

## SENATE—Tuesday, July 9, 1985

(Legislative day of Monday, July 8, 1985)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

## PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

God, our Father, we thank You for the presence of Father McDonnell in the Senate yesterday and for his prayer which reminded us of that which is fundamental to our national life. We regret the ease with which we forget these fundamentals until tragedy brings us back to reality. Forgive us for weak connections with our roots. Renew in us the vital convictions which guarantee our future as they have for 200 years.

Thank You, Father, for the recess, for the work accomplished, the renewed relationships with constituents, time with family and safe travel. We have 19 working days until the August recess and a staggering load of legislation. Save the Senate from futile battles which are mere shadow boxing—from victories in which there are no winners—and prevent the Senators from being their own worst enemies as they struggle to make the democratic process work. Make them aware of Your availability, Your wisdom, Your strength, Your direction at all times and in every situation. In the name of the Lord, we pray. Amen.

## RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

## SCHEDULE

Mr. DOLE. Mr. President, under the standing order, the leaders have 10 minutes each, to be followed by a special order in favor of the distinguished Senator from Wisconsin [Mr. PROXMIER] for not to exceed 15 minutes, and routine morning business until noon, with statements limited therein to 5 minutes each. At noon, we have the policy luncheons on both sides from 12 to 2 p.m.

Then, at 2 p.m., the Senate, by unanimous consent obtained on June 24, will begin consideration of S. 49, the McClure-Volkmer Gun Control Act. Rollcall votes can be expected throughout today's session in regard to that bill. It is my hope we can com-

plete action on that bill fairly early this evening, by 7 or 8 o'clock. I think we should be able to do that unless there is something that occurs the leader is not aware of.

On tomorrow, I believe we will convene at 11 o'clock and begin a live quorum at noon, under the provisions of rule XXII. Following the live quorum, the Senate will proceed to vote on the cloture motion relating to S. 995, the South Africa bill. If cloture is invoked, it is the majority leader's intention to continue the debate on the motion to proceed, and votes are expected throughout the day.

We also hope to dispose of that bill on Wednesday or sometime on Thursday.

Then, on Friday, we will turn to the consideration of other Legislative or Executive Calendar items.

I might indicate that I have just had a leadership meeting with the President. He is very concerned about the fact that a number of his nominees that are on the calendar have not been cleared by the Senate. He would hope very much that we could—I do want to very quickly point out that they are not being held up by anyone on the other side of the aisle. The distinguished minority leader has been most cooperative. I think, without exception, they are prepared to clear nearly every nominee.

But the President is very hopeful we can clear these nominees. Some are Ambassadors to very sensitive and important countries and other positions of importance. It is my hope that sometime this week we can dispose of those nominees. It is the President's hope we can do it today.

The President feels rather strongly that they are his nominees.

They have been thoroughly examined. He feels rather strongly that, being the President, that should be his right. I guess that is mentioned in the Constitution somewhere.

But, in any event, the President is very hopeful we can do that this week.

Mr. President, I reserve the balance of my time.

## RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. NICKLES). Under the previous order, the Democratic leader is recognized.

Mr. BYRD. Mr. President, I thank the Chair.

## THE ATHENS-BEIRUT AIRCRAFT HIJACKING AND INTERNATIONAL TERRORISM: LESSONS TO REMEMBER 8 DAYS LATER

Mr. BYRD. Mr. President, 8 days ago, America was saddened by the release of the 39 hostages seized during the terrorist hijacking of TWA flight 847.

In various ways, all Americans shared with the hostages and their families the harrowing ordeal of their 17 days in captivity. The safe return of these hostages permits our Nation a measure of collective relief.

Yet as we give thanks for the safe return of these 39 individuals, we should remember that 7 more fellow Americans, and 4 citizens of our NATO ally, France, remain terrorist hostages in Lebanon.

As important, we should never forget that one American, a young man who served proudly in the U.S. Navy, was brutally beaten and murdered in cold blood during this terrorist crime.

There is only tragedy for the family of Navy Petty Officer Second Class Robert Dean Stethem, and we can only hope that our condolences and sympathy provide some consolation during its time of grief.

This terrible murder, and the continued captivity of the seven Americans and four Frenchmen, are a sober reality which should place in proper perspective the understandable aura of relief surrounding the release of the 39 other hostages.

This initial relief must be replaced by a somber determination that this Nation, in concert with many other nations, now must do much more to combat international terrorism and to guard against repetitions of these crimes against all civilized peoples.

Our Nation also must redouble its efforts to obtain the freedom of the remaining hostages and to try to find some way to punish the hijackers and murderers who seized TWA flight 847.

In the past several weeks, there has been much public debate about how we should fight international terrorism. Such debate is the hallmark of our democracy.

However, as this debate continues, it is time that we turn our efforts away from unspecified verbal gauntlets and toward more aggressive and specific actions to give those challenges to terrorism more weight and meaning.

That is why I proposed—in Senate Joint Resolution 153—that the United

States initiate a multilateral negotiation aimed at drafting international treaties or agreements containing more effective defenses against terrorism, including more widespread prosecution and extradition of terrorists and more certain sanctions against nations supporting terrorism.

As the President considers my proposal, I hope that the executive branch also is evaluating a full range of other diplomatic, economic, and, if appropriate, military responses to terrorism.

When Vice President BUSH convenes the administration's special Terrorism Task Force, the American people and their elected representatives in Congress will expect to hear what further, specific actions the administration intends to propose.

The administration should tell us, within the boundaries of appropriate classification of information, what specific actions it is proposing to other nations to carry out the President's most recent antiterrorism decisions, to free the remaining hostages and to punish those responsible for the TWA hijacking and murder.

In a letter to the President today, I have asked him to provide us with this information as well as to take three further actions to guard against future terrorism and to assist Congress in cooperating effectively with the executive branch in this endeavor.

First, the administration should conduct a comprehensive review of all the bilateral and multilateral air transport agreements the United States has signed, to determine whether they should be renegotiated to emphasize increased airport and in-flight security.

Second, the executive branch should provide a special report to Congress identifying, at least on a classified basis, those nations whose major airports represent security risks to American travelers and airlines, any specific actions our Government has recommended to those nations to improve their airport security, the responses to those recommendations, and any options available to the U.S. Government to encourage implementation of these recommendations, including any appropriate sanctions. If sanctions are an available option with respect to any particular country, and the administration thinks they should not be implemented, it should explain its reasons in this special report.

Third, the President should consider still further improvements to U.S. intelligence capabilities targeted against terrorism and should ask Congress to consider them as soon as possible, in special authorizing and funding legislation, if necessary.

The special report I am requesting from the President would help Congress and the American people to know who are our allies, and who are

our enemies, in this battle against international terrorism.

Terrorism possesses no one nationality, Mr. President, as the murder of our marines in El Salvador and the bombings of airports in Japan and the Federal Republic of Germany have demonstrated recently. While the Middle East has become the principal source of international terrorism, no nation is safe from this threat, and all civilized nations should cooperate against it.

Those nations who have supported terrorism directly, such as Syria and Iran, and those whose policy interests have been promoted indirectly by it, such as the Soviet Union, should recognize that they, too, are vulnerable to attack by terrorists. Some of these nations already have been attacked, and they should realize that their safety rests ultimately in joining the fight against such crimes.

Unfortunately, it is uncertain whether this realization was Syria's motivation for helping to free the hostages from TWA flight 847. Our thanks for this assistance should be tempered by the memory that Syrian complicity, reportedly, at least played an indirect role in the terrorist bombing which killed 241 American marines at Beirut Airport in 1983.

Mr. President, there are two other aspects of this latest terrorist event which the Congress and the American people should think about in the days ahead.

This latest hijacking underscores not only our need to increase our anti-terrorist actions, but also the requirement for redoubled efforts to help resolve the underlying problems preventing peace in the Middle East. Until peace is achieved, this troubled region will continue to be the source of international terrorism.

Finally, we should reflect upon the role of the press in this affair and what that role might be in covering future terrorist acts.

The first amendment protecting freedom of the press is a foundation of our democracy, and that is as it should be. A free press safeguards our basic liberties.

Yet the press coverage of the TWA hijacking raises troubling questions about how the media covers such news and whether it becomes so much a part of the event being covered that it unduly influences the event, instead of reporting on the outcome.

The press, in part, is aware of these concerns, and two of its most respected reporters, David S. Broder and Lou Cannon, have presented alternative interpretations of the coverage of the hijacking.

Mr. Broder wrote in the Washington Post, among other thoughts, that:

At some point, many of us watching felt television crossed the line between covering the story and hyping it. The incessant inter-

views . . . implicitly collapsed all questions to the imperative of a quick release.

He continued:

We cannot reduce international relations to the close-up pictures on which television thrives. The problems are more complex. We cannot think straight about foreign policy if our emotions are being jerked up and down by the zoom lenses.

What we saw in this hostage-taking was a President and an America whose policy options might have been constrained or unduly influenced by the coverage of the event. Indeed, Mr. Broder seems to be saying that the almost-daily, emotion-filled interviews with the hostages and their families could have imposed undue pressure on the administration to act precipitously or make concessions to the hijackers simply to obtain the release of the hostages.

Safe release of the hostages was, properly, the first priority of our Government in this incident, but Mr. Broder's point is a valid one to ponder.

Mr. Broder also states that:

Shiite and Syrian critics of the United States were able to use the American television networks to make their propaganda points.

His comments reflect another concern being raised about the coverage—that the terrorists' negotiating positions may have been reinforced by the headlines and the omni-present cameras and microphones.

Lou Cannon, on the other hand, provides a different viewpoint. He defends the press' performances by writing:

Several freed hostages thanked reporters for keeping the public focus on their plight. And it is also worth noting that the media refrained from publishing or airing information that could have been damaging to the hostages.

Mr. Cannon continued:

Beyond the necessary suppression of certain information, television also distinguished itself, in some positive ways. (Nabih) Berri's frequent appearances on television may have exposed Americans to some self-serving propaganda, but they also gave the Amal leader a highly publicized stake in solving the crisis.

Mr. President, we all know that U.S. Government officials often try to use the press as a means to reach a policy objective, sometimes in a most self-serving manner. Mr. Cannon refers to this in his column, as well. The press also should resist this type of official exploitation.

In addition, we all understand the natural competitiveness which impels news organizations to obtain scoops in the quest for more information, better ratings, more readers or more viewers. True journalistic coups earn our respect and are a public service when they increase our citizens' awareness.

Furthermore, I am not calling for press self-censorship, or for Congress to legislate any controls on the news media.



I am calling on the news media, however, to reflect more on its behavior in these cases, as Mr. Broder and Mr. Cannon have done, and to be more introspective, so it might consider how best to serve the interests we all share and to protect the safety of any victims of terrorism in the future.

It is clear that the networks and the broadcast media, in general, are as aware as the print media of the need for this type of "soul-searching," as Ron Powers of CBS News called it. In a commentary on "CBS Sunday Morning," Mr. Powers called for a summit meeting of network and broadcast industry executives to ask questions and come up with answers as to their proper role in reporting the news on acts of terrorism in the future. I wholeheartedly support Mr. Powers' suggestion.

Mr. President, I look forward to receiving the President's reports on the latest efforts to combat international terrorism, and I pray that the efforts to seek release of the seven Americans and four Frenchmen still hostage in Lebanon soon meet with success.

I hope also, Mr. President, that we will never let fade from our view the senseless murder of an American military man by the two hijackers in the TWA event.

I ask unanimous consent that my letter to President Reagan be printed in the RECORD, as well as a transcript of the "CBS Sunday Morning" commentary by Ron Powers on July 7, 1985.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,  
OFFICE OF THE DEMOCRATIC LEADER,  
Washington, DC, July 9, 1985.

The PRESIDENT,  
The White House,  
Washington, DC.

DEAR MR. PRESIDENT: The hijacking of TWA Flight 847, the seizure of its passengers and their subsequent release, and the continued captivity by terrorists in Lebanon of seven Americans and four Frenchmen, all underscore the necessity for our nation to redouble its efforts to fight international terrorism.

That is why I proposed—in Senate Joint Resolution 153—that the United States initiate a multilateral negotiation aimed at drafting international treaties or agreements containing more effective defenses against terrorism, including more widespread prosecution and extradition of terrorists and more certain sanctions against nations supporting terrorism.

As your special Terrorism Task Force begins its work, the American people and their elected representatives in Congress will look forward to learning what further, specific actions the Administration intends to propose against international terrorism.

In this regard, and also to assist Congress in cooperating effectively with the Executive branch in the fight against terrorism, I would like to request that your Administration inform us, within the boundaries of appropriate classification of information, what specific anti-terrorist actions are being pro-

posed to other nations to implement your June 18 decisions, to free the remaining hostages and to punish those responsible for the TWA hijacking and murder.

Also, I would ask that you take three other actions which could strengthen significantly our anti-terrorist activities. These are:

(1) conducting a comprehensive review of all the bilateral and multilateral air transport agreements signed by the U.S., to determine whether any should be renegotiated to emphasize increased airport and in-flight security;

(2) providing a special report to Congress identifying, at least on a classified basis, those nations whose major airports represent security risks to American travelers and airlines, any specific actions our government has recommended to those nations to improve their airport security, the responses to those recommendations, any options available to the U.S. government to encourage implementation of these recommendations, including any appropriate sanctions, and if sanctions are an available option toward any country but are not being implemented, the Administration's reasons for not doing so;

(3) considering still further improvements to U.S. intelligence capabilities targeted against terrorism, and proposing them to Congress as soon as possible in special authorizing and funding legislation, if necessary.

These reports and other initiatives I am requesting should contribute to our battle against international terrorism.

My thanks in advance for your consideration and cooperation.

Sincerely,

ROBERT C. BYRD.

CBS SUNDAY MORNING, JULY 7, 1985,  
COMMENTARY BY RON POWERS

It is time for American broadcasters to commit an act of statesmanship: an act so large and so unusual and so utterly improbable that its virtue would confront the evil of modern terrorism and help disarm it.

It is time for a summit meeting: people from the networks, the cable systems, the broadcast groups and the large urban stations.

The purpose—a voluntary consensus on limits; on some reasonable self-control over the extremes of broadcast options during a terrorist episode.

And underline "voluntary." These limits should not conform to the government's notion of news. They should conform to common sense and good will.

But—you say a summit meeting is unlikely among the super-competitive broadcast leaders? So was a summit between Reagan and Gorbachev until last week.

Unlikely, but not impossible. It would have to be inspired by an individual. One network president or group chairman or station manager.

Someone with the courage, or maybe the strangeness, to affirm, publicly, for the first time, that marginal wealth, marginal rating points, temporary prestige—none of those is as important as history. And that television does not stand apart from history. And that television's role in history is in danger lately of being defined by active forces of evil. And that now is the time to reclaim that role and direct it toward good.

Now, I recognize that words like "evil" and "good" and "virtue" are out of fashion this century; they strike the ear like the clank of medieval armor. They embarrass.

But the word "terror" is very much in fashion; and what other values will broadcasters summon when it strikes again?

Free-market competition? In the past three weeks, that standard contributed to a political victory for a radical faction inside Lebanon and the cheapening of human outrage here at home.

What contributions will the coverage make when terrorism becomes a routine domestic story instead of an occasional far-off episode, as some experts are starting to predict? One reputable American columnist is already calling for this country to retaliate in kind to terrorist murders; and eye for an eye, a death for a death.

Imagine the sort of coverage that action might provoke.

So it's time for a broadcast summit. Time to find ways of neutralizing television as a terrorist weapon.

What ways? Well, a couple of ideas.

No more on-air dialogue between anchor-men and partisan spokesman from the other side. It's like a free campaign commercial for the bad guys.

No more coverage of spectacle for spectacle's sake: hostage press conferences, readings of terrorists' demands.

Leave the victims' families alone. No cash payoffs; no more treating them like winners in a macabre game show. This is a corruption of grief—and it turns the families into terrorist pawns.

And finally, it should be made clear that none of these restraints will amount to self-censorship. There's a difference between restraint, and submitting to the government's policy line.

I believe that American broadcasters don't really want to look as bad and as self-interested as they looked at times during the TWA hijack crisis. They get locked into that sort of performance by the blind logic of competition.

The only key is some kind of consensus for self-control. And the only way that key will be turned is by some individual, some broadcast leader. A statesman.

MR. BYRD. Mr. President, I thank the Chair. I thank the distinguished Senator from Wisconsin. I have kept him waiting.

#### RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin [Mr. PROXMIRE] is recognized for not to exceed 15 minutes.

MR. PROXMIRE. I thank the Chair.

#### WHY DOES THE NUCLEAR ARMS RACE RUSH AHEAD?

MR. PROXMIRE. Mr. President, what policies can this country pursue to reduce the terrible prospect of nuclear war? Here's a question all of us—hawks and doves, Democrats and Republicans, indeed even Americans and Russians—can agree on as a common objective. All of us agree on the consequences of nuclear war. All of us know that a superpower nuclear war would bring total unmitigated disaster to our country. Indeed, the National Academy of Science has found, in a report commissioned by the Defense Depart-

ment, that there is a "clear possibility"—in their words—that such a war would trigger a nuclear winter. Such a consequence would constitute the worst environmental disaster for the Earth in the past 65 million years. If nuclear winter were triggered, most of mankind would starve to death. There is the real possibility that our species might become extinct. With this kind of stake in peace, the objective of preventing a nuclear war obviously enjoys a very high priority.

Is there no priority higher than the avoidance of nuclear war? Surprisingly for almost all of us, there is. Since we recognize fully the virtual certainty that such a war would destroy our great country as an organized society, why does not the prevention of such a war constitute our No. 1 objective? And it certainly does not. Can we face the likelihood that in a superpower nuclear war, everyone we hold dearest, including our own children, might perish at once or die a slower but more agonizing death?

Can we say that there are consequences flowing from the policies that would avoid a nuclear war that would be worse than this catastrophe of death that would surely flow from such a war? Indeed there are, for many of us. To my knowledge none—not one—of the 535 Members of Congress—the 435 in the House and the 100 in the Senate—have advocated a unilateral destruction of all of our nuclear arms. No Member of the Congress has said that our President should tell the Soviet Union that we will not retaliate with devastating nuclear force in response to any nuclear attack the Soviet may make against this country. Indeed, few Members of the Congress have even disavowed the expressed policy of our country in all Presidential administrations in the past 30 years to reserve the right for this country to strike first with nuclear weapons. In fact, most Members of Congress seem to have accepted by acquiescence the policy of this country to use nuclear weapons first even if the Soviet does not make a conventional attack on this country. That first-strike doctrine envisages a nuclear response by the United States and NATO in the event of a Soviet conventional breakthrough in Europe.

The position of the U.S. Congress on nuclear weapons and nuclear war is, considering the utterly disastrous consequences of such a war, astonishingly uniform. To a person, Congress favors deterrence. To a person, Congress opposes unilateral nuclear disarmament or even unilateral nuclear weapons reduction. Without exception, Members of Congress say they favor arms control. All Members of Congress insist that any agreements must be verifiable and mutual. It is this Senator's judgment that no Member of Congress would support U.S. compliance with a

treaty if the evidence were clear and convincing that the Soviets had violated the treaty in any militarily significant way.

Of course, Members of Congress differ over what nuclear weapons are effective or necessary. We split on the wisdom of the MX, the B-1 B bomber, the star wars anti-missile defense. But these differences do not hinge on any differences on basic military policy. They hinge on judgments about the effectiveness of the weapons, the cost, the incremental value of adding or not adding more nuclear weapons to an arsenal already big enough to blow the Soviet Union off the face of the Earth.

Given this remarkable consensus in Congress, why is there no outcry from the press, from the universities, from some segment of the public generally? This country glories in dissent. We thrive on differences of opinion. We recognize that it is debate and discussion that make our democracy strong. What is the basic difference between this great democracy and totalitarian nations such as the Soviet Union? It is our welcome of the challenge of dissent. And yet, on the most serious threat to survival the world has ever faced, we speak as one.

Think of it. The Catholic bishops have reminded us that ours is the first generation since Genesis that has the power to end life on Earth. The bishops have called on our people and our Government to use all our material and spiritual resources to prevent a nuclear war. But how much time, how much effort, how much consideration of the options have we given to this most critical question of this or any age?

Mr. President, the American people, in State after State, in referendum after referendum, have told us that they want this country to work to negotiate an end to the arms race with the Soviet Union. The people in this country cry out for nuclear weapons arms control. We have, over the past 22 years, forged five major arms control treaties with the Soviet Union. But the nuclear weapons arms race streaks on, blasting ahead stronger than ever. In spite of the meetings going on now in Geneva between representatives of the two superpowers, the outlook for effective arms control progress is dimmer now than it has been for 30 years. Both Russia and the United States will gain immensely in security and in their economic well-being by ending this insane arms race. We can and must do better.

#### MYTH OF THE DAY: THAT ENVIRONMENTAL POLICIES HAVE IMPROVED SINCE SECRETARY WATT LEFT

Mr. PROXMIRE. Mr. President, for several days now, I have delivered to

the floor of the Senate what I call my myth of the day.

My 10th myth of the day has been a product more of expectation than a Presidential or administration statement. When James Watt left the Reagan administration as Secretary of the Interior, Americans who put a priority on the environment heaved a mass sigh of relief. The general public still persisted in the feeling that we could expect to breathe clean air, drink pure water, and that the Nation's marvelous environmental legacy was home free. Unfortunately, that general belief is a myth. The environment suffers the same problems of exploitation and neglect it suffered under Watt. Consider:

First, the Reagan administration still has no acid rain program, preferring unlimited "further study" to taking action. Meanwhile our lakes and forests continue to be damaged and recent scientific studies show the problem is spreading to new geographic areas like Far West.

Second, in first 5 years of Superfund Program the Federal Government totally cleaned up just a handful of sites—six—out of the thousands of dangerous, abandoned, hazardous waste dumps nationwide.

Third, EPA managed to reregister just 1 percent of all pesticides standards. Even worse the vast majority of older pesticides on the market are missing vital test data for determining whether they cause cancer, birth defects or mutations.

Fourth, the Interior Department has continued implementing Watt's policy of weakening the landmark Alaska Lands Act including his attacks on Alaskan national parks and refuges.

Fifth, the Surface Mining Program is still not enforced. The Interior Department is owed hundreds of millions in uncollected fines from scofflaw mining companies.

Sixth, Interior is still implementing Watt's onshore oil and gas leasing policies which threaten wildlife and cheat taxpayers out of a fair rate of return for our resources.

Seventh, despite some cosmetic changes in Watt's controversial Coal Leasing Program, Interior still clings to his giveaway policies which encourage speculation.

Eighth, Interior has not backed down from Watt's controversial areawide mass leasing of offshore oil and gas lands.

#### CORPS OF ENGINEERS WIN JULY FLEECE

Mr. PROXMIRE. Mr. President, during the July break, I awarded my July Golden Fleece to the Army Corps of Engineers for spending \$33 million, with another \$17 million in the pipeline, to pump sand on 10 miles of



beach, which fronts costly condominiums and haughty hotels in Miami Beach. The corps is really sand-bagging the taxpayers with this one because one large storm could easily sweep away all this sand. The corps' efforts are making it easier for those staying in these pleasure palaces to bathe but the average taxpayer is taking the bath.

The corps is in the midst of a costly, never ending, and futile effort to rebuild the beach in front of Miami Beach. They are dredging sand off-shore and pumping it onto the beach to widen it. Natural geologic forces are eroding the beach, but the corps is attempting to thwart those forces. Taxpayers in Wisconsin, Nebraska, and throughout the Nation, are paying \$5 to \$6 million a mile to underwrite this effort.

Are these efforts futile? Here is a quote from "Living With the East Florida Shore," a book written by expert geologists and marine scientists: "Shoreline engineering destroys the beach it was intended to save." Taxpayers can pour in the millions, the corps can pump ton upon ton of sand, but recent research demonstrates that the best that can be hoped for is that Miami Beach will become Miami seawall. If local interests want to protect their investment and reimburse the corps for the total cost, fine, but the taxpayer should not be handed even part of the bill.

Make no mistake: The corps is doing this work to protect the investment of developers who built high-rise condominiums and hotels along an unstable beach. Without that sand, could they charge \$150 a night for a room or \$1 million for that condo? The corps sows the sand, but developers reap the beach.

Once this type of work starts, finding a time to say "Enough, already," is next to impossible. The corps is now rebuilding about 10 miles of beach, but is ready to start work on another 2.5 miles because "Local interests desire extension of the northern limit." Where does the corps stop—Palm Beach, Fort Lauderdale, or Maine?

The money for this extension is hidden away in the supplemental appropriations bill recently debated by Congress, which appropriates an initial \$1 million as a downpayment on a \$4.1 million project. But before the money can be spent, the administration and local interests have to agree on a cost-sharing formula. If local developers want a nice, sandy beach, let them pay for it—all of it. That is the only formula which is fair.

We laugh today at the story about Xerxes, an ancient Persian Shah who ordered his army to whip the sea after a storm destroyed his fleet. Before laughing too hard, however, the taxpayers should consider what the

corps—a modern-day Xerxes—is doing for Miami Beach.

#### SOVIET JEWS AND THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, the saga of Jews fighting for basic human rights in the Soviet Union offers an excellent example of why the United States needs to ratify the Genocide Convention.

While the conditions that Soviet Jews currently face do not constitute genocide, it is important to remember the signal that American ratification of this landmark treaty would send to the Soviet Union regarding our commitment to human rights.

America's failure to approve the Genocide Convention has frequently been used as a weapon by the Soviet Union to impugn the motives of the United States with regard to human rights. Our moral credibility in criticizing Soviet treatment of its Jewish population would be greatly enhanced if the Soviets could not deride us for failing to approve such a basic declaration of human rights as the Genocide Convention.

A new book, "The Jews of Hope," by Martin Gilbert describes the manifold human rights violations that the Soviet Government has perpetrated upon its Jewish citizens.

The book concentrates on the so-called refuseniks—Jews seeking and being denied permission to emigrate to Israel. Mr. Gilbert describes the despicable devices that the Soviet Government has used to harass the refuseniks.

Gilbert's book comes from interviewing a number of the more prominent refuseniks during his trip to the Soviet Union in 1983. "The Jews of Hope" is an examination of resistance, in spite of numerous human rights violations.

The plight of the refuseniks is astounding, Mr. President. Between 1968 and 1981, 640,000 Jews attempted to leave the Soviet Union. Of these, 260,000 were allowed to leave while 380,000 were compelled to remain.

During 1984, fewer than 1,000 were permitted to leave. The Soviet leadership maintains a policy of official intimidation toward the Jewish population.

Among the tactics used by the Soviets to intimidate the refuseniks have been: economic reprisal, discrimination against their children, isolation from friends and relatives living abroad, constant surveillance, arrests, frame-ups, terms in the Gulag, and anti-Semitic propaganda.

The anti-Jewish policy also includes a systematic campaign to prevent unauthorized religious or cultural observances. There are no religious schools and no rabbinical seminaries in the Soviet Union. Jewish religious literature is practically nonexistent.

The Soviet Union is one of the few non-Arab countries where outright anti-Semitism is propagated at the government level.

Lev Kovneyev, a popular Soviet writer, said in the publication of the Communist youth organization that the purpose of Zionism was "to turn every Jew, no matter where he lives \*\*\* into a traitor to the country where he was born." This is indeed shameful at the governmental level.

Mr. President, the plight of the refuseniks is indeed a tragic one as described by Martin Gilbert. The United States has repeatedly criticized these violations, yet the Soviet Union continually responds by pointing to America's failure to ratify the Genocide Convention.

Mr. President, I urge the Senate to ratify this fundamental statement of human rights to convince the world of our commitment to the sanctity of human life.

#### REFORMING MEDICARE REIMBURSEMENT TO HOSPITALS

Mr. PROXMIRE. Mr. President, the most important reform in the history of Medicare was enactment of a prospective payment system for inpatient hospital care.

This new payment system has helped to turn the industry upside down. The old cost-based reimbursement system provided hospitals with every incentive to increase both costs and charges, increase the intensity and number of services provided to patients, and increase their length of stay. The incentives for efficiency or good management were minimal, at best.

By contrast, Medicare's new prospective payment approach is based upon setting a price up front, prospectively, based upon the patient's diagnosis. Since reimbursement is geared to what amounts to a price list of 470 different diagnosis related groupings, or DRG's, hospital administrators and their medical staff have an incentive for efficiency since they know in advance what Medicare's payment will be.

The changes that have occurred in the hospital industry since the implementation of the DRG system have been little short of phenomenal. Average length of stay for Medicare patients has declined 2 days. Admissions stabilized and have since declined. Hospital suppliers have slashed prices as they are finding backward price pressure from a newly competitive hospital industry. And, in some cases, patients are finding discounts for the first time as hospitals begin to market their most cost-effective services.

As with any system, the DRG system which Medicare adopted contains both good incentives and ones which bear watching. For example,

the incentives for economic efficiency also contains the possibility for under-service of Medicare patients, such as lowering the quality of care or premature discharge and it is important that Medicare monitor these developments very closely.

And it is important to recognize that DRG's are a somewhat blunt tool, subject to very legitimate criticisms, which we need to address as we move along.

For example, critics have pointed out that the DRG's themselves are not clinically precise and may need to be reformulated as we go along to assure that the system makes better clinical sense and properly accounts for the differing costs faced by hospitals with more severely ill patients.

Small hospitals also face a problem since the DRG system is based upon the averaging inherent in the law of large numbers: A hospital makes a profit on easy-to-treat cases but loses on patients severely ill. For most hospitals, these numbers will balance in theory but a small hospital may never have the volume of patients to permit that balancing to take place and we may need to address that problem as we go along.

In addition, while the Health Care Financing Administration is currently exploring the possibilities for extending the prospective payment concept to other areas of health care services, hospitals are currently left partially under prospective payment—for inpatient care—and partially cost-reimbursed—for all other services, such as outpatient care, skilled nursing facility care or home health care—and that disparity provides incentives for cost shifting that are hard to resist.

While most of these issues cannot be addressed just yet, the legislative package I am introducing today will attack three problems that stem from the prospective payment system and the dual structure of reimbursement hospitals face.

#### S. 1400, THE PROSPECTIVE PAYMENT SYSTEM AMENDMENT

Mr. President, pressure has been mounting on the Congress to delay the 3-year phase-in of the DRG system. While there are a number of issues that contribute to this pressure, one of the most recurring themes is the concern with the march to a national urban and a national rural DRG rate.

Over the course of the 3-year phase-in—and we have just passed the halfway point—hospitals are receiving a decreasing portion of their payment based upon their actual costs and an increasing portion based upon a prospectively determined DRG rate. The DRG rate itself is a blend of the appropriate regional rate—and there are nine of them based upon the nine census regions—and the national DRG rate. With each year, the DRG rate is increasingly based upon the national

DRG rate at full implementation, hospitals will be reimbursed solely on the DRG rate schedules for urban and rural areas and those rate schedules will be based solely on national prices.

It is that inexorable march to a DRG price schedule based solely on national prices that has generated great concern because a fully national rate brings with it the promise of massive economic transfers between the older, higher cost hospitals of the Northeast and Midwest and the newer facilities of lower cost areas such as the Sun Belt or some areas of the Far West.

These critics contend that the purpose of the DRG system is to reward efficient and penalize inefficient hospitals but the interregional transfers inherent in a rate only determined on a national level raise the possibility of major windfall profits and catastrophic losses to individual hospitals in a region, without regard for the efficiency of their hospital management or medical staff. In short, they argue that the cost of doing business is simply not uniform throughout the nation and we need to take that into account.

While they have a tendency to overstate their case, the hospital associations have raised a valid point. But in proposing a freeze of implementing the DRG system, they are dead wrong on their solution.

In my view, the Congress must send a clear and unambiguous signal to the industry that we remain committed to implementing the prospective payment concept and any delay would undermine that message. The types of severity of illness adjustments and other refinements to the DRG's themselves which are now under consideration will take more time than a year to implement and there is little possibility that a year's delay will speed their development. It will simply set the stage for further requests for delay.

In addition, we must keep the pressure on high-cost hospitals to achieve the management and productivity efficiencies that are possible and to work with their medical staffs to reassess the tremendous variations in patterns of medical practice that have been so ably outlined by Dr. Jack Wennberg of Dartmouth University.

But if the DRG system is to work, it must be both fair and equitable and perceived as fair and equitable: the rewards or penalties that a hospital faces must be reasonably related to costs over which the administrators and their medical staffs can actually exert control.

That is why my bill will provide for the continued implementation of the DRG system on schedule but addresses the inequities of computing an urban and rural DRG price list solely on the basis of national prices. My bill would require that, at full implemen-

tation the DRG price will be a blend of the appropriate regional DRG rate and the national DRG rate: a 50-50 split.

The advantages of such a blend are clear. It recognizes the fact that costs are not uniform throughout the country and, by providing for an even split between the costs of each region and national costs, this approach eliminates the windfall profits and the catastrophic losses that institutions would otherwise face. But it retains the incentives for efficient management and retains the vital economic linkage of the DRG system: financial reward and financial penalty. Hospitals in all regions would retain incentives to lower costs but the dimensions of those profits and losses would be more reasonably related to their actual management and clinical efficiency.

For hospitals in regions which would benefit even more under a national rate, than under my blend proposal, I would point out that the certainty of continued implementation of the DRG system, even at a blended rate, offers far more security than the unpredictability of what may happen following a one year freeze. And as long as the specter of windfall profits and catastrophic losses remain, the possibility of further attacks on full implementation of a prospective payment system will persist. And that is certainly not in the interests of hospitals in so-called winner States.

And, finally, by adopting this proposal, we will be providing ourselves with the necessary breathing room to test out the other long-term modifications in the DRG system that are now under development.

My bill is designed to be budget neutral. It is not intended to increase Medicare's expenditures but is intended to be implemented by the Department of Health and Human Services to preclude any increase in outlays.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

#### S. 1400

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) BLEND OF NATIONAL AND REGIONAL RATES.—*

(1) Section 1886(d)(1)(A)(iii) of the Social Security Act is amended to read as follows: "(iii) beginning on or after October 1, 1986, is equal to the applicable combined adjusted DRG prospective payment rate determined under subparagraph (D)(ii) for such discharges."

(2) Section 1886(d)(1)(D) of such Act is amended—

(A) in the matter preceding clause (i), by striking out "subparagraph (A)(ii)(II)" and inserting in lieu thereof "subparagraph (A)"; and



(B) in clause (ii), by striking out “, and before October 1, 1986.”

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to discharges occurring on or after October 1, 1985.

**S. 1401, HOSPITAL WAGE INDEX ADJUSTMENT**

**Mr. PROXMIRE.** Mr. President, the second bill I am introducing today will not increase Medicare's outlays either but will redress a major imbalance in the wage index used by Medicare to compute hospital reimbursement.

In implementing the DRG system, the Department was forced to rely upon data collected by the Bureau of Labor Statistics in order to determine the average wages paid at each institution. There were a number of problems with this ES 202 data set but the key problem was that while it tabulated total hospital wages and the total number of employees, it did not account for the contribution of part-time employees. That meant that for States like Wisconsin which relied heavily upon part-time employees the wage level was significantly understated. Medicare had no way of knowing how many full-time equivalents the reported number of employees equaled.

That is why the Congress mandated the creation of a new wage index, based upon a more complete accounting of part-time employees and directed that the new wage index be implemented retroactive to October 1, 1983. The Department has now computed a new index and announced its intention to implement the wage index this October 1.

But the Department's report highlighted the tremendous shifts in reimbursement that will result from the application of the retroactive provisions of the law: Shifts which might mean millions of dollars in collections from hospitals in some areas for the purpose of redistribution to other areas that had been underpaid in the past. It is clear to hospitals in winner States, like Wisconsin, as well as loser States that enforcing the provision retroactively would simply cause financial havoc for no good purpose. That is why the American Hospital Association and the Wisconsin Hospital Association have proposed repeal of the retroactive provision and I agree.

My bill would repeal that provision, provide for the application of the new wage index prospectively beginning October 1, and direct the Secretary of HHS to make periodic updates in the index.

The importance of implementing the new wage index on schedule cannot be overstated and that is why I am delighted to join Congressman HAL DAUB in offering this proposal.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

**S. 1401**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) PROSPECTIVE APPLICATION OF REVISED INDEX.*—Section 2316(b) of the Deficit Reduction Act of 1984 (Public Law 98-369) is amended—

(1) by striking out “for hospitals for cost reporting periods beginning on or after October 1, 1983” and inserting in lieu thereof “for discharges occurring on or after October 1, 1985”, and

(2) by striking out the second sentence and inserting in lieu thereof the following: “For discharges occurring during fiscal year 1986, any such changes in the wage index shall be derived from total gross hospital wages.”

(b) **AUTHORIZING PERIODIC UPDATING OF INDEX.**—Section 2316(a) of such Act is amended by adding at the end the following new sentence: “The Secretary shall provide for such periodic adjustments in the appropriate wage index as may be necessary, taking into account changes in the wage differences of full time and part time workers.”

(c) **EFFECTIVE DATE.**—The amendments made by subsections (a) and (b) shall be effective as if they had been included in the Deficit Reduction Act of 1984 as originally enacted.

**S. 1402, HOME HEALTH CARE REIMBURSEMENT REFORM**

**Mr. PROXMIRE.** Mr. President, the third bill I am introducing has a very simple purpose: to assure that all home health agencies, whether they are based in a hospital or a storefront down the street, will face the same cost limits for their area and the same cost reporting requirements when seeking Medicare reimbursement.

In reimbursing home health agencies, Medicare has always treated hospital-based home health units differently from all other home health care providers.

One aspect of this difference has been in the area of cost reporting. Since Medicare requires hospitals to spread the cost of their overhead—general and administrative costs—across all services that they provide, hospitals which provide home health services have never filed the same cost reports as other home health providers. Because of the great discretion that hospitals can exercise in allocating their overhead costs, it has always been necessary that a hospital agency's claims be handled by the hospital's fiscal intermediary as part of their review of all hospital service claims.

In addition, Medicare has recognized higher cost limits for hospital-based providers of home health services. With the adoption of the Tax Equity and Fiscal Responsibility Act of 1982, Congress mandated the development of a single cost limit for all home health agencies but required the Department to recognize the impact of

the Medicare cost allocation formula through an add-on to this general cost limit. In practice, this has meant that a hospital-based home health agency faces a Medicare reimbursement cost limit which, on average, is 13-percent higher than a free-standing provider for the very same service.

The application of the Medicare cost allocation formula to hospital services other than inpatient care is generally quite appropriate and, in cases such as reimbursement of skilled nursing home care, is even more appropriate in light of empirical findings that hospital-based nursing home units often treat patients who are more severely ill.

But in the case of home health care, where only a small percentage of the activity is taking place on the hospital grounds, there are a number of legitimate policy reasons for changing the present arrangement.

First, by requiring hospital-based home health care units to follow the same cost reporting and claims policies as other health units, we will improve the quality and consistency of home health claims review.

The inconsistencies of Medicare intermediaries in reviewing home health care claims has been a recurring problem. The difficulty in improving the system has been the fact that for most Medicare fiscal intermediaries, home health claims have represented a small percentage, both in volume of claims and in total dollars, of their business and they were never able to devote sufficient resources to this area in order to develop proper expertise. That is why the Congress mandated that all home health claims should be channeled to a handful of so-called regional intermediaries. In this way a few intermediaries will handle all home health care claims and, by reducing the number of intermediaries making decisions and increasing the volume of claims they review, the possibility of consistency in decision-making is significantly enhanced.

Unfortunately, as long as hospital-based home health care units file their home health claims as they currently do, these claims will be exempt from that system since they will have to be reviewed by the hospital's own intermediary. In a few cases, the hospital's own intermediary may be one of the regional home health reviewers but, in most cases, they will not. This means that claims from 20 percent of all providers will be exempt from this regional intermediary review system and that will undercut its possibility of success. Even more important, the hospital's intermediary will be handling even fewer home health claims than it currently does and the possibility for erratic and inappropriate decisions is increased on those claims.

In my view it is in the interest of Medicare, the beneficiary and the hospital to see that their home health claims are handled by the newly designated regional intermediaries.

Second, by requiring all home health agencies to file the same cost reports, the Congress and the Department will be in a better position to compare costs between free-standing facilities and hospital-based units and among hospital-based units. Currently that simply cannot be done because of the variability in how hospitals allocate their overhead costs. With home health care costs increasing at a more rapid pace than any other Medicare-covered service, and the possibility of applying prospective payment to home health care still many years away, it is essential that we maintain solid, and comparable, cost data in the interim. With my bill, we will be able to do that.

Third, there has been a rush into home health care services by all sorts of providers but the most astounding increases have come from for-profit agencies and by hospitals. While all providers reaching a decision to enter the home health care market know that they will face the same general cost limits from Medicare, a hospital faces a cost limit which is 13 percent higher. That skews the economic incentives facing an administrator who is attempting to decide whether his or her hospital should create a home health agency, enter a joint venture with an existing provider or simply contract with existing providers to meet their patients' home health needs. There seems to be little reason to encourage hospitals to enter the home health market in light of the phenomenal number of providers who have recently entered the field and the inherent incentives a hospital has to diversify its services. Hospitals should choose to enter the market on the same grounds as any other provider: they can meet the prevailing Medicare price.

And, finally, it is important to remember that the overwhelming portion of home health services activity takes place far from the hospital's grounds. It does not take place on the hospital's campus. And in an era in which a hospital is prospectively reimbursed under the DRG system for inpatient care yet cost-reimbursed for all other services, the appeal of using the cost allocation formula for cost-shifting is growing. And in this area, where the justification for the application of the cost allocation formula is least strong, it's time that we reassess its validity in light of the other policy considerations I have outlined.

Mr. President, I fully recognize that some hospital-based providers may face extraordinary costs as a result of being a sole community provider, peculiarities of geographic location or

the necessity of paying a premium for necessary, but difficult to attract personnel, and that is why my bill does not affect the Secretary's authority to grant exceptions to the cost limits on a case-by-case basis where the hospital-based agency, or any other home health provider, can make its case. And the comparable data base that can be developed from all providers filing the same reports will better enable the Secretary to assess the validity of those requests for exceptions.

Mr. President, my bill offers the possibility of improving the consistency and quality of claims decisions, better cost data, increased competition and savings of several million dollars a year for Medicare.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1402

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1861(v)(1)(L) of the Social Security Act is amended by striking out the period at the end thereof and inserting the following: "on a case-by-case basis, but no generally applicable add-on to such limitation may be allowed for hospital-based home health agencies. The Secretary shall utilize a uniform cost report for all home health agencies, whether free standing or hospital based."*

*(b) The amendment made by subsection (a) shall be effective with respect to services furnished after the date of the enactment of this Act.*

#### ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond 12 noon with statements therein limited to 5 minutes each.

#### THE SEVEN LEFT BEHIND

Mr. DIXON. Mr. President, all of us rejoice that the hostages from TWA flight 847 are safely back on American soil. We are thankful for their return.

There have been innumerable expressions of happiness across our land during the last few days, and over the Fourth of July holiday. We in Illinois are especially grateful, Mr. President, because there were several Illinois citizens among the flight 847 hostages who returned home.

At the same time, all of us were saddened at the untimely and unnecessary death of Robert Stethem. This courageous young American truly deserves our respect, and we remember his family in our prayers.

There is an additional note of sadness related to the events in Lebanon. On the Fourth of July, I met with the family of Father Lawrence Jenco, a 51-

year-old Catholic priest and native of Joliet, IL, who is a hostage still being held in Lebanon. He is, in fact, one of seven Americans, Mr. President, who were left behind when the other hostages were released. These seven were left behind, but they are not forgotten. I assured the Jenco family that we will make every effort to free Father Jenco and the other Americans still being held as prisoners in Lebanon. We are determined that they, too, will be returned to the United States to once again share the freedom that we as Americans all enjoy.

The tragedy of these seven hostages is that none of them was doing any harm to Lebanon or its citizens. They all were in Lebanon for good reasons, and many of them were on missions of mercy. Many of them were there to help ease the suffering of the people in that war-torn land. All of the seven were innocent victims who were plucked from the streets of Beirut by their captors.

Father Jenco was in Lebanon as director of the Catholic Relief Services in Beirut. He dedicated himself to the goal of helping to rebuild strife-torn Lebanon. He was abducted January 8, 1985.

Shortly after his disappearance, more than 10 of Father Jenco's relatives visited with Senator PAUL SIMON, Congressman GEORGE O'BRIEN, and me to discuss his plight. More than anything else, they requested that we, as their representatives in Congress, remember Father Jenco and the other hostages still being held in Lebanon, and that we continue to press the State Department to make every effort to insure the safe release of all of the hostages. Since that time, Senator SIMON, Congressman O'BRIEN, and I have been in constant touch with the State Department to press home the point that the United States cannot rest or be at ease until all of the hostages are freed and safely back on American soil.

Father Jenco's family's hopes were raised because of assurances they received that our Government was trying to include the seven hostages in the effort to release the Americans from flight 847. Father Jenco's relatives were devastated when they learned that he and six others were not to be included among those coming home. All of us share their sadness.

Because I understand how dejected they are, I invited more than 30 of Father Jenco's relatives to join me in Illinois on July 4 to remind all Americans that our problems in Lebanon are not yet over. I suggested that we keep Syria involved in the situation there, with the hope that President Assad can be as helpful with the seven left behind as he was with those from TWA flight 847. We must also press



the International Red Cross and the United Nations to work for the release of Father Jenco and his fellow hostages. Other nations, such as Algeria and even Iran, may have an important role to play in getting our Americans back home where they properly belong.

I have been in touch with Ambassador Robert Oakley, who is the director of the State Department's Office of Counterterrorism and Planning. I have also discussed Father Jenco's plight with other officials at the State Department. The Department keeps me thoroughly briefed on the situation. I constantly urge the Department officials to do the best they can under what we all recognize are difficult circumstances.

None of us can be satisfied with this unhappy situation until the seven who were left behind are free and back home.

#### 25TH ANNIVERSARY OF EAST-WEST CENTER

Mr. INOUE. Mr. President, as we celebrate our Nation's 209th birthday, I rise to congratulate the East-West Center on the occasion of its 25th anniversary.

Congress created the East-West Center in Honolulu, HI, 25 years ago. For a quarter of a century, the center has been promoting better relations and understanding among nations of Asia, the Pacific, and the United States through cooperative study, training, and research. In the late 1950's, when the East-West Center was still just an idea, many Members of this body and others in Government, business, and education stepped forward to urge that the institution be established. Twenty-five years later, we can admire the foresight of these leaders.

During the center's first quarter century, participant awards have totaled nearly 35,000—two-thirds from Asia and the Pacific, one-third from the United States. The center's alumni came to learn and exchange views, and they returned home enriched by the experience. These men and women include heads of government, Members of Parliament, leaders in business and education, journalists, artists, and thousands more.

The East-West Center, with its programs of student training and advanced research, complements other educational institutions. At universities, scholarly exchange among experts from different countries plays a secondary to the primary mission of basic research. At the East-West Center, by contrast, it is the central mission. Specialists from the United States, Asia, and the Pacific Islands bring a wide spectrum of skills and viewpoints to the center to study critical issues facing this part of the

world—with which we will do more trade by the year 2000 than we will with our European allies. It is truly a collaborative approach, which is particularly well suited to our modern era.

Much of the center's work has practical application to both the private and public sectors. Research at the center cuts across academic disciplines to bear on issues important to the very survival of nations and their economies—problems like the consequences of rapidly growing cities; the aging of populations in Japan and the United States; the erosion of topsoil in steep upland areas of the tropics; the supply and future distribution of oil and mineral resources; and the strain of rapid modernization on traditional cultures. The center is dedicated to research and education that contributes to the solution of complex issues such as these.

But the center is more than a research and training institution. At a time when antagonism between nations is so much part of the political agenda, and when internal strife creates deep divisions within societies, the East-West Center stands out for its commitment to improving cooperation and understanding between peoples. It is a symbol of the U.S. interest in the Pacific and Asia and our country's vision that a better understanding of the Pacific will benefit every member nation of the basin community.

Mr. President, the past 25 years have seen great changes in the world. Through these turbulent times, I am proud to recognize the steadfast and continuing commitment of the East-West Center to understanding these changes and influencing them for the better. Now more than ever before, the center plays a crucial role in our quest for cross-cultural communication and scientific exchange. I thus urge my colleagues to join with me in recognizing the center's contributions and commending them for a successful quarter century.

#### RESIGNATION OF DAVID STOCKMAN

Mr. DOLE. Mr. President, I regret the resignation of David Stockman as OMB Director. But I fully understand his desire to move on.

His departure will be a great loss to the President and others inside and outside of Government who have worked closely with him over the years. There have been a few bumps along the way, but overall he has done an outstanding job. The great strides we have taken toward making the Government more responsible and more efficient would have been difficult to achieve without his knowledge and skill.

We will miss his presence as we continue in our deficit reduction efforts this year, and in years to come.

#### TRIBUTE TO LT. GEN. THOMAS HERREN

Mr. HEFLIN. Mr. President, it is with great sadness that I rise today to share with my colleagues the news of the recent passing of one of our country's outstanding military leaders, Lt. Gen. Thomas W. Herren, who died on June 4, 1985.

General Herren's death was brought to my attention by his 15-year-old granddaughter, Lisa, who lives in Bethesda, MD. Lisa sent a letter to me at my apartment in Washington and enclosed an obituary stating many of her grandfather's accomplishments, but, as she put it, "yet not half so many as those that are in my heart. He meant a lot to me, a grandfather above the rest."

General Herren was not only a grandfather above the rest, but also a patriot above the rest. General Herren was a veteran of three wars, and commanded the Military District of Washington from 1950 to 1952. He served with the field artillery in France during World War I, and was an assistant commander of the 70th Infantry Division in Europe during World War II. General Herren served as deputy commanding general for civil affairs of the 8th Army and as a commanding general of Korean Zone Communications during the Korean war.

After leaving Korea, he served in West Germany and served as commanding general of the 1st Army, based in New York, before retiring from active duty in 1957. His decorations included two Legions of Merit and the Distinguished Service Medal.

General Herren was a native of Dadeville, AL, and graduated from the University of Alabama in 1917. Later that year, he received his Army commission. Before World War I and World War II, he graduated from the Cavalry School and the Command and General Staff College.

The outbreak of World War II found him a cavalry instructor at Fort Benning, GA. He spent 1 year as commandant of the Cavalry School at Fort Riley, KS, before going to France with the 70th Division in 1944. He landed in Marseilles with the division's three infantry regiments, which, as "Task Force Herren," fought on the Rhine and in the Battle of the Bulge.

After that war, he held staff posts in South Korea and Japan before going to Washington in 1949 as the Army's Chief of Special Services. A noted pre-World War II polo player, the general, in his post, supervised the Army's sports program.

Thomas Herren will be greatly missed by his State, his country, and

probably most of all, by his granddaughter, Lisa Herren. I wish to extend my condolences to General Herren's wife, the former Lillian Corcoran, his two sons, retired Army Lt. Col. Thomas W. Herren, Jr., of Falls Church, VA, and retired Army Col. John D. Herren, of Bethesda, MD, and his four other grandchildren.

#### THE UNIQUE ROLE OF BLACK COLLEGES AND UNIVERSITIES

Mr. HEFLIN. Mr. President, on June 19, 1985, I joined my friend and colleague, Senator PAUL SIMON, in introducing the Title III Amendments of 1985.

I am particularly pleased that Senator SIMON has agreed to address one of my concerns, which is, that as this legislation develops in the Senate, there may be a future need to alter the bill. A major change would include an enhancement provision pertaining to future judicial consent decrees affecting our historically black colleges. It is my hope that the Committee on Labor and Human Resources would consider this potential need during the markup session of the bill. This type of provision pertaining to our historically black colleges would build on the existing rationale that the unique role of black colleges and universities must be maintained.

It is conceivable, Mr. President, that our historically black colleges would be required not only to upgrade their facilities, but also to establish professional schools. Certainly, if this is to be successfully accomplished, these colleges and universities will need help from the Federal Government to carry out their "access" mission. The Title III Program is the only source of direct institutional assistance to historically black colleges and universities.

The legislation we introduced on June 19, 1985, contains a special provision for "eligible or graduate" institutions, such as the Tuskegee School of Veterinary Medicine. I commend Senator SIMON for recognizing the important role institutions of higher education, like Tuskegee Institute, play in educating the majority of black veterinarians throughout the country. However, in the future, new demands may be placed upon other universities such as Alabama State University in Montgomery and Alabama Agricultural and Mechanical University in Huntsville. These universities may be required to establish new, innovative and professional programs on campus.

Mr. President, in my judgment, the Title III Program is the best Federal resource for meeting the future needs of these universities. It is critical that the Federal Government do all that it can to assure the continued progressive development of these institutions as new demands are placed upon them.

I urge my colleagues to act swiftly in adopting this legislation.

#### FURTHER INFORMATION ON THE EFFECTS OF PCP

Mrs. HAWKINS. Mr. President, I did not think it was possible to hear anything more grotesque than the things I've already heard about the effects of the drug PCP. But an article which recently appeared in the Washington Post's Health Section brings new, even more horrifying, revelations to light. To provide an idea of the kind of verifiable information it contains, this article is entitled, "PCP Users Don't Feel Pain When Their Bones Break."

This is how the author, the chief psychologist in the department of psychiatry at the District of Columbia General Hospital, begins his remarkable article: "His mother threatened to sue me. She did not want her son to go to St. Elizabeth's. However, this was the second time in 2 weeks that he attempted to set the house on fire and assault his family. Now all he would do was remain quiet or sit up in bed staring into space. He had a history of using PCP."

Dr. Brown, the article's author indicates in this hard-hitting statement of the effects of this man-made drug, that "more than any other substance of abuse, PCP adversely and irreversibly affects our youth." The doctor states that PCP has created an entire new kind of public menace and a whole new population of mentally disturbed individuals. This is due in part to the fact that PCP is easy to make and cheap to buy, but it is also due to the fact that PCP can cause irreversible brain damage. In fact, it is estimated that more than 50 percent of admissions to psychiatric emergency rooms in New York, Los Angeles, Boston and the District of Columbia are drug related.

This statistic alone attests to the uniqueness of this drug. The difference between PCP and other drugs starts with its history. Phencyclidine was originally developed as a surgical anesthetic; however, after being used for a short time, it was observed that patients recovering from surgery where this narcotic was used displayed bizarre, psychotic behavior. Subsequently, the drug was banned, and now is obtainable only by buying what is manufactured in clandestine laboratories with no control over the ingredients. This makes a substance with unpredictable results even more dangerous.

It is recognized that PCP greatly reduces or eliminates awareness of physical pain and recent memory, and it increases strength. As a result, it has become common to hear of patients who break out of handcuffs or leather restraints, suffering broken bones and

serious cuts in the process—all the while totally oblivious to the pain. Additionally, these persons generally do not remember the events that caused the injuries.

PCP can be smoked with marijuana. It can also be ingested by smoking it with tobacco; by mixing and snorting it with cocaine; by swallowing it with alcohol in its liquid form; or by injecting it with heroin. When it is taken in the more extreme forms (for example, injection), it is almost impossible to predict whether the drug will act as stimulant, as a depressant, or as an hallucinogen. Even a one-time use of PCP can trigger an underlying psychiatric problem, or cause irreversible destructive or self-destructive behavior. The doctor gives us two rather common examples of such behavior: "jumping off a building or gouging out eyes."

Another unique feature of this narcotic is that rather than being metabolized or excreted like cocaine, heroin, or marijuana, PCP is absorbed in body and brain fat tissue, where it accumulates. These fat deposits serve as sources of continued PCP toxicity, creating symptoms ranging from recurring psychotic episodes, to those of brain injury. The latter includes: Speech is slow and slurred; certain words become difficult to pronounce; and abilities to concentrate, organize, and think in abstraction become impaired. These symptoms endure for an indefinite period of time after use of the drug is discontinued. One of the most dangerous aspects of abuse of this drug is that discontinued use does not assure that psychotic symptoms will end, or not recur.

Dr. Brown relates another anecdote involving a PCP user: "A doctor recently requested that handcuffs be taken off a patient who had injured himself as a result of being on PCP. He seemed to be calm, and the officer unlocked the handcuffs. A few seconds later he attacked the doctor, and with the handcuffs, beat the officer who was trying to restrain him. It took eight men to subdue him. The patient suffered broken ribs but did not feel any pain and did not remember what happened. The officer required surgery."

Mr. President, more medical care is required with PCP abuse than with any other illicit narcotic because use of the drug results in respiratory and cardiovascular disfunctions, seizures, and convulsions. Also, there are many accidents, and self-inflicted injuries. Suicide has become a common problem in chronic PCP users.

What more need to be said to inform potential PCP users of the incredible danger of even an initial use of this drug? Despite the copious dissemination of information such as what is contained in this article, young minds



and young bodies are continuing to be maimed and destroyed through use of this drug. As chairman of both the Senate Subcommittee on Children, Family, Drugs and Alcoholism, and the Senate drug enforcement caucus, I will continue to do all I can to provide for enhanced prevention and education efforts directed at killing the demand for PCP.

#### FIFTIETH ANNIVERSARY OF THE CONGRESSIONAL RESEARCH SERVICE'S BILL DIGEST

Mr. MATHIAS. Mr. President, today I should like to congratulate and honor the Library of Congress on the occasion of the 50th anniversary of the Digest of Public General Bills and Resolutions. This publication is compiled by the Bill Digest Section of the American Law Division in the Congressional Research Service. The digesters and indexers in this section also provide us with information for our legis and scorio data bases. They have been fulfilling their legislative mandate since 1935, making the Digest one of the oldest legislative publications of the Library of Congress.

The first volume of the Digest appeared in direct response to the congressional need for legislative information. The 1935 committee report authorizing appropriations for the Digest stated:

The purpose is to furnish in the form of a brief synopsis the essential features of the introduced public bills and resolutions and a little fuller digest of reported measures in order that Members may have a weekly file from which they may follow the legislation when introduced and from which they may readily answer correspondence concerning these measures. Many bills and resolutions in the form in which drafted, particularly where amending and existing statute, involve study to ascertain the simplest purpose. This often takes more time than the pressure of business in most offices will permit.

The goal of the 73d Congress with regard to the provision of digests to Members has grown over the years, so that the Bill Digest Section today not only provides digests, but indexing terms, titles, revised digests, sponsor indexes, identical bill indexes, and a myriad of other legislative materials and pieces of information. In addition, the Bill Digest Section is responsible for the list of terminating programs and the online Scorio data bases for the last six Congresses.

It is a privilege to bring to the attention of my colleagues in the U.S. Congress the 50 years of outstanding work of this important section of the Congressional Research Service. In light of these accomplishments, it is fitting that on this 50th anniversary we pay specific tribute to the group of dedicated employees who make it all possible. No salute would be complete with-

out mention of Joseph E. Ross, Chief of the American Law Division, and Terry G. Guertin, editor and head of the Bill Digest Section. I would also like to share with you the names of the other members of the Bill Digest Section staff: Assistant Editor Kathryn R. Overton; unit supervisors Liane Mei Eng, Jack Foley, and Randolph Hansen; support staff supervisor Carolyn Agee; legislative indexing coordinator Andrew Mendelson; legal and paralegal: James M. Benton, Anson S. Carpenter III, J. Clarke, Ellen D.A. Duvall, Audrey F. Feffer, Marc R. Levis, Elliott Maizels, Paul Alan Mitchell, Holly J. Reppert, Russell C. Richardson, Jr., Sharon Kearney Rowe, Keith Sakelhide, Elizabeth Selinger, Edward J. Spence, and Jack Szveda; and the support staff: Denise H. Agee, Pauline T. Burton, Beverly Campbell, Juanita M. Campbell, Ralph O. Eads, S.M. Everett, Amanda B. Fenner, Melinda L. Henderson, Winnifred Henderson, Audrey E. Miller, Paula M. Moore, Peggy Murphy, JoAnne O'Bryant Carolyn Rhone, and Frank Spigel.

#### RETIREMENT OF ROBERT E. TRIPP

Mr. WEICKER. Mr. President, Robert E. Tripp, of Alexandria, VA, recently retired from the Department of Labor Budget Office after 15 years of service there.

Bob is a native of Washington, DC, having been born within the Federal City in the old Providence Hospital here on Capitol Hill. He has spent most of his life in the Washington area, except for military service, and schooling at the University of Denver, where he received his bachelor's degree.

Bob's entire Federal career spanned 32 years and included, in addition to military service, posts at the Civil Service Commission—now Office of Personnel Management—at the National Aeronautics and Space Administration, at the Commerce Department's Office of Foreign Direct Investment, and at the Office of Economic Opportunity. While his career was varied, and indicative of the multiple talents of the man, Bob's last tour of duty, in the Department of Labor Budget Office, was the longest, and the position in which he became most known for his invaluable service not only to his Department but also to Congressional Appropriations Committee staffs for the last eight congressional sessions.

Those who have dealt with Bob know him to be a most competent and professional civil servant. His assignment in the Budget Office was the Department's employment and training programs, which have undergone extensive changes in format and funding levels over the period of Bob's tenure.

He never failed to provide expert assistance in the understanding of the complicated budget numbers for these programs, and became known as "the expert" on the detailed appropriations for these accounts.

Bob, speaking on behalf of the members of the Appropriations Subcommittee and its staff members whom you have so ably assisted over the years, thank you not only for a job well done, but for a job done superbly with consistent professionalism. Good luck in your future endeavors.

Mr. PROXMIER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### JOINT REFERRAL OF NOMINATION OF S. BRUCE SMART, JR.

Mr. DOLE. Mr. President, as in executive session, I ask unanimous consent that the nomination of S. Bruce Smart, Jr., to be Under Secretary of Commerce for International Trade, be jointly referred to the Committees on Finance and Banking, Housing and Urban Affairs.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SCHEDULE

Mr. DOLE. Mr. President, the Senate will be recessing from 12 until 2 p.m., as indicated earlier, for the policy luncheons of the Republicans and Democrats. At 2 p.m. we will be on the Gun Control Act. The principal sponsor is Senator McClure, and there are a number of sponsors on each side.

It is my hope that we can conclude action on that bill by 7 or 8 p.m. this evening.

Then tomorrow at some time shortly after noon we will be voting on the cloture motion on the motion to proceed on the South African bill. I believe we can safely predict we will be able to take that bill up sometime tomorrow.

I also indicate that, as I said earlier, the President is very hopeful that we will permit the Senate to take action on some 28 State Department nominees that are on the Executive Calendar.

#### RECESS UNTIL 2 P.M.

The PRESIDING OFFICER. Under the previous order, the hour of 12 noon having arrived, the Senate will now stand in recess until the hour of 2 p.m.

Thereupon, the Senate, at 11:59 a.m., recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. WALLOP).

#### FEDERAL FIREARMS OWNERS PROTECTION ACT

The PRESIDING OFFICER. The clerk will report S. 49.

The assistant legislative clerk read as follows:

A bill (S. 49) to protect firearms owners' constitutional rights, civil liberties, and rights to privacy.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. McCLURE. Mr. President, I suggest the absence of a quorum, with time to be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Mr. President, in the heat of hammering out a piece of legislation as complex and controversial as the Firearms Owners Protection Act, it sometimes happens that the real reason for such an effort is forgotten. That reason is to protect honest firearms owners and dealers from the kind of abuse we have seen in the past. A bad law is like an accident waiting to happen. Real people have suffered, and we need to pause and remember a few of those real people.

Herb Van Buren, of Arizona, a collector, was persuaded to sell agents six firearms at several gun shows. Van Buren had no idea that, under various court decisions, this could be considered "engaged in the business" of dealing in guns, which requires a license. He clearly had no criminal intent; he told one agent that he didn't even want to know anyone who would misuse a gun. He was convicted on Federal felony charges of dealing without a license.

Richard Boulin was a licensed gun dealer and private collector, veteran and former policeman. He was convicted of selling his private firearms without recording them in his business records. He was told by BATF agents that sales from private collection did not need to be recorded; while he was awaiting trial, the head of BATF made the same statement in a letter to Senator Hayakawa. He was convicted of an innocent act, so technical that even BATF's head thought it was legal.

The home of Bob Wampler, a Virginia corporate executive, was raided by

BATF. The BATF confiscated his 70-gun collection—25 of which were antiques, and the remainder engraved, or gold inlaid. No criminal charges were brought. For 2½ years he kept pushing for their return; BATF at one point threatened to prosecute if he didn't let them keep the guns. Nearly 3 years later, they returned them—all without any charges being filed.

David Jewell, of Denver, CO, had his expensive collection confiscated from his vehicle. The collection included a shotgun valued at \$7,000. BATF, based on three sales over a period of months, charged him with dealing without a license. Although they dropped the charges in 1978, they did not return his guns until 1980.

These are only a few of the people who have suffered because of a law that does not do what it is supposed to do. The Gun Control Act of 1968 is snake oil. It is medicine that does not solve the ill of violent firearms abuse. It is about time we changed the dose.

The abusive enforcement of present Federal firearms law has been chronicled again and again. I have seen documented evidence in Senate hearings that makes very clear that when a law is loosely written, it can provide an irresistible temptation for the authorities to overstep the bounds of proper law enforcement, and seize citizen's property without due process, ruin them financially with endless red tape and litigation, and violate their constitutional rights.

We need to redirect law enforcement efforts away from what amounts to paperwork errors and toward willful firearms law violations that will lead to violent crime; for example, selling stolen guns, or selling firearms to prohibited persons. In order to work toward this goal, I have introduced the Firearm Owner's Protection Act, S. 914. I should like to point out some of the things this bill will do, once enacted into law:

Define "engaging in the business" to clarify when dealers, gunsmiths, makers of ammunition and importers must have a license.

Permit out of State purchase of firearms if the sale and possession are legal both in the State of purchase, and in the purchaser's State of residence.

Mandate an element of criminal intention for prosecution and conviction of Federal firearms laws violations.

Clarify procedures for dealer sales of firearms from his private collection.

Permit inspection of dealer's records for reasonable cause.

Require mandatory penalties for the use of a firearm during a Federal crime.

Limit seizure of firearms only to those specifically involved in a criminal transaction.

Provide for the return of seized firearms, and grant attorney's fees in spiteful or frivolous suits.

Allow the Secretary to grant relief from disability, and provide for judicial review of certain cases.

Remove requirement for affidavit for purchase of less than 50 pounds of black powder for sporting purposes.

Allow the interstate transportation of unloaded, inaccessible firearms.

Congressman VOLKMER and I worked extensively with the enforcement agencies during the last session of Congress to address their suggestions for changes in the law. The results of these negotiations have been incorporated into S. 49. Here are the most important:

"Importer" for the purposes of requiring a license is defined.

Unless a pardon expressly states that no firearms rights are granted, set aside, expunged or pardoned, convictions will regain these rights.

In interstate sales, a recipient may be prosecuted if he had reasonable cause to believe that he was violating the law. In a mail sale, parties must have met at least once, face to face except where otherwise permitted. Sales between nondealers not transacted through a dealer are eliminated. Presumption is provided that a dealer has knowledge of all published State or local ordinances. This refers to those laws published in the dealer rule book provided by BATF.

A dealer may sell a firearm from his private collection without doing paperwork after 1 year of transfer from his business stock. He cannot do this to evade paperwork. Inspections are permitted for reasonable cause or without warrant for tracing. Inspections for instructing dealers in proper record keeping procedures are permitted once in every 12 months.

An additional, but not mandatory sentence is provided for carrying a firearm during a Federal felony. Mandatory sentences are to be served consecutively. Forfeiture of seized firearms is allowed when criminal charges are not brought, or when they are voluntarily dismissed.

The Secretary may grant relief from disability. Judicial review of relief cases may be brought.

The legislative veto on regulations was dropped.

To wrap everything up, I think the Firearm Owners Protection Act is a measure that will bring us closer to sensible law enforcement, and the proper constitutional protection of honest American gunowners.

Mr. President, I ask unanimous consent that a statement by the distinguished Senator from Wyoming [Mr. WALLOP] be inserted in the RECORD, as if delivered, following my remarks at the opening of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, the need for protections such as those con-



tained in S. 49 is carefully outlined in the January, 1980 issue of the legal journal "Case and Comment." This article discusses how many honest firearm collectors were victimized for actions which they believed were legal, and which most of us would probably believe were legal. Since the courts held that a person could be convicted despite the most innocent intent—one court even refused to let a collector prove he had relied on the advice of an attorney that his conduct was proper—many honest collectors were left with the brand of a felony record, a record which left them unable to touch a firearm for the remainder of their lives. I find it especially disturbing that one collector was convicted, let alone prosecuted, when the Government's own transcripts showed him telling the informant:

I don't want to know anybody that does anything wrong with guns. No. I'm serious . . . I don't want, I would never want to contribute to anything that might make it look bad for all of us.

