
Steny H. Hoyer, Majority Leader
John A. Boehner, Republican Leader

James E. Clyburn, Majority Whip
Roy Blunt, Republican Whip

Re: **"MATCH" Act of 2007 (HR 1759)**

Dear Representatives:

Federal Public and Community Defenders have been asked for their views on HR 1759. This letter responds to that invitation. We oppose the bill. It is unnecessary and it violates the Separation of Powers. It would recreate the chaos that followed the recent surrendering of legislative power to the Attorney General in the Sex offender Registration and Notification Act. Over the past fifteen months, the Attorney General has used the legislative power ceded to him by the 109th Congress to promulgate regulations and bring criminal prosecutions against sex offenders that have been held by numerous courts to violate the Constitution. Based on this track record, the 110th Congress should not follow the same unwise and unconstitutional path.

Further, there is no Commerce Clause authority to require individuals to register for state arson offenses, or to require the States to implement such a registry. There is no constitutional authority for directing States to enact a criminal law. The bill is an invalid exercise of the spending power and would violate the Tenth Amendment. Finally, even in the unlikely event that all of these problems could be fixed, the bill is broader than necessary to accomplish valid law enforcement purposes.

By all appearances, HR 1759 is a hasty response to the recent forest fires in California, none of which has been confirmed to have been the result of arson. To our knowledge, the only confirmed instance of involvement by a human being is a ten-year-old boy who accidentally started a fire while playing with matches. At minimum, Congress should take the time to determine, based on full and accurate information, whether arson is a problem on such a scale to support the extraordinary step of requiring the States to establish, administer and pay for yet another federal registry program. If so, the bill is in need of extensive revision to pass constitutional muster.

**THE BILL VIOLATES THE SEPARATION OF POWERS BY SURRENDERING
LEGISLATIVE POWER TO THE ATTORNEY GENERAL, AND THEREBY
THREATENS THE FUNDAMENTAL RIGHTS OF ALL AMERICANS.**

“Congress is manifestly not permitted to abdicate or to transfer to others the essential legislative functions with which it is [constitutionally] vested.” *Panama Refining Co. v. Ryan*, 293 U.S. 388, 421 (1935). It was “the central judgment of the Framers of the Constitution that, within our political scheme, the separation of governmental powers into three coordinate Branches is essential to the preservation of liberty.” *Mistretta v. United States*, 488 U.S. 361, 380 (1989).

The power to decide whether a law has retroactive effect may *only* be exercised by Congress. See *INS v. St. Cyr*, 533 U.S. 289, 316 (2001); *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). In Section 2(b)(4), the bill imitates the Sex Offender Registration and Notification Act of 2006 (SORNA), in which the 109th Congress handed over its power to decide whether the law was retroactive to the Attorney General (AG). The AG has abused that power by promulgating regulations and bringing prosecutions in violation of the *Ex Post Facto* and Due Process Clauses. Because the courts have struck down the resulting prosecutions on those and other grounds, they did not have to reach the “substantial arguments that Congress impermissibly delegated its power to establish retroactive laws in violation of the nondelegation doctrine.” *United States v. Kapp*, 487 F. Supp. 2d 536, 543 n.10 (M.D. Pa. 2007); see also cases cited in footnote 3. This bill directly presents the Separation of Powers violation.

In numerous other sections, the bill violates Separation of Powers as either a “pure delegation” of legislative power to the AG or an “excessive delegation” due to the absence of any intelligible standard which the AG is directed to follow. *Mistretta v. United States*, 488 U.S. 361, 372 (1989); *id.* at 420 (Scalia, J., dissenting). In doing so, the bill ensures that the constitutional rights of American citizens will be violated. For example:

- Secs. 2(h)(1) and 2(i) suggest that the AG can require persons to register who were not convicted of a criminal arson offense, though no direction is given as to who those people might be. The Executive has classified individuals as sex offenders and violent offenders in the past even without any congressional suggestion that it may do so, thus engaging in unauthorized lawmaking.¹

¹ See *Henrikson v. Guzik*, 249 F.3d 395 (5th Cir. 2001) (BOP engaged in unauthorized lawmaking by notifying local jurisdiction under 4042(b)(3) of release of prisoner serving federal felon in possession sentence based on 1977 conviction for a crime of violence); *Fox v. Lappin*, 409 F. Supp.2d 79 (D. Mass. 2006) (BOP engaged in unauthorized lawmaking by notifying local jurisdiction under section 4042(c) of release of prisoner serving federal felon in possession sentence based on 1981 state sex offense); *Simmons v. Nash*, 361 F.Supp.2d 452 (D.N.J. 2005) (BOP engaged in unauthorized lawmaking by notifying local jurisdiction under section 4042(c) of release of prisoner serving federal drug sentence based on 1983 state offense of attempting to promote adult prostitution).

- Sec. 2(j)(1) would give the AG the unlimited authority to include information not only in the National Arsonist Registry, but in *any* “other appropriate databases,” not specified by Congress but as determined by the AG in his sole discretion. Congress should not give the AG unfettered authority to create and use general criminal profiling in unspecified and unknown databases, as this suggests.
- Sec. 2(a)(2) would give the AG unlimited authority to “interpret” the bill. Interpretation of statutes is a judicial function. The Executive may only implement statutes to carry out executive functions and may not stray from congressional directives in doing so.
- Secs. 2(c)(1)(G) and 2(c)(2)(G) would give the AG the absolute authority to “require” individuals to provide, and jurisdictions to include “[a]ny other information” not specified by this Congress. The same authority was given to the AG in the SORNA. As a result, the AG has published a “guideline” requiring sex offenders to provide, and jurisdictions to collect, a plethora of information, including, for example, the person’s vacation itinerary, any professional licensing, and any “designations” for purposes of “routing or self-identification” in telephone or Internet communications.² The collection of this information is costly and time-consuming for the States, and would certainly be an unwarranted invasion of privacy if adopted for persons convicted of arson, or, as Secs. 2(h)(1) and 2(i) suggest, any other offense determined by the AG.

THE BILL WOULD PERMIT STATE PROSECUTIONS IN VIOLATION OF THE *EX POST FACTO* CLAUSE AND THE DUE PROCESS CLAUSE IF SO DIRECTED BY THE AG.

Unlike the Adam Walsh Act, this bill would not create a federal failure to register offense, but would require States to create such an offense and to make it a felony. As explained below, there is no constitutional authority for this extraordinary encroachment on state sovereignty and it would violate the Tenth Amendment.

In addition, by turning over to the AG the authority to decide if the law is retroactive, *see* Sec. 2(b)(4), and the authority to make rules for notifying individuals who cannot be notified and registered in accordance with subsection 2(f)(1), *see* Sec. 2(f)(2), the bill would invite state prosecutions in violation of the *Ex Post Facto* Clause and without notice in violation of the Due Process Clause.

Retroactive laws, even those without penal consequences, are highly disfavored because, among other things, they fail to give notice and upset settled expectations. *See Landgraf v. USI Film Products*, 511 U.S. 244 (1994). Retroactive criminal laws that create new crimes or raise existing penalties violate the *Ex Post Facto* Clause. *See Weaver v. Graham*, 450 U.S. 24, 30-31 (1981). And, the Due Process Clause prohibits prosecution for failure to register in any type of offender registry without the person

² *See* 72 Fed. Reg. at 20220-23.

having received actual notice of the duty to register. *See Lambert v. California*, 355 U.S. 225 (1958).

Congress delegated to the AG the authority to decide whether SORNA was retroactive to persons convicted before the law was enacted and persons convicted before the implementation of SORNA in their jurisdictions, the deadline for which is July 27, 2009, and if so, to promulgate regulations to ensure that they and anyone who could not receive notice of their duties under SORNA and be registered by an “appropriate official” before completion of sentence or within three days of sentencing, receives notice and is registered. *See* 42 U.S.C. §§ 16913(b), (d), 16917(a), (b). The AG failed to act, but immediately began prosecuting persons with old convictions who were never notified or registered under SORNA. Seven months later, the AG promulgated an “emergency interim rule,” never published for comment, declaring that the law was retroactive to all offenders even if they were not required to register at the time of the offense or if there was no registry at all at that time, and declining to provide any procedures for notice and registration of such persons. The stated purpose of the regulation was to prevent the defense that SORNA did not apply because there was no regulation saying it did. *See* 28 C.F.R. Part 72, 72 FR 8894-01, 2007 WL 594891 (February 28, 2007). Three months and many prosecutions later, the AG issued guidance on how such persons were to be notified and registered, acknowledging that it was not possible to notify or register anyone before SORNA is implemented by the jurisdiction. *See* Fed. Reg. 30210-01, 2007 WL 1540140 (May 30, 2007).

There are now two regulations on the books -- one stating that all persons must register and are subject to prosecution for failure to register no matter that no such duty existed at the time of the offense and no matter that no notice was given -- and one acknowledging that notice and registration cannot occur before a jurisdiction implements SORNA and directing jurisdictions that they need not give notice or register anyone who is not in prison or under supervision or under an existing duty to register.

To our knowledge, no jurisdiction has yet implemented SORNA. From July 2006 to the present, DOJ has prosecuted numerous individuals who were convicted of sex offenses long ago and were never notified of the duty to register under SORNA. The courts have dismissed many of those prosecutions as in violation of the statute itself, the *Ex Post Facto* Clause, and/or the notice requirement of the Due Process Clause.³ Nonetheless, DOJ continues to prosecute these cases.

³ *See United States v. Bobby Smith*, 481 F. Supp. 2d 846 (E.D. Mich. 2007); *United States v. Kapp*, 487 F. Supp. 2d 536 (M.D. Pa. 2007); *United States v. Marvin L. Smith*, 2007 WL 1725329 (S.D. W. Va. 2007); *United States v. Barnes*, 2007 WL 2119895 (S.D.N.Y. 2007); *United States v. Muzio*, 2007 WL 2159462 (E.D. Mo. 2007); *United States v. Heriot*, 2007 WL 2199516 (D.S.C. 2007); *United States v. Sallee*, No. CR-07-152-L (W.D. Okla. Aug. 13, 2007) (unpublished), available on http://www.fd.org/odsth_AdamWalsh.htm; *United States v. Stinson*, ___ F.Supp.2d ___, 2007 WL 2580464 (S.D. W. Va. 2007).

Because HR 1759 does not create a federal failure to register offense, the AG could not itself bring prosecutions in violation of the *Ex Post Facto* Clause and the Due Process Clause. However, the AG can issue regulations directing States to do so, and can be expected to do so if given the opportunity.