The collector was induced to sell five firearms from his collection. All five were sold legally, to a person legally entitled to own them, who assured the collector that he was a legitimate collector himself. But it was successfully argued that, although each sale was legal, the sales taken together amounted to dealing in firearms without a \$10 dealer's license.

S. 49 would prevent legitimate collectors such as this gentleman from being convicted for unintentional and technical violations. Moreover, it would encourage the executive branch to use its power of clemency in cases such as these, so that the errors of the past may be repaired.

I ask unanimous consent to have the "Case and Comment" article printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

#### GUN LAWS AND GUN COLLECTORS

(By David T. Hardy)

If firearm ownership is commonplace in America—and surveys repeatedly indicate that it is—then the firearm collectors comprise the aristocracy amid the popular movement. These collectors are virtually a "nation unto themselves", with their own shows, at which they compete in display of their finest firearms, their own organizations, their own specialties—one may choose British military firearms 1760-1945, another may strive to obtain all calibers and chamberings of the Marlin 1893. There are also general collectors, and most specialists have a general collection "on the side," which may feature such favored pieces as the exquisitely crafted Parker shotguns (which begin at about \$900), the Winchester Model 21 (the only American shotgun fitted to the individual's dimensions; the "economy" line starts at \$3,500), or scarce "presentation pieces," engraved and inlaid pieces given by inventors and companies to both Eastern and Western national leaders (Samuel Colt, in the 1870's and 1880's cre-

ated quite a few of these pieces). They have their own magazine now, independent of all other firearm publications, in which it is not uncommon for a collector to take out a full page, tastefully illustrated advertisement to attract other collectors for purchase or exchange of a few unneeded pieces.

Even individuals who support strict firearm regulation might well be tempted to consider these individuals a relatively riskless segment of the population. Persons bent upon robbing a drugstore simply do not seek a Winchester 21; domestic homicides are unlikely to be settled at dawn with a cased pair of Durs Egg flintlock duelling pistols. Indeed, the federal agency which enforces the firearm laws, the Bureau of Alcohol, Tobacco and Firearms (BATF), has repeatedly claimed that criminals predominantly use cheap handguns—valued under \$50, caliber .32 or less, barrel 3 inches or less. No true collector would even use one of these as a paperweight: the risk of being seen with it by other collectors would be too great.

#### LAW ENFORCEMENT AGAINST COLLECTORS

It is therefore surprising to note that federal agencies enforcing firearm laws have often appeared to devote a large amount of their energies to sending such collectors to jail, and confiscating their collections. It is even more surprising to discover that the federal government itself is becoming a large-scale collector—its collection established primarily by choice items appropriated, without compensation, from these collectors.

In part, the collector's very law-abiding qualities make them perfect targets for law enforcement. The BATF has been faced with some unique bureaucratic difficulties of late. Since 1972, the skyrocketing prices of sugar, main component of "moonshine", has drastically curtailed illegal brewing. Between 1972 and 1978, the number of "stills" raided by BATF dropped from nearly 3,000 to only 381. The Bureau suddenly saw itself faced with obsolescence of its traditional area of enforcement, a rather unique experience in law enforcement (one may imagine the consternation at the Drug Enforcement Administration if the entire drug-using populace suddenly turned to meditation or alcohol). Self-preservation dictated a sudden increase in firearm enforcement. But agents seeking to push up their "body counts" of arrests and firearms seized were faced with serious problems. To invade fields where firearms are feloniously used is apt to prove quite dangerous; it also takes time, and this is unavailable when Washington makes it clear that arrests in your district must be doubled within the next year. A safe and easy target had to be located.

#### DEALER DEFINED

Agents therefore quickly evolved a method of entrapping collectors, through a technique which I term "implied dealership". This depends upon a clause in the 1968 Gun Control Act which provides that "dealers" in firearms must be federally licensed, and makes it a felony to conduct business as a "dealer" in firearms without such license. Private sales of one's own property by a nondealer are not subject to federal licensing.

The statute contains no definition of "dealer". Nor do the Bureau regulations, ostensibly promulgated to clarify and enforce the statute, provide such definition. Since 1972, the Bureau has actively discouraged applications for licensing, in a political move to create an impression of reduction in

"firearms traffic". Under its regulations, for example, the applicant must have business premises separate from his residence and must keep regular "business hours". Collectors who reported sales only to other collectors and hours "by appointment" soon found their licenses being revoked. Moreover, a "dealer's" premises are statutorily subject to search, without warrant or probable cause. Collectors, who asked whether licenses were needed, were usually informed that five to ten firearms sales per year did not constitute acting as a "dealer".

Actually, while the statute has no definition, federal appellate courts have defined "dealer" very broadly. They have repeatedly noted that there is no minimum number of sales necessary; that no minimum level of profit from sales of firearms is essential, and that the sole question is whether the jury believes the accused citizen to have engaged in "any business" of selling firearms. The Bureau has frequently obtained collections on as few as four to six sales per year, and these actions have been universally upheld.

#### OBTAINING EVIDENCE

The agents thus can easily lead an individual, who all the while believes he is obeying the law, into a felony indictment. Undercover agents approach the collector at a gun show. Their routine is already choreographed and has been tested in previous cases. Different agents may make one or two purchases at this gun show, followed by a few more at the next gun show, until four to six sales are obtained. The agents offer a very high price, and purchase with little bargaining; thus the collector can easily be shown to have made a profit on their sale. As "icing on the cake", they may lead the collector into stating that he could obtain an additional firearm from a different collector for them; at this point he is acting as a broker for matter not already in his collection.

After the evidence is obtained, the collector is indicted on felony charges. The burden on him is immense. Legal defense costs usually run between \$3,000 and \$20,000. Conviction on the felony count means total loss of right to possess firearms within the United States. It also carries a penalty of 5 years imprisonment and a \$5,000 fine.

In an effort to add to these burdens, the Bureau generally confiscates the collector's prize collection. This is done under a provision of the Act which permits confiscation of firearms "involved in or used in or intended to be used in" any violation. The confiscation puts additional financial pressure on a collector who may already be impoverished by the legal costs.

These activities have been frequently reported among collectors, but little work to compile and analyze them has been done. Recently, I have had the privilege of serving as project director to a Task Force seeking to compile a comprehensive report on Bureau activities, which report was sponsored by the Second Amendment Foundation. The objective evidence which was compiled on this particular activity provided compelling. I could not escape the conclusion that the Bureau had carefully preyed upon misinformation as to the status of the law, some of which had been given out by the Bureau's own agents, in order to entrap law-abiding citizens and confiscate substantial amounts of their private property for the Bureau's own collection!

## ENTRAPMENT

First, the Bureau seeks to entrap law-abiding individuals who would not disobey the law, if it were not for the agent's activities and deception; it does not aim entrapment at individuals who would violate the law anyway and are but given an opportunity. Many of the individuals contacted, in various part of the nation, with no opportunity to confer with each other, reported acting on advice of agents that five or ten sales per year of their own firearms did not constitute "dealing". In one especially well documented case, we obtained a government transcript of a recording of the defendant speaking to the agent. "I don't want to know anybody what does anything wrong with guns. No, I'm serious. I collect, and, to me, there's a lot of fine people collecting. Several chiefs of police, several detectives here, and otherwise. . . . I don't want, I would never want to contribute to anything that might make it look bad for all of us. . . . There's a few people who are making it look bad for the many."

This individual was enticed into the sale of a sufficient number of firearms, his collection was confiscated at a gun show, and, when he filed suit for their recovery eight months later, an indictment was handed down within ten days. He is today a felon on probation. Given that "the first duties of the officers of the law are to prevent, not to punish crime. It is not their duty to incite to crime . . .", the entrapment of an individual of this type, solely for the virtue of increasing a "body count" of convictions and confiscations, is hardly justifiable conduct on the part of a public agency.

## CONFISCATION

A second reprehensible aspect of the BATF attack on collectors is the tendency to focus on large and expensive collections. Confiscations tend to center upon these collections to the exclusion of the cheap firearms which the Bureau so often claims are the roots of violence. During the course of the Second Amendment Foundation study, I utilized the Freedom of Information Act to obtain copies of the Bureau's "Reports of Property Subject to Judicial Forfeiture", which gave inventories of seizures by collector name, value, firearms, and ultimate disposal. A few examples will suffice. In one, the Bureau confiscated 83 firearms from a Pennsylvania collector. The Bureau's own appraisal fixed the value at \$18,020.00. The collection was devoted primarily to antique Marlin rifles, especially the 1893 model, although some 1881 models in .40-.62 caliber and an especially rare .30-.40 "baby carbine" were included. Only five of the 83 were handguns—and the average handgun appraisal was \$116. A second major example also came from Pennsylvania. There, 136 firearms valued at \$28,335.00 were taken. These included five Parker shotguns (one valued at \$1,000), a Winchester model 21 (undervalued at \$900), and a number of French and German collector shotguns. Private reports have also been received (from time frames outside of the period requested under the statute) of numerous confiscations; an Eastern collector reported a seizure of \$10,000 worth of items; two years after the confiscation, he has neither been charged with any offense nor has the collection been returned. A South Carolina collector reported seizure of over 100 firearms valued at over \$15,000.00. He was acquitted of charges. Two weeks after the acquittal, the Bureau served him with notice of intent to forfeit his collection, maintaining that the criminal acquittal did not bind them in

subsequent "civil" forfeiture proceedings. (Further, three persons, in Connecticut, Arizona, and Nebraska, reported that their automobiles were seized on claims that they had used the vehicles to transport firearms).

## OBTAINING COLLECTIONS

A third reprehensible aspect lies in the Bureau's use of its powers to furnish its own private collection. The reports obtained through the Freedom of Information Act requests showed that approximately one-third of the collections were being routed back to the BATF with the purpose of acquiring a "reference collection". The two Pennsylvania seizures mentioned earlier alone contributed 75 firearms valued at \$18,000 to this Bureau collection. The collection is not easily filled, obviously, especially with reference to the expensive shotguns; the Bureau apparently needed no less than five Parkers, three of the same gauge. Modern firearms are also found useful. One report from a Texas case disclosed a seizure of 86 firearms valued at over \$20,000.00. The local Bureau office chose to keep 48 of these firearms for their local arsenal (and, presumably, for issue to the agents who confiscated them). Interest in filling this collection may explain the Bureau's tendency, reported by several collectors, to dismiss charges or permit pleas to a misdemeanor in the event the collector would permit them to keep the collection. These offers were transmitted through the prosecutor's office to the defense attorney's office; in several cases, I was able to contact the defense attorney and confirm that such offers had been made.

## VINDICTIVE INTENT

Finally, some of the seizures appear to display a vindictive intent. In a famous Texas case, the agents seizing an expensive collection were seen to deliberately drop the firearms to the floor before storing them. Several firearms, in "as manufactured" condition and unfired, were "test fired", greatly reducing their collector value. Despite the dealer's acquittal, agents refused to return the firearms. Even after judgment was rendered in the collector's favor on a civil proceeding, they still refused. Only after contempt proceedings were brought against them did they return the collection, then disclosing that it had been stored in a damp warehouse which had seriously rusted many of the finer pieces. A Colorado defendant reported, and his attorney confirmed, that his collection (including a Parker valued at \$10,000) was thrown across the room as each firearm was booked in, and permitted to fall to a concrete floor. A Virginia defendant reported (and, once again, his attorney confirmed) that his firearms were thrown into a 50-gallon drum and wheeled to court in that manner. They were taken out and slammed down in a pile during the trial. When a request was made to treat them more gently, the result was only more violent treatment. In several cases in addition to the Texas one mentioned above, the Bureau refused to return firearms despite acquittal and then brought civil proceedings to confiscate the collection. Some collectors reported having to give up their collection because the criminal trial had exhausted their financial resources and the legal expense of the fight would be \$2,000 or more. The collector, of course, does not recover his attorney's fees in the event he is acquitted, nor does he secure the return of the firearms. The Bureau, on the other hand, is served by attorneys paid from tax funds contributed to by the dealer.

Is this apparent focus on the law-abiding gun collector an isolated occurrence, or part of a general pattern? Since the Bureau does not itemize prosecutions by collector status, it is most difficult to tell. One might expect a rational, albeit, ruthless, administrator to focus upon these individuals. As noted above, they are generally naive sorts who believe that "since I am law-abiding, I have nothing to fear from the law", are unlikely to shoot informants, are easily arrested without violence, and in short, make a perfect target for a quick increase in arrests at minimal risk. What information we do have suggests that the Bureau has been assessing its probabilities in this manner. During Project CUE, the Bureau published breakdowns of prosecutions in certain cities. In Washington, DC, for example, out of 1,603 investigations, only 206 dealt with felons in possession of firearms, only 58 with stolen firearms, and only 20 with use of firearms in a felony. Of Chicago's 1,980 investigations, 135 dealt with felony possession, 54 with theft, and only 9 with use in a felony. Considering that studies have repeatedly documented that approximately 25 percent of handguns used in crime are stolen, one might expect that more than 3.6 percent of the Bureau's Washington investigations, for example, would deal with firearms theft. But we must reflect that catching firearm thieves and marketers of stolen firearms may be dangerous and difficult, hardly the type of thing to undertake when large numbers of quick arrests are needed.

## CONCLUSION

In short, it appears that the Bureau of Alcohol, Tobacco and Firearms has devoted a significant portion of its investigative and law enforcement efforts to entrapping naive collectors of firearms, of a type unlikely to be contributing to criminal firearm markets. This campaign has enabled the Bureau to boast of impressive statistics of convictions and firearms seizures, with minimal effort and personal risk. It has also permitted the seizure of significant numbers of collector items, of which substantial numbers are appropriated, without compensation, for the Bureau's own collection. The underlying practice of encouraging, rather than avoiding, crime can hardly be justified: its exploitation for Bureau property gains, or as part of a vengeance motive, is even more repugnant.

Mr. SYMMS. Mr. President, Jim McClure and I see eye to eye on many issues. Nowhere are we more staunch allies than in the battle to protect our second amendment rights. Like the majority of Idahoans, we believe that every honest American has the right to keep and use firearms for any legal purpose, whether for hunting, target shooting, collecting, self-defense, or old-fashioned tin can plinking.

We also believe that the Government exists to serve the people, and not the other way around. This is the main theme of the Constitution. When agents of the Government take advantage of a badly written law to run roughshod over the constitutional rights of gun dealers and owners, they need to be brought up short, and the only way to do this is to change the law that gives them leave to violate the Constitution.



The Firearm Owners Protection Act was conceived in the notion that law enforcement needed to be directed at the real criminals, not someone who makes an honest mistake in his book-keeping. It was obvious that the hastily enacted Gun Control Act of 1968, which Senator McCLEURE's bill refines, made it easy for overzealous agents of the Bureau of Alcohol, Tobacco, and Firearms to spend a lot of enforcement effort snooping out violations so far removed from the general notion of gun crime that it would be funny, if the results were not so tragic.

The sponsors and proponents of the Gun Control Act of 1968 claimed that it would significantly reduce the rate of crime, particularly crimes involving the use of firearms. It has not. Instead, between 1967 and 1982, the national homicide and handgun-homicide rates rose 50 percent, while robbery rates and robberies involving the use of firearms have nearly tripled. Clearly, the 1968 act has served to reduce neither the rate of violent crime nor the use of firearms in the commission of crime. It has, however, increased the regulatory burden imposed on law abiding American citizens—gun owners and dealers—and subjected those same citizens to the threat of severe penalties for technical violations of the law caused by inadvertent errors. We saw this clearly in a long series of hearings.

Every point in the Firearm Owners Protection Act is designed to correct a documented problem. Every point is aimed at directing law enforcement toward those violations of Federal firearms law that are most likely to contribute to violent firearms crime—those who knowingly sell to prohibited persons, those who knowingly traffic in stolen firearms. It's just not cost effective to allow law enforcement to follow its old pattern of snooping after minor paperwork errors.

Today, nearly half the households in America own some kind of firearm: estimates suggest that private citizens in this country own between 120 and 140 million guns. Mr. President, these people are not criminals. They are decent, responsible men and women, union members, business executives, doctors, lawyers, teachers, civil servants, elected officials—including a number of U.S. Senators and Representatives, and others too numerous to mention. Their guns are purchased for hunting, sporting activities, collecting, self-defense, and other legal purposes. These American citizens should not be the victims of Federal agents seeking to administer Federal law.

Yet, my colleagues in this body should be aware that the Senate Subcommittee on the Constitution has found that 75 percent of Federal firearms prosecutions are aimed at ordinary citizens who had neither criminal intent nor any knowledge they were

breaking the law. The Gun Control Act of 1968 allows the unreasonable and unwarranted infringement of rights guaranteed to all Americans under the second amendment to the Constitution. It is an intolerable situation which we must act to correct.

Federal firearms law is a complicated matter. Fine-tuning this portion of Federal law is no simple matter. JIM McCLEURE has worked long and hard to come up with corrections that answer every objection. I think he has succeeded—this legislation was voted out of the Judiciary Committee unanimously. I urge my colleagues to follow the committee's lead and cast their votes for this bill, for the right of the American citizen to keep and bear arms, and, ultimately, for the protection of our Constitution.

Mr. HELMS. Mr. President, as a cosponsor of the Federal Firearms Owners Protection Act, S. 49, I hope this important legislation will be given overwhelming support by the Senate.

The Gun Control Act of 1968 was never intended to be a vehicle for Federal Government harassment of law-abiding American citizens who buy, sell, and own guns. Yet to a considerable extent that is what it has become. The pending legislation will correct many of the abuses which have occurred under the 1968 act.

Mr. President, the right to keep and bear arms has a long and honorable history in the United States. It is, of course, enshrined in the second amendment to the Constitution and was reckoned as fundamental by our Founding Fathers—both Federalist and anti-Federalist.

It is important that we who serve in the Senate in 1985 pause to remember why the founders of our country viewed the right to own guns as fundamental. Of course, they knew the importance of firearms for hunting—not just for sport but for supplying food for the family. They also knew that, in a largely frontier society, guns were vital for self-defense against common criminals who were a constant threat to the safety and survival of innocent law-abiding citizens.

Today, these same arguments are presented in support of preserving the rights of gun ownership, and properly so because they are valid arguments.

However, for the Founding Fathers, neither of these arguments was the overriding reason in favor of an armed citizenry. For them, the most important reason for gun ownership was political—that is, armed citizens constituted an effective hedge against tyrants. Fresh from their victory over the British, they had indelibly impressed on their minds the political importance of citizens who owned and knew how to use guns.

Mr. President, many in Washington today do not want to be reminded of this political function of gun owner-

ship. After saddling the American people with nearly \$2 trillion in Federal debt, failing to act effectively to stop the spread of Communist tyranny around the world, and presiding over the destruction of fundamental American values such as innocent human life in the womb, religious liberty, the institution of the family, the neighborhood school, and public morality in general, it is small wonder that the Washington establishment would prefer to ignore the political reasons for the right to bear arms.

But we should not ignore these reasons, and we especially should not ignore them at a time when the Government seems incapable of protecting its citizens against international terrorism. Surely it takes no great wisdom to see that American citizens—with the full freedom to buy, sell, and own firearms—will be safer in their persons and possessions against terrorism than citizens without such freedom.

Mr. President, so that this debate will not occur without reference to the historical foundations for the right to keep and bear arms, I ask unanimous consent that an article by Stephen P. Halbrook, entitled "To Keep and Bear Their Private Arms: The Adoption of the Second Amendment, 1787-1791," appearing in 10 Northern Kentucky Law Review 13 (1982), be printed in the RECORD—including footnotes—at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

TO KEEP AND BEAR THEIR PRIVATE ARMS: THE ADOPTION OF THE SECOND AMENDMENT, 1787-1791

(By Stephen P. Halbrook\*)

After the Constitution was submitted for ratification in 1787, political writings and debates in state conventions revealed two basic positions: the federalist view that a bill of rights was unnecessary because the propose government had no positive grant of power to deprive individuals of rights, and the anti-federalist contention that a formal declaration would enhance protection of those rights. On the subject of arms, the federalists promised that the people, far from ever being disarmed, would be sufficiently armed to check an oppressive standing army. The anti-federalists feared that the body or the people as militia would be overpowered by a select militia of standing army unless there was a specific recognition of the individual right to keep and bear arms.<sup>1</sup>

While their sojourns abroad prevented their active involvement in the ratification process, John Adams and Thomas Jefferson, the future leaders of the federalist and republican parties respectively, reiterated in 1787 their preferences for an armed populace. In his defense of the American constitutions, John Adams relied on classical sources in the context of an analysis of quotations from Marchamont Nedham's "The Right Constitution of a Commonwealth" (1656) to vindicate a militia of all the people:

"That the people be continually trained up in the exercise of arms, and the militia lodged only in the people's hands, or that part of them which are most firm to the interest of liberty, that so the power may rest fully in the disposition of their supreme assemblies." The limitation to "That part most firm to the interest of liberty," was inserted here, no doubt to reserve the right of disarming all the friends of Charles Stuart, the nobles and bishops. Without stopping to enquire into the justice, policy, or necessity of this, the rule in general is excellent. . . . One consequence was, according to [Nedham], "that nothing could at any time be imposed upon the people but by their consent. . . . As Aristotle tells us, in his fourth book on Politics, the Grecian states ever had special care to place the use and exercise of arms in the people, because the commonwealth is theirs who hold the arms: the sword and sovereignty ever walk hand in hand together." This is perfectly just. "Rome, and the territories about it, were trained up perpetually in arms, and the whole commonwealth, by this means, became one formal militia."<sup>2</sup>

After agreeing that all the continental European states had achieved absolutism by following the Caesarian precedent of erecting "praetorian bands, instead of a public militia,"<sup>3</sup> the aristocratic Adams rejected the very right which won independence from England: "To suppose arms in the hands of citizens, to be used at individual discretion, except in private self-defense, or by partial orders of towns . . . is a dissolution of the government."<sup>4</sup> But for the more radical Thomas Jefferson, individual discretion was acceptable for the use of arms not simply for private, but also for public defense. Writing in 1787, Jefferson stressed the inextinguishable connection between the right to have and use arms and the right to revolution as follows:

God forbid we should ever be twenty years without such a rebellion . . . And what country can preserve its liberties, if its rulers are not warned from time to time, that this people preserve the spirit of resistance? Let them take arms . . . The tree of liberty must be refreshed from time to time, with the blood of patriots and tyrants.<sup>5</sup>

#### I. THE CONTROVERSY OVER RATIFICATION OF THE CONSTITUTION

##### A. The Federalist Promise: To Trust The People With Arms

It was characteristic of the times that the federalists were actually in close agreement with Jefferson on the right to arms as a penumbra of the right to revolution. Thus, in THE FEDERALIST No. 28, Hamilton wrote: "If the representatives of the people betray their constituents, there is then no resource left but in the exertion of that original right of self-defense which is paramount to all positive forms of government . . ."<sup>6</sup> And in No. 29, Hamilton related the argument that it would be wrong for a government to require the great body of yeomanry and of the other classes of citizens to be under arms for the purpose of going through military exercises and evolutions, as often as might be necessary to acquire the degree of perfection which would entitle them to the character of a well-regulated militia . . . Little more can reasonably be aimed at with respect to the people at large than to have them properly armed and equipped. . . .

This will not only lessen the call for military establishments, but if circumstances should at any time oblige the government to form an army of any magnitude that army

can never be formidable to the liberties of the people while there is a large body of citizens, little if at all inferior to them in discipline and the use of arms, who stand ready to defend their rights and those of their fellow-citizens.<sup>7</sup>

In THE FEDERALIST No. 46, Madison, contending that "the ultimate authority . . . resides in the people alone,"<sup>8</sup> predicted that encroachments by the federal government would provoke "[p]lans of resistance" and an "appeal to a trial of force."<sup>9</sup> To a regular army of the United States government "would be opposed a militia amounting to near half a million of citizens with arms in their hands," and referring to "the advantage of being armed, which the Americans possess over the people of almost every other nation," Madison wrote: "Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms."<sup>10</sup> If the people were armed and organized into militia, "the throne of every tyranny in Europe would be speedily overturned in spite of the legions which surround it."<sup>11</sup>

The Constitution's proponents agreed that it conferred no federal power to deprive the people of their rights, because there was no explicit grant of such power and because the state declarations of right would prevail.<sup>12</sup> The existence of an armed populace, superior in its forces even to a standing army, and not a paper bill of rights, would check despotism. Noah Webster promised that even without a bill of rights, the American people would remain armed to such an extent as to be superior to any standing army raised by the federal government:

"Another source of power in government is a military force. But this, to be efficient, must be superior to any force that exists among the people, or which they can command; for otherwise this force would be annihilated, on the first exercise of acts of oppression. Before a standing army can rule, the people must be disarmed: as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any band of regular troops that can be, on any pretence, raised in the United States. A military force, at the command of Congress, can execute no laws, but such as the people perceive to be just and constitutional; for they will possess the power, and jealousy will instantly inspire the inclination, to resist the execution of a law which appears to them unjust and oppressive."<sup>13</sup>

Tench Coxe argued in his influential *American Citizen* that, should tyranny threaten, the "friends to liberty . . . using those arms which Providence has put into their hands, will make a solemn appeal to 'the power above.'"<sup>14</sup> Coxe also wrote: "The militia, who are in fact the effective part of the people at large, will render many troops quite unnecessary. They will form a powerful check upon the regular troops, and will generally be sufficient to overawe them. . . ."<sup>15</sup> Writing as "A Pennsylvanian," Coxe went into even more detail:

"The power of the sword, say the minority of Pennsylvania, is in the hands of Congress. My friends and countrymen, it is not so, for the Powers of the Sword are in the Hands of the Yeomanry of America from Sixteen to Sixty. The militia of these free commonwealths, entitled and accustomed to

their arms, when compared with any possible army, must be tremendous and irresistible. Who are the militia? Are they not ourselves. Is it feared, then that we shall turn our arms each man against his own bosom. Congress have no power to disarm the militia. Their swords, and every other terrible implement of the soldier, are the birth-right of an American. . . . [T]he unlimited power of the sword is not in the hands of either the federal or state governments, but, where I trust in God it will ever remain, in the hands of the people."<sup>16</sup>

In summary, the Constitution's proponents promised that the individual right to keep and bear arms would be not simply a formal right but a fact which would render an armed citizenry more powerful than any standing army, and consequently a bill of rights was unnecessary. It was natural that the virtue of an armed populace or general militia was stressed in terms of its political value for a free society, since the ratification process involved political issues. Nonetheless the right to have weapons for non-political purposes such as self-protection or hunting—but never for aggression—appeared so obviously to be the heritage of free people as never to be questioned. In the words of "Philodemus": "Every free man has a right to the use of the press, so he has to the use of his arms." But if he commits libel, "he abuses his privilege, as unquestionably as if he were to plunge his sword into the bosom of a fellow citizen. . . ." Punishment, not "previous restraints," was the remedy for misuse of either right.<sup>17</sup>

##### B. Anti-Federalist Fears: The People Disarmed, A Select Militia

Among the anti-federalist spokesmen, the great fear was that without protection by a bill of rights, creation of a select militia or standing army would result in the disarming of the whole people as militia and the consequent oppression of the populace. This fear had been expressed by the prediction of Oliver Ellsworth in the federal Convention that the creation of "a select militia . . . would be followed by a ruinous declension of the great body of the militia."<sup>18</sup> John DeWitt contended: "It is asserted by the most respectable writers upon government, that a well regulated militia, composed of the yeomanry of the country, have ever been considered as the bulwark of a free people. Tyrants have never placed any confidence on a militia composed of freemen."<sup>19</sup> DeWitt predicted that Congress "at their pleasure may arm or disarm all or any part of the freemen of the United States, so that when their army is sufficiently numerous, they may put it out of the power of the freemen militia of America to assert and defend their liberties. . . ."<sup>20</sup>

George Clinton, writing as "Cato," predicted a permanent force because of "the fear of a dismemberment of some of its parts, and the necessity to enforce the execution of revenue laws (a fruitful source of oppression) . . ."<sup>21</sup> "A Federal Republican" foresaw an army used "to suppress those struggles which may sometimes happen among a free people, and which tyranny will impudently brand with the name of sedition."<sup>22</sup> The admission by some federalists, particularly James Wilson, that a small standing army was anticipated led to a particularly fearful reaction by anti-federalists. "[F]reedom revolts at the idea,"<sup>23</sup> according to Elbridge Gerry, for the militia would become a federal force which "may either be employed to extort the enormous sums that will be necessary to support the civil



list—to maintain the regalia of power—and the splendour of the most useless part of the community, or they may be sent into foreign countries for the fulfilment of treaties . . .”<sup>24</sup> Praising the Swiss militia model, “A Democratic Federalist” rejected Wilson’s argument for a standing army, “that great support of tyrants,” with the following reasoning:

“Had we a standing army when the British invaded our peaceful shores? Was it a standing army that gained the battles of Lexington and Bunker’s Hill, and took the ill-fated [John] Burgoyne? Is not a well-regulated militia sufficient for every purpose of internal defense? And which of you, my fellow citizens, is afraid of any invasion from foreign powers, that our brave militia would not be able immediately to repel?”<sup>25</sup>

The most influential writings stating the case against ratification of the Constitution without a bill of rights consisted of Richard Henry Lee’s Letters From the Federal Farmer (1787-1788) (hereinafter Letters). Since most of Lee’s proposals for specific provisions of a bill of rights were subsequently adopted in the Bill of Rights, some with almost identical wording, the Letters provide an excellent commentary on the meaning of the provisions of the Bill of Rights in general and the second amendment in particular. Predicting the early employment of a standing army through taxation, Lee contended:

“It is true, the yeomanry of the country possess the lands, the weight of property, possess arms, and are too strong a body of men to be openly offended—and, therefore, it is urged, they will take care of themselves, that men who shall govern will not dare pay any disrespect to their opinions. It is easily perceived, that if they have not their proper negative upon passing laws in congress, or on the passage of laws relative to taxes and armies, they may in twenty or thirty years by means imperceptible to them, totally deprived of that boasted weight and strength: This may be done in a great measure by congress, if disposed to do it, by modelling the militia. Should one fifth or one eighth part of the men capable of bearing arms, be made a select militia, as has been proposed, and those the young and ardent part of the community, possessed of but little or no property, and all the others put upon a plan that will render them of no importance, the former will answer all the purposes of an army, while the latter will be defenseless . . . I see no provision made for calling out the *posse comitatus* for executing the laws of the union, but provision made for congress to call forth the militia for the execution of them—and the militia in general, or any select part of it, may be called out under military officers, instead of the sheriff to enforce an execution of federal laws, in the first instance, and thereby introduce an entire military execution of the Laws.”<sup>26</sup>

In his second series of Letters, Lee classified as “fundamental rights” the rights of free press, petition, and religion; the rights to speedy trial, trial by jury, confrontation of accusers and against self-incrimination; the right not to be subject to “unreasonable searches or seizures of his person, papers or effects”; and, in addition to the right to refuse quartering of soldiers, “the militia ought always to be armed and disciplined, and the usual defense of the country . . .”<sup>27</sup> Since these rights were all to be recognized in the Bill of Rights, it is appropriate to examine in detail the substance of Lee’s concept of the militia:

“A militia, when properly formed, are in fact the people themselves, and render regu-

lar troops in a great measure unnecessary. . . . [T]he constitution ought to secure a genuine and guard against a select militia, by providing that the militia shall always be kept well organized, armed, and disciplined, and include . . . all men capable of bearing arms; and that all regulations tending to render this general militia useless and defenseless, by establishing select corps of militia, or distinct bodies of military men, not having permanent interests and attachments in the community to be avoided.”<sup>28</sup>

Thus, Lee feared that Congress, through its “power to provide for organizing, arming, and disciplining the militia” under article I § 8 of the proposed Constitution, would establish a “select militia” apart from the people which would be used as an instrument of domination by the federal government. The contemporary argument, that it is impractical to view the militia as the whole body of the people, and that the militia consists of the select corps known as the National Guard, also existed during the time of Lee, who refuted it in these terms:

“But, say gentleman, the general militia are for the most part employed at home in their private concerns, cannot well be called out, or be depended upon; that we must have a select militia; that is, as I understand it, particular corps or bodies of young men, and of men who have but little to do at home, particularly armed and disciplined in some measure, at the public expense, and always ready to take the field. These corps, not much unlike regular troops, will ever produce an inattention to the general militia; and the consequence has ever been, and always must be, that the substantial men, having families and property, will generally be without arms, without knowing the use of them, and defenseless; whereas, to preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them; nor does it follow from this, that all promiscuously must go into actual service on every occasion. The mind that aims at a select militia, must be influenced by a truly anti-republican principle; and when we see many men disposed to practice upon it, whenever they can prevail, no wonder true republicans are for carefully guarding against it.”<sup>29</sup>

Richard Henry Lee’s view that a well regulated militia was the armed populace rather than a select group, or “Prussian militia,”<sup>30</sup> was reiterated by proponents and opponents of a bill of rights. As “M. T. Cicero” wrote to “The Citizens of America”:

“Whenever, therefore, the profession of arms becomes a distinct order in the state . . . the end of the social compact is defeated. . . . No free government was ever founded, or ever preserved its liberty, without uniting the characters of the citizen and soldier in those destined for the defence of the state. . . . Such are a well regulated militia, composed of the freeholders, citizen and husbandman, who take up arms to preserve their property, as individuals, and their rights as freeman.”<sup>31</sup>

The armed citizens would defend not only against foreign aggression, but also domestic tyranny. As expressed by another commentator: “The government is only just and perfectly free . . . where there is also a *demerit* resort, or real power left in the community to defend themselves against any attack on their liberties.”<sup>32</sup>

While the view continued to be expressed that “a bill of rights as long as my arm” had no place in the Constitution,<sup>33</sup> a correspondent of the opposite persuasion noted that

throughout his state people were “repairing and cleaning their arms, and every young fellow who is able to do it, is providing himself with a rifle or musket, and ammunition,” but that civil war would be averted by adoption of a bill of rights.<sup>34</sup> If these views reflect the resultant compromise that a bill of rights would guarantee broad rights without being overly detailed, they also indicated that the demand for a bill of rights was as strong as the demand for independence a decade before. And consistent throughout the debate thereon was the general understanding that the right to keep and bear arms was an individual right.<sup>35</sup>

#### C. Demands in the State Conventions for a Written Guarantee That Every Man Be Armed

In the debates in the state conventions over the ratification of the Constitution, the existence of an armed citizenry was presumed by federalists and anti-federalists alike as requisite to prevent despotism. Issues which divided the delegates included whether a written bill of rights guaranteeing the right to keep and bear arms and other individual rights should be added to the Constitution, and whether a provision guarding against standing armies or select militias was necessary. In the Pennsylvania convention, John Smilie warned: “Congress may give us a select militia which will, in fact, be a standing army—or Congress, afraid of a general militia, may say there shall be no militia at all. When a select militia is formed; the people in general may be disarmed.”<sup>36</sup> This argument assumed that the right to keep and bear arms<sup>37</sup> would be protected by the people combining into general militias to prevent being disarmed by select forces. In response, James Wilson contended that the Constitution already allowed for the ultimate force in the people: “In its principles, it is surely democratical; for, however wide and various the firearms of power may appear, they may all be traced to one source, the people.”<sup>38</sup>

In the Massachusetts convention, William Symmes warned that the new government at some point “shall be too firmly fixed in the saddle to be overthrown by any thing but a general insurrection.”<sup>39</sup> Yet fears of standing armies were groundless, affirmed Theodore Sedgwick, who queried, “[I]f raised, whether they could subdue a nation of freemen, who know how to prize liberty, and who have arms in their hands?”<sup>40</sup> In New York, Tredwell feared that “we may now surrender, with a little ink, what it may cost seas of blood to regain.”<sup>41</sup> And in the North Carolina convention, William Lenoir worried that Congress can “disarm the militia. If they were armed, they would be a resource against great oppressions. . . . If the laws of the Union were oppressive, they could not carry them into effect, if the people were possessed of proper means of defense.”<sup>42</sup>

But it was Patrick Henry in the Virginia convention who expostulated most thoroughly the dual rights to arms and resistance to oppression: “Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. Unfortunately, nothing will preserve it but downright force. Whenever you give up that force, you are inevitably ruined.”<sup>43</sup> Fearful of the power of Congress over both a standing army and the militia, Henry asked, “Have we the means of resisting disciplined armies, when our only defence, the militia, is put into the hands of Congress?”<sup>44</sup> Furthermore, “of what service would militia be to you, when, most prob-

ably, you will not have a single musket in the state? For, as arms are to be provided by Congress, they may or may not furnish them."<sup>45</sup> It was to meet such objections that prompted the adoption later of the second amendment, which sought to guarantee the revolutionary ideal expressed by Henry in these words: "The great object is, that every man be armed. . . . Every one who is able may have a gun."<sup>46</sup> Henry's objection to federal control over arsenals within the states would apply equally to control over private arms:

"Are we at last brought to such a humiliating and debasing degradation, that we cannot be trusted with arms for our own defence? Where is the difference between having our arms in our own possession and under our own direction, and having them under the management of Congress? If our defence be the *real* object of having those arms, in whose hands can they be trusted with more propriety, or equal safety to us, as in our own hands?"<sup>47</sup>

George Mason buttressed Henry's arguments by pointing out that pro-British strategists resolved "to disarm the people; that it was the best and most effectual way to enslave them . . . by totally discussing and neglecting the militia."<sup>48</sup> Mason also clarified that under prevailing practice the militia included all people, rich and poor. "Who are the militia? They consist now of the whole people, except a few public officers."<sup>49</sup> Throughout the debates Madison sought to picture the observations of Henry and Mason as exaggerations and to emphasize that a standing army would be unnecessarily consequent on the existence of militias<sup>50</sup>—in short, that the people would remain armed. And Zachariah Johnson argued that the new Constitution could never result in religious or other oppression: "The people are not to be disarmed of their weapons. They are left in full possession of them."<sup>51</sup>

The objections of the anti-federalist pamphleteers and orators, particularly George Mason and Richard Henry Lee, prompted the state ratifying conventions to recommend certain declarations of rights which became the immediate source of the Bill of Rights. Each and every recommendation which mentioned the right to keep and bear arms clearly intended an individual right. The individual character of the right is evident additionally in those proposals made in the conventions wherein a majority of delegates voted against a comprehensive bill of rights. The latter was the case in regard to the proposals of Samuel Adams in the Massachusetts convention "that the said Constitution be never construed to authorize Congress to infringe the just liberty of the press, or the rights of conscience; or to prevent the people of the United States, who are peaceable citizens, from keeping their own arms. . . ."<sup>52</sup> Similarly, the proposals adopted by the Pennsylvania minority included the following:

"That the people have a right to bear arms for the defense of themselves and their own state, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals. . . ."<sup>53</sup>

New Hampshire was the first state to ratify the Constitution and recommended that it include a bill of rights, including a provision that "Congress shall never disarm any Citizen, unless such as are or have been in Actual Rebellion."<sup>54</sup> Not only are these

words in no way dependent upon militia uses, but the provision is separated from another article against standing armies by a provision concerning freedom of religion.<sup>55</sup> The New Hampshire convention was the first wherein a majority proposed explicit recognition of the individual right later expressed in the second amendment.<sup>56</sup> The New Hampshire and Pennsylvania proposals for the right to keep and bear arms were viewed as among "those amendments which particularly concern several personal rights and liberties."<sup>57</sup>

George Mason's pen was at work in Virginia, which suggested the following provision:

"That the people have a right to keep and bear arms; that a well-regulated militia, composed of the body of the people trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, are dangerous to liberty, and therefore ought to be avoided. . . ."<sup>58</sup>

Since these three propositions are stated independently of one another, it is obvious that the first is a general protection of the individual right to have arms for any and all lawful purposes, and is in no way dependent on the militia clause that follows. Madison's draft of the second amendment as later proposed with the Bill of Rights in Congress relied specifically on the recommendation by the Virginia convention.<sup>59</sup>

The New York convention predicated its ratification of the Constitution on the following interconnected propositions:

"That the powers of government may be reassumed by the people whensoever it shall become necessary to their happiness. . . . That the people have a right to keep and bear arms; that a well regulated militia, including the body of the people *capable of bearing arms*, is the proper, natural, and safe defence of a free state."<sup>60</sup>

Explicit in this language are the two independent declarations that individuals have a right to be armed and that the militia is the armed people. Similar language was adopted by the conventions of Rhode Island<sup>61</sup> and North Carolina.<sup>62</sup>

## II. THE RATIFICATION OF THE BILL OF RIGHTS

### A. Madison's Proposed Amendments: Guarantees of Personal Liberty

In acknowledgement of the conditions under which the state conventions ratified the Constitution, and in response to popular demand for a written declaration of individual freedoms, in 1789 the first U.S. Congress, primarily through the pen of James Madison, submitted for ratification by the states the Amendments to the Constitution which became the Bill of Rights. Relying upon the Virginia Declaration of Rights and the amendments proposed by the state conventions,<sup>63</sup> on June 8, 1789, Madison proposed in the House of Representatives a bill of rights which included the following: "The right of the people to keep and bear arms shall not be infringed; a well armed, and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms shall be compelled to render military service in person."<sup>64</sup> That Madison intended an individual right is clear not only from this wording, but also from his notes for his speech proposing the amendment: "They [proposed amendments] relate 1st. to private rights—fallacy on both sides—espey as to English Decln. of Rts.—1. mere act of part. 2. no freedom of press—Conscience . . . attainders—arms to protests."<sup>65</sup>

Madison's colleagues clearly understood the proposal to be protective of individual

rights. Fisher Ames wrote: "Mr. Madison has introduced his long expected amendments. . . . It contains a bill of rights . . . the right of the people to bear arms."<sup>66</sup> Ames wrote another correspondent as follows: "The rights of conscience, of bearing arms, of changing the government, are declared to be inherent in the people."<sup>67</sup> And William Grayson informed Patrick Henry: "Last Monday a string of amendments were presented to the lower House; these altogether respected *personal liberty*. . . ."<sup>68</sup>

Ten days after the Bill of Rights was proposed in the House, Tench Coxe published this *Remarks on the First Part of the Amendments to the Federal Constitution* under the pen name "A Pennsylvanian" in the Philadelphia Federal Gazette, June 18, 1789, at 2, col. 1. Probably the most complete exposition of the Bill of Rights to be published during its ratification period, the *Remarks* included the following:

"As civil rulers, not having their duty to the people duly before them, may attempt to tyrannize, and as the military forces which must be occasionally raised to defend our country, might pervert their power to the injury of their fellow-citizens, the people are confirmed by the next article in their right to keep and bear their private arms."<sup>69</sup>

In short, what is now the second amendment guaranteed the right of the people to have "their private arms" to prevent tyranny and to overpower an abusive standing army or select militia.

Coxe sent a copy of this article to Madison along with a letter of the same date. "It has appeared to me that a few well tempered observations on these propositions might have a good effect. . . . It may perhaps be of use in the present turn of the public opinions in New York state that they should be republished there."<sup>70</sup> Madison wrote back acknowledging "[Y]our favor of the 18th instant. The printed remarks inclosed in it are already I find in the Gazettes here [New York]. Far from disagreeing that the amendment protected the keeping and bearing of 'private arms,' Madison explained that ratification of the amendments "will however be greatly favored by explanatory strictures of a healing tendency, and is therefore already indebted to the co-operation of your pen."<sup>71</sup>

Coxe's defense of the amendments was widely reprinted.<sup>72</sup> A search of the literature of the time reveals that no writer disputed or contradicted Coxe's analysis that what became the second amendment protected the right of the people to keep and bear "their private arms." The only dispute was over whether a bill of rights was even necessary to protect such fundamental rights. Thus, in response to Coxe's article, *One of the People* replied with *On a Bill of Rights*, which held "the very idea of a bill of rights" to be a "dishonorable one to freemen." "What should we think of a gentleman, who, upon hiring a waiting-man, should say to him 'my friend, please take notice, before we come together, that I shall always claim the liberty of eating when and what I please, of fishing and hunting upon my own ground, of keeping as many horses and hounds as I can maintain, and speaking and writing any sentiments upon all subjects.' In short, as a mere servant, the government had no power to interfere with individual liberties in any manner absent a special delegation. '[A] master reserves to himself . . . every thing else which he has not committed to the care of those servants.'"<sup>73</sup>



The House Committee on Amendments subsequently reported the guarantee in this form: "A well regulated militia, composed of the body of the people, being the best security of free state, the right of the people to keep and bear arms shall not be infringed; but no person religiously scrupulous shall be compelled to bear arms."<sup>74</sup> The House debated this proposal on August 17 and 20, 1789. Elbridge Gerry clarified that the purpose of the amendment was protection from oppressive government, and thus the government should not be in a position to exclude the people from bearing arms:

"This declaration of rights, I take it, is intended to secure the people against the maladministration of the Government; if we could suppose that, in all cases, the rights of the people would be attended to, the occasion for guards of this kind would be removed. Now, I am apprehensive, sir, that this clause would give an opportunity to the people in power to destroy the constitution itself. They can declare who are those religiously scrupulous, and prevent them from bearing arms.

"What, sir, is the use of militia? It is to prevent the establishment of a standing army, the bane of liberty. Now, it must be evident, that, under this provision, together with their other powers, Congress could take such measures with respect to a militia, as to make a standing army necessary. Whenever Government means to invade the rights and liberties of the people, they always attempt to destroy the militia, in order to raise an army upon their ruins. This was actually done by Great Britain at the commencement of the late revolution. They used every means in their power to prevent the establishment of an effective militia to the Eastward. The Assembly of Massachusetts, seeing the rapid progress that administration were making to divest them of their inherent privileges, endeavored to counteract them by the organization of the militia; but they were always defeated by the influence of the Crown."<sup>75</sup>

Representative Gerry's argument was that the federal government should have no authority to categorize any individual as unqualified under the amendment to bear arms. "Now, if we give a discretionary power to exclude those from militia duty who have religious scruples, we may as well make no provisions on this head."<sup>76</sup> The point was that keeping and bearing arms was a right of "the people," none of whom should thereby be disarmed under any pretense, such as the government determining that they are religiously scrupulous or perhaps that they are not active members of a select militia (e.g., the National Guard).

In reply, Representative Jackson "did not expect that all the people of the United States would turn Quakers or Moravians; consequently, one part would have to defend the other in case of invasion."<sup>77</sup> The reference to "all the people" indicated again the centrality of the armed populace for defense against foreign attack. After further discussion, Gerry objected to the wording of the first part of the proposed amendment:

"A well regulated militia being the best security of a free State, admitted an idea that a standing army was a secondary one. It ought to read, 'a well regulated militia, trained to arms;' in which case it would become the duty of the Government to provide this security, and furnish a greater certainty of its being done."<sup>78</sup>

Gerry's works exhibit again the general sentiment that security rested on a general—rather than a select—armed populace.

The lack of a second to his proposal suggests that the congressmen were satisfied that the simple keeping and bearing of arms by the citizens would constitute a sufficiently well regulated militia to secure a free state, and thus there was no need to make it, in Gerry's words, "the duty of the Government to provide this security. . . ."

Further debate on the exemption of religiously scrupulous persons from being compelled to bear arms highlights the sentiment that not only bearing, but also the mere keeping, of arms by all people was considered both a right and a duty to prevent standing armies. The exemption would mean, objected Representative Scott, that "a militia can never be depended upon. This would lead to the violation of another article in the Constitution, which secures to the people the right of keeping arms, and in this case recourse must be had to a standing army."<sup>79</sup> "What justice can there be in compelling them to bear arms?" queried Representative Boudinot. "Now, by striking out the clause, people may be led to believe that there is an intention in the General Government to compel all its citizens to bear arms."<sup>80</sup> The proposed amendment was finally agreed to after insertion of the words "in person" at the end of the clause.<sup>81</sup>

In the meantime, debate over the proposed amendments raged in the newspapers. The underlying fear against a government monopoly of arms was expressed thusly: "Power should be widely diffused. . . . The monopoly of power, is the most dangerous of all monopolies."<sup>82</sup> The understanding that the keeping and bearing of private arms contributed to a well regulated militia was represented in the following editorial:

"A late writer . . . on the necessity and importance of maintaining a well regulated militia, makes the following remarks:—A citizen, as a militia man, is to perform duties which are different from the usual transaction of civil society. . . . [W]e consider the extreme importance of every military duty in time of war, and the necessity of acquiring an habitual exercise of them in time of peace. . . ."<sup>83</sup>

At the same time, what was to become the second amendment was not considered to condition having arms on the needs of the citizens in their militia capacity, but was seen as having originated in part from Samuel Adams' proposal (which contained no militia clause) that Congress could not disarm any peaceable citizens:

"It may well be remembered, that the following 'amendments' to the new constitution of these United States, were introduced to the convention of this commonwealth by . . . SAMUEL ADAMS. . . . [E]very one of the intended alterations but one [i.e., proscription of standing armies] have been already reported by the committee of the House of Representatives, and most probably will be adopted by the federal legislature. In justice therefore for that long tried Republican, and his numerous friends, you gentlemen, are requested to republish his intended alterations, in the same paper, that exhibits to the public, the amendments which the committee have adopted, in order that they may be compared together. . . ."

"And that the said constitution be never construed to authorize congress . . . to prevent the people of the United States, who are peaceable citizens, from keeping their own arms. . . ."<sup>84</sup>

Although many of the proposed amendments were subjected to criticism, what became the second amendment was apparently never attacked, aside from one editori-

al which argued that the militia clause was insufficient, but never questioned the right to bear arms clause. After quoting the language of the proposal as it was approved by the House, the well known anti-federalist Centinel opined:

"It is remarkable that this article only makes the observation, 'that a well regulated militia, composed of the body of the people, is the best security of a free state;' it does not ordain, or constitutionally provide for, the establishment of such a one. The absolute command vested by other sections in Congress over the militia, are not in the least abridged by this amendment. The militia may still be subjected to martial law . . . , may still be marched from state to state and made the unwilling instruments of crushing the last efforts of expiring liberty."<sup>85</sup>

This indicates the understanding that the militia clause was merely declaratory and did not protect state rights to maintain militias to any appreciable degree. That anti-federalists of the ink of Centinel never attacked the right to bear arms clause demonstrates that it was considered to recognize a full and complete guarantee of individual rights to have and use private arms. Surely a storm of protest would have ensued had anyone hinted that the right applied only to the much objected-to select militia.

#### *B. From the Senate to the States: The Adoption of the Second Amendment*

When the Senate came to consider the proposed amendments in early September, 1789, it became evident that while the right of individuals to keep and bear arms would not be questioned, attempts to strengthen recognition of state rights over militias and to proscribe standing armies would fail. Amendments mandating avoidance of standing armies were rejected,<sup>86</sup> as was a proposal "that each state respectively, shall have the power to provide for organizing, arming and disciplining its own militia, whensoever Congress shall omit or neglect to provide for the same."<sup>87</sup>

The form of the amendment adopted by the Senate, and approved by both houses on September 25, 1789, was the same as subsequently became the second article of the Bill of Rights: "A well regulated militia, being necessary to the security of a free state the right of the people to keep and bear arms, shall not be infringed." Comparing the House resolve with that of the Senate, the former redundantly mentions "the people" twice—once as militia, again as the entity with the right to keep and bear arms—while the latter more succinctly avoided repetition by deleting the well recognized definition of militia as "the body of the people." The Senate also deleted the phrase that "no person religiously scrupulous shall be compelled to bear arms," perhaps because the amendment depicts the keeping and bearing of arms as an individual "right" for both public and private purposes, and perhaps to preclude any constitutional authority of the government to "compel" individuals without religious scruples to bear arms for any purpose. Finally, the Senate specifically rejected a proposal to add "for the common defense" after "to keep and bear arms,"<sup>88</sup> thereby precluding any construction that the right was restricted to militia purposes and to common defense against foreign aggression or domestic tyranny.

That the Senate's deletion of the well recognized definition of militia as "the body of the people" implied nothing other than its

wish to be concise, but that its rejection of the proposal to limit the amendment's recognition of the right to bear arms "for the common defence" meant to preclude any limitation on the individual right to have arms, e.g., for self-defense or hunting, is evident in the joint recommendation by the Senate and House of the Amendment to the states. "The conventions of a number of the states having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added,"<sup>88</sup> was the language of Congress which prefaced the proposed amendments when submitted to the states. In short, Congress modeled the Bill of Rights, including the second amendment's implicit definition of militia as the whole people and explicit guarantee of the right to have arms to "the people," on the proposals submitted by the states, which in turn through their adoption thereof made the articles of amendment a part of the Constitution.

The adoption of the amendments by the states was by no means a foregone conclusion, and the ratification struggle ensued through 1791. Three positions emerged in the controversy: (1) the proposed amendments were adequate, (2) further guarantees were needed, and (3) freemen had no need of a bill of rights. None of the proponents of these respective positions ever called into question that keeping and bearing arms was a basic individual right. The common understanding was that the proposed bill of rights sought to guarantee personal, unalienable rights, but that unenumerated rights were also retained by the people.<sup>89</sup> Patrick Henry, Richard Henry Lee, and others were pleased with the bill of rights as far as it went, but wanted guarantees against standing armies and direct taxes.<sup>91</sup> Since these same prominent anti-federalists were among the most vocal in calling for a guarantee recognizing the individual right to have arms, it is inconceivable that they would not have objected to what became the second amendment had anyone understood it not to protect personal rights.

The view that the rights of freemen were too numerous to enumerate in a bill of rights was coupled with the argument that the ultimate protection of American liberty would be the armed populace rather than a paper bill of rights. An opponent of a bill of rights, Nicholas Collins argued that the American people would be sufficiently armed to overpower an oppressive standing army. "While the people have property, arms in their hands, and only a spark of noble spirit, the most corrupt Congress must be mad to form any project of tyranny."<sup>92</sup> On the other hand, the pro-amendment view was that both the existence of a bill of rights and an armed populace to enforce it would provide complementary safeguards. The following editorial advances this view, and assumes not only that keeping and bearing arms contributes to a well regulated militia, but also that militia exercises in effect demonstrate the people's strength so that government would not consider infringing on the right to keep and bear arms:

"The right of the people to keep and bear arms has been recognized by the General Government; but the best security of that right after all is, the military spirit, that taste for martial exercises, which has always distinguished the free citizens of these States; From various parts of the Continent the most pleasing accounts are pub-

lished of reviews and parades in large and small assemblies of the militia . . . Such men form the best barrier to the Liberties of America."<sup>93</sup>

While many people were thus flexing their muscles by engaging in armed marches to ward off tyranny and secure the right to keep and bear arms, the debate over ratification of the Bill of Rights raged through 1790. Some reiterated that no bill of rights could enumerate the rights of the peaceable citizen, "which are as numerous as sands upon the sea shore. . . ." <sup>94</sup> President Washington reminded members of the House of Representatives that "a free people ought not only to be armed, but disciplined. . . ." <sup>95</sup> Still, right to arms provisions were not necessarily associated with the citizen's militia, but were also coupled with different provisions. For instance, a widely published proposed bill of rights for Pennsylvania included a militia clause in a separate article from the following: "That the right of the citizens to bear arms in defence of themselves and the State, and to assemble peaceably together . . . shall not be questioned."<sup>96</sup>

During the ratification period the view prevailed that the armed citizenry would prevent tyranny. Theodorick Bland wrote Patrick Henry that "I have founded my hopes to the single object of security (*in terrorem*) the great and essential rights of freedom from the encroachments of Power—so far as to authorize resistance when they should be either openly attacked or insidiously undermined."<sup>97</sup> While the proposed amendments continued to be criticized due to lack of a provision on standing armies,<sup>98</sup> no one questioned the right to bear arms amendment.<sup>99</sup> Two days before Rhode Island ratified the bill of rights, newspapers in that state republished its declaration of natural rights included in its recent ratification of the Constitution: "That the people have a right to keep and bear arms: That a well-regulated militia, including the body of the people capable of bearing arms, is the proper, natural and safe defense of a free state. . . ." <sup>100</sup>

As more and more states adopted the amendments and debate thereon began to dwindle, even proponents of an anti-standing army provision conceded that an armed citizenry, as a well regulated militia, would prevent oppression from that quarter. As "A Framers" argued to "The Yeomanry of Pennsylvania":

"Under every government the dernier resort of the people, is an appeal to the sword; whether to defend themselves against the open attacks of a foreign enemy, or to check the insidious encroachments of domestic foes. Whenever a people . . . entrust the defence of their country to a regular, standing army, composed of mercenaries, the power of that country will remain under the direction of the most wealthy citizens . . . [Y]our liberties will be safe as long as you support a well regulated militia."<sup>101</sup>

#### CONCLUSION

In recent years it has been suggested that the second amendment protects the "collective" right of states to maintain militias, but not the right of "the people" to keep and bear arms. If anyone entertained this notion in the period in which the Constitution and Bill of Rights were debated and ratified, it remains one of the most closely guarded secrets of the eighteenth century, for no known surviving writing of the 1787-1791 period states that thesis. Instead, "the people" in the second amendment meant

the same as it did in the first, fourth, ninth and tenth amendments, i.e., each and every free person. A select militia as the only privileged class entitled to keep and bear arms was considered as execrable to a free society as would be select spokesmen approved by government as the only class entitled to freedom of the press. Nor were those who adopted the Bill of Rights willing to clutter it with details such as non-political justifications for the right (e.g., self-protection and hunting) or a list of what everyone knew to be common arms, such as muskets, scatterguns, pistols and swords. In light of contemporary developments, perhaps the most striking insight made by those who originally opposed the attempt to summarize all the rights of a freeman in a bill of rights was that, no matter how it was worded, artful misconstruction would be employed to limit and destroy the very rights sought to be protected.

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<sup>1</sup> Relevant state constitutional provisions at this time were: "That the people have a right to bear arms for the defence of themselves and the state . . ." PA. CONST. OF 1776, Declaration of Rights, art. 13 (current version at PA. CONST. art. 1 § 21); VT. CONST. OF 1777, ch I, Declaration of the Rights of the Inhabitants of the State of Vermont (current version at VT. CONST. ch I, art. 16); "That the people have a right to bear arms, for the defence of the State . . ." N.C. CONST. OF 1776, A Declaration of Rights, cl. 17 (current version at N.C. CONST. art. 1, § 30); "The people have a right to keep and bear arms for the common defence." MASS. CONST. OF 1780, Pt. 1, A Declaration of Rights of the Inhabitants of the Commonwealth of Massachusetts, art. 17 (current version at MASS. CONST. pt. 1, art. 17, § 18). The following provision was adopted during the same period in which the Bill of Rights to the U.S. Constitution was being ratified: "That the right of the citizens to bear arms, in defence of themselves and the State, shall not be questioned." PA. CONST. OF 1790, art. 9, § 21 (current version at PA. CONST. art. 1, § 21).

<sup>2</sup> J. ADAMS, A DEFENCE OF THE CONSTITUTIONS OF GOVERNMENT OF THE UNITED STATES OF AMERICA 471-72 (London, 1787-88). Newspaper editorialists of the time also alluded to Rome's disarming of conquered peoples. The Massachusetts Centinel, Apr. 11, 1787, recalled "the old Roman Senator, who after his country subdued the commonwealth of Carthage, had made them deliver up . . . their arms . . . and rendered them unable ever to protect themselves. . . ." 13 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 79 (J. Kaminski & G. Saladino eds. 1981).

<sup>3</sup> J. ADAMS, *supra* note 2, at 474.

<sup>4</sup> *Id.* at 475.

<sup>5</sup> Letter from Thomas Jefferson to Wm. S. Smith, (—, 1787), reprinted in T. JEFFERSON, ON DEMOCRACY 20 (S. Padover ed. 1939). In his influential Letter of January 27, 1788, Luther Martin stated: "By the



principles of the American revolution, arbitrary power may, and ought to, be resisted even by arms, if necessary." 1 J. ELLIOT, DEBATES IN THE SEVERAL STATE CONVENTIONS 382 (2d ed. Philadelphia, 1836). See also New York Journal, Aug. 14, 1788, at 2, col. 4 (the people will resist arbitrary power). A writer in the Pennsylvania Gazette, Apr. 23, 1788, criticized "the loyalists in the beginning of the late war, who objected to associating, arming, and fighting, in defence of our liberties, because these measures were not constitutional. A free people should always be left . . . with every possible power to promote their own happiness." 2 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION (Mfm. Supp.) 2483 (M. Jensen ed. 1976).

<sup>8</sup> THE FEDERALIST No. 28, at 180 (A. Hamilton) (Arlington House ed. n.d.).

<sup>9</sup> THE FEDERALIST No. 29, at 184-85 (A. Hamilton) (Arlington House ed. n.d.).

<sup>10</sup> THE FEDERALIST No. 46, at 294 (J. Madison) (Arlington House ed. n.d.).

<sup>11</sup> Id. at 298.

<sup>12</sup> Id. at 299.

<sup>13</sup> Id. at 300. On arms regulation by the French monarchy to prevent democracy, see L. KENNETH & ANDERSON, THE GUN IN AMERICA 5-16 (1975).

<sup>14</sup> "The state declarations of rights are not repealed by this Constitution, and, being in force, are sufficient," argued Roger Sherman in the federal convention. 5 J. ELLIOT, DEBATES ON THE ADOPTION OF THE FEDERAL CONSTITUTION 538 (Philadelphia, 1845). Hamilton averred in THE FEDERALIST No. 84 that a bill of rights "would contain various exceptions to powers which are not granted; and, on this very account, would afford a colorable pretext to claim more than were granted." THE FEDERALIST No. 84, at 513 (A. Hamilton) (Arlington House ed. n.d.). Hamilton's fear appears vindicated in view of the current restrictive interpretation that the Bill of Rights recognizes no individual right to bear arms. See, e.g., L. TRIBE, AMERICAN CONSTITUTIONAL LAW 226 n. 6 (1978).

<sup>15</sup> Webster, An Examination into the Leading Principles of the Federal Constitution in PAMPHLETS ON THE CONSTITUTION OF THE UNITED STATES 56 (P. Ford ed. 1888). See also id. at 48, 51-52.

<sup>16</sup> Cox, An American citizen IV in THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, supra note 2, at 433.

<sup>17</sup> Id. at 435; and in Cox, Examination of the Constitution, in PAMPHLETS ON THE CONSTITUTION OF THE UNITED STATES, supra note 13, at 151.

<sup>18</sup> Pennsylvania Gazette, Feb. 20, 1788, THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, supra note 5, at 1778-80. See also Foreign Spectator, Independent Gazetteer, Sept. 21, 1787: "The power of a veteran army could not subdue a patriotic militia ten times its number . . ." Id. at 384. A Supplement to the Essay on Federal Sentiments, Independent Gazetteer, Oct. 23, 1787: "[T]he whole personal influence of the Congress, and their partide army could never prevail over a hundred thousand men armed and disciplined, owners of the country . . ." Id. at 801. Antifederalists agreed with this thesis. Thus, the Freeman's Journal, Feb. 27, 1788, stated that "it would require more troops than even the empress of Russia can command, to chain down the enlightened freemen . . ." Id. at 1829. And Detector, Independent Gazetteer, Feb. 11, 1788, gave the reason: "[T]he sons of freedom . . . may know the despots have not altogether monopolized these necessary articles [powder and lead]." Id. at 1695.

<sup>19</sup> Pennsylvania Gazette, May 7, 1788, THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, supra note 15, at 2579.

<sup>20</sup> 5 J. ELLIOT, supra note 12, at 444.

<sup>21</sup> THE ANTI-FEDERALIST PAPERS 75 (M. Borden ed. 1965).

<sup>22</sup> Id.

<sup>23</sup> Id. at 38.

<sup>24</sup> Id. at 19.

<sup>25</sup> Gerry, Observations on the New Constitution in PAMPHLETS ON THE CONSTITUTION OF THE UNITED STATES, supra note 13, at 10.

<sup>26</sup> Id. at 11.

<sup>27</sup> PENNSYLVANIA HERALD, Oct. 17, 1787, THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, supra note 5, at 196-97. See also Z. FREEMAN'S JOURNAL, MAR. 5, 1788: "[T]HE PEOPLE THEMSELVES FREED AMERICA FROM FOREIGN TYRANNY." Id. at 1925.

<sup>28</sup> R. Lee, Letters of a Federal Farmer (1787-88), in PAMPHLETS ON THE CONSTITUTION OF THE UNITED STATES, supra note 13, at 305-06.

<sup>29</sup> R. LEE, ADDITIONAL LETTERS FROM THE FEDERAL FARMER 53 (Philadelphia, 1788).

<sup>30</sup> Id. at 169.

<sup>31</sup> Id. at 170 (emphasis added).

<sup>32</sup> A Slave, Philadelphia Independent Gazetteer, Oct. 6, 1787, THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, supra note 2, at 345. Aristocrats, in THE GOVERNMENT OF NATURE DELINEATED 15-17 (1788) (hereinafter ARISTOCRATS), feared that the active militia would "quell insurrections that may arise in any part of the empire on account of pretensions to support liberty, redress grievances, and the like." THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, supra note 5, at 2524. "The second class or inactive militia, comprehends all the rest of the peasants; viz., the farmers, mechanics, labourers, & c. which good policy will prompt government to disarm. It would be dangerous to trust such a rabble as this with arms in their hands." Id. at 2526.

<sup>33</sup> Charleston State Gazette, Sept. 8, 1788, at —, col. —. See also id., Aug. 7, 1788, at 3, col. 1-2 (militia as citizenry); Letter from New York, Oct. 31, 1787, 3 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 390 (M. Jensen ed. 1978): "THE MILITIA (ART. I, § 8, CL. 15) COMPREHENDS ALL THE MALE INHABITANTS FROM SIXTEEN TO SIXTY YEARS OF AGE . . . THE CONSTITUTION . . . PUTS THE UTMOST DEGREE OF CONFIDENCE IN THE PEOPLE . . ."

<sup>34</sup> On Tyranny, Anarchy, and Free Governments, New York Morning Post, Aug. 21, 1788, at 2, col. 2.

<sup>35</sup> A Friend to Equal Liberty, Philadelphia Independent Gazetteer, Mar. 28, 1788, at —, col. —. The Federal Gazette, Mar. 12, 1789, at 2, col. 3 opined: "[I]f it is done, it is to be hoped the friends of turtle and roast beef will stand upon a clause in the bill of rights, to secure the perpetual enjoyment of those two excellent dishes."

<sup>36</sup> Independent Gazetteer, Apr. 30, 1788, at —, col. —. See also Letter from Thomas B. Wait to George Thatcher (Aug. 15, 1788), in Thatcher Papers, Vol. II (available in Boston Public Library): "The same instrument that conveys the weapon, should refine the shield—should contain not only the powers of the rulers, but also the defence of the people." "Brutus" wrote in the New York Journal, Nov. 1, 1787: "Some [natural rights] are of such a nature that they cannot be surrendered. Of this kind are the rights of . . . defending life . . ." THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, supra note 31, at 525.

<sup>37</sup> As expressed in the Boston Independent Chronicle, Oct. 25, 1787, in a "ship's news" satire on demands for a bill of rights: "[I]t was absolutely necessary to carry arms for fear of pirates, & c. and . . . their arms were all stamped with peace, that they were never to be used but in case of an hostile attack, that it was in the law of nature for every man to defend himself, and unlawful for any man to deprive him of those weapons of self-defence." THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, supra note 31, at 523.

<sup>38</sup> THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, supra note 5, at 509.

<sup>39</sup> Not only was the right to keep and bear private arms universally acknowledged, but in Pennsylvania the right of individuals to keep public arms was asserted. "Jacob Trusty" queried the editor of the Freeman's Journal, Dec. 19, 1787, as follows: "I wish you would inform me, through the channel of your paper, of the true meaning of disarming the Militia in this State at this solemn period: The county officer shows us an order of Council for to deliver them for cleaning, but we in our county have, upon second thought, resolved to clean them ourselves. Is this a trick for to push upon us the new plan of government whether we will or will not have it; no, Mr. Bailey, those gentlemen in your city who have planned it, are poor politicians, if they depend on our agreeing to give up our mush sticks." THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, supra note 5, at 1361.

"A Militia Man" responded in the Pennsylvania Gazette, Dec. 26, 1787, that the Supreme Executive Council had merely directed the lieutenants "to collect all the public arms within their respective counties, have them repaired, and make return to Council . . . for payment." Id. at 1362. Jacob Trusty was then asserted to be mistaken "if he thinks the militia will be duped into a broil by any antifederalist . . ." Id. To this, "Trusty" responded in the Independent Gazetteer, Jan. 10, 1788, "that the militia of the country rather choose to repair and clean their own arms at this critical juncture, than to deliver them up to any one whatever." Id. at 1365. And "An Old Militia Officer of 1776" declared in

the same paper on Jan. 18, 1788: "The orders, issued by Council, enjoining the delivery of the public arms at this juncture, when a standing army is openly avowed to be necessary, has occasioned no small degree of apprehension. . . . These orders . . . amount . . . to a temporary disarming of the people. When the arms will be re-delivered, must depend upon the discretion of our rulers. . . . But if . . . these orders originate in that spirit of domination . . . will it not be their indispensable duty, as men, as citizens, and as guardians of their own rights, immediately to arm themselves at their own expense? This expedient will convince the enemies of liberty, that the people (their own defenders in the last resort) are prepared for the worst. . . ." Id. at 1369-70. See also Aristocrats, supra note 30, at 29-30, id. at 2538-39; Independent Gazetteer, Feb. 27, 1788, id. at 1833; Pennsylvania Herald, Feb. 5, 1788, id. at 1373; Freeman's Journal, Jan. 23, 1788, id. at 1371.

<sup>40</sup> The Documentary History of the Ratification of the Constitution, supra note 5, at 336.

<sup>41</sup> J. Elliot, supra note 5, at 74.

<sup>42</sup> Id. at 97.

<sup>43</sup> Id. at 404.

<sup>44</sup> J. ELLIOT, DEBATES IN THE SEVERAL STATE CONVENTIONS 203 (2d ed. Philadelphia, 1836).

<sup>45</sup> J. ELLIOT, DEBATES IN THE SEVERAL STATE CONVENTIONS 45 (2d ed. Philadelphia, 1836).

<sup>46</sup> Id. at 48.

<sup>47</sup> Id. at 51-52.

<sup>48</sup> Id. at 386.

<sup>49</sup> Id. at 168-69.

<sup>50</sup> Id. at 380.

<sup>51</sup> Id. at 425.

<sup>52</sup> See, e.g., id. at 413.

<sup>53</sup> Id. at 646.

<sup>54</sup> B. SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 681 (1971).

<sup>55</sup> Dissent of Minority, THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, supra note 5, at 597-598, 623-24; E. DUMBAULD, THE BILL OF RIGHTS AND WHAT IT MEANS TODAY 12 (1957). See also id. at viii-ix, 51-52. "The amendments proposed by the Pennsylvania minority bear a direct relation to those ultimately adopted as the federal Bill of Rights." B. SCHWARTZ, supra note 52, at 628. See also id. at 665. While the cited provision explicitly supports an individual right to have arms for more than militia purposes, the minority was very concerned about the specter of a select militia. "The militia of Pennsylvania may be marched to New England or Virginia to quell an insurrection occasioned by the most galling oppression, and aided by the standing army, they will no doubt be successful in subduing their liberty and independency." THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, supra note 5, at 638.

<sup>56</sup> B. SCHWARTZ, supra note 52, at 761.

<sup>57</sup> Id.

<sup>58</sup> Id. at 758. "The right to bear arms, going back to the English Bill of Rights, received recognition in the Second Amendment to the Constitution . . . Counting this article, seven out of twelve of New Hampshire's proposals were ultimately accepted." E. DUMBAULD, supra note 53, at 21 n.37.

<sup>59</sup> A Foreign Spectator, Remarks on the Amendments, No. XI, Federal Gazette, Nov. 28, 1788, at —, col. —.

<sup>60</sup> 3 J. ELLIOT, supra note 43, at 659. See also 3 G. MASON PAPERS 1068-71 (1970).

<sup>61</sup> E. DUMBAULD, supra note 53, at 21 and 51-52; 2 B. SCHWARTZ, supra note 52, at 765.

<sup>62</sup> J. ELLIOT, supra note 5, at 327-8.

<sup>63</sup> Id. at 335.

<sup>64</sup> J. ELLIOT, supra note 42, at 244.

<sup>65</sup> R. RUTLAND, THE BIRTH OF THE BILL OF RIGHTS 206 (1955); E. DUMBAULD, supra note 53, at viii-ix, 21, 51-52.

<sup>66</sup> 1 ANNALS OF CONG. 434 (June 8, 1789).

<sup>67</sup> Madison, Notes for Speech in Congress, June 8, 1789, 12 MADISON PAPERS 193-94 (C. Hobson & R. Rutland eds. 1979). In a letter to Edmund Pendleton, Oct. 20, 1788, Madison referred to proposed amendments as "those further guards for private rights . . ." 4 MADISON PAPERS 60 (C. Hobson & R. Rutland eds. 1979). In a Rough Draft of Proposed Bill of Rights that he would have presented had he not been defeated for election by Madison, James Monroe proposed "a declaration in favor of the equality of human rights; . . . of the right to keep and bear arms . . ." James Monroe Papers, N.Y. Public Library, Miscellaneous Papers.

<sup>68</sup> Letter from Fisher Ames to Thomas Dwight (June 11, 1789), in 1 WORKS OF FISHER AMES 52-53 (Philadelphia, 1854).

<sup>67</sup>Letter from Fisher Ames to F. R. Minot (June 12, 1789), in *id.* at 53-54.

<sup>68</sup>June 12, 1789, PATRICK HENRY 391 (1951) (emphasis added). See also Letter from Joseph Jones to James Madison (June 24, 1789), in 12 MADISON PAPERS, *supra* note 65, at 258 (the Amendments are "calculated to secure the personal rights of the people . . ."); Letter from William L. Smith to Edward Rutledge (Aug. 9, 1789), in S.C. HIST. MAG. 14 (1968) (the amendments "will effectually secure private rights . . .").

<sup>69</sup>Madison's proposals had been published two days before in the same paper. Federal Gazette, June 16, 1789, at 2, col. 2.

<sup>70</sup>Letter from Tench Coxe to James Madison (June 18, 1789), in 12 MADISON PAPERS, *supra* note 65, at 239-40.

<sup>71</sup>Letter from James Madison to Tench Coxe (June 24, 1789), in *id.* at 257.

<sup>72</sup>See, e.g., New York Packet, June 23, 1789, at 2, col. 1-2; Boston Massachusetts Centinel, July 4, 1789, at 1, col. 2.

Coxe's Remarks on the Second Part of the Amendments, which appeared in the Federal Gazette, June 30, 1789, expostulated what is now the ninth amendment as follows: "It has been argued by many against a bill of rights, that the omission of some in making the detail would one day draw into question those that should not be particularized. It is therefore provided, that no inference of that kind shall be made, so as to diminish, much less to alienate an ancient tho' unnoticed right, nor shall either of the branches of the Federal Government argue from such omission any increase or extension of their powers." *Id.* at 2, col. 1-2.

<sup>73</sup>Federal Gazette, July 2, 1789, at 2, col. 1.

<sup>74</sup>1 ANNALS OF CONG. 750 (1789). The committee on amendments made its report on July 28. *Id.* at 672.

<sup>75</sup>*Id.* at 750.

<sup>76</sup>*Id.*

<sup>77</sup>*Id.*

<sup>78</sup>*Id.* at 751.

<sup>79</sup>*Id.* at 766.

<sup>80</sup>*Id.* at 767. Actually, the opposite may be inferred by the eventual deletion of this part of the amendment, the purpose of which was to guarantee the individual "right" to keep and bear arms rather than to create a "duty" to do so. Arguably, this deletion was meant to preclude any constitutional power of government to compel any person to bear arms rather than to exempt only the religiously scrupulous.

<sup>81</sup>*Id.* at 767.

<sup>82</sup>Political Maxims, New York Daily Advertiser, Aug. 15, 1789, at 2, col. 1. See also Letter from Patrick Henry to Richard Lee (Aug. 28, 1789): "For Rights, without having power and might is but a shadow." PATRICK HENRY, *supra* note 68, at 398.

<sup>83</sup>Philadelphia Independent Gazetteer, Aug. 18, 1789, at 3, col. 1.

<sup>84</sup>From the Boston Independent Chronicle, Philadelphia Independent Gazetteer, Aug. 20, 1789, at 2, col. 2.

<sup>85</sup>Centinel, Revived, No. xxix, Philadelphia Independent Gazetteer, Sept. 9, 1789, at 2, col. 2.

<sup>86</sup>Senate Journal, Ms. by Sam A. Otis, Virginia State Library, Executive Communications, Box 13 (Sept. 4, 1789) at 1; (Sept. 8, 1789) at 7.

<sup>87</sup>*Id.* (Sept. 8, 1789) at 7.

<sup>88</sup>*Id.* (Sept. 9, 1789) at 1. Another alteration by the Senate may have also been significant. In changing the House's version that a militia was "the best security" to the version that a militia was "necessary to the security" of a free state, the Senate may have sought to answer the objections like that made by Representative Gerry in the House: "A well regulated militia being the best security of a free State, admitted an idea that a standing army was a secondary one." 1 ANNALS OF CONG. 751 (1789). It is noteworthy that Richard Henry Lee was a member of the Senate at that time.

<sup>89</sup>2 B. SCHWARTZ, *supra* note 52, at 1164.

<sup>90</sup>"The lower house sent up amendments which held out a safeguard to personal liberty in great many instances . . ." Letter from William Grayson to Patrick Henry (Sept. 29, 1789), PATRICK HENRY, *supra* note 68, at 406. "The whole of that Bill [of Rights] is a declaration of the right of the people at large or considered as individuals . . . [I]t establishes some rights of the individual as unalienable and which consequently, no majority has a right to deprive them of." (emphasis added). Letter from Albert Gallatin to Alexander Addison (Oct. 7, 1789), A.G. Papers, at 2, Ms. in N.Y. Hist.

Soc. "But there are some rights too essential to be delegated—too sacred to be infringed. These each individual reserves to himself; in the free enjoyment of these the whole society engages to protect him . . . All these essential and sacred rights, it would be difficult, if not impossible, to recount, but some, in every social compact, it is proper to enumerate, as specimens of many others . . ." *An Idea of a Constitution*, Independent Gazetteer, Dec. 28, 1789, at 3, col. 3. See also *The Scheme of Amendments*, Independent Gazetteer, March 23, 1789, at 2, col. 1: "The project of muffling the press, which was publicly vindicated in this town [Boston], so far as to compel the writers against the government, to leave their names for publication, cannot be too warmly condemned." Registration of persons for exercise of basic freedoms was considered to be infringement.

<sup>91</sup>Patrick Henry "is pleased with some of the proposed amendments; but still asks for the great desideratum, the destruction of direct taxation." Letter from Edmund Randolph to James Madison (Aug. 18, 1789), in 12 MADISON PAPERS, *supra* note 65, at 345. Jefferson was dissatisfied with the bill of rights but did not object to the arms bearing provision. Letter from Thomas Jefferson to James Madison (Aug. 28, 1789) in 12 MADISON PAPERS, *supra* note 65, at 363-64. The bill of rights was "short of some essentials, as Election interference & Standing Army & c . . ." Letter from Richard Henry Lee to Charles Lee (Aug. 28, 1789), in 2 LETTERS OF RICHARD HENRY LEE 499 (Ballagh ed. 1914). Most of those in the Virginia House who opposed the adoption of the amendments "are not dissatisfied with the amendments so far as they have gone" but wanted delay to prompt an amendment on direct taxes. Letter from Hardin Burnley to James Madison (Nov. 5, 1789), in 12 MADISON PAPERS, *supra* note 65, at 460. In the Virginia Senate, there was extensive criticism of the proposed free speech guarantee and other amendments as too narrow, but no one questioned the right to bear arms provision. Objections to Articles, VA. SEN. J. 61-65 (Dec. 12, 1789). Virginia forestalled adoption of the bill of rights until the end of 1791. Nor did the Massachusetts General Court, which rejected the bill of rights, object to the arms bearing provision in its verbose Report of the Committee of the General Court on Further Amendments. See Report reprinted in MASSACHUSETTS AND THE FIRST TEN AMENDMENTS 25-29 (D. Myers ed. 1936).

<sup>92</sup>Remarks on the Amendments, Fayetteville Gazette, Oct. 12, 1789, at 2, col. 1.

<sup>93</sup>The Gazette of the United States, Oct. 14, 1789, at 211, col. 2.

<sup>94</sup>"A bill of rights for freemen appears to be a contradiction in terms . . . [I]n a free country, every right of human nature, which are as numerous as sands upon the sea shore, belong to the quiet, peaceable citizen." Federal Gazette, Jan. 5, 1790, at 2, col. 3. "The absurdity of attempting by a bill of rights to secure to freemen what they never parted with, must be self-evident. No enumeration of rights can secure to the people all their privileges . . ." Federal Gazette, Jan. 15, 1790, at 3, col. 3. This article ridiculed a bill of rights as analogous to conveying a house and lot but excepting out of the grant an enumeration of other houses and lots retained by the seller.

<sup>95</sup>Speech of Jan. 7, 1790, Boston Independent Chronicle, Jan. 14, 1790, at 3, col.—.

<sup>96</sup>Providence Gazette & Country Journal, Jan. 30, 1790, at 1, col.—.

<sup>97</sup>Letter from Theodorick Bland to Patrick Henry (March 19, 1790), PATRICK HENRY, *supra* note 68, at 417-18.

<sup>98</sup>"A well regulated militia is the best defence to a free people, a standing army in time of peace are not equal to a well regulated militia." Political Maxims, Independent Gazetteer, July 24, 1790, at 2, Col. 1. "Where a standing army is established, the inclinations of the people are but little regarded." Political Maxims, Independent Gazetteer, July 31, 1790, at 2, Col. 2.

<sup>99</sup>E.g., Summary of the Principal Amendments Proposed to the Constitution, post May 29, 1790 Ms. College of Wm. & Mary, Tucker-Coleman coll., Box 39b notebooks, Notebook VI, at 212-22.

<sup>100</sup>Providence Gazette and Country Journal, June 5, 1790, at 23.

<sup>101</sup>Independent Gazetteer, Jan. 29, 1791, at 2, col. 3.

Mr. ABDNOR. Mr. President, I rise to speak in support of the legislation offered by Senator McClure, and I want the record to reflect that I have

supported this legislation since the days when I served in the House of Representatives. I have been particularly concerned about the tendency of courts and the Department of Justice to misconstrue some of the provisions of existing Federal law. I believe this bill and my remarks will clarify the intent with which those provisions were adopted.

When the Congress enacted the Gun Control Act of 1968, it contained a requirement of firearm dealer licensing which was begun with the 1938 Federal Firearms Act. That provision, as codified today in title 18, United States Code, section 922(A)(1) provides that:

It shall be unlawful—for any person, except a licensed . . . dealer, to engage in the business of . . . dealing in firearms or ammunition . . .

The act defined "dealer" as including "any person engaged in the business of selling firearms or ammunition." These persons were required to pay a \$10 occupational tax to the Treasury and to maintain records of their firearm inventory and disposition. When Congress enacted that bill it clearly had in mind the ordinary and common definition of a dealer—a person to whom firearms transactions were a business—a regular livelihood, rather than one who owned for his own sport or pride, a firearms collection. It seemed unlikely that so small a burden would pose any serious problems for gun owners. But the sad fact is that these vague legal definitions have created problems for ordinary American gun owners, hobbyists, and collectors.

The statute "requires no minimum number of sales, dollar volume of sales, or number of employees to constitute engaged in the business." The end result is tremendous confusion over who should possess a FFL license and who need not, and I am glad that this legislation will once and for all end this nightmare for legitimate gun owners.

Mr. President, the reason I am so concerned about this legislation being enacted into law is the awful situation that Florida businessman Howard Shaw was placed in when the U.S. attorney in Jacksonville, FL, and the FBI, and the Department of Justice decided to go after him for minor inadvertent technical violations of the Gun Control Act of 1968, although President Reagan, Attorney General Meese, former Deputy Assistant Secretary of Treasury Powis and BATF Director Higgins have all made crystal clear that this administration will not make felons out of otherwise law-abiding gun owners and dealers. The U.S. attorney in northern Florida with full knowledge of the administration policy to the contrary chose to prosecute Howard Shaw for negligent and inadvertent recordkeeping errors. The



Department of Justice indicted Mr. Shaw on 88 recordkeeping errors which would have sent him to jail for 440 years and cost him \$440,000. Let me say right now that BATF looked at this situation with respect to Mr. Shaw and would have nothing to do with it. As a matter of fact internal BATF memorandums state that the "alleged violations were technical and minor and would not have met the ATF standards for a full FFL criminal investigation."

Mr. President, I want to tell the Senate about this Shaw case because hopefully the legislation we pass today will prevent an injustice like this from happening again.

The case began in the summer of 1983 when Shaw, a successful businessman and skeet shooting champion, was called to testify before a grand jury in Tampa investigating political corruption of public officials in north Florida. Shaw, who was not a suspect in the case and who had no knowledge of the alleged activities, refused to testify.

Immediately thereafter, the U.S. Department of Justice and agents from the FBI seized Shaw's business records and his records as a federally licensed firearms dealer.

In September, a grand jury indicted Shaw, alleging 86 counts of record-keeping errors and two counts of misstatements to inspectors of the Bureau of Alcohol, Tobacco and Firearms during a routine compliance check in 1978. According to court documents, all 86 recordkeeping counts charged that Shaw waited more than 1 day to record firearms sales and acquisitions, a Federal felony under the Gun Control Act. All the guns involved were high-priced collectors items, primarily shotguns Shaw used for competitive shooting. The other two counts were minor errors which BATF testified it felt no need to pursue. Each count carried a maximum penalty of 5 years in jail and/or a \$5,000 fine.

While BATF had no interest in the case, the Justice Department embraced it with a vengeance. In addition to subpoenaing Shaw's business and FFL records, the Department of Justice would not allow Shaw to touch a gun or hunt while the matter was in litigation. Isn't that a touching deprivation of liberty?

On February 6, 1984, Shaw went on trial in the U.S. District Court for the Middle District of Florida. Shaw maintained he was unaware of Federal requirements which stipulated that gun transfers must be recorded within 1 day, and it was pointed out in court that Shaw did keep paperwork necessary to conduct a firearms trace if BATF requested one.

On February 8, U.S. District Court Judge Susan H. Black dismissed 3 of the 88 counts, but ruled that the other 85 must be decided by the 12-member

jury. After only 2 hours deliberation, the jury chose a foreman and voted unanimously for acquittal on the first ballot.

After the acquittal, jury foreman Harry Sieman told the press that, "We didn't find any criminal intent in this case. It was just sloppy recordkeeping but no wrongful intent to deceive."

According to the Florida Times-Union, one juror, who asked not to be identified, said prosecutors had "an untold motive" in bringing the case. "It sounded like they couldn't get him on anything else so they charged him with this," the paper quoted the juror as saying.

Mr. President, the National Rifle Association is just as upset about the prosecution of Howard Shaw as I am. In Milwaukee, WI, on May 29, 1984, the Board of Directors of the NRA passed a resolution alleging that the Shaw case was an abuse of prosecutorial discretion and requested U.S. Senate hearings. I hope they get those hearings. I want the Senate, and the country, to know that the Department of Justice in this administration, in effect imposed a \$100,000 fine upon Howard Shaw, for that was the amount he had to pay his lawyers for his successful defense in fighting off 440 years in prison and \$440,000 in fines.

Mr. President, I ask that this NRA resolution be printed in the *RECORD* at the conclusion of my remarks, and I urge speedy adoption of this legislation and its enactment and signing into law by President Reagan. The last thing we want is another Howard Shaw case.

Mr. President, I ask unanimous consent that the attached resolution be printed in the *RECORD*.

There being no objection, the resolution was ordered to be printed in the *RECORD*, as follows:

#### RESOLUTION

Whereas, Howard Shaw was indicted by a Federal Grand Jury for the Middle District of Florida on 86 counts of violation of the Gun Control Act of 1968, which consisted solely of minor, inadvertent and technical record-keeping errors under the Gun Control Act of 1968, and that none of the counts involved fraud; and

Whereas, The entire prosecution of Mr. Shaw was carried out as a totally criminal manner in the United States District Court for the Middle District of Florida, without following Bureau of Alcohol, Tobacco and Firearms guidelines, and exposed Mr. Shaw to 440 years in prison, and \$440,000 in fines, and damaged both his business and personal reputation in the community; and

Whereas, The present Administration has stated "That in the past firearms regulators have too often lost sight of their ultimate objective and have misused their authority to search for minor technical infractions by otherwise law-abiding sportsmen, collectors, and dealers instead of concentrating on firearms violations by criminals. The Administration's policy, therefore, is to redirect its enforcement focus away from the former toward the latter."; and

Whereas, The prosecution of Howard Shaw is a good example of the gross and flagrant abuses which are possible under the current Gun Control Act of 1968; and

Whereas, Mr. Shaw was acquitted of all counts not dismissed by the courts; and

Whereas, We believe that this prosecution was contrary to the policies of the President, was contrary to the policies of the Department of the Treasury and the Bureau of Alcohol, Tobacco and Firearms, the law enforcement agency with primary jurisdiction over the Gun Control Act of 1968, and constituted a flagrant abuse of prosecutorial discretion; now, therefore, be it

*Resolved*, That the U.S. Senate Judiciary Committee be urged to hold hearings as to whether the indictment of Mr. Shaw was an abuse of prosecutorial discretion and contrary to the guidelines and policies of the Department of the Treasury and Bureau of Alcohol, Tobacco and Firearms and that the Senate Judiciary Committee make recommendations with a view to taking action against any responsible parties and preventing a recurrence of this or similar actions; and, be it further

*Resolved*, That NRA transmit this resolution to the President of the United States, Attorney General of the United States, Secretary of the Treasury and appropriate United States Senators on the Judiciary Committee, with appropriate covering letters urging action on this matter.

Mrs. HAWKINS. Mr. President, there was an article recently in the National Rifle Association's Monitor magazine which revealed the results of the most recent Department of Justice report on violent crime. These results are horrifying: Last year, nearly 1 in 4 U.S. households was victimized by violent crime.

According to the Bureau of Justice Statistics of the Department of Justice, urban residents fell victim to crime more often than those living in suburban or rural areas. In 1984, 1 out of 53 urban households was victimized by rape, robbery, or aggravated assault, compared to 1 in 111 suburban households. Only 1 in 200 rural households suffered a violent crime in 1984.

Although the total number of crime victims decreased in 1984, the Bureau of Justice statistics indicated that the number of households having a member victimized by rape increased by 33,000 compared to 1983.

Mr. President, these statistics represent an unacceptable situation. That is why I am working toward obtaining passage of S. 49, the Firearm Owners Protection Act of 1985. This proposal, considered by the full Senate today, is seen by many as vital to the protection of law-abiding gun owners and dealers throughout the country. With the violent crime that victimizes so many of American households, we must make sure that our right to self-protection is guaranteed. Under the present ambiguous language found in the Gun Control Act of 1968, this guarantee is not clearly provided. S. 49 would rectify this situation.

This proposal, introduced by my friend and colleague, Senator

McCLURE, and cosponsored by me, is designed to accomplish the following:

Define "engaged in the business" of dealing in firearms to clarify who needs a Federal firearms license. Collectors who make occasional sales from their collections would not need a license;

Require that criminal intent be proved before citizens could be prosecuted for inadvertent violations of Federal firearms laws;

Protect against unreasonable search and seizure by requiring that reasonable cause exists before an inspection of dealer records;

Guarantee the return of all confiscated firearms after dismissal or acquittal of charges;

Clarify the law regarding dealer transactions from private collections;

Ease interstate sales of firearms—face-to-face transactions could take place as long as they are legal in the State of transfer and the State to which the gun is to be taken;

Allow interstate transportation of unloaded, inaccessible firearms;

Require mandatory minimum prison sentences for those convicted of using a gun during the commission of a crime.

Also, the Firearms Owners Protection Act of 1985 would redirect the efforts of the Bureau of Alcohol, Tobacco, and Firearms against criminals who misuse guns. The Agency has admitted that only 10 percent of its cases in recent years have been against felons in possession of guns or those selling to them.

S. 49 will not weaken existing Federal gun laws, but rather will strengthen provisions that prohibit certain classes of citizens from owning, possessing, or selling firearms. Persons in that class include criminals, adjudged mental incompetents, illegal aliens, dishonorably discharged military personnel, and drug or alcohol abusers.

Mr. President, in total, this worthy proposal will provide all the protections necessary for law-abiding citizens that are missing from existing law. It would also strengthen current law by adding provisions directed against criminals and others who misuse firearms. I urge my colleagues not only to offer their support of S. 49, but also their active efforts to achieve this legislation's expeditious passage.

Mr. LAXALT. Mr. President, the right of Americans to own firearms has been recognized since the founding of our country. It is emphatically guaranteed against Federal encroachment by the second amendment. If this right is to be restricted or qualified in any way, the burden of showing the necessity for such qualification and the effectiveness of any proposed solution must be placed on those who propose it.

Consequently, I rise today in support of Senator McClure's proposed legis-

lation to amend the Gun Control Act of 1968 to restore the constitutional rights of honest, legitimate gun owners, and gun dealers. When Congress enacted the Gun Control Act, its intended purpose was to curtail criminal activity involving the misuse of firearms, not to place unnecessary restrictions on law-abiding citizens. The act clearly states:

It is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms for the purpose of hunting, trapshooting, target shooting personal protection, or any other lawful activity. \* \* \*

The 1968 act has, however, created numerous administrative and enforcement problems because of poor draftsmanship. As outlined in testimony before the Senate Judiciary Committee, the enforcement of the act's restrictions has resulted in infringements of basic individual civil liberties, such as abusive search and seizure practices and unwarranted prosecutions for mere technical violations of the law. S. 49 addresses these problems; it seeks to direct law enforcement efforts toward those firearms transactions most likely to contribute to violent crime.

The Federal Firearms Owners' Protection Act is a comprehensive, well-rounded package of badly needed legislation. This bill clearly defines the statutory phrase "engaged in the business," to enlighten individuals involved in firearms transactions as to exactly who needs a Federal firearms license. The bill also establishes clear procedures for the sale and transfer of firearms. Current law is ambiguous in its requirements, ensnaring many people who have neither the desire nor the intent to violate the law.

S. 49 seeks to tighten and make consistent the classification of "high risk" individuals who may not own or possess a gun. Moreover, this bill would strengthen existing criminal laws by authorizing mandatory minimum prison sentences for criminals convicted of Federal crimes involving firearms. By directing the punishment at those who commit criminal offenses, these laws as amended by S. 49 would properly punish those who abuse gun ownership and possession without infringing upon the constitutional liberties of sportsmen and legitimate gun owners.

Would-be criminals and potential murderers must be aware that we will not tolerate the continuing threat of violent crime. We should not be held hostage by the criminal, nor should we be held hostage by overly restrictive and unpopular gun control laws. Therefore, I ask my colleagues in the Senate to join me in supporting Senator McClure's efforts.

Mr. GARN. Mr. President, I rise in strong support of S. 49. This bill helps

to reestablish the protection of the right of American citizens to keep and bear arms. It moves the gun laws of this country much closer to fulfilling the purpose of the Gun Control Act of 1968 outlined in section 101:

It is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity. \* \* \*

Indeed, S. 49 is designed to deter criminals from using firearms when committing a crime. It does this by establishing a mandatory prison term for the use of a firearm in a violent crime of a minimum sentence of 5 years, with no parole or work release. Just as importantly, the bill is designed not to burden law-abiding citizens who wish to purchase a firearm for their own use and/or protection.

It is currently law that a convicted felon may not own or possess a gun. Yet, crimes continue to be committed by convicted felons with guns. The measures now in place because of the Gun Control Act of 1968 are not preventing criminals from obtaining firearms. They are, however, harassing and inconveniencing law-abiding citizens who wish to purchase firearms.

This bill seeks to strengthen our constitutionally guaranteed right to keep and bear arms. Richard Henry Lee, who was a delegate to the Continental Congress, initiator of the Declaration of Independence and a member of the first Senate which passed the Bill of Rights, said:

To preserve liberty, it is essential that the whole body of people always possess arms, and be taught alike, especially when young, how to use them.

While the historical context of this statement makes such a remark understandable, the intent of Congress and the thinking of the time is clear. All citizens have a right to keep and bear firearms, a right that the Government should protect and encourage—not stifle.

Often, citizens of the United States are purchasing firearms for the express purpose of self-defense. There are many people, myself among them, who feel that the overbearing regulations and intimidating paperwork that go along with the concept of gun control only deter those who would be protected by having firearms, rather than those who would use a gun to perpetrate a violent crime. We must pass this legislation to alter this unjustifiable situation.

The merits of this bill are many, and I urge my colleagues to support this much-needed reform.

Mr. DENTON. Mr. President, the time is long overdue for Congress to take action to put an end to the many inequities and hardships that result to



law-abiding citizens from the questionable law enforcement practices that have been used to implement the Gun Control Act of 1968. S. 49 is designed to do just that.

The bill has been thoroughly scrutinized from every point of view for 6 years. As a result of this extensive review and the untiring efforts of Senator McCURE, we have a laudable piece of legislation that will help to strike the appropriate balance between the constitutional rights of law-abiding gun owners and dealers, on the one hand, and legitimate law enforcement interests, on the other. The bill represents a major step toward the modernization of our current laws to prevent the recurrence of the many abuses of the law which have been documented in detail before Judiciary Committee hearings.

In a time of increasing violent crime, it is the duty of the Government to enact and enforce laws that will serve to protect our citizens through the imposition of swift, severe, and certain penalties on people who use firearms in connection with violent crimes. At the same time, the laws must be carefully fashioned both to protect the interests of law-abiding citizens and to preserve the necessary tools for effective law enforcement. S. 49 is the best effort we have toward accomplishing that task.

In retrospect, we know that the Gun Control Act of 1968, although well-intentioned, was rushed into law in an emotional response to a series of assassinations. As hearings have shown, the effect of the Gun Control Act of 1968 has been to subject honest firearms owners and dealers to unnecessary harassment while having no discernible effect on the use of firearms in violent crime.

Mr. President, the bill would make many significant changes to our current gun laws. Rather than talk about all of the changes, let me just mention what, in my mind, is one of the most significant provisions of the bill. That provision is section 104, which incorporates, with some modification, language from the Comprehensive Crime Control Act of 1984 to provide for a mandatory, determinate sentence for any person who uses or carries a firearm in furtherance of a violent crime.

I say that it is a particularly significant provision not because it will have any greater or more significant effect than the other provisions but because it embodies the essence of the entire legislative effort: The redirection of our law enforcement resources away from law-abiding gun owners and dealers toward those criminal elements and events that cause so many citizens to be afraid to walk the streets at night.

Mr. President, the bill has received broad support. It currently has 51 cosponsors in the Senate and 125 cospon-

sors in the House. I encourage my colleagues to continue to support the bill in the hope that we can move it swiftly through the 99th Congress and strike a major blow against crime.

Thank you, Mr. President.

#### AMENDMENT NO. 437

Mr. HATCH. Mr. President, I send an amendment to the desk on behalf of Senators SYMMS and METZENBAUM—or perhaps METZENBAUM and SYMMS—and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Utah, [Mr. HATCH], for Mr. SYMMS and Mr. METZENBAUM, proposes an amendment—

Mr. HATCH. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 29, strike out lines 5 through 14 and insert in lieu thereof the following:

#### TRANSPORTATION OF FIREARMS

SEC. 107. (a) Chapter 44 of title 18, United States Code, is amended by inserting between section 926 and section 927 the following new section:

#### "926A. Interstate transportation of firearms

"Any person not prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport an unloaded, not readily accessible firearm in interstate commerce notwithstanding any provision of any legislation enacted, or any rule or regulation promulgated by any State or political subdivision thereof."

(b) The table of sections for chapter 44 of title 18, United States Code, is amended by inserting between the item relating to section 926 and the item relating to section 927 the following new item:

#### "926A. Interstate transportation of firearms."

Mr. SYMMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, I thank the distinguished Senator from Utah for solving a dispute over authorship. If there has been any misunderstanding over it, it certainly was not the intention of this Senator.

The intent of this amendment that I have been working on with the distinguished floor leader of the bill is to protect the second amendment rights of law-abiding citizens wishing to transport firearms through States which otherwise prohibit the possession of such weapons. As written, S. 49 nullifies all State and local law and regulations which prohibit, or have the effect of prohibiting, interstate transportation of firearms or ammunition through such States. Such language is needed because citizens currently are unable to transport firearms through those States and local jurisdictions which ban firearm possession.

Some Senators have expressed concern, however, that the preemptive language of S. 49 could cause unnecessary confusion. They have been concerned that the current language of S. 49 may cloud the applicability of State and local regulations enacted to prevent the carrying of loaded and concealed weapons.

Therefore, rather than preempt all State and local regulations that prohibit the transportation of firearms and ammunition, this amendment would change section 107 to confer a right of interstate transportation of firearms. This amendment will allow law-abiding citizens to transport firearms safely through any State or municipality in the course of interstate travel. It, therefore, meets the objective of the preemptive language in S. 49 without causing unnecessary confusion about the ordinances to be preempted.

The PRESIDING OFFICER. The Senator from Idaho will suspend. The agreement provided that the amendment on interstate transportation would be offered by the Senator from Ohio [Mr. METZENBAUM]. Therefore, the Senator from Idaho is out of order.

Mr. HATCH. Mr. President, this agreement, if I recall, if the Chair will let me intervene, I think provided that either the Senator from Idaho or the Senator from Ohio would propose it. I think I presented the amendment on behalf of the—if you read the time agreement—

The PRESIDING OFFICER. The agreement provides specifically for an amendment offered by Senator METZENBAUM modifying the preemption provisions, 1 hour.

Mr. HATCH. Mr. President, I ask unanimous consent that we handle it in the way that I sent the amendment to the desk, and we have both Senators; both of them should be treated equally as far as being sponsors of this amendment. The actual agreement was for an amendment offered by Senator METZENBAUM modifying the preemption provisions, 1 hour.

The PRESIDING OFFICER. Does the Senator from Ohio offer this amendment?

Mr. METZENBAUM. I would have to object to that. The fact is that the Senator from Ohio is in extensive negotiations with respect to this matter and agreed not to discuss at great length the motion to proceed with this issue. I have no objection to proceeding with the understanding that it is the Metzenbaum amendment that is being offered and I would be delighted to have the Senator from Idaho as a cosponsor of the Metzenbaum amendment.

The PRESIDING OFFICER. The Senator will suspend while I state the agreement. The record shows that this

amendment may be offered by either the Senator from Idaho or the Senator from Ohio but not by the Senator from Utah.

Mr. METZENBAUM. Let me make a parliamentary inquiry whether or not, on page 2 of the Calendar of Business, it does not provide in a unanimous-consent agreement that there be an amendment offered by Senator METZENBAUM modifying the preemption provisions, 1 hour. Is that not controlling?

The PRESIDING OFFICER. The Senate Journal is the final arbiter of Senate procedure. The Senate Journal clearly states that either the Senator from Ohio [Mr. METZENBAUM] or the Senator from Idaho [Mr. SYMMS] present the amendment.

Mr. SYMMS. Mr. President, who has the floor?

The PRESIDING OFFICER. At the moment, the Senator from Idaho has the floor.

#### AMENDMENT NO. 438

(Purpose: To provide a substitute for the preemption provisions)

Mr. SYMMS. Mr. President, I send an amendment to the desk on behalf of myself and the Senator from Ohio and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The bill clerk read as follows:

The Senator from Idaho [Mr. SYMMS] for himself and Mr. METZENBAUM, proposes an amendment numbered 438.

On page 29, strike out lines 5 through 14 and insert in lieu thereof the following:

#### TRANSPORTATION OF FIREARMS

Sec. 107. (a) Chapter 44 of title 18, United States Code, is amended by inserting between section 926 and section 927 the following new section:

##### "§ 926a. Interstate transportation of firearms

"Any person not prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport an unloaded, not readily accessible firearm in interstate commerce notwithstanding any provision of any legislation enacted, or any rule or regulation promulgated by any State or political subdivision thereof."

(b) The table of sections for chapter 44 of title 18, United States Code, is amended by inserting between the item relating to section 926 and the item relating to section 927 the following new item:

"926a. Interstate transportation of firearms."

Mr. SYMMS. Mr. President, I just say that whoever wants credit for this amendment, there are 100 Senators here; I am willing for all Senators to have credit. I am interested in the results and what we are trying to do in this bill. If there is any misunderstanding, I certainly apologize to my colleagues who have assumed certain things.

I have the June 24, RECORD. On page S8685, it clearly states that the amendment will be offered by either Senator METZENBAUM or Senator SYMMS, modifying the preemption pro-

visions. I certainly hope there are no hard feelings.

I ask unanimous consent that I may go on with my remarks. Then I ask unanimous consent that my earlier remarks be added to this speech.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SYMMS. Mr. President, the intent of this amendment that I have been working on with the distinguished floor leader of the bill is to protect the second amendment rights of law-abiding citizens wishing to transport firearms through States which otherwise prohibit the possession of such weapons. As written, S. 49 nullifies all State and local law and regulations which prohibit or have the effect of prohibiting interstate transportation of firearms or ammunition through such States. Such language is needed because citizens currently are unable to transport firearms through those States and local jurisdictions which ban firearms possession.

Some Senators have expressed concern, however, that the preemptive language of S. 49 could cause unnecessary confusion. They have been concerned that the current language of S. 49 may cloud the applicability of State and local regulations enacted to prevent the carrying of loaded and concealed weapons.

Therefore, rather than preempt all State and local regulations that prohibit the transportation of firearms and ammunition, this amendment would change section 107 to confer a right of interstate transportation of firearms. This amendment will allow law-abiding citizens to transport firearms safely through any State or municipality in the course of interstate travel. It therefore meets the objective of the preemptive language in S. 49 without causing unnecessary confusion about the ordinances to be preempted.

Mr. President, in a June 18, 1985, editorial, the Washington Post called this meritorious provision "an all-or-nothing provision allowing all sorts of dangerous or untrained handgun packers to roam anywhere." I was not surprised by the inaccuracy of the statement or the inflated rhetoric used. The problem is that the Post is talking about apples in a bowl of oranges. My amendment and the bill to which it is attached seek to protect the rights of law-abiding citizens wishing to transport firearms which are both unloaded and not readily accessible.

The rationale of my amendment is quite simple. There is no reason for us to prevent law-abiding sportsmen and hunters from changing their State of residence or attending a sporting event in another State simply because they are forced to avoid entire States in their travels. That is really what this is all about, Mr. President.

The argument that this amendment will hamper law enforcement efforts is

fallacious. A firearm kept in a compartment where it is both not readily accessible and not loaded should not be subject to State and local firearm possession restrictions. Of course, once the firearm is loaded and/or removed from the compartment, or otherwise becomes accessible to the carrier, it cannot legally be transported in interstate commerce under this legislation.

Some may argue that an unloaded and inaccessible handgun poses a greater danger than a long gun in the same conditions. However, a hunter's not readily accessible, unloaded handgun constitutes no greater threat than an Olympic marksman's inaccessible, unloaded rifle.

These, Mr. President, are the reasons why I have offered this amendment today. I do not seek to invalidate State and local laws regarding firearm possession. Rather, my amendment confers a right on law-abiding citizens to transport their firearms through States otherwise prohibiting them from possessing such weapons. Nor does my amendment overturn State restrictions on the possession of concealed and/or loaded handguns. Handguns which are unloaded and inaccessible pose no danger either to local citizens or law enforcement officials.

The second amendment rights of law-abiding citizens transporting their firearms must be upheld. I believe this amendment accomplishes this goal.

Mr. President, this bill has been a long time coming. My distinguished senior colleague, Senator McCURE, certainly deserves the praise and support of all of us, along with the distinguished floor manager of the bill, the Senator from Utah. I compliment both of them. I know, from my personal friendship and working with the distinguished senior Senator from Idaho, that he has worked long and hard and very ably to get to this point today. I urge passage of the bill. I urge passage of this amendment. I urge all my colleagues to stay with the leadership and the committee on this legislation because I believe they have done a good job for the individual rights and the protection of the second amendment to the Constitution. It is an important piece of legislation. It will be landmark legislation. I appreciate the work my colleagues have done. I know I speak for the many thousands of constituents in my State—legitimate firearms dealers, sportsmen, and others who are law-abiding citizens who have had unnecessary harassment from BATF in the enforcement of the 1968 Gun Control Act. I think this will put the focus where it should be, on the criminals, and will allow the law-abiding citizen to exercise his constitutional rights.

I say again my compliments to my colleagues who have made this possible. I yield the floor.



Mr. HATCH. Mr. President, I rise in support of this amendment, and I heartily congratulate my colleagues, Senators SYMMS and METZENBAUM, for the leadership they have shown in bringing this amendment to the floor. I congratulate Senator SYMMS for sponsoring S. 45, a bill with many similar objectives to this amendment, and, of course, both Senators METZENBAUM and SYMMS for offering this amendment to S. 49.

This amendment by Senators METZENBAUM and SYMMS will grant a right of interstate transportation to law-abiding firearms owners who may be traveling with an unloaded firearm which is not readily accessible through a State or local jurisdiction that forbids firearm possession or carrying.

Many firearm owners currently travel through Massachusetts or some localities, like New York City, where local laws may forbid possession of firearms and may be used to harass interstate travelers of commerce. These travelers may be on their way through the locality on a hunting trip or on the way to a marksmanship competition or simply on their way to a new home in a distant State. If these travelers are detained in a speeding violation, for example, and local authorities discover a firearm that is unloaded and not readily accessible, they may still be prosecuted for violation of a local ordinance banning possession or carrying of a firearm. This amendment will correct that injustice.

S. 49, as introduced, dealt with this problem by preempting these State statutes to the extent they were inconsistent with this right of interstate transportation of unloaded and less accessible firearms. In fact, this original provision would not have nullified any of the 30 or so State statutes regulating carrying of a firearm because these State statutes governed intrastate carrying of concealed and loaded weapons while S. 49 concerned only interstate transportation of unloaded and not-readily-accessible weapons. Nonetheless, this amendment creating a right to interstate transportation is a far more efficient means of achieving a goal for which they and others have worked for years. I commend them again for this worthy amendment and urge my colleagues to approve this amendment.

Mr. President, will the Senator from Idaho join the Senator from Utah in a brief colloquy in order to clarify the scope of his amendment?

Mr. SYMMS. I will be happy to engage in a colloquy with my distinguished colleague, the floor manager for the bill.

Mr. HATCH. I thank the Senator. First, let me say that I am pleased to be a cosponsor of this amendment. I believe it meets the concerns voiced by some Members regarding the preemptory language in section 107 of the bill.

Rather than declaring certain State laws "null and void," this amendment simply confers on all law-abiding citizens a right to transport their firearms in a safe manner in interstate commerce. This is a legitimate and appropriate use of Congress' constitutionally delegated authority to regulate interstate commerce.

While the amendment clearly allows, individuals to transport firearms while traveling between States, it is the Senator's understanding that the amendment also would allow an individual to have his or her firearms shipped from one State to another by a commercial moving company?

Mr. SYMMS. I thank the Senator for his question and his supportive remarks. It is my understanding that the amendment would allow individuals to ship firearms between States as long as the firearms are unloaded and not readily accessible to the moving company employees responsible for transporting them. The amendment would protect the individual shipper, the moving company, and its employees from liability under any State or local laws which would otherwise prohibit the interstate transport of firearms through their jurisdictions. Thus, the legislation would allow individuals moving from one State to another to have a moving company ship their firearms along with their personal and household property.

Mr. HATCH. I thank the Senator for his remarks, and I concur with his understanding of the scope of the amendment.

Mr. METZENBAUM. Mr. President, we can accept the amendment on this side of the aisle, and I share the Senator's understanding of the applicability of this amendment to individuals shipping firearms by moving van when those firearms are unloaded and not readily accessible.

The PRESIDING OFFICER. Has the Senator from Utah yielded the floor?

Mr. HATCH. I yield to the Senator from Ohio.

Mr. METZENBAUM. Mr. President, there seemed to be some confusion about this amendment, and the Senator from Ohio will explain his perception of it.

When the leadership of the Senate indicated his intent to move forward with the gun control bill, some Senators including myself, felt very strongly that it was a bad bill—it is still a bad bill. It will be a bad bill when this amendment is accepted—but that it might be made somewhat better. It is a bill that had no hearings. It is a bill that was introduced and held at the desk.

And so, when a motion was made to proceed, I had no difficulty in indicating my concerns and that I intended to explain to the Members of the Senate, as well as the people of this country,

how we were proceeding in connection with this legislation. As is normal, not unusual, in the processes of the Senate, there then developed an extended period of negotiations. Out of these negotiations, the Senator from Ohio and the sponsors of this legislation as well as the leadership of the Senate came to an understanding that two amendments would be accepted. One of the amendments had to do with the import of parts for guns that are not to be used for sporting purposes. When the motion to proceed was taken up the other day, I had come to an understanding and agreement and felt that it was appropriate that I leave to catch a plane. The Senator from Utah was to introduce those amendments on my behalf.

Now with no disrespect to the Senator from Utah, who is my friend and an extremely honorable man, I think some misunderstanding developed at that point because I think that while the Senator from Ohio was negotiating with some Members of the Senate and the leadership on this issue of section 107, the Senator from Utah was at the same time negotiating with the Senator from Idaho. The Senator from Ohio was not aware of that fact and I guess would have been as surprised as I was today when I came to the floor of the Senate to find that the Senator from Idaho and the Senator from Ohio were so much in accord that we were in disagreement as to who was to offer the amendment, because we do come from a different posture with respect to the overall aspects of the bill. But having said that, let me address myself to the issue itself.

Section 107 of the bill, whether intended or not, has a potentially disastrous effect on State and local laws because it risks invalidation of many of those laws.

In particular, the bill, if enacted in its current form without the amendment, would make null and void any State or local statute or regulation which has the effect of prohibiting the transportation of a firearm or ammunition in interstate commerce through such State when such firearm is unloaded and not readily accessible.

That meant no limits whatsoever except that the firearm could not be loaded.

The effect of this broad language is to drastically alter the current relationship between the States and the Federal Government in the area of regulating firearms because currently section 927 of title 18 of the United States Code provides that no provision of current Federal gun control laws shall be construed as indicating a congressional intent to preempt State laws unless there is an irreconcilable conflict between State and Federal laws.

In other words, Congress recognized that States and localities may decide to regulate the ownership and transportation of firearms, and the intent of Congress was that these laws should remain in effect unless there was no possible way of resolving a conflict between State and Federal law.

S. 49 in its current form, however, would totally nullify State laws under a broad range of circumstances. For example, State licensing laws that prohibit the carrying of firearms without a permit may be construed as prohibiting the transporting of a firearm through the State. In such a case, section 107 in S. 49 would nullify the law entirely. Consequently, rather than simply create a defense to an individual prosecution, the statute would be nullified in all circumstances.

The purpose of this amendment is to make clear that it is the intention of Congress that State and local statutes and regulations shall remain in effect except that in certain narrow circumstances involving travel through one or more States other than the State of residence, a defense is available to prosecutions under State and local gun control laws.

The circumstances under which a defense would be created under this amendment are limited to cases where a person is transporting a firearm in interstate commerce and the firearm is unloaded and not readily accessible. For example, under this amendment a person traveling through a State who keeps an unloaded firearm locked in the trunk of his car would not be liable in a State prosecution under State law for carrying a weapon without a State license. This amendment would not prevent a conviction: First, if the firearm were loaded during the period when the person traveled through the State; second, if the person reached his destination within the State; third, or if the firearm was moved to an accessible position, for example, into the interior of the automobile. If any of the circumstances required by this amendment are no longer present, State or local laws are fully applicable and no defense to a prosecution under this amendment is available.

This amendment will insure that State and local laws are given their full effect, subject only to the justifiable exception involving the transporting of a firearm through the State when it is unloaded and not reasonably accessible to a potential user.

Mr. President, I ask unanimous consent that a very helpful and thorough analysis of the problems raised by section 107 of S. 49, prepared by the law firm of Wilmer, Cutler & Pickering, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### ANALYSIS OF SECTION 107 OF McCLURE-VOLKMER BILL

Section 107 of the McClure-Volkmer Bill, S. 49, a provision relating to the preemption of state law, could, if enacted, trigger a fundamental restructuring of the present relationship between state and federal authority in one important area of firearm regulation. This provision, which would preempt certain restrictions by states on the transportation of firearms in interstate commerce, could nullify, in whole or in part, as many as twenty-one state "license to carry" laws or other state statutes prohibiting the carrying of firearms.

State license to carry statutes require persons wishing to carry handguns, or in a few instances other firearms, within that jurisdiction to obtain a permit before doing so. The comprehensiveness of such schemes varies considerably from state to state. Several states restrict the carrying of a handgun only if concealed on one's person; others contain broader restrictions prohibiting the carrying of a firearm in any manner without a license. Still other statutes contain specific language restricting the vehicular transportation of handguns. Most of the licensing schemes carve out exemptions from their requirements for certain classes of gun carriers, such as hunters and target shooters, common carriers, licensed gun dealers or their agents, nonresidents with permits to carry from another state, and individuals traveling from place of purchase or repair. Some states qualify their exemptions with specific requirements as to the manner in which a firearm may be carried.

Currently, all questions relating to federal preemption of state firearms laws are governed by section 927 of Title 18 of the United States Code. This section provides:

"[N]o provision . . . shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together."

18 U.S.C. 927 (1984). Proposed section 107 of the McClure-Volkmer Bill would create the following exception to section 927:

"Provided, however, That any provision of any legislation enacted, or of any rule or regulation promulgated, by any State or a political subdivision which prohibits or has the effect of prohibiting the transportation of a firearm or ammunition in interstate commerce through such State, when such firearm is unloaded and not readily accessible, shall be null and void."

While the intent of proposed Section 107 may be only to prevent states from applying their license to carry laws to prohibit interstate travelers from transporting unloaded and inaccessible firearms through such states, its language could be read to extend far beyond this limited purpose. As a result, enactment of Section 107 potentially could result in the preemption of state license to carry statutes in their entirety or as they pertain to any form of firearm transportation within a vehicle.

Proposed Section 107 would render "null and void" not only those statutory provisions which directly "prohibit[]" the transportation in interstate commerce of an unloaded, not readily accessible firearm, but also those that "ha[ve] this effect." As a result, if any provision of a state license to carry law or other statute prohibiting carrying intrudes to any extent upon the federal

right to transport firearms created by Section 107, that provision will be struck down by Section 107, not just as the state statute is applied to restrict the interstate transportation of an unloaded, not readily accessible firearm, but in its entirety.

Twenty-one of the states with license to carry laws or other prohibitions on carrying may place some restriction on the interstate transportation of unloaded, not readily accessible firearms. Many of these states, such as California, Pennsylvania, Michigan, and Massachusetts, have statutes which specifically prohibit the vehicular transportation of a handgun without a license, as well as other forms of carrying, and contain exceptions to their proscriptions which may not be broad enough to encompass all conceivable types of interstate transportation of unloaded, inaccessible firearms. In such cases, Section 107 could preempt that portion of the statute which restricted the transportation of a firearm in a vehicle.

Several other states, such as New York, New Jersey, and Wyoming, have statutes which simply prohibit the carrying of a handgun or other firearm in any manner without a permit and which contain exemptions which may not be broad enough to cover all interstate transportation of an unloaded, inaccessible firearm. These statutes do not contain a provision specifically prohibiting the carrying of a firearm in a vehicle. In such cases, the intrusion on the federal right would derive from the provisions establishing the entire licensing scheme. Since Section 107 could have the effect of rendering those provisions null and void, the entire license to carry schemes in effect in these states could be struck down by operation of proposed Section 107.

Three other states—South Carolina, Virginia, and Utah—prohibit the carrying of handguns in general, subject to certain exemptions, and issue permits to carry only to law enforcement personnel or other individuals whose employment places them in physical danger. The exemptions to these statutes may not be broad enough to include all forms of interstate transportation of an unloaded, inaccessible firearm. Since the intrusion of the federal right here too would stem from the statutory scheme as a whole, Section 107 also could conceivably preempt these statutes entirely. Whether these and many of the other statutes described above would in fact be preempted by Section 107 would depend upon the construction ultimately given to the proposal's unclear language.

While the words of Section 107 are unambiguous in their creation of a federal right of interstate transportation of an unloaded, inaccessible firearm, the provision is far too vague to serve as the basis for preempting state laws coming into conflict with that right, particularly since the section operates to nullify any conflicting state provision. For example, Section 107 does not define the phrase "through such state." Suppose a nonresident traveler with an unloaded, inaccessible gun in the trunk of his automobile spent the night at a roadside motel in State A or stopped there for a few days to visit friends before reaching his ultimate destination in State B. Would State A's statute requiring that individual to have a license to carry be preempted by Section 107?

Moreover, the plain language of Section 107 does not limit its protection of interstate firearms transportation to interstate travel by nonresidents. What if a resident employed as a common carrier drove "through" his home state while making a



coast-to-coast delivery of a cargo of firearms? Or if a resident who owned a summer cottage in a State A purchased a gun in a State B, and drove "through" her home state, State C, to that summer house, stopping in State C overnight? Does Section 107 prevent a state from regulating the carrying of firearms within its own jurisdiction by such residents? Indeed, Utah, for example, exempts all nonresidents who transport unloaded firearms in a case, gun box, gun rack, or locked trunk from its prohibition on carrying of a concealed weapon.<sup>1</sup> If Section 107 does protect these residents described above, the existence of this type of blanket exemption for nonresidents would not be sufficient to protect a state scheme from federal preemption.

Finally, what does Section 107 mean by the words "not readily accessible"? Is it enough to keep the guns locked in a box in the driver's compartment? Must they be locked in the trunk? Need they be locked in a box in the trunk? Will locking them in the glove compartment suffice? Some current state statutes contain specific exemptions for vehicular transportation of firearms if a gun is unloaded and secured in a specified manner. For example, Minnesota authorizes the transportation of a pistol without a permit in a vehicle if the gun is unloaded, and contained in a fastened case, gun box, or securely-tied package.<sup>2</sup> In contrast, Michigan creates an exemption for certain hunters, target shooters, and antique gun holders if their pistols are unloaded and placed in a wrapper or container in the trunk of a vehicle.<sup>3</sup> South Carolina exempts individuals from its general ban on carrying provided only that they secure their pistols in a closed glove compartment or closed trunk.<sup>4</sup> Whether these and other statutory exemptions would be sufficient to enable a state to avoid preemption of its statute would depend upon the interpretation that ultimately was given to the phrase "not readily accessible" in Section 107.

Appended to this Memorandum is a state-by-state analysis of twenty-one state statutes which could be preempted, in whole or in part, by the passage of Section 107. Although this Appendix contains references to a number of cases found to be relevant to the preemption question, the analysis of these state schemes is based primarily upon the language of the statutes themselves, and does not purport to be a comprehensive compilation of all those cases which conceivably could bear on this issue.

[Adrienne Masters—Beth Kramer, a law clerk in the office of Wilmer, Cutler & Pickering, assisted in the preparation of the Appendix to this Memorandum.]

#### APPENDIX—STATE-BY-STATE ANALYSIS OF IMPACT OF SECTION 107 OF MCCLURE-VOLKMER BILL

##### ALABAMA

Alabama state law requires that persons obtain an annual permit to carry a pistol in a vehicle or concealed on or about the person, stating in pertinent part: "[n]o persons shall carry a pistol in any vehicle or concealed on or about his person, except on his land, in his own abode or fixed place of business without a license." *Ala. Code* § 13A-11-73 (1982). Although the statute expressly

provides a method only for residents to obtain a license to carry, *Ala. Code* § 13A-11-75 (1982), the statute's requirements would seem to apply to non-residents as well,<sup>1</sup> since the statute prohibits any "person" from carrying a pistol. Relevant exemptions to the license to carry law include: (1) any persons engaged in manufacturing, repairing, or dealing in pistols; (2) the agents or representatives of "such person possessing, using, or carrying a pistol in the usual or ordinary course of business;" (3) any licensed common carrier except taxicabs; and (4) any persons carrying an unloaded pistol in a secured wrapper from place of purchase to home or business, or to place or repair, or when moving. *Ala. Code* § 13A-11-74 (1982).

Although the statute creates several exceptions that limit the applicability of the license to carry law to interstate travelers, these exceptions are not broad enough to include all transportation "through" the state of an unloaded firearm which is not readily accessible. Several classes of interstate travelers would appear to fall outside the above-mentioned exemptions. A hunter or interstate traveler would not be authorized to carry an unloaded and inaccessible firearm without a license unless he happened to be moving or going from place of purchase or repair. Since the scope of the agent exemptions is limited by the phrase "usual and ordinary course of business," certain representatives of such dealers also might not fall within an exemption.<sup>2</sup> Hence, because the statute could in certain circumstances have the effect of prohibiting interstate transportation of firearms, and since there is no severable provision relating solely to interstate travel, it is quite possible that Section 107 could preempt Alabama's license to carry scheme entirely as it relates to carrying a pistol in a vehicle, an integral part of the statutory scheme as a whole.

##### CALIFORNIA

The California license to carry law provides that it is unlawful for "any person [to] carry[] concealed within any vehicle which is under his control or direction . . . any firearm capable of being concealed upon the person without having a license to carry such firearm." *Cal. [Penal] Code* § 12025(a) (West Supp. 1985). The statute also prohibits the carrying of a concealed firearm upon one's person. *Id.* § 12025(b). The relevant exemptions to this license to carry law include: (1) transportation by any merchant of unloaded firearms as merchandise; (2) licensed hunters while engaged in hunting or while going to or from hunting expeditions; and (3) members of shooting or antique gun clubs. *Cal. [Penal] Code* § 12027 (West Supp. 1985). Although the statute only specifies the procedure by which residents may obtain a license, *See Cal. [Penal] Code* § 12050 (West 1982), the statute's requirements would seem to apply to nonresidents as well<sup>3</sup> since the statute states that "any person" will be subject to criminal penalties if he or she carries a firearm without a license.

Although the California license to carry scheme contains several broad exceptions, the statute will in several circumstances prohibit the transportation through the state of an unloaded, inaccessible handgun if that weapon is "concealed" in the car. One California court already has held that the placing of a weapon in a closed glove compartment constitutes "concealment."<sup>4</sup> A court could easily apply this logic to conclude that an unloaded handgun in the trunk of the car was "concealed" as well. Al-

though the statute carves out exceptions for licensed hunters and those "transport[ing] firearms as merchandise," an interstate traveler driving through California for some other purpose would be subject to the license to carry requirement. For example, a person who drove "through" the state with a concealed handgun to be used for personal protection upon his or her arrival in another state would be unable to do so without a permit, even if the gun was unloaded and not readily accessible. Since this statute could be construed to restrict the interstate transportation of firearms in these limited instances, it is conceivable that a court could construe Section 107 as presently drafted to nullify that provision of the state statute which prohibits the carrying of a firearm in an automobile, thus, significantly impairing the effectiveness of the statutory scheme as a whole.

##### COLORADO

Colorado's license to carry scheme prohibits "a person" from carrying a concealed firearm, on or about the person, whether unloaded or loaded, but creates an affirmative defense for anyone who has obtained a permit to carry. *Colo. Rev. Stat.* § 18-12-105(1)(b) (1978). The procedure for obtaining such a license to carry is available both for residents and persons not within the jurisdiction. *Colo. Rev. Stat.* § 18-12-105.1 (Supp. 1983). A person in a private automobile or other private means of conveyance carrying a weapon for lawful protection while traveling has an affirmative defense and does not need a license to carry. *Colo. Rev. Stat.* § 18-12-105(2)(b) (1978).

It is possible that if the "lawful protection" exemption were literally construed to exclude those interstate travelers who carried their weapons for sport or business rather than for protection, Section 107 could potentially render Colorado's license to carry scheme invalid. The statute reaches all residents and nonresidents who carry a concealed weapon "on or about the person." This phrase could conceivably be construed to include a traveler who kept an unloaded firearm locked in his glove compartment or in a gunbox in the passenger compartment. If the phrase "not readily accessible" contained in proposed Section 107 were held to encompass such behavior, and these two definitions thus overlapped, the Colorado statute would in this limited instance, prohibit interstate transportation of a firearm in a manner protected by Section 107. Since the Colorado statute contains no severable provision which alone would prohibit such interstate travel, Section 107 as presently drafted could conceivably be held to preempt the entire state statutory scheme.

##### CONNECTICUT

The Connecticut license to carry statute renders it unlawful for "any person who knowingly has, in any vehicle owned, operated or occupied by him, any weapon for which a proper permit has not been issued." *Conn. Gen. Stat. Ann.* § 29-38 (West 1975). The statute also prohibits any person from carrying a pistol or revolver upon his person without a license. *Conn. Gen. Stat. Ann.* § 29-35 (West Supp. 1984). Exceptions listed in connection with this latter provision include: (1) transportation of pistols or revolvers as merchandise; (2) persons carrying from place of sale to residence or business, or for moving or repairing; or (3) any person carrying a pistol or revolver in or through the state for the purpose of taking part in a competition if such person has a permit or license to carry issued by another state.

<sup>1</sup> Utah Code Ann. § 76-10-523(5) (1978).

<sup>2</sup> Minn. Stat. Ann. § 624.714 (West Supp. 1985).

<sup>3</sup> Mich. Comp. Laws Ann. § 750.231a (1) (Supp. 1984).

<sup>4</sup> S.C. Code Ann. § 16-23-20 (Law. Co-op. 1984).

Footnotes at end of article.

*Conn. Gen. Stat. Ann.* § 29-35 (West Supp. 1984). Both nonresidents possessing a valid permit in their state and in-state residents may obtain a permit to carry pistols or revolvers in Connecticut. *Conn. Gen. Stat. Ann.* § 29-28 (West 1975).

Although the interrelationship between these two proscriptions is ambiguous, and it is thus unclear whether the exemptions also apply to the transportation of a firearm in a vehicle, it would seem clear that in either case Section 107 could conceivably preempt Connecticut's statutory license to carry scheme as it applies to vehicular travel altogether. If the exceptions to the "upon the person" provision do not reach transportation in a vehicle, then the statute would prohibit any interstate transportation of an unloaded, inaccessible firearm. If, instead, these exemptions serve additionally as exemptions to the vehicular travel provision, the statute would still restrict some forms of interstate transportation of such a firearm. For example, the statute prohibits an interstate traveler wishing to carry a firearm for personal protection or a hunter without a license to carry from his or her home state from carrying an unloaded and inaccessible firearm. Since the statute contains no provision which directly prohibits interstate transportation of an unloaded, not readily accessible firearm, proposed Section 107 would, in its present form, preempt Connecticut's restrictions on automobile transportation of a firearm without a license, clearly an intricate part of the state's license to carry law.

#### DISTRICT OF COLUMBIA

The District of Columbia license to carry law provides in pertinent part that "[n]o person shall carry either openly or concealed on or about his person . . . a pistol, without a license. . . ." *D.C. Code Ann.* § 22-3204 (1981). The pertinent exemptions to the license to carry scheme include: (1) any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person carrying a pistol in the usual or ordinary course of business; and (2) any person carrying a pistol unloaded in a secure wrapper from place of purchase to residence or business, for purposes of repair, or when moving. *D.C. Code Ann.* § 22-3205 (1981). The statute provides a procedure by which residents, persons with a place of business in D.C., and nonresidents with a license to carry a concealed pistol issued by another state can obtain a license to carry. *D.C. Code Ann.* § 22-3206 (1981); the broad language of the statute, however, would encompass all "persons," including nonresidents who have never been issued a permit in any state.<sup>5</sup>

The potential for preemption of the District of Columbia's license to carry scheme depends on whether the definition of "not readily accessible" in proposed Section 107 could conceivably overlap with that of "on or about the person," as contained in the D.C. statute. If a court were to conclude that a firearm locked in a glove compartment or in a gun box in the passenger compartment were both "about the person" and "not readily accessible," the exemptions in the D.C. scheme would not be broad enough to cover all classes of interstate travelers.<sup>6</sup> For example, a hunter or targetshooter driving from Maryland through the District destined for Virginia, and carrying an unloaded handgun in this manner, would be prohibited from doing so without a license to carry. Similarly, the exemption for persons engaged in the "business" of manufacturing, repairing or dealing in firearms or

their agents carrying a firearm in the "usual and ordinary course of business," would not include individuals who repair firearms as a hobby.<sup>7</sup> Since the prohibition on this form of interstate travel would derive not from any specific provision relating to interstate transportation or automobile travel, but rather from the statutory scheme as a whole, application of Section 107 as proposed could conceivably result in the preemption of the District of Columbia statute in its entirety.

#### INDIANA

Indiana's license to carry scheme provides that "a person shall not carry a handgun in any vehicle or on or about his person . . . without a license." *Ind. Code Ann.* § 35-47-2-1 (Burns 1985). The pertinent exemptions to this statutory scheme include: (1) any person engaged in the business of manufacturing, repairing, or dealing in firearms; (2) the agent or representative of such person carrying a handgun in the usual or ordinary course of business; and (3) any person carrying an unloaded handgun in a secure wrapper from place of purchase to his or her residence or business, for purposes of repair, or when moving. *Ind. Code Ann.* §§ 35-47-2-2(10)-(11) (Burns 1985). Although the statute expressly provides a method only for residents and nonresidents with a regular place of business or employment in Indiana to obtain a license to carry, *Ind. Code Ann.* § 35-47-2-3 (Burns 1985) the statute applies to any "person" which should include other nonresidents as well.<sup>8</sup> Indiana will, however, recognize a nonresident's license to carry issued in another state. *Ind. Code Ann.* 35-47-2-21(b) (Burns 1983). The statute specifies that hunters must obtain a qualified license to carry handguns. *Ind. Code Ann.* § 35-47-2-4 (Burns 1985).

Despite Indiana's broad exemptions to its license to carry scheme, the statute will still prohibit certain interstate transportation of an unloaded, not readily accessible firearm. For example, the exemptions do not reach transportation of a firearm by an interstate hunter or nonresident traveler who wished to transport a handgun to a contiguous state to be used for personal protection.<sup>9</sup> Since there is no severable provision which has only the effect of prohibiting this type of transportation, proposed section 107, as currently drafted, could have the effect of nullifying that provision of Indiana's statute which prohibits the vehicular transportation of a handgun, clearly a critical part of the statutory scheme.

#### MAINE

Maine's statutory license to carry scheme provides that "no person may . . . conceal about his person any firearm" unless such person has been issued a permit. *Me. Rev. Stat. Ann.* tit. 25, § 2031 (Supp. 1984). The licensing provision explicitly permits both residents and nonresidents to obtain a permit to carry. *Me. Rev. Stat. Ann.* tit. 25, § 2032(1), (5) (Supp. 1984). The statute contains no exemptions to its license to carry provisions.

Provided that the phrase "about his person" were interpreted to overlap with at least one of the conditions ultimately found to satisfy the "not readily accessible" requirement contained in proposed Section 107—possibly, for example, the placing of a gun in a locked gun box or secure wrapper, or in a trunk or glove compartment—and assuming that locating a gun in such a manner would constitute "concealment,"<sup>10</sup> the Maine statute clearly would prohibit an

interstate traveler from carrying an unloaded, not readily accessible firearm without a license. Since Maine's scheme contains no severable provision relating solely to vehicular travel or to interstate transportation, Section 107 as currently drafted could have the effect of nullifying Maine's license to carry scheme in its entirety.

#### MASSACHUSETTS

The Massachusetts license to carry scheme provides that "whoever . . . carries on his person, or carries on his person or under his control in a vehicle, a firearm, loaded or unloaded . . ." without a license to carry violates the statute. *Mass. Gen. Laws Ann.* ch. 269, § 10 (West Supp. 1985). Licenses to carry will be issued to any person residing or having a place of business in the jurisdiction, *Mass. Gen. Laws Ann.* ch. 140, § 131 (West Supp. 1985), and authorizes nonresidents to obtain a temporary license to carry firearms for purposes of participating in a firearms competition. *Mass. Gen. Laws Ann.* ch. 140, § 131F (West Supp. 1985). The statute permits nonresidents with a valid permit or license from another state to carry a pistol or revolver in or through the Commonwealth for purposes of competition or hunting. The interstate hunter traveling in or through Massachusetts is exempt from the license to carry laws if he has on his person a hunting or sporting license issued by Massachusetts or his state of destination. *Mass. Gen. Laws Ann.* ch. 140, § 131G (West Supp. 1984). The statute also requires an ID card in order to possess a firearm without a license to carry. *Mass. Gen. Laws Ann.* ch. 140, § 129B (West 1974 & Supp. 1985). The statute contains several other exemptions relating to possession of firearms, but, since violation of this provision is a separate offense, these exemptions would not be applicable when solely the license to carry provisions are in question.<sup>11</sup>

The question of whether proposed Section 107 could preempt the Massachusetts scheme would depend on the construction of the term "under his control" in the state statute. If the driver of a vehicle who had the keys to a trunk, gunbox or glove compartment were held to have "control" of a firearm so located,<sup>12</sup> the Massachusetts statute would prohibit the interstate transportation of certain unloaded, inaccessible firearms in some cases. For example, a resident who purchased a handgun in a state to the south, and drove his car "through" Massachusetts to a state to the north would be prohibited from doing so without a license to carry. A nonresident would also be prohibited from carrying an inaccessible, unloaded handgun through the state if, he had no license from his home state, and was a hunter without a valid hunting license, or was carrying a gun to be used for personal protection at his place of destination. Since the statute contains no severable provision which applies to interstate travel, proposed Section 107 as currently drafted could conceivably preempt that portion of the Massachusetts license to carry scheme which places a restriction on carrying a handgun in a vehicle. Without this provision, the Massachusetts license to carry scheme would be rendered ineffectual.