Congress should not permit this to happen. If an arsonist registry must be enacted, Congress itself should declare that it applies only to persons convicted on or after the date of enactment, and only to persons who have received notice and been registered in compliance with subsection 2(f).

THERE IS NO COMMERCE CLAUSE AUTHORITY FOR DIRECTING INDIVIDUALS CONVICTED OF STATE ARSON OFFENSES TO REGISTER, OR FOR DIRECTING STATES TO ESTABLISH AND ADMINISTER AN ARSON OFFENDER REGISTRY.

The bill contains neither an interstate nor a commerce component. Even the Attorney General has acknowledged that, absent interstate travel, there is no constitutional federal authority for requiring a state sex offender to register. *See* 72 FR 8894-01, 8895 (Feb. 28, 2007). By the same token, there is no Commerce Clause authority for requiring states to establish a registry. The Supreme Court has already decided that arson does not inherently have a substantial effect on interstate commerce, and so has read the federal arson statute not to include arson of a residence not used in commercial activity in order to avoid a Commerce Clause violation. *See Jones v. United States*, 529 U.S. 848 (2000). *See also United States v. Morrison*, 529 U.S. 598 (2000) (striking down Violence Against Women Act); *United States v. Lopez*, 514 U.S. 549 (1995) (striking down law making it a federal crime to possess a firearm within 1000 feet of a school).

THERE IS NO CONSTITUTIONAL AUTHORITY FOR DIRECTING STATES TO ENACT A STATE CRIMINAL LAW.

Sec. 2(b)(5), which would require the states to create a failure to register offense and punish it as a felony violates state sovereignty. To our knowledge, except for the Adam Walsh Act, Congress has never taken the extraordinary step of directing states to enact criminal legislation. Enacting state laws is the sole province of state legislatures, not of Congress. *See Morrison*, 529 U.S. at 618 (the “regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States”); *New York v. United States*, 505 U.S. 144, 188 (1992) (“The Federal Government may not compel the States to enact or administer a federal regulatory program.”).

THE BILL WOULD BE AN INVALID EXERCISE OF THE SPENDING POWER AND WOULD VIOLATE THE TENTH AMENDMENT.

It is our understanding that several States are considering not implementing the SORNA because it will cost more than they would lose through a 10% reduction in

Byrne Grant funds. We strongly doubt the States will be willing to implement yet another federal registry scheme, particularly for something that is not a widespread problem. The bill would simply operate as a fine, and lawsuits would undoubtedly follow, raising the following arguments and others.

First, the spending power may not be used to induce States to violate an independent constitutional prohibition. See *Lawrence County v. Lead-Deadwood School Dist.*, 469 U.S. 256, 269-70 (1985); *South Dakota v. Dole*, 483 U.S. 203, 210-211 (1987).

HR 1759 would violate the Tenth Amendment, which prohibits Congress from compelling the States to administer federal regulatory schemes. See *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144, 188 (1992). The Tenth Amendment is not an independent limitation on the spending power *only if* the State has a viable choice between accepting or rejecting a condition to avoid a reduction in federal funds. *South Dakota*, 483 U.S. at 210-211. In *South Dakota*, all the State had to do was raise the drinking age to 21 in order to avoid a 5% reduction in federal funds. In *Oklahoma v. Civil Service Comm'n*, 330 U.S. 127, 143-44 (1947), all the State had to do was remove an official from office to avoid a reduction in federal funds equal to two years' compensation for that official.

Under HR 1759, the States would be required to *spend* large sums of money to implement a complex federal arson registry apparatus, or *lose* 10% of the funds they have been receiving since 1968 to support existing state and local law enforcement priorities. Without any guarantee of a grant, or of funds being actually appropriated for a grant, a State that "fails, as determined by the Attorney General, to substantially implement" the costly arsonist registry, would lose 10% of the Byrne Grant funds it now receives and presumably needs.⁴ This is not a viable choice, but a fine.

Indeed, this is not an encouraging condition at all, but a compelled regulatory scheme. Where, as here, the statute does not merely "stat[e] the conditions upon which moneys shall be expended," but requires the State "to submit to a regulation which otherwise could not be enforced," the law is not a condition, but a regulation, which is valid only if it falls within one of Congress' enumerated regulatory powers. *United States v. Butler*, 297 U.S. 1, 73 (1936); see also *South Dakota*, 483 U.S. at 215-18 (O'Connor, J., dissenting). The only possibility here is the Commerce Clause, which does not give Congress the power to impose a national arson offender registry.

Further, HR 1759 would induce the States to implement regulations which themselves violate the Separation of Powers, which in turn would violate "the central judgment of the Framers of the Constitution that, within our political scheme, the separation of governmental powers into three coordinate Branches is essential to the preservation of liberty." *Mistretta*, 488 U.S. at 380. And, if the AG follows past

⁴ The bill "authorizes to be appropriated" to the Attorney General "such sums as may be necessary" for grants to offset costs to be awarded by the Attorney General in his or her sole discretion for fiscal years 2008 through 2013, which guarantees nothing to the states. See Secs. 2(q) & 3.

practice, the States will be induced to violate individual rights under the *Ex Post Facto* and Due Process Clauses.

Second, while the spending power may be used to place conditions on the expenditure of funds, such conditions must be “reasonably related” to the purpose of the federal program. *Massachusetts v. United States*, 435 U.S. 444, 461 (1978). In enacting the Byrne Grant program, Congress found “that crime is essentially a local problem that must be dealt with by State and local governments if it is to be controlled effectively.” Pub. L. No. 90-351, 82 Stat. 197 (June 19, 1968). Thus, the primary purpose of the Byrne Grant program is to “encourage States and units of general local government to prepare and adopt comprehensive plans *based upon their evaluation of State and local problems of law enforcement funds*.” *Id.* (emphasis added). Forcing States to give up Byrne Grant funds when they make their own evaluation that participation in a federal arsonist registry does not address a State or local law enforcement problem is not reasonably related, and is in fact contrary to, the purpose of the Byrne Grant program. We have been unable to find any law, other than the SORNA, conditioning Byrne Grant funds on the States’ taking any particular steps.

The bill would also direct state law enforcement officers to carry out their duties in specific ways that are repugnant to state sovereignty, for example, stating that the jurisdiction “shall” revoke an exemption based on cooperation if the person ceases active cooperation. *See* Sec. 2(b)(6).

Third, any condition imposed pursuant to the spending power must be “unambiguous.” *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981). The condition here is entirely ambiguous. Not only does it depend for its definition on regulations yet to be promulgated by the AG in his unlimited discretion, but Byrne Grant funds are lost if the State “fails, as determined by the Attorney General, to substantially implement this section.” *See* Sec. 2(n)(1). Other ambiguities abound, including the suggestion that funds may be lost if a State does not, to the AG’s satisfaction, implement the registry based on its own Constitution. *See* Sec. 2(n)(2).

THE BILL IS BROADER THAN NECESSARY TO ACCOMPLISH VALID LAW ENFORCEMENT PURPOSES.

First, under Sec. 2(j), entitled “Notification Procedures,” the bill requires the jurisdiction to provide the information in the registry to “[a]ny organization, company, or individual” who requests such notification, and to each school and public housing agency even if the person does not go to school or live in public housing, and contains no prohibition on public access to the Internet site. If Congress must enact this legislation, it should explicitly limit disclosure to law enforcement authorities, prohibit disclosure to any other person or entity, and prohibit public Internet access. If law enforcement authorities determine, for good reason in pursuit of their duties, that there is a need to disclose to a particular person or entity, they may do so.

Second, offenders are automatically placed on the registry based on the offense alone, and there is no way to be removed, except in exchange for substantial assistance in the investigation or prosecution of another. *See* Sec. 2(b)(6). Even the SORNA permits removal after a period during which there is no re-offense if the person successfully completes a treatment program. If Congress must enact this legislation, it should permit exemption for successful completion of an appropriate treatment program.

Third, mere arrests for any offense, *see* Sec. 2(c)(2)(C), should not be included in the registry. An arrest without a conviction means the person was not found guilty of an offense. Further, the "optional" exemptions in Sec. 2(g)(3) should be mandatory, in order to ensure that these offenders have a second chance to get on their feet as productive citizens.

Fourth, rather than requiring the person to sign a form stating that he or she understands, even if he or she does not understand, *see* Sec. 2(f), the appropriate official should be required to notify the person in a manner that the person can understand in light of his or her native language, mental capability and age, and if that is not possible, to so note on the form. Forcing a person to sign a form stating that he or she understands the duty to register when in fact he or she does not makes no sense and would violate the Due Process Clause.

Fifth, the reference to civil commitment in Sec. 2(d) should be removed. There is no civil commitment law for arsonists, and this bill should not even suggest such a possibility.

Sixth, the three-day time period for registering after a non-prison sentence is imposed, *see* Sec. 2(b)(2)(B), and updating changed information, *see* Sec. 2(b)(3), is unreasonable, and should be increased to five days and ten days, respectively.

Seventh, the registration requirement should not apply to children. If it does apply to children, the school should not be notified. Schools should be safe havens for children -- the place they go for education and support. Once they are labeled and tracked at school, they are more likely to drop out and never have a second chance.

Thank you for the opportunity to provide our comments on this legislation.

Very truly yours,



Thomas W. Hillier, II
Federal Public Defender

cc: Members of the House Judiciary Committee

Mr. SCOTT. It is my pleasure now to recognize my colleague from Virginia, the Ranking Member of the Subcommittee, Mr. Forbes, for his statement.

Mr. FORBES. Thank you, Chairman Scott. And I thank you for holding this hearing today on H.R. 1759, the "Managing Arson through Criminal History," or "MATCH Act of 2007."

I also want to commend our colleagues from California, Congresswoman Bono and Congressman Schiff, for their hard work on this legislation and thank them for taking time out of their busy schedules to be with us today.

My colleagues from California know all too well the devastation that arson causes. The California wildfires have killed 14 people and injured as many as 70 others.

The fires have torched over 500,000 acres, from Los Angeles to the Mexican border, and displaced 513,000 people from their homes. Costs in San Diego County alone are projected to exceed \$1 billion.

Sadly, arson is to blame for at least two of the nearly two dozen wildfires that spread across California last month and continue to burn in some areas.

The Santiago fire, which was ignited by an arsonist on October 21, was 90 percent contained on Sunday evening. Fourteen hundred firefighters have been battling this blaze, which has charred nearly 29,000 acres for over 2 weeks.

The national arson statistics are troubling. According to the FBI's Uniform Crime Reporting Program, 69,055 arson offenses were reported in 2006, a 2.1 percent increase over 2005. The average value lost per arson offense was \$13,325.