#### MICHIGAN

The Michigan license to carry law provides that no person shall carry a pistol without having first obtained a license. *Mich. Comp. Laws Ann.* § 28.422 (1981). The scheme makes it a criminal offense for a person to carry a concealed weapon on or



about his person, "... or whether concealed or otherwise in a vehicle operated or occupied by him without a license to carry." *Mich. Comp. Laws Ann.* § 750.227 (West Supp. 1984). Exemptions to the criminal provision include: (1) a person holding a valid license to carry issued by another state, except where the pistol is carried in nonconformance with any restriction appearing on the license; (2) the regular and ordinary transportation of a pistol as merchandise by an authorized agent of a person licensed to manufacture firearms; (3) a person carrying a pistol unloaded in a wrapper or container in the trunk of a vehicle, if in possession of a valid Michigan hunting license or a member of an organization having pistol shooting range facilities, while en route to or from a hunting or target shooting area, or if such firearm is an antique, while en route to an exhibit or demonstration; and (4) a person carrying a pistol unloaded in a wrapper or in a container or the trunk of a vehicle from the place of purchase to his home or residence, for repair purposes, or when moving. *Mich. Comp. Laws Ann.* §§ 750.231a. (1)(a)-(b), (d)-(e) (Supp. 1984). A person may also carry an unloaded pistol in the passenger compartment of a vehicle without a trunk if he or she otherwise complies with (3) or (4) and the wrapper or container is "not readily accessible" to an occupant. *Mich. Comp. Laws Ann.* § 750.231a(1)(f) (Supp. 1984). The transportation of firearms other than pistols is also exempt if such firearms are unloaded and inaccessible from the interior of the vehicle, are carried in the trunk of vehicle, or are enclosed in a case. *Mich. Comp. Laws Ann.* § 750.227d(1)(a)-(d) (Supp. 1984). Although the statute specifies that only residents of Michigan for at least six months are eligible for licenses to carry, *Mich. Comp. Laws Ann.* § 28.426 (1981), the statute clearly would seem to be applicable to nonresidents, since Michigan recognizes licenses to carry issued by other states and since the language of the statute applies to any "person."<sup>15</sup>

Although the Michigan license to carry scheme does contain several broad exceptions, the statute will in limited circumstances prohibit the transportation of an unloaded and inaccessible handgun "through" the state. For example, an interstate traveler who has no license to carry issued in another state is prohibited from carrying an unloaded and inaccessible pistol which he or she intends solely to use for personal protection in a contiguous state. Similarly, the statute would apply to an interstate hunter without a valid Michigan hunting license. Since there is no provision which directly prohibits these forms of interstate transportation in the statute, Section 107, as it is proposed, could be held to preempt that important provision of the Michigan law which relates to the carrying of a firearms in a vehicle, leaving the statute without an integral part of Michigan's license to carry scheme.

#### MINNESOTA

Minnesota renders it unlawful for "a person ... [to carry] ... a pistol in a motor vehicle ... or on or about his clothes or person ... without first having obtained a permit to carry." *Minn. Stat. Ann.* § 624.714 (West Supp. 1985). Although specifically addressing only the procedure by which residents may obtain a license to carry, *Minn. Stat. Ann.* § 624.714 Subd. 2. (West Supp. 1985), the statute's broad language making it unlawful for "a person" to carry without a license should render the scheme applica-

ble to both residents and nonresidents.<sup>16</sup> Relevant exemptions to the scheme include: (1) carrying a pistol from place of purchase to residence or business or for purposes of repair; (2) carrying a pistol between one's dwelling house and place of business; (3) carrying a pistol in the woods for purpose of hunting or target shooting; and (4) transporting a pistol in a motor vehicle if the pistol is unloaded; and contained in a closed and fastened case, gun box, or securely-tied package. *Minn. Stat. Ann.* § 624.714 Subd. 9.

Although the scheme establishes an extensive series of exemptions to the license to carry law, some interstate travelers may nonetheless be prohibited from carrying an unloaded and inaccessible firearm "through" the state. The exemption for transportation of an unloaded pistol in a gun box, fastened case, or securely-tied package, if literally construed, would not be broad enough to cover two other methods which could conceivably be found to make a firearm "not readily accessible" for purposes of applying proposed Section 107—locking a gun in the trunk or in the glove compartment of a car. An interstate traveler who so carried a handgun and did not fall within any of the other exemptions in the statute, including a common carrier, an interstate traveler who sought to use a handgun for personal protection in a contiguous state, and perhaps even a hunter who is not yet "in the woods" but rather is still on the highway, would not be able to carry an unloaded handgun locked in a trunk or glove compartment without a permit. Since there is no provision which directly prohibits the interstate transportation of an unloaded, not readily accessible firearm, Section 107 as drafted could conceivably strike down Minnesota's key prohibition against carrying a firearm in a vehicle if the statutes are so construed.

#### NEW JERSEY

The New Jersey license to carry law states that it is unlawful for "any person [to] knowingly [have] in his possession any handgun, without having obtained a permit to carry." *N.J. Stat. Ann.* § 2C-39-5(b) (West 1982). The statute provides a procedure for both residents and nonresidents to obtain a permit. *N.J. Stat. Ann.* § 2C-58-4(c) (West 1982). Exemptions include: (1) licensed dealers and registered employees during the course of their normal business, see *N.J. Stat. Ann.* 2C-39-6(b)(2) (West Supp. 1984); (2) transportation of weapons from any place of purchase to residence or place of business, in the course of moving, or for repair; (3) members of a rifle or pistol club going to or from target practice; or (4) travel to or from any place for purpose of hunting if the person has a valid hunting license, provided that such weapon is carried unloaded and contained in a closed and fastened case, a gun box, or a securely-tied package, or is locked in the trunk of an automobile. *N.J. Stat. Ann.* §§ 2C-39-6(e)-(f)(1)-(3), (g) (West Supp. 1984).

Despite these broad exemptions, this statute would prohibit the interstate transportation of an unloaded and inaccessible handgun in some circumstances. For example, an interstate hunter without a valid hunting license, an out-of-state traveler who seeks to keep a handgun for protection at his or her state of destination, or someone transporting a handgun as merchandise who is not a licensed dealer or a registered employee of such dealer would all be prohibited from transporting an inaccessible, unloaded handgun through New Jersey without a license to carry. Moreover, if a court were to construe the phrase "not readily accessible"

in proposed Section 107 to include locking a gun in a glove compartment, it is possible that the owner of that handgun would not fall within the exemption discussed above for hunters, which explicitly provides that a gun must be placed in a box or a securely-tied package, or be locked in a trunk. Since the statute clearly would apply to some interstate travelers seeking to transport unloaded and inaccessible guns, and since the statute contains neither a specific provision prohibiting interstate transportation of such firearm, nor even a provision relating solely to vehicles, it is conceivable that passage of Section 107 in its present form could result in preemption of New Jersey's entire license to carry scheme.

#### NEW YORK

The New York license to carry law provides that "a license for a pistol or revolver shall be issued to have and carry concealed any firearm" without regard to employment or place of possession. *N.Y. [Penal] Law* § 400.00 2.(f) (McKinney Supp. 1984), and establishes the crime of criminal possession. *N.Y. [Penal] Law* § 265.01(5) (McKinney 1980). Although the statute provides no procedure by which a nonresident traveler can obtain a permit to carry, the statute has been held nonetheless to apply to nonresidents.<sup>17</sup> Exemptions from violations for unlawful possession include: (1) possession of rifle or shotgun if by a licensed hunter who is not a citizen of the United States; (2) the regular of ordinary transportation of pistols or revolvers by a manufacturer of firearms or his or her agent; and (3) possession of a pistol or revolver by a nonresident while attending an organized competitive pistol match, provided that such firearm is transported unloaded and locked in an opaque container. *N.Y. [Penal] Law* § 265.20 (McKinney 1980 & Supp. 1984).<sup>18</sup>

Despite the inclusion of these exceptions in New York's license to carry scheme, the statute will nonetheless prohibit transportation of some unloaded, not readily accessible firearms through the state if the term "concealed" is construed to encompass locking a firearm in a trunk or glove compartment,<sup>19</sup> if placing a firearm in such a manner also would satisfy Section 107's requirement that a firearm be "not readily accessible." Although the statute contains an exemption for the regular and ordinary transportation of firearms as merchandise, the scope of the exception would depend upon the interpretation of "regular ordinary transportation." Moreover, it requires that the firearm be locked in an opaque container. If the merchandise was placed in a sealed cargo area, for example, but not placed in a container, the statute would require a permit to carry. In addition, the statute would appear to require all hunters who are U.S. citizens to obtain licenses to carry to transport even an inaccessible firearm. Finally, this statute has already been applied to an interstate, nonresident traveler who passed through New York en route to visit friends in another state.<sup>20</sup> Since the New York statute conceivably could prevent the transportation of an unloaded, inaccessible firearm "through" the state, and since this result stems not from a severable provision which directly prevents the interstate transportation of a firearm, or relates to vehicular travel, but rather derives from the statute as a whole, Section 107 as presently drafted conceivably could preempt New York's license to carry scheme in its entirety.

## NORTH DAKOTA

The North Dakota license to carry law provides that: "no person without a license shall carry a pistol, either openly or concealed, in any vehicle or on or about his person." *N.D. Cent. Code* § 62-01-05 (1960). Relevant exemptions include: (1) any person engaged in manufacturing, repairing or dealing in pistols; (2) their agents if carrying is in the usual or ordinary course of such business; (3) any common carrier; and (4) the carrying of a pistol in an unloaded and secure wrapper from its place of purchase to one's home or business, for repair purposes, or when moving. *N.D. Cent. Code* §§ 62-01-05(5)-(7) (1960). Although the statute only establishes a procedure to enable residents to obtain a license, as well as non-residents who already have a license to carry a pistol issued by another state, *N.D. Cent. Code* § 62-01-07 (Supp. 1983), the broad language of the statute would clearly apply to nonresidents without such licenses.<sup>21</sup> The statute also requires that no person carry concealed "about his person" any loaded or unloaded gun unless to effect a lawful and legitimate purpose. *N.D. Cent. Code* § 62-03-01. (Supp. 1983).

Although the North Dakota license to carry scheme contains several broad exceptions, the statute will in several circumstances prohibit the transportation of an unloaded and inaccessible pistol "through" the state without a license to carry. For example, the statute would require an interstate hunter or an out-of-state traveler who wanted to use a handgun for personal protection in another state from transporting an unloaded, inaccessible handgun "through" North Dakota. Moreover, a manufacturer's agent transporting a pistol not in the "ordinary course of business" could not avail himself of that exemption. Since the statute contains no provision which directly prohibits the interstate transportation of such firearms, proposed Section 107 could nullify the provision of the North Dakota law which importantly prohibits the vehicular transportation of a firearm without a license.

## OREGON

The Oregon license to carry scheme provides that it is unlawful for "any person" to "carry concealed upon his person or within any vehicle which is under his control or direction any pistol, revolver, or any other firearm capable of being concealed upon the person, without having a license to carry." *Or. Rev. Stat.* § 166.250 (1983). Relevant exemptions to the license to carry law include: (1) transportation by any merchant of unloaded firearms as merchandise; (2) target shooters going to or from the target range; and (3) licensed hunters while going to or from a hunting expedition. *Or. Rev. Stat.* §§ 166.260(3), (7)-(8) (1983). The language of the statute, which refers to "any person" would suggest that the statute would apply to both residents and nonresidents.<sup>22</sup>

Despite Oregon's inclusion of several pertinent exceptions to its license to carry scheme, the statute nonetheless prohibits the transportation "through" the state of an unloaded, inaccessible handgun by the person in control of such vehicle in certain instances. For example, a nonresident hunter without a license, an interstate traveler seeking to carry a handgun for personal protection into a contiguous state, and an individual who is commercially transporting a handgun but is not a "merchant," could not drive through the state with an unloaded gun locked in a gun box or the trunk of a car. Since the Oregon statute contains no

provision which directly prohibits the interstate transportation of a handgun in this matter without a license, Section 107 as presently drafted, could conceivably be held to preempt the provision of the Oregon's license to carry scheme which restricts the carrying of a handgun in a vehicle, an integral part of the statutory scheme.

## PENNSYLVANIA

The Pennsylvania state law provides in pertinent part: "no person shall carry a firearm in any vehicle or concealed on or about his person . . . without [annually obtaining] a license." 18 *Pa. Cons. Stat. Ann.* § 6106(a) (Purdon 1983). Those exempted from this requirement include: (1) any person engaged in manufacturing, repairing, or dealing in firearms; or (2) the agent or representative of any such person, carrying a firearm in the usual or ordinary course of business; (3) any person carrying a firearm unloaded and in a secure wrapper from place of purchase to home or business, for the purposes of repair, or when moving; (4) those persons licensed to hunt in Pennsylvania, if such persons are actually hunting or going or returning from a hunting expedition, and register the make of the firearm in order to prove they come within the exemption; and (5) target shooters if going to or returning from target practice. 18 *Pa. Cons. Stat. Ann.* §§ 6106(b)-(c) (Purdon 1983). The licensing provision specifies a procedure by which "any person"—resident or nonresident—can obtain a license to carry. *Pa. Cons. Stat. Ann.* § 6109(a) (Purdon 1983).

Proposed Section 107 could significantly preempt the Pennsylvania license to carry law. Although the scheme contains numerous exceptions to the requirement that all persons obtain a permit to carry a firearm in a vehicle, certain classes of interstate travelers would appear to be prohibited from carrying even an unloaded and inaccessible firearm "through" the state. For example, an interstate traveler who carried an unloaded and not readily accessible pistol through Pennsylvania for self-protection to be used at a place of destination outside the state would be required to obtain a permit unless he or she was coincidentally traveling from the place of purchase or repair, or was moving. A hunter who is licensed to hunt in another state or who fails to register the make of the firearm with Pennsylvania authorities is also prohibited from carrying an unloaded and inaccessible firearm without a permit. The applicability of the exception for a manufacturer's agent also will depend upon the scope of the term "usual or ordinary course of business." Because the Pennsylvania scheme prohibits interstate transportation of an unloaded, not readily accessible firearm in these instances, but does not contain a severable provision directly relating to such interstate transportation, Section 107 could conceivably nullify that portion of the statute which proscribes carrying a firearm without a permit in a vehicle. Preemption of this important provision would significantly impair the viability of the entire licensing scheme.

## RHODE ISLAND

Rhode Island's license to carry law provides in pertinent part that: "[n]o person shall without a license or permit . . . carry a pistol or revolver in any vehicle or conveyance or on or about his person whether visible or concealed. . . ." *R.I. Gen. Laws* § 11-47-8 (1981). The provision's requirements do not apply, however, to any nonresident holding a valid permit or license in another state that allows him to carry a pistol or re-

volver in any vehicle or conveyance, or on or about his person, provided that the nonresident is merely transporting the firearm through Rhode Island in a vehicle without any intent on the part of the nonresident to detain himself or remain within the state. Other relevant exemptions to the scheme include: (1) the regular or ordinary transportation of pistols as merchandise; and (2) the carrying of an unloaded and securely wrapped pistol from place of purchase to home or business or when moving. *R.I. Gen. Laws* § 11-47-9 (1981).<sup>23</sup> The scheme also exempts a target shooter carrying a pistol or revolver to or from the target range. *R.I. Gen. Laws* § 11-47-10 (1981). Although the statute authorizes the issuance of a permit to carry only to a resident or nonresident who already holds a similar permit from another state, *R.I. Gen. Laws* § 11-47-11 (1981), the broad language used in the statute indicates its applicability to all nonresidents.<sup>24</sup>

Although Rhode Island's license to carry scheme contains several broad exemptions, in several circumstances the statute would still prohibit transportation of an unloaded and not readily accessible handgun "through" the state. For example, a hunter from a state without a licensing scheme could not under any circumstance carry an unloaded and not readily accessible pistol. Although the nonresident traveler with a license to carry from his home state is exempted from Rhode Island's license to carry requirement if he transports the firearm with no "intent . . . to detain himself or remain . . . within the state," it is unclear whether this exemption would still apply if the traveler stayed overnight in a roadside hotel or a friend's cottage. If a court were to find the exemption inapplicable in such a case, but were to conclude that the traveler was traveling "through" the state for purposes of applying Section 107, Rhode Island's statute could be found to impermissibly restrict travel of even an individual who holds a license to carry in his or her home state. Since there is no provision which directly prohibits these forms of interstate travel without a permit, proposed Section 107 could conceivably preempt Rhode Island's license to carry law as it pertains to carrying a handgun in a vehicle, a provision critical to the scheme as a whole.

## SOUTH CAROLINA

South Carolina's comprehensive statutory scheme provides that "it is unlawful for anyone to carry [any pistol] about the person, whether concealed or not." *S.C. Code Ann.* § 16-23-20 (Law. Co-op. 1985). Relevant exemptions to this provision include: <sup>25</sup> (1) target shooters going to or from target practice; (2) licensed hunters while engaged in hunting or going to or from hunting expeditions; (3) any pistol in any vehicle where the pistol is secured in a closed glove compartment or closed trunk; (4) any person carrying a pistol unloaded and in a secure wrapper from place of purchase to his or her home or business or in process of moving his or her home or business; or (5) any person "regularly engaged in the business" of manufacturing, repairing, repositioning or dealing in firearms or his or her representative while carrying "in the usual or ordinary course of business." *Id.* §§ 16-23-20 (3)-(5), (9)-(10). The statute's requirements would clearly cover both residents and nonresidents since the broad language of the statute prohibits "anyone" who is not exempted from carrying a pistol.



See S.C. Code Ann. § 16-23-20 (Law. Co-op 1985).

Although the South Carolina's scheme contains several extremely sweeping exemptions, the statute could conceivably, in one instance, have the effect of prohibiting transportation "through" the state of an unloaded pistol or revolver, even if that pistol is not readily accessible.<sup>26</sup> If the term "not readily accessible" in proposed Section 107 were interpreted to include firearms which were locked in a gun box in the back seat of a car, the state's "inaccessible" gun exception would not appear to be broad enough to govern. Hence, someone who did not fall within any of the other exceptions, such as a person who engaged in gun repairing as a hobby or an interstate traveler who wished to use a handgun for protection at his or her ultimate state of destination, could not drive through South Carolina so carrying an unloaded gun. Since there are no provisions specifically prohibiting either this type of interstate transportation or carrying in a vehicle without a permit, this limited class of cases could conceivably result in the total preemption of the South Carolina scheme if proposed Section 107 is enacted in its present form.

#### SOUTH DAKOTA

The South Dakota license to carry law provides that it is unlawful for "any person" to carry a pistol or revolver, loaded or unloaded, concealed in any vehicle operated by him without a license to carry. *S.D. Comp. Laws Ann.* § 22-14-9(2) (1979). Such person is also prohibited from carrying a pistol or revolver "concealed on or about his person." *S.D. Comp. Laws Ann.* § 22-14-9(12) (1979). Relevant exemptions to the license to carry scheme include: carrying unloaded weapons, provided such weapons are carried (1) in the trunk or other closed compartment of the vehicle; or (2) in a closed container which is too large to be effectively concealed on the person or within his clothing. The container may be carried in the vehicle. *S.D. Comp. Laws Ann.* § 22-14-10 (1979). Because a license can be obtained by "any person," see *S.D. Comp. Laws Ann.* § 23-7-7 (1979), the statute's requirements clearly apply to both residents and nonresidents.

Although the South Dakota license to carry scheme contains several broad exemptions, the statute could conceivably, in one instance, prohibit transportation "through" the state of the unloaded, not readily accessible firearm in a vehicle operated by an interstate traveler.<sup>27</sup> An interstate traveler who kept an unloaded handgun in a small gun container which was not "too large to be effectively concealed on the person or within his clothing," *S.D. Comp. Laws Ann.* § 22-14-10 (1979), in the back seat of a car, must, under the statute, obtain a license to carry. If the words "not readily accessible" in proposed Section 107 were construed to extend to this situation, Section 107 could preempt that critical portion of the state statute which requires a license to carry a handgun within a vehicle, despite the inclusion of these extremely broad exemptions.

#### UTAH

The Utah statutory scheme provides that it is unlawful for "any person" [to carry] a concealed dangerous weapon, . . . except that a firearm that contains no ammunition and is enclosed in a case, gun box, or securely-tied package shall not be considered a concealed weapon." *Utah Code Ann.* § 76-10-504(1) (Supp. 1982). The scheme, however, permits a person to "keep[]" a firearm capable of being concealed upon the person

in a vehicle with no restrictions provided that such vehicle is under that person's "control." *Utah Code Ann.* § 76-10-510 (1978).<sup>28</sup> From the broad language in this statute, which refers to "any person," it is clear that the statute's requirements are applicable to nonresidents as well as to residents. Relevant exemptions to this license to carry law include: (1) common carriers while engaged in the regular and ordinary transportation of firearms as merchandise; (2) nonresidents traveling in or through state provided that any firearm is unloaded and enclosed in a case, gun box, or securely-tied package, held securely in a gun rack, or locked in the trunk of an automobile in which the nonresident is transporting the firearm, see *Utah Code Ann.* §§ 76-10-523(4)-(5) (1978); (3) any resident or nonresident hunter with a valid hunting license or who is lawfully engaged in hunting; and (4) patrons of shooting ranges. *Utah Code Ann.* §§ 76-10-512(3)-(4) (1978).

While Utah's exemptions to its statutory scheme extend to almost every possible type of interstate transportation of a firearm, there is one situation in which proposed Section 107 could conceivably preempt the Utah statute.<sup>29</sup> Although the Utah scheme specifies numerous methods of storing an unloaded firearm which will avoid a violation of the statute, such methods of storage do not include locking a gun in a glove compartment. If the phrase "not readily accessible" in Section 107 were interpreted to permit placing a handgun in a locked glove compartment, Utah's statutory scheme would prevent an individual who was not in "control" of the car—a passenger—from carrying such firearm for purposes other than hunting. While this may be an extreme illustration, its significance is profound. Were a court to conclude that the Utah scheme did apply to this single instance, proposed Section 107 would leave the court only two options: rewrite the statute to include the exemption for glove compartments, which appears to have been carefully omitted from the statute, or strike down the entire statutory scheme, since there is no provision which specifically prohibits this method of interstate transportation of a firearm.

#### VIRGINIA

Virginia's statutory scheme prohibits the carrying of a concealed weapon, making it unlawful: "[i]f any person carr[ies] about his person, hidden from common observation, any pistol, revolver or other weapon designed or intended to propel a missile of any kind. . . ." *Va. Code* § 18.2-308A (Supp. 1984).<sup>30</sup> Relevant exemptions to the scheme include: (1) any regularly enrolled member of a target shooting organization who is at, or going to or from, an established shooting range, provided that the weapon is unloaded and securely wrapped while being transported; (2) any member of a weapons collecting organization going to or from a bona fide weapons exhibition, provided that the weapon is unloaded and securely wrapped while being transported; and (3) any person carrying such weapons between his or her residence and place of purchase or repair provided that the weapon is unloaded and securely wrapped while being transported. *Va. Code* § 18.2-308(B)(3)-(5) (Supp. 1984).

As long as the phrase "about his person" were interpreted to encompass a firearm which was "not readily accessible" under the federal statute—which might be the case if a gun were placed in a gun box, in the trunk of a car, or in a glove compartment<sup>31</sup>—the statute would, in various circumstances, prohibit the transportation of

an unloaded and not readily accessible firearm "through" the state. A traveler who drives through the state with a handgun for any reason other than carrying it from place of purchase or repair, attending a weapons exhibit, or going to or from a shooting range (but only if he or she was a member of a shooting organization), would be liable under the statute. Such individuals would include a common carrier, a hunter, or an individual seeking to use a handgun for personal protection in a contiguous state. Since the statute contains no severable provision which directly prohibits such interstate transportation, nor even a provision which renders the scheme applicable to carrying in a vehicle, the enactment of Section 107 as presently drafted could conceivably preempt Virginia's prohibition on carrying a concealed weapon in its entirety.

#### WYOMING

The Wyoming license to carry law provides that it is unlawful for a "person" to wear or carry a concealed deadly weapon without a permit. *Wyo. Stat.* § 6-8-104 (1983). This language would indicate that the statute applies to both residents and nonresidents.<sup>32</sup> The only exemption to Wyoming's license to carry scheme is for law enforcement officers. *Wyo. Stat.* § 6-8-104(a)(i).

As long as the word "concealed" in Wyoming's statute is held to encompass some condition that also would be found to satisfy the "not readily accessible" requirement—possibly, for example, the placing of a firearm in a gun box, a trunk, or a glove compartment—the statute would clearly prevent interstate transportation of an unloaded, "not readily accessible" firearm without a permit. This would be true in almost any conceivable situation. Because the prohibition on such interstate transportation would derive from no specific, severable provision, but rather from the statutory scheme as a whole, passage of proposed Section 107 could result in the preemption of Wyoming's entire license to carry scheme.

<sup>1</sup> See *People v. Perez*, 67 Misc. 2d 911-13, 915, 325 N.Y.S.2d 183, 184-85, 188 (1975) (upholding constitutionality of applying license to carry laws to nonresident traveler where statute provided no procedure by which a nonresident could obtain a license).

<sup>2</sup> Cf. *Cormier v. United States*, 137 A.2d 212, 215 (D.C. 1957) (requiring person not engaged in "business" of repairing firearms, but who instead repairs firearms as hobby to obtain a license to carry).

<sup>3</sup> See *People v. Perez*, 67 Misc. 2d 911, 911-13, 915, 325 N.Y.S.2d 183, 184-85, 188 (1975) (upholding constitutionality of applying license to carry laws to nonresident traveler where statute provided no procedure by which a nonresident could obtain a license).

<sup>4</sup> See, e.g., *People v. Smith*, 164 P.2d 857, 858 (Cal. 1946).

<sup>5</sup> Cf. *People v. Perez*, 67 Misc. 2d 911, 911-13, 915, 325 N.Y.S.2d 183, 184-85, 188 (1975) (upholding constitutionality of applying license to carry law to nonresident traveler where statute provided no procedure by which a nonresident could obtain a license).

<sup>6</sup> Indeed, the fact that the statute contains an exemption for the carrying of a pistol in a secure wrapper when moving provides strong support for the argument that the District of Columbia's statute could be construed to prohibit the transportation of a firearm in a gun box next to the driver of a vehicle.

<sup>7</sup> See, e.g., *Cormier v. United States*, 137 A.2d 212, 215 (D.C. 1957) (violation of statute, *inter alia*, where defendant was not "engaged in the business of repairing firearms").

<sup>8</sup> See *People v. Perez*, 67 Misc. 2d 911, 911-13, 915, 325 N.Y.S.2d 183, 184-85, 188 (1975) (upholding constitutionality of applying license to carry laws to nonresident traveler where statute provided no pro-

cedure by which a nonresident could obtain a license).

<sup>9</sup> See also *Beck v. State*, 414 N.E.2d 970, 973 (Ind. 1981) (defendant not within unloaded and secured wrapper exception when gun found under front seat of auto with cylinder removed since firearm was within reach and could have been reassembled easily).

<sup>10</sup> See, e.g., *People v. Smith*, 164 P.2d 857, 858 (Cal. 1946) (weapon placed in closed glove compartment deemed "concealed").

<sup>11</sup> Mass. Op. Att'y Gen. 95, 96 (Aug. 7, 1975). Some of the relevant exceptions to the possession requirement include: (1) possession of rifles and shotguns by nonresident hunters with valid nonresident hunting licenses during hunting season; (2) possession of rifles and shotguns on a firing or shooting range; and (3) traveler's possession of rifles or shotguns traveling in or through the state provided the firearm is unloaded and enclosed in a case; and (4) the regular and ordinary transport of firearms as merchandise by a common carrier. Mass. Gen. Laws Ann. ch. 140; § 129C (West 1974 & Supp. 1985).

<sup>12</sup> See, e.g., *Commonwealth v. Collins*, 417 N.E.2d 994, 996 (Mass. App. 1981) ("control" of firearms in truck established where defendant owned and operated car, assisted in packing trunk, and had possession of ammunition).

<sup>13</sup> See 1930-1932 Mich. Att'y Gen. Biennial Rep. 568, 570; see also *People v. Perez*, 67 Misc. 2d 911, 911-13, 915, 325 N.Y.S.2d 183, 184-85, 188 (1971) (upholding constitutionality of applying license to carry requirements to nonresident traveler carrying weapon without a permit en route to friends in another state, where statute provided no procedure by which a nonresident traveler could obtain a permit).

<sup>14</sup> See *People v. Perez*, 67 Misc. 2d 911, 911-13, 325 N.Y.S.2d 183, 184-85 (1975) (applying license to carry laws to nonresident traveler although statute provided no procedure by which a nonresident traveler could obtain a permit).

<sup>15</sup> The term "firearm" is defined as a pistol or revolver, a shotgun having one or more barrels less than 18 inches in length or any weapon made from such shotgun, if the weapon has an overall length of less than 26 inches, or a rifle having one or more barrels less than 16 inches in length, or any weapon made therefrom with an overall length of less than 26 inches. N.Y. [Penal] Law § 265.00(3) (McKinney Supp. 1984).

<sup>16</sup> The statutory scheme actually creates an exemption from application of statute to anyone with a license to carry. N.Y. [Penal] Law § 265.20(a)(3). (McKinney 1980).

<sup>17</sup> See *People v. Perez*, 67 Misc. 2d 911, 915, 325 N.Y.S.2d 183, 188 (1971) (upholding constitutionality of applying statute to nonresident traveler).

<sup>18</sup> The scheme also provides that the New York state license to carry is not valid within New York City unless a special permit is granted or unless those firearms purchased from a licensed dealer in New York are being transported immediately from the dealer, and are transported in a locked opaque container. N.Y. [Penal] Law § 400.00(6) (McKinney Supp. 1984).

<sup>19</sup> See *People v. Smith*, 164 P.2d 857, 858 (Cal. 1946) (weapon placed in closed glove compartment deemed "concealed").

<sup>20</sup> *People v. Perez*, 67 Misc. 2d 911, 911-13, 325 N.Y.S.2d 183, 184-85 (1971).

<sup>21</sup> Cf. *People v. Perez*, 67 Misc. 2d 911, 911-13, 915, 325 N.Y.S.2d 183, 184-85, 188 (1975) (upholding constitutionality of applying license to carry laws to nonresident travelers where statute provides no procedure by which a nonresident can obtain a license).

<sup>22</sup> The statute provides a procedure by which any applicant can request a license to carry, and does not restrict the granting of such applications to residents. See Or. Rev. Stat. § 166.290 (1983).

<sup>23</sup> The person exempted for transporting firearms as merchandise or household goods, however, is not given the right to carry a concealed firearm by virtue of this exemption. R.I. Gen. Laws § 11-47-9 (1981).

<sup>24</sup> Cf. *People v. Perez*, 67 Misc. 2d 911, 911-13, 915, 325 N.Y.S.2d 183, 184-85, 188 (1975) (upholding constitutionality of applying license to carry laws to nonresident traveler where statute provided no procedure by which a resident could obtain a license).

<sup>25</sup> South Carolina's statutory scheme is a blanket prohibition on carrying of a pistol about the person with relevant exceptions. The only license to carry contemplated by the statute is one available to law

enforcement personnel, see S.C. Code Ann. §§ 16-23-120(6), (12) (Law Co-op. 1985), and those whose business or employment regularly exposes them to dangerous circumstances. S.C. Code Ann. § 23-31-120 (Law Co-op. 1977 & Supp. 1983).

<sup>26</sup> Although the language of the statute requiring the pistol to be carried "about the person" would, at first glance, appear to suggest that the firearm would have to be near the individual in the car, the statute contains a broad exemption for guns secured in a closed trunk. This strongly suggests that a firearm which is anywhere in the automobile could be considered "about" the person for purposes of application of this provision.

<sup>27</sup> It is obvious from the exemptions contained in the statute that the term "concealed" is intended to encompass the placing of a pistol in at least some of the locations which would make such firearm "not readily accessible." See also *People v. Smith*, 164 P.2d 857, 858 (Cal. 1946) (weapon placed in closed glove compartment deemed "concealed").

<sup>28</sup> The statutory scheme takes the form of a ban on carrying weapons altogether, subject to numerous qualifications and exemptions as described herein. The statute also authorizes certain law enforcement authorities to issue a license to carry a concealed weapon for "good cause." This licensing provision contains no residential requirement. See Utah Code Ann. § 76-10-513 (1978).

<sup>29</sup> Although the state statute applies only to "concealed" weapons, it is clear from the exemptions to this provision that a weapon would be considered "concealed" if it was placed in a trunk or other enclosed area. See also *People v. Smith*, 164 P.2d 857, 858 (Cal. 1946) (weapon placed in closed glove compartment deemed "concealed").

<sup>30</sup> Virginia's statutory scheme is a blanket prohibition on carrying of a concealed weapon about the person with relevant exceptions. "Any person" may apply for a permit to carry a specific type of weapon, however, if he or she demonstrates "a need to carry such concealed weapon." Va. Code § 18.2-308D (Supp. 1984).

<sup>31</sup> Indeed, the fact that the exceptions themselves contemplate that firearms be "securely wrapped" adds support for the proposition that "about his person" might be so construed.

<sup>32</sup> Indeed the statute directs county sheriffs to issue permits to travelers, as well as others whose employment requires them to carry a weapon. Wyo. Stat. § 6-8-104(b) (1983).

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the names of Senator KENNEDY and Senator KERRY be added as cosponsors of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The names of Senators HATCH, and McCURE were added as cosponsors of the amendment.

Mr. McCURE. Mr. President, will the Senator from Utah yield the Senator from Idaho 5 minutes on the amendment?

Mr. HATCH. I am delighted to yield.

Mr. McCURE. I thank the Senator for yielding.

Mr. President, I commend the junior Senator from Idaho and the Senator from Ohio [Mr. METZENBAUM] for offering this amendment, because I think it does what we intended to do, to avoid the harassment that has occurred and the unintended circumstances that have occurred in the past when people innocently found themselves in a jurisdiction where there were restrictions on firearm ownership or transportation and were then prosecuted, without any conscious intention on their part to violate the law of the local jurisdiction, whether a State statute or a city ordinance.

I believe this amendment clarifies what was intended by the original bill;

therefore, I commend both Senators for having offered this amendment to make certain that it says what was intended, and no more than what was intended.

With respect to there not having been hearings on the bill, I say to my distinguished friend from Ohio that there probably has never been a piece of legislation that arrived on the floor of the Senate with more painstaking scrutiny than has this bill.

While it has not had hearings in the committee during this session of Congress, it has had hearings in previous sessions of Congress. With four exceptions, the bill before the Senate is identical to the one that was not only introduced and heard before the Committee on the Judiciary but also was subjected to intensive markup sessions in that committee; and it was unanimously reported by that committee after those hearings and that markup during the last Congress. There are four exceptions.

One is a very significant exception, a difference. Senator KENNEDY had offered—and I expect will offer again—a provision with respect to the sale of a handgun in a State not the residence of the purchaser. He had offered that amendment in the committee, and it had been adopted in the committee before they voted to report the bill.

In introducing the bill this year, I omitted that provision, because it was obvious that either it would be in the bill and an amendment would be offered to strike it, or it would not be in the bill and an amendment would be offered to add it to the bill.

Since I was introducing the bill, I felt that it should come as close as possible to my own view of what the bill should have in it, and I elected to leave it out and to leave it to the proponents of that provision to offer an amendment to insert it.

In all honesty, I will oppose it as strenuously as I can, and those on the opposite side will support it as strenuously as they can.

This amendment is not a controversial one, in that sense, and therefore I hope the Senate will adopt it and that we can move on to the other amendments, some of which will be controversial and others of which I hope will not be.

Mr. DOLE. Mr. President, I am pleased to rise in support of this amendment which is supported by the administration.

The amendment is consistent with the intent of S. 49 which is to protect legitimate gun owners, hunters, and sportsmen who are traveling from their home State to another State with an unloaded, inaccessible weapon.

Under current law, such persons can be prosecuted under some State and local gun laws even where they are



simply on a hunting trip, traveling to a sporting event, or moving.

The unfairness of the situation is highlighted by the fact that in some States, such nonresidents cannot even obtain a gun permit.

The amendment is an improvement over S. 49 insofar as it creates a Federal right for such persons to travel interstate with unloaded, inaccessible weapons, as opposed to the provision in the bill, as introduced, which could conceivably result in the invalidation of an entire State or city gun control law on the basis of a single prosecution.

Mr. President, I regret that there was a misunderstanding about the sponsorship of this amendment, but the fact that two Senators with such diverse views would both claim authorship perhaps underscores how valid and sound the amendment is.

The PRESIDING OFFICER. Is all time yielded back?

Mr. HATCH. I yield back the remainder of my time.

Mr. METZENBAUM. I yield back the remainder of my time.

Mr. SYMMS. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 438) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, when Congress enacted the Gun Control Act of 1968 its goal was to reduce violent crime; its goal was not to allow the easy prosecution of and making of cases against law-abiding citizens who did not understand the intricate, detailed, and complex technicalities of the Gun Control Act. Yet such activity has been the history of the enforcement and administration of this act. It has not been used as a tool for prosecuting violent criminals but rather as a tool for making cases against law-abiding citizens ignorant of the complexities of the law. As a consequence, significant Federal law enforcement, judicial, and correctional resources, which are already too thinly stretched, have been diverted from attacking violent crime. It is the purpose of this bill to shift the focus of those resources away from the prosecution of technical violations so that the criminal justice system can better deal with violent crime.

Anyone in the Senate who is serious about controlling crime should urge the swift passage of this legislation because it redirects our firearms laws toward control of criminal abuse rather than technical regulatory violations. For example, under current law,

the simplest recordkeeping oversight is a Federal felony, just as is the most severe criminal abuses. The hearings over the years have shown that this results in scarce law enforcement resources becoming occupied with prosecuting minor violations instead of focusing on violent crime. For instance, even Senator Bayh concluded his hearings with the comment that: "I am very much disturbed by some of the allegations that have been presented to this subcommittee about abuses by the Government in enforcing the law." This bill will provide a mens rea standard for violations under the code and redirect enforcement efforts toward violent intentional crimes, instead of recordkeeping errors. For example, in New Hampshire the BATF spent 5 days once inspecting a dealer's records only to find a single violation, he was 5 pounds over his black powder storage limit. It would perhaps make more sense to have those officers inspecting crime-infested neighborhoods, for 5 days.

This bill will aid the fight against crime and should have our support. It is true that current gun laws are technical and complex, that they contain numerous exceptions and that the regulations springing from this law are as complex as the law itself. But all these are reasons to simplify and redirect the current law.

Let me give an example that demonstrates why this bill is important. It is not a hypothetical, but a tragic story uncovered by our hearings on this bill. This example involves a retired policeman, a French national who had won his American citizenship by volunteering for military service during the worst of the Vietnam war. While a policeman, he obtained a Federal firearm dealer's license, in order to sell to other police. Another gun collector asked to purchase a few of his firearms. Since these were part of his personal collection, he felt he could sell them without the paperwork required of a licensed dealer's sales from inventory. After all, the Federal agent who issued him the license had told him that this was legal.

A few months later he awakened to a nightmare. A team of Federal agents arrested him, executed a search warrant on his family's house, searched his father's business, and confiscated his entire firearms collection. When his case came for trial he seemed to have the best defense imaginable. There was no question he had thought his conduct was legal. In fact, he managed to prove that the Director of the prosecuting agency agreed! A Senator had written to complain of prosecutions on these grounds and the Director, not being informed that one was at that moment pending a few miles away, wrote a denial. Citing his agency's publications, the Director wrote that the agency recognized that

a person could lawfully do exactly what the policeman had done.

I wish I could conclude with the vindication of this citizen. But the court concluded that the Gun Control Act provisions he was charged under were strict liability: No matter how honest his intent, no matter that the head of the prosecuting agency thought his conduct was legal, if in fact he erred, it was a crime—a felony—and justified confiscation of his collection. The policeman summed up his situation:

They took an ordinary person who had never been arrested for anything, who did not even have a traffic ticket against him, and made him into a felon. I cannot get a mortgage today. I cannot find a job today . . . (It) made me the same type of felon as the guy who goes out on the street and pushes drugs or kills his wife. . . .

The real problem was that the policeman's case was typical of the way certain agencies were using the Gun Control Act to generate easy cases. Our Senate committees heard all too many similar stories—of a disabled veteran charged with felonies on grounds so weak the judge not only dismissed them but publicly apologized on behalf of the United States; of others who won acquittal, only to find the agency proceeding to confiscate their museum-grade collections; of many who, after long and successful fights against flimsy allegations or falsified charges, found themselves vindicated but financially ruined.

At the same time, we found clear evidence that investigative priorities had followed the course of least resistance, away from penetration of genuine criminal markets and toward the making of easy cases. Although the Gun Control Act was mainly meant to keep felons from getting guns, we found that less than 10 percent of GCA cases were for sale to, or purchase by, a felon. One expert, himself described as the dean of Treasury law enforcement, estimated 75 percent of Federal gun cases were being brought against ordinary citizens who had inadvertently violated some technical requirement.

The evidence was clear that a change was needed—a fundamental redirection of the law and of its enforcement. That is why I sponsored S. 49, a bill to protect firearm owners' constitutional rights, civil liberties and rights to privacy. S. 49 is hardly revolutionary. It extends the most simple elements of due process to American citizens who choose to own firearms. No longer is honest intent irrelevant; most violations must be proven willful, undertaken with illegal intent. If a person is acquitted, their property cannot be confiscated on the same charges. If a person must sue to get improperly confiscated property back, or to defend against frivolous charges, he can recover an attorney's fee from the agency. A dealer can sell to a resi-

dent of another State if the sale is completely legal under both State's laws. Regulations imposed must be only those necessary to the purposes of the law.

These are reasonable reforms, aimed at keeping the law and its enforcement on the right track—aimed at the real criminal. For exactly that reason, this legislation is endorsed by the Fraternal Order of Police and the National Sheriffs' Association, both of which feel it would actually make the Gun Control Act more enforceable—against the real criminal.

The opposition to S. 49 does not come from law enforcement, which supports it. It seems to come mainly from persons who have never read it or its endorsements. Curiously, many of these opponents are the same persons who consider themselves civil libertarians yet they will gladly embrace entrapments, unreasonable search and seizures, and even physical brutality—so long as these are directed at firearm owners. To such persons, of course, no reforms of the Gun Control Act can ever be good news. To the rest of us—to law-abiding gunowners, to law enforcement, and to free men and women in general—it can be nothing but.

Mr. President, I should like to address some frequent questions which have arisen concerning this bill, and then I will answer them, because I think there has been much misconception with regard to this bill by some of the people who have been opponents of the bill throughout the last number of days.

No. 1: Wouldn't this bill allow escaping criminals, felons, and terrorists to get guns? The answer is that 18 U.S.C. 922 (g) and (h)—which currently prohibits sales to fugitives from justice, convicted felons, drug abusers, and adjudicated mental incompetents—is strengthened by this bill. Instead of only licensed dealers being prohibited from selling or transferring to these prohibited persons, anyone who does so is guilty of a felony. The bill is stronger on this point than current law.

No. 2: Wouldn't this forbid inspections of dealers except those preceded by advance notice? The answer is that this bill authorizes five different kinds of inspections for tracing, compliance, enforcement, and other purposes. Only one of these, the courtesy visit, is preceded by notice. The others are allowed anytime the Federal officers have reason to believe a law has been violated or need access to records for law enforcement.

No. 3: Wouldn't the bill allow mail-order sales? The answer is that 18 U.S.C. 922(a)(1) and 18 U.S.C. 1715 and 18 U.S.C. 922(c) now ban mail order sales. The bill does absolutely nothing to change those provisions of present law.

No. 4: Wouldn't the bill allow an individual to walk across a border to get a gun his State law prohibits? The answer is clearly no. Interstate sales may be made only when three circumstances are met: First, the sale must be face-to-face with a dealer across his business counter; second, the sale must be subject to recordkeeping for tracing purposes; and third, the sale must comply with the law of both the buyer's and seller's State. Compliance with State law is required by the bill; a violation of this command is a felony.

No. 5: Why not a waiting period? I can say that 34 States have rejected such restrictions. Why should the Federal Government resume to impose one?

We prefer to allow the States to make up their minds and to do whatever they decide is right in this area.

The leading law enforcement agencies—Department of the Treasury and Department of Justice—agree that these waiting periods do little or nothing to deter crime and they oppose a national waiting period. Criminals, of course, do not wait in line and subject themselves to recordkeeping and potential tracing to get a firearm. They steal or get their guns through other unlawful means. A high percentage of crimes committed are committed with illegally obtained weapons.

Studies have shown that over 80 percentage of all crimes committed with guns were committed with guns which were obtained through illegal channels. A waiting period would have little effect on crime but would burden sportsmen and other law-abiding gun owners.

Mr. President, I ask unanimous consent to have printed in the RECORD a factsheet on the Firearms Owners Protection Act; a statement of Ferris E. Lucas, executive director, National Sheriffs Association; a statement of Vince McGoldrick, chairman, National Legislative Committee, Fraternal Order of Police; and a statement by our colleague, Senator SASSER, entitled "Gun Control Act Amendments Needed Now."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### FACT SHEET: THE FIREARMS OWNERS PROTECTION ACT

1. *Engaged in the Business.*—Existing law requires those engaged in the business of gun dealing obtain a license, but doesn't expressly define "engaged in the business." The result is a hodgepodge of definitional interpretations found in court rulings, interpretations which vary from circuit to circuit. This has led to many collectors being convicted for just a few sales which were made during the regular and normal course of their collecting or hobby activities. The Protection Act expressly defines "engaged in the business" to include only dealing with the intent of making livelihood and profit (business and commercial motives). Hobbyists and collectors who intend only to enhance their personal collections or hobby by

their activities are specifically protected from the threat of prosecution.

2. *State of Mind.*—For the most part existing law requires no proof of criminal intent, resulting in felony prosecutions and convictions for acts which were unintended (e.g., "engaging in the business" by a few gun sales) or based on inadvertent violations. The Protection Act creates a demanding intent requirement for each violation of the 1968 Gun Control Act. Those violations generally applicable to persons possessing specialized knowledge of gun laws (e.g., legal machine gun owners) or violations which contain elements that target real criminals (e.g., transportation of a stolen firearms, knowing or having reasonable cause to believe that the firearms are stolen) would require a "knowing" criminal intent standard. Those violations susceptible to unintentional commission are governed by the higher "willful" standard. Under these provisions alone, some estimates state that 75% of BATF's victims would have been acquitted.

3. *Warrantless Inspection.*—Current law allows warrantless inspection of dealers' premises anytime during business hours. The Protection Act generally makes reasonable cause and an administrative warrant a requirement for inspection of dealers' premises. Limited exceptions are provided: (1) for a criminal investigation of someone other than the dealer who is being inspected; (2) for regulatory inspection—but only once a year, only after notice, and no charges may be based on the regulatory inspection except for willful recordkeeping violations and sales to prohibited persons (e.g., convicted felons); (3) for tracing of particular firearms, as a part of a bona fide criminal investigation. Licensed collectors are also protected by the Act. The Protection Act would essentially end mass, random audits.

4. *Ammunition Recordkeeping.*—The Protection Act eliminates ammunition recordkeeping and the requirement of dealers' licenses for ammunition-only dealers.

5. *Pardons, Etc.*—The Protection Act provides that a person convicted of a felony who secures a pardon, restoration of civil rights, or whose record has been expunged is no longer considered a felony for the purposes of possessing firearms—courts have held this not true under existing law.

6. *Firearms Seizures and Forfeitures.*—Existing Law permits seizure and forfeiture of guns that are more probably than not "intended to be used" in federal firearms violations, does not expressly require their return if the owner is acquitted of criminal charges, puts no time limit on their being held, and gives the owner no remedy if he wins return. The Protection Act requires "clear and convincing" evidence that guns are "intended to be used" in federal firearms violations, requires that each gun be individually tied to the violation, that they be returned if the owner is acquitted on the criminal charges, that forfeiture actions be begun within 120 days after seizure, and grants the gun owner an attorney's fee if he sues for their return and wins. Wholesale seizures of entire gun collections will be significantly limited.

7. *Interstate Sales.*—The Protection Act would allow sale by licensed dealers to non-resident buyers so long as neither the laws of the place of sale nor those of the purchaser's residence are broken.

8. *Interstate Travel With Firearms.*—The Protection Act would grant a right to transport firearms despite state and local laws which have the effect of prohibiting the transportation of firearms through a state



or locality when the firearms are unloaded and not readily accessible. This is intended to prevent state or local laws, which may ban or restrict firearm ownership, possession, or transportation, from being used to harass law-abiding travellers.

**9. Dealer Collections.**—The Protection Act would create an exception from recordkeeping for all private sales by licensed dealers from their private collections as long as the firearms have been separate from inventory for more than a year and were not transported to a private collection to avoid recordkeeping.

**10. Relief for Past Abuse Victims.**—Current law allows a felon to apply for a "relief from disability" which, if granted, enables him to own guns again. But it excludes from this anyone convicted of a Gun Control Act violation. Thus all collectors, dealers, and other gun owners convicted by misuse of the law in the past are forever barred from gun ownership. The Protection Act removes this exclusion so they can apply on an equal basis with anyone else—and, given their clean records and technical violations, should be able to obtain relief.

**11. Attorneys' Fee.**—As a penalty for abuse and to prevent damage to the innocent, the Protection Act requires judges to award an attorney's fee to a gun owner if the enforcing agency's action is vindictive or commenced without legal basis. This applies to criminal as well as civil proceedings.

**12. Regulations.**—The Protection Act requires that regulations issued be only those necessary to enforcement of the Act. (Current law allows any regulations the Secretary thinks reasonably necessary, a broader standard).

**13. License Revocation.**—The Protection Act provides that, where a licensee has been charged with, and acquitted of, criminal charges, those same transactions may not be used as the basis of a license revocation. The enforcing agency now is able to follow an acquittal with a license revocation action, doubling legal expenses for the dealer.

**14. Enhanced Penalties for Criminal Use of Firearms.**—The Protection Act would provide extra penalties for the criminal misuse of firearms during felonious crimes of violence. Probation, suspended sentences, paroles, and furloughs are ruled out for the violent misuser of firearms and the extra penalties would not run concurrently with any other sentences which form the basis for the enhanced penalties.

**15. Importation of Sporting Firearms.**—Current law provides that the Secretary of the Treasury may authorize the importation of firearms which are generally recognized as particularly suitable for sporting purposes. The Protection Act provides that the Secretary of the Treasury shall authorize the importation of firearms which are suitable for or readily adaptable to sporting purposes.

**16. Dealer Sales at Gun Shows.**—Current law generally forbids licensed dealers from selling firearms at gun shows while non-licensed individuals are not restricted. As a practical matter, the licensed dealer goes to gun shows and displays his goods. The buyer selects the firearm he wants and pays the dealer who then either gives the firearm to a local licensed dealer for delivery to the buyer for an additional "transfer fee", or returns to his place of business and there transfers the firearm to the buyer. In either case, the buyer from a licensed dealer is inconvenienced in a fashion not experienced if he had purchased his firearm from a non-

licensed individual. The Protection Act would permit licensed dealer sales at gun shows from a local dealer to a resident or non-resident buyer as long as the usual paperwork is filled out. This would place the licensed dealer on an equal footing with the private individual and save the buyer both time and money.

**17. Prohibited Persons Defined.**—The Protection Act consolidates the several separate and inconsistent statutes setting out classes of prohibited persons into one easily identified group of individuals who are prohibited access to firearms.

#### STATEMENT OF FERRIS E. LUCAS, EXECUTIVE DIRECTOR, NATIONAL SHERIFFS' ASSOCIATION

Mr. Chairman, my name is Ferris E. Lucas, Executive Director of the National Sheriffs' Association. As you know, I am not a stranger to the Committee on the Judiciary. Over the past couple of decades I have testified on numerous occasions before this Committee and various Subcommittees under your jurisdiction. Once again, therefore, it is my pleasure to share with the Committee the thoughts and positions of the National Sheriffs' Association which I represent, relative to S. 1030, the McClure/Volkmer Federal Firearms Owners Protection Act—which our members overwhelmingly support.

The National Sheriffs' Association promotes legislation beneficial to sheriffs nationally and to the professionalism of law enforcement so we may enjoy the preservation of life, liberty and the pursuit of happiness as these were guaranteed by the Constitution and the Bill of Rights. Further, the NSA, strongly supports the individual right to keep and bear arms as guaranteed by the Second Amendment to the Constitution.

Mr. Chairman, it is apparent that civilians need to protect themselves. There are not enough sheriffs or police officers to protect law-abiding citizens from the criminals who prey on our society. Therefore, it is no wonder that as long ago as 1972 the National Sheriffs' Association adopted a resolution calling for mandatory sentences for persons convicted of crimes in which a firearm is used, independent of the sentence they may receive for the specific crime. It is exactly this proposal which is incorporated in McClure/Volkmer which imposes mandatory time, without probation, parole or furlough for use of a firearm in a federal felony against the person.

The NSA represents sheriffs and deputy sheriffs of the counties of all the states in the union. We have approximately 56,000 current members of the NSA who are both active and retired members. Of our nationwide number of sheriffs, these include 3,104 active sheriffs who are in turn responsible for over 160,000 deputies. Although some of our sheriffs may be responsible for enforcing the law over areas in excess of 20,117 square miles, they receive the bare minimum of law enforcement funds to carry out their responsibilities. With these fiscal handcuffs tightening around our wrists we will be expected to do even more with even less in the coming years. The tendency of Federal, state and local authorities to continually impose more laws and provide less enforcement will make this situation continually worse. Further, there are not only the geographical strictures on our members, but also the legal ones. Evidence which a Court in retrospect decides was improperly obtained is kept out even where the officer honestly believes that he or she was acting

properly. The practical effect is that an officer in the field is judged as if he or she had a law library in the trunk of the car and a law clerk in the back seat.

Gentlemen, we are here today testifying in favor of McClure/Volkmer. Mr. Chairman, the members of the NSA are in the front line of criminal law enforcement. We are charged with the enforcement of the laws which protect our citizens against murderers, robbers, rapists, and other serious offenders who by definition prey upon society. And we deal every day with the citizens, both young and old, who have been the victims of these predators.

The laws which we enforce are not predominately regulatory ones; they are laws whose infringement inflicts directly criminal harm on our citizens. Regulatory laws, of course, may indirectly hinder criminal action and cause more work for our members, but when law enforcement resources are limited they necessarily draw resources away from enforcement which has a direct impact upon criminals and violent crime. Every law enforcement officer who is enforcing a regulatory statute, such as the Gun Control Act, means one that is not available to answer a breaking and entering call, a robbery in progress call, a rape in progress call or to provide the routine assistance to the public that so often is the case.

Accordingly, just as we support obtaining increased resources for our members, we support the removal of increased enforcement burdens which either do not hinder criminals or hinder them so indirectly as to be almost useless. McClure/Volkmer is a bill which will have exactly this impact.

For example, the existing Federal Gun laws make it a felony for a private citizen to give or sell a firearm to a resident of a different state, even though this would violate the laws of neither state. This can have no logical basis; the only reason to prevent an interstate transfer is to prevent the evasion of local laws and if there are no local laws, why is this a federal issue?

A McClure/Volkmer would take care of this by prohibiting interstate sales only where it would violate the laws of where the sale was made or where the buyer resides.

Lastly, another very important provision of McClure/Volkmer is the addition of the word "willful" to the section outlining the criminal penalties. As it is the most technical violation, committed with the most innocent intent, is as serious a violation as any other. This bill would require that a violation be "willful", committed with a criminal intent, before it can be federally punished. The NSA strongly endorses the addition of "willful" to this section.

The only argument for permitting federal prosecution of an unintentional violation is it is too much work for federal agents to ascertain whether the individual acted with illegal intent. Our members, who every day enforce criminal statutes requiring far more detailed proof of intent of this (the requirement of premeditation and malice of forethought for murder is the most obvious one) do not consider this realistic. Frankly, if you have the resources to prosecute unintentional technical violators of the Gun Control Act, give them to our members, and we will use them instead to prosecute murderers, rapists, armed robbers, and burglars.

The voice of the people is the supreme law. If law enforcement is to have a voice in the future of America, it must make that voice heard in the Halls of Congress and in state and local legislatures across America. Won't you cooperate with us? It is time to

consider a change. We believe McClure/Volkmer is the needed change at the needed time.

Thank you.

STATEMENT OF VINCE MCGOLDRICK, CHAIRMAN, NATIONAL LEGISLATIVE COMMITTEE, FRATERNAL ORDER OF POLICE

Mr. Chairman, my name is Vince McGoldrick and I speak on behalf of the Fraternal Order of Police. The Fraternal Order of Police is the oldest and largest police organization in the United States. Our membership presently consists of approximately 160,000 active or retired law enforcement personnel. I myself retired after 23 years of police service, both civilian and military.

As police officers, our members have a uniquely detailed view of crime and the criminal justice system. They are among that small part of the population obligated by the law and their oaths to move against a criminal act or public danger, rather than avoid it. As a result, police officers and their families bear a disproportionate part of the burden of criminal tragedy, in the form of deaths and injuries in the line of duty. In the past decade, 1,147 law enforcement officers have been murdered in the line of duty; last year alone, over 57,000 were assaulted.

With this burden, law enforcement officials have a unique responsibility. They are the front line of law enforcement. The legislature may enact laws, the judiciary may interpret them, but it is the police officer, deputy or agent on duty who must decide whether and how they should be applied to any particular case. If the law to be enforced is restricted and clear, and covers only acts society really wants punished in every case, the application is simple. But when the law is vague, or overbroad, or really intended to be applied only in exceptional cases, it is the individual officer who must make that decision. All too often, he or she must make it without any particular guidance.

As police, we therefore favor laws which are certain and clear, and define as concisely as possible those acts which policymakers really want punished. We support firm and sure punishment for those who violate such laws. For both these reasons, the Fraternal Order of Police strongly supports S. 1030, the McClure/Volkmer bill.

S. 1030 represents a series of amendments to current federal firearm laws, chiefly the Gun Control Act of 1968. The effect of the bulk of these amendments is to reform the Gun Control Act in ways that make it more rational, more clear, more narrowed and more precise—in a phrase, more enforceable.

Many aspects of the Gun Control Act, as it exists, are enforcement nightmares. The Act outlaws, and imposes felony penalties upon, a wide range of conduct in which ordinary, honest citizens regularly engage. Under it, a transfer of a firearm to a resident of another state, in full compliance with all state laws, is a federal felony. To "engage in the business of dealing" in guns without a license is a felony—yet no section of the law tells enforcing agents just what Congress meant by that phrase. To distribute ammunition to others without a manufacturer's license is a felony, although we may suppose that the law's drafters did not intend the arrest of the millions or tens of millions of law-abiding citizens who have done just that. The agent or officer who must enforce such requirements is left completely at sea when it comes to knowing just

what enforcement was really intended, and sometimes even just what is legal or illegal.

Even where the commands of the law are clear, they are often irrational. A licensed dealer cannot, of course, sell to a convicted felon. A private citizen, who is guilty of a felony if he sells to a resident of another state, can sell to a convicted felon. One section defines five classes of people who cannot receive firearms; another defines four classes who cannot possess them. Yet, only two of those classes overlap (felons and former mental cases) and even these are defined differently in each of the two sections! The terms of the Gun Control Act are thus not only overbroad and vague, but also they are sometimes even inconsistent, arbitrary and capricious. A person charged with enforcing the law, whose decisions must be made in the field and not in a legislative hearing room, deserves better descriptions of what conduct you desire stopped and punished.

S. 1030 goes far to remedy these problems. It creates a precise definition of prohibited firearm owners, and this definition applies uniformly to private and to dealer sales, to receipt, transportation and ownership of firearms. It defines "engaged in the business", and makes it clear that Congress desires "willful" violators, and not those who accidentally transgress with innocent intent, to be arrested and prosecuted. Enforcement of the law is accordingly made less burdensome and more certain. The Fraternal Order of Police strongly supports these improvements in the enforceability of the Gun Control Act.

We also support S. 1030's efforts to increase penalties for criminal misuse of a firearm. The Gun Control Act is primarily a regulatory statute. It is not used to prosecute a murderer, rapist, or robber as such. Instead, it permits prosecution of those who violate regulatory measures (licensing, recordkeeping, interstate sales) in the hopes that this might indirectly hinder the actual criminal. The major exception to this arrangement is found in section 924(c) of the Act, which imposes stiffer punishments upon anyone who uses or carries a firearm in commission of a federal felony. The chief problem is that the additional penalty is not a mandatory penalty—that is, the offender can receive probation or parole without limitation—unless it is a second conviction under that specific section. Since, to the best of my knowledge, no one has ever been twice convicted under 924(c), a judge who desires to give a violent federal offender probation can simply give him the additional term with probation or suspended sentence.

S. 1030 changes this, imposing a mandatory sentence—no probation, parole, work furlough or any other form of release—for use of a firearm in a federal crime against the person. The Fraternal Order of Police strongly endorses this proposal. Indeed, we as police have a personal stake in laws of this type. Studies of murders of police conducted by the Federal Bureau of Investigation have shown that for nearly three-quarters of such killers this was not their first offense. 39% had received probation or other similar leniency from the judicial system. No less than 25% were on probation or parole for past offenses when they murdered the police officer. While we as law enforcement personnel are the most exposed to the recidivist, we are not the only ones at risk. An LEAA study of convicted robbers found that most were career criminals who began their criminal acts by age 14; they

averaged over two prior felony imprisonments, before beginning their current robbery term. The Fraternal Order of Police therefore strongly endorses laws such as S. 1030, which seek to incarcerate serious offenders.

The Fraternal Order of Police thus considers S. 1030 to be a vast improvement over the Gun Control Act as it now exists. It clarifies, tightens and makes rational the all too often vague and inconsistent provisions of that Act. We therefore support it from our standpoint as law enforcement professionals. And we also support it as individuals. Many, if not most, of our members are themselves firearms owners in private life. We enjoy the safe and legitimate uses of firearms for sport and collecting and we support their necessary use for self-defense. On-duty police, who form a small part of one percent of the population, cannot be everywhere at every time, particularly when the criminal has the advantage of picking the time and place of the offense. As firearms owners as well as law enforcement professionals, we support S. 1030's move to reorient the federal firearm laws away from the legitimate users of firearms and toward stiffer punishment for the criminal.

#### GUN CONTROL ACT AMENDMENTS NEEDED NOW

Mr. SASSER. Mr. President, approximately 2 months have passed since the introduction of "A Bill to Protect Firearm Owner's Constitutional Rights, Civil Liberties, and Right to Privacy," a bill which I have cosponsored. I am pleased to be able to say that over half the Senate has, in those 2 months, elected to sign on to this needed legislation. We may look forward to passage of this bill, but I feel that it is desirable to discuss now the need for this legislation and its historical context.

The primary thrust of this bill is aimed at amending the Gun Control Act of 1968 to change its most onerous provisions and institute guarantees of gun owners' civil liberties which were omitted from the act. To understand how those guarantees were omitted, we should examine the historical background of the 1968 act.

What ultimately became the 1968 Gun Control Act originated in 1963, as a relatively modest measure to require police notification before mail-order firearm purchases. Over the following years, as the gun control controversy expanded, so did the proposed legislation. It finally came to the floor in 1968 in a politically charged atmosphere. Those who sought extensive Federal regulation of gunowners fought for registration and permit systems; those who opposed it primarily fought against these proposals. The Gun Control Act was not a coordinated piece of legislation, but a hodgepodge of proposals which neither side particularly wanted, inserted piecemeal as the legislative battle saw-sawed back and forth. No sooner was it enacted—as part of the Omnibus Crime Control and Safe Streets Act—than a new push was started for amending the bill.

A second piece of legislation, entitled the Gun Control Act of 1968, was passed, which amended various provisions of the first bill, making it apply to rifles and shotguns as well as pistols, creating a collectors' licensing system, amending provisions for review of license denials, and generally clouding the issue to a still greater degree. The end result was a strange piece of legislation. Among its other unusual features:

"Four classes of persons are prohibited from purchasing or receiving firearms (sec-



tion 922), and six classes of persons are forbidden possession of firearms (section 1201). But only two of these classes overlap and even here the classes are defined in different language: the result is that most of the groups forbidden receipt of firearms are not forbidden possession and vice versa.

"The section limiting possession by persons convicted of an offense punishable by more than one year provides that a pardon ends the prohibition—but the drafters of the section limiting receipt of a firearm by the same class forgot to insert a similar provision. Accordingly, the Seventh Circuit has held that a person given a full pardon is allowed to possess a firearm, but commits a felony when he receives it to begin possession. (*Thrall v. Wolfe*, 503 F.2d 313 (7th Cir. 1974).)

"The Act makes it a federal felony to 'engage in the business' of dealing in firearms without a special license but fails to give any guidelines of any sort on what 'engage in the business' means. This is vital to legitimate gun collectors, who often swap or sell a few firearms out of their collection. Courts have repeatedly held that, in absence of a legislative definition, there is no minimum profit, no requirement of advertising, employment of others, or premises used for business. The jury is simply instructed that the defendant should be convicted if they find he did 'any business' in firearms. One court has even claimed that the display of a firearms collection in a glass case is listed among the characteristics associated with a 'firearms business venture,' so that a normal collector's display at a gun show is itself evidence of violation. (*United States v. Jackson*, 352 F. Supp. 672 (D. Ohio 1972) *aff'd* 480 F.2d 927 (6th Cir. 1973).)

"The Act requires a federally-licensed firearms dealer to keep records of his inventory and sales, and does not require private citizens to do so. But it says nothing about what a dealer who has a private collection, not in his business inventory, should do if he sells a part of that collection as a private citizen. The agency enforcing the gun laws itself cannot make up its mind on this issue, but the persons who pay are law-abiding gunowners. In 1972, the agency formally ruled that a dealer did not have to record in his inventory personal firearms, even if they were on his business premises, if they were marked not for sale. It then proceeded to prosecute several dealers whom its agents enticed into selling guns from their private collection. At their trials it argued that its ruling, if read carefully, only said personal firearms did not have to be recorded in the inventory, not that their sale did not have to be recorded in sales records. But even while one of these prosecutions was pending, the head of the agency stated, in writing, that the dealer may 'maintain a private collection independent of the business inventory and lawfully dispose of such firearms without entering the transaction in the business records.' When confronted with this statement by its acting director, the agency responded that (1) the director was mistaken as to the law and (2) since mistake of law is no defense under the Act, the fact that the dealer here had the same misunderstanding is no protection to him! If this were not enough, since that date the agency's director has been quoted again as advising dealers that they may indeed have a private collection and sell from it off their business premises! No one seems to know what a dealer should do in this case—except that if he wrongly guesses the agency's position this month, he will be prosecuted on federal felony charges."

The vague and often inconsistent commands of the Gun Control Act would be a serious enough imposition to the citizens of this Nation, but they are compounded by two general problems. The first is that every violation, no matter how trivial or technical, is a Federal felony. Not only are those who violate subject to 5-years imprisonment in a Federal institution plus a \$5,000 fine, they lose most civil rights—to vote, hold office, and so on—even if their honest nature leads the judge to impose no real punishment. More than this, they totally lose the right to possess any firearm for the remainder of their lives. While a person who knowingly and intentionally commits a barehanded murder or robbery can theoretically get an administrative "relief from disability," enabling him to own firearms, a person convicted of a minor and unintentional Gun Control Act technically cannot—another of the harmful quirks of that legislation.

The second general problem is that most sections of the Gun Control Act require no proof of intent in order to obtain a conviction. The requirement of proof of criminal intent has been ingrained in our legal system from its beginnings; Blackstone went so far as to state that a crime without criminal intent was unknown to the common law of England. In *Morissette v. United States*, 342 U.S. 246 (1952), our Supreme Court went so far as to read an intent requirement into a statute where Congress has failed to insert that requirement. It stated that to do otherwise would "radically change the weight and balances of the scales of justice," and that the effect would be to "ease the prosecution's path to conviction, to strip the defendant of such benefit as he derived at common law from innocence of evil purpose, and to circumscribe the freedom heretofore allowed juries." *Id.* at 263.

The *Morissette* court's condemnation of this as a "manifest impairment of the immunities of individuals" was expanded a few years later when the Court added that "were it otherwise, the evil would be as great as it is when the law is written in print too fine to read or in a language foreign to the community." *Lambert v. California*, 355 U.S. 226, 230 (1957). Unfortunately, the Congress failed to place intent requirements in most of the provisions of the Gun Control Act. In *United States v. Powell*, 513 F.2d 1249 (8th Cir. 1975), the court went so far as to say that, in an "engaging in the business" prosecution, reliance on an attorney's opinion that the conduct was lawful is no defense.

The 90th Congress most definitely did not have to enact such a complicated gun control law, but the combination of the language they chose in the Gun Control Act and the interpretations the courts have placed upon that language had exactly that effect. Commands so vague that even the head of the agency charged with their enforcement cannot define them combined with the doctrine that "ignorance is no excuse" produce a law custom-made to ensnare law-abiding citizens who exercised their right to own and use arms. This opportunity fitted in perfectly with the bureaucratic expansion of the enforcing agency, the Bureau of Alcohol, Tobacco and Firearms (BATF).

Between 1968 and 1972 for instance, the Bureau was able to expand its employment of special agents from 985 to 1,622. Before the Gun Control Act, the agency had only been able to employ 214 agents for firearms enforcement; 5 years later it was able to thus employ almost a thousand.

But the BATF apparently found that enforcing the law against genuine criminals—for example, convicted felons who illegally owned firearms—was not suitable to mass production of arrests that could be used as a "numbers game" to justify still more employment of agents.

Instead, it has engaged in frequent entrapment of licensed dealers and private collectors. They were easily located, were not evasive or even expecting undercover approaches. They had no criminal intent, but the law did not require proof of such for charges or conviction. The broad language of the act and the vagueness of its commands insured that they could easily be lured into a technical violation.

Collectors were approached by agents who purchased two, four, or six guns from their collection. They were then raided, charged, and their collections confiscated on "engaging in the business of dealing in guns" charges. Dealers were approached by non-residents of their States, to whom they could not sell. When they turned down the nonresident, a resident agent with valid identification claimed to be a relative and bought the firearm legally "for" the nonresident. The dealer was then charged with a "straw man" sale. Other dealers were induced to make sales from their personal collections, then charged with having sold without proper recording, as I described earlier. In many areas, a virtual reign of terror came to dominate legitimate gun owners and collectors.

To date, three Senate and one House hearings have documented the extent of these abuses. These have established, among other things, that approximately 75 to 80 percent of BATF criminal firearms charges were being brought against individuals who had no criminal intent; that BATF itself admits barely 10 percent of its firearm charges are on "felon in possession" or "sale to felon" charges; that an assistant director of the Bureau had indicated in a private memorandum to the director that he "shuddered to think" that their errors might lead to conviction of innocent citizens; that agents have repeatedly confiscated collector-grade firearms, deliberately dropped them on concrete floors, stored them in damp areas, and otherwise damaged them; that in aggravation of this, agents have often refused to return seized firearms even after their owner has been acquitted, after grand juries refused to find even "probable cause" to believe he had broken the law, or after the Bureau itself dropped charges.

These were not minor acts; in several cases the agents calmly informed individuals that the Bureau did not have to pay legal expenses, the individuals did, and if they sued to assert their rights, the expense would be beyond their means. BATF, to be sure, claimed to have "reformed," but the hearings document that, after the reforms, the percent of cases brought against felons in possession dropped and the value of seized firearms rose, indicating seizure of more collectors' items, not fewer.

In short, this legislation is vitally needed. We must remove the opportunity for such abuses, and minimize the incentive for new ones by providing liberal remedies for firearm owners who successfully assert their rights. This bill would achieve these goals with a series of provisions, which I can briefly discuss here.

First, prosecution for unintentional violations would be ended. Now the Government must prove, beyond a reasonable doubt, that a violation was willful before it can

obtain a conviction. A technical violation, by one who did not intend to break the law, can no longer form the basis of life-wrecking felon status.

Second, this bill would narrow and clarify the most vague commands of the Gun Control Act. The vague command that one refrain from engaging in the business would be clarified by a definition of that term as pertaining to engaging in the repetitive sale of firearms for the primary motive of profit, and as expressly excluding firearms hobbyists who dispose of their collection. This more nearly approaches what we commonly think of as a dealer—not a collector who exhibits his firearms and swaps or sells in pursuit of a hobby.

Another provision would recognize that a licensed dealer may have a private firearms collection, separate from his inventory, and so long as he keeps it separate may act as a private collector in acquiring, keeping, and disposing of it. No longer will those with a license be treated as second class citizens who even dispose of their own property in a manner permitted an ordinary, unlicensed citizen.

Yet another provision would coordinate the different sections listing persons banned from receiving or possessing firearms. As I mentioned earlier, existing law in this area is an ill-coordinated hodgepodge of different provisions—persons prohibited from owning guns may not be prohibited from receiving them, and vice versa, a pardon may permit a person to possess but not to receive, and so on. This bill coordinates these provisions into clear-cut commands: seven classes of persons, including all convicted felons who have not received pardons, reliefs from disabilities, or expungement of cases, are banned from possessing, owning, receiving or transporting firearms. The same rules on pardon, relief, and expungement apply to all such restrictions.

Third, this bill would remove the opportunity and incentive for harassment and civil rights violations. If a citizen is acquitted confiscated firearms cannot be withheld based on the charges of which he has been found innocent. Nor can firearms be withheld if the agency seizes them and refuses to bring charges within 120 days. The BATF has in the past seized firearms from an individual and, to cover the fact that the firearms were not involved in any violation, claimed that he "intended to use" them at some unspecified later date. This bill would remove the "intended to use" language from the confiscation section, allowing seizure only where the Bureau can establish firearms actually were used in violation of the law.

Given that the Governmental seizure of valuable private property without compensation, jury trial, requirement of proof beyond a reasonable doubt or any other safeguards normally accorded one whom the Government seeks to punish, is a procedure whose constitutionality skates upon thin ice to begin with, a limitation to property actually involved in violations is surely the minimum that justice requires.

As a means of enforcing these restrictions, the bill contains provisions that, where the owner of firearms must sue for their return, he is automatically entitled to a reasonable attorney's fee if successful. I see no reason why a citizen may have his property taken by the Government, win a finding that its taking was illegal and be saddled with legal fees while fighting a Government agency whose fees are paid from his pocket and those of every taxpayer.

Finally, the bill would remove several sections of the act which have been used for abuse and which constitute needlessly broad and wasteful restrictions. The most important of these is the ban on interstate firearm sales. When the Gun Control Act was being debated, it was initially proposed to ban interstate sales where the effect was to circumvent local laws—for example, where the buyer resided in an area where the acquisition of the gun would be illegal.

These proposals were rejected at the 11th hour due to drafting difficulties and instead a general ban on all interstate transfers—even where no local law existed that could be circumvented—was imposed. This, in turn, was altered by various exceptions—for firearms passing by will and devise, transferred to a dealer, replacement firearms, sales between contiguous States—but only of certain firearms and with special forms—and so forth. The result is to make inadvertent Federal felons out of honest citizens who transfer or give a firearm to a friend or relative who lives across a State line, even where they violate no State laws in so doing.

This bill would replace this exception-riddled general ban with a simple, clear, and rational rule: an interstate transfer is legal if it violates no State or local law in the place of the sale and the place to which the buyer intends to take it. If it breaks local laws in either of these places, it is illegal.

Another provision of the bill ends ammunition recordkeeping, another provision hastily inserted in the Gun Control Act. Even the agency enforcing the law has admitted that ammunition recordkeeping is of no measurable crime-fighting value and, with billions of rounds sold each year, the paperwork burden is enormous.

A third provision permits agents to enter the premises of dealers for record searches only where they have reasonable cause to believe a violation has occurred or there is evidence of such to be found. All too often, in the name of generating "makework" for appropriations time, or harassing a dealer, agents have spent hours or days examining his records without any reason to expect evidence of violation. We must remember that a firearms dealer, like any citizen, is entitled to his fourth amendment protection against search and seizure without probable cause. If an ordinary businessman is entitled to this protection when enforcement of OSHA is involved—and our Supreme Court has ruled that he is—I see no reason why the fact that he has chosen to transact firearms business should create an exception in the Bill of Rights.

In summary, I think this legislation is badly needed, to prevent future abuses of this type, to force the enforcing agency back toward real criminals and away from law-abiding gun owners, and in general to coordinate and add some reason to a hastily drafted and poorly formed statute. I am tired of the abuses which have been committed in its name—tired of having citizens without criminal intent being charged with felonies, tired of having honest collectors' museum-grade firearms seized as if they were likely to be used in crime, tired of agents who withhold firearms after their owners have been acquitted of all charges, tired of hearing that "ignorance of the law is no excuse," when the law is so vague the directors of the enforcing agencies admit ignorance of its provisions.

The 90th Congress acted hastily in drafting the legislation as it now stands; I suggest it is our duty in the 97th to end forever the violation of our Constitution and laws in the name of its enforcement.

Mr. HATCH. Mr. President, we have just been discussing the various recordkeeping provisions of S. 49 in conjunction with the recordkeeping provisions in the current 1968 Gun Control Act. Those favoring this amendment—to include the current Bureau of Alcohol, Tobacco and Firearms regulation (178.126) in S. 49—may not have reviewed the Senate record relative to this provision in 1968 after the act passed and regulations were promulgated to implement it. Thus, let me take the time first to report that Congress had no intent to require all law-abiding gun dealers to report all their firearms transactions to the Alcohol and Tobacco Tax [ATT] Division of the Treasury Department [currently BATF]. And, the Director of ATT likewise agreed that it was not their intent either.

I believe it is appropriate at this time to insert in the RECORD a letter from Harold A. Serr, Director, Alcohol and Tobacco Tax Division to Senator Frank Church clarifying the record information submission requirement for firearms licensees.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter from Harold A. Serr, Director, Alcohol and Tobacco Tax Division, dated December 17, 1968, to our late colleague, Senator Church.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

HON. FRANK CHURCH,  
U.S. Senate, Washington, DC.

DEAR SENATOR CHURCH: In response to your inquiry on December 17, 1968, I would like to assure you that under no circumstances does the Alcohol and Tobacco Tax Division intend to require licensed firearms dealers to submit all records of firearms transactions to a central location. This would be in effect gun registration and the Congress clearly showed its desires in this area when gun legislation was voted on.

The provisions of Section 178.125 and 178.126 are simply an effort to make workable the provisions of Section 923(g) of the Gun Control Act of 1968. This section of the statute states that licensees "shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe."

We contemplate the necessity of using these provisions of the statute when we become aware of violations of the law by an unscrupulous dealer. This is a very small minority who are in the firearms business but I would like to cite to you an example where we could have used this in the past. Our Special Investigators learned that a dealer was selling firearms (handguns) to residents of a bordering state whose law prohibited such purchases without a permit. Our agents approached the dealer and told him that if they gave their right names they would get in trouble back home. The dealer stated that they could give him any name they chose. So one of our agents stated that his name was Donald Duck and the other gave as his name Mickey Mouse. Both agents gave their address as Disneyland, California.



When we find out that situations like this exist, we would require the dealer to submit records of his sales, not for the purpose of registration, but for the purpose of proceeding against the dealer for a criminal violation of the law.

I wish to assure you again that we have no intention of requiring law-abiding gun dealers to report their firearms transactions to us. Not only do we intend to comply with the intent of Congress in this manner but our resources are such that we would be totally inundated with paper if we tried to do otherwise.

If I can be of further assistance please do not hesitate to contact me.

Sincerely yours,

HAROLD A. SERR

Director, Alcohol and Tobacco Tax  
Division.

Mr. HATCH. Mr. President, we are prepared for any further amendments.

Mr. MATSUNAGA. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MATSUNAGA. How much time is there on the bill itself?

The PRESIDING OFFICER. Seven hours and forty minutes.

Mr. MATSUNAGA. Mr. President, if I may address the bill itself in general, I wish to do so.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. MATSUNAGA. I ask unanimous consent that I may proceed for such time as I may require.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATSUNAGA. Mr. President, I rise to urge my colleagues to approve certain amendments which will be offered to S. 49 to strengthen current law and to correct several provisions of S. 49 which in effect would impede enforcement of the Gun Control Act of 1968.

At the outset, I must say that I am encouraged by the action taken by this body on June 24, 1985, to modify S. 49 in keeping with the intent of the 1968 Gun Control Act. I am referring specifically to the following amendments which were agreed to and which would:

First, tighten the provision allowing gun dealers to operate at temporary locations outside of their shops by defining temporary locations in consistency with current regulations of the Bureau of Alcohol, Tobacco, and Fire Arms covering sales at gun shows, so that gun sales made outside of their shops would be allowed only at gun shows or other events sponsored by legitimate gun organizations;

Second, delete the provision that would have barred any prosecution under the Gun Control Act of 1968 for violations resulting from simple carelessness;

Third, delete provisions that would have preempted gun laws in 20 States regulating interstate transportation of firearms in favor of new language establishing the limited right to carry an

unloaded, inaccessible firearms in interstate commerce from one State to another where possession is lawful in both States.

Fourth, prohibit the importation of barrels, frames, and receivers for "Saturday night specials"—the 1968 Gun Control Act prohibits the importation of these small handguns, which are not suitable for sporting purposes but are frequently used in crimes; the importation of parts, however, has been allowed; and

Fifth, close the loophole in the National Firearms Act that allows paramilitary members, drug traffickers and others to bypass Federal restrictions on the possession of automatic weapons.

Mr. President, in 1975 the Hawaii State Legislature enacted a handgun control law banning the ownership of cheap, nonsporting, concealable handguns, so-called Saturday night specials, in a major effort to reduce handgun violence in the islands. Unfortunately, it is generally agreed in our State that this law has not resulted in significant reductions in handgun crimes. The prime reason for this failure is that effective handgun control cannot be achieved through purely State and local initiatives. The Gun Control Act of 1968 preserves the authority of States and localities to regulate guns among their residents by prohibiting the interstate sale of guns. With the exception of very limited circumstances, a resident of one State cannot travel to another State and purchase a firearm. S. 49 would nullify this provision and authorize dealers to make face-to-face firearms sales to out-of-State customers if the sale would be lawful under the laws of the seller's and the buyer's jurisdiction.

I believe it is critical that we accept the amendment which will be offered by the senior Senator from Massachusetts [Mr. KENNEDY] to retain the prohibition of interstate sales of handguns. It would be practically impossible for a dealer to determine that sales to out-of-State purchasers conform to the applicable State or local laws which are in a constant state of flux and whose application may vary greatly according to individual State court decisions.

The Senate Judiciary Committee, when considering similar legislation in 1984, recognized that the interstate sale of handguns could jeopardize State and local law enforcement and added language to the bill to retain the restrictions on interstate sales for handguns with barrel lengths of less than 3 inches, the so-called snubbies. S. 49 does not contain this important Judiciary Committee amendment.

Another weakening provision of S. 49 would require advance notice to gun dealers before compliance inspections. At present, agents of the Bureau of Alcohol, Tobacco, and Firearms [BATF]

are authorized to conduct surprise visits to inspect sales records maintained by federally licensed gun dealers. S. 49 would require that a dealer be given reasonable notice before an inspection. With less than 100 BATF agents and over 200,000 handgun dealers in this country, unannounced visits are necessary, if inspection is to serve as a deterrent and be effective in ensuring that weapons are distributed through lawful channels in a traceable manner, that sales to undesirable customers are prevented, and the origin of particular firearms are detected. An amendment to be offered by the Senior Senator from Maryland [Mr. MATHIAS] would retain current law with respect to surprise Federal compliance inspections and should be supported.

The third amendment for which I urge support and acceptance is the provision being offered by my distinguished colleague from Hawaii, Senator INOUE, and myself, which would require a 14-day waiting period between the time of negotiation for sale of a handgun and its time of delivery. This amendment would not mandate a criminal background check of the purchaser; rather, it would allow State and local authorities to exercise that option. It would also provide an exception from the waiting period for purchasers who present a notarized statement from the local police chief stating that immediate possession of the handgun is necessary for the individual's personal safety.

Such a waiting period, which was recommended by the 1981 Attorney General's Task Force on Violent Crime and which has broad support among the law enforcement community, will go a long way to facilitate background checks to keep handguns out of the wrong hands. It would also serve as a cooling off period for those intent on suicide or crimes of passion. I have supported a waiting period for handgun purchases during consideration of earlier legislation relating to handguns, and I would remind my colleagues that an identical provision was adopted by the Senate Judiciary Committee during markup of similar legislation in 1982.

Mr. President, I am convinced that these amendments to S. 49 which I have discussed briefly, are essential improvements which would enhance law enforcement and prevent handguns from falling into the wrong hands. They would not place undue restrictions on honest citizens with respect to the acquisition, possession, or use of firearms for recreational or other lawful purposes. I strongly urge my colleagues to approve these amendments which will be offered during consideration of S. 49. Without these amendments, the bill should not be passed.

Mr. JOHNSTON. Mr. President, will the distinguished manager yield me some time?

Mr. HATCH. Mr. President, I am happy to yield as much time as the Senator may need.

Mr. JOHNSTON. I thank the distinguished Senator.

Mr. President, I rise in support of the Firearms Owners' Protection Act, S. 49. The issue of a citizen's right to bear arms and of the State to regulate that right is one which strikes at the heart of our Nation's political and judicial heritage. It is a matter for intense discussion and other heated debate, but this is as it should be. Few laws passed are absolutely perfect; sometimes we must go back and review them in order to resolve any imperfections and clarify the original intent. The bill before us today, the Firearms Owners' Protection Act (S. 49), is designed primarily to correct demonstrated abuses which are embodied in present law. Please allow me to reiterate the various reforms which this bill incorporates:

First, it defines, "engaging in the business" in order to clarify whether a Federal firearms license is needed.

Second, it liberalizes interstate sales of firearms when such sales are already legal in both the State of sale and the State of purchase.

Third, it mandates that an element of criminal intention for prosecution and conviction of Federal firearms law violations be present.

Fourth, it clarifies procedures for firearms sales by a dealer from his own private collection.

Fifth, it permits inspection of a dealer's records for reasonable cause.

Sixth, it requires mandatory penalties for the use of a firearm during a Federal crime.

Seventh, it limits the seizure of firearms.

Eighth, it provides for the return of seized firearms, and grants attorney's fees in spiteful or frivolous lawsuits.

Ninth, it allows the interstate transportation of unloaded, inaccessible firearms.

Contrary to popular hearsay, this bill would not allow for mail order or unlicensed pawn shop sales of firearms, nor would it restrict legitimate inspection of dealers' records.

This bill recognizes and reaffirms many of the most important constitutional rights of American citizens: to keep and bear arms, embodied in the second amendment; security from illegal and unreasonable searches and seizures, embodied in the 4th amendment; protection against the uncompensated taking of property; double jeopardy, and the assurance of due process of law as stated in the 5th amendment; and their rights against the exercise of authority, as stated in the 9th and 10th amendments.

Furthermore, S. 49 is the result of the beliefs of many that additional

legislation is needed in order to correct problems—both actual and potential—within existing firearms statutes and their enforcement policies. The original intent of the Gun Control Act of 1968 was that:

It is not the purpose (of this title) to place under any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity . . . or to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes.

In essence, this bill seeks to redress inaccuracies and inconsistencies present within current law. More importantly, it is designed to send a clear and powerful message to the owners, both legal and illegal, of firearms and to the agency responsible for the enforcement of our Nation's gun laws [ATF]: the rights of honest, law-abiding citizens will be upheld, and those charged with enforcement duties must direct their efforts and attention toward the activities of those violent criminals whose callous disregard for the rights of others is abhorrent. We must remember that our country's Constitution sets forth very clearly the rights of its citizens, and we must turn our attention to the actions of those who would abuse those rights. Sometimes it is necessary to remind ourselves exactly who are the criminals and who are the victims, both of crimes committed and of imperfect legislation. This bill is such a reminder. I intend to fully support the Firearms Owners Protection Act and I urge my colleagues to do the same.

I thank the distinguished colleague from Utah for yielding.

Mr. HATCH. I thank my colleague.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. KASSEBAUM). The clerk will call the role.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### AMENDMENT NO. 508

(Purpose: To provide that the making of false statements by a licensed dealer, licensed importer, or licensed collector be a misdemeanor)

Mr. HATCH. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposed an amendment numbered 508.

Mr. HATCH. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Madam President, I ask unanimous consent that I be permitted to present this amendment in lieu of the simple carelessness amendment provided for in the unanimous-consent agreement.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 21, strike out lines 2 through 22 and insert in lieu thereof the following:

"(a)(1) Whoever—

"(A) other than a licensed dealer, licensed importer, licensed manufacturer, or licensed collector knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under the provisions of this chapter;

"(B) knowingly makes any false statement or representation in applying for any license or exemption or relief from disability under the provisions of this chapter;

"(C) knowingly violates subsections (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922;

"(D) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l);

"(E) knowingly violates any provision of this section; or

"(F) willfully violates any other provision of this chapter,

shall be fined not more than \$5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine.

"(2) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

"(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

"(B) violates subsection (m) of section 922, shall be fined not more than \$1,000, or imprisoned not more than one year, or both, and shall become eligible for parole as the Board of Parole shall determine."

On page 8, strike out lines 8 and 9 and insert in lieu thereof the following:

(B) by amending paragraph (3) to read as follows:

"(3) is an unlawful user of or addicted to marijuana or any depressant or stimulant substance or narcotic drug (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));"

On page 8, strike out lines 23 and 24 and insert in lieu thereof the following:

(B) by amending paragraph (3) to read as follows:

"(3) is an unlawful user of or addicted to marijuana or any depressant or stimulant substance or narcotic drug (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));"

On page 10, strike out lines 1 and 2 and insert in lieu thereof the following:

(B) by amending paragraph (3) to read as follows:

"(3) is an unlawful user of or addicted to marijuana or any depressant or stimulant substance or narcotic drug (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));"



On page 21, line 24, after "any" insert "felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (94 Stat. 1159; 21 U.S.C. 855a), or any".

On page 22, line 5, after "such" insert "felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (94 Stat. 1159; 21 U.S.C. 855a), or".

On page 22, line 14, strike out "included that imposed for the" and insert in lieu thereof "including that imposed for the felony described in the Controlled Substances Act (21 U.S.C. 801), the Controlled Substances Import and Export Act (21 U.S.C. 951), or section 1 of the Act of September 15, 1980 (94 Stat. 1159; 21 U.S.C. 855a), or".

On page 1, line 3, strike out "of citizens".  
On page 1, line 7, strike out "their" and insert in lieu thereof "the".

On page 2, line 2, strike out "their" and insert in lieu thereof "the".

On page 5, line 19, strike out "the sale or" and insert in lieu thereof "the activity involving firearms, including the sale or other".

On page 5, line 24, strike out "opposed to" and insert in lieu thereof "distinguished from".

On page 7, line 12, strike out the colon and insert in lieu thereof a semicolon.

On page 12, line 13, strike out "is so" and insert in lieu thereof "is in a licensee's personal collection".

On page 12, lines 15 and 16, strike out "disposition or any acquisition" and insert in lieu thereof "transfer".

On page 14, line 3, strike out "explicitly" and insert in lieu thereof "expressly".

On page 14, line 3, beginning with "the Act", strike out through "privacy." on line 5 and insert in lieu thereof "this section".

On page 14, line 20, after "inspect" insert "or examine".

On page 14, lines 22 and 23, strike out "for a reasonable inquiry" and insert in lieu thereof "in the course of a reasonable inquiry".

On page 15, line 4, strike out "to prohibited persons" and insert in lieu thereof "in violation of section 922(d)".

On page 15, line 5, strike out "inspections or inquiries" and insert in lieu thereof "inspection or examination".

On page 15, line 15, strike out "inspections or inquiries" and insert in lieu thereof "inspection or examination".

On page 15, line 23, strike out "Such procedure" and insert in lieu thereof "The inspection and examination authorized by this subsection".

On page 16, line 21, strike out "explicitly" and insert in lieu thereof "expressly".

On page 16, lines 22 and 23 and insert in lieu thereof "by this section".

On page 17, lines 8 and 9, strike out "tracing firearms" and insert in lieu thereof "determining from whom a licensee acquired a firearm and to whom such licensee disposed of such firearm".

On page 22, lines 19 and 20, strike out "or destructive device".

On page 22, line 21, strike out "the good faith".

On page 22, line 21, insert a comma after "danger".

On page 22, line 23, insert a comma after "person".

On page 22, strike out line 24 and insert in lieu thereof the following: "court finds that the perceived immediate danger was so perceived in good faith and that a sentence under this section would".

On page 22, line 25, strike out "justice and" and insert in lieu thereof "justice".

On page 23, line 1, strike out "such" and insert in lieu thereof "The".

On page 27, line 22, strike out "925" and insert in lieu thereof "926".

On page 30, strike out lines 16 through 19 and insert in lieu thereof the following:

Sec. 201. Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (sections 1201, 1202, and 1203 of the appendix to title 18, United States Code) is hereby amended to read as follows:

"Sec. 1201. (a) In the case of a person who violates section 922(g) of title 18, United States Code, and who has three previous convictions by any court referred to in section 922(g)(1) of title 18, United States Code, for robbery or burglary, or both, such person shall be fined not more than \$25,000 and imprisoned not less than fifteen years, and notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g) of title 18, United States Code, and such person shall not be eligible for parole with respect to the sentence imposed under this subsection.

"(b) As used in this title—

"(1) 'robbery' means any crime punishable by a term of imprisonment exceeding one year and consisting of the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected to bodily injury; and

"(2) 'burglary' means any crime punishable by a term of imprisonment exceeding one year and consisting of entering or remaining surreptitiously within a building that is property of another with intent to engage in conduct constituting a Federal or State offense."

Mr. HATCH. Madam President, during negotiations in the 98th Congress relative to the scienter or state of mind requirements, there was a discrepancy between what the parties understood the term "knowing" to mean. Senator McCURE, who deserves great credit for his contributions to this legislation, expressed his concern that some courts have diluted "knowing" to mean "belief" or "reckless disregard" rather than "actual cognizance." The simple carelessness language was added to the bill to clarify that the holding and rationale of those cases would not apply to the offenses covered by this bill. Unfortunately, attempting to set aside those cases by the addition of the simple carelessness language creates needless confusion and contradictions in S. 49. Accordingly, this objective is more properly handled by the legislative history of the report to accompany S. 914 from the 98th Congress, which is the authoritative source for the intent of the Judiciary Committee, and the clear understanding of the manager and supporters of this bill that these cases are not to be applied as a guide in ascer-

taining the meaning of the term "knowingly." In voting or speaking on any aspect of this bill's revisions concerning mens rea, we intend to exclude the following cases from any consideration of the meaning of the term "knowingly," *U.S. v. Graves*, 394 F. Sup. 429 (W.D. Penn. 1975) aff'd, 554 F. 2d 65 (3rd Cir. 1977); *U.S. v. Thomas*, 484 F. 2d 909 (6th Cir. 1973) cert. denied 414 U.S. 912 (1973); *U.S. v. Werner*, 160 F. 2d 438 (1947); and in addition, any other case or cases which can be construed similarly to hold what these cases have been construed to hold.

With this understanding, however, I must urge the Senate to comply with its earlier time agreement and delete the "simple carelessness" language.

The ambiguity and confusion inherent in the term "simple carelessness" might only be partially overcome by extensive legislative history explaining the narrow purpose of this terminology. It seems far preferable to devote that legislative history to Congress' intent that the cases I have mentioned above not be applied to offenses occurring under this act. This will avoid extensive confusion, yet accomplish our objective just as certainly as devoting legislative history to explanation of the meaning of the term "carelessness."

Madam President, I ask unanimous consent to have printed in the RECORD a letter concerning this question.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

#### DEPARTMENT OF THE TREASURY,

Washington, DC, July 5, 1985.

DEAR SENATOR HATCH: This responds to your request for the Administration's position on the so-called "simple carelessness" defense in S. 49, "A Bill to protect firearms owners' constitutional rights, civil liberties, and rights to privacy."

The provision in question, which appears on page 21 of the bill, lines 20 through 22, specifically states, "That no person shall be prosecuted under this subsection where the conduct of such person involves simple carelessness." The apparent purpose of the provision is to preclude the prosecution and conviction of person for an act of simple carelessness constituting a technical violation of the Gun Control Act, e.g., federally licensed firearms dealers who inadvertently violate the recordkeeping requirements of the Act in some minor or insignificant aspect.

The Administration believes that the defense is unnecessary inasmuch as other provisions of the bill would require proof of an accused's knowledge or intent in any prosecution under the Gun Control Act. Furthermore, the bill would amend 18 U.S.C. Section 924(a) to require as an element of proof that certain offenses were "knowingly" committed on the accused's part, while the remaining offenses were committed "willfully". For example, in a prosecution of a licensed dealer for the felony of falsifying records of firearms transactions required to be maintained by the dealer, the Government would have to establish that the

dealer acted willfully, and not that he or she was simply careless. In view of the bill's provisions for these knowledge or intent elements, the "simple carelessness" defense could create confusion and ambiguity in the law.

We appreciate the opportunity to respond on this issue.

Sincerely,

EDWARD T. STEVENSON,

Deputy Assistant Secretary (Operations).

Hon. ORRIN G. HATCH,

U.S. Senate, Washington, DC.

Mr. HATCH. Madam President, this amendment makes one important substantive change and several technical changes in the bill. The substantive change involves the penalties to be assessed for a recordkeeping violation by a licensed dealer. Under current law, a knowing failure under 18 U.S.C. 922(m) to make appropriate entries in or to properly maintain the voluminous records required by the 1968 act is a felony. In light of the evidence received by the hearings on this subject, it seems perfectly logical that a penalty of up to 1 year in prison or a fine of not more than \$1,000 or both will be sufficient to encourage licensed dealers, manufacturers, importers, or collectors to maintain proper records. The most important sanction for a pattern of recordkeeping violations is left undisturbed by this bill or this amendment, namely the discretion of the Secretary of Treasury to revoke the license of a dealer who fails to act in accordance with the law. The threat of being put out of business is probably sufficient in itself to ensure compliance with the recordkeeping requirements of the act.

On the other hand, this amendment reducing a licensed dealer's recordkeeping violations from a felony to a misdemeanor will also respond appropriately to the concern, substantiated by committee hearings, that dealers have been and can be subjected to harsh felony penalties for technical violations of the rigid recordkeeping standards. This amendment will also attenuate the need for language in S. 49 excusing willful or knowing violations if committed with simple carelessness.

As I mentioned earlier the other provisions of this amendment are technical. The provisions of current law preventing a drug abuser from obtaining firearms are updated to reflect new definitions of controlled substances. Drug offenses, although perhaps implicitly included in any Senator's list of violent crimes, is explicitly added to the list of violent crimes triggering a mandatory penalty if committed with a firearm. In addition several other clarifying or technical changes are made. Some of these are necessary to conform the bill to the enactment of the Comprehensive Crime Control Act of 1984. The 1984 Crime Act made certain changes in the law which would

be unintentionally repealed by these later provisions of S. 49.

This amendment has been reviewed by the Department of Treasury for the administration which supports the single substantive and multiple technical changes contemplated by this language. At this point, I will explain briefly each of the changes contemplated by the amendment:

Brief description: This amendment contains the following elements: 1. The current felony for "knowingly" making a false statement or representation on firearm records is reduced to a misdemeanor for licensed dealers. 2. The provisions of current law preventing a drug abuser from obtaining firearms are updated to reflect new definitions of controlled substances. 3. Drug offenses are added to the list of "violent crimes" triggering a mandatory penalty if committed with a firearm. 4. Various important technical amendments are added, principally to conform S. 49 to the enactment of the Comprehensive Crime Control Act of 1984 (for example, in its current form, S. 49 repeals the recently enacted Armed Career Criminal Act.)

#### Explanation:

1. Reduction to misdemeanor. See pages 1 and 2 of this amendment changing provisions on page 21 of S. 49. In light of the concern, substantiated by Committee hearings, that a licensed dealer can be subjected to harsh felony penalties for technical or careless violations of recordkeeping requirements, 18 U.S.C. 922 (m) is reduced to a misdemeanor for licensed dealers. A "knowing" state of mind is still required for a violation, but the penalty is only a misdemeanor. Anyone who knowingly misrepresents his status to a licensed dealer in order to acquire a weapon, e.g., a convicted felon knowingly concealing his criminal record, would remain subject to the penalties of current law under 18 U.S.C. 924 (a). Imprisonment up to a year and/or a fine up to \$1000 should be sufficient to ensure that licensed dealers keep accurate and complete records. The more important incentive for a dealer to comply with these requirements is left untouched by this amendment and bill, namely the Secretary retains full discretion to revoke the license of any dealer who fails to uphold the law. The threat of losing the right to do business is probably sufficient alone to ensure compliance with recordkeeping requirements. This reduction to a misdemeanor, however, will appropriately reflect the Senate's concern that inadvertent recordkeeping violations not become the basis for harsh criminal penalties. This amendment also attenuates the need for language in S. 49 excusing any "willful" or "knowing" violation committed with "simple carelessness."

2. Redefining drug offenses. See page 3 of amendment changing provisions on pages 8 and 10 of S. 49. The existing references in the Gun Control Act (18 U.S.C. 922 (d) (3), (g) (3), and (h) (3)) to definitions of marijuana, depressant or stimulant drugs, and narcotic drugs cite repealed statutes. The current definitions of those terms appear in the Controlled Substances Act, 21 U.S.C. 802. This amendment will, therefore, clarify that these new definitions apply.

3. Drug offenses with firearm trigger mandatory penalty. See pages 3 and 4 of this amendment changing page 21 of S. 49. This will add serious drug offenses as predicate crimes for the application of the offense in

18 U.S.C. 924 (c) for using a firearm during the commission of violent crimes.

#### 4. Technical amendments:

On page 1 of S. 49, delete "of citizens" and make conforming grammatical changes because the right to keep and bear arms applies also to illegal aliens.

On page 5, insert "activity involving firearms, including" because the provision applies to importers who do more than just sell or distribute firearms, specifically, an importer also imports.

On page 5, substitute "distinguished from" for "opposed to" because the concepts described are not in opposition to each other, but only distinguishable.

On page 7, make a punctuation change, specifically change a colon to a semicolon.

On page 12, add "in a licensee's personal collection" for the sake of clarity.

On page 12, use of the word "transfer" puts the entire paragraph in the same language. There is no substantive difference between a "disposition" and a "transfer", but since "transfer" is used earlier and is a term of art in the 1968 Act, it is preferable to retain that word for the same concept throughout the bill. Moreover the words "or any acquisition" should be deleted because it is only the transfer of firearms from business inventory into a private collection that gives rise to the evasion of law this language is intended to prevent.

On page 14, replace "explicitly" with "expressly" and the name of S. 49 with "this section."

On page 14, the current wording is not clear, specifically it is difficult to understand the phrase "to inspect or examine . . . for a reasonable inquiry." This substitutes "if the inspection is reasonably related to such investigation"—a better wording of the Senate's intent.

On page 15, since "prohibited persons" is a term not defined by law, it would be better to refer directly to section 922(d), which defines specifically which persons are prohibited.

On page 15, change "or inquiries" to "or examinations" because examinations are the activities authorized by the earlier language of S. 49. Changing terminology could cause confusion. Several changes of this variety are necessary.

On page 16, make same changes as on page 14.

On page 17, the term "tracing" is not defined by the statute, this substitution makes clear that the intent of this provision is to determine from whom and to whom a licensee received and disposed of a firearm. Leaving this undefined term could lead to misconceptions about the Senate's intent.

On page 22, this section was rewritten by the Comprehensive Crime Control Act of 1984. This technical amendment clarifies the intent of the provision and makes it conform to current law.

On page 27, change "925" to "926".

On page 30, redraft the language which would otherwise inadvertently repeal the recently enacted Armed Career Criminal Act.

Mr. DOLE. Madam President, I am pleased to join in cosponsoring this amendment. In light of the concern, substantiated by committee hearings, that a licensed dealer can be subjected to harsh felony penalties for technical or careless violations of recordkeeping requirements, 18 U.S.C. 922(M) would be reduced to a misdemeanor for licensed dealers under the amendment.



A knowing state of mind is still required for a violation, but the penalty is only a misdemeanor. Anyone who knowingly misrepresents his status to a licensed dealer in order to acquire a weapon, for example, a convicted felon knowingly concealing his criminal record, would remain subject to the penalties of current law under 18 U.S.C. 924(A). Imprisonment up to a year and/or fine up to \$1,000 should be sufficient to ensure that licensed dealers keep accurate and complete records.

The more important incentive for a dealer to comply with these requirements is left untouched by this amendment and bill, namely the Secretary retains full discretion to revoke the license of any dealer who fails to uphold the law. The threat of losing the right to do business is probably sufficient alone to ensure compliance with recordkeeping requirements. This reduction to a misdemeanor, however, will appropriately reflect the Senate's concern that inadvertent recordkeeping violations not become the basis for harsh criminal penalties.

Madam President. I circulated an amendment similar to the one we are accepting today during the Judiciary Committee's consideration of S. 1030 in the 97th Congress. I continue to view this as a much needed change. I am pleased that it is being incorporated into S. 49.

Mr. KENNEDY. Madam President, the Senator from Utah has explained the amendment as I understand it.

I hope that with the understandings we have reached, the Senate will accept the amendment.

I think it absolutely essential that we do make this change, and I welcome the fact that the managers have agreed to do so.

The PRESIDING OFFICER. Have all Senators yield back their time?

Mr. McCLURE. Madam President, will the Senator from Utah yield to the Senator from Idaho?

Mr. HATCH. I yield whatever time the Senator from Idaho needs.

Mr. McCLURE. I thank the Senator for yielding.

Madam President, I would have preferred had we kept the original language and the breadth of that original language with respect to the several offenses under the 1968 act.

However, I have been trying to meet the objections of people who were concerned with that new standard which is admittedly more ambiguous than current law, because the injection of a new standard as simple carelessness is an untried and untested standard.

But I would have preferred to do it in the text of the statute rather than to depend upon legislative history which specifically says it is our intention to override the court decisions that find to the contrary.

However, the change in the level of penalty with respect to two of the three recordkeeping violations to which the knowing state of mind applies is a sufficient incentive for me to accept the amendment, and the legislative history that has now been entered by the Senator from Utah will apply to the 11 provisions of the 1968 Gun Control Act which would, under McClure-Volkmer, only require a knowing violation. Therefore, with that balance between the reduction of penalty for two of the provisions and the legislative history for the remaining nine, I can accept that compromise.

The inclusion specifically of drug-related offenses among the offenses to which the mandatory minimum applies appears to me to be not only necessary but highly desirable to make very certain that we intend that the provisions of this act extend to that type of violation as well.

I, therefore, support the amendment and urge its adoption.

Mr. HATCH. Madam President, I move the amendment.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. HATCH. We are prepared to yield back our time.

Mr. KENNEDY. Madam President, we are prepared to yield back our remaining time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Utah.

The amendment (No. 508) was agreed to.

Mr. HATCH. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. Madam President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. I thank the Chair.

Is the distinguished Senator from Massachusetts prepared to go ahead with his amendment?

Mr. KENNEDY. Madam President, I had understood that the Senator from Maryland [Mr. MATHIAS] was prepared to move forward with an amendment. We are just in the process of notifying him. I would hope that there would not be any unnecessary delay. If so, we are prepared to proceed.

So I suggest the absence of a quorum and ask unanimous consent that the time not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## AMENDMENT NO. 509

(Purpose: To continue the prohibition on interstate sales of handguns)

Mr. KENNEDY. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] for himself, Mr. MOYNIHAN, Mr. METZENBAUM, Mr. MATSUNAGA, and Mr. KERRY, proposes an amendment numbered 509.

Mr. KENNEDY. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 7, lines 8 and 9, strike out "firearm" and insert in lieu thereof "shotgun or rifle".

Mr. KENNEDY. A parliamentary inquiry, Madam President, I understand there is a time limit on this amendment; am I correct?

The PRESIDING OFFICER. The Senator is correct. There is a time limit of 1 hour, evenly divided.

(Mr. WEICKER assumed the chair.)

Mr. KENNEDY. Mr. President, I yield myself 7 minutes.

Mr. President, once again I want to stress, as we continue this debate on the question of firearm legislation, that this amendment, which I and my colleagues offer, does not change or improve upon existing law—as much as I would like to do that—rather, it merely continues the existing law on the interstate sale of handguns, while relaxing those same laws on the sale of sporting weapons, rifles, and long-guns.

As I indicated at the outset of this debate, I have been willing for many years to join the sponsors of this legislation in reducing unnecessary restrictions and regulations on the purchase and sale of rifles and shotguns for hunting and sporting purposes. But I believe we must, at a minimum, continue current law with respect to handgun sales.

Handgun control is an essential part of effective law enforcement—as yesterday's press conference by all the major American police and law enforcement groups emphasized. The ready availability of lethal, concealable handguns undermines the fundamental effort to protect citizens from violent crime. As the police said in their statements, instead of weakening handgun controls, we should be working to keep handguns from falling into the wrong hands without jeopardizing in any way the legitimate sporting interests of our citizens or their interest in self-defense.

Mr. President, we all share the basic goal of the sponsors of this bill—to

remove unnecessary regulatory burdens on the purchase of firearms by hunters and others for sporting purposes, and by law-abiding citizens seeking weapons for self protection. We should eliminate excessive redtape and regulations affecting the sale of rifles, shotguns and sporting weapons.

But we must not misuse this worthwhile goal as an excuse to weaken the law as it applies to the narrow category of handguns—especially snubbies and "Saturday Night Specials"—which have not legitimate sporting purpose and which are often used in crime.

Over the past 4 years I repeatedly tried to draw this distinction during the Judiciary Committee's consideration of this bill; Congress can—and should—deal differently with long-guns than it does with handguns.

Yet, the pending bill goes far beyond this legitimate goal. Instead, it weakens both Federal as well as State laws governing the control of handguns.

This issue is not a concern of mine alone, Mr. President. It is a concern shared by all the major police and law enforcement associations in the United States.

Let me read from a joint statement issued by them yesterday, delivered by James Sterling, acting executive director, International Association of Chiefs of Police; Richard Boyd, national president, Fraternal Order of Police; Thomas J. Iskrzycki, chairman, National Troopers Coalition; Williams Matthews, executive director, National Organization of Black Law Enforcement Executives; and Gary P. Hayes, executive director, Police Executive Research Forum

It is a statement that speaks for itself—a statement that echoes the concerns of local law enforcement officials all across this land over this bill's fundamental weakening of existing handgun control laws—and it is a statement that strongly supports this amendment.

They state:

... Unfortunately, the pending legislation would legalize the interstate sale of handguns thus circumventing state and local laws to regulate handgun commerce. This would impair the ability of state and local law enforcement agencies to prevent handguns from being acquired, carried or possessed illegally.

Although S. 49 does make some reforms which meet the legitimate needs of hunters and sportsmen, we in the law enforcement community consider it urgent that those changes not be enacted in a manner that jeopardizes law enforcement's ability to respond to the use of handguns in violent crime.

Accordingly, we urge that when the Senate considers S. 49, it amend the legislation so that current law prohibiting the interstate sale of handguns is retained.

That is what this amendment does, Mr. President.

Equally important, we urge the Senate to take advantage of this opportunity to strengthen our federal laws by accepting

the recommendation of the 1981 Attorney General's Task Force on Violent Crime and enact a waiting period to facilitate records checks for the purchase of handguns.

Those were two provisions that were included in the President's own commission for fighting violent crime.

In short, Mr. President, the law enforcement community in this country—the police officers, the State troopers, the chiefs of police, and many other law enforcement officers—have all spoken in support of this amendment to maintain existing law on the interstate sale of handguns.

From their point of view, the issue is pure and simple, it is a law enforcement issue—a crime control issue.

For those who are literally on the firing line, this is not an issue of restricting hunters or legitimate handgun owners in our society. Rather, it is an issue of keeping handguns out of the wrong hands.

Mr. President, let me conclude by saying once again that I have no objection to relaxing current limitations on interstate sales of rifles and long guns, but what possible justification is there to relaxing existing controls—which are modest already—on the sale of handguns?

We know 50 percent of all homicides in the United States involve handguns, compared to only 5 percent for rifles. We know that handguns, and particularly the "snubbies"—handguns with a barrel length of 3 inches or less—are the preferred instruments of criminals.

They are easily concealed. They have no accuracy beyond the range of a stickup. But they are lethal and a very effective tool for the common criminal.

All recent studies prove this—that there is a high correlation between the concealability of a handgun and its use in criminal activity. The most exhaustive study was undertaken by the Cox News Service 4 years ago. After months of detailed statistical investigation, they found that 2 out of every 3 handguns used in murders, rapes, robberies, and muggings were with "snubbies." Two-thirds of all handgun violence is with a "snubbie"—and handguns represent over half of all violent crimes in our society.

Why, Mr. President, would we want to ease existing laws on their interstate sale and transfer? How does making "snubbies" easier to get advance the interests of hunters and sportsmen in our society?

The answer is that it makes no sense whatsoever—and that is the message that the police chiefs and troopers tried to give us yesterday, and many days before that.

I urge my colleagues to heed their call—to view this amendment for what it is: An effort to maintain existing law enforcement tools on the sale of handguns in our society.

This is a fundamental law enforcement issue—as every Attorney General's Task Force on Crime has stated, including President Reagan's task force in 1981. If we fail to adopt this amendment, we will not only turn our backs against this long record, but against the advice—indeed, the pleas—of local law enforcement officers from across our country.

I urge the Senate to adopt this amendment that merely continues existing law—nothing more, nothing less.

For the record, Mr. President, I would like to read the statement made by Chief John J. Norton of Pittsburgh, PA, on behalf of the International Association of Chiefs of Police:

STATEMENT BY JOHN J. NORTON, FIRST VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

On behalf of the International Association of Chiefs of Police, I would like to thank you for attending this press conference. The IACP is a voluntary professional organization established in 1893. It is comprised of chiefs of police and other law enforcement personnel from all sections of the United States and more than 60 nations. Command personnel within the United States constitute more than seventy percent of the more than 14,000 members. IACP members lead and manage more than 480,000 law enforcement officers at the Federal, State and local levels. Throughout its existence, the IACP has striven to achieve proper, conscientious, and resolute law enforcement. In all of its activities, the IACP has been constantly devoted to the steady advancement of the Nation's best welfare and well-being.

Our purpose today is to request that the U.S. Senate act on behalf of the law enforcement community and the citizens of this country when considering amendments to the Gun Control Act of 1968. Specifically, we are urging the retention of the current law prohibiting the interstate sale of handguns and asking Congress to enact a waiting period for purchasers.

The IACP supports the rights of all law-abiding U.S. citizens to possess firearms, and the legitimate sporting, recreational, law enforcement and private security uses of firearms. However, current Federal, State and local laws directed at preventing the sale and purchase of handguns to various categories of proscribed persons have proven to be ineffective. At present, there exists no uniform and certain procedure to verify the eligibility. Unfortunately, enactment of the pending legislation (S. 49) legalizing the interstate sale of handguns would further impair the ability of State and local law enforcement agencies to prevent handguns from being acquired, carried, or possessed illegally. Further, the sale of handguns by licensed dealers to nonresidents of the State in which the licensee's place of business is located will make ineffective the laws, regulations and ordinances in the several States and local jurisdictions regarding such handguns.

As drafted the legislation authorizes dealers to make face-to-face firearms sales to out-of-state customers if the sale would be lawful under the laws of seller's and purchaser's jurisdictions. As a practical matter, the provision that interstate sales must meet the requirements of both States will not be applied in many sales. Handgun own-



ership laws vary not only from State-to-State but county-to-county and city-to-city. Therefore, it would be virtually impossible for a licensed dealer even with good intentions, to make sure that sales to out-of-state purchasers conform to all laws. A compilation of these laws consists of thousands of pages. Furthermore, even similarly worded statutes and ordinances may have various applications and interpretations as applied by the courts in the different jurisdictions.

Accordingly, we urge that when the Senate considers S. 49, it amend the legislation so that the current law prohibiting the interstate sale of handguns is retained.

The IACP also urges that the Senate take advantage of this opportunity to strengthen our Federal laws by enacting a waiting period for the purchase of handguns. Such a waiting period will encourage the development of effective statewide plans and programs for the screening of prospective purchasers of handguns. It will also allow law enforcement officials the time necessary to carry out these plans and conduct a records check and background investigation for handgun purchasers.

For years and on several different occasions, the IACP membership has passed resolutions urging the creation of a waiting period. In 1981, the Attorney General's Task Force on Violent Crime also recognized the need for a waiting period and recommended that the Gun Control Act of 1968 be amended to provide for a mandatory waiting period. In discussing this recommendation, the task force noted:

"There is, at present no effective method to verify a purchaser's eligibility. The dealer must know or have reason to believe that the purchaser is ineligible to receive a firearm in order to make a transaction unlawful. However, this is very difficult to prove. A person purchasing a firearm from a federally licensed dealer is required to sign a form on which he affirms by sworn statement that he is not proscribed from purchasing a firearm. This signature relieves the dealer from any liability for illegal transfer as long as he requests and examines a form of purchaser identification, other than a Social Security card, that verifies the purchaser's name, age, and place of residence."

A waiting period to confirm the aforementioned information and permit a law enforcement agency to verify the person's eligibility is sensible and necessary for effective law enforcement. In locations such as South Carolina; California; Broward County, Florida; and Columbus, Georgia, where waiting periods are in effect, officials claim great success.

Therefore, the IACP urges that the Senate favorably consider an amendment establishing a waiting period to facilitate a records check and background investigation for the purchase of handguns.

Although this legislation does make some reforms which meet the legitimate needs of hunters and sportsmen, we in the law enforcement community consider it urgent that those changes not be enacted in a manner that jeopardizes law enforcement's ability to respond to the use of handguns in violent crime.

Thank you.

So, Mr. President, I hope those Senators who are considering whether to support this legislation will really understand how those police officers, who are the frontline of American defense in terms of our homes and secu-

rity and in terms of our local communities, feel about this legislation and this particular amendment. As I said earlier, we know from recent statistics that handguns are used in more than 50 percent of the crimes of violence—either pistols, Saturday night specials, or snubbies. That has been documented in the very extensive Cox series of newspaper articles.

I ask unanimous consent it be made a part of the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### HANDGUNS: PREFERRED INSTRUMENTS OF CRIMINALS

Mr. KENNEDY. Mr. President, as sponsor in the Senate of the bill (S. 974) to curb the criminal use of handguns, I have long stressed that only criminals and assassins would be affected by this legislation—since handguns are clearly the weapons of choice among modern criminals.

Small handguns, especially so-called Saturday night specials, have no accurate range beyond a few feet. They have no other purpose except to kill and maim human beings, and to aid and abet criminal violence across our land.

This fact has been made graphically clear once again, in a series of provocative and well-researched articles prepared by reporters of Cox News Service. Their recent series underscores the social and human costs of the escalating handgun violence in our country and what the proliferation of these deadly weapons means for our society.

This series gives testimony to the urgency to limit the sale and distribution of handguns—which too easily fall into the hands of the criminals and psychopaths in our country.

Mr. President, I commend the reporters of Cox News Service for their excellent reporting on handgun violence, and its principal cause—the cheap availability of small handguns who benefit only those who have a criminal intent.

I urge my colleagues to review their findings, and ask that several samples of their excellent series—which appeared in the Miami News—be printed at this point in the RECORD.

The material follows:

[From the Miami News, Sept. 7, 1981]

#### SNUBBIES

(By Joseph Albright)

WASHINGTON.—With their slender butts and cute muzzles, they look like toys. One flick on the trigger and out barks one-third of an ounce of lead at 735 miles per hour, shaped to plow a mushroom cavity into someone's gut.

They are snub-nosed killers: a sub-species of feather-light, extra-short handguns that are inaccurate beyond the range of a card table.

As home-defense devices, they are less humane than electric stun guns, less reliable than full-sized pistols, and probably less effective than shotguns or German shepherds.

Their advantage is that they leave no unsightly bulges when they are concealed. Thus police detectives carry them in arm holsters. Store owners hide them in their belts. Mothers pack them in purses.

As this series of articles will show, snub-nosed guns—both cheap and expensive, domestic and foreign made—also have proven

to be the overwhelming weapon of choice among modern criminals. Indeed, evidence from Atlanta, Miami and 16 other cities indicates that 2 out of every 3 handguns used in murders, rapes, robberies and muggings were "snubbies"—handguns with barrels protruding no more than 3 inches beyond the cylinder.

Short-barreled guns also run through the history of American assassinations and assassination attempts. A search of historical records showed that since 1835, 10 out of 15 assassins and would-be assassins have chosen extra-small pistols in their assaults on presidents and other political figures.

The starting point for this series is a reel of computer tape imprinted with detailed descriptions of 14,268 crime guns. The guns were seized by police and federal agents in street crimes in 18 metropolitan areas during the first nine months of 1979. The records were funneled into a Treasury Department computer when local police departments called Washington to have the guns traced back to their manufacturer by contacting Treasury's Bureau of Alcohol, Tobacco and Firearms (ATF).

Under the Freedom of Information Act, Cox Newspapers obtained a copy of the tape, after confidential information on the identities on retail gun dealers and gun purchasers had been electronically blocked out. A team of reporters and researchers then sorted the traced guns by makers and models, with the aid of American Management Systems, a computer consulting firm in Rosslyn, Va.

Once assembled, the 250,000 blips of information disclosed in unprecedented detail what kinds of handguns are instruments of crime, where they come from and how long they have been in circulation.

To complete this intelligence report on the weaponry of American crime, reporters also examined 20,000 gun manufacturing and importing records and conducted 75 interviews with U.S. and foreign gun manufacturers, wholesalers, dealers, illegal gun smugglers, law enforcement authorities, legislators and pro- and anti-gun lobbyists.

The study did not cover shotgun and rifle crimes, since nearly all the trace requests involved handguns. In any event, national Justice Department crime surveys indicate that handguns account for more than three-fourths of all gun murders and assaults as well as more than 90 percent of all robberies in which a gun was used.

In describing various handguns, these articles refer to both pistols and revolvers. A pistol is a handgun whose chamber is integral with the barrel. A revolver is a handgun with a cylinder containing multiple chambers that can be discharged in succession.

The official records disclosed that:

The country's leading crime instrument was a short-barreled .22 cal. revolver assembled by the German-owned RG Industries Inc. of Miami. The company assembles the guns out of sets of parts shipped from its German affiliate, Roehm GmbH. One out of every seven handguns seized by police in street crime cases was a Roehm-origin gun, one out of twelve was a Roehm .22-cal. model. RG Industries' fastest seller, a 2-inch-barrel .22 revolver called the RG 14, was the type of gun which the FBI said was fired by John H. Hinckley Jr., accused of attempting to assassinate President Reagan last March. The gun retails for \$39.95. (The Roehm GmbH gun firm described in this story has no connection with a larger and better known German company, also called

Roehm GmbH, which manufactures plastics and pharmaceutical supplies.)

Contrary to popular impression, most street guns are not cheap, low-caliber, foreign-origin "Saturday Night Specials." Of the 15 leading crime guns reviewed in the Cox Newspapers' analysis only two—the Roehm .22 and the Tanfoglio .25 Titan—fit that exact description. Ten of the 15 leading crime guns were made in America out of U.S. gun parts. Of the American-made guns, seven were made by Smith & Wesson, Colt and Charter Arms, all makers of high-quality, relatively expensive guns. Seven of the 15 crime guns retailed for less than \$100. The eight others range from \$117 to \$330. Ten of the 15 had bullet size of .38 or .357 caliber, the rest were smaller.

The second-ranking crime instrument was the snubnosed American-made Smith & Wesson .38-cal. Chiefs Special. As the country's leading handgun manufacturer, Smith & Wesson advertises the Chiefs Special as a police "back-up" weapon. It also sells the gun to civilians through sporting goods dealers. In 1979, 1 out of 5 crime guns recovered by police was some kind of a Smith & Wesson. One of 17 was a Smith & Wesson Chiefs Special or one of its virtually identical variants. The Chiefs Special, which is less than half the weight of the traditional Colt six-shooter, sells for \$170 to \$240.

Both the RG industries .22 and the Smith & Wesson Chiefs Special are examples of snub-nosed guns that are statistically more prone to crime than average handguns. About 4 percent of the handguns in circulation are Roehm-origin .22s, but they represented 7.9 percent of the handguns traced by police at crime scenes. Similarly, Smith & Wesson Chiefs Specials make up no more than 3 percent of the stockpile of handguns in the United States. But Chiefs Specials were traced in 5.9 percent of the 14,268 handgun-related crimes.

One of 20 crime guns is a palm-sized .25-cal. automatic pistol—the Titan—selling for less than \$75. The leading source is a pair of factories in Brescia, Italy, owned by Giuseppe Tanfoglio and his four children. Pistol parts from those factories are assembled into guns by two Miami assembly plants, Firearms Import & Export Corp. and Excam Inc. Virtually identical .25 palm pistols are also made by half a dozen American companies, including Raven Arms of Industry, Calif., Bauer Firearms of Fraser, Mich., and Sterling Arms of Lockport, N.Y.

Guns manufactured by Sturm, Ruger & Co., a firm that specializes in long-barreled target and hunting pistols, are much less prone to become involved in crimes than average handguns. In 1979, the company sold 16 percent of all handguns throughout the United States—roughly the same market share it has held for two decades. Yet only 3 percent of the handguns recovered at crime scenes in 1979 were Rugers. Company president William Ruger said his concern "does not make small pocket roscoes (slang for pistol)." Asked why, he said: "Partly it was that I thought they were controversial and partly because I saw no sporting purpose in them."

Recently purchased guns are more likely to be used as crime instruments than older guns. An ATF tabulation shows 18 percent of the crime guns traced in 1979 were a year old or less. The next largest category was 2-year-old guns, representing 10 percent of the crime guns. After that, the percentages trailed off year by year—6 percent of the crime guns were 8 years old, 4 percent 9 year old. It was almost as if guns had a kind of radioactive half-life as crime weapons.

In another indication of the crime-prone tendency of smaller handguns, the main Smith & Wesson wholesaler in Miami, Sidney G. Davies, estimated that only about 1 or 2 percent of the Smith & Wessons he distributes are snub-nosed models called the Chiefs Special, the Chiefs Special Airweight and the Bodyguard. Yet statistics show that 24 percent of the 157 Smith & Wessons recovered in Miami murders, robberies and assaults were these light-framed "snubbies."

#### THE VICTIMS

The attempted assassination of Ronald Reagan will be recorded in history, but not so the names of Brett Rushing, Sondra Spearman, L. S. Spencer, and Fenwick Langlanals. All four were killed within a 57-day period surrounding the Reagan shooting, each a victim of the same type of handgun allegedly aimed at the president—a Roehm RG 14.

Rushing, 34, died on March 28, 1981, after being shot in his Memphis, Tenn., home. His wife was critically wounded. Police held Rushing's cousin, Mark Franklin Farrow, 27, in the prison ward at City of Memphis hospital.

A witness said during dinner, Rushing asked Farrow to pass the biscuits, and Farrow threw a biscuit at Rushing exclaiming, "I'm tired of you making derogatory remarks about me."

A short time later, Rushing was dead, killed by a single shot to the right side.

Ms. Spearman, 28, of Tampa also died on March 28. She was shot in the face with an RG 14 during an argument with a neighbor. Police arrested the neighbor, Paulette Parks, 31, and charged her with first-degree murder.

Spencer, 41, of Austin, Tex., was shot to death May 10 by his commonlaw wife who apparently mistook him for a burglar. Spencer was trying to open the door of the house when he was killed. Police said Maud Nicely yelled, but when Spencer did not respond, she fired a Roehm RG 14 through the door. The bullet struck Spencer in the chest.

Langlanals, 67, of Port Arthur, Tex., died on May 24, when he was struck in the chest by one of three shots fired from a Roehm RG 14. Police said the shooting occurred during a domestic quarrel at his home.

#### THE HISTORY

Small, easily concealable handguns have been an American institution for a century. Over the years they have been called "last chance guns," "suicide specials," "Lilliput pistols," "belly guns," "ghetto guns" and "the ace in the hole."

Only since the mid-1950's have they been called "Saturday Night Specials," a name said to have been coined by Detroit police to describe the weekend traffic in cheap guns from Ohio.

The first snubbe was the single-shot percussion pistol, the Philadelphia Derringer, introduced in the 1820s by Henry Derringer.

Donald Webster, the leading historian of the cheap small gun, writes: "From the early 1870s until about World War I, Suicide Specials were supplied to the public by every means possible. They were given away for cigar and later cigarette prizes; offered as presents to small boys as soap salesmen door to door."

Colt and Smith & Wesson held the initial U.S. patents on pocket-repeating pistols. When the patents ran out following the Civil War, dozens of companies sprouted up in the Connecticut Valley and elsewhere to turn out cheap copies. Of the companies that made the "Suicide Specials," the only

two still in business are Harrington & Richardson of Gardner, Mass., and Iver Johnson Arms of Middlesex, N.J.

An 1887 Sears, Roebuck and Co. catalog listed a mail-order revolver called the "Blue Jacket Number 1." The price was 60 cents.

The first American snub-noses model to achieve wide popularity was the 1895 Colt "New Pocket Revolver." Colt proclaimed in an 1895 newspaper ad: "Always ready! Perfect Safety! Absolute Accuracy!"

Both World War I and World War II brought flows of imported weapons, some of final quality and others aptly called "junkers." The flow of cheap imports grew to a torrent during the American civil rights rioting of the mid-1960s, a decade during which U.S. per capita handgun ownership jumped by 50 percent. A 1968 federal gun control law shut off imports of small pistols but left open a loophole for the importation of sets of pistol components.

Recent ATF studies show there are now about 54 million pistols and revolvers in the United States. In 1955, there were only 16 million, the bureau estimates.

There is no telling exactly how many of these are short-barreled snubbies. Ruger, who heads the second-largest U.S. handgun manufacturing company, estimated that "perhaps one-third" of 2.1 million handguns sold last year had barrels 3 inches or shorter. James Oberg, president of Smith & Wesson, said that Ruger's estimate "could be about right."

Handguns of all sizes were the instruments of 10,000 murders and another 550,000 crimes of violence, according to 1977 estimates based on a crime victimization study by the U.S. Law Enforcement Assistance Administration.

This means that in a given year, 1 out of every 100 handguns in the nation's private handgun stockpile was involved in a crime.

In a recent article for the Ford Foundation, Phillip Cook, a professor at Duke University, wrote: "If current rates of handgun violence persist, the approximately 2 million new handguns sold this year will eventually be involved in almost 600,000 acts of violent crime."

Even so, there has never been any rock-solid proof that the increase in the national handgun population has contributed to the increase in violent crimes over the last 25 years.

The closest the government has come to an official pronouncement on the question came in 1979 when a U.S. Surgeon General's report said:

"Many factors undoubtedly are involved in our high homicide rate. Economic deprivation, family breakup, the glamorizing of violence in the media, and the availability of handguns are all important . . . Easy access to firearms appears to be one factor with a striking relationship to murder. From 1960 to 1974, handgun sales quadrupled . . . During that same period, the homicide rate increased from 4.7 per 100,000 to 10.2 for the overall population—and from 5.9 to 14.2 for young people aged 15 to 24."

#### GROWTH OF HANDGUNS

Year	Handgun circulations (millions)	U.S. populations (millions)	Handguns per 100 people
1945	13	133	9.7
1950	14	151	9.3
1955	16	165	9.6
1960	19	179	10.6
1965	22	193	11.4



## GROWTH OF HANDGUNS—Continued

Year	Handgun circulations (millions)	U.S. populations (millions)	Handguns per 100 people
1970.....	31	203	15.3
1975.....	42	215	19.5
1980.....	54	226	23.9

Source: Handgun estimates from U.S. Bureau of Alcohol, Tobacco and Firearms. The figures include weapons used by the 700,000 Federal, State, and local law enforcement officers. The estimates do not reflect any estimate of foreign weapons illegally imported into the United States or U.S. weapons exported, either legally or otherwise. Population estimates from U.S. Census Bureau.

[From the Miami News, Sept. 7, 1981]

# ASSASSINS HAVE ALWAYS FAVORED SMALL, SNUB-NOSED GUNS

(By Joseph Albright)

WASHINGTON.—Down through American history, the weapons used by 10 of 15 assassins and would be assassins of political figures have been among the most readily concealable variety of pistols then available.

Here, compiled from records at a half-dozen archives, are the 10 instances when small pistols were used:

President Andrew Jackson was in the rotunda of the U.S. Capitol when an assailant, Richard Lawrence, fired two shots and missed on Jan. 30, 1835. Lawrence fired two pocket-sized percussion pistols, which he withdrew from his inside coat pocket.

President Abraham Lincoln was murdered in Ford's Theater in Washington on April 14, 1865. The assailant, John Wilkes Booth, fired a 44-cal. cap-and-ball Derringer measuring 5½ inches long.

President William McKinley was assassinated on Sept. 6, 1901, as he was about to shake hands with Leon Czolgosz in Buffalo, N.Y. Czolgosz shot him with a short-barreled .32-cal. Iver Johnson revolver.

President-elect Franklin D. Roosevelt escaped assassination on Feb. 15, 1933, while riding in an open car in Miami. The assailant, Giuseppe Zangara, fired a 32-cal. revolver. The gun, made by the U.S. Revolver Co., had a 5-inch barrel.

Sen. Huey Long (D-La.) was assassinated in the rotunda of the Louisiana State Capitol on Sept. 8, 1935. The murderer, Carl Austin Weiss, used a small .32-cal. Browning automatic pistol.

Sen. Robert F. Kennedy was fatally wounded in a Los Angeles hotel on June 5, 1968, the night of the 1968 California primary. Sirhan Sirhan, the assailant, fired a snub-nosed, 22-cal. Iver Johnson revolver with a 2.5-inch barrel.

Gov. George Wallace of Alabama was wounded while campaigning at a Laurel, Md., shopping center on May 15, 1972. His attacker, Arthur Bremer, fired a snub-nosed Charter Arms .38-cal. Undercover revolver with a 2-inch barrel.

President Gerald Ford escaped injury on Sept. 22, 1975, when Sara Jane Moore fired a shot as Ford was leaving a San Francisco hotel. Her gun was a 32-cal. Smith & Wesson Chiefs Special with a 2-inch barrel.

San Francisco Mayor George Moscone was murdered in his office on Nov. 27, 1978. The assailant, former city supervisor Dan White, fired a .32-cal. Smith & Wesson Chiefs Special with a 2-inch barrel.

President Ronald Reagan survived an attempted assassin's bullet outside a Washington hotel on March 30, 1981. The gun the FBI said was taken from the accused attacker, John W. Hinckley, Jr., was a .22-cal. RG 14 revolver with a 2-inch barrel assembled from German-made parts by the Miami-based RG Industries Inc.

Following are five other cases involving other types of assassination weapons:

President James Garfield was shot in the back at a train station in Washington on July 2, 1881, and died the following September. The assassin, Charles J. Guiteau, fired a .44-cal. British Bulldog, a heavy-framed revolver of unknown barrel length.

Former President Theodore Roosevelt was shot and seriously wounded while campaigning for the presidency in Milwaukee on Oct. 14, 1912. The assailant, John Schrank, fired a heavy-framed .38-cal. Colt revolver that was built on a .44-cal. frame. The barrel length is unknown and the gun has been lost.

President Harry Truman escaped death on Nov. 1, 1950, when two Puerto Rican nationalists Griselio Torresola and Oscar Collazo, shot their way into the Blair House in Washington, where Truman was living while the White House was being renovated. The guns taken from the attackers were a German Luger pistol and a Walter P-38 pistol, both full-sized handguns.

President John F. Kennedy was assassinated while riding in a motorcade in Dallas on Nov. 22, 1963. The attacker, Lee Harvey Oswald, fired a mail-order Mannlicher-Carcano rifle from the window of the Texas School Book Depository.

President Gerald Ford escaped assassination on Sept. 5, 1975, in Sacramento when Lynette (Squeaky) Fromme aimed a pistol at him as Ford reached out to shake her hand. The gun was a full-sized Colt 1911 Army model .45-cal. automatic pistol, which she had secreted under her flowing dress.

[From the Miami News, Sept. 7, 1981]

# THE ROEHM CONNECTION—W. GERMAN GUN PLANT CONCERNED ITS WEAPON CREATING A BAD IMAGE

(By Henry Eason)

SONTHKIM, WEST GERMANY.—On the outskirts of a Swabian village that rises in medieval quaintness from a sea of swaying wheat of hops, machines roar in a factory that made the parts of the gun which the FBI says was used to shoot President Reagan.

At lunchtime, a siren blares with a sound like a World War II air raid warning. Workers leave tidy, squat, modern buildings, pass under the "Roehm" sign above the plant gate and picnic on the grassy bank of a stream just beyond the employees' parking lot.

The setting is far removed from the street violence in America, where the products of the workers' labor are referred to by police authorities as Saturday Night Specials.

Roehm.

It is a name which, to German customers, means quality drill chucks and other machine tools. Tool and machine-making factories which branch off from the Sontheim-based Roehm GmbH company are in West Germany, France, Italy, Brazil, Denmark and Great Britain. Roehm is a major international competitor in the machine tool field, with sizable sales to American industry. (The company described in this story has no connection with another German company, also called Roehm GmbH, which manufactures plastics and pharmaceutical supplies.)