In recent years, arson has become an effective tool for ecoterrorists who have destroyed homes in Arizona, Colorado, and New York to protest urban sprawl. In my home state of Virginia, roughly 1,400 forest fires have burned this year, and 20 percent of these fires were deliberately set.

In 1994, California established an arson database to track arsons dating back to 1979. The database includes information on the type of arson, the number of arson offenses, the number of closed cases and the estimated dollar value of property damage.

Similar to the California database, the MATCH Act creates a national arson registry and requires criminal arsonists to report where they live, work and go to school.

In addition, the act requires the national database to include finger and palm prints and an up-to-date photograph. The MATCH Act will assist law enforcement officials with identifying and apprehending arsonists, particularly serial arsonists, and ecoterrorists.

I look forward to hear from today's witnesses about this proposal.

Mr. Chairman, I yield back the balance of my time.

Mr. SCOTT. Thank you.

We have a very distinguished—we are joined by the gentleman from Georgia, Mr. Johnson, and we will ask all other Members to have their statements entered for the record.

We have a very distinguished panel of witnesses before us to help us consider important issues that are currently before us.

Our first witness is the bill's sponsor, the Honorable Mary Bono, who represents California's 45th Congressional District. She is the chief sponsor of the legislation.

She is a graduate of the University of Southern California and earned a bachelor of fine arts degree in art history.

Our next witness will be Congressman Adam Schiff, who represents California's 29th District. As a fellow Californian of Ms. Bono, he also well knows the devastation arson fires can cause as his congressional district has been heavily affected by the recent fires.

He is a co-sponsor of H.R. 1759, a graduate of Stanford University and Harvard Law School.

Next witness will be Fire Chief Tracy Pansini of Burbank, California. He is the fire chief in Burbank, with almost 30 years of experience as a firefighter, engineer, paramedic, fire captain, instructor, battalion chief and assistant chief.

He was appointed interim fire chief in May of 2005 and fire chief in January 2006. In August 2007, he was appointed Area C coordinator, which consists of 11 adjacent cities in Southern California.

Our final witness will be Fire Chief William Soqui of the Cathedral City Fire Department in Cathedral, California. He has 25 years of fire experience that includes being a firefighter paramedic, a hazardous materials specialist and a fire investigator.

In his leadership roles, he has been fire battalion chief managing operations, also working in emergency, medical and ambulance services, training, hazardous materials and as deputy fire marshal before his appointment as fire chief in October of last year.

He has an associate of science degree in fire technology and emergency medical services from Crafton Hills College and a bachelor of science degree in business administration and management from the University of Redlands.

Each of our witnesses' written statements will be entered into the record in its entirety.

I would ask each of our witnesses to summarize his or her testimony in 5 minutes or less, and to help you stay within that time, there is a timing device on your table.

When the light goes from green to yellow, you will have 1 minute to conclude your testimony. And when the light turns red, we would appreciate it if you would come to a conclusion.

We will begin with Ms. Bono.

TESTIMONY OF THE HONORABLE MARY BONO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. BONO. Good afternoon, Chairman Scott, Ranking Member Forbes, Members of the Subcommittee.

I want to thank you for convening this hearing today and allowing me the opportunity to testify on the "Managing Arson Through Criminal History," or "MATCH Act of 2007."

I am very pleased to have been joined in this effort by my good friend and colleague from California, Representative Adam Schiff. And although Stanford completely dashed USC's hopes for a championship game this year, I still like him anyway.

So I have appreciated his expertise and his willingness to work with me to make improvements to this legislation.

Although we introduced the MATCH Act several months ago, the devastation of the recent catastrophic fires in California have called to the Nation's attention the damage and destruction that fire can cause.

The cause of these fires, which burned over 500,000 acres, are still under investigation, and some are suspected to be the result of arson.

Through these recent events, we have all been reminded of the bravery of the men and the women on the front lines of these powerful and all but uncontrollable fires.

This issue is one that is near the heart of my community. Just over a year ago, we lost five dedicated U.S. Forest Service firefighters in the Esperanza fire, a blaze that has been attributed to arson.

One of the fallen firefighters, Jason McKay, called his girlfriend Stacy shortly before his death to tell her that he loved her before going out and losing his life to save the lives of others.

Jason was planning to propose to Stacy at Christmas. Now they will not have that opportunity for a future together, something that so many of us take for granted.

But Jason and Stacy's story is not the only tale of tragedy due to arson. The devastation, pain and loss that result from arson are felt by all of its victims.

The Peria family in Hawaii was forced to live in a tent on the ashes of their family home, after their house and cars were randomly lit on fire.

The Bernard family of Georgia relies on the community to ensure that their basic needs are met, after their mobile home burned to the ground. The young children escaped only after their teenage daughter broke through and crawled through jagged glass to help her family out.

I can share statistic after statistic about the damage caused by arson, the millions of dollars lost and grand totals of people affected.

But what these numbers fail to convey is the story of individuals, the hundreds of families currently in Southern California who will have nowhere to celebrate the holidays this year, the veteran who lost his war medals and mementos before he could share them with his grandchildren, the baby pictures, the refrigerator art, the family rocking chair—the things and the heirlooms that no insurance policy could possibly replace and no one else will quite ever understand.

It is our duty as Members of Congress to provide what tools and infrastructure we can to aid in both the prevention of this crime and speedy apprehension of those who choose to commit it.

The MATCH Act, which I introduced earlier this year as H.R. 1759, creates a national arson registry. This registry combines the efforts of Federal, local and State law enforcement officials to track criminal arsonists.

We have worked to ensure that this registry does not infringe on States' rights. The MATCH Act is not intended for youth. It is expressly targeted at adults and repeat offenders.

States maintain their ability to treat juvenile offenders in the manner best suited to the needs of their States and localities.

Records kept in the database envisioned as a result of this legislation have been an area of which I have paid particular attention, giving law enforcement the information they need. I have based some of this framework on the successful sex offender registry law.

Additionally, our discussions with the Bureau of ATF and Explosives have indicated that this registry will serve an important function in tracking serial arsonists.

It is my sincere belief that the MATCH Act will make a meaningful difference in the way we approach and deal with arson.

I would like to thank the fire chiefs from California who have joined us today. I know that each of us will benefit from their insight and experience.

I would like to give a special thanks to Chief Soqui, who was actually responsible for the concept of a national arson registry. He is a resident of my district, and I am grateful for his willingness to participate in today's hearing and to be a part of crafting this legislation.

In closing, I would like to make clear my commitment to work with Members from both sides of the aisle and staff to ensure that we move forward a well-crafted, workable piece of legislation.

I have been heartened by the support that I have received from so many Members of this Committee for this legislation. More than 15 Members of the Judiciary Committee are currently co-sponsors of the MATCH Act.

I look forward to working with each of you as the legislative process moves forward.

Again, thank you, Mr. Chairman and Ranking Member Forbes, for holding this hearing today.

[The prepared statement of Ms. Bono follows:]

PREPARED STATEMENT OF THE HONORABLE MARY BONO, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA

Good afternoon Chairman Scott, Ranking Member Forbes and Members of the Subcommittee. I want to thank you for convening this hearing and allowing me the opportunity to testify today on the Managing Arson Through Criminal History or MATCH Act.

I am pleased to have been joined in this effort by my good friend and colleague from California, Representative Adam Schiff. I have appreciated his expertise and willingness to work with me to make improvements to the legislation.

Although we introduced the MATCH Act several months ago, the devastation of the recent catastrophic fires in California have called to the nation's attention the damage and destruction that fire can cause. The cause of these fires, which burned over half a million acres, are still under investigation and some are suspected to be the result of arson.

Through these recent events, we have all been reminded of the bravery of the men and women at the front lines of these powerful and all but uncontrollable fires. This issue is one that is near to the heart of my community. Just over a year ago, we lost five dedicated US Forest Service firefighters in the Esperanza fire, a blaze that has been attributed to arson.

One of the fallen fire fighters, Jason McKay called his girlfriend, Staci, shortly before his death to tell her that he loved her before going out and losing his life to save others.

Jason was planning to propose to Staci at Christmas. Now they will not have the opportunity for a future together, something that so many of us take for granted.

But Jason and Staci's story is not the only tale of tragedy due to arson—the devastation, pain and loss that result from arson are felt by all its victims. The Parilla family in Hawaii was forced to live in a tent on the ashes of their family home after their house and cars were randomly lit on fire. The Barnard family of Georgia relies on the community to ensure that their basic needs are met after their mobile home

burned to the ground. The young children escaped only after a teenage daughter broke and crawled through jagged glass to help her family out.

I can share statistic after statistic about the damage caused by arson, the millions of dollars lost and grand totals of people affected.

But what these numbers fail to convey are the stories of individuals. The hundreds of families in Southern California who will have nowhere to celebrate the holidays this year, the veteran who lost his war medals and mementos before he could share them with his grandchildren, the baby pictures, the refrigerator art, the family rocking chair—the things that no insurance policy could possibly replace and that no one else will ever quite understand.

It is our duty as Members of Congress to provide what tools and infrastructure we can to aid in both the prevention of this crime and speedy apprehension of those who chose to commit it. The MATCH Act, which I introduced earlier this year as H.R. 1759, creates a national arson registry. This registry combines the efforts of federal, local and state law enforcement officials to track criminal arsonists.

We have worked to ensure that this registry does not infringe on states' rights. The MATCH Act is not intended for youth, it is expressly targeted at adults and repeat offenders. States maintain their ability to treat juvenile offenders in the manner best suited to the needs of their states and localities.

Records kept in the proposed database have been an area in which I have paid particular attention, giving law enforcement the information they need. I have based some of this framework on the successful sex offender registry law. Additionally, our discussions with the Bureau of Alcohol, Tobacco, Firearms and Explosives have indicated that this registry will serve an important function in tracking serial arsonists.

It is my sincere belief that the MATCH Act will make a meaningful difference in the way that we approach and deal with arson. I would like to thank the Fire Chiefs from California that have joined us today; I know that each of us will benefit from their insight and experience. I would like to give a special thanks to Chief Soqui who is actually responsible for the concept of a national arson registry. He is a resident of my district, and I am grateful for his willingness to participate in today's hearing and be a part of crafting this legislation.

In closing, I would like to make clear my commitment to work with Members from both sides of the aisle to ensure that we move forward a well crafted, workable piece of legislation. I have been heartened by the support that I have received from so many members of this Committee for this legislation; more than 15 Members of the Judiciary Committee are currently co-sponsors of the MATCH Act. I look forward to working with each of you as the legislative process moves forward. Again, thank you Mr. Chairman and Ranking Member for holding this hearing today.

Mr. SCOTT. Thank you.