Roehm also stands for target pistols and blank pistols throughout Europe and in other countries, where handgun control laws strictly regulate concealable pistols and revolvers that use live ammunition.

It is in America that Roehm's cheap .22-cal. revolvers and other live ammunition

handguns attained notoriety long before John Hinckley Jr., was indicted on charges of firing one into the president of the United States.

In 1979, Roehm-made .22-cal revolvers were the instruments in 1 of every 12 street crimes in which police found a handgun, a computer study by Cox Newspapers of handgun crimes in Atlanta, Miami and 16 other cities showed. No other Manufacturer's gun was so frequently found at crime scenes.

As a result of worldwide publicity on its gun because of the assassination attempt on President Reagan, the Roehm family says it had decided to scale down production and sales of its least expensive guns.

Guenther Roehm, a principal officer and stockholder in Roehm GmbH and a part-owner of RG Industries Inc. of Miami, which assembles the cheap handguns, said that continuing to make revolvers such as the RG 14 "is not good for us."

In the first interview granted by any official of the company in more than a decade, Roehm said he is concerned about what he called "an image problem"—one that might give Roehm GmbH a bad name with its machine tool clients and with customers interested in the more expensive handguns that Roehm also sells.

Roehm is a tall, patrician figure who, at 56, has the polished manners of a European diplomat. He speaks English accurately, but haltingly, and was interviewed with the aid of his export manager, Karl Mack.

He is descended from generations of industrialists in Zella Mehlis Suhl, in what is now East Germany. After World War II, he recalled, the Roehm family's factories were in ruins.

The "Americans picked us up because they were not interested to have good companies with high level of production in the East Zone (under Soviet control). So they say take your technical people along with you . . . So we came to a camp in Heidenheim (near Sontheim), and the Americans gave us food . . . So we looked around and . . . we found a small room and we started making our tools again."

The old customers soon returned to Roehm joined by new customers. Some Americans came in the 1950s and interested the Roehms in manufacturing inexpensive handguns for the market in the United States. It was a good market.

Then, as Roehm explained, when the gun control movement gained strength in the United States and cheap exports were banned in 1968, the Roehms became involved in producing some handgun parts in Sontheim which were added to other parts in Florida to make complete handguns that could be sold legally in America.

"So what you want to know," Roehm said, anticipating the question, "is do we go into this cheap business or do we intend to go the other way?"

"We want to go in the other way. I have been (to Florida) four weeks ago and I explained to my people there, I want to make better guns, guns I can sell in five, six, eight years in the same way, good guns. We change the finish. We made more precision in the parts and so on. Sometimes the Americans want to go in another way (to reduce cheap handguns)."

Roehm would not say directly how he felt about one of the guns made by Roehm and RG allegedly being used to shoot President Reagan, but export manager Mack responded.

"Yes, we heard about it. Sorry for it," Mack said.

He elaborated. "This man could have attacked the president with a bomb or a knife or anything . . . Somebody can make crimes with anything. Of course, it's easier to use a gun for crime."

Mack said he assumes that "most of the guns we make are just used for protection," but added, "It can be that also some guns are also used for crime."

[From the Miami News, Sept. 7, 1981]

#### GUN FIRMS COMPETE IN AN ARMS RACE

(By Joseph Albright)

SPRINGFIELD, MASS.—Few outside the gun business have heard about the arms race between the Chiefs Special, a palm-sized .38 revolver made by the long-established Smith & Wesson Co., and a look-alike weapon called the Undercover, made by the up-and-coming Charter Arms Corp.

Yet the collateral damage includes:

Alabama Gov. George Wallace, shot and paralyzed with an Undercover in 1972.

President Gerald Ford, nearly assassinated by a Chiefs Special in 1975. (Sara Jane Moore pulled the trigger but missed.)

San Francisco Mayor George Moscone, murdered with a Chiefs Special in 1978.

Ex-Beatle John Lennon, shot and killed with an Undercover in 1980.

Washington cardiologist Dr. Michel Halberstam, murdered with a Chiefs Special in 1980.

Some Chiefs Specials and Undercovers were originally sold to civilians in gun shops with no more paperwork than with any other handgun.

But most, say the presidents of both companies, were sold either to police departments for detectives, or to individual uniformed officers who wanted the tiny, hard-hitting guns as "backups" for their service revolvers.

As it turned out, the qualities that appealed to law-abiders have also turned the Chiefs Special and the Undercover into a Cadillac category, coveted by discriminating thugs who would prefer not to use poorly made, small-caliber "Saturday night specials."

In 1979, 5.9 per cent of all handguns recovered in violent crimes in Miami and 17 other cities were Smith & Wesson Chiefs Specials, according to a computer analysis of federal gun-tracing records by Cox Newspapers. Carrying the numbers one step further, there is reason to believe the Chiefs Special in civilian hands is about three times as likely to be used in a crime as a typical handgun.

Here is the chain of statistical evidence suggesting that the Chiefs Special has a higher-than-normal crime rate:

When you add up the serial numbers that the company has assigned to light-frame guns—nearly all of which have been Chiefs Specials—the total is roughly 1.5 million since 1950. No more than one-third of those are still in police hands. Divide the remaining two-thirds (one million) in civilian hands by the total United States stockpile of about 50 million civilian-owned handguns. Results: only about 2 per cent of all civilian-owned handguns are Chiefs Specials, but they are 5.9 per cent of all the handguns involved in violent crimes.

Further calculations show that the Charter Arms Undercover is also about three times as likely to be used in a crime as a typical handgun. There are about 600,000 Undercovers in circulation. One-third of these are in police hands; the remaining

400,000 are in civilian hands. They make up 0.8 per cent of the civilian handgun stockpile, yet 2.7 per cent of all the handguns recovered in violent crimes were Undercovers.

Smith & Wesson president James L. Oberg was asked why the company sells small handguns, in light of studies by the Federal Bureau of Alcohol, Tobacco and Firearms showing the prevalence of short-barreled guns as crime instruments.

Oberg replied: "I sell the guns that the market is demanding. We don't have any category for people who are going to keep a weapon in their drawer, but we know they do."

Some of his friends have told him they are reluctant to keep full-sized handguns in their homes, Oberg explained.

When asked how Smith & Wesson determines its "product mix" of standard and short-barreled handguns, Oberg said: "I would have to say that we are focusing on dollars more than anything else. Most of our motivation of what we do here is to supply dollars to our stockholders. For us, a great deal of the motivation is to run a profitable company."

After the interview, Oberg mailed a revised version of that statement: "Our purpose is to satisfy the needs of our customers with products which emphasize quality, safety and service. Our mix also has to consider producing an adequate return for our shareholders."

Gunter W. Bachmann, a Smith & Wesson vice president, said the company has no way of knowing whether small handguns such as its Chiefs Special are more likely to be used in crimes than larger handguns.

"Let's face it, they are all concealable," he said.

At the Charter Arms plant in Stratford, Conn., company president David Ecker said he feels "pretty sick" whenever he hears that a Charter Arms Undercover has been found at a crime scene.

"I know I felt a great sigh of relief on hearing that our product wasn't used (in the attempted assassination of President Reagan)," said Ecker. "I do not like to see any of our products used in that way."

One of the roots of the rivalry over the high-class, short-barreled gun market was a decision by New York City police in the late 1940s to arm women officers with an experimental light-frame revolver.

Since then, the rivalry has been fed by two unrelated factors. One was that the basic patents for small handguns expired in the 19th century, leaving a small arms manufacturer virtually no protection against plagiarism in gun designs. The other was the rioting that spread from Watts to Harlem to Detroit in the mid-1960s, generating a huge market for "self-defense" handguns.

In January 1949, a story in the Springfield, Mass., Union recorded a decision by Smith & Wesson, the city's second-largest employer, to begin production of a new so-called light-frame revolver for policewomen in New York.

"The New York police girls carry these guns in shoulder holsters which outwardly appear to be shoulder bags," the newspaper reported. "The light-frame weapon is widely popular among sporting clubs and shooting ranges."

The new version weighed only 19 ounces. Its butt was as skinny as an umbrella handle. The cylinder was drilled for only five .38 cartridges since it wasn't big enough around for six holes. With its 2-inch barrel,

the gun was only 6.5 inches long. It fired with a kick that left the wrist tingling.

The Colt Firearms Division had been selling policemen a similar-looking, slightly heavier .38 snub-nosed revolver, called the Detective Special since 1927. For the civilian sector, Colt sold limited numbers of a comparable snub-nosed gun it called the Bankers Special.

And Smith & Wesson was already marketing a rival called the Terrier. A 1952 company catalog said, "This little gun is to be found in a great many homes where it represents a unit of protection for the citizen and his family." It looked like the gun developed for the New York policewomen, but it wasn't as sturdy.

The Smith & Wesson sales force broadened the horizons of the policewomen's revolver by introducing it at a 1950 conference of the International Association of Chiefs of Police in Colorado Springs. As part of the promotion, police delegates were asked to vote on a name for the gun.

"When the votes were counted, the most commonly suggested and appropriate name was the .38 Chiefs Special," Smith & Wesson historian Roy Jinks has written. "The name was officially adopted."

The 1952 Smith & Wesson catalog brimmed with enthusiasm:

The Chiefs Special was a small sideline for Smith & Wesson, the nation's leading pistol manufacturer. Little effort was made to push snub-nosed gun sales to civilians. At the same time, Colt was content to sell its Detective Special largely to policemen.

There was an unfulfilled demand, by 1963 Douglas McClellan realized it. McClellan, a young draftsman who had worked at Colt Industries and three other Connecticut gun factories, set out to design a competing snub-nosed gun. In late 1964 he displayed his first prototype to a few gun columnists at a National Rifle Association convention in Los Angeles.

It was to become the basis of Charter Arms, a new company 75 miles down the Connecticut River valley from Smith & Wesson. Initially, its only product was a snub-nosed .38 revolver weighing three ounces less than the Chiefs Special. At \$55, it was \$17 cheaper than any snub-nosed gun in the Smith & Wesson arsenal.

In a press release to gun writers, Charter Arms explained that the purpose of the "Undercover" was to satisfy a need on the part of "all law enforcement officers and homeowners."

"The new (Undercover) was well received," a writer for Guns & Ammo magazine recalled later. "Even fussy handgunners were soon admiring and buying the all-steel compact."

Charter Arms picked a fortuitous time to enter into the gun market. As Ecker, the company president, recalled: "You had a terrific civil rights problem, with riots all across the country. There was a terrific boom in firearms sales. So any firearm that was being manufactured or imported was being sold."

William B. Grunn, then Smith & Wesson's president, decided he could not ignore the new Undercover.

A clipping from Gunsport Magazine, found in the military history collection of the Smithsonian Institution, described how the country's No. 1 handgun manufacturer reacted:

"Back at the Springfield ranch, the S & W ramrods took a dim view of the business they were losing and decided to sew up the commercial market again by hustling



through another production run of 18,000 new Chiefs Specials. Another source said it was three runs of 12,000 each. . . .

The GunSport writer, Jan Stevenson, quoted a Smith & Wesson official as saying: "It's true, we are making Chiefs Specials again, and we're putting them on the market as fast as we can."

Today, Smith & Wesson declines to give out production figures for its snub-nosed gun. But from a look at the pattern of serial numbers assigned to Smith & Wesson light-frame guns, it is obvious that the company boosted its production of Chiefs Specials in the years after the Undercover came to market.

A chart of serial numbers published in Jinks' "History of Smith & Wesson" a glossy volume for gun fanciers, indicates that the factory assigned an average of 39,000 serial numbers a year to light-frame revolvers, principally the Chiefs Special, in the 1950s and 1960s.

In a 12-month period ending in 1970, the company used 100,000 light-frame serial numbers. After that, light-frame serial numbers were assigned at the rate of at least 75,000 a year.

Another escalation in the snub-nosed arms race occurred in March 1968 when Smith & Wesson introduced an even more awesome weapon: the world's smallest .357 magnum revolver.

Smith & Wesson had been selling heavy, long-barreled .357 magnums since 1935, when it managed the publicity coup of presenting the first model to FBI Director J. Edgar Hoover. A newspaper clipping of the time proclaimed that film stars Gary Cooper, Clark Gable and Franchot Tone were also among the owners of "the Big Bertha of the handgun field."

A .357 magnum cartridge is one-eighth inch longer than a standard .38 special bullet, although they are virtually the same diameter.

The magnum contains enough extra gunpowder to exert 40,000 foot-pounds of pressure on the bullet, instead of 17,000 foot-pounds for a normal policeman's bullet. That means a .357 magnum can blast through a wall and still kill someone.

Smith & Wesson began efforts to shrink the frame of .357 magnum guns in 1954, at the suggestion of Bill Jordan, then a marksman with the U.S. Border Patrol.

"Until this date . . . no company had ever attempted to perfect a small frame for this cartridge," wrote company historian Jinks.

The result was the Smith & Wesson Combat Magnum, a medium-framed revolver with a standard 4-inch barrel. Jordan, appearing on the 1955 television show "You Asked For It," held up the gun and called it "the answer to a peace officer's dream."

After what Jinks has described as "considerable encouragement from plainclothes law enforcement personnel," the company designed an even smaller .357 magnum during the 1960s. When it was offered to the public in the 1968 catalog, this 31-ounce miniature cannon was fitted with a 2.5-inch barrel, a rounded butt for easy concealment, and quick-draw sights.

Back at Charter Arms, McClennahan and Ecker devised what amounted to a counter-escalation—the Charter Arms .44 Special Bulldog. It was 11 ounces lighter than the miniature Smith & Wesson Combat Magnum, although the dimensions were about the same. It fired a bigger bullet, but one not fast enough to be classified as a magnum.

In a glowing review for the magazine *Guns & Ammo*, pistol connoisseur Clair

Rees said the Charter Arms Bulldog .44 "threw 60 percent more lead" than ordinary .38 caliber handguns.

"The new gun," Rees wrote, "appealed instantly to many pistolers who had a need for a relatively small, easily concealed revolver but who lacked faith in the performance of .38 special loads for serious social use."

A Cox Newspapers computer analysis of gun records found that only about 0.2 percent of guns recovered in 1979 street crimes were Charter Arms Bulldogs—and only 0.8 percent were S & W Combat Magnums.

One who will be remembered for his "serious social use" of a Charter Arms Bulldog is David Berkowitz, now serving a 315-year sentence as New York's "Son of Sam" killer.

[From the Miami News, Sept. 7, 1981]

#### POWERFUL GUN LOBBY ROLLS OVER OPPOSITION

(By Cheryl Arvidson)

WASHINGTON.—It comes as no surprise to find the gun lobby loudly opposing proposals that would impose restrictions on shotguns and rifles, require registration or confiscation of firearms or limit availability of the quality handgun.

But the 2-million-member National Rifle Association also is on the front line defending the inaccurate, often poorly made small handgun—a stand seemingly inconsistent with its 110-year history of promoting firearms safety, marksmanship and hunting. This strident opposition to handgun control has effectively eliminated any chance for national legislation to restrict small handguns this year, next year and probably for years to come.

The National Rifle Association, with a \$30 million-plus annual budget, is the richest and most influential pro-gun organization in the country, and it is also the most moderate of the three groups that constitute the gun lobby. Headquartered in Washington, the association has a separate lobbying branch, the Institute for Legislative Action, which spends \$4 million each year to stop any attempt at gun control, no matter how modest.

Operating out of its own office building complete with gun museum and target range, the association successfully manipulates the scenario that plays out year after year: gun control bills are introduced and left to die in subcommittees without any serious consideration because they just can't be passed in the House or Senate.

"I don't think I've got a snowball's chance in hell to pass it. Congress is just too conservative," said Rep. Marty Russo, D-Ill., about a bill he's been introducing since 1976 to prohibit the sale and manufacture of small handguns, cheap or expensive, by setting length restrictions on pistols and revolvers.

"If the president getting shot and the pope getting shot doesn't rattle these guys, nothing will."

The association defends the snub-nosed handgun as part of its overall goal of preserving the right of citizens to keep and bear arms. With its claims that firearms ownership is a fundamental constitutional right under the Second Amendment, the association sees no middle ground.

"I think that there is room for compromise," Neal Knox, executive director of the association's Institute for Legislative Action, says with a smile. "There are a lot of gun laws on the books I'd like to get rid of. I'm willing to compromise away some of those."

In fact, the association's top priority is passage of a bill that would weaken or eliminate many of the federal gun statutes now on the books. The McClure-Volkmer bill, named after its sponsors Rep. Harold Volkmer, D-Mo., and Sen. James McClure, D-Idaho, is being promoted by the association as getting government off the backs of law-abiding American gun owners and gun dealers. Even though certain provisions concern federal lawmen, the bill has a good chance of passing.

"The handgun is a symbol," explains Rep. John Ashbrook, R-Ohio, one of two congressmen on the association's board of directors. "It's a firearm. It would be the same thing if it were a rifle. The motives, intentions and past records of those who want to take away the handgun are not trusted by those who own the handguns."

The association is opposed to closing a loophole in the 1968 Gun Control Act that, while banning imported handguns, allows foreign parts for "Saturday night specials" to be imported and put onto American-made frames. It is equally opposed to more drastic legislation—offered by Rep. Peter Rodino, D-N.J., and Sen. Edward Kennedy, D-Mass.—that would ban "Saturday night specials" and require a waiting period and police check before any handgun purchase.

As a result, critics claim, the gun lobby has so muddled the water that a rational policy cannot be debated, let alone adopted, at a national level.

"The NRA, unlike any other group in the country, has just made mincemeat of the legislative process," said Sanford Horwitt, a consultant to the National Coalition to Ban Handguns.

"You can't get any kind of reasonable public policy on anything having to do with handguns, which is clearly a problem in this country, because this group refuses to deal with anything that begins to approach a reasonable public policy," Horwitt continued. "Because they have taken this extremist position on handguns, it has ended all discussions of it in the legislative arena. It's more than being single-minded. It's almost no-minded."

With federal channels closed, gun control advocates are coming to believe that local actions—such as a tough anti-gun ordinance recently passed by Morton Grove, Ill.—may offer their best hope of restricting deadly handguns.

Although the Federal Bureau of Alcohol, Tobacco and Firearms has found that most guns used in violent crime had barrel lengths of 3-inches or less, the association sees no link between small guns and crime.

"They're trying to blame the gun for the crime, and they're trying to prohibit all guns," said Knox. "There is no evidence whatsoever that the population of guns, small or large, has any effect on crime."

Russo, a former state attorney for Cook County, Ill., doubts handgun control measures would stop the hardened criminal, but he is convinced that getting rid of small handguns would stop "the heat-of-passion-type situation, the argument, the spontaneous situation."

"There is no other reason why a small, concealable handgun is made in society except to shoot someone," says Russo. "The reason it is made small is so no one knows you've got it on you. With my bill, anyone could buy a gun and keep one at home, it would just be a larger size. It would make your pocket sag a little bit, it would stick out of your trousers. Somebody would see it."

"I've shoot bears with handguns with a 3-inch barrel," said Rep. John Dingell, D-Mich., when asked why the association defends the small handgun. He is the other member of Congress on the board of directors of the association. "When I hunt elk, I carry a small .22 automatic to shoot grouse for the pot or finish off elk."

"I'd like to sell tickets to the confrontation, and I'd also like to bet on the bear," answered Horwitt. "The fact is no one goes around shooting bears with a 3-or 4-inch handgun. It just isn't done. If we're down to that as to why someone refuses to support a ban on handguns, we're down to some petty flaky people."

Knox, asked about the "redeeming social value" of a small handgun, cites his wife's Smith & Wesson Bodyguard, which he gave her for Mother's Day in 1958.

"I've carried my wife's... gun with me many a mile while hunting, as a second gun," he said. "I've carried it with me while fishing. I've carried it with me while flying because I did all my flying out in Arizona, and that's some rough country, and a person who doesn't prepare himself... is making a mistake."

Knox, who as chief association lobbyist earns \$63,000 a year, calls the small handgun "the best possible gun" for protection.

"In the case of a small gun, you can have that thing concealed right near the door, in a book where it's not visible to your neighbors coming in. They'll think you're a little bit strange if you've got a shotgun sitting in the corner by the door. A shotgun by the door, loaded, in my estimation is far more hazardous from an accidental standpoint than is a handgun in a nice, small place of concealment."

Gun supporters also say a small gun is easier for women to shoot, and that the poor can afford a "Saturday night special," but not the better-made—and more costly—"snubbies" and full-sized handguns.

"Looking at it from a racial standpoint," says Ashbrook, "the handgun is the only defensive weapon a poor person can afford. You'd think poor blacks, as victims of crime, would want handgun control, but they don't."

"Blacks had handguns solely for defense more than any other group," observes Knox.

Blacks also are the victims of more handgun crimes, but Knox said that is because "blacks commit more crimes against blacks," not because of the guns.

That reasoning is not upheld by the Congressional Black Caucus, which consistently votes as a bloc against the gun lobby.

Money and strong citizen support explain both the association's power and the trouble encountered by anti-gun groups such as Handgun Control Inc. and the National Coalition to Ban Handguns.

The association's members will contribute money when asked, write lots of letters and make telephone calls to their congressmen or senators to protest restrictive legislation or government regulations. They turn out in large, vociferous numbers at rallies or public meetings where gun control is being discussed. The association's budget is 30 times larger than that of Horwitt's National Coalition to Ban Handguns.

"They'll vote on this issue," said a former aide in the Carter White House. "I daresay there's no issue on which you and I would vote, no one issue alone. That's what makes these groups strong."

Some anti-gun lobbyists contend the power of the association is overrated, but

the group's reputation is so formidable that whether the power is real becomes almost irrelevant.

A House staffer recalls lobbying congressmen on gun control legislation and citing public opinion polls showing a majority of Americans in favor of handgun control, only to have the members respond, "It doesn't matter. If they (the gun lobby) only control 2 or 3 per cent of the vote in my district, that's enough because the margin (of victory) is only 5 or 6 per cent."

Russo believes much of the association's strength comes from its ability to convince members that "as soon as they take the handguns, the next thing is your shotguns, then the next thing you know, the Russians will come and you won't have any way of defending yourselves."

"They portray, inaccurately I think, every issue as if the question is whether or not Mrs. Jones who lives in rural Florida is going to be able to have her gun to protect herself from the night rider," said Richard Davis, who was the Treasury official overseeing the Bureau of Alcohol, Tobacco and Firearms in the Carter years.

The association and other pro-gun groups often do raise the confiscation spectre in their mailings. Anti-gun groups point to this in criticizing the association for misrepresentation and distortion, but Knox says that confiscation is exactly what handgun control is all about. The confiscation argument sells well among gun owners because of a basic distrust of government.

"If we only thought (handgun control) was an honest effort to do this and nothing more, we might agree," Ashbrook said.

Mr. KENNEDY. Only about 5 per cent of the homicides in the United States are from long guns, rifles, or shotguns. So we are prepared—at least this Senator is prepared—to see that we remove some of the kinds of restrictions that exist in current law that hinder or cause some inconvenience to hunters if we are able to keep existing law on handguns, snubbies, and Saturday night specials.

Mr. President, I hope there are those who will be listening in their offices—our colleagues in the Senate—to this debate this afternoon because one of the reasons that this legislation is on the floor is because those who support it want to reduce red tape for all those local gun dealers all across this country. The supporters of this bill want to reduce the burden on those small shopkeepers from the Federal hand and from Federal intervention or inspection. But without this amendment, what does this legislation provide with regard to handguns?

Without this amendment, this legislation, on page 7, says in deleting clause A, paragraph 3, and inserting in lieu thereof the following: (a) Shall not apply to the sale of, delivery of any firearm to a resident of a State other than a State in which the licensee's place of business is located if the sale and delivery and receipt fully comply with the legal conditions of sale in both such States; that is, where it is legitimate in the State where the sale will take place and legitimate in the State where the individual is from.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. I yield myself 5 more minutes.

Let's say that dealer makes the mistake. Say he does not know, for example, that if he sells to somebody in Maryland that there is a 7-day waiting period, or in Nevada at the current time if that person lives in Las Vegas, it is 72 hours, or if the person is from Wyoming it is a 48-hour time limitation, et cetera.

Then what happens to that dealer? It says over here on page 21 that anyone who violates the provisions of this chapter shall be fined not more than \$5,000, or imprisoned not more than 5 years. That person commits a felony.

If you do not accept this amendment, you are saying to every dealer out in the West and the South that if they do not know everything that happens to be in these two books at least as of the time that they were produced—let the record show that there is more than 2,000 pages here—if they do not know it, they can be penalized for \$5,000 and commit a felony.

I hope we accept this amendment, which responds to the legitimate law enforcement issues that have been raised by those that know more about it than any single Member of this body and who are, day in and day out, faced with the force of violence in our society—and we hear a great deal about that issue internationally and locally, they know what it means, and they have seen their colleagues that have been brutalized and murdered. They know the families that are growing up with orphaned children. They understand that issue, and they are here to tell us that we ought to retain the existing law which they know, understand, and which has been tried and tested.

So, Mr. President, I just hope that in our concern both for law enforcement, in our concern about the regulatory burden that we are placing on individuals dealers, and in our concern about the role of the Federal Government reaching out and providing inspections into all of these little, small towns, communities, and dealers all over this country—and the dangers which they are going to have, the burden that is going to be placed upon all of them—that the Senate go on record and support this amendment.

Finally, I want to stress, Mr. President, that this amendment applies only to handguns—the snubbies, the Saturday night specials. There are no hunting purposes whatsoever—no hunting purpose whatsoever—for a Saturday night special. I have listened to those Members of the Senate try to make that case in the quiet of a committee meeting, and I have heard the snickers of those who would support



such a Senator's amendment because there is no legitimate sporting purpose for a snub. You cannot hit anything accurately beyond a few feet. Then we hear about how Bambi is hurt in the woods and they have to go up and use a Saturday night special in order to save Bambi from its misery. I hope we are not going to hear that laughable argument on the floor of the U.S. Senate this afternoon, Mr. President.

The final point that I will make is that we will hear very shortly how we cannot really keep pistols and Saturday night specials out of the hands of the criminals. So why should we inconvenience the legitimate sportsman? You can use that argument. But I hope they will address that and maybe suggest some changes in the law's controls on prohibitive drugs. You cannot stop illegal drugs in our society. Then why not make those illegal drugs available to others as well? The American people have too much common sense to swallow such arguments, Mr. President. We do not possibly suggest because we pass a law against murder that we stop all murders. Of course we do not.

But what we hope to do is be able to reduce to some extent, and the chief enforcement officials understand this issue best, and understand it so well that they believe we can have some impact to some extent in reducing the handgun terror that exists in so many parts of this country and on the city streets of this Nation. That is really what we are debating here this afternoon. I hope this amendment will be accepted, and I reserve the balance of my time.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I would also like to explain why I intend to oppose the amendment which will retain the current ban on interstate sales of handguns. As is typical of many provisions of the 1968 law under revision today, the ban on interstate sales of firearms is far more restrictive than necessary to accomplish the objectives of the law. The purpose of the interstate sales restrictions in the 1968 act was to guarantee compliance with firearm laws in the States. It was feared that a State's firearm laws could be easily circumvented by buyers who crossed State lines to acquire weapons they could not purchase in their own State of residence. To prevent circumvention of State law, the 1968 act, as I have mentioned, prohibited almost all interstate sales. The exceptions were very narrow and specific. Unless you were in another State and your sporting gun was lost or stolen or you were in a State contiguous to your residence that specifically by law authorized such sales, you could not purchase that perfect firearm for which you

had shopped for years if you happened to find it while traveling out of State.

This harsh restriction is simply not necessary to uphold the original purpose of the 1968 act. S. 49 permits out-of-State purchases, but also ensures that the laws of the buyer's as well as the seller's State will be scrupulously obeyed. S. 49 requires those interstate sales of all firearms—deer rifles, shotguns, and handguns—to comply with requirements that will guarantee that the objective of the 1968 act is met; namely, that all State laws will be upheld. To accomplish this, S. 49 requires the following:

First, all interstate sales of firearms, including handguns, must take place over the counter. This allows the dealer to identify and make inquiries of the purchaser, thus preventing sales to felons and others prohibited from acquiring firearms.

Second, all interstate sales of firearms, including handguns, must be recorded in the dealer's records, thus permitting tracing.

Third, all interstate sales of firearms, including handguns, must comply with the laws of both the buyer's and the seller's State. The licensed dealer is legally responsible for knowing those laws which are printed in the Treasury Department manual distributed to all dealers. The dealer is held accountable for any sales in violation of applicable State or local laws. And the dealers understand these books and can easily turn to the pages that will define these laws and can easily explain them.

These requirements of S. 49 carry out the objective of the 1968 act. State and local laws may not be circumvented by interstate purchases. A State or locality remains free to impose very strict controls on handguns or other firearms, and those restrictions will be upheld. In that respect, the amended law will not differ from current policy. At the same time, law-abiding citizens, citizens whose purchase of a firearm would comply completely with the laws of their residence, are not barred from purchasing a firearm out of State by a Federal regulation that has absolutely no effect on arms control.

Prohibiting a citizen from purchasing a firearm in another State that he could buy at home has no effect whatsoever on crime. It is needless restriction on lawful firearm ownership and acquisition. And it is not necessary to uphold the intent of the 1968 act. For that reason, I will oppose this amendment.

I would also like to note that the Department of the Treasury, which is charged with the responsibility of ensuring that the objectives of the 1968 act are carried out, supports the view that the restrictions contemplated by this amendment will not advance crime control. In a June 24, 1985 letter

to me in my capacity as manager of this bill, the Department states:

The administration opposes this proposal. We believe that the controls imposed by S. 49 with respect to licensee's sales of handguns to out-of-state residents are adequate from a law enforcement standpoint.

The letter then recapitulates the requirements of S. 49 as I have just done. Thus, S. 49, according to the Department with expertise in firearms enforcement, is sufficient for crime control purposes and this amendment is unnecessary. I would add furthermore that the needless additional restrictions of this amendment amount to burdensome regulation of otherwise lawful firearm transactions.

I ask unanimous that the letter dated June 24, 1985, from the Department of the Treasury, signed Bruce E. Thompson, Jr., be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,  
Washington, DC, June 24, 1985.

Hon. ORRIN G. HATCH,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR HATCH: The Department is pleased to respond to certain issues and possible amendments expected to arise during debate on S. 49, a bill "to protect firearm owners' constitutional rights, civil liberties, and right to privacy."

Maintaining current interstate controls over licensee's sales of handguns. The Administration opposes this proposal. We believe that the controls imposed by S. 49 with respect to licensee's sales of handguns to out-of-state residents are adequate from a law enforcement standpoint, e.g., sales must be made over-the-counter, purchasers would be identified and inquiries made concerning their eligibility to purchase firearms, sales would be reflected in licensee's records kept pursuant to current recordkeeping requirements, and the licensee would be responsible for knowing applicable State and local statutes prohibiting the sale, and would be held accountable under Federal law for sales violating such State and local laws. Furthermore, a State or municipality may, if it chooses, impose more stringent regulations on handgun transactions by its citizens.

Requirement for Notice before inspection of importer, manufacturer, dealer and collector. S. 49 proposes that importers, manufacturers, dealers and collectors be provided notice by ATF before an annual compliance inspection is made. This compliance, or courtesy visit, is made routinely to assure that the licensee is complying with Federal recordkeeping requirements on the acquisition and transfer of firearms. This differs from a visit in the course of a criminal investigation where there is reasonable cause to believe laws have been broken by the licensee. In those cases, visits are made under search warrant or inspection warrant and without notice. Therefore, the Administration would retain the notice requirement in connection with the compliance inspection, as it would not adversely impact on law en-

forcement. The Administration supports the language in S. 49.

Narrowing the "gun show" provision. The Administration has no objection to such an amendment, provided the amendment's definition of gun show is broadened to include the entire definition appearing in the regulations, 27 C.F.R. Section 178.100. In other words, the term should be defined to include not only sporting firearms events sponsored by national, State or local firearms organizations, but such events sponsored by other organizations and entities.

Limit preemption provision to longguns. Language in S. 49 would provide that persons transporting weapons unloaded and not readily accessible would be protected from restrictive local and State laws. The Administration supports such a provision, since the transport of weapons to hunts, target matches and other legitimate activities are seldom involved in crime.

Require a 14-Day Waiting Period for Handgun Sales. The Administration has stated earlier that waiting periods for purchases of handguns should be a matter for the States and local governments to decide. The Administration does not advocate a national waiting period.

Armor Piercing Bullets. The Administration has endorsed proposed legislation as articulated in S. 104 to regulate the importation and manufacture, for police and military use, of ammunition commonly termed armor-piercing. This bill defines bullets as armor piercing if they are solid or contain cores of certain hard metals. We would have no objection to the inclusion of S. 104 in S. 49.

Prohibition of parts for short barrel handguns (snubbies). The 1968 Gun Control Act amended prior law which regulated the importation of gun parts. Congress, at that time, felt that such regulation was not practical. Numerous problems would exist relating to whether specific parts are parts for importable or nonimportable firearms, since many parts of a given manufacturer will be assembled in a variety of firearms configurations. Existing law regulates the principal part of a firearm, i.e., the frame or receiver, and we believe this is adequate. The Administration opposes a prohibition or parts importation.

Conversions of semi-automatic weapons to machineguns and silencer parts. This amendment, which would amend the National Firearms Act, is apparently designed to expressly include within the Act's definitions of machinegun those parts used to convert semi-automatic weapons into machineguns, but which do not comprise the entire conversion kit, as well as certain semi-automatic weapons that can be readily converted to fire automatically. Additionally, the amendment would broaden the Act's definition of silencer to cover not only complete silencers and all the parts comprising a silencer, but individual component parts of silencers.

With respect to the machinegun aspects of the amendment, we would point out that under existing law, 26 U.S.C. Section 5845(b), the term machinegun includes "any combination of parts designed and intended for use in converting a weapon into a machinegun." Based upon this definition, the Treasury Department has classified certain firearms parts as machineguns even though not all the parts necessary to convert the weapons to fire automatically were present. Furthermore, based upon the current definition of machinegun to include weapons "designed to shoot . . . automatically," the

Department has also classified certain semi-automatic weapons as machineguns because they possessed design characteristics of machineguns and were easily converted to fire automatically. Thus, current law may already regulate as machineguns the types of weapons and firearms parts that concern the proponents of the amendment. Nevertheless, in the interest of clarity, an amendment relating to machineguns would not be inappropriate. The amendment as it relates to silencers would strengthen existing law and law enforcement efforts to combat the illegal manufacture of and trafficking in silencers.

The proposed requirement that machinegun manufacturers submit design plans for their weapons to the Government prior to manufacture is unnecessary, in our opinion. Under current law, the firearms industry is presumed to know the provisions of the National Firearms Act relating to their business and is responsible for compliance with the law. As a practical matter, the firearms industry constantly seeks advice of the Department relative to the classification of weapons without any legal requirement to do so. We believe that most manufacturers designing new weapons will continue to seek such advice as a sound business practice. To mandate the industry's submission of plans in advance of production would be burdensome on the industry, and on the government from an administrative standpoint. The problem would be compounded in view of the possible duty of submitting plans with respect to changes in the design of existing weapons.

Finally, we would advise that the language of the amendment dealing with the definition of machineguns and silencers is problematic. Therefore, we would be glad to provide assistance in redrafting the language to better accomplish the objectives of the amendment.

We appreciate the opportunity to discuss these issues and stand by for further assistance if requested.

Sincerely,

BRUCE E. THOMPSON, Jr.,  
Assistant Secretary  
(Legislative Affairs).

#### THE SNUBBIE MYTHS

Mr. HATCH. Mr. President, since we have heard a great deal about so-called "snubbies" or "Saturday Nite Specials," I would like to urge us to reconsider many of the arguments about small handguns. In the first place, I would like to quote again from section 101 of the Gun Control Act of 1968. This section outlines many of the appropriate uses for firearms in the following terms:

It is not the purpose of this Title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens / who use firearms / . . . for hunting, trap-shooting, target shooting, personal protection, or any other lawful activity.

The 1968 act explicitly states that personal protection and other lawful activities ought not to be encumbered by Federal law. Accordingly the 1968 act did not presume to set any size or barrel-length or price limitations on sale and transportation of firearms. This is because the authors of the 1968 act understood that a small handgun may be used for lawful purposes,

such as personal protection, shooting rodents, or maybe just plinking.

Banning or regulating handguns on the basis of size or price could well mean that poor people who may need an inexpensive firearm for the legitimate purpose of personal protection may be prevented from doing so. It could well mean that the 35 to 40 million Americans who now own small handguns and use them lawfully could not repair or continue to use their property.

The justification given for restricting or banning these small handguns is their supposed link to crime. The only study on this subject was performed by a Cox newspaper. It disclosed that 33.9 percent of all handgun crimes were committed with small handguns. The same study disclosed that small handguns are 33 percent of all handguns produced. Thus, 33 percent of all handgun crimes were committed with guns that constitute 33 percent of all handguns—hardly an unexpected result that warrants special restrictions on short-barreled weapons.

On the other hand, we need to acknowledge the lawful purposes of these smaller weapons. A recent survey by Caddell concluded that 4.8 million Americans have successfully used firearms for one of the lawful purposes stated by the 1968 act—personal protection. That amounted to 600 instances of personal protection from firearms a day or 25 instances per hour when the presence of a handgun may well have prevented a rape, robbery, or worse. This explains the results of a PROMIDS study done for the Department of Justice in which Professor Wright and others learned that criminals are more afraid of meeting an armed civilian than of being apprehended for a crime.

This study disclosed that 53 percent of imprisoned felons had chosen not to commit a specific crime out of fear the victim might be armed; 57 percent of criminals who had used firearms to commit crimes had been scared off or shot at by an armed victim. By the way, these same criminals only listed smallness and concealability as a factor in firearm choice 10 percent of the time. They much preferred larger, expensive weapons.

Again we can see why the authors of the 1968 act, when striving to control crime, chose not to set any limits on the size of handguns. The size of handguns is simply not related to crime and small handguns are clearly used for many lawful purposes.

Mr. McCURE. Mr. President, I oppose the pending amendment, which I will shortly move to table.

My principal reason for opposing the amendment is that, frankly, it differs fundamentally from the amendment which the Senate Judiciary Commit-



tee agreed to report during the 98th Congress.

Let me first give a brief explanation of the problem which the underlying language of McClure-Volkmer seeks to address:

Under current law, a resident of one State cannot purchase a firearm directly from a resident of another non-contiguous State. Say a resident of Idaho wants to buy a firearm from a resident of New Hampshire. Assume, also, that this firearm is not locally available and that it is only available through purchase from a resident of another State, such as the State of New Hampshire.

Under current law, the resident of New Hampshire would have to go through a licensed dealer in New Hampshire, who would transfer the weapon to a licensed dealer in Idaho, who would transfer the weapon to the ultimate purchaser.

Gunowners have correctly pointed out that there is no valid reason for this bureaucratic morass. So long as either the buyer or the seller is a licensee, there is just as much of an ability to trace the disposition of the weapon in an interstate sale as with an intrastate sale. So the original language of McClure-Volkmer would have allowed an interstate sale of a weapon from a licensee to a nonlicensee, so long as the transaction complied with the law of the State of sale and the State in which the purchaser resided.

In committee, the Senator from Massachusetts attacked the McClure-Volkmer language on the grounds that it would require a gun dealer to be responsible for knowing the law of the State of any prospective purchaser. In effect, each dealer would have to have access to all of the gun laws of all 50 States. And, while the original bill provided for the preparation by BATF of a handbook summarizing State gun laws, the Senator from Massachusetts persisted in his objections.

So, the Senator from Delaware proposed an amendment which would remedy the problems of the Senator from Massachusetts. Under the proposal of the Senator from Delaware, which was approved unanimously by the Senate Judiciary Committee, interstate sales of longer guns—that is, guns with barrel lengths of greater than 3 inches—could be made, so long as they complied with the law of the State of the sale. Although the buyer would be liable for fines and imprisonment if he made a purchase in violation of the law of the State of residence, neither the out-of-State dealer nor the Federal Government would be required to enforce that State's laws for it. The rationale for this position was, as the Senator from Massachusetts pointed out in committee, the extremely onerous burden which such a requirement would place on a local

dealer with respect to an interstate sale.

In exchange for loosening up the circumstances under which a longer gun could be sold interstate, the provisions governing interstate sales of shorter guns—that is, guns with barrel lengths of less than 3 inches—was to be tightened, so that they would more restrictive than those contained in McClure-Volkmer. In essence, interstate sales of shorter guns would continue to be governed by current law. They would be transferred from the seller to a licensed dealer in his State to a licensed dealer in another State to the ultimate seller.

Even though the continuance of this labyrinthine process really posed no law enforcement benefits, even when applied only to shorter guns, most gun groups readily agreed to maintain current law governing shorter guns, in exchange for a loosening of restrictions on longer guns.

The problem arose from the fact that the language of the amendment was not available to the committee at the time it agreed to this compromise. The language, which was not approved by the committee, differed, when it became available, from the committee agreement in one pivotal respect:

In the language which was produced, the interstate sales of a longer gun would have to comply with the laws of both the State of purchase and the State of the residence of the purchaser. This was, of course, not what the committee agreed to. In fact, it pointedly ignored the problem which triggered the amendment in the first place—the difficulty that a dealer would have in trying to keep track of the laws of all 50 States.

Now, I have an amendment which would embody the agreement made in the Senate Judiciary Committee last year. And, if my tabling motion is unsuccessful, I will offer that amendment. But, frankly, Mr. President, I would hope that we could avoid this entire mess.

The compromise contained in the version of McClure-Volkmer under consideration has been approved by the two relevant departments of the administration—Justice and Treasury—and by all of the major gun groups, in addition to all of the major sponsors of the legislation. It is the language of the Baker amendment on the continuing resolution, which was sustained against procedural objections by votes of 63 to 31 and 77 to 20.

I ask unanimous consent that relevant portions of the committee transcript be printed in the RECORD at this point:

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### EXCERPT

(The debate starts around page 30 of the transcript, with Kennedy calling up the at-

tached amendment. He initially implies that the amendment would subject concealable weapons to all provisions of current law—not just those provisions dealing with interstate sales—and that it would exempt long guns from all provisions of current law. This is clearly not what his amendment would do, and when Hatch correctly summarizes the nature of the Kennedy amendment, Kennedy corrects himself. Kennedy then, on page 36, summarizes the difference between Kennedy and Hatch as revolving around whether a Nevada resident purchasing a long gun in South Carolina would have to comply with Nevada law, as well as South Carolina law. He holds up his book of statutes compiled from those states represented on the Judiciary Committee and chastises Hatch for making the poor licensee learn that enormous mass of statutes, in addition to the statutes of his own state. Hatch tries to assert that this would be no problem, since the licensee would have the new book of state laws compiled by the Justice Department, but Kennedy persists. At this point, Biden begins asking questions about the nature of the Kennedy amendment.)

BIDEN. So you are going to end up with no book? . . . I go from Delaware out to Nevada or Wyoming and I want to buy a twelve-gauge shotgun. I can just walk in and buy the shotgun, and I do not have to do anything under your proposal. . . . Now, if I go, though, to buy a, quote, snubby and I walk into a gun store in Cheyenne— . . . I am not allowed to buy the snubby. . . . But if we go the route the Senator from Utah is suggesting, I walk into that store, as we call them in Delaware, that guns and goodies shop, and I walk in, and I want to buy either a snubby and/or a long gun, the dealer has to know what the rules in my State are, relative to both of these—

HATCH. As well as his own State.

KENNEDY. Under the existing law, if you wanted to purchase it, it is distributed in the interstate through a licensed dealer in your own State that is presumed to know the law.

BIDEN. What does your amendment do with regard to long guns? Does it keep the existing law, or does it lift all exemptions on long guns?

KENNEDY. It lifts all exemptions on long guns.

BIDEN. So, my staff just told me that, if I walked into—let us take Vermont, they have nothing there, zero. . . . Now . . . if I go up to Bennington and I go into a gun store and I want to buy a shotgun, can I put my money down and walk out of that store right there with that shotgun? My staff says no. And I—

KENNEDY. Yes.

BIDEN. No, not current law, under—

KENNEDY. Current law.

BIDEN. [continuing]. Under your amendment—

KENNEDY. Yes.

BIDEN. Under your amendment you would be able to walk out. Okay. Good.

HATCH. All I am saying is that—what it does do . . . is it upholds and sustains State laws.

BIDEN. All right.

HATCH. And it requires them to meet the laws of both States—

BIDEN. It seems to me that . . . you (Senator Kennedy) are saying this book will be no longer needed because, in fact, you will keep the existing law as it relates to the small handgun, the small snubbies. Okay?

KENNEDY. Yes.

BIDEN. And existing law says you cannot buy them in interstate.

KENNEDY. Right.

BIDEN. But it eliminates all other laws relating to the interstate sales as it relates to the handgun—I mean the long gun. Is that right?

KENNEDY. The Senator is correct. Yes, I guess the—there are some, some States have some restrictions on—

BIDEN. No, I understand that. But the State of Vermont has no restriction on anything.

KENNEDY. You are right.

BIDEN. So, in Vermont you could walk in, buy the gun, and go hunting that morning.

KENNEDY. The Senator is absolutely correct and has put his finger on the nub of the issue. That is that there are obviously legitimate interests of someone who goes to Massachusetts and goes on out to Wyoming and hunts and the gun gets lost or loses it in the plane, or whatever happens, and then wants to be able to purchase it and cannot do it, unless you have the contiguous State, then you have a waiting period and other restrictions under the existing law. But that is fine. I would . . . But do not wipe out restrictions with regard to the small concealable weapons that are used in crimes of violence.

BIDEN. Would the Senator object if there was an amendment that said the law as it exists today with regard to small handguns, whatever the law is, would stay intact.

HATCH. So far, you are not too far off course.

BIDEN. Forget for a moment the Kennedy amendment. Let us assume I introduce an amendment that said the law as it relates to handguns does not change. Whatever it was in 69, it stays that way, but would lift the restrictions on interstate sales for all other guns except as the State law applies to that State. You would be treated as a State resident. I would be treated as a cowboy from Wyoming if I walked in to buy a gun.

SIMPSON. (Objects to slur re Wyoming.)

BIDEN. What happens if you just say the law as it has been on the books . . . as it relates to handguns, leave it alone . . . and then take the laws that relate to all other guns, . . . and lift all Federal restrictions. Say it is only what the State says. So, Joe Biden riding an interstate through Cheyenne, he gets to purchase or not purchase a long gun, based upon whatever Cheyenne's laws are.

HATCH. (Enumerating problems with the Biden proposal, the first of which was that it would create a new distinction between a concealable weapon and a long gun.) Number two, it also fails—the Kennedy amendment would be a failure to uphold certain State laws. For instance, some States prohibit the sale of long guns to children less than 16 years of age.

BIDEN. Well, this law would apply. You could not walk into that State—in other words, . . . when I, as a Delawarean, attempt to walk into a gun store, whether it is in Maryland, Vermont, Wyoming, or Utah, I will be held accountable to the same exact regulations as the person from Wyoming, Vermont, Utah, or Maryland, with the single exception of a small-barreled revolver, a handgun. . . . Now, what is wrong with keeping that law as it related to handguns with barrels of 3 inches or less and freeing up every other person in America to be treated like the citizen from that community at that moment in time?

The way I would change it (Hatch)—I am not at all sure that the Freedom (Wyoming) dealer is either, A, going to know the law.

All right, keep the law as it is on the books since 69 with respect to handguns with barrels less than three inches, three inches or less, and lift all other restrictions.

It would lift all . . . restrictions other than the ones that are in that State—for all—

THURMOND. For interstate sales.

BIDEN (continuing). For interstate sales. All restrictions of interstate sales are lifted but for handguns with barrels three inches or less, which is the law now. The law goes beyond handguns three inches or less, in terms of interstate.

HATCH. Do we keep the other changes that we have made in—

BIDEN. On the interstate sale. And the answer is yes.

● Mr. DODD. Mr. President, I rise in strong opposition to this legislation in its present form. While I have many concerns with the bill before the Senate today, I believe it is still, possible, with the approval of certain crucial amendments, to enact a responsible bill.

This legislation, as proposed, turns back the clock of Federal protection against handgun crime in seeking to overturn key provisions of the modest Gun Control Act of 1968, as passed in the wake of the assassinations of Martin Luther King, Jr., and Robert F. Kennedy. This measure would weaken our national firearms laws and effectively take, as the National Rifle Association has called it, "the first step toward repealing the 1968 Gun Control Act."

The Gun Control Act of 1968 was intended to keep handguns out of the wrong hands—the felon, the minor, the unlawful drug user, the mental incompetent—and to punish harshly those who use handguns in crime. The centerpiece of the act is the broad prohibition of interstate commerce in firearms by unlicensed, private citizens. The legislation we consider here today eliminates that prohibition, allowing once again easy mail access to guns by criminals and would-be assassins.

My father, the late Senator Thomas Dodd, dedicated much of his Senate service to putting an end to such easy availability of firearms to criminals. He was chairman of the Senate's Juvenile Delinquency Subcommittee, where he conducted numerous hearings in the 1960's on the unrestricted availability of firearms. My father was astounded by what he discovered. Bazookas, handguns, and an assortment of automatic weapons were on display in his subcommittee—the undeniable and frightening evidence of the ease with which these lethal weapons could be acquired—at times even by the children of committee staff.

My father led an uphill and often-times exasperating battle to move legislation aimed at keeping guns out of the hands of criminals through the full committee and onto the Senate floor. He never lost faith, and I am proud to say, remained a driving force

behind final passage of the Gun Control Act of 1968. He refused to believe that the gun runners, the hoodlums, the crackpots, and the self-styled vigilantes were more powerful than the American people. My father believed in his own words, that "the American people will not forget the assassination of President Kennedy with a weapon fraudulently obtained through the mails, nor could they forget the other needless tragedies that they read about every day."

Mr. President, I refuse to believe that our national nightmare over the assassination of President Kennedy has been forgotten. I believe a passage from Carl Bakal's book, "The Right to Bear Arms," is telling:

Then came the terrible tragedy in Dallas. In the space of a few seconds, Lee Harvey Oswald—with a cheap foreign surplus military rifle, purchased under a phony name from Klein's Sporting Goods, a Chicago mail-order house—had murdered the President. On the rifle was a telescopic sightsight which had originated from another mail-order house, Weapons, Inc., of Los Angeles. Less than an hour later, Oswald had killed police officer J. D. Tippitt with a .38 caliber revolver purchased from still another mail-order house, Seaport Traders, also of Los Angeles.

It would be disconcerting, indeed, Mr. President, for this body to repeal the very provision whose purpose is to prevent such tragedy.

Another concern I have with this bill is that it was placed directly on the Senate Calendar, by-passing the careful scrutiny of the Senate Judiciary Committee. I believe it was a mistake to reintroduce the bill this year without the compromises that painstakingly were worked out by the Judiciary Committee last year to prohibit the interstate sale of "snubbies"—handguns with barrel lengths less than 3 inches. It has been well documented that 11 of 15 handguns most often used in the commission of murder, armed robbery, and other street crimes had snub-nosed barrels of 2.5 inches or less. Criminals favor concealability. Short barrels mean inaccuracy at anything beyond point blank range. They should therefore be of little interest to legitimate hunters, hobbyists, and target-shooters.

I also would have liked to have seen a waiting period included in this bill, a provision adopted by the Senate Judiciary Committee in the 98th Congress. The Gun Control Act of 1968, while setting forth categories of persons to whom firearms may not be sold, does not require verification of the purchasers eligibility. A person purchasing a firearm from a federally licensed dealer is only required to sign a form on which he affirms by sworn statement that he is not proscribed from purchasing a firearm. As one might expect, this "honor system" of verification has done little to prevent pro-



scribed persons from obtaining firearms.

The 1981 Attorney General's Task Force on Violent Crime addressed this loophole in Federal gun laws and recommended that "a waiting period be required for the purchase of a handgun to allow for a mandatory records check to ensure that the purchaser is not one of the categories of persons who are proscribed by existing Federal law from receiving a handgun." A number of States and municipalities, including my home State of Connecticut, have enacted waiting period laws which have proven to be effective in keeping handguns out of the wrong hands.

The idea of a waiting period has broad public support. The law enforcement community, including the International Association of Chiefs of Police and the National Association of Attorneys General, supports a waiting period for handgun purchases. Moreover, a 1981 Gallup poll showed that 91 percent of the American people support a 21-day waiting period for handgun purchases with a background check.

I am also concerned that this legislation would, in its present form, preempt Connecticut's restrictions on automobile transportation of a firearm without a license, clearly an intrinsic part of my home State's license-to-carry law. This represents a derogation of the rights of States to regulate firearms within their own borders, a policy contrary to the intent of the Gun Control Act of 1968. I believe this goes too far. The interstate transportation of hunting rifles and shotguns does not pose the same law enforcement problem that the transportation of handguns does. In my view, an amendment to the bill could meet the needs of both hunters and law enforcement by restricting the provision allowing interstate transportation to long guns.

Mr. President, I have a number of other concerns with this bill, but in the interests of time, I will reserve my comments for the present. I am sure some of my colleagues will be addressing these same concerns as we move forward on this legislation.

Finally, I would urge my colleagues to give serious thought to what is being asked of us here. We are being asked to relax and weaken our already modest Federal protections against handgun crime. In effect, we are being asked to further hinder the ability of law enforcement officers to respond to violent crime. More than 10,000 Americans will be murdered with handguns this year. If we add up the number of Americans killed just with handguns since 1968, the total is a staggering 350,000. Surely, the time has not come to loosen Federal restrictions on criminals' access to handguns.

I urge my colleagues to vote against this bill in its present form.●

Mr. CHAFFEE. Mr. President, passage of the Gun Control Act of 1968 was an important step toward effective control over the sale and trafficking of firearms in order to reduce the incidence of violent crime in the United States.

The legislation before us today makes changes in the current law intended to reduce unnecessary burdens on law-abiding citizens with respect to lawful use of firearms. I support the bill's goal of easing certain restrictions on the purchase and sale of guns for hunting and sporting purposes. However, this legislation does not do enough to halt the proliferation of handguns and could weaken existing laws designed for this purpose.

The United States has more violent crime than other countries which have restrictions on handguns. I have consistently supported efforts to strengthen controls over the purchase and distribution of handguns.

Handgun control is an essential part of effective law enforcement. The ready availability of lethal, concealable handguns undermines efforts to protect citizens from violent crime.

Handgun deaths are a national tragedy. Handguns are used in more than 10,000 murders in the United States and another 500,000 crimes of violence each year. Small handguns are the overwhelming weapon of choice by street criminals and assassins.

Despite the need to strengthen controls over handguns, the legislation we have before us would have the opposite effect and weaken current law.

Under current law a State has the right to regulate gun ownership among its residents. This legislation places that right in grave jeopardy. It would authorize dealers to make face-to-face firearms sales to out-of-State customers if the sale would be lawful under the laws of the sellers' and buyers' jurisdiction. Since State and city gun laws vary widely, it would be a formidable task for dealers to insure that sales to out-of-State purchasers conform to law. The potential for handguns to fall into the wrong hands would be significantly greater should this provision be retained in the bill before us today.

I believe we can move forward to protect the rights of law-abiding citizens who purchase firearms for recreation, law enforcement, and private security and at the same time, strengthen law enforcement efforts to prevent handguns from falling into the wrong hands. There are three amendments we will consider which will facilitate this goal.

The first and most crucial amendment would relax the ban on the interstate sale of shotguns and rifles but retain the current prohibition on the interstate sale of handguns. Failure to

adopt this amendment would hinder the ability of law enforcement agencies to control the spread of handguns.

Another important amendment would require a 14-day waiting period for purchases of handguns. A waiting period would not only give police the necessary time to determine if a purchaser is prohibited by law from owning a firearm, but also deter individuals who in a moment of desperation purchase a handgun to use in a suicide or a crime of passion. Limiting access to handguns for a period of time is an important intervention for crime prevention.

In addition an amendment to retain current law with respect to surprise Federal compliance inspections of Federal firearms licensees will be offered. The opportunity to conduct surprise visits to check sales records maintained by federally licensed gun dealers is vital to insure that sales are made through regular channels and are traceable. Instead of weakening Federal compliance inspections we should ensure that enforcement authorities have the tools necessary to deal with those who criminally misuse guns or who recklessly make it possible for others to do so.

We have an opportunity today to take this measure beyond the protection of the rights of hunters and sportsmen and to move toward reducing the incidence of crime in the United States. I hope my colleagues will join me in supporting the amendments before us.

Mr. KERRY. Mr. President, as we consider S. 49, the McClure-Volkmer Firearms Owners Protection Act, I think it is useful to recall the history of the legislation this act is to modify—the Gun Control Act of 1968, passed in the wake of the assassinations of Martin Luther King and Robert Kennedy by men using handguns.

Sadly, it took these two assassinations to convince Congress after 5 years of debate to pass basic regulations on the interstate sale of firearms. The act was designed to "provide support to Federal, State, and local law enforcement officials in their fight against crime and violence." Its passage was in recognition of the fact that gun violence in the United States had grown to alarming proportions. The legislative history of the act shows that one of the principal purposes of the legislation was to provide aid to the States against the "migratory handgun."

A major aim of the Gun Control Act was to assist State and local gun control efforts by reducing the flow of guns from loose-control to tight-control jurisdictions. Prior to the act, two Northeastern States, including my home State of Massachusetts, and a number of municipalities had attempt-

ed to restrict handgun possession to only those of their citizens who could demonstrate a special need to own one.

Such laws were intended to reduce handgun ownership to a tiny fraction of the national average of 40 handguns per 100 households. As it turned out, municipal efforts to restrict handgun possession were vulnerable to the flow of handguns from within the States and from other States. And even State efforts were vulnerable to interstate traffic.

A major problem in administering any gun licensing system was the interstate "leakage" of guns. In the mid-1960's, it was estimated that 87 percent of all firearms used in Massachusetts crime had been purchased first in other States. Two-thirds of a sample of handguns confiscated in New York City had come from other States, and surveys in other States told the same story.

It was to meet this problem directly that the 1968 statute was enacted—to stop the frustration of local efforts to license and register ownership of guns.

The centerpiece of the new regulatory scheme was the ban on interstate shipments to or from persons who do not possess Federal licenses as dealers, manufacturers, importers or collectors, coupled with the declaration that it was unlawful for any person other than a Federal license holder to engage in the business of manufacturing or dealing in firearms. The act thus granted Federal licensees a monopoly on interstate transactions and required a Federal license to engage in any but isolated intrastate transactions.

While private citizens were to be excluded from commerce in guns, federally licensed dealers were to be much more strenuously regulated. The fees from all Federal licenses were increased. Minimum standards for licensees were set, and the Secretary of the Treasury was given broad powers to establish mechanisms for regulating licensed manufacturers and dealers.

Having established Federal regulation of those in the business of making, selling and importing firearms, as well as all interstate aspects of commerce in firearms, the act pursued its major aims with a series of criminal prohibitions.

Those without Federal licenses were prohibited from shipping guns to other private parties in another State and from transferring guns to persons they knew or had reason to believe were residents of another State.

Dealers were prohibited from shipping to private citizens in other States and from selling to those who the dealer knew had reason to believe resided out of State.

All dealers had to sign a form indicating a customer had produced identification showing he was not a resident

of another State. This form, which also identified the firearms sold and gave the purchaser's name, address, and description was retained by the dealer and made available for inspection by the Alcohol, Tobacco and Firearms agents.

All of this provided a Federal framework for the monitoring of interstate firearms sales to help State and local efforts to keep arms away from criminals, and to trace weapons when they were used to commit crimes. This Federal regulatory system was the heart and soul of the 1968 Gun Control Act. And yet, the McClure-Volkmer bill, without the amendments we have had placed before us today, will substantially dismantle this regulatory system, and again make it extraordinarily difficult for localities and States to fight crime committed with guns.

For these reasons, I offer my strong support to the amendment offered by Senator KENNEDY to maintain the current interstate sales regulations of handguns. Those of us who were in law enforcement at the local level—and both Senator KENNEDY and I were prosecutors in Massachusetts—know that local efforts to monitor and track weapons will be made practically impossible if the KENNEDY amendment is not adopted to maintain existing law in this area.

Senator KENNEDY has worked tirelessly on behalf of all those injured by criminals with guns or who lost friends or family through crimes or abuse of firearms, and on behalf of law enforcement officials, to make the McClure-Volkmer legislation protect them, as well as gun owners.

I strongly urge this body to adopt the Kennedy amendment.

I am aware of the concerns of law-abiding firearms owners and recognize that McClure-Volkmer may eliminate some unintended consequences of the 1968 law. But law-abiding firearms owners will not be hurt by amendments to this legislation such as the Mathias amendment, which eliminates notification to dealers before Federal compliance inspections. I think it is incredible that a Federal agency trying to make sure that the law is followed should have to give a dealer notice before an inspection, to give him time to get his house in order if he has been violating the law. This notification provision does nothing to help those who are law-abiding—it only protects those who are violating the law, by interfering with law enforcement.

Finally, I wish to make special note of the service that Senator METZENBAUM has done Massachusetts, and the other States that currently have laws regulating handguns, with his amendment to modify the preemption provisions that would otherwise void many State and local gun control laws, including the Bartley-Fox law in Mas-

sachusetts, a law which has been central to law enforcement in the Commonwealth ever since its passage.

Bartley-Fox was a milestone in gun control for Massachusetts, passed by the State legislature as the result of a collaboration between two remarkable men, the speaker of the house, David Bartley, and State Judge John J. Fox, a man who had dedicated himself to seeking out the best methods of dealing with the problem of crime with guns.

The Bartley-Fox prohibits the transportation of a firearm or ammunition through Massachusetts by anyone who does not have a license for the weapon, and provides for exceptions for nonresidents under certain circumstances.

Its help to law enforcement officials in the years since its passage has been profound—and Massachusetts wants to keep it.

Senator METZENBAUM's amendment has allowed Massachusetts to keep Bartley-Fox. Without it, McClure-Volkmer would preempt it.

This would be unfortunate for Massachusetts, for law enforcement, and for our system of federalism itself, for the reasons set forth in an excellent memorandum written by Judge Fox about the effects of McClure-Volkmer. At this time, I ask unanimous consent that Judge Fox's memorandum be inserted in the RECORD at the conclusion of my remarks.

As Judge Fox explains:

The logical implications of what this proposed statute seeks to do would be to permit the federal government to assume full control over a State's procedures for the administration of its own criminal justice system.

I thank Senator METZENBAUM for his protection of Massachusetts ability to regulate crime as a result of the adoption of his amendment.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

MEMORANDUM BY JUDGE JOHN J. FOX OF MASSACHUSETTS

#### CONSIDERATIONS OF FEDERALISM

It is clear that this Bill, in its present form without the Metzenbaum amendment, would preempt such state legislation as Bartley/Fox (and all analogous or cognate state legislative enactments) by making "null and void" any provision in state law which prohibits or has the effect of prohibiting the transportation of a firearm or ammunition in interstate commerce or through a state. (See pg. 57 of Sen. Report No. 98-583, 98th Cong. 2d Session). This blatant attempt to preempt or exclude state law aimed at addressing the problem of crime and violence—interests critically central to the welfare of a state and traditionally of preeminent local concern—intrudes impermissibly into state sovereign functions. It clearly proceeds upon a fundamental misunderstanding of the role that state governments play in our federalist system. Such a result would not only undoubtedly retard the creative experimentation which bold and progressive state legislatures have gen-



erated but would be antithetical to the values of federalism and inconsistent with our Constitutional history. Indeed, such an approach would undermine one of the most valuable aspects of our federalism—the combined, collective and collegial interaction of state and federal governments in areas of mutual concern. As one scholar has written “a federal system implies a partnership all members of which are effective players on the team and all of whom retain the capacity for independent action. It does not imply a system of collaboration in which one of the collaborators is annihilated by the other.” *L. White, The States and the Nation*, 3(1953).

Before turning to the diverse articulations of the principles of federalism which are strikingly relevant here, it may be useful to set forth briefly the specific particulars by which this proposed legislation—invoking preemption—impacts directly and adversely a local state statute such as Bartley/Fox.

The Bartley/Fox Law, Massachusetts General Laws, Chapter 269, Sec. 10(a), applies to an unlicensed person who possesses a firearm, rifle or shotgun while in a motor vehicle. The law further provides for exceptions for non-residents under certain circumstances. Under Massachusetts General Laws, Chapter 140, Sec. 129C(h), a non-resident may possess a rifle or shotgun and ammunition therefor while traveling in or through the Commonwealth, provided that the rifle or shotgun is unloaded and enclosed in a case. Similarly, under Massachusetts General Laws, Chapter 140, Sec. 131G, a non-resident may possess a pistol or revolver under certain circumstances if that person is a resident of the United States and has a permit or license to carry firearms issued under the laws of his home state and those licensing laws are substantially similar to the licensing laws of Massachusetts. (Copies of Sec. 129C(h) and Sec. 131G are enclosed).

Consequently, the existing limitations imposed by Massachusetts on the ability of non-residents to possess firearms, rifles and shotguns while traveling through the Commonwealth in a motor vehicle would be vitiated if this proposed federal legislation is enacted. Again this result would obtain because of the explicit provision of the proposed bill which states: “That any provision of any legislation enacted, or of any rule or regulation promulgated, by any State or a political subdivision which prohibits or has the effect of prohibiting the transportation of a firearm or ammunition in interstate commerce through such state, when such firearm is unloaded and not readily accessible, shall be null and void. (Emphasis supplied). The attempt to strike down, or dilute the efficacy of our Massachusetts law, (and cognate or analogous state provisions) in such an important particular, contravenes an unbroken expression of Supreme Court precedent relative to the primacy of state criminal laws, given the circumambient nature of our federalism.

One of the strongest expressions of this principle was articulated by Mr. Justice Field in his opinion for the United States Supreme Court in *Baltimore & O.R. Co. v. Baugh*, 149 U.S. 368 (1911). Thus he stated, in a passage quoted with approval by the Court in the historic decision in *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938):

“The Constitution of the United States . . . recognizes and preserves the autonomy and independence of the States—independence in their legislative and independence in their judicial departments. Supervision over

either the legislative or the judicial action of the States is in no case permissible except as to matters by the Constitution specifically authorized or delegated to the United States. Any interference with either, except as thus permitted, is an invasion of the authority of the State and, to that extent, a denial of its independence.” 149 U.S. at 401.

This statement is an eloquent expression of a cardinal principle of our federalism. This general rule, bottomed deeply in belief in the importance of state control of state procedures relating to its criminal law is that federal law takes state law—absent extraordinary circumstances—as it finds it. *Hart, The Relations Between State and Federal Law*, 54 Colum.L. Rev. 489, 508 (1954). Clearly this is a principle which has a striking relevance here. It may be true as the proponents of this bill will argue that the proposed law may not effect dramatic changes in the laws and procedures of all States. But it would be difficult to imagine another attempt by the Federal Government to supplant a state procedure which is so traditionally within the purview of state authority. If Congress may do this, presumably it has the power to achieve other such ends; e.g., to preempt state court rules of civil procedure and judicial review in all other similar areas. This would be the type of gradual encroachment hypothesized by Professor Tribe when he wrote recently: “Of course, no one expects Congress to obliterate the states at least in one fell swoop. If there is any danger it lies in the tyranny of small decisions—in the prospect that Congress will nibble away at state sovereignty, bit by bit, until someday essentially nothing is left but a gutted shell.” *L. Tribe, American Constitutional Law* 302 (1978).

If the power sought to be legitimized in this proposed bill is vindicated, then such a principal would, by hypothesis, permit the federal government to assume full control over a State's procedures for the administration of its own criminal justice system. This is and must be beyond the power of the federal government if the federal system is to exist in substance as well as form. The right of the State to regulate its own substantive law, to regulate its own procedures governing the conduct of litigants in its courts, and its interest in supervision of those procedures, stand on the same constitutional plane as its right and interest in framing “substantive law” governing other aspects of the conduct of those within its borders.

In reviewing the Supreme Court's decisions over the last four decades, one of the first and most striking facts to emerge is the obvious importance of the Court's interpretation of the obligations and imperatives of federalism in the development of American criminal law. See, *Allen, The Supreme Court, Federalism and State Systems of Criminal Justice*, 8 DePaul L. Rev. 213 (1959). These opinions invariably stress the need to respect the “sovereign character of the several states” by giving the states the widest latitude in developing their own substantive criminal law. See, e.g., *Ashcraft v. Tennessee*, 322 U.S. 143 (1944). There are many reasons for this.

In respecting the autonomy of the states, the principle of federalism preserves local control of government. This has various advantages. It avoids centralized power and the potential for abuse inherent in the concentration of governmental authority; it promotes democracy by allowing decisions to be controlled by the population most di-

rectly affected; it permits laws to be formulated in accordance with local conditions and to be enforced by persons who are familiar with local concerns; and it permits a diversity necessary for the survival of pluralism. These advantages arguably have special significance as applied to the field of criminal justice and the substantive criminal law statutes of a state. Notwithstanding expansion of federal legislative power, the enactment and enforcement of criminal laws remains the primary responsibility of the states. With respect to the specific problems sought to be addressed by state bills such as Bartley/Fox, these principles have a special and unique relevance. For example, what applies to a state like Massachusetts may not apply as easily to a state like Montana. What applies to a city like New York may not apply as easily or as persuasively to a bucolic hamlet in rural Nebraska. What applies to Nebraska may not be as relevant to a state like Mississippi. The essential point is that local custom, local tradition, local conditions and circumstances, local law enforcement vary so dramatically that it is neither surprising nor subversive that the autonomy of the states should be preeminently respected in this area.

This concern for the principle of federalism is hardly a new development. For example, in the celebrated *Slaughter House* cases, the Supreme Court consistently referred to the “whole theory of the salutary relations of the state and federal government” in rejecting a broad reading of the privileges and immunities clause which would have curtailed state substantive law. Similarly, equal protection rulings relating to state criminal procedures have consistently noted the importance of leaving the states free to prescribe their “own modes of judicial proceedings.” *Missouri v. Lewis*, 101 U.S. 22 (1879). And the early due process decisions, in refusing to strike down or preempt state criminal law, frequently stressed that such a ruling would be inconsistent with “the full power of the state to order its own affairs and govern its own people.” See, e.g., *Twining v. New Jersey*, 211 U.S. 78 (1908); *Maxwell v. Dow*, 176 U.S. 581 (1900).

It is clear that a review of the vast generality of Supreme Court cases show that the justices supporting the essentially autonomy of state sovereignty feared that imposition of federal limitations might destroy the positive advantages of local control. The Supreme Court consistently indicated that the federal government, reposing far from the local scene, had to exercise caution, limiting its authority to the imposition of those “principles of decent procedure” that were basic to a free society and therefore accepted by the vast majority of local communities. Indeed, the clear thrust of these decisions make clear that if the power of the states to deal with local crime was unduly restricted, the end result might be a shift of responsibility to the Federal Government with its vastly greater resources . . . bringing us closer to the monolithic society which our federalism rejects.” *Malloy v. Hogan*, 378 U.S. (1969).

These opinions, and many others, clearly demonstrate that state legislative and administrative bodies are not field offices of the national bureaucracy. Instead, each State is sovereign within its own domain, governing its citizens and providing for their general welfare. While the Constitution and Federal statutes define the boundaries of that domain, they do not harness state power for national purposes. Rather, the Constitution contemplates an indestructible

Union, composed of indestructible States, a system in which both the state and national governments retain a "separate and independent existence." *Texas v. White*, 7 Wall. 700, 725 (1869); *Lane County v. Oregon*, 7 Wall. 71, 76 (1869).

Adhering to these principles, the Supreme Court has recognized that the Tenth Amendment restrains congressional action that would impair "a State's ability to function as a State." *United Transportation Union v. Long Island R. Co.*, 455 U.S. 367, 373 (1982); *National League of Cities v. Usery*, 426 U.S. 833, 842-852 (1976); *Fry v. United States*, 421 U.S. 542, 547 n. 7 (1975). See also *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 423-424 (1978). For example, in *National League of Cities v. Usery*, *supra*, the Court held that Congress could not prescribe the minimum wages and maximum hours of state employees engaged in "traditional governmental functions." *Id.*, at 852, because the power to set those wages and hours is an "attribute of state sovereignty" that is "essential to (a) separate and independent existence." *Id.*, at 845 (quoting *Lane County v. Oregon*, *supra* at 76).

In 1981 the Supreme Court identified three separate inquiries underlying the result in *National League of Cities*, *supra*. Thus the Court stated: "A congressional enactment violates the Tenth Amendment if it regulates the 'States as States,' addresses matters that are indisputably attribute(s) of state sovereignty and directly impairs (the States') ability to structure integral operations in areas of traditional governmental function. *Hodel v. Virginia Surface Mining & Reclamation Association*, 452 U.S. 264, 287-288 (1981) (quoting *National League of Cities*, *supra* at 854, 845, 852). See also *United Transportation Union*, *supra*.

Given the fact that effective crime control is one of the most dramatic issues facing state governments it would be difficult to imagine a federal statute which would more directly regulate the "States as States" in those "indisputable attribute(s)" of state sovereignty or which, ultimately, would impair a state's ability to "structure integral operations in areas of traditional function" than the proposed federal statute considered here.

Another significant argument against the present proposal is that it would undoubtedly retard the creative experimentation which is such a part of our federalism. For example, in *New State Ice Co. v. Liebman*, 285 U.S. 262 (1932), Justice Brandeis admonished the Court against undue interference with state experimentation. Thus he stated: "To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."

In espousing this principle, courts and commentators frequently have recognized that the fifty States do indeed serve as "laboratories" for the development of new social, economic and political ideas. See, e.g., *Chandler v. Florida*, 449 U.S. 560, 579 (1981); *Reeves, Inc. v. Stake*, 447 U.S. 429, 441 (1980); *Whelan v. Roe*, 429 U.S. 589, 597 and n.20 (1977); *Macmahon, The Problems of Federalism: A Survey in Federalism, Mature and Emergent* 3, 10-11 (A. Macmahon, ed. 1955); *N. Rockefeller, The Future of Federal-*

*ism* 8-9 (1962). And this belief in state innovation is no judicial myth. Here in Massachusetts, for example, after decades of academic debate, state experimentation finally provided an opportunity to observe no fault automobile insurance in operation. See, *C. Morris & C. Morris, Jr., Morris on Torts* 244-245 (2d ed. 1980); *Friendly, Federalism: A Foreword*, 86 Yale L.J. 1019, 1034 (1977). When Wyoming became a state in 1890, it was the only State permitting women to vote. (Wyoming's policy followed a practice it had adopted as a territory). (Compare Act of January 21, 1891, Ch. 100, Sec. 4 (1890-1891) Wyo. Sess. Laws 394 with Act of March 14, 1890, Ch. 80, Sec. 5 (1890) Sess. Laws Wyo. Territory 157). See generally, *C. Beard & M. Beard, The Rise of American Civilization*, 563 (rev. ed. 1937).

That "novel" idea did not bear national fruit for another thirty years. (The Nineteenth Amendment, ratified in 1920, prohibits abridgment of the right to vote on account of sex). In another dramatic example, Wisconsin pioneered unemployment insurance. (Compare Act of January 28, 1932, Ch. 20, 1931-1932 Wis. Laws 57; Act of June 1, 1933, Ch. 186, 1933 Wis. Laws 448; Act of June 2, 1933, Ch. 194, 1933 Wis. Laws 491; *W. Leuchtenburg, Franklin D. Roosevelt and the New Deal, 1932-1940*, p. 130 (1963). Again, Massachusetts was a pioneer in initiating minimum wage laws for women and minors. (See, Act of June 4, 1912, Ch. 706, 1912 Mass. Acts 780); *R. Morris, Encyclopedia of American History*, 768 (Bicentennial ed. 1976).

Even in the field of environmental protection, an area subject to heavy federal regulation, the States have long supplemented national standards with innovative and far reaching statutes. Florida, for example, has enacted particularly strict legislation against oil spills. (Fla. Stat. Ann., Sections 376-011-.21) (1974 ed. and Suppl. 1982). The Supreme Court upheld that legislation in *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973). Utility regulation is another field marked by valuable state intervention. (See *Federal Power Commission v. East Ohio Gas Co.*, 338 U.S. 464, 489 (1950). (Jackson, J., dissenting). "Long before the Federal Government could be stirred to regulate utilities, courageous states took the initiative and almost the whole body of utility practice has resulted from their experiences."

Moreover, attempts at federal preemption in this area are completely misplaced. When Congress preempts a field it precludes only state legislation that directly conflicts with the national approach. No such situation exists here. Rather, it is now well established that States usually retain the power to complement congressional legislation, either by regulating details unsupervised by Congress or by imposing requirements that go beyond the national threshold. In rare instances, Congress so occupies a field that any state regulations are inconsistent with national goals. The Supreme Court, however, is reluctant to infer such expansive preemption in the absence of persuasive reasons. *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963). See generally, *Stewart, Pyramids of Sacrifice: Problems of Federalism in Mandating State Implementation of National Environmental Policy*, 86 Yale L.J. 1196, 1239-1247 (1977); *Comment Redefining the National League of Cities State Sovereignty Doctrine*, 129 U. Pa L.Rev. 1460, 1477-1748 (1981). Certainly, there should be no such attempt at "expansive preemption" in this case.

As the foregoing examples will illustrate, one of the major justifications advanced for promoting a strong federalism derives from Justice Brandeis' admonition that states should be provided ample room for diversity (and thus experimentation) in both its substantive and procedural law. Indeed, the importance of allowing leeway for experimentation is state criminal law provisions was noted early by the Supreme Court in *Hurtado v. California* where it was stressed that due process ought not to preclude a state, if it so desires, from looking beyond the common law and basing its process on "the best of all systems and of every age," letting the "new and various experiences of its own situation . . . (shape) new and not less useful forms." 110 U.S. 516 (1884). In subsequent years the same philosophy found consistent voice in Supreme Court decisions and, perhaps, was best summarized by Justice Frankfurter in a discussion of *Powell v. Alabama* in which he wrote "the mood of the Supreme Court has been insistently cautious in attempting to limit the reach of the criminal law of a state." In his view, this was proper for, as he noted, the Fourteenth Amendment should not be "the basis of a Uniform Code of Criminal Procedure federally imposed." "Alternative modes of arriving at truth" should not be barred. As in the area of economic regulation, "here too, freedom must be left for new, perhaps improved, methods 'in the insulated chambers afforded by the several states.'" See, *F. Frankfurter, Law and Politics*, 192 (1939).

In addition to promoting experimentation, federalism enhances the opportunity of all citizens to participate in representative government. Alexis de Tocqueville understood well that participation in local government is a cornerstone of American democracy:

"It is incontestably true that the love and the habits of republican government in the United States were engendered in the townships and in the provincial assemblies. . . . (I)t is this same republican spirit, it is these manners and customs of a free people, which are engendered and nurtured in the different States to be afterwards applied to the country at large." 1 *A. de Tocqueville, Democracy in America* 181 (H. Reeve Trans. 1961).

Citizens, however, cannot learn the lessons of self-government if their local efforts are devoted to reviewing proposals formulated by a far-away national legislature. If we want to preserve the ability of citizens to learn democratic processes through participation in local government, citizens must retain the power to govern, not merely administer, their local problems.

Finally, our federal system provides a salutary check on governmental power. As Justice Harlan once explained, our ancestors "were suspicious of every form of all-powerful central authority." Harlan, *supra* n.16, at 944. To curb this evil they both allocated governmental power between state and national authorities and divided the national power among three branches of government. Unless we zealously protect these distinctions, we risk upsetting the balance of power that buttresses our basic liberties. In analyzing this brake on governmental power, Justice Harlan noted that "(t)he diffusion of power between federal and state authority. . . . takes on added significance as the size of the federal bureaucracy continues to grow." *Ibid.* See also, *I. Silone, The School for Dictators* 119 (W. Weaver trans. 1963). ("A regime of freedom should receive its lifeblood from the self-government of local institutions. When democracy, driven



by some of its baser tendencies, suppresses such autonomies, it is only devouring itself. If in the factory the master's word is law, if bureaucracy takes over the trade union, if the central government's representative runs the city and the province . . . then you can no longer speak of democracy").

Even if one accepted a certain legitimate subordination of values of local control, it is still possible to argue that the different problems faced by the diverse state criminal justice systems require standards more flexible than those that would derive from a single monolithic standard in this area. The logical implications of what this proposed statute seeks to do would be to permit the federal government to assume full control over a State's procedures for the administration of its own criminal justice system. As noted previously this is and must be beyond the power of the Congress if the federal system is to exist in substance as well as form. Again, the right of a state, like Massachusetts, to regulate its own procedures governing the conduct of potential criminal defendants in its courts, and its interest in supervision of those procedures, stand on the same constitutional plane as its right and interest in framing substantive laws governing other aspects of the conduct of those within its borders. As Justice Powell noted in *Shadwick v. Tampa*, 407 U.S. 345 (1972), "(O)ur federal system x x x recognizes in plural and diverse state activities one key to national innovation and vitality. States are entitled to some flexibility and leeway x x x in the administration of their criminal law." Obviously what the Court strongly suggests—words powerfully relevant here—that a jot-for-jot application of single monolithic standard would put "the states, with their differing law enforcement problems x x x in a constitutional straight jacket." *Ker v. California*, *supra* at 672.

It is clear that the logical upshot of the proposed statute would not be a move toward the "harmonious" federalism which the Supreme Court has consistently indicated should be our goal. Indeed, the result presaged by the proposed statute would be the very antithesis of this objective. Proponents of this bill may argue that the result sought to be achieved by the proposed statute is justifiable as a means of promoting "efficiency" in the administration of criminal justice. Such an argument must be rejected unless one is willing to accept the kind of "efficiency" which, though perhaps appropriate in some watered-down form of federalism, is not congenial to the kind of robust federalism which has been the hallmark of this country over many fruitful and productive years.

Mr. THURMOND. Mr. President, I support the interstate sales provisions of S. 49 which will permit the purchase of firearms by citizens from another State in accordance with the laws of both States. This provision has the strong support of the administration, the Department of the Treasury, professional firearms associations, firearms dealers, and numerous other groups. The controls imposed by S. 49 provide many protections for legitimate law enforcement purposes. The requirements imposed by S. 49 include direct over-the-counter purchases, proof of identification and eligibility to purchase firearms, and extensive recordkeeping by licensed dealers. States

and municipalities are free to impose further, more restrictive requirements, as they deem proper.

I am of the opinion that the States should, in fact, determine those requirements most appropriate for their jurisdictions. I am confident that the lawmakers of States and localities will be able to adopt those safeguards most appropriate to the needs of their jurisdictions regarding the important subject matter of firearms.

#### INTERSTATE HANDGUN SALES

Mr. MOYNIHAN. Mr. President, I am pleased to support the amendment offered by my friend, Senator KENNEDY, to retain the current restrictions on the interstate sale of handguns. The provision in S. 49 to permit such sales would undermine current efforts to control handgun crime.

This amendment does no more than reaffirm current Federal law. The 1968 Gun Control Act, enacted in response to the tragic assassinations of Dr. Martin Luther King, Jr. and Robert F. Kennedy, prohibits all interstate gun sales. S. 49 would eliminate this ban, and permit gun dealers to sell handguns out-of-State if the sale would be legal under the laws of both the buyer's and dealer's States.

Far from advancing the rights of firearms owners, such a provision would place a new burden on gun dealers, by requiring them to know all the gun control regulations of every State in which they might do business. More important, the prospect of interstate handgun sales would gravely weaken efforts to control the spread of illegal handguns, and hamper police efforts to trace guns used in the commission of crimes.

It is not surprising, then, that this amendment is endorsed by the Nation's major law enforcement organizations, including the International Association of Chiefs of Police, the Police Executive Research Forum, the National Troopers Coalition, the National Organization of Black Law Enforcement Executives, and the Fraternal Order of Police, as well as the American Bar Association and the U.S. Conference of Mayors.

This amendment would not deny the rights of sportsmen, nor broaden the scope of Federal gun control law. It would only preserve an important provision in current law. The Nation's police officers have given this amendment their strong endorsement. I urge my colleagues to support it as well.

Mr. HATCH. Mr. President, I am prepared to yield back the remainder of my time, unless the distinguished Senator from Massachusetts desires to reply.

Mr. KENNEDY. Mr. President, I would like to ask how much time we have.

The PRESIDING OFFICER. The Senator has 15 minutes remaining.

Mr. KENNEDY. Mr. President, I yield myself 5 minutes.

I direct the attention of the floor manager of the bill to the section of the legislation that puts the burden on the local dealer. That is addressed, as I understand it, on page 7:

... shall not apply to the sale or delivery of any firearm to a resident of a State other than a State in which the licensee's place of business is located if the sale, delivery and receipt fully comply with the legal conditions of sale in both such States:

I gave my understanding of what that provision means. It is saying that without my amendment, for every dealer all over this country, this is going to mean he has presumed knowledge about this provision. If that dealer does not understand the laws of 50 States and hundreds of localities—and as I said when we were considering it in the Judiciary Committee, we just had an opportunity to do the review of provisions of a few States. For example, whether there is a background check for the purchase of any handgun. For South Carolina, there is one in Fort Mill; whether there is a waiting period, and there is a 7-day one in Maryland, 72 hours in Las Vegas; in Kansas, there is a 15-day period; Cheyenne, WY, 48 hours—the dealer is presumed to understand all local and State laws before selling a handgun to an out-of-State resident.

Then there is the various prohibited classes of individuals. As we have seen in our review, those particular provisions are changing with just about every legislature. So every local dealer is going to have to be aware of those changes or, under this legislation, which is Federal legislation, the possibility of facing an investigation and the penalties spelled out on page 21 making the dealer guilty of a felony. I am just wondering if that is his understanding and, if not, why not, if the Senator will use his own time.

Mr. HATCH. I will be happy to use my own time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I suggest that the Senator has read the statute correctly. S. 49 permits out-of-State purchases but it also ensures that the laws of the buyer's as well as the seller's State shall be scrupulously obeyed. S. 49 requires those interstate sales of firearms—deer rifles, shotguns, and handguns—comply with requirements that will guarantee the objective of the act was met; namely, that all State laws be upheld.

Mr. KENNEDY. As the Senator knows, we have already addressed the issue on the long guns.

Mr. HATCH. We are talking about handguns as well.

Mr. KENNEDY. The Senator has included those.

Mr. HATCH. Yes; I am just stating what the law is, and there are three basic requirements: That all interstate sales of firearms including handguns must take place over the counter face to face. This allows the dealer to identify and make inquiries of the purchasers, and thus it prevents sales to felons and others prohibited from acquiring firearms. Second, all interstate sales of firearms, including handguns, have to be recorded in the dealer's records so that tracing can be readily obtained. Third, all interstate sales of firearms, including handguns, must comply with the laws of both the buyer's and the seller's States. The licensed dealer is legally responsible for knowing those laws. The Senator is correct in stating that the way he has. Those laws are printed in a Treasury Department manual distributed to all dealers. The dealer will be held accountable for any sales in violation of applicable State or local laws, and it is up to the Treasury Department to update those handbooks on a regular basis.

In fact, it is required in the act that they do so. Licensed dealers are familiar with the use of these handbooks. They know how to use them. They know how to interpret the laws. Frankly, we believe that those are adequate protections under the circumstances. We do not think that the true sportsman should be hampered in his right to obtain handguns just because there may be an isolated case here and there which some people think might militate against him.

Mr. KENNEDY. Is the Senator saying that if it conforms with what is actually produced by the Bureau of Alcohol, Tobacco and Firearms, it is going to be basically a defense? Because, as the Senator knows all too well, the BATF book of State and local regulations is always out of date—delayed often by a year or more. They are not timely. I would daresay from a casual review of the States which have any of the requirements we have outlined here, they are significantly out of date. A statement was made by the Senator from Utah about the timeliness and accuracy, but in going over those various provisions we found out that even in the States that were represented by the Judiciary Committee, in almost every single instance they were not really accurate.

The only point, Mr. President, that I make, unless the Senator has more to add to it, is that we are creating a very, very significant additional burden, a good deal of potential vulnerability, and a great deal of additional redtape for dealers. For some of the reasons that I have outlined, unless we accept my amendment, I would hope that those who are concerned about peace and the security in our communities and towns—and we hear many speeches and read many

press releases about that particular issue—that they know that, according to law enforcement officials, we will take a significant step backward in crime control.

Mr. HATCH. Mr. President, I draw the attention of my colleague, the distinguished Senator from Massachusetts, to section 108(1) of this bill which states that upon the enactment of this act the Secretary shall publish and provide to all licensees a compilation of the State laws and published ordinances of which licensees are presumed to have knowledge pursuant to chapter 44 of title 18, United States Code, as amended by this act.

And it goes on from there to answer the distinguished Senator's question.

Now, the licensed dealers are willing to meet this burden, and it is little more than they have to do for long guns anyway. They are familiar with the manual. The Treasury Department is willing to keep the manual up to date and keep them informed. Frankly, it is not going to be the burden the distinguished Senator from Massachusetts says, but even if it was, in order to provide sportsmen with the right to obtain guns, they feel as though they can comply with this particular provision. I believe that the bill takes care of most, if not all, of the concerns of the Senator.

Mr. KENNEDY. Will the Senator, on my time, tell us how many more individuals are going to be hired to do this review at the Bureau of Firearms?

Mr. HATCH. We have been informed that they can do this right now.

Mr. KENNEDY. But they have not.

Mr. HATCH. They are doing it.

Mr. KENNEDY. The fact of the matter is—

Mr. HATCH. They are not doing it with regard to handguns.

Mr. KENNEDY. I would be glad to supply the book of last year and then to inquire of the Senator, in particular towns and communities, what individual dealers would be vulnerable under this legislation. If he is able to answer it, it will be amazing to me because the BATF books are not complete or up-to-date.

Mr. President, the bureaucratic issue is one thing, but I do think the law enforcement issue is clearly the overwhelming issue involved here. I feel that reason stands by itself as the basis for a continuation of existing law on the interstate sales of handguns—not an expansion, not an alteration but just a continuation of current law.

The final point is that if you do not vote for this amendment, you are basically voting to circumvent in one very important way State laws, because under the existing law the only way you can get a handgun or pistol, or even a Saturday night special, is to go through a licensed dealer in your home State. This opens up a complete-

ly different opportunity to circumvent those State laws. For the reasons outlined by the law enforcement officials, I think this would be a serious mistake for those who are concerned about law enforcement.

I reserve the remainder of my time.

Mr. HATCH. Mr. President, I yield such time as the distinguished Senator from Idaho uses.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I understand the statement of the Senator from Massachusetts has made, but let me point out a couple of errors. He made some reference to a letter in which there is reference to the circumvention of State law. As a matter of fact, the bill requires absolute compliance with State law, not circumvention of it. If a purchaser goes to a licensed dealer—and remember, it is a face-to-face transaction with licensed dealers only—only if that licensed dealer can verify the fact that the transaction is lawful in both the State of the purchaser's residence and the State where the transaction takes place can the transaction take place. It circumvents no law at all.

As a matter of fact, if the Senator was really concerned about the burdensome recordkeeping, we could simply delete the reference to the State of residence of the purchaser. That, indeed, would be a circumvention of that State law by permitting a nonresident to go from the place where he could not own or purchase a firearm to a place where he could.

It was because we did not wish to do this that we have these recordkeeping requirements which the Senator now decries. Frankly, I think the Senator from Massachusetts, in his heart of hearts, shares our desire that we not circumvent State law.

With respect to the burden of S. 49 on dealers, if a dealer thinks that S. 49 imposes too onerous a requirement or one that is fraught with too much danger, he has the right to refuse to make the sale, saying: "I can't verify. I can't know that I would not be violating the law, because I do not know what the law of your residence is. I'm sorry, I won't sell this gun to you." It is very easy for him to avoid the recordkeeping and the hazard to which he would be exposed, if he desires to do so.

I hope the amendment is rejected.

Mr. HATCH. Mr. President, I am prepared to yield back the remainder of my time and to vote.

Mr. KENNEDY. I am prepared to do so. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.



Mr. McCURE. Mr. President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. ARMSTRONG], and the Senator from Oregon [Mr. HATFIELD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from New Jersey [Mr. BRADLEY], the Senator from Louisiana [Mr. LONG], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

The PRESIDING OFFICER (Mr. HECHT). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 69, nays 26, as follows:

[Rollcall Vote No. 139 Leg.]

#### YEAS—69

Abdnor	Garn	Murkowski
Andrews	Goldwater	Nickles
Baucus	Gore	Nunn
Bentsen	Gramm	Packwood
Bingaman	Grassley	Pressler
Boschwitz	Hatch	Pryor
Bumpers	Hawkins	Quayle
Burdick	Hecht	Rockefeller
Byrd	Heflin	Roth
Chiles	Heinz	Rudman
Cochran	Helms	Sasser
Cohen	Hollings	Simpson
D'Amato	Humphrey	Specter
Danforth	Johnston	Stafford
DeConcini	Kasten	Stennis
Denton	Laxalt	Stevens
Dole	Leahy	Symms
Domenici	Lugar	Thurmond
Durenberger	Mattingly	Trible
Eagleton	McClure	Wallop
East	McConnell	Warner
Exon	Melcher	Wilson
Ford	Mitchell	Zorinsky

#### NAYS—26

Biden	Harkin	Matsunaga
Boren	Hart	Metzenbaum
Chafee	Inouye	Moynihan
Cranston	Kassebaum	Pell
Dixon	Kennedy	Proxmire
Dodd	Kerry	Riegle
Evans	Lautenberg	Sarbanes
Glenn	Levin	Weicker
Gorton	Mathias	

#### NOT VOTING—5

Armstrong	Hatfield	Simon
Bradley	Long	

So the motion to table amendment No. 509 was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. McCURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### AMENDMENT NO. 510

(Purpose: To amend the provisions regarding compliance inspections)

Mr. MATHIAS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: The Senator from Maryland [Mr. MATHIAS] proposes an amendment numbered 510.

Mr. MATHIAS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 14, line 24, after "(B)" insert "for routine compliance inspections."

On page 14, line 25, strike out ", upon reasonable".

On page 15, line 1, strike out "notice."

On page 15, line 9, after "(A)" insert "for routine compliance inspections."

On page 15, lines 10 and 11, strike out ", upon reasonable notice."

Mr. MATHIAS. Mr. President, this amendment would eliminate an unnecessary and, I believe, a harmful provision of Senate bill 49 that requires notification before a routine compliance inspection of a dealer, manufacturer, or other licensee under the act. Without this amendment, Senate bill 49 would require enforcement officers to give dealers a reasonable notice—whatever reasonable notice may be—of an upcoming inspection.

The proponents of this requirement advocate it because they say the Bureau of Alcohol, Tobacco, and Firearms has been harassing legitimate dealers by conducting frequent, unannounced compliance inspections. The Judiciary Committee looked very carefully into this allegation and produced no compelling evidence to indicate that this is, in fact, the case.

However, if, in fact, it were the case, any concerns in this area are fully addressed by the requirement that is already contained in Senate bill 49—a requirement that is not touched by the language of this amendment—that compliance inspections can be conducted no more frequently than once a year.

Clearly, an annual inspection, whether it is announced or whether it is unannounced, cannot be considered to harass the honest businessman.

Currently, we permit unannounced compliance inspections of various kinds of business activities. Unannounced inspections of liquor distributors and retailers have long been part of both Federal and State regulation of that industry. In fact, the first public job that I ever had was as the counsel to a license commissioner. And it was part of the warp and woof of that office that the commissioner would casually drop in on business establishments at all hours of the day

and night. The fact that he might do so was anticipated by the licensee.

Similarly, the production of meat, of poultry, and of eggs is regulated by Government, and those regulations are enforced through routine compliance inspections which may be unannounced. The drug industry, the mining industry, for other examples, are treated in the same way. And this is accepted by the industries and expected by the public.

The Congress has long recognized that compliance inspections are critical to enforcement of Federal law. In the case of industries where evidence can be easily concealed or moved or altered, unannounced inspections are a significant deterrent to illegal behavior and a most useful tool in apprehending willful violators.

As Dr. Samuel Johnson, the great English moralist, observed over 200 years ago, "Nothing is so conducive to a good conscience as the suspicion of being watched." Yet, Senate bill 49 would abolish unannounced inspections of the records and inventory of Federally licensed firearms dealers and manufacturers. In this way, the bill severely restricts the effectiveness of Federal enforcement.

Prior notification would be of little importance to a legitimate firearms dealer. His records would not, of course, need change or alteration. His inventory would not have to be improved prior to the visit from Federal officials. Thus, the honest dealer would receive no benefit from the legislation.

However, the unscrupulous dealer or manufacturer would be given adequate notice and adequate opportunity to engage in what we might call creative recordkeeping, and the improvement of otherwise illegal inventory, in order to bring his business into temporary compliance and thereby to thwart lawful Federal enforcement.

The Supreme Court has specifically upheld unannounced inspections of licensed gun dealers of the kind that Senate bill 49 would prohibit, and that this amendment would allow to continue. In the case of the United States versus Biswell, the Court stated that "inspection is a crucial part of the regulatory scheme since it assures that weapons are distributed through regular channels in a traceable manner and makes possible the prevention of sales to undesirable customers and the detection of origins of particular firearms."

A brief review of the facts in the Biswell case will show the kind of enforcement actions that will be prohibited by Senate bill 49 unless it is amended as proposed in the pending amendment. This review also indicates the type of dealer who will benefit from the prohibition.

Mr. Biswell has been federally licensed as a dealer in sporting weapons. One afternoon he was visited, unannounced, at his place of business by local policemen accompanied by a Federal Treasury agent who identified himself and conducted an inspection of Mr. Biswell's books. The record discloses that the Treasury Agent then requested access to Mr. Biswell's locked storeroom. Mr. Biswell at first refused, but the Treasury agent handed Mr. Biswell a copy of title 18, section 923(g) which authorizes such unannounced inspection and Mr. Biswell, deferring to the majesty of the law, opened the storeroom.

There the Treasury agent found two sawed-off rifles which Mr. Biswell was not licensed to possess since he was a licensed dealer only in sporting weapons. As a result, Mr. Biswell was convicted of violating Federal firearms law, and the Supreme Court, in upholding the reasonableness of the unannounced compliance inspection, upheld Mr. Biswell's conviction.

If we were to enact, as I hope we will not, Senate bill 49 without the pending amendment, I wonder what would happen to someone who was placed in the position of Mr. Biswell. I would like to leave Mr. Biswell himself out of it. We cannot speculate as to what he might have done or not have done had he had some prior notice of the inspection which resulted in his conviction. But some other dealer in sawed-off weapons, notified in advance that an inspection of his records and inventory was about to take place would not, I suspect, sit idly behind his counter waiting for the Treasury agents to arrive. I rather suspect that he would conduct a preinspection of his own inventory and remove the more novel weapons that it might contain. On the appointed day when he was expecting the visit of the Treasury agent, and his place of business was shining and swept and everything was in order, there would be no sawed-off rifles to be found by the Federal agent, and the premises would be all in order for the compliance inspection.

Now, the very next day this hypothetical dealer would be able to restore the illegal weapons to the inventory, safe in the knowledge that he would always have adequate notice and adequate opportunity to remove them before the next inspection that would not take place, under the law, until at least a year later.

Without the pending amendment, Senate bill 49 will cripple Federal enforcement of the law. Only the dishonest dealer will benefit from such preinspection notification. But all of the American people will suffer because of the reduction in enforcement effectiveness. So I urge Senators to consider the effect of this provision of Senate bill 49 and to support the pending amendment to eliminate this unde-

sirable feature, and to restore effective compliance and enforcement.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, a brief explanation of the inspections policy included in S. 49 should answer many of the questions posed by my colleagues. Under current law, a dealer's entire inventory and his record is subject to inspection at any time during business hours without prior notice. There are no restrictions on the number of inspections or on the use of information gathered during these inspections. Unannounced searches have become fishing expeditions for inadvertent recordkeeping violations. In one instance, publicized by our hearings, several BATF agents conducted a thorough search of one dealer over a period of several days only to discover a minor recordkeeping violation concerning a few pounds of black powder. Section 49 remedied some of these past problems by codifying the new practices of the BATF. Specifically, S. 49 employs at least two different inspection mechanisms for two different purposes.

I can distinguish these two types of searches by labeling them loosely the compliance inspections and the enforcement searches. Compliance inspections, or courtesy visits, as they are sometimes called, are limited to one per year after reasonable notice, and information gathered in these annual routine inspections cannot be used to criminally prosecute the dealer unless the inspection discloses sales to prohibited persons or a willful recordkeeping violation. The reasons for these limitations on the courtesy visit is that its purpose is solely to instruct dealers in the operation of the law and to help the dealer comply with technical recordkeeping requirements. Even these annual visits and notice restrictions do not apply, however, when Federal law officers are tracing firearms or seeking evidence concerning violations by persons other than the dealer. The notice provision will assist both the Federal officers and the dealer in this process. Clearly, this provision of S. 49 will promote the flexibility and cooperation between the regulated and regulator that is essential to the success of this regulatory scheme. The compliance inspection must be distinguished from the enforcement search, and the enforcement search is conducted with the only restriction being those listed on the warrant issued by a judicial officer on the basis of reasonable cause. A dealer is always subject to searches conducted on this basis. If the Federal officers have reasonable cause to believe a violation of the law may be discovered on the dealer's premises, they may obtain a warrant and conduct a full search in accordance with the

terms of that warrant. Recognizing that S. 49 grants Federal officers access to records as often as is necessary to promote compliance and enforce the law, the Treasury Department states:

The administration would retain the notice requirement in connection with the compliance inspection as it would not adversely impact on law enforcement.

So I think the bill addresses the concerns of the distinguished Senator from Maryland. Furthermore, the Secretary has full access to records for tracing purposes. In addition, the licensee is required by the bill to submit any records necessary for law enforcement to the Secretary of the Treasury. This bill will not hinder in any way enforcement of the law or the ability of the Treasury Department to trace weapons used in crime.

Mr. President, since the majority and the minority leader are down at the White House—so that all of our colleagues will understand—I will move that the vote on the amendment be set aside so that we can go to the next amendment with no vote occurring until 6:15. Maybe someone else would like to speak before I make the motion.

Mr. MATHIAS. I think we may have some further discussion on this.

Mr. HATCH. I will withhold that motion until the end of the day.

Mr. MATHIAS. The Senator from Utah has raised a valid argument that there may be harassment if there were unannounced inspections.

But I think it is worthy to note the opinion of Justice White, who, speaking for the majority, said that in the gun control context, "if inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential."

I think that is the crux of this whole question. That is what is at issue in this colloquy. "If inspection is to be effective and serves as a credible deterrent, then unannounced, even frequent, inspections are essential." That is Justice White speaking. That is the law enforcement point of view.

Under the bill, there is no possibility of frequent inspections. This amendment does not touch the question of frequency. If inspections can only be conducted with prior notice, then I suspect that they will have very little deterrent purpose and will have no value.

It is interesting to note that the court later stated in its opinion that,

It is also plain that inspections for compliance with the Gun Control Act pose only limited threats to the dealer's justifiable expectations of privacy. When a dealer chooses to engage in this pervasively regulated business and to accept a Federal license, he does so with the knowledge that his business records, firearms and ammunition will be subject to effective inspection. Each licensee is annually furnished with a



revised compilation of ordinances that define his obligations and define the inspector's authority. The dealer is not left to wonder about the purposes of the inspector or the limits of the task.

It seems to me that that language of the Supreme Court is very important in the consideration of this amendment.

I would ask the distinguished Senator from Utah if he really believes that if there was an announcement of the inspection of Mr. Biswell's premises that the sawed-off weapons would have been found there, and that the law with respect to the purchase of such weapons could have been effectively enforced. It is that question that I think should move the Senate to adopt this amendment by a very large majority.

Mr. HATCH. In that particular case, they did discover by a surprise check. They have a right to do that.

Let me read from the third paragraph of the letter from the Department of the Treasury that we put into the RECORD earlier today, dated June 24, 1984, the paragraph entitled, "Requirement for Notice before inspection of importer, manufacturer, dealer and collector." That paragraph states:

Requirement for Notice before inspection of importer, manufacturer, dealer and collector. S. 49 proposes that importers, manufacturers, dealers and collectors be provided notice by ATF before an annual compliance inspection is made. This compliance, or courtesy visit, is made routinely to assure that the licensee is complying with Federal recordkeeping requirements on the acquisition and transfer of firearms. This differs from a visit in the course of a criminal investigation where there is reasonable cause to believe laws have been broken by the licensee. In those cases, visits are made under search warrant or inspection warrant and without notice. Therefore, the Administration would retain the notice requirement in connection with the compliance inspection, as it would not adversely impact on law enforcement. The Administration supports the language in S. 49.

I believe the language in S. 49 does take care of the Senator's concern. Certainly, it provides for two alternatives on inspection. If there is any reason to believe that there is a law being broken, then there is nothing that would prevent the appropriate authorities from obtaining the necessary warrant and investigating the premises.

Mr. MATHIAS. Would the Senator consider a similar requirement for prior notice in the case of alcoholic beverage licensees?

Mr. HATCH. I think we are dealing with another question there.

Mr. MATHIAS. We are dealing with the question of law enforcement.

Mr. HATCH. I would tell the distinguished Senator that there are already three nonnotice inspections provided for in this bill and I believe that is sufficient.

Mr. MATHIAS. I can assure the Senator it is not.

Mr. KENNEDY. Will the Senator yield?

Mr. MATHIAS. Yes.

Mr. KENNEDY. Will the Senator yield me 5 minutes?

Mr. MATHIAS. I do.

Mr. KENNEDY. Mr. President, I join in commending the Senator from Maryland for offering this amendment. He has given a very full and complete explanation of it.

What we are saying in this amendment, Mr. President, is that if we can permit unannounced inspections for animal welfare, for example, we should be more concerned in having similar inspections for some firearm dealers who are trafficking in illegal weapons, perhaps even for sale to the underworld, or for sale to those involved in drugs.

We permit this kind of inspection, as the Senator from Maryland has pointed out, in a number of different areas of public policy.

Why, Mr. President? It is because we think there is some worthwhile, useful, public purpose that can be served from such inspections. Certainly, it seems to me that in areas which involve life and death, in the trading and use of weapons, this is a reasonable, sensible, and responsible position to take.

In our earlier discussion, we found out that 83 percent of the children in our society who commit suicide each year are using small handguns. The figures in terms of suicides are going right through the ceiling. None of us are saying if you put some kind of restriction, some kind of inspection, you are going to resolve that problem. But what we are saying is when you begin to break down the walls of any kind of control or any kind of legitimate inspections, effectively what we are saying is that the availability of these weapons, the use of these weapons, is going to become more significant and more pronounced.

I think the amendment of the Senator from Maryland provides a very important service. We have seen those who have indicated support for this legislation say we are really basically tinkering with the current law just to eliminate the redtape, that we really want to preserve the various benefits of firearms legislation, to ensure the protection, safety, and security of the American people. Yet, we see time in and time out in this bill where we take steps that emasculate any kind of legitimate effort to control the proliferation of handguns.

I had a good opportunity to attend a conference with the Senator from Maryland just the past week in Geneva, where we heard about the proliferation of nuclear weapons, and we heard the President talking about the dangers of nuclear proliferation. No one knows more about that issue than the Senator from Maryland.

But what about the proliferation of weapons here in the cities and in the rural areas of this country that bring death and destruction just as surely as the explosion of nuclear weapons, Mr. President, in terms of the individual who is dead?

We have, without the acceptance of this particular amendment, just again turned our backs on the families of this country who are hurt by handgun crime, and the proliferation of handguns in our society.

They are the ones who are going to be affected and impacted by the continuing cutting away of any kind of sensible, responsible controls.

We are concerned sufficiently about liquor control in our society, so we permit unannounced inspections. We are concerned about the quality of mines, so we permit inspection. These are areas on which I agree.

We are sufficiently concerned about animal welfare, so we permit inspections.

We are concerned about meat and egg production, so we permit inspection.

And in the fashioning and the shaping of drugs in our society, we permit inspection. There has been a solid record made by the health committees over periods of years why these inspections are so important in terms of safety of prescription drugs in our society.

But talk about handguns, Saturday night specials, snubbies, bullets, and school is out. School is out. The NRA wins again.

The PRESIDING OFFICER. The Senator's 5 minutes has expired.

Mr. HATCH. Mr. President, I do not quite know how to interpret the comments of my two esteemed colleagues. There is inspection under this bill. Let me list five inspections that the bill provides for and, hopefully, put this to rest.

There is the courtesy visit with a notice provision attached. That is No. 1.

No. 2, they can inspect any time they have reasonable cause and a warrant, without notice. If you look at the Biswell case, implied in that case is that they had reasonable cause to inspect, and they did.

No. 3, any inspection during a reasonable inquiry during the course of a criminal investigation may be had. There is just no question about that under the bill as it is written.

No. 4, a licensee may be required to submit all records necessary for law enforcement to the Secretary of the Treasury—at any time the Secretary wants to have these records submitted.

No. 5, law enforcement officials could come on the premises and inspect for tracing purposes any time they want to.

I fail to see where the concerns of our esteemed colleagues are not accommodated by the bill. They seem to say that, just because the law enforcement officials do not have an absolute right during a courtesy visit, they cannot enforce the law.

Mr. KENNEDY. Will the Senator yield for a moment?

Mr. HATCH. I am delighted to yield.

Mr. KENNEDY. Could the Senator indicate where in the course of our hearings on this legislation, we heard what abuse took place, what pattern of abuses are taking place that there has to be this kind of change?

Mr. HATCH. I did cite the one instance in my opening remarks, which was publicized in the committee hearings, where several BATF agents conducted a thorough search of a dealer over a period of several days only to discover a minor recordkeeping violation.

Mr. KENNEDY. Is this the only example where, as I understand it, in response to my question, the Senator said there was an instance in the course of the hearings, where the BATF went in and found recordkeeping violations?

Mr. HATCH. As I understand it, Mr. President, we have had all kinds of complaints of harassment on the part of BATF officials, if you will, toward licensees. That is what we are trying to touch here, get some reasonableness as far as inspections are concerned. There is no way that an adequate law inspection cannot be accomplished under this bill. Let me give another illustration.

Mr. KENNEDY. Mr. President, I do not want to interfere with the Senator's presentation, but I daresay I hope that in the Senator's presentation he will give some additional examples. I followed some of those hearings and I just do not believe that case has been made that a pattern of abuse has occurred. Maybe I missed something during the course of the consideration of the matter, but I just do not believe that case has been made about the types of abuses which the Senator has outlined.

Mr. HATCH. Mr. President, let me give one other illustration that came up during the hearings. I understand there were other accusations and complaints being made. But I remember a case where there was confiscation without charges. Bob Wampler, a VA executive, was concerned. They raided his home, confiscated his 75-gun collection, 25 of which were antiques, gold engraved, et cetera. No criminal charges were ever brought.

For 2½ years he kept pushing for their return and BATF at one point threatened to prosecute if he did not let them keep the guns. Nearly 3 years later, they returned them, all without a single charge being filed.

I call the distinguished Senator's attention to page 39 of the committee report. It makes the point that during its hearings, the committee received considerable evidence of the misuse of existing overly broad powers to confiscate and forfeit firearms. That is what we are trying to avoid, among other things.

Frankly, Mr. President, I think this particular amendment does not add a thing to the bill. The bill provides adequate law enforcement. It gives five ways of obtaining enforcement. I think that is adequate. I shall be happy to yield some time to the distinguished Senator from Idaho.

Mr. McCLURE. Mr. President, I thank the Senator for yielding. I also oppose this amendment.

Basically, the situation is this: The McClure-Volkmer bill allows four different types of BATF inspections. It may conduct inspections "for a reasonable inquiry during the course of a criminal investigation." It may conduct regular annual inspections. It may conduct inspections or inquiries for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation. And, finally, it may require the submission of "all record information required to be kept" by Federal gun laws, "on a form specified by the Secretary of the Treasury." Pursuant to these inspections, the Secretary may seize any weapon, and may require forfeiture if he can demonstrate that that weapon was intended to be used in the commission of any of a series of relatively minor recordkeeping offenses.

Now, the Senator from Maryland complains that one of the four permissible inspections—one of the four—requires that BATF notify the person being inspected before the inspection is conducted. That one inspection which would require reasonable notice is the routine annual inspection which is conducted on legitimate gun dealers with absolutely no showing of wrongdoing.

In support of his amendment, the Senator raises two arguments: first, that warrantless surprise inspections are constitutional, and second, that warrantless surprise inspections are conducted in a total of five other cases of federal law—only five.

Mr. MATHIAS. If the Senator wants more, we can give them to him, Mr. President.

Mr. McCLURE. With respect to the question of whether the pending amendment is constitutional, let me say that it probably is. But this is not to say that it represents good policy. The question of whether a form 4473 is properly filled in is a considerably different question from whether a coal mine is about to collapse, or a drug or a milk product is adulterated. In the latter cases, a mistake by the miner or

manufacturer could result in the loss of hundreds—perhaps thousands—of lives. Does anyone really believe that the recordkeeping inspections conducted by BATF involves issues of the same magnitude?

Second, I doubt that it is possible to produce a single example of an industry which is subject to the range of inspections and the magnitude of intrusion that is applied to the firearms industry.

For example, are there four different types of inspections which the Federal Government imposes on the mine industry? Or the liquor industry? Or the drug industry? I don't believe it.

Furthermore, I can assure the Senator that the seizure and forfeiture provisions applicable to guns are applied to no other industry in the country. There are only three cases in title 18 in which property can be forfeited based only on the intent to commit a crime. They are: First, the possession of counterfeit plates; second, the possession of illegal drugs; and third, the lawfully and constitutionally protected possession of guns.

So, if the Senator from Maryland would care to offer an amendment replacing the restriction of the Gun Control Act with regulations applicable to any other industry, let me say that I would be inclined to support such an amendment. Lets loosen gun controls to the level of regulation imposed on, say, drugs or mines or milk products.

But let me say that I strongly oppose efforts to pick and choose between the most onerous aspects of each Federal regulatory scheme, and apply only the strictest aspects of each Federal statute to the firearms industry. And that is what the Senator is attempting to do.

Mr. President, I would also respond to the Senator from Massachusetts who raised the question why the need for this provision. I can tell you why this provision is needed. It is because we have witnessed in the past several years the attempts by BATF to harass legitimate gun owners and collectors by constant surprise inspections, not once but twice, not twice but three or four times. This harassment has not just involved efforts to come in and look at records to see that they are in shape, but efforts conducted in a manner which disrupts business constantly. In New Hampshire, BATF went into a dealer's shop with surprise inspections on five successive days. They ultimately charged him for being 5 pounds over on black powder. We have a history of abuse of the inspection provision under the existing statute. That is why many of the provisions in the McClure-Volkmer bill are there: because we are trying to correct a specific documented abuse in-



volving the over-intensive application of surprise inspections which are not legitimately required to protect the public interest, if that interest is simply to make certain that all of the records are being kept in the appropriate manner.

Let me reiterate what I said just a moment ago. If you have probable cause to believe that the crime has been committed, you can get a warrant and search. If you want to trace a firearm and look through the records to determine where and to whom that firearm was sold, you can do that without notice, even without this amendment. The only provision the Senator from Maryland seeks to attack in this instance is the simple requirement that if you are going to come into a legitimate dealer's office, into his place of business and spend hours going through his records, you should give him notice of the fact you are coming, so you do not disrupt his business, as has been done in the past. I hope that the amendment will not be adopted. At the appropriate time, when all time has been yielded back, I intend to make a motion to table the amendment.

Mr. MATHIAS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Maryland has 10 minutes.

Mr. MATHIAS. Mr. President, I yield myself such time as I may require.

The Senator from Utah has said that there are five kinds of inspections provided under the act and that should be adequate. I think we need to look at those very briefly.

The first he lists is the courtesy visit, which I do not believe is intended under any circumstances to be an inspection. It is what it appears to be. It is an advisory, educational experience for the enforcement officer and for the licensee. The next three of the so-called inspections that he mentions are, First, that which would follow the issuance of a warrant by an appropriate court; second, that which might take place in the course of a criminal investigation; and third, that which might result from tracing a firearm, presumably after the commission of a crime. All of these inspections require a threshold showing of some independent event that has occurred somewhere, sometime, someplace. The threshold event may or may not involve the licensee. It may or may not have some relation to the business or to the inspection. But a threshold has to be crossed before any one of those investigations can take place. That is hardly the kind of spontaneous, independent investigation that law enforcement requires.

The fifth inspection that he mentioned is the access by the Secretary of Treasury to the records, and as to

that I would merely refer to the experience under the *Biswell* case. If the Treasury agent who visited Mr. Biswell had stopped his research after he had looked at the records, there would have been no *Biswell* case. It was only after he said, "Now, having looked at the records, I want to go into your storeroom" that he found the illegal sawed-off weapons.

That one experience, although others could probably be cited, is adequate to indicate that the mere inspection of the records is not sufficient for law enforcement. That is why so many law enforcement officers around the country are supporting this amendment.

Now, my good friend from Idaho has said that this is a question merely of looking for some form, some insignificant, minor form that may be improperly filled in. He says that that should not require the right to make an unannounced inspection, that that is not in the same category as a mine shaft that is inadequately vented or inadequately structured. Nor, he says, is it in the same category as a dairy product that may be contaminated or meat that may be unwholesome.

But I would suggest to the Senate that we are talking about the question of human welfare.

We are talking about questions of human life, of human health, of danger to human beings, whether it is in a mine shaft or whether it is from eating contaminated food or whether it is from being attacked with an illegal weapon. That is really what we are after. We are looking at one common thread through all of this kind of regulation, which is the thread of concern for human safety, human welfare, human security. That is why law enforcement officers from one coast to another are interested in this amendment.

Now, the question is raised, why not make an announcement that you are coming, why not tell them you are coming. Well, I think if the average alcoholic beverage licensee got a phone call that said, "Sweep up, clean up, heave out, get ready, we will be around—let's see, it's now about 10 minutes of 6. We are coming around, we will be there around 9 o'clock, so get ready for us"—it would be the subject of a great deal of laughter and ridicule. If there were not laughter and ridicule there would be a charge of collusion. It would be charged that somebody in the licensing inspector's office colluded with the licensee to tell them they were coming around.

I think the same is true in any kind of business. We are not picking out one kind of business for this necessary tool of law enforcement. In those areas of commerce that are deemed to be necessary to regulate pervasively, you have to have the ability from time to time to make unannounced inspec-

tions. I think that the question has to be asked, without any knowledge as to what Mr. Biswell would have done—because, as I said earlier, that would have been speculative and hypothetical—the question has to be asked, Does anybody believe that there ever would have been a *Biswell* case if Mr. Biswell had had prior notice?

Then the question has to be asked, What difference does it make? Of course, the difference is significant. In Mr. Biswell's inventory, in his store, two sawed-off weapons were found, two weapons that were in violation of his license, two weapons that presumably might have been used to threaten human life and welfare.

So it does make a difference. It makes a serious difference in terms of public safety, and for that reason I hope the Senate will adopt this amendment.

Mr. McCURE. Mr. President, will the Senator from Utah yield?

Mr. HATCH. I am happy to yield to the distinguished Senator from Idaho.

Mr. McCURE. Mr. President, I take this time only to respond to this much to the Senator from Maryland.

First of all, there have been voluminous records compiled of the wrongs that were done by BATF in the harassment of lawful dealers in the conduct of lawful businesses in which they found no wrongdoing.

There was, and I think is, a reason to protect lawful businessmen in the conduct of their businesses from the oppressive actions of government. But if that is not of sufficient concern, I think we also should look to the differences between two types of inspections, because the Senator from Maryland very carefully delineates the conditions which inspectors hope to find in inspections of eating establishments or of licensed beverage establishments—the conditions of compliance or noncompliance with provisions of a statute or ordinance that regulates those premises. But, if the Senator's amendment is adopted, legitimate gun dealers will not be similarly protected. There is nothing to prevent simple inspections of records from turning into surprise fishing expeditions, not just inspections to determine whether the records are being kept correctly.

As a matter of fact, the annual inspection is being used, and has been used, not to discover the criminal misbehavior of people who have illegally purchased guns or illegally sold guns, but to find an unwitting or careless mistake in the recordkeeping, which is the very essence of what we are trying to eliminate.

If the inspection of the records is to discover the commission of a crime by someone else who is in possession of that gun, or somebody who illegally purchased one, that can be done just as certainly with notice before inspec-

tion as without it. The only reason for the inspection without notice is the attempt to find a recordkeeping error—not the commission of crime with a gun, but a recordkeeping error. That is precisely the problem we had under the 1968 Gun Control Act, and that is precisely why the amendment of the Senator from Maryland would take us back a long step instead of forward.

Mr. MATHIAS. Mr. President, will the Senator yield for a question?

Mr. McCLURE. I am happy to yield.

Mr. MATHIAS. The Senator refers to a recordkeeping error. Does he consider that Mr. Biswell made a recordkeeping error in having sawed-off weapons in his storeroom?

Mr. McCLURE. I suggest to the Senator from Maryland that the possession of a sawed-off shotgun is a violation of current criminal law and has nothing to do with recordkeeping whatsoever—good, bad, or indifferent.

If the Senator is suggesting that we have warrantless inspection of all premises in order to discover whether somebody has an illegal sawed-off shotgun, I suggest that we start in his home, and we will do it twice a day for the next 6 months and see whether he feels that any constitutional right has been impinged.

Mr. MATHIAS. The Senator from Maryland is not suggesting that he would have unannounced inspections of all kinds of premises. I am suggesting that in a number of regulated businesses, such as licensed premises where alcoholic beverages are sold and firearms are sold, there shall be a limited number of inspections, as this bill provides.

Mr. McCLURE. The inspections we refer to here are not inspections of the premises. They are inspections of the records.

Mr. MATHIAS. How would the Senator expect the Treasury agent to know whether the records were accurate?

Mr. McCLURE. By inspecting the records.

Mr. MATHIAS. By inspecting the records, and then comparing them with the inventory.

Mr. McCLURE. Which they are entitled to do under the McClure-Volkmer bill.

Mr. MATHIAS. Only with notice.

Mr. McCLURE. With notice, certainly. The inspection of the records of that business, but not the inspection of the premises to determine whether or not an unrelated crime has been committed.

Mr. MATHIAS. Now we are making progress.

Mr. McCLURE. I have not yet detected it.

Mr. MATHIAS. I revert to my question. Does the Senator think that if Mr. Biswell had notice that his storeroom was to be inspected, there ever would have been a Biswell case?

Mr. McCLURE. It was not question of his records being wrongly kept that caused him to be in violation. It was because he was in violation of an existing firearms statute that bans the possession of a sawed-off shotgun.

The Senator is suggesting warrantless, unannounced inspections of premises to uncover the presence of the violation of a crime. That is totally different from the question of whether or not the records have kept correctly and whether or not there should be notice upon the inspection of the records.

We have talked endlessly about the civil liberties of people against warrantless inspection and have even suppressed evidence that was taken with warrantless inspections of premises where there was discovery of the commission of a crime unrelated to the reason for the inspection.

I suggest to the Senator that if, in the case of an inspection of a milk factory, under the guise of inspecting the sanitary conditions, inspectors had discovered, without a warrant, that the owner of that milk plant had a sawed-off shotgun, there would have been suppression of that evidence.

I suggest to the Senator again that the Senator simply does not understand the rationale behind this section.

Mr. MATHIAS. The Senator clearly would not suggest that an inspection of a dairy premises which began with the records and ended up with the identification of salmonella in the product would not result in some enforcement action under the law. I think that is the appropriate parallel.

Unfortunately, the Senator has not yet answered my question as to whether or not there would have been a Biswell case had Mr. Biswell had prior notice.

Mr. HATCH. Mr. President, if all debate is concluded on this matter, I am prepared to yield back the remainder of my time.

Mr. MATHIAS. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McCLURE. Mr. President, I wonder if the Senator from Maryland might be willing to temporarily set aside his amendment before proceeding to a motion and a vote on his amendment.

Mr. MATHIAS. Mr. President, I will be happy to comply with the request of the Senator from Idaho.

Mr. McCLURE. My understanding is that the majority leader is at a meeting with the President at the White House and desires to delay votes until sometime shortly after 6, when he will return to the floor.

Mr. HATCH. Both the majority leader and the minority leader.

Mr. President, I ask unanimous consent that the vote on the amendment of the distinguished Senator from Maryland be postponed until conclusion of the debate on the next amendment and that in the meantime we proceed to consider the next amendment; and I further ask unanimous consent that the vote on this amendment and the subsequent amendment occur no sooner than 6:15 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I believe the distinguished Senator from Hawaii is here and prepared to start on his amendment.

I yield the floor.

#### AMENDMENT NO. 511

(Purpose: To apply a waiting period to the sale of a handgun except sales between licensed importers, manufacturers, dealers, and collectors)

Mr. INOUE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Hawaii [Mr. INOUE], for himself, Mr. METZENBAUM, Mr. MATSUNAGA, Mr. KENNEDY, Mr. MOYNIHAN, and Mr. KERRY, proposes an amendment numbered 511.

Mr. INOUE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 10, lines 21 and 22, strike out "a new subsection to read as follows:" and insert in lieu thereof "the following new subsections:"

On page 11, line 3, strike out the closing quotation marks and final period.

On page 11, between lines 3 and 4, insert the following:

"(o) It shall be unlawful for any person to deliver any handgun to any other person after negotiating for the sale of such handgun to such person, before the expiration of 14 days after the date of the first payment for such handgun is received from the buyer of same, except that the delay period provided for herein shall not apply—

"(1) When the chief law enforcement officer of the purchaser's place of residence certifies, by notarized statement to the seller, that the immediate delivery of the handgun to the buyer is, to his knowledge, necessary to protect against a threat of immediate danger to the physical safety of the buyer;

"(2) when the purchaser provides proof that he has purchased another handgun within the previous twelve months and that in such purchase he complied with the 14 day waiting period; or

"(3) to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors."

#### 14-DAY WAITING PERIOD AMENDMENT TO THE GUN CONTROL ACT

Mr. INOUE. Mr. President, the amendment that I send to the desk on behalf of myself and Senators METZENBAUM, MATSUNAGA, KENNEDY, MOYNI-



HAN, and KERRY provides for a 14-day waiting period between the time a sale of a handgun is negotiated and its delivery.

Under existing law, it is unlawful for a licensed dealer to knowingly transfer a firearm to convicted felons, fugitives from justice, drug abusers or addicts, mental defectives or persons committed to mental institutions, illegal immigrants, persons dishonorably discharged from the armed services, and former citizens who have renounced their U.S. citizenship. In what is characterized as a "law enforcement" amendment contained in this bill, this prohibition is extended to all persons. However, neither the bill nor existing law provides for any meaningful mechanism to determine that a purchaser of a handgun is not among these categories.

Today, in most States such persons legally prohibited from possessing a firearm can immediately obtain a handgun merely by signing a form which provides that he is not proscribed from obtaining such a weapon and showing some form of identification to verify his address and birthdate. Unless the seller knows or has reason to believe of a violation, he makes the sale based solely on the buyer's statement.

Entrusting felons, addicts, and other such persons to comply with this kind of "honor system" makes a mockery of our attempts to keep weapons from their hands.

Accordingly, I am proposing a mandatory 14-day waiting period to allow Federal, State, and local authorities at least an opportunity to verify a buyer's representations.

Support for a waiting period is not limited to the so-called gun control community. Law enforcement officials urge the passage of the amendment, recognizing the ineffectual nature of the existing enforcement mechanism. The International Association of Chiefs of Police, the National Association of Attorneys General, the Police Executive Research Forum, National Troopers Coalition, National Organization of Black Law Enforcement Executives, and the Fraternal Order of Police all endorse this waiting period. And, 119 present and former chiefs of police and police commissioners have signed Handgun Control Inc.'s safe streets petition which includes the waiting period provision.

In 1981, Attorney General William French Smith's task force on violent crime concluded that because there existed "no effective method to verify a purchaser's eligibility" and "since drug addicts, mental defectives and the like are not the best risk for an honor system, a waiting period to verify the purchaser's eligibility is sensible and necessary."

I believe that it is also worth noting that, although it has since altered its

position, the National Rifle Association in 1976 expressly recognized that, "A waiting period could help in reducing crimes of passion and in preventing people with criminal records or dangerous mental illness from acquiring guns."

Additionally, the Committee on the Judiciary in its version of the bill reported during the 97th Congress included an amendment almost identical to the one proposed here. It was sponsored at that time by Senator KENNEDY and our current majority leader.

A waiting period is, of course, not a new idea. Fifteen States and many local governments impose waiting or registration periods ranging from 3 to 15 days. The adoption of this amendment would therefore only follow the foresight of jurisdictions from Alabama to Wisconsin. And while it is true that all States and localities are free to impose waiting periods, a Federal minimum requirement would ensure national uniformity and reinforce the Government's commitment to the enforcement of the law.

The widespread acceptance of this concept is due, I believe, to the fact that it is not a gun control measure as much as it is a law enforcement measure.

Virtually everyone who has studied the subject agrees that effective enforcement of existing laws and the punishment of those who violate them are as, or more, important than weapons control. Yet, Federal law provides neither the opportunity nor means for the enforcement of its simplest and most straightforward prohibition—that weapons shall not be sold to persons who we can all agree should not have possession of them. Shopkeepers, salesmen, pawnbrokers, and private citizens are simply left to apply their judgment and understanding of the law based on what is probably a one-time face-to-face transaction.

Even those who may want or require more time, or assistance to conduct an investigation, are not provided a basis for doing so. And if a conscientious seller was to voluntarily defer a sale in order to learn more about the buyer, the handgun purchaser would only have to go elsewhere.

A mandatory waiting period will not keep handguns from the hands of all criminals and other prohibited persons. It will, however, provide law enforcement officials and others who are serious about implementing existing law with an additional tool. I can see no reason why this tool cannot, or should not, be provided.

It will not impose significant additional limitations upon an individual's alleged right to bear arms. The waiting period would apply only to handguns. The sales of rifles, shotguns, and ammunition would remain unaffected. And while the waiting period would indeed delay the delivery of a handgun

in most circumstances, such a delay constitutes only the most minimal intrusion upon any alleged right. Such minimal intrusions are constitutionally and practically tolerated with regard to the exercise of virtually all of our recognized rights.

And when the issue is providing someone with an efficient and instantaneous power to kill, I cannot but believe that any burden imposed is far outweighed by our Nation's interest in keeping weapons from the hands of the irresponsible.

The waiting period would not prevent someone from immediately obtaining a weapon if he or she requires it to protect against an immediate danger to physical safety. The amendment provides for a waiver of the waiting period upon certification of such a need by the chief law enforcement officer of the person's place of residence.

The amendment would not delay transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Existing Federal verification of their eligibility to purchase weapons makes the waiting period unnecessary. Commercial transactions between licensees would therefore be unaffected.

The amendment would not place unwanted additional burdens upon local, State, or Federal law enforcement. No particular action on their part is required. The amendment merely provides them with an opportunity—an opportunity that they are requesting—to conduct checks or otherwise work to prevent prohibited persons from purchasing weapons.

Mr. President, I am not suggesting that a waiting period is a panacea for our Nation's crime or handgun problem. However, I do believe that if we are serious about enforcing those few restrictions which do exist on the transfer of handguns, something leaving more than an "honor system" is required. The law enforcement community has identified a waiting period as an appropriate tool of enforcement. And if its application results in the commission of one less crime, or in keeping weapons from the hands of one less felon or drug addict, I believe the minimum inconvenience it would impose would be more than justified.

Available evidence indicates that handguns will be kept from far more than a handful of prohibited persons. For example, police in Palm Beach County, FL, credit a 7- to 14-day waiting period enacted last year as being partly responsible for a 200-percent decrease in the homicide rate in the first quarter of 1985.

Police in Columbus, GA, report that the city's 3-day waiting period and background check catch two felons a week trying to buy handguns. And in the first 6 months after the enactment of a 10-day waiting period in Broward

County, FL, 37 applicants for handguns were found to have past felony arrests or outstanding warrants.

On the other side of the spectrum, police in South Carolina, which does not have a waiting period, estimate that 300 to 350 guns per year are sold to people who were found to have past felony records or are otherwise prohibited from owning a handgun.

Finally, Mr. President, the proposed waiting period would provide a "cooling off" period which may deter the impulsive criminal or suicidal use of otherwise readily purchasable handguns.

No one here would sanction the sale of a handgun to a person who was enraged or despondent and because of his condition intended to put the handgun to immediate use. Yet, Federal law contains nothing to prevent or prohibit such a sale. A mandatory waiting period would at least have the effect of denying such a person immediate access to a handgun. It would not, and could not, prevent all crimes of passion or acts of self-destruction. It would, however, ensure that our laws operate as a barrier rather than accomplice.

The Broward County, FL, waiting period was enacted after two separate murder-suicides were committed with guns purchased on the day of the murder. I hope we do not wait to suffer more such tragedies before we act.

Mr. President, over 2 million handguns are manufactured annually in the United States. According to a 1981 Gallup poll, 91 percent of all Americans favored a waiting period to assist in keeping these weapons from felons, drug addicts, and the like. The law enforcement community has urged us to adopt such a period, as has the Attorney General's Task Force on Violent Crime. Neither any notion of rights nor practicality mitigate against the imposition of this reasonable restraint. I, therefore, urge my colleagues to vote in favor of the adoption of this amendment.

(Mr. TRIBLE assumed the chair.)

Mr. HATCH. Mr. President, the 1968 Gun Control Act contains a waiting period. The waiting period was limited by the 90th Congress to mail order sales. The 1968 act, Public Law 90-618, requires a 7-day waiting period for any sale where the buyer "does not appear in person at the licensee's business premises"—18 U.S.C. 922(c). During this waiting period, the licensee notifies local law enforcement officers about the sale to ensure that prohibited persons, such as convicted felons, do not acquire a firearm. Thus, in the instance of mail order sales, the 90th Congress provided a waiting period to prevent such sales to prohibited persons.

A national waiting period for all circumstances as proposed by this

amendment, however, was not considered necessary by the Congress that enacted the 1968 Gun Control Act. The reason is quite simple. When sales are conducted face to face and over the counter at the licensee's place of business, there are already adequate safeguards against unwarranted sales. The dealer must make a record of sale, which makes tracing convenient, and the purchaser must establish his eligibility to purchase a firearm. Any knowing misrepresentations by the purchaser are punishable as felonies. In the minds of the 90th Congress and indeed in practice, there was no need for additional delays for law-abiding citizens wishing to purchase a firearm. Such restrictions would suffer from the same infirmity of other provisions of the 1968 act; namely, it would not hamper criminals from obtaining firearms yet would place burdens on lawful firearm transactions. After all what criminal is going to go through recordkeeping and waiting period requirements to get a firearm? A waiting period only burdens sportsmen and other lawful firearm purchasers.

This conclusion is shared by the majority of the States. Over 30 States have considered and rejected waiting periods. Perhaps these States were persuaded by the findings of Prof. Philip Cook and James Bloise, who conducted a study of "State Programs for Screening Handgun Buyers" and concluded that—

There has been no convincing empirical demonstration that a police check on handgun buyers reduced violent crime rates. . . . It is known that such screening systems are widely circumvented.

Indeed other studies have shown that over 80 percent of all guns used in crime were stolen or acquired through other illegal channels. This confirms our commonsense understanding that a criminal is not likely to risk purchasing from a firearms dealer, where he will be required to fill out extensive forms, establish his identity and eligibility to acquire a firearm, and place his crime weapon on easily traceable records.

Waiting periods are also unlikely to deter many "crimes of passion." With a very few exceptions, these crimes are committed between the times of 10 p.m. and 3 a.m. by someone under the influence of alcohol or drugs. The sale of firearms is precluded by the time frame and prohibited by the latter circumstance. Besides, a study by James D. Wright of the University of Massachusetts found that more than 80 percent of all current handgun purchasers already own another handgun. In the unlikely event that the vast bulk of gun owners would consider committing a crime, a "cooling off" period would be irrelevant. Finally, the Police Foundation's study entitled "Firearm Abuse" documented that only 2 percent of handguns traced back from a

crime were less than a month old. A month is several times the period of this proposed waiting period and twice as long as the longest State waiting period. This type of restriction on firearm acquisition is simply not likely to reduce crime involving firearms. Those jurisdictions which have adopted a waiting period have generally experienced a rise in crime.

That is a fact that not too many people have taken into consideration, although it may or may not be relevant.

These many reasons are perhaps behind the position of the Treasury Department, which is charged with enforcing Federal firearms laws. The Department states that:

The Administration does not advocate a national waiting period . . . the Administration has stated earlier that waiting periods for purchases of handguns should be a matter for the States and local governments to decide.

Because such restrictions have little or no effect on violent crime but encumber lawful firearm transactions, the Gun Control Act has not included a generally applicable waiting period. In my opinion, no evidence has been presented in hearings or on the Senate floor today sufficient to persuade the Senate to depart from current policy.

Mr. President, I am happy to yield such time as he may need to the distinguished Senator from Idaho.

Mr. McCLURE. Mr. President, I thank the Senator for yielding.

Under this amendment, purchasers of handguns would be required to wait 14 days between purchase and delivery, which supposedly would allow local police authorities to check criminal and mental records in the hope of screening out prohibited buyers. The main argument is the States will have an opportunity—and I stress opportunity—to do a background check if they so desire. It does not provide for such a check. It merely is alleged to give the States the opportunity. The argument is completely specious.