Mr. Schiff?

TESTIMONY OF THE HONORABLE ADAM B. SCHIFF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. SCHIFF. Mr. Chairman and Ranking Member, thank you very much for having the hearing today. This is, I think, my second time to testify before you in the last couple months, and I have come to realize how much easier it is sitting up there than down here.

But I am grateful for the opportunity and appreciate this hearing and markup as well, and I extend my thanks to my colleague, Mary Bono, for her superb leadership on this issue in crafting this legislation that I think will make a real difference in the prevention of arson and the prosecution of arson.

I am very grateful to work with my colleague, and it has been a great pleasure.

I also want to extend my thanks to Chief Pansini, of Burbank for the superb job that he does each and every day, keeping my constituents safe from fire.

We live in a city that is bordered by some spectacularly beautiful Verdugo Mountains that are very dry and wonderful kindling, unfortunately, and his department does a superb job in protecting the

people of the city of Burbank and other cities as well, so I am very grateful the chief was able to come out and join us.

I would like to submit my testimony for the record and just summarize it, if I can, and talk about, I think, what some of the practical applications of this registry will be.

I was a prosecutor for a number of years and prosecuted arson, among other things, and one case in particular that I handled I think is a good indication of how this registry will be of great benefit.

This was in the late 1980's, early 1990's, and someone was setting a string of fires in the San Bernardino forest, and investigators weren't able to find out who it was.

They kept starting fires by using a device that was a cigarette with matches taped around it and the person would smoke the cigarette, drive around, throw the cigarette into the brush.

The cigarette would burn down to the matches, ignite the matches, ignite the brush, and by that point he and his vehicle were far away.

So there were these series of fires all started with the same incendiary device. They couldn't find out who it was. They couldn't catch him in the act. What they ended up doing was installing video cameras at the entrances and exits of the forest.

And the next time a fire started, they figured out the point of origin of the fire, and the amount of time it would take to go from the point of origin past one of the entrances or exits, and they looked at the license plate numbers of the vehicles that passed within that window.

They then tracked down some of those drivers. They found one who smoked the same brand of cigarette, which was an unusual brand, that was used in these fires and also compiled other evidence which was enough for probable cause, but not enough to prove beyond a reasonable doubt that their suspect had committed the crimes.

He was arrested, and he was interviewed. He admitted to setting the fires in a taped interview. However, the tape recording malfunctioned and the confession was lost and, with it, most of the case.

And as we pursued the investigation to try to find other evidence before we had to go to trial, we found a probation officer of the suspect from many years earlier who had kept his probation records in his basement and pulled the file on the suspect and found that the suspect, many years ago, had set fires using a cigarette with matches taped around it, the same exact modus operandi.

And when the suspect was confronted with this evidence, he ended up pleading guilty.

Now, if we would have had a registry like this in existence at the time, we would have known of convicted arsonists who lived in the region. We would have known what their modus operandi was. We might have been able to stop him before he set several of the later fires.

We might have been able to convict him without the fortuity of having found this probation officer who kept records, fortuitously also, in his basement.

Keeping records in your basement is not a sound investigative law enforcement strategy. A registry like this, I think, is. And when my colleague approached me with it, I was very delighted to join her effort. I think this will make a real difference in two respects.

It will make a real difference in the investigation of arson that has occurred by knowing what convicted arsonists are in the region.

But it will also make a difference, I think, in deterring arson because someone who is contemplating arson who is a part of the registry will know that they will be immediately on the suspect list if they commit further arson.

So I think it is a very important bill. I am glad to be associated with it. And I thank the Committee for this hearing.

And I yield back, Mr. Chairman.

[The prepared statement of Mr. Schiff follows:]

PREPARED STATEMENT OF THE HONORABLE ADAM B. SCHIFF, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, thank you for inviting me to testify before the Subcommittee. This hearing focuses on legislation that Congresswoman Mary Bono and I introduced earlier this year. The Managing Arson Through Criminal History Act—the MATCH Act—would create a national arson registry, which would provide an important tool for law enforcement officers to track arsonists and share information across jurisdictions.

When I was a prosecutor with the U.S. Attorney's Office in Los Angeles, I worked on cases related to arson, and I saw then the damage that arson can cause.

Over recent weeks, the nation saw the destruction caused by the fires in Southern California. Over 1,500 homes were destroyed and half a million acres of land burned. 7 people died, and 85 more were injured, including 61 firefighters. These brave heroes put their lives on the line everyday for us to protect people, homes and wildlife, and I thank them for their service.

In climate like California, with hot weather, drought and the Santa Ana winds, a small fire can become particularly devastating. When I first learned that some of fires last month were caused by arson, I was sickened. Such incredible damage and destruction that was completely unnecessary and malicious.

In California, arson ranks in the top 3 known causes of the state's wildfires. Nationwide, each year, arsons cause serious damage to homes, wilderness areas and too many deaths. In 2006, 31,000 arsons were reported across the country, which resulted in 305 deaths and \$755 million in property loss. It is for this reason that it is critical that we give law enforcement and firefighters the tools to quickly and efficiently investigate arsons and prevent future acts of arson from occurring.

The MATCH Act would create a national arson registry and would require convicted arsonists to report where they live, work and go to school. The database would include finger and palm prints of the arsonist, a recent photograph, vehicle information, criminal history and other relevant information. The length of time that a convicted arsonist would be required to register is based on how many acts of arson they have committed—5 years for one offense, 10 years for two offenses and lifetime for a serial arsonist who committed three or more offenses. The information would only be made available for law enforcement agencies and other relevant personnel and not the general public. Most important, when a convicted arsonist updates his or her information with a change of residence, notification would be sent to the appropriate law enforcement agencies.

When an arson has occurred, it is critical to quickly find the individual involved to prevent future acts of arson and prosecute the individual responsible. Frequently arsonists use the same trademark tools—such as a unique incendiary device, a manner of starting a fire, or similar targets, such as houses of worship, or auto dealerships. In a case where the arsonist may have come from another jurisdiction or state to commit the act of arson, the information in the database will give law enforcement an important tool to identifying convicted arsonists that may be connected to very similar acts of arson.

The national registry created by the MATCH Act will build on the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Bomb Arson Tracking System—or

BATS. In 2004, the Attorney General consolidated all of the Justice Department's arson and explosives incident databases into a single database, based on the BATS model. This has helped jurisdictions collect and share information, which has also improved the accuracy and detail of reporting.

The MATCH Act's national arsonist registry will improve the BATS database by providing more extensive information about convicted arsonists. This information will help law enforcement investigating arsons by being able to quickly search a palm print, a trademark arsonist feature such as an incendiary device, arsonists living in a particular neighborhood, and other key information that could provide clues in an investigation. Most importantly, the registry can also prevent future acts of arson by requiring convicted arsonists to update their information when they move or change schools or jobs. In addition to putting law enforcement on notice, this also lets the convicted arsonists know that they can't hide from law enforcement for the purpose of committing another act of arson.

Our community came together to fight the fires we saw in California. Firefighters from across the state were joined by the National Guard, the Army, and firefighters from the Mexican cities of Tijuana and Tecaté. The quick and united response was immensely important, and now it is ever more important for us to ensure that such tragedy never strikes again. I believe that the national registry created by the MATCH Act and its notification requirements are important tools to prevent future acts of arson and assist in the investigation of arsons that have occurred.

Thank you again Mr. Chairman for this opportunity to testify on this legislation.

Mr. SCOTT. Thank you.

Mr. Pansini?

**TESTIMONY OF TRACY PANSINI,
BURBANK FIRE DEPARTMENT, BURBANK, CA**

Mr. PANSINI. Mr. Chairman, thank you for inviting me to provide testimony in support of H.R. 1759, the "Managing Arson Through Criminal History," the "MATCH Act of 2007."

As you know, my name is Tracy Pansini, and I am currently the fire chief for the city of Burbank and hold some other titles as well.

The MATCH Act could not have come at a better time, and I thank Bill for actually introducing it to Congresswoman Bono. The legislation is great. It couldn't have come at a better time, when the ever-so-vibrant images of California burning dominate the media landscape.

This apocalyptic portrait of mesmerizing flames dancing from home to home has caused more than \$1 billion in damage. Much of Southern California is ablaze, similar to what we saw in Texas and Oklahoma this year.

We have seen this before in Florida, Colorado, Arizona, Montana, Utah, just to name a few States. Some of the largest wildland fires have been related to arson.

As you have stated earlier, the Santiago fire continues to burn in Orange County where 26 homes have been destroyed, 28,000 acres. More than \$10 million has been spent just on suppression costs alone.

Families have been displaced. Families live in a supermarket parking lot with their children's pillows resting on asphalt soaked—full puddles of motor oil; the Buckwheat fire, Santa Clarita—35,000 acres, 26 homes. One individual lost his life trying to protect his home and his life and his valuables—both confirmed arson related.

The focus of an investigation for one of San Diego's fires is a convicted arsonist from Missouri. We know that an individual that committed an act of arson is likely to commit a future act.

Maybe if we had this information about the Missourian available in a national database similar to the MATCH Act, we could have prevented the conflagration that has currently consumed 2000 homes and displaced 500,000 people.

Many returned to a nuclear wasteland of entire streets consumed, autos turned into balls of blackened metal, home after home—30 on one street alone I counted as I toured the area—reduced from places of love, mementos and family heirlooms to blackened concrete, charred rubble, twisted metal, blanketed with gray and white ash.

This legislation is an extremely important vehicle to help us track arsonists nationally. Knowing that a convicted arsonist moved into Burbank would help us in an investigation of an arson fire.

The MATCH Act would also allow us to proactively screen local movement of arsonists. It would link disparate dates and events with the human element at the local, State and Federal level.

It will be a tool to strengthen the relationships of evidence with people, events and capabilities. It will help us connect the dots in the investigative phase.

The increased need post-9/11 and other recent fires nationwide make the passing of this bill critical. Generally, when it gets too hot for arsonists, they move to other areas. It is extremely important for investing agencies to know when these arsonists relocate to other areas.

We had a rash of 40 carport fires that spanned numerous jurisdictions, damaged many apartment buildings and displaced families. The arsonist had relocated from the Flatbush area of New York.

The local law enforcement had identified him as an arsonist, so he relocated to the L.A. area to continue his craft. Had we been able to use MATCH, we would have caught him sooner, or maybe he would not have moved in the first place.

Arson is being used as a terrorist tool, as Mr. Forbes stated, to negatively impact houses of worship, gang-related fire bombings and environmental issues.

In 1996, Congress passed the Church Protection Act, which expanded the options available to prosecutors but did not provide any way of capturing the data and sharing the information on the incidents to local enforcement agencies.

In October 2005 in Burbank, we experienced an arson fire in our foothills that consumed structures as well as the serene vegetation in Burbank, Glendale and Los Angeles.

One day prior, another arson fire across the valley was started—Calabasas, California—that burned the community of Los Angeles City, Los Angeles County and Ventura County.

Could the fires be related? As we are battling one fire, we can look across the valley and see the smoke header from the other fire.

As a young fire captain, I remember chasing numerous fires set in trash cans littering the alleys of Burbank. The arsonists always use the same device and perfect it under our noses.

That arsonist was the infamous John Orr, who went on to burn up 64 homes in Glendale, kill six in a South Pasadena fire, destroy

the Waltons set on Warner Brothers' backlot and burned businesses in all the surrounding communities.

He went on to start hundreds of fires in the cities across California. John had a 10-year run before being caught. Then and now, there was nothing in place to track the information across jurisdictions.

We need all of your support in passing this important legislation. Disaster volunteers, arson patrols and vigilant enforcement are not enough. We need the MATCH Act.

That concludes my testimony, and I would like to thank you, Mr. Chairman, for allowing me to provide the testimony in support of this important legislation.

[The prepared statement of Mr. Pansini follows:]

PREPARED STATEMENT OF TRACY PANSINI

Mr. Chairman, thank you for inviting me to provide testimony in support of H.R. 1759, the Managing Arson through Criminal History (MATCH) Act of 2007.

My name is Tracy Pansini and I am a veteran firefighter with 28 years of experience. Currently, I am the Fire Chief for the City of Burbank, California. Also, I am the vice president of Foothill Fire Chiefs Association and the California, Office of Emergency Services (OES) "Area C" coordinator. As coordinator, I represent 11 jurisdictions.

The MATCH Act could not have come at a better time when the ever so vibrant images of California burning dominate the media landscape. In an apocalyptic portrait of mesmerizing flames, dancing from home to home, that has caused more than 1 billion dollars in damage. Much of Southern California is ablaze, similar to what we saw in Texas and Oklahoma this year, Florida, Colorado, Arizona, Montana, Utah and many other states.

Some of the largest wildland fires have been related to arson. The massive "Santiago Canyon" fire continues to burn in Orange County where 26 homes have been destroyed and 28,000 acres scorched. More than 10 million dollars have been spent so far on just suppression. Families living in a supermarket parking lot with their children's pillows resting on asphalt soaked in puddles of motor oil. The "Buckweed" fire in Santa Clarita burned 35,000 acres and destroyed 26 homes and took the life of one resident. All confirmed arson related.

Criminals and arsonists anticipate the wind and they want to come out and do their thing. An out-of-state man is the focus on an investigation for one of San Diego's fires. It is reported that a resident arsonist from Missouri is the focus of the investigation. An email was sent to local fire departments suggesting that a person of interest was a convicted arsonist in Missouri. Maybe if we had this information available in a national database similar to the MATCH Act we could have prevented the conflagration that has currently consumed 2,000 homes.

What awaited many as they were allowed to return was what seemed to be a nuclear wasteland of entire streets consumed, autos turned into balls of blackened metal, the only thing left standing were the concrete chimneys that looked like dominos lined up and unsupported. Home after home—30 on one street alone—reduced from places of love, pictures, mementos and family heirlooms to blackened concrete, charred rubble and twisted metal blanketed with grey and white ash.

Currently, we don't have any vehicle to track arsonists on the national level or state level for that matter. This is extremely important legislation to help us track arsonists nationally. Knowing that a convicted arsonist moved into Burbank would assist in an investigation of an arson fire. The MATCH Act would allow us to proactively screen local movement of arsonists. It has the unique ability to link disparate dates and events with a human element at the local, state and federal level. It will be a tool and part of a system that can be used to strengthen the relationships of evidence with people on events and capabilities. It is natural to look to enhance it with other information of relevance to help us connect the dots in the investigation phase. The increased need post 9/11 and our recent fires nationwide make the passing of this bill critical.

An individual that committed an act of arson is likely to commit a future act. If we had the MATCH type of data base in place, we would have had the opportunity to find a prolific arsonist. He always used the same device as most arsonists do and perfected it under our noses. As a young fire captain, I remember chasing numerous fires set in trash cans littering the alleys of Burbank. I gave the device to our inves-

tigator, but, then as now, there was nothing in place to track the information with a human component. That arsonist was the infamous John Orr who went on to burn up 64 homes in Glendale, kill six in the Ole's Home Improvement fire in South Pasadena, destroy the Walton set on the Warner Brothers lot and burn business in all the surrounding communities. He went on to start hundreds of fires in cities from central California to Southern California along the I-99 interstate. PBS did an hour long television show "Hunt for the Serial Arsonist" tracking Orr. HBO did an original movie "Point of Origin" based on the Joseph Wambaugh book about John Orr. John probably had a ten year run before being caught. It would help to have a data base. Then and now we use our network skills, but that is limited at best.

Generally, when it gets too hot for arsonists, they move to other areas. It is extremely important for investigating agencies to know when arsonists relocate to another area. We had a rash of 40 carport fires that spanned numerous jurisdictions and damaged many apartment buildings and displaced families. The arsonist had relocated from the Flatbush-area of New York. The local law enforcement had identified him as an arsonist so he relocated to the Los Angeles-area to continue his craft. Had we been able to use MATCH, we would have caught him sooner, or maybe he would not have moved in the first place.

Arson is the leading cause of fire in the United States. Arson fires are very costly in terms of human casualties and direct dollar loss. According to the U.S. Fire Administration, "Each year, an estimated 267,000 fires are attributed to arson, which result in 1.4 billion in property loss and cause over 2,000 injuries and 475 deaths." Locally, our arson fires account for 30% to 40% of our fire total. I Googled the term "Arson Fire" and received 420,000 sites.

In addition, arson is being used as a terrorist tool to negatively impact houses of worship, gang related fire bombings, and environmental terrorism. In 1996, Congress passed the "Church Arson Prevention Act," which expanded the options available to prosecutors, but did not provide any way of capturing the data and sharing the information on the incidents to local enforcement agencies.

Some acts of Arson are politically motivated. For example, here in Southern California, an environmental group, known as the Earth Liberation Front (ELF), committed arson to spread their message of protecting the environment. The ELF group fire bombed auto dealerships who sold poor gas mileage vehicles. Many dealerships were destroyed causing economic disruption to local cities.

As a result here in Burbank, as in many other communities, we have initiated an "Arson Watch" program. We have trained our community disaster volunteers (CDV) in what to look for and where to patrol. In October 2005, we experienced an arson fire in our foothills that consumed structures and vegetation in Burbank, Glendale and Los Angeles. One day prior, across the valley another arson wildland fire was started in Calabasas, Calif. That burned in the communities of Los Angeles City, Los Angeles County and Ventura County. Could the fires be related?

We need all of your support in passing this important legislation. Disaster volunteers, Arson Patrols and Vigilant enforcement are not enough. We need the MATCH Act!!!

Mr. Chairman, thanks again for allowing me to provide testimony in support of this important legislation.

TESTIMONY OF WILLIAM SOQUI, FIRE CHIEF, CATHEDRAL CITY FIRE DEPARTMENT, CATHEDRAL CITY, CA

Mr. SOQUI. Thank you, Chairman Scott, Ranking Member Forbes, Members of the Subcommittee.

Thank you for the opportunity to come before you, the Subcommittee on Crime, Terrorism and Homeland Security and testify regarding H.R. 1759, "Managing Arson Through Criminal History Act of 2007," which was introduced on March 29, 2007 by Congresswoman Bono and Congressman Schiff.

I come to you today as a certified fire investigator in the American fire service, a California fire chief of a municipal fire department and a member and representative of the Riverside County Fire Chiefs Association, whose members represent one of seven counties in Southern California that was recently ravaged by the wind event and firestorm and which is currently under local, State and Federal disaster declarations.

The story of fire is older than man, and when harnessed and used appropriately it has proved beneficial in providing shelter, comfort and a source for preparing food for consumption.

My testimony today is not about the beneficial uses of fire but the misuse in the criminal act of arson which can kill and terrorize people, threaten and destroy property, and damage or destroy ecosystems and the environment.

Currently, two fires—the Santiago fire in Orange County and the Buckweed fire in Los Angeles County—have been determined to be the result of arson. Although some of the causes of the recent fires have been determined, others are still being investigated.

Last year, on October 26, 2006, a vegetation fire was reported near the streets of Esperanza and San Geronio in the southeast section of an unincorporated community of Cabazon in Riverside County.

This arson fire quickly grew to several hundreds of acres in the following hours, overtaking and killing five United States Forest Service firefighters.

For a long time the perception of much of the general public is that arson is a victimless crime amounting to paper losses to be covered by an insurance companies.

The reality is that arson is a crime that affects everyone, by increasing insurance premiums, blighting our neighborhoods, killing hundreds annually, and physically and emotionally scarring the victims of fire.

Nationally, arson is the leading cause of fires in the United States and the second leading cause of death from fire. An estimated 31,000 intentionally set structure fires occurred in 2006.

Twenty percent of arson fires involve vehicles, 30 percent involve structures and 50 percent occur outdoors.

Intentionally set fires in structures resulted in 305 civilian deaths. Intentionally set structure fires resulted in over \$755 million in property loss and 20,500 intentionally set vehicle fires occurred.

Arson fires accounted for 24 percent of residential fires in metropolitan areas and were the leading cause of residential fires.

In 1972 a study was commissioned to study the reasons that the richest and most technologically advanced nation in the world would lead all the major industrialized countries in per capita deaths and property losses from fires.

It was written in 1974 and titled “America Burning.” The study led to the establishment of the United States Fire Administration and the National Fire Academy and a lot of technological advances in firefighting equipment and data collection.

Unfortunately, many of the issues identified and presented in the document still persist some 33 years afterwards.

There are many and varied reasons for fire-setting—vandalism, spite, revenge, intimidation, concealment of another crime, economic motives, civil disorder, gang initiation, excitement, suicide and murder.

Spite and revenge have been ranked the leading motive behind incendiary fires. Because they are targeted at people and not just buildings or physical objects, these fires tend to be the most dangerous in terms of casualties.

They are premeditated acts committed by both adult and adolescent fire-setters. Juveniles account for 50 percent to 55 percent of the arrests nationally of intentionally set fires.

Fires are set for sport, for vandalizing property. They are ranked high as a motive, and juveniles are responsible for a majority of these.

Additionally, juveniles participating in criminal gang activity have often resorted to violence to accomplish their goals. The violence stems from their objective to obtain power, control and respect.

Fire does not respect geographic boundaries and neither do arsonists. Modern life allows us to travel across jurisdictional boundaries between States in a matter of minutes.

Southern California is served by seven major airports, allowing easy access and convenience. The states of Arizona, Nevada, Oregon, New Mexico, Washington and Utah are accessible to Southern California in less than 90 minutes by airplane.

The Federal Bureau of Investigation Uniform Crime Reporting in 2004 indicates a conviction rate of only 17.1 percent nationwide.

Across the United States, the U.S. Department of Justice, in their sourcebook of 2003, collected recidivism rates from 15 States. Within 3 years of their release, 57.7 percent of convicted arsonists were rearrested, 41 percent were reconvicted, and 38.7 percent returned to prison with or without a new prison sentence.

Currently, only three States maintain arson registries. They are California, Illinois and Montana. Unfortunately, in 2007, America is still burning.

The MATCH Act registry will provide stronger links among public safety agencies, links that are needed to reduce the incidence of arson, thus saving lives, property and the environment.

The MATCH Act will serve as a valuable tool to aid the men and women who serve in our fire and law enforcement agencies and are engaged in the process of identifying, locating, apprehending, convicting and tracking these modern-day criminal terrorists attempting to escape justice and who seek sanctuary across State lines.

Thank you for the opportunity to provide testimony.

[The prepared statement of Mr. Soqui follows:]

PREPARED STATEMENT OF WILLIAM M. SOQUI

Chairman Scott and Ranking Member Forbes and Members of the Subcommittee:

Thank you for the opportunity to come before you, the subcommittee on Crime, Terrorism, and Homeland Security and testify regarding H.R. 1759, Managing Arson Through Criminal History Act (MATCH) of 2007 introduced on March 29, 2007 by Congresswoman Mary Bono and Congressman Adam Schiff.

I come to you today as a Certified Fire Investigator in the American fire service, a California Fire Chief of a municipal Fire Department and a member and representative of the Riverside County Fire Chiefs Association whose members represent one of the seven counties in Southern California that was recently ravaged by the wind event and firestorm and which is currently under local, state and federal disaster declarations.

The story of fire is older than man and when harnessed and used appropriately it has proved beneficial in providing shelter, comfort and a source for preparing food for consumption.

What I will testify to today is not the beneficial uses of fire but the misuse in the criminal act of arson which can kill, and terrorize people, threaten and destroy property and damage or destroy ecosystems and the environment.

Currently, two fires (the Santiago Fire in Orange County and the Buckweed Fire in Los Angeles County) have been determined to be the result of arson. Although

some of the causes of recent fires have been determined, others are still being investigated.

Last year, on October 26, 2006, a vegetation fire was reported near the streets of Esperanza and San Gorgonio in the southeast section of the unincorporated community of Cabazon (Riverside County). This arson-caused fire quickly grew to several hundreds of acres in the following hours overtaking and killing five US Forest Service firefighters.

For a long time the perception by much of the general public is that arson is a victimless crime amounting to paper losses to be covered by insurance companies. The reality is that arson is a crime that affects everyone, by increasing insurance premiums, blighting our neighborhoods, killing hundreds annually, and physically and emotionally scarring the victims of fire.

Nationally,

- Arson is the leading cause of fires in the United States and the second leading cause of death from fire (the first cause is careless smoking).
- An estimated 31,000 intentionally set structure fires occurred in 2006.
- 20% of arson fires involve vehicles, 30% involve structures and 50% occur outdoors.
- Intentionally set fires in structures resulted in 305 civilian deaths.
- Intentionally set structure fires also resulted in \$755,000,000 in property loss.
- 20,500 intentionally set vehicle fires occurred, a decrease of 2.4% from a year ago, and caused \$134,000,000 in property damage, an increase of 18.6% from a year ago.
- Arson fires accounted for 24% of residential fires in metropolitan areas and were the leading cause of residential fires.

In 1972 a landmark study was commissioned to study the reasons that the rich and most technologically advanced nation in the world would lead all the major industrialized countries in per capita deaths and property loss from fire. It was written in 1974 and titled "America Burning." The study led to the establishment of the United States Fire Administration (USFA) and the National Fire Academy (NFA) and too many technological advances in firefighting equipment and data collection. Unfortunately many of the issues identified and presented in the document still persist 33 years after it was written. The National Fire Protection Association in 1971 classified about twenty five percent of fires as unknown or incendiary. Twenty six percent of large loss school fires were classified as incendiary and forty four percent of large loss church losses were classified as incendiary.

In 1994, according to the National Fire Incident Reporting System (NFIRS), approximately 1/3 of all fires in the United States were classified as arson (incendiary or suspicious) making it the leading cause of fire. In comparison the second leading cause open flames only made up 12 percent of all fires.

Motivations for Firesetting

People set fires for varied and complex reasons. For criminals prosecuted for crimes where there is direct evidence, motive is often a secondary consideration and is not necessarily crucial for conviction. But because arson is a clandestine crime where witnesses are rare and some or most of the direct evidence burns in the fire, motive becomes a critical element in prosecuting firesetting cases.

The most common motives behind firesetting are:

1. Vandalism
2. Spite and revenge
3. Intimidation
4. Concealment of another crime
5. Economic motives, include insurance fraud, debt removal, direct monetary gain, elimination of unwanted ownership, land assembly for development, and removal of business competition
6. Civil disorder and hate related crime
7. Gang initiation
8. Excitement
9. Suicide
10. Murder

Spite and revenge has been ranked the leading motive behind incendiary fires. Because they are targeted at people and not just buildings or physical objects, these fires tend to be the most dangerous in terms of casualties. They are premeditated acts, committed by both adult and adolescent firesetters.

Juveniles account for 50–55% of arrests in intentionally set fires. Fires set for the sport of vandalizing property was ranked high as a motive, and juveniles are responsible for the majority of these. Additionally, juveniles participating in criminal gang activity often resort to violence to accomplish their goals. This violence stems from their objective to obtain power, control and “respect.”

Fire does not respect geographic boundaries and neither do arsonists. Modern life allows us to travel across jurisdictional boundaries between states in a matter of minutes. Southern California is served by seven major airports allowing easy access and convenience. The states of Arizona, Nevada, Oregon, Washington, Utah are accessible to California in less than ninety minutes by airplane.

The Federal Bureau of Investigation’s Uniform Crime Reporting in 2004 indicates the conviction rate for arsonists is 17.1% nationwide. According to the United States Dept. of Justice, Bureau of Justice Statistics Sourcebook of 2003 collected data regarding recidivism from 15 states. Within three years of their prison releases, 57.7% of convicted arsonists were rearrested, 41.0% were reconvicted, and 38.7% returned to prison with or without a new prison sentence.

Currently only three states maintain Arson Registries. They are California, Illinois and Montana. Unfortunately in 2007, America is still burning.

The MATCH Act registry will provide stronger links among public safety agencies; links that are needed to reduce the incidence of arson, thus saving lives, property and the environment. The MATCH Act, will serve as a valuable tool to aid the men and women who serve in our fire and law enforcement agencies, and are engaged in the process of identifying, locating, apprehending, convicting and tracking these modern day criminal terrorist attempting to escape justice and who seek sanctuary across state lines.

Thank you for the opportunity to testify here today before the Subcommittee on Crime, Terrorism, and Homeland Security.

Mr. SCOTT. Thank you. Thank you, Chief.

I will now recognize myself for 5 minutes for questions and ask Ms. Bono, did I understand your testimony to say that you did not intend to have youth in the database?

Mrs. BONO. That is correct.

Mr. SCOTT. And is it your testimony that it is your intention that the access to the information only be law enforcement personnel?

Mrs. BONO. Yes, Mr. Chairman.

Mr. SCOTT. Okay.

Mr. Soqui, you indicated that California already has a database.

Mr. SOQUI. That is correct.

Mr. SCOTT. When there is an arson, how often does someone’s name appear on that database?

Mr. SOQUI. I don’t have a specific on the numbers of when it occurs. One of the problems, again, is sharing that database and being able to access it and, again, making sure that that person is only from the state of California.

Mr. SCOTT. Have you had experience with the database in California?

Mr. SOQUI. Not specific to a conviction of somebody.

Mr. SCOTT. How long has the database been in existence in California?

Mr. SOQUI. I can’t answer that question for you.

Mr. SCOTT. Chief Pansini?

Mr. PANSINI. I can’t tell you the time line, but it is in our penal code system in California. But the problem is that when you relocate, it is only a misdemeanor, and so there is no teeth in the penal code itself to get arsonists to—when they relocate, to reenter into the system.

And currently, mostly it is just used at the State level and a little bit at the county level.

Mr. SCOTT. Can you access the entire California database?

Mr. PANSINI. We have to do it through our police department side.

Mr. SCOTT. Can they access the database?

Mr. PANSINI. Yes, but the trouble here is that our police departments—they are tasked with crimes against people prior to crimes against property. So crimes against people take such a huge workload for them that they rarely get a chance to go after crimes against property.

Mr. SCOTT. If there is a national database, why would there be any difference?

Mr. PANSINI. Because currently this database in this bill makes it—actually has teeth in it that has every agency that has access to it—how it currently works now in the state of California is our police department has to pull down that information, and they pull it down whenever they get the whim to do that.

And then they have to walk it across the hall to the fire administration side to get somebody to look at it. That rarely happens, because they get so caught up, again, with crimes against people.

But we have nothing in place right now—there is the BATS, the Bomb Arsonist Tracking System, but all it does is tracks the device and the incident itself. There is nothing that ties people in to product.

Whether it is an IID or an IED, an incendiary device or an explosive device, there is not a human component to that.

Mr. SCOTT. Well, if we pass this bill, what I am trying to get at is how will things be much better.

Mr. PANSINI. Because we will all have the capability to input information on personal arson that is in our jurisdiction, and how they use their devices and what their devices look like, and then that will be available to every fire department and law enforcement agency nationwide.

Mr. SCOTT. You are not inputting that now in the California database?

Mr. PANSINI. We are not, no.

Mr. SCOTT. What do you input now in the California database?

Mr. PANSINI. We put in nothing except the incident information itself into the National Fire Incident Reporting System, and that is all.

Mr. SCOTT. Is that name—

Mr. PANSINI. It is called NFIRS.

Mr. SCOTT. No, what do you put in, name, address and the fact that they were charged or convicted with arson?

Mr. PANSINI. No. None of that. Just the incident data itself.

Mr. SCOTT. Not name?

Mr. PANSINI. No, sir.

Mr. SCOTT. That is the California database.

Mr. PANSINI. It is actually now a national database.

Mr. SCOTT. Okay. In California do you put the name in?

Mr. PANSINI. No, we don't.

Mr. SCOTT. Not much of a database, is it?

Mr. PANSINI. No, sir. I hope that is why we are here, to get this in place.

Mr. SCHIFF. Mr. Chairman, can I just clarify on one of the questions you asked in terms of youth?

As I understand it—and we are working with your staff, I think, and Mary's as well on this—the bill, as it is currently drafted, refers to criminal arsonists, which is defined as people convicted of arson.

I think what we found out from legal counsel is the way that that would be interpreted—is we have been trying to find out—does that mean a juvenile who is adjudicated in an arson case would be considered, does that mean only a juvenile who is treated as an adult would be considered, or does that mean only an adult would be considered.

I think that the answer is that it depends on State law, that depending on what State you are in, the State could treat a juvenile who is adjudicated as a juvenile as a person convicted of arson.

So the bill, as it is written, in some States I think currently does apply to juveniles, and the question that we would have to work with you on is should it, under what circumstances should juveniles that go in be able to get out or, you know, whatnot.

But I think, to clarify further, that—I would think that a juvenile who is treated as an adult, who is waived into adult court, would be within the bill currently, and even juveniles who are adjudicated depending on whether that State considers that a conviction may also be included.

Mr. SCOTT. I think you are right, and the question was designed to find out what the legislative intent was, and then we can go from there to make sure the language reflected the legislative intent.

So the questions you have articulated we will be working on.

The gentleman from Virginia?

Mr. FORBES. Thank you, Mr. Chairman.

Mr. SCOTT. Excuse me. I would like to recognize the gentleman from North Carolina has joined us. Thank you.

Excuse me.

Mr. FORBES. Thank you, Mr. Chairman.

And we want to, once again, thank all of you for being here.

And Mary, you and Adam know we appreciate the work you have done. It is our customary procedure that we don't ask you many questions, so if you want to answer any of these other questions, just chime in.

Chiefs, we appreciate what you do. I was amazed when I was hearing Adam talk about how you found out who had committed one of those crimes. It is amazing to me that you can trace that back to a pack of matches, you know, and do that. So we appreciate your work.

One of the things that I would like to ask you about is the recidivism part of it, because obviously that is a key to a lot of our databases. Is there a huge recidivism component?

And, Chief, I think you mentioned that 57.7 percent of arsonists were rearrested.

Mr. SOQUI. That is correct, and that is based on a study that was done by the Department of Justice.

Mr. FORBES. Are they rearrested for arson or for just some other crime?

Mr. SOQUI. It is all of the above. Some are rearrested and reconvicted for arson. Others have other issues that they violate their parole or end up back in prison.

Mr. FORBES. And help me with this one, because I know one of the things we look at is—certainly with sexual offenders, we know there is a huge recidivism rate that takes place.

But I was listening to your testimony when you went down the common motives, and you mentioned vandalism, spite and revenge, intimidation, concealment of another crime, economic motives, civil disorder, gang initiation, suicide and murder.

I left out excitement, because of all of those, the excitement part is probably the one that would be most leaning toward some sort of recidivism. The other things don't always have that connectivity between there.

What has been your experience in terms of the recidivism that you see with arsonists? What causes that recidivism and how large is it?

Mr. SOQUI. I don't have the information. I can only relate it to you anecdotally. There was actually another study that was done about people who are incarcerated and whether there was a history of fire-setting, and there was a large relationship between fire-setting and persons that were incarcerated.

There is a whole dynamic on the psychology of fire-setting. The one that we talk about, again, is spite, revenge. And that is probably the most dangerous, because it actually targets a person, whether it is in an occupied structure or in an open area.

Mr. FORBES. But has it been your experience that they use arson for spite and revenge on one individual, and if they do it on one individual, they will do it on another individual at another time? Has that been just your anecdotal experience?

Mr. SOQUI. I think it depends on—you know, each person has different motivation. And again, Chief talked about John Orr. His was, again, hero worship and those kinds of things.

Mr. FORBES. One of the things that could help us that you could submit just for the record at some point is any information you have, even if it is anecdotal information, about the recidivism component of it, because obviously that is one of the things that drives us to these databases.

If having information on previous crimes gives us some sort of predictability on future crimes, it makes it a lot more helpful to have the database.

The other question I would ask—in your experience, how many fires and what percentage of them are done by juveniles, because that was a question that came up. Do you have a feeling for that?

Mr. PANSINI. About 58 percent of arson fires as expressed, I believe, on Channel 7 recently, is juvenile fire-setters.

Mr. FORBES. So if we really want to make this accurate, you are going to need to have a picture of the juveniles that are involved.

Mr. SOQUI. I think the one thing that is confusing is there is a very low conviction rate, you know, down in the 15 percent, 16 percent. Now, again, when you clear on a UCR form, the uniform crime reporting, you have to make an arrest.

And I think that the high percentage of arrests occur with juveniles, that 50 percent to 55 percent, so it is not really a metric that applies.

It has to do with sophistication, age, whether they are talking to their peers. Those kinds of things tend to lead to more arrests of juveniles. But again, the metric doesn't apply.

Again, a more sophisticated arsonist—again, Chief referred to John Orr. It took 10 years to capture him. But again, he is a much more sophisticated—and doing it for a different reason.

Mr. FORBES. The 17.1 percent conviction rate that I think you used in your testimony—why is it so low? What causes the conviction for arsonists' cases?

Is it detecting who they are? Is it getting evidence? What have you found to be the difficulty?

Mr. PANSINI. We just experienced a \$12.5 million arson fire with explosion as well, and a lot of the evidence is destroyed. And it went so far that flammable liquids were used to do it in multiple starts.

But when we went to court—and we never made it to court because we didn't have enough, but we used a chainsaw overhead to cut open the roof, and that is how we vent the hot gases and stuff, and it allows us to go inside to do the firefight.

Well, because that chainsaw uses oil and uses gasoline to fuel the chain, therefore they had to rule out the one hit down into the drain on flammable liquid. So it is extremely difficult to prosecute an arsonist because of that.

We also had a point in time where we had the arsonists and they physically went out to a gas station that had a camera. They were seen filling up gasoline cans on camera and then driving away.

And then we caught them as they torched up a restaurant that was on the hill, and we estimated there was probably 10 gallons of fuel, exactly what they filled up.

We couldn't prosecute them even though they smelled like gasoline, they had empty cans, because they stated that they went to the gas station—their car was empty.

So it is extremely difficult. But there is a propensity for junior fire-setters to manifest to adulthood, and it is different tendencies.

It starts sometimes with cruelty to animals. Then it manifests into fires and things of excitement. And it goes on through life, and they continue to burn.

Mr. FORBES. Well, my time is up, but basically that is what we want to try to find out. You have seen a pattern from juveniles in doing this and as they get to be adults—a pattern that you need to be able to track.

Also, do you see a pattern from starting smaller fires and then building up to larger fires if they continue down their arsonist career, or is that—

Mr. PANSINI. Absolutely, because their excitement gets larger and bigger.

If you get juveniles young enough, and you get some intervention programs going on, and you continue to work with them, you can have a success to divert them from an adult arson career.

Mr. FORBES. Thank you all.

Mr. Chairman, I yield back.

Mr. SCOTT. Thank you.
The gentleman from Georgia?

Mr. JOHNSON. Thank you.

Many of my questions have been answered, and I hope I won't be duplicitous. And I am having trouble understanding the rationale for instituting a nationwide database.

I understand that if you do this database, then it would perhaps deter convicted arsonists from engaging in future arson because they know that they would be suspected of future arson, is that fair to say?

Mr. SOQUI. I think that is fair to say. I think the other issue is, again, just the easy access between jurisdictions. It is just easy to move from one area to another, and this would allow us to have that information in a database and access it.

Mr. JOHNSON. Is there any empirical data that would suggest that arsonists tend to move between jurisdictions?

Mr. SOQUI. I would again take the example that Chief Pansini had, which had to do—

Mr. JOHNSON. And I know that there will always—

Mr. SOQUI. Right.

Mr. JOHNSON [continuing]. Be examples, but have there been any studies that would suggest that arsonists tend to move between States?

Mr. PANSINI. I don't believe so, but because we have nowhere to track the data it would be hard to come up with a conclusion.

Mr. JOHNSON. Let me ask this question. Have there been any studies that suggest that arson, like, say, sexual offenders, is an action that will definitely be repeated in the future by an arsonist?

In other words, what is the—are there any studies that you can show us which would prove or indicate that a convicted arsonist is bound to be an arson recidivist?

Mr. SOQUI. I think the information that I referred to in my testimony—again, it is done from 2003 and covers 15 States—again, showed that within 3 years of their prison release, 57.7 percent of convicted arsonists were rearrested.

Mr. JOHNSON. For some reason, not necessarily arson.

Mr. SOQUI. Correct.

Mr. JOHNSON. But would there be anything that would show that an arsonist who has been convicted of committing that offense is predisposed and likely to commit that offense again, just some kind of a psychological compulsion, much as child molesters or sexual predators?

Is there any studies that can make that link that you know of?

Mr. SOQUI. I am not aware of any specifically. I think the issue is specifically, you know, what is it that caused them to commit the arson.

Again, whatever the reason was to do it—if there was a gang initiation, it may have been a single event. If it is—

Mr. JOHNSON. Are there any studies that would break down the motivations for committing arson and would state the proportions of those who do it for some kind of compulsive reason, or gang initiation, or some other reason?

Are there any studies that would tend to break down data and be able to be helpful to us as we consider this legislation?

Mr. SOQUI. I think we would have to look—again, you have to remember the numbers go backwards, which is there is a very small conviction rate, so that gives you only a certain percentage that you can study based on that information.

I am not familiar with a specific study. I will be happy to look into it and see if we can't get something back to you.

Mr. JOHNSON. Well, okay. Well, let me ask, then, it seems to me that—okay. If this database—I mean, are you saying that it would predict—just due to the fact that a person is on the database, would that be a predictor that they would engage in arson again or they are about to engage in arson?

Mr. SOQUI. I think what it does is it is another resource. It is another tool. If you are in a situation where you know that nobody knows what it is that you are doing, then you are less likely to be convicted.

If there is a resource that is available to us that would allow us to track a person based on a previous history of fire-setting, it would, again, narrow the field as to the people that we could look at for those crimes.

Mr. JOHNSON. So regardless of one's motivation in committing an arson, if they commit an arson for any reason, their name is going to go on the database, and it would be regardless of whether or not the arson was just for fun, or whether or not it was to try to kill somebody, or whether or not it was committed by a teenager.

It is going to go on the database. That person is going to go on the database.

Mr. SOQUI. I think what we talked about, again—it was, again, to exclude juveniles from it, so I don't know that a teenager would apply. It would depend on the jurisdiction and why they were convicted.

Again, I think it is—you have to remember the big picture, which is, again, this is the leading cause of fire in the United States, is people committing arson.

We are looking at the specifics of why the arson was committed. And again, it is a very small number of people that are ever even convicted of the crime because of the issues that were mentioned, the difficulty in obtaining forensic evidence and prosecuting somebody.

Mr. JOHNSON. And now the information that would be kept on the data registry—it would be available to any organization, company or individual who requests the information?

Mr. PANSINI. No, it is only available to law enforcement and fire agencies.

Mrs. BONO. If I might add to that, too, in the draft—the legislation we introduced, we have already agreed that we would make changes, that the language is too vague and we would specify only law enforcement—fire investigators, law enforcement would only have access to the database.

Mr. JOHNSON. So it would not be publicly accessible.

Mrs. BONO. That is correct.

Mr. JOHNSON. Okay. Thank you.

Mr. SCOTT. Thank you.

Mrs. BONO. Excuse me, Mr. Chairman. Can I just add one thing, if I might, to that?

Mr. SCOTT. Yes, just go ahead. I am sorry.

Mrs. BONO. Thank you. Just when you asked about studies, I just have one statistic on recidivism rates.

In 2000, the number of arsonists paroled in California was 173. Within 1 year of parole, 69 of those, or 39 percent, had reoffended. And within 2 years, 93, or 58 percent, had reoffended.

Mr. JOHNSON. By committing another arson?

Mrs. BONO. Yes. So I don't know about studies, but these statistics are very clear on recidivism rates. They are quite high.

And you know, there is also—has to be a difference between the courts—between understanding, as in the recent fire in California—one of the fires in Santa Clarita was started by a boy who was playing with matches.

And certainly, I think the way the court would handle that—I am not a lawyer, but the way the court would handle that—not only that, the court of public opinion certainly looks differently on that.

As to the Esperanza fire last year, which was committed, ironically, the same—I guess the pack of cigarettes where the match is inserted into the cigarettes or wrapped around seems to be a frequent tool that they use.

And I think just those two differences, obviously, would be looked at by the court and handled by the court, I would assume, and make a difference in the database at the end.

Mr. JOHNSON. Well, I would be interested in seeing that data that you just shared with us, so I will have my staffer to get with your person, and we will see about that.

Mrs. BONO. Thank you very much.

Mr. JOHNSON. Thank you very much.

Mr. SCOTT. Thank you.

The gentleman from North Carolina?

Mr. COBLE. Thank you, Mr. Chairman.

Good to have you all with us.

Mr. Chairman, a year ago—almost a year ago to the day—the building that housed one of the largest senior high schools in my district was destroyed in a fire. Arson investigation continues to this day. And I was invited to visit that campus last week.

That incident almost destroyed that community emotionally. They recovered and they are doing well. I know of—few persons, if any, Mr. Chairman, in my opinion, are any more insufferable than those who intentionally set fires that result in property damage and loss of life.

And I commend you all for your efforts in tracking them down. And I hope we are able to get the one who did it back home as well as the California fires as well.

Chief Soqui—how do you pronounce that?

Mr. SOQUI. It is Soqui, sir.

Mr. COBLE. I wasn't even close.

Mr. SOQUI. You were close.

Mr. COBLE. Chief Soqui, the fires in Southern California are estimated to cost over \$1 billion. Concerns are already being raised about what, if any, insurance coverage victims will receive.

In your experience, are the victims able to recover and rebuild with their insurance, or do often times they face substantial out-of-pocket costs as well?

Mr. SOQUI. I think it is based, again, on the policy that you have and how high their deductible is. Most people are able to recover their costs through fire insurance.

But again, it is not a victimless crime in that you and I end up paying for it in the end. Our insurance prices are going to increase to cover those losses.

Mr. COBLE. Yes.

Chief Pansini, how many arson fires in your area have you identified as acts of ecoterrorism? And is this becoming a more prevalent problem?

Mr. PANSINI. We experienced the ELF with a series of fire-bombings in auto dealerships that sold cars that were of poor gas mileage. And they burned about five auto dealerships, which had a direct impact to the sales tax of those local communities.

Mr. COBLE. Well, as you point out, Chief, all of us pay for this, and these people often times are given a pass.

So again, I commend you all for what you do.

Mr. Chairman, I thank you and Mr. Forbes for having called this hearing and I yield back.

Mr. SCOTT. The gentleman from California, Mr. Lungren?

Mr. LUNGREN. Thank you very much, Mr. Chairman. I am not sure I have any questions. I just want to say I think this is a very worthy bill.

I don't know why there is any opposition to it. In California, we have had a database for some period of time. We toughened the law up in the 1990's while I was attorney general such that we require people to continue to be registered for their life.

Some of the complaints about establishing such a database sort of remind me of when we were dealing with Megan's law. People said there is some violation of privacy rights or something.

The fact of the matter is if someone is convicted of an arson, that is a record that is publicly available. The problem is it is difficult to put it all together in order to have law enforcement be able to utilize this at a time of threat or a time of actual fire.

I happen to think this kind of database would actually be—a registry would be helpful in our pursuit of preventing fires and also attempting to find perpetrators where fires are established.

So I happen to—I would like to commend the authors of the bill for bringing this bill to our attention.

I thank the gentlemen who are here representing the courageous firefighters around the country but particularly in our home state of California where we, unfortunately, suffer from the vagaries of natural disaster, including our Santa Ana winds, but also exacerbated by those who, for various reasons, commit criminal acts of arson.

It devastates entire communities, causes death and destruction, and the damage lasts for years and years and years and years.

And the threat of a fire coming down a canyon at 110 miles an hour in areas where people live, where people find themselves, or the firefighters themselves, is just such an awesome act once it

gets going that it is difficult to describe, as much as you gentlemen have done on this and other occasions.

And in face of such an overwhelming threat, it just seems to me that this makes reasonable sense, and I appreciate the gentlelady from California and the gentleman from California talking about us amending it if there is any problems.

But the fact of the matter is the basis of the need is there. I think this is a professional, reasonable approach that will give us additional information.

And just think about it. If through this we deter a single fire, given what we have seen in California recently, it would well be worth it.

So I thank you for bringing this before us, and I thank the Chairman for having this hearing and the subsequent markup and hope we can move this along quickly.

I thank the gentleman for yielding.

Mr. SCOTT. Thank you.

And the gentleman from Texas, Mr. Gohmert?

Mr. GOHMERT. Thank you, Mr. Chairman.

And I do also appreciate all of your being here and, of course, those standing on the front lines between us and harm—we appreciate you very much and appreciate you being here.

My friend from California indicated he didn't know why anybody would oppose, and you know, I am one who is always watching out for States' rights. Obviously, there are occasions when it is necessary to bring the whole country together.

But I approach, you know, a bill like this—how does it affect States' rights? And obviously, there was a great deal of careful thought given to this bill, and not in—trying to avoid any effort to intrude on what under our Constitution is the State's right to pursue and investigate and prosecute criminal laws.

And also, in noting the arson fire statistics from the National Fire Incident Reporting System, the U.S. Fire Administration, Department of Homeland Security, it looks like the number of fires is down dramatically, the number of deaths not down quite as dramatically, or the loss.

But it does seem like we are getting more sophisticated arsonists. And of course, in this mobile society a lot more folks happen to start a fire and then move on to another State.

So I can understand someone's hesitance because of my approach to bills like this, but then in weighing the need for it and the ability to actually enhance a State's capability of investigating, and pursuing and prosecuting arsonists, I think it is overall a very good thing.

I am curious. When we talk about who would have access, law enforcement—and whoever knows—and, Congressman Schiff, you may answer it right away, but would insurance companies have access to that information initially, do you know?

Mr. SCHIFF. I think the answer is no.

Mr. GOHMERT. Okay. And I would have mixed emotions about that. On the one hand, you know, we are hoping that people reform and don't start fires. And of course, everybody needs fire insurance for a home, that kind of thing.

So apparently its availability would come into play if there were any suspicion of wrongdoing—then could consult with local law enforcement after an act on an insured dwelling or building, and the law enforcement would then be able to get that information? Is that basically the gist?

Mr. SCHIFF. I would think, Mr. Gohmert, that the insurance company would be predominantly interested in whether the fire was arson. And they would get that information from the fire department and whatnot. That would determine whether the claim was covered or not covered or whatnot.

They would, I am sure, have an interest in seeing that who was responsible was prosecuted, but in terms of their need to have access to the registry, they probably wouldn't have a need.

And it might be hard to contain the information—

Mr. GOHMERT. Well, unless there was evidence that it may have been arson, if there was that suspicion, and law enforcement started an investigation, then certainly they would have access to the information at that point.

Mr. SCHIFF. Well, I mean, yes.

Mr. GOHMERT. It is not something you go on fishing expeditions in. And understand, I am very sensitive to—well, there was a lawsuit not too many years ago, and all I did was read the account in some of the legal journals.

But as I understood it, they had a memo from somebody within the insurance company saying after the house fire, first see if there isn't some way you can claim that it is arson so we don't have to pay it.

We don't want to support those. But my understanding is if there is actual evidence, enough to file a complaint, then law enforcement would have that information, correct?

Mr. SCHIFF. Yes. I would think that if there is evidence of arson, that that evidence, in some form, is shared with the insurance company. My point is that I don't know that the insurance company needs access to a registry—

Mr. GOHMERT. I agree.

Mr. SCHIFF [continuing]. In order to find out whether it is a legitimate claim or not.

Mr. GOHMERT. Right.

Mr. SCHIFF. And if you do give them access to the registry, you may not be able to contain who else gets access to the registry.

Mr. GOHMERT. Yes. And that is why I asked the question, because if you start from the position where you are a former arsonist, so therefore we are not going to ever pay a claim, even though we have received all of your payments all these months—and that is what prompted me to ask the question.

I am not sure that it is appropriate for them to have that information, unless there is evidence of fire—that is what prompted the question. I think we are concerned about the same thing.

But I appreciate you all pushing this bill, and hopefully it will result in fewer arsons in the future, even so. And thank you again for your work.

And, Mr. Chairman, I yield back.

Mr. SCOTT. Thank you.

And do any other Members have questions? If not, we will thank the witnesses for their testimony and ask unanimous consent that Members have 5 legislative days to input any other matters into the record.

Thank you very much for your testimony today.

[Whereupon, at 2:10 p.m., the Subcommittee was adjourned.]