If a State, in fact, desires to have a background check, it can do so now simply by enacting such a waiting period and check as a matter of State law. The only areas which do not have such State waiting periods are obviously States which do not want the opportunity. Thus, the amendment serves absolutely no purpose.

I think the real rationale is something more, simply to serve as an inconvenience in those of our States—the majority, incidentally—which do not want such waiting periods. There is no basis to pretend that all the States, in fact, have the same problems or outlooks.

In some areas, crime may be less or the need for prompt defense greater. Some of our States may find arguments unconvincing which others



accept. Some may have more respect for individual rights than others. But these are not judgments we ought to overrule, least of all on the pretense that we are giving them a so-called opportunity. The main rationale for this amendment is the supposed opportunity for a background check. This is ridiculous since the amendment only provides such an opportunity to States, which do not want the opportunity, and to their citizens who have voted it down.

However, the proposal is fatally flawed by the fact that, according to both street wisdom and scientific studies, criminals do not buy their firearms through legal commercial channels, particularly if there is a screening system which would result in their being denied a purchase of the gun because of their criminal record.

If pressed, the advocates of such laws acknowledge that active criminals will not go through the elaborate screening procedures we might enact, but they say the provision will still have a positive effect by serving as a cooling-off period, thereby preventing normally law-abiding persons from impulsively buying a gun in the heat of anger and killing a loved one or themselves.

Again, Mr. President, the advocates substitute anecdotes for evidence. While we have all heard of individuals who rushed down to the local gunshop and immediately used it to commit murder or suicide, there are many thousands of transactions where this does not happen. In the hope of preventing that one tragedy, those other thousands of buyers are subjected to governmental procedures that have never achieved a statistically noticeable decrease in either the crime or suicide rates. Waiting period laws are often described as moderate compromises. Such a law is neither moderate nor a compromise. It includes major elements of both gun registration and licensing, the types of laws which Congress has repeatedly refused to enact with good cause. Waiting period laws are presently in effect in States and cities totaling about two-thirds of the Nation's population, including most of the area with the highest rates of criminal violence. They were one of the types of laws examined for effectiveness in the \$287,000 Wright-Rossi study of weapons and violent crime funded in 1978 by the Carter administration's Justice Department. That study found no evidence that any gun control law had reduced the crime or violence rates. The lead researcher, Prof. James Wright, of the University of Massachusetts at Amherst, has stated that he began the study with a predisposition toward gun control but "We became less and less convinced that handgun bans and restrictive handgun laws can do anything to pre-

vent crime." I urge Members to obtain a copy of that study.

Such screening laws do not work because they are easily evaded, either by theft or black market purchases. Persons with criminal records, knowing that they would be screened out by a background check, simply bypass such systems. The futility of the scheme is evident in the frequent proposal for the screening system to include a mental records check, though both privacy laws and medical ethics prohibit such records from being made available to the police. The presumed cooling-off benefit assumes that handgun buyers are first-time purchasers. On the contrary, one study has estimated that at least 80 percent of handguns are purchased by persons who own other firearms. Since the overwhelming majority of gun buyers own numerous guns, what possible purpose is served by making them wait 2 weeks before obtaining another one? While the benefits to a waiting period law are imaginary, the social and financial costs to the taxpayers are huge. A waiting period is even worse than a firearms licensing law, since a firearms owner must go through the same procedure with the same multiple trips to the dealer's store, while the police agency must spend the same amount of wasted time and taxpayers' money investigating the background of the same person they may have approved repeatedly in the past. A Federal waiting period law in effect mandates local gun registration since information concerning the gun and its purchaser usually would be required to be given to local police. Despite such flagrant violation of privacy, once police agencies possess that kind of record, it is almost impossible to make them relinquish it.

Mr. President, I think it is useful to make a couple of comparisons about experiences with respect to such waiting periods. I make reference to several States in which in 1965 had one waiting period. They extended the waiting period between 1965 and 1983. And I might indicate that in 1965 the U.S. homicide rate per 100,000 persons was 5.1, and by 1983 it had increased to 8.3 per 100,000 persons, or an increase of 62.7 percent. But let us look at what happened in States that enacted or expanded waiting periods.

In that same timeframe, California expanded its waiting period from 2 days to 15 days, and the homicide rate went up from 4.7 to 10.5, or a 123.4-percent increase—almost twice the national average. In Connecticut, the homicide rate was 1.6 when they had a waiting period of 1 day, and when they expanded that to 14 days the homicide rate went to 4.1 percent, a change of 156.2 percent over that same time period. In the State of Washington, they had 2.2 homicides per 100,000 at the time they had a waiting period of

2 days. They expanded the waiting period to 3 days and the homicide rate went up to 4.9 percent, an increase of 122.7 percent. In Wisconsin, they had no such statute in 1965, and a homicide rate of 1.5 per 100,000 persons. They enacted a waiting period of 2 days and the homicide rate went up to 2.8 percent, an increase of 86.6 percent. In Illinois, they had no provision in 1965. They enacted a 1-day waiting period for long guns and 3 days for handguns, and the crime rate expanded by 86.5 percent.

Mr. President, waiting periods are demonstrated by the statistics—demonstrated by the facts—to be absolute failures in accomplishing what the proponents suggest that they do.

Mr. President, I hope the amendment is defeated.

Mr. INOUE. Mr. President, just a few words of observation. It has been said by the opponents of this amendment that criminals do not risk purchasing guns from legal dealers. Another rhetorical question was asked: "What criminal will go through the trouble of filling out forms?" Finally, "The benefits of the waiting period are strictly imaginary." Yet, every national organization on law enforcement, chiefs of police, the Association of Police Officers, the Association of Attorneys General—every one of them—has come out endorsing this because it is a law enforcement measure, not a gun control measure. I would like to suggest that these men and women, members of these organizations, know a bit more about crime than any one of us here.

As I tried to indicate in my opening remarks, these police officers have pointed out, for example, that because of the 14-day waiting period in Palm Beach County, FL, there has been a 200-percent decrease in crimes in the first quarter of 1985; in Columbus, GA, the 3-day waiting period and background check is catching felons every week trying to buy handguns, and in the most famous case of recent years, the case of Mr. Hinckley, I am certain if there was a waiting period they would have found in the investigation that he was undergoing psychiatric treatment. Therefore he would have been prohibited from buying a handgun.

I just hope, Mr. President, that we will come to our senses and adopt this reasonable law enforcement amendment.

Mr. President, I yield time now to the distinguished Senator from Massachusetts.

Mr. HATCH. Will the Senator withhold?

Mr. INOUE. Yes.

Mr. KENNEDY addressed the Chair. The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, just a few comments on this particular amendment. First of all, I want to commend the Senator from Hawaii for bringing this to our attention at this hour. I welcome the opportunity to co-sponsor it. It is an issue which is plain on its face. It is an issue which has been debated in the Senate Judiciary Committee on a previous occasion.

As a matter of fact, back in 1982, the Senate Judiciary Committee which gave full time and attention to this issue, accepted this very amendment by a vote of 8 to 5. So the Judiciary Committee that considered all of the arguments that we are talking about only briefly here this afternoon, considered the law enforcement implications of it, accepted it 8 to 5 in a bipartisan effort.

Still, we find that those who are supporting this bill still refuse to accept it. As a matter of fact, the majority leader of the U.S. Senate at that particular time found sufficient merit in the argument that is being made this afternoon by the Senator from Hawaii, to support that amendment I will welcome his support for this amendment this afternoon, as he supported it in 1982. I am sure the Senator from Hawaii will yield time to hear him express his support for the amendment he offered and supported in 1982.

Mr. President, I would like to just take a moment of the Senate's time to go back to 1968, when we were first considering gun control legislation. We made it as a matter of national policy then, and it has been reiterated by President Reagan's own Attorney General's Task Force on Violent Crime, that as a matter of national policy we want to keep handguns out of the hands of those who use narcotics. That was a matter of national policy. It should not be decided one way in Massachusetts, another way in Louisiana, another way in North Dakota. As a matter of national policy, we should keep handguns out of the hands of narcotics addicts, keep handguns out of the hands of fugitives, those who have committed felonies, and keep guns out of the hands of the mentally ill.

It is spelled out in the 1968 law.

We made it a national policy; we did not want those people to have legal access to handguns. This is not just an issue of inconvenience to a hunter. This is to say that as national policy it is in our national interest that those who are addicted to narcotics, those who have been in mental institutions, those who are felons, should not be able to purchase handguns in our society.

It is self-evident as to the reasons why.

Under the bill offered by the Senator from Idaho, it comes in without this amendment. A fellow comes up

and says, "I want to buy the handgun." The dealer says, "Fill out this form." He fills it out, he buys the handgun and walks out the door. He can be a felon, an addict, and he can just have walked out of a mental institution—but no questions are asked. If you ever come to the point of trying to enforce this legislation, which has been virtually made impossible by many of its provisions, that dealer has an absolute defense by saying, "look, he filled this out. What am I supposed to do with it?" He has an absolute defense.

If you do not support the amendment of the Senator from Hawaii, what you are saying is, "OK, America, the U.S. Senate is saying it is OK to sell handguns to those addicts, the mentally ill, felons, go ahead, we will not let our police chiefs do any check at all." It is tough enough to do it with 14 days. They are already hard pressed in 100 ways.

But we will deny them any opportunity to run a local police check. You might as well strike that section that was written into the 1968 act.

Yet, we say in so many speeches and hearings about how concerned we are about the problems of organized crime, about those who are addicted to drugs, and about the mentally ill, we see so many Members are here bleeding crocodile tears about the problems of violence in our society. Then we refuse to do anything about trying to control—which this amendment would do.

President Reagan's own commission recommended this very approach to the problem. They made a series of recommendations, but a key one was that there should be a waiting period for a mandatory record check to ensure that the purchaser of a handgun is not in one of the prescribed categories in existing law.

Mr. President, I would hope that the very reasonable position that has been stated by the Senator from Hawaii, that has been recognized in some 27 State jurisdictions, would be accepted by us today.

They say, "Well, if local town U.S.A. does not want to do it, why should we require them to do it?"

The reason we require them to do it is because it is in the national interest to keep handguns out of the hands of narcotics pushers and felons.

We are spending millions and millions of dollars a year in support of crime control measures. Wait until we have all those crime control measures that come pouring out costing the taxpayers money, saying "We are really going to fight crime. We are going to add hundreds of millions of dollars more."

Yet we have today the leaders of the major American police agencies, who know these issues, supporting this

amendment that will not cost the taxpayers a single penny.

But you wait and see the people who will not support this. They will soon have amendments on the next appropriations bill to add money to fight crime.

The police officers know why we should support this amendment, Mr. President. The Senate Judiciary Committee in 1982 knew the reason. The President's Task Force on Crime knows the reason. The Senate Judiciary Committee in 1968, when it went through elaborate hearings and reached this conclusion, knew the reason.

I will say finally, Mr. President, that I have two very wonderful sons. And I was rather amazed 2 years ago when my son Patrick used to go down quahogging right in front of my house on Cape Cod. He was out quahogging. He had turned 13 years of age. The game warden came up to him and asked how old he was. He said he had turned 13. The game warden said, "Don't you know, in order to quahog off Cape Cod, you have to go over and get a license."

So Patrick came up and told me about it. We went over, filled out the papers and eventually got him a license so he could quahog.

Not the NRA. Not if you are a drug addict. Not if you are a criminal. You do not have to wait a day or have any check on your purchase of a handgun.

Mr. President, if this amendment is not accepted by the Senate of the United States, it is a sad day for local law enforcement all across this country. Make no mistake about it. Everybody knows it. We spend more time making studies and appointing commissions. But we are just going to make it all the easier for criminals to purchase handguns because we just do not want to risk a little inconvenience to some people.

Mr. President, that is a shameful position.

I know where the votes are. I know where they have been for far too long in this body, but I still find it disturbing.

Mr. President, I ask that three recent editorials relating to this issue be printed at this point in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the New York Times, July 9, 1985]

#### MAKING SENSE OF GUN CONTROL

The reasonable foundation of America's gun policy is that localities may control who owns a gun by controlling who may buy one. Ideally, by stressing local interests it should be possible to reconcile the needs of rural hunters and collectors and the desperate need of cities to limit handguns.

Such a respectful compromise is possible in the Senate this week, but not if the gun lobby succeeds in pushing through a bill sponsored by Senator McClure of Idaho.



In the name of reducing red tape for sportsmen and hobbyists, Senator McClure proposes to water down the 1968 prohibition on gun sales to out-of-state residents. The gun lobbyists contend that this "reform" would eliminate a great inconvenience for, say a New York hunter who damages his rifle while shooting elk in Utah; he could buy a replacement without having to return to New York.

But the McClure bill makes no distinction between stranded hunters and criminals intent on buying handguns who are frustrated by gun laws in their home states. It would permit any gun sale to nonresidents provided they appear in person and are qualified purchasers under the laws of both the seller's and buyer's jurisdiction.

The nation's police and supporters of gun control are properly alarmed. The two-jurisdiction proviso would be virtually unenforceable. Who could possibly check to see that 200,000 gun dealers are obeying the laws of remote localities?

As police groups point out, it's hard enough to enforce the ban on selling guns to felons, addicts and mental patients. Besides retaining the interstate prohibition, they are pushing for a 14-day waiting period to permit background checks of purchasers.

Senator Kennedy of Massachusetts is expected to propose an intelligent compromise to relax the interstate sales ban only for rifles and shotguns. It was endorsed last year by the Senate Judiciary Committee but left out of Senator McClure's bill in the current session.

The Kennedy approach is noteworthy not only because it solves the traveling hunter's problem but because it suggests a lasting alliance between legitimate gun enthusiasts and urban centers seeking gun control. Urban legislators should have no practical reason to oppose freer access to guns for sportsmen and hobbyists. By the same token, rural lawmakers should have no practical reason to block stricter limits on handguns in cities.

Could an issue so soaked in emotion achieve a reasonable resolution? Yes, if a majority of the Senate decides to stand with Mr. Kennedy instead of Mr. McClure.

[From the Washington Post, July 9, 1985]

#### S. 49: HELP YOUR LOCAL POLICE

If ever a U.S. senator wanted to support a strong anti-crime measure and respond directly to pleas from police chiefs across the country, today's the day. S. 49 is going to the floor. Unless amended, this bill would gut the current minimal controls on the acquisition of handguns. But with amendments aimed at stopping quick sales, the legislation could be converted into an important anti-crime measure.

No, this isn't another round in the old debate over "gun control." This is a matter of public safety. What the police are seeking in these amendments is in the interest of sportsmen, collectors and anybody else who understands the difference between legitimate purchases of firearms—for recreation, law enforcement and private security—and quickie sales of "snubbies" and other concealable handguns to criminals and "impulse" purchasers.

The 14,000-member International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, the Fraternal Order of Police, the National Troopers Coalition and the Police Executive Research Forum are calling for two amendments:

To retain a current prohibition on interstate sales of handguns. Allowing these

sales, as the unamended proposal would do, would circumvent existing state and local regulation of handgun traffic and "impair the ability of state and local law enforcement agencies to prevent handguns from being acquired, carried or possessed illegally."

To add a 14-day waiting period for purchases of handguns, in order to facilitate basic records checks. A waiting period was recommended also by the 1981 Attorney General's Task Force on Violent Crime, since "drug addicts, felons, mental defectives and the like are not the best risk for the 'honor system' . . ."

Several improvements already have been accepted by original sponsors of the bill. One would remove a sloppy proposal that would have barred prosecution of a dealer for violations claimed to have resulted from "simple carelessness." A second change takes out language that would have preempted state and local license-to-carry laws. Another would close a terrible loophole in existing law that allows the importation of parts to make "Saturday Night Specials"—the handgun that criminals, not sportsmen, love to tote.

What more does any senator need to hear before joining to turn a bad bill into an important move against violent crime?

[From USA Today, July 2, 1985]

#### CONTROL HANDGUNS TO STOP THE CARNAGE

Every week; on the average, 384 people are killed with handguns in the USA.

How do they die? In arguments that end in murders. In robberies that end in slaughter. In accidents that end in tragedy. In bouts of depression that end in suicide.

The last two weeks have been typical:

In Rehoboth Beach, Del., two 16-year-old boys, best friends who spent all their spare time together, were fooling around. Robert Jordan found a .45-caliber pistol in his brother's suitcase. Robert's friend playfully pointed the gun at Robert—and shot and killed him.

In Youngstown, Ohio, a woman argued with her boyfriend outside a supermarket. She followed him inside, took out a pistol and opened fire—killing a 15-year-old boy who was helping his mother carry home the groceries.

In Los Angeles over the weekend, an ex-parishoner walked into a Baptist church in Chinatown and blasted away at the pulpit with a .45, killing the deacon and an assistant pastor. While 350 worshippers hugged the floor in terror, an off-duty deputy killed the gunman.

There are 60 million pistols in the USA. About 150,000 are stolen every year. In 1983, 9,000 people were murdered by handguns; another 1,000 were killed accidentally.

Congress made an effort to stop this carnage in 1968, when it established a system of federally licensed firearms dealers. Next week, the Senate is scheduled to vote on a new law that would seriously weaken the few feeble federal gun control that do exist.

Instead of gutting the gun laws, Congress should be strengthening them, as several police groups have urged. The USA's handgun murder rate is 100 times higher than England's, where gun laws are strict.

When will we ever learn?

How many teen-agers have to blow away their best friends before we act? How many distraught lovers have to kill innocent shoppers?

How many children have to reach into daddy's secret hiding place, take out that dark, shiny, heavy thing they've seen on

TV, and slaughter their mothers, their brothers, or their sisters? When will we ever learn?

Congress must act now: Require federal handgun registration. Require lengthy waiting periods and thorough background checks before anyone can buy a handgun.

Carrying an unregistered handgun must be a felony. Violators should get a year in jail. Massachusetts passed a law like that, and its handgun murder rate dropped 45 percent.

A properly written handgun registration law would not impinge on the legitimate rights of hunters, sportsmen, and collectors to pursue their hobbies.

Will we ever learn?

Let's do what we can now to keep the guns out of the hands of the kids and the criminals and the crazies. If we don't, then we're the crazy ones.

Mr. DODD. Mr. President, I commend the Senator from Massachusetts for his comments. I have not risen earlier today to address myself to this particular issue but, since the Senator from Massachusetts referred to the act of 1968, I would be somewhat remiss if I did not rise, since it was my father who wrote the section in 1968 of that legislation which required a waiting period. We in Connecticut have a waiting period. We have had one for years and years. People who wish to purchase a handgun are required to go in and fill out the forms. It is usually a wait of 5 or 6 or 7 days.

I always found in my State, when this issue has arisen, that hundreds of sportsmen and target shooters have had no difficulty whatsoever with a waiting period. None whatsoever. It has worked very, very well in our State.

We have no idea how many crimes we have prevented as a result of its existence. It is hard to prove a negative. But it has certainly been no hardship at all to have the minimum required, to ask people just to go through a very basic and simple check to determine whether or not they are competent, mentally competent or incompetent as a result of convictions or drug addiction, to possess a firearm and the damage that they can cause.

The statistics, of course, as the Senator from Massachusetts has pointed out very adequately and eloquently, show the overwhelming numbers of deaths that occur as a result of crimes of passion, where, in that moment of passion, a person runs out and buys that handgun and the damage occurs. I recall, back in those days of the late 1960's, that this body in those days felt very strongly that we ought to try to do something intelligent in the area of at least reducing the proliferation.

No one every made an argument that this was going to wipe out crime or stop the determined felon from acquiring a handgun to go out and cause mayhem in our streets or in their own homes. No one of any intelligence ever made that argument in any way what-

soever. But to suggest that this is somehow a great burden, a great burdensome requirement, to have a person go through a modest waiting period—I come from a State which is the largest single State in production of firearms in the United States. People in my State whose jobs depend on this legislation, in many ways, hunters and sportsmen who understand the issue very well, have found that in our State of Connecticut, this kind of waiting period works very, very well indeed.

My hope would be that our colleagues today will appreciate the wisdom of the amendment by the Senator from Hawaii and will adopt it.

I thank the Senator for yielding.

Mr. HATCH. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Utah has 15 minutes. The Senator from Hawaii has 2½ minutes remaining.

Mr. DOLE. Mr. President in the 97th Congress, I had sponsored a waiting period amendment in the Senate Judiciary Committee which was similar to the amendment being offered today by Senator INOUÉ. When the issue was reexamined by the committee in the last Congress, however, I withdrew my support for such an amendment. Many States and cities already have waiting period for handgun sales as well as a required background check for handgun purchases. State and local authorities are in the best position to know whether a waiting period would be effective in deterring crime and, thus, I believe the decision should be left to them. To the extent that most "crimes of passion" are committed late at night when, in general, guns cannot be legally purchased, it is doubtful whether a waiting period would have any significant impact on reducing such crimes. In any event, I do not believe a sufficient record has been established to justify the imposition of a mandatory waiting period on a nationwide scale.

Mr. President, I explained, in more detail, my reservations about a national waiting period in my additional views in last year's committee report on S. 914. I ask unanimous consent that these views be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### WAITING PERIOD

In the 97th Congress, during consideration of S. 1030, the Judiciary Committee adopted a compromise amendment offered by this Senator which would have required persons attempting to purchase handguns over the counter from federally licensed firearms dealers to wait 14 days after date of initial payment before the handgun could be delivered to the buyer.

The purpose of this amendment was to provide for a "cooling off period" which would act as a deterrent to individuals who,

in a fit of passion, might acquire a handgun for the purpose of committing a violent crime. An opportunity would also be afforded for dealer's records to be available during the cooling off period for those enforcement authorities who are authorized by federal or state law, or local published ordinance to inspect the dealer's records to insure compliance.

The amendment was intended to complement the waiting period required in Section 922(c) of Title 18 of the United States Code. Since the enactment of the Gun Control Act of 1968, a 7-day waiting period has been required before a dealer could ship a firearm in intrastate commerce to a purchaser. However, unlike section 922(c) this amendment would not require notification of the purchaser's chief law enforcement officer.

In mail order transactions the dealer's records are not readily available or accessible to the purchaser's enforcement officials. However, in over-the-counter sales, records are available for inspection by the local chief or his representative. It would be unwise and impractical for local police departments, as a matter of Federal law, to amass files of over-the-counter transactions. When valid requirements exist for tracing of guns that have been criminally misused, the records of the retail sale are available for inspection at the dealer's place of business. To require more would mean the establishment of expensive and redundant record keeping systems by local enforcement officials.

The original amendment offered by Senator Kennedy, in addition to imposing a 21 day waiting period, would have required a name search of the criminal history records of the Federal Bureau of Investigation to determine whether the purchaser would be prohibited from purchasing, transporting, receiving or possessing firearms. This approach had substantial difficulties.

The Committee rejected the Kennedy approach and adopted my substitute.

This year, Senator Kennedy reoffered the substitute that the Committee had previously approved. However, because of continuing criticism of interested sporting groups as well as other provisions of the Hatch substitute which improve capabilities of law enforcement officials to trace the ownership chain of guns that have been criminally misused, the Committee rejected the "cooling off" amendment.

While the "cooling off" substitute is preferable to the original waiting period amendment, substantial questions remain as to the advisability of adapting an approach which would impose additional paper work burdens on dealers and purchasers as a matter of federal law. Many states now have waiting period and background check provisions in their gun control laws. It may well be that this is sufficient.

Mr. HATCH. Mr. President, let me also mention again seven points relative to waiting periods:

First, criminals do not buy their guns through legal channels. A criminal is simply not likely to walk into a gun store, sign a 4473 form, and subject himself to scrutiny about his eligibility to purchase a firearm, which he may not do if he is a convicted felon. Waiting periods do not deter criminals from getting guns.

Second, the Wright-Rossi study (University of Massachusetts), found that more than 80 percent of firearms

used in crime were obtained through illegal channels, namely, stolen or purchased on the black market. They concluded that waiting periods and other gun control measures had not succeeded in reducing violent crime, according to available evidence.

Third, 34 States have considered and rejected a waiting period.

Fourth, waiting periods have not made New York, Washington, DC, or other locales any more safe.

Fifth, crimes of passion, according to voluminous police studies, occur between 10 p.m. and 2 a.m. and usually when the attacker is under the influence of alcohol. Gun purchases would be precluded by these circumstances. Moreover, the statistics show these crimes are committed with the nearest available object: a knife, a club, or a gun. An impassioned killer does not take the time to shop for a gun before carrying out his impassioned act.

Sixth, 80 percent of handgun buyers already own another gun. This undercuts the chance that a waiting period could serve as a cooling-off time. It also shows that the major effect of this provision will be to encumber the firearms rights of law-abiding citizens. One hundred twenty to one hundred forty million guns are owned in the United States, over half of all the households possess one.

Seventh, This amendment was rejected by the Judiciary Committee last Congress by a vote of 11 to 3.

Several States have been mentioned by Senator INOUÉ. I would like to take a few moments to respond:

First, the Senator mentioned South Carolina.

The Palmetto State has the honor of being cited by Senator INOUÉ for having lax gun laws and by Senator KENNEDY for having stringent gun laws. In point of fact, the State's gun laws are tough on the criminal, with mandatory penalties for using guns to commit violent crimes, and that law has led to a 33 percent drop in the homicide rate between 1975 and 1983—comparable to the drops in other Southeastern States adopting such penalties.

Aside from that, police are notified after the transfer of handguns by dealers—so if there are problems, the police ought to have hard data to prove it—and only one handgun can be bought each month. But there is no waiting period and there is no background check.

The Senator also mentioned Palm Beach County, FL. It has been alleged that the number of murders fell 200 percent in Palm Beach County, which would suggest that a waiting period is effective. In fact, West Palm Beach had a waiting period for years and parts of Palm Beach still do not. The homicide rate in early 1984, before the county adopted a waiting period, was



very high, after being fairly low in the previous year; the homicide rate in the quarters since the waiting period have passed have varied, some were just like early 1984 and very high, and some were just like 1983 and lower. The waiting period simply did not affect these crime rates. In Broward County, the adoption of a waiting period was almost immediately followed by a rise in handgun deaths, particularly the suicides which some have alleged would be reduced by a waiting period. Under the waiting period, there were far fewer handgun transfers by dealers, indicating that the law was interfering with the ability of citizens to buy guns, and it was admitted that many of those whose applications were denied were rejected for arbitrary and improper reasons.

After two inexplicably high homicide years, Massachusetts passed a law which altered the punishment for a decades-old gun law. Two-thirds of Massachusetts residents said it impacted most on law-abiding rather than criminals. The violent crime rate rose from 19th highest in the Nation in 1974 to 11th in 1983. Boston went from the 5th most violent city over 500,000 in 1974 to most violent in 1981, and lowered themselves to only third in 1983 by redefining crimes. Absent Boston, the State homicide trends mirrored New England. A Justice Department study concluded that the law did not work, that any belief that it was based on faith, not fact, and that the law seemed to adversely affect the law-abiding, and slow down the criminal justice process for the criminal, allowing many more criminals to go wholly unpunished.

Imitative States—Connecticut and New York—saw brief increases in their homicide and violent crime rates followed by a return to regional trends.

Mr. President, I yield such time as he may need to the distinguished Senator from Kentucky.

Mr. McCONNELL. I thank the Senator from Utah.

Mr. President, I rise today in support of the bill introduced by the distinguished Senator from Idaho, and in opposition to the waiting period amendment offered by the distinguished Senator from Hawaii. I am convinced that the bill itself will significantly enhance the legitimate liberties, guaranteed by the Constitution, of firearms owners all across America. At the same time, the bill, I am convinced, will not endanger a single American who would not already have been endangered, and, on the contrary, will see to it fewer Americans will become the tragic victims of lawless criminals.

Consequently, I am compelled to oppose the amendment seeking to attach a 14-day waiting period to the bill. While well-intentioned, the amendment will not serve its stated

purpose. This amendment will not prevent criminals from acquiring firearms. It will not prevent the classic crimes of passion that proponents of the amendment claim it will. Rather, the waiting period amendment would add additional regulations to the already over-regulated lives of law-abiding citizens. To the extent that it would have any effect at all, it would deprive law-abiding citizens of their rights, of their liberties, and of their ability to protect themselves.

Mr. President, we should examine closely the premises upon which this amendment is based. When we do, I'm confident that we will find that the theoretical underpinnings of the amendment are ready to collapse.

For example, the notion that imposition of a waiting period will result in fewer crimes of passion, fewer homicides in general, and a lower incidence of violent crime is based upon the assumption that criminal acquires his weapon through legitimate gun dealers. Yet nothing is further from the truth, for most criminals find their guns on the street, in illicit transactions between themselves and other criminals. Clearly, adopting a federally mandated waiting period and imposing new and onerous regulations on licensed gun dealers and law-abiding purchasers of guns will have absolutely no impact on such transactions.

Nor will waiting or cooling-off periods reduce the incidence of the classic crimes of passion. All the evidence is that these crimes usually occur late at night or early in the morning, at times when legitimate gun dealers are not open for business. The evidence also suggests that these crimes are the product of alcohol or drug-induced rage, and are perpetrated with the aid of the closest weapon at hand. In many cases, the weapon is a firearm, but it might just as easily be a knife or a hammer. What is clear, however, is that the weapon is not a gun purchased on the spot in the heat of the moment.

Indeed, studies have demonstrated that these crimes of passion follow from a clearly identifiable buildup period. One study in the Kansas City area indicates that in some 90 percent of the cases, police had been called to intervene in prior domestic disturbances before the crime was committed. Obviously, a waiting period would be totally ineffective in so far as these situations involving patterns of domestic quarrels over an extended period of time are concerned. Thus, it is a simple fact that a waiting period would have little impact on the major problem it would be designed to combat, and numerous studies have demonstrated that no relationship can be found between the imposition of a waiting period and the ultimate level of violent crime. Conversely, a clear and undeniable relationship exists be-

tween the imposition of a waiting period and the creation on the one hand of an unarmed, defenseless citizenry, and on the other of a needless mass of burdensome regulations.

Mr. President, let me also mention a particularly unconvincing argument that has been advanced by the proponents of this amendment. Some have suggested that a waiting period of the type offered here would lead to a reduction in the incidence of suicide, especially among our young people. I know that this suggestion has been made recently, in fact, by representatives of the American Association of Suicidology in testimony before the Subcommittee on Juvenile Justice, of which I am a member. Clearly, the problem of youth suicide is a tragedy, one that I am deeply concerned about, but to suggest that a waiting period on the purchase of handguns will result in a meaningful reduction in the incidence of youth suicide—the tragic response of an adolescent who has fallen victim to the pressures of seemingly insurmountable problems over a great deal of time—is to highlight the bankruptcy of the arguments made in support of the amendment.

Waiting periods do not stop suicide. They do not stop crimes of passion, robbery or burglary. Most of all, they do not stop violent crimes committed by violent criminals bent on violating the law and the sanctity of our homes. One noted researcher at Duke University has found that "there has been no convincing empirical evidence that a police check on handgun buyers reduces violent crime . . . most felons and other ineligible who obtain guns do so not because the State's screening system fails to discover their criminal record, but rather because these people find ways of circumventing the screening system entirely."

No, Mr. President, this amendment to impose a 14-day waiting period on the purchase of firearms will not prevent violent criminals from committing violent crimes. All the evidence tells us that it will not. But it will, without a doubt, prevent many innocent, law-abiding citizens of this great Nation from protecting themselves from those very criminals who will ignore, avoid, or otherwise circumvent the law. Some of these citizens may then become the defenseless victims of those very thugs the amendment is intended to reach, who will be armed not only with the firearms they illegally obtained but also with the knowledge that their victims will be unarmed and unprotected.

I recognize that the proponents of this and other amendments to the bill come with the best of intentions, but I would urge those inclined to support such amendments to consider carefully these and other facts presented here today. This is not the first time I

have considered the merits of legislation directed toward firearms owners. Indeed, while chief executive of Jefferson County, KY, the largest county in the State with a population of some 750,000 people, I rejected an ordinance that would have imposed a waiting period on the purchase of handguns. I did so because I was convinced, based on the facts, that such a waiting period would not have achieved the admirable goals of its proponents, and would have added needless, useless and potentially dangerous limitations on the rights of law-abiding citizens to acquire and own firearms.

I urge my colleagues to oppose this waiting period amendment for the same reasons that I opposed such a waiting period in Jefferson County, KY, and to oppose any other amendment to S. 49, the Firearms Owners Protection Act, that would have the same effect.

Mr. President, I wish to make a few observations with regard to the whole waiting period issue. I suspect I am one of the few people in the Senate who used to appoint a police chief. I suspect I am one of the few people in the Senate who has had an opportunity to vote on a local ordinance providing for a waiting period. I want to relate my own experience with that waiting period issue from a local government perspective.

In my community, I was the county executive, like the mayor of a county, and among my responsibilities was the responsibility to appoint a police chief, which I did. He was a very experienced fellow who had served in the detective division for a number of years and had also been in the patrol division, had come up through the ranks of the police department, and was considered the best police officer we had. After a shooting in one of the local bank branches, there was a great deal of interest in having a waiting period ordinance. One was introduced. At that juncture, I had no preconceived notions about the appropriateness of waiting period legislation and whether or not it would have an impact on crime. I went into it with a completely open mind and listened to the arguments on both sides. I have listened to the passionate arguments of the senior Senator from Massachusetts and others on both sides today.

My police chief came in and said the net effect of a waiting period ordinance would be to increase the number of firearms transfers among individuals and to reduce the number of firearms transfers from gun shops to individuals, thereby making it more difficult, not less difficult, to trace firearms that are used in the course of a commission of a crime.

Frankly, that is not what I expected to hear from my own police chief, because I had heard over the years the arguments of all the various law en-

forcement officer organizations supporting waiting period legislation. I have heard all of those cited again today. I know they support them. I just want to make the point that not everyone in the law enforcement community is unified in the notion that waiting period legislation will necessarily be an effective tool in the combating of crimes committed with handguns. I just wanted to make that personal observation of my own experience with that waiting period legislation.

I yield back to the distinguished Senator from Utah.

Mr. HATCH. Mr. President, I am delighted to yield such time as he may need to the distinguished Senator from Idaho.

Mr. McCLURE. Mr. President, I again thank the distinguished Senator from Utah for yielding. I take this time just to give a couple of answers to comments that have been made by people on the other side of the issue, one or two that spring from genuine emotion, but are typical of the misdirection which that emotion gives us.

It has been suggested that Mr. Hinckley's condition would have been discovered by a background check. Frankly, Mr. President, I am appalled at that argument. To the best of my recollection, and perhaps somebody can refresh my memory, Mr. Hinckley had been under psychiatric treatment and there was a private physician-patient relationship that guarded the confidentiality of that condition. A 14-day waiting period in Dallas would have pointed out nothing with respect to his condition.

As a matter of fact, Mr. Hinckley also acquired two handguns in California, a State with a 15-day waiting period applying to all handgun transfers, whether through a dealer or not. The emotion may be correct. The facts are that it would have done nothing to uncover his condition or to avoid the sale or purchase of a handgun in his case and would have done nothing to prevent the crime which we all abhor.

The distinguished Senator from Hawaii pointed to the statistic of Palm Beach County's homicide rate drop. I might point out that a 200-percent drop is mathematically impossible because it goes beyond zero and would imply the resurrection of the dead, which I do not believe was his intention, although that is the mathematical result. The real reason there was a drop in the homicide rate in Palm Beach County was that, at the same time, they adopted a provision which is in the McClure-Volkmer bill. That is mandatory penalties. Mandatory penalties do cause change in conduct, do produce reductions in homicide rates, unlike the waiting period, which has been demonstrated to be ineffectual.

It has been asserted that research suggests that criminals will be kept

from getting guns by a waiting period, but even gun control advocates who have researched the issue such as Philip Cook, of Duke University, and Matthew DeZee, of Florida State University, have said that criminals do not use legitimate channels, and would not be likely to be kept from getting a handgun by a waiting period. Waiting periods have not lowered crime or homicide rates.

The distinguished Senator from Massachusetts said that in 1982, the Judiciary Committee, by a vote of 8 to 5, accepted such a provision in the bill pending before the Judiciary Committee. But in 1984, the Judiciary Committee favorably voted unanimously to report a bill that had no waiting period in it.

The vote on the waiting period amendment was 11 to 3. The reporting of the bill was unanimous.

Mr. President, I oppose this amendment in the strongest terms.

There are a variety of amendments which have been offered to this bill and although most of them are, in the opinion of this Senator, ill-conceived, few are so anathema to America's gun owners that they would kill the bill.

The pending amendment, however, would kill this legislation. Make no mistake about it: The adoption of this amendment will cause S. 49 to be pulled down, leaving the vote on this amendment as the pivotal gun vote of the 99th Congress.

The reason why this amendment would kill the bill is clear: It would constitute a major step toward establishing a system of handgun registration which could be accessed nationally through systems which have been developed or may be developed by the Department of Justice and other law enforcement entities.

The central compromise of the Gun Control Act of 1968—the *sine qua non* for the entry of the Federal Government into any form of firearms regulation was this: Records concerning gun ownership would be maintained by dealers, not by the Federal Government and not by State and local governments. These records would be maintained by dealers—and by dealers only, except in extraordinary circumstances, such as when a dealer goes out of business.

This amendment would destroy that central compromise. And, as such, it would constitute a slap in the face for those gunowners who foolishly signed off on the 1968 act, with the expectation that the antigun movement would not immediately move to destroy the compromises which allowed the act to be passed.

The pending amendment would allow centralized police files containing the names of handgun owners. There is nothing in the amendment which provides for the destruction of



the lists of names after the cross-checks are made, and, in fact, I believe it would be foolish to assume that the names forwarded for cross-checks will not be maintained and computerized.

Once the names of all handgun owners are computerized, the Senators need to understand that there is no prohibition in the pending amendment which would prevent their being accessed by other law enforcement authorities.

In sum, Senators contemplating a vote against tabling this amendment should understand that their vote will be interpreted as a vote against S. 49; a vote in favor of firearms registration; and, an antigun vote.

Mr. President, we can all devise mechanisms which arguably would lead to more effective law enforcement. Mandatory minimum sentences for felony convictions would go further in that direction than any other measure we could enact, in view of the large percentage of violent crimes which are committed by persons who have previously been convicted of such crimes or who are out on bail. Such a measure would have no constitutional problems at all.

But, with respect to guns, Congress decided in 1968 to reject a system of centralized registration. To destroy that pivotal compromise at this time would kill this legislation.

Mr. INOUE. Mr. President, since the matter of Mr. Hinckley was brought up by the Senator from Hawaii and commented upon by those who oppose the amendment, I would just like to quote from an interview which was held about 2 years ago. This is the mother of Mr. Hinckley:

I just know that if it had been difficult, John would not have purchased the guns and this would not have happened.

And John Hinckley, Senior, the father of the man who attempted to take the life of our President, said:

Yes, if he had to fill out forms and come back in 10 days and go through some sort of procedure that involved a great deal of effort, I don't think he would have got it.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. MCCLURE. Mr. President, will the Senator yield briefly?

Mr. HATCH. I am delighted to yield to the Senator from Idaho.

Mr. MCCLURE. Mr. President, I understand the statement of the distinguished Senator from Hawaii. The fact is that Mr. Hinckley did face a waiting period, did buy two handguns in California subject to a 15-day waiting period. The statement of his mother notwithstanding, this amendment would not have added to the difficulties that he faced in purchasing a handgun, nor would it have resulted in any criminal investigator discovering the fact of his psychiatric examination without a violation of the privacy of

medical records between himself and his physician.

It has been estimated by GAO that a background check, even a rudimentary background check, will cost approximately \$50. If there are 2 million handguns per year purchased and each one receives just the minimum rudimentary background check, that is \$100 million, and for what reason? To accomplish virtually nothing. Again, I hope the amendment is rejected.

Mr. HATCH. Mr. President, I have enjoyed the debate, but I agree with everything the distinguished Senator from Idaho has said. I might mention the administration has stated earlier that waiting periods for purchases of handguns should be a matter for the States and local governments to decide. The administration does not advocate a national waiting period, and neither do I. I believe that the law enforcement agencies, Justice and Treasury, do not either. I am prepared to yield back the remainder of my time if the distinguished Senator from Hawaii is.

Mr. HECHT. Mr. President, I rise in opposition to this amendment. Of the various amendments which we can expect to consider during the disposition of this bill, few are so repugnant to America's gunowners that they would kill the bill.

The pending amendment, however, would, in my opinion, kill this legislation. Make no mistake about it: The adoption of this amendment will cause S. 49 to be pulled down, leaving the vote on this amendment as the pivotal gun vote of the 99th Congress.

The reason this amendment would kill the bill is clear: It would constitute a major step toward establishing a system of handgun registration which could be accessed nationally through systems which have been developed or may be developed by the Department of Justice and other law enforcement entities.

The central compromise of the Gun Control Act of 1968 was that records concerning gun ownership would be maintained by dealers, not by the Federal Government and not by State or local governments. By dealers only, except in circumstances such as the closing of a particular dealer's business.

This amendment would destroy that central compromise. It would allow centralized police files containing the names of handgun owners. There is nothing in the amendment which provides for the destruction of the lists of names after the cross-checks are made, and, consequently, I believe it is reasonable to assume that the names forwarded for these cross-checks would be maintained and computerized.

Once the names of all handgun owners are computerized, the Senators need to understand further that there

is no prohibition in this amendment which would prevent their being accessed by other law enforcement authorities.

There is simply no viable reason why citizens must register their name to participate in a constitutionally guaranteed freedom. As the Declaration of Independence states, these rights are God given, not government given. That distinction is important, because those who believe certain freedoms are bestowed on us by the Government, may also use the same rationale to restrict them.

This amendment carries the same theme which many other of the amendments to this bill contain: they impute intent to an inanimate object. Because the worst is feared, some would say that guns must be regulated regardless of whether constitutionally guaranteed freedoms are trampled. If the same line of reasoning were followed, regulation might next be considered necessary for a kitchen drawer full of knives.

This amendment has a litany of objectionable, and impractical features.

First, because convicted felons are already prohibited from purchasing guns, the law applies only to law-abiding citizens who have no felonious criminal record. Further, a criminal who wanted to obtain a gun illegally could easily do so, with no waiting period.

Second, inherent in the amendment is the assumption that everyone is a criminal, or has, or will have, criminal intent.

Third, the amendment could increase victimization by delaying self-protection for threatened law-abiding citizens.

Fourth, it violates the purpose of the Gun Control Act of 1968 which states:

... it is not the purpose of this title to place any undue or unnecessary federal restrictions or burdens on law abiding citizens with respect to the acquisition, or use of firearms appropriate to the purpose of hunting, trapshooting, personal protection, or any other lawful activity. . .

Fifth, it violates the purpose of this bill which is to:

... protect the firearms owners of Constitutional rights, civil liberties, and rights to privacy. . .

Mr. President, we can all devise mechanisms which arguably would lead to more effective law enforcement. Mandatory minimum sentences for felony convictions would go further in that direction than most other measures we could enact, in view of the large percentage of violent crimes which are committed by persons who have previously been convicted of such crimes or who are free on bail.

Finally, with respect to guns, Congress decided in 1968 to reject a system of centralized registration. To

destroy that pivotal compromise at this time would kill this legislation.

Mr. THURMOND. Mr. President, the issue of whether there should be a waiting period before a purchaser is allowed to buy a handgun has been the subject of careful consideration by the Judiciary Committee in recent years. Last year, the committee turned down a similar proposal by a vote of 11 to 3.

While there are very strong feelings on the merits of such a waiting period, I believe the real issue is at what level this policy decision is to be made. It is my belief individual States, not the Federal Government, should decide this issue. It is for that reason that I oppose this amendment because it seeks a Federal solution to a policy issue best left to the States.

Mr. KASTEN. Mr. President, I rise in support of S. 49, a bill to protect the constitutional rights, civil liberties, and rights to privacy of firearm owners.

Our proper goal in considering any legislation affecting the public's access to, and use of, firearms is clear. We must aim at striking a careful balance, between the rights of law-abiding citizens on the one hand, and the pressing need for effective law enforcement on the other. I believe S. 49, as amended, meets this test.

S. 49 makes several useful changes in the scope of Federal regulations affecting firearms. These changes both protect the rights of individual gunowners and aid law enforcement, by making it clear that gunowners who only occasionally sell or repair firearms, or who sell all or part of their collections will not have to go through the cumbersome, time-consuming process of obtaining a Federal license. These changes will allow the Bureau of Alcohol, Tobacco, and Firearms to concentrate its scarce resources on those businesses who handle most of the gun trade.

Another important change in current law made by S. 49 would permit individuals to mail legally owned firearms to a licensed manufacturer, importer, or dealer for repair, customization, or other lawful purpose. This change would not allow mail order sales of firearms by licensees to nonlicensees. Instead, it would remove an unnecessary and awkward impediment to legitimate commerce.

S. 49 also removes another needless barrier to commerce by permitting face-to-face sales by licensees to persons who do not reside in the licensees' State, so long as the sales are legal in the respective States of both the buyer and seller. This eliminates the need for a collector, hunter, or other law-abiding citizen to go through the very complicated procedures required by current law for acquiring a rare or customized firearm from a licensed dealer in another State.

Finally, this bill clarifies existing law to allow the Treasury Department to revoke firearms licenses only in the case of willful violations of the law. This clarification represents a recognition that the paperwork required by the 1968 Gun Control Act is exceedingly complex; even the best-intentioned gun dealers are liable to make inadvertent, technical mistakes. The need for effective and appropriate law enforcement dictates that the Government not spend scarce resources prosecuting honest citizens who make mistakes, but the minority who operate in disregard of the law.

Mr. President, I have never believed that the rights of gunowners and the Government's responsibility to enforce the law necessarily need to be in conflict. S. 49, by removing many unnecessary restrictions on the lawful activities of honest citizens, protects individual rights guaranteed in the Constitution. I believe that S. 49 does this without jeopardizing the Government's ability to combat crime—by more carefully targeting the thrust of the 1968 Gun Control Act, S. 49 enhances the Government's capacity to go after criminals. I urge my colleagues to approve this important legislation.

Mr. STEVENS. Mr. President, the Firearms Owners Protection Act is at long last coming before the full Senate for consideration. This is the most important piece of legislation for gunowners in this century. Since the passage of the Gun Control Act of 1968, the erosion of the right to keep and bear arms has been justified on the basis that rigid gun control laws will reduce the incidence of violent crime. However, the law has been ineffective. It has served to punish the law-abiding gunowner for the actions of a career criminals, and has been implemented in a way that discourages gunownership.

S. 49 focuses on areas of regulatory abuse resulting from the Gun Control Act. An entire Federal agency spends a large portion of its effort in prosecuting and harassing gunowners for technical violations of the law. Our tax dollars will be applied more effectively if our law enforcement officials become more involved in detecting and arresting robbers, muggers, rapists, and murderers.

There are a number of amendments which will be offered to S. 49, most of which cloud the issue. For example, the imposition of waiting periods on the sale of firearms do not add any deterrent quality. Career criminals will continue to skirt an established screening process. The paperwork requirements and effort associated with waiting periods will divert personnel away from true crime control efforts.

Even more troubling are the efforts to make a distinction between handguns and long guns such as rifles and

shotguns. If we exempt handguns from the changes being sought by S. 49, we would accept the premise that possession alone is a serious cause of violent crime. Criminals are responsible for the violence in this country. Making a distinction between handguns and other firearms serves to restrict the constitutional right of citizens to keep and bear arms without deterring criminal behavior. It sets a dangerous precedent for future exclusion of other firearms classes.

Pervasive regulation is not the answer to the growing incidence of violent crime. The Gun Control Act has been in existence for almost 20 years, but crime has risen steadily. Our law enforcement efforts must be directed at deterring criminal behavior. Strong penalties are required to deter the use of firearms in Federal crimes. There must be an immediate response to acts of violent crime and treason. I have sponsored legislation which calls for death by firing squad when treasonous acts are perpetrated for monetary gain. Senator McCLURE should be commended for taking a tough stance on the use of firearms to commit crimes. The day career criminals begin to feel the full force of the law for their acts is the day that we can walk the streets in safety.

Mr. MOYNIHAN. Mr. President, I am pleased to support the amendment offered by my friend, Senator INOUYE, to require a 2-week waiting period between the purchase of a handgun and its delivery. Such a waiting period, I am convinced, could save hundreds of lives taken annually by these firearms.

Congress passed the 1968 Gun Control Act in response to the assassinations of Martin Luther King, Jr. and Robert F. Kennedy, and wisely prohibited the sale of firearms to certain unreliable people—most notably, convicted felons, fugitives from justice, drug addicts, and mental incompetents. However, the law, as now written, rather naively expects unreliable persons to refrain from trying to buy a gun, or assumes a gun dealer will recognize a customer's ineligibility. Certainly this is not an effective way to enforce the law. This amendment would mandate a 14-day waiting period, so gun dealers could thoroughly check a customer's background to ensure that he or she is legally qualified to own a gun.

A 14-day waiting period also would provide potential gun purchasers a "cooling off" period. According to the FBI, almost 42 percent of all murders committed with a handgun in 1983 followed directly from an argument. Far too often an individual, in the heat of passion, or suicidal despair, rushes to purchase a gun and uses it on himself or others. Anyone with a legitimate need to buy a gun will not be seriously inconvenienced by a 14-day waiting



period. But those legally unqualified to possess a gun, or who seek one in a state of emotional desperation, should be made to wait.

The common sense behind this modification of the 1968 Gun Control Act was not lost on the Attorney General's Task Force on Violent Crime, which in its final report, issued in 1981, recommended that "a waiting period be required for the purchase of a handgun." I am proud to be joined in support for this amendment by some of this Nation's largest organizations of law enforcement officers, including the International Association of Chiefs of Police, the National Association of Attorneys General, the Police Executive Research Forum, the National Troopers Coalition, the National Organization of Black Law Enforcement Executives, and the Fraternal Order of Police, as well as the American Bar Association and the U.S. Conference of Mayors.

This amendment is a reasonable and necessary attempt to make the provisions of the 1968 Gun Control Act more viable. The Nation's law enforcement officers are nearly unanimous in their support for this amendment. I strongly urge my colleagues to support it as well.

Mr. McCLURE. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I understand that all of the time on the Mathias amendment was yielded back. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. McCLURE. And now all the time on the Inouye amendment has been yielded back. Is that correct?

The PRESIDING OFFICER. There remains 2 minutes. The Senator from Hawaii has 1 minute 38 seconds.

Mr. INOUE. I yield back the remainder of my time.

Mr. HATCH. I yield back all my time.

The PRESIDING OFFICER. All time has now been yielded back.

Mr. McCLURE. Under the previous unanimous-consent agreement, would it be my understanding that we would first move to the consideration of the Mathias amendment and then the vote with respect to the Inouye amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. Mr. President, I move to table the Mathias amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McCLURE. Mr. President, I ask unanimous consent that it be in order at this time to move to table the Inouye amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McCLURE. Mr. President, I move to table the Inouye amendment.

VOTE ON MATHIAS AMENDMENT NO. 510

The PRESIDING OFFICER. The vote will first occur on the motion of the Senator from Idaho to table the amendment of the Senator from Maryland [Mr. MATHIAS]. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. ARMSTRONG] and the Senator from Oregon [Mr. HATFIELD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from New Jersey [Mr. BRADLEY], the Senator from Louisiana [Mr. LONG], the Senator from Illinois [Mr. SIMON], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 76, nays 18, as follows:

[Rollcall Vote No. 140 Leg.]

#### YEAS—76

Abdnor	Garn	Mitchell
Andrews	Goldwater	Murkowski
Baucus	Gore	Nickles
Bentsen	Gorton	Packwood
Biden	Gramm	Pressler
Bingaman	Grassley	Proxmire
Boren	Hart	Pryor
Boschwitz	Hatch	Quayle
Bumpers	Hawkins	Riegle
Burdick	Hecht	Rockefeller
Byrd	Heflin	Roth
Chiles	Helms	Rudman
Cochran	Hollings	Sasser
Cohen	Humphrey	Simpson
D'Amato	Johnston	Specter
Danforth	Kassebaum	Stevens
DeConcini	Kasten	Symms
Denton	Laxalt	Thurmond
Dixon	Leahy	Tribble
Dole	Levin	Wallop
Domenici	Lugar	Warner
Durenberger	Mattingly	Welcker
Eagleton	McClure	Wilson
East	McConnell	Zorinsky
Exon	Melcher	
Ford		

#### NAYS—18

Chafee	Inouye	Metzenbaum
Cranston	Kennedy	Moynihan
Dodd	Kerry	Nunn
Evans	Lautenberg	Pell
Glenn	Mathias	Sarbanes
Harkin	Matsunaga	Stafford

#### NOT VOTING—6

Armstrong	Hatfield	Simon
Bradley	Long	Stennis

So the motion to table amendment No. 510 was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. McCLURE. I move to lay that motion on the table.

The motion to table was agreed to.

VOTE ON INOUE AMENDMENT NO. 511

The PRESIDING OFFICER. The question is now on agreeing to the

motion of the Senator from Idaho [Mr. McCLURE] to table the amendment of the Senator from Hawaii [Mr. INOUE]. The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. ARMSTRONG] and the Senator from Oregon [Mr. HATFIELD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from New Jersey [Mr. BRADLEY], the Senator from Louisiana [Mr. LONG], the Senator from Illinois [Mr. SIMON], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 71, nays 23, as follows:

[Rollcall Vote No. 141 Leg.]

#### YEAS—71

Abdnor	Exon	Mitchell
Andrews	Ford	Murkowski
Baucus	Garn	Nickles
Bentsen	Goldwater	Nunn
Biden	Gore	Packwood
Bingaman	Gorton	Pressler
Boschwitz	Gramm	Pryor
Bumpers	Grassley	Quayle
Burdick	Hatch	Riegle
Byrd	Hawkins	Rockefeller
Chiles	Hecht	Roth
Cochran	Heflin	Rudman
Cohen	Helms	Sasser
D'Amato	Helms	Simpson
Danforth	Hollings	Specter
DeConcini	Humphrey	Stafford
Denton	Johnston	Stevens
Dixon	Kasten	Symms
Dole	Laxalt	Thurmond
Domenici	Leahy	Tribble
Durenberger	Lugar	Wallop
Eagleton	Mattingly	Wilson
East	McClure	Zorinsky
Evans	McConnell	

#### NAYS—23

Boren	Kassebaum	Metzenbaum
Chafee	Kennedy	Moynihan
Cranston	Kerry	Pell
Dodd	Lautenberg	Proxmire
Glenn	Levin	Sarbanes
Harkin	Mathias	Warner
Hart	Matsunaga	Welcker
Inouye	Melcher	

#### NOT VOTING—6

Armstrong	Hatfield	Simon
Bradley	Long	Stennis

So the motion to lay on the table amendment No. 511 was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. BYRD. I thank the Chair.

Mr. President, the majority leader is not on the floor at the moment. Perhaps the distinguished assistant Republican leader can answer the question—the question being what is the program for the rest of the day, how many rollcall votes may be anticipated.

ed, what will be the program tomorrow, and beyond?

#### SCHEDULE

Mr. SIMPSON. Mr. President, on behalf of the majority leader, I express to my colleague that we will have one more rollcall vote this evening. That will conclude the activities of the day. That will be on final passage on this measure. Then, tomorrow we will have at 12 noon a live quorum to be followed by a cloture vote on the motion to proceed to S. 995 on the issue of South Africa. Rollcall votes will be expected throughout the day tomorrow in connection with that measure. That is the schedule for this day and for tomorrow.

Mr. BYRD. Mr. President, I thank the distinguished assistant majority leader.

Mr. SIMPSON. Mr. President, in addition, I say to the distinguished minority leader, we will convene tomorrow at 11 a.m. There will be special orders, and then at 12 noon, we will go to the cloture action.

Mr. BYRD. I thank the distinguished assistant majority leader.

Mr. HATCH. Mr. President, I yield 30 seconds to the distinguished Senator from Idaho.

Mr. McCURE. Mr. President, I ask unanimous consent that the distinguished Senator from California [Mr. Wilson], be added as a cosponsor of the bill.

Mr. DeCONCINI. Mr. President, will the Senator yield?

Mr. HATCH. Mr. President, I yield 30 seconds to the distinguished Senator from Arizona [Mr. DeCONCINI].

Mr. DeCONCINI. I thank the Senator.

Mr. President, I compliment the distinguished Senator from Utah and the distinguished Senator from Idaho for the fine efforts they put forth here today.

I am extremely pleased to have this opportunity to vote in favor of S. 49, the McClure-Volkmer Federal Firearm Owners Protection Act. I have enthusiastically cosponsored the McClure-Volkmer bill throughout my tenure in the U.S. Senate and am pleased it is being acted on now. It is my hope that, with early action by the Senate, the House of Representatives will move expeditiously to approve this necessary legislation.

The McClure-Volkmer bill will correct several flaws in the Gun Control Act of 1968, and will remedy other provisions of the act that have been repeatedly and consistently abused by the Bureau of Alcohol, Tobacco and Firearms [BATF]. The remedial provisions incorporated in this legislation are long overdue. Hearings that I held in 1979 and 1980 in the Treasury Subcommittee of the Committee on Appropriations revealed a consistent pattern of harassment of legitimate gun dealers by the BATF. These hearings

demonstrated the tremendous need for legislation such as the McClure-Volkmer bill which will offer protection for law-abiding gun dealers and gun-owners without in any way threatening the American people.

The McClure-Volkmer bill does not allow the mail-order sale of handguns. The bill does not provide for the sale of firearms by unlicensed pawnshops. S. 49 does not overturn State laws prohibiting or restricting firearms sales or possession, except in the very limited instance of interstate transportation through a State of an unloaded inaccessible firearm.

S. 49 will restore the constitutional rights of firearms owners and dealers by:

First, permitting licensed importers, manufacturers, and dealers to conduct business at gun shows.

Second, setting out procedures for the storage with GSA and BATF for the records of out-of-business dealers.

Third, spelling out some of the information-gathering procedures for tracing firearms and precluding criminal charges based solely on information provided under those procedures.

Fourth, requiring certain reports relating to multiple sales of pistols and revolvers.

Fifth, applying a knowing state of mind with respect to some offenses and a willful standard to others rather than the present absence of any intent standard.

Sixth, further clarifying what constitutes being "engaged in the business" of dealing of firearms by defining "with the principal objective of livelihood and profit."

Seventh, spelling out circumstances under which the inventory and records of licensed dealers can be inspected.

Eighth, establishing mandatory sentences for the use of armor-piercing ammunition in the commission of a Federal crime of violence; and

Ninth, providing for the seizure of firearms under limited circumstances where they were intended to be used in specified crimes, including crimes of violence.

Mr. President, today is a significant day for tens of millions of American gunowners. The bill we will pass today will assure the rights of citizens to keep and bear arms under the second amendment to the Constitution and their rights to security against illegal and unreasonable searches and seizures under the fourth amendment. I am pleased to have been a part of the effort to achieve passage of this legislation. I shall be pleased to report to Arizona's thousands of gunowners that the Senate has responded to their legitimate concerns and has passed the Firearm Owners Protection Act.

Mr. MATHIAS. Mr. President, will the Senator from Utah yield?

Mr. HATCH. Mr. President, I yield 30 seconds to the distinguished Senator from Maryland.

Mr. MATHIAS. Mr. President, the issue of gun control involves strong, often conflicting interests that need to be considered and weighed carefully. On the one hand, I can well understand many of our citizens' concern for self-defense at a time of unacceptably high crime rates, as well as the need to protect the legitimate rights of sportsmen. At the same time, I am aware of the obvious need for protection against the lawless use of easily obtainable and concealable handguns that all too often are used in the commission of violent crimes.

As a Member of Congress for the past 25 years, I have tried to help shape a coherent, fair, and effective Federal policy in this sensitive area to advance the effort to curb violent crime, without imposing unduly burdensome and bureaucratic procedures on law-abiding Americans.

After careful study, I have concluded that the enactment of S. 49 would be a step away from this goal. Therefore, I shall vote against this bill.

S. 49 would unnecessarily tilt the balance against local law enforcement officials and local crime prevention efforts. At the same time, this bill offers very little benefit to the sportsman and no benefit whatever to the citizen who possesses a gun for personal defense in the home.

Since I was first elected to Congress, I have consistently opposed legislation to require the registration of firearms owners, or to ban the possession of handguns by law-abiding citizens. I shall continue to oppose such proposals. But those issues have nothing to do with the legislation that is before us today.

The major thrust of this bill is to make it easier for dealers to sell guns to nonresidents and to make it more difficult to bring the law to bear against dealers who violate it. These goals should have no place in Federal firearms policy.

Every major law enforcement group opposes this bill. In my own State, the Maryland State Troopers Association have expressed to us their strong opposition to S. 49 unless amended to protect legitimate law-enforcement goals. These amendments have not been adopted. The chief of police of Baltimore County, Cornelius Behan, and other Maryland law enforcement leaders have expressed similar concern about this legislation to me.

S. 49 does not, as some would assert, pit the sportsman or other lawful gunowners against those who would ban guns. It pits those few who are willing to sell guns for profit to anyone with the money to purchase, against law enforcement officers and agencies who



are concerned with the safety of their own officers and the general public.

S. 49, if enacted, would weaken enforcement of existing laws, prohibiting sales of guns to felons, the mentally ill, and others whose possession of a weapon presents a clear danger to society. Because I believe that such prohibitions must be vigorously enforced, in order to redeem our constitutional pledge to "insure domestic tranquillity," I shall oppose S. 49.

Mr. DOLE. Mr. President, it was my hope that we could pass an amendment to the National Firearms Act which would tighten restrictions on the sale of kits used to convert semiautomatic weapons into automatics, either as a part of S. 49 or through the prompt passage of separate legislation. This issue was discussed extensively during the negotiations which led to the time agreement on S. 49 and I know it is a change that has broad based support.

Unfortunately, because the National Firearms Act is a part of the Tax Code, we were advised that if the proposed amendment originated in the Senate, it would be blue-slipped back. As a consequence, we will be unable to address this issue in the context of S. 49 but I would repeat my strong support for amending the National Firearms Act to close this loophole as it applies to conversion kits and will make every effort to promptly pass a bill containing such a change should an appropriate vehicle become available.

#### MACHINEGUN AMENDMENT

Mr. HATCH. Mr. President, Senator DOLE's efforts to clarify laws regarding machineguns would not be an amendment to the Gun Control Act of 1968, but amends the National Firearms Act of 1934. That is a significant point because it could encumber this bill procedurally in the House of Representatives. Under House Rules, the 1968 act is under the jurisdiction of the Judiciary Committee, but the detailed tax and regulatory provisions of the 1934 act fall under the Ways and Means Committee. Rather than subject S. 49 to the potentially fatal procedural obstruction of consideration in two separate committees, I commend the majority leader for dealing with this problem as a separate bill.

In furtherance of a separate bill, I have already participated in meetings with the majority leader and the Treasury Department. Since this subject can be treated in separate legislation, which has the full influence of the majority leader behind it, I commend this action.

Turning for a moment to the specific of this problem, the National Firearms Act pertains to machineguns, short or sawed-off shotguns and rifles, and so-called destructive devices—including grenades, mortars, rocket launchers, and other heavy ordnance. Acquisition

of these weapons is subject to prior approval and registration by the Secretary of the Treasury. Generally, a one-time tax of \$200 is placed on each transfer or manufacturing of a title II weapon.

The bill on which I have worked with the majority leader deals with kits which may be purchased for the purpose of converting semiautomatic firearms into machineguns or fully automatic weapons. The concern addressed by this proposal is that a conversion kit which does not contain all the parts necessary to make a conversion might not be covered by the provisions of the National Act.

My reading of current law indicates that these kits would be covered. The current definition of machineguns covered by the National Act includes "any combination of parts designed and intended for use in converting a weapon into a machinegun." A machinegun, by the way, is defined as any weapon which shoots or is designed to shoot more than one shot automatically with a single function of the trigger. Based on the broad definition of machinegun which includes "any combination of parts \* \* \* intended for use in converting a weapon into a machinegun," a conversion kit is already covered by the National Act. Even if the kit did not contain the total number of parts necessary to effect the conversion, it would still be a combination of parts intended for use in conversion. Therefore, it would be subject to the registration and tax requirements of title II.

This is not the only way that this problem is already addressed by the current law. As I mentioned earlier, a machinegun is also defined as a weapon "designed to" shoot automatically. On the basis of their design characteristics, the Treasury Department has classified at least four semiautomatic weapons as "machineguns" because they were designed to be easily converted to fire automatically. These weapons, too, fall within the ambit of the National Act. Understanding these points, I can grasp the significance of the Treasury Department's comment on this conversion kit amendment. The Department said, "current law may already regulate as machineguns the types of weapons and firearms parts that concern the proponents of the amendment."

Although amendment of the National Act to cover conversion would be unnecessary, I am still willing to add clarity to this point in current law. For this reason, I have been working with the majority leader and the administration on legislation with this objective. In the context of S. 49, however, I see this amendment as creating significant problems in the House. This amendment should not be added to a bill amending only the Gun Control Act. There seems to be no problem re-

quiring action at this minute. The current National Act seems to handle any potential problems in this area. Conversions to machineguns are being regulated now within the terms of the 1934 act. Amending S. 49 in this manner, however, could make its approval in the House extremely difficult if not impossible.

Mr. EAST. Mr. President, I encourage each of my colleagues to vote in support of S. 49, the Firearms Owners Protection Act. The passage of this bill is of critical importance to our Nation's 60 million firearms owners, and the principles embodied in this legislation are of the utmost concern to all Americans who support the Constitution of the United States.

Today we debate an issue that was resolved by our Founding Fathers nearly 200 years ago. As we approach the Bicentennial of the Constitution in 1987, we should reflect upon the intentions of James Madison, Patrick Henry, Samuel Adams, and the rest of that courageous band of patriots who pledged their lives, fortunes, and sacred honor to found a nation dedicated to individual liberty. I am saddened to report that, with regard to the right to keep and bear arms, we have not honored their most deeply held beliefs.

One of the grievances that sparked our forbearers' fight for independence stemmed from British attempts to confiscate their private arms. Despite the guarantees of the English Bill of Rights of 1689, which included the general right of all citizens to retain arms for their protection, the British attempted to disarm the North American colonists in order to solidify political control over the Colonies. In Massachusetts Bay Colony, the cradle of the Revolution, brave colonists complained repeatedly of the deprivations of their right to keep arms. These colonists were faced with the confiscation of their private arms by the British Governor, General Gage. Once the colonists were disarmed, British soldiers conducted raids and breakins, illegal searches, and mass arrests, all in order to prevent the formation of a citizen militia. As former Chief Justice Earl Warren noted:

Among the grievous wrongs of which (the colonists) complained in the Declaration of Independence were that the King had subordinated the civil power to the military, that he had quartered troops among them in times of peace, and that through his mercenaries he had committed other cruelties. Our War of the Revolution was, in good measure, fought as a protest against standing armies. Moreover, it was fought with a civilian army, the militia, and its great Commander-in-Chief was a civilian at heart.

This experience with a governmental confiscation of arms led the colonists to protest ratification of our Constitution without a specific, written guarantee that no national govern-

ment would ever intrude upon the right of each and every citizen of the United States to keep and bear their own firearms for the defense of themselves, their families, and their property. Fully 5 of the 11 States that originally ratified the Constitution in 1789 called for an amendment relating to the right to keep and bear arms. The importance of this right is demonstrated particularly in light of the fact that there were only five State proposals for a free press amendment and only three for a free speech amendment.

Thus, as a result of their firm belief that the right to keep and bear arms was the first line of defense for a free people, the Founding Fathers guaranteed that right in the second amendment. Indeed, the fundamental importance of the second amendment to the scheme of liberty contained in the Bill of Rights was recognized by Supreme Court Justice Joseph Story when he described the right to keep and bear arms as "the palladium of the liberties of the republic."

It is ironic that today we should be debating whether Americans do have the right to own and keep firearms. The debate 200 years ago was over whether it was even necessary to include a written guarantee of what seemed to those wise men an inalienable, and undoubted, right not subject to the whims of politics or the will of legislatures. Patrick Henry, James Madison, George Mason, and their noble brethren all believed that the right of an individual to keep and bear arms was so elemental, so obvious to all men of reason and good will, that the mere recording of words could only confirm what no government had the power to deny. As Zachariah Johnson said, "The people are not to be disarmed of their weapons. They are left in full possession of them."

These great men must be disturbed in their rest as they hear their political descendants question not only the wisdom, but the very existence, of rights that they considered to be fundamental to all free peoples. Patrick Henry, discussing the relationship between an armed citizenry and individual freedom, uttered these immortal words: "Guard with jealous attention the public liberty. Suspect every one who approaches that jewel." Had we but heeded that warning, we would not need to be here today, attempting to restore liberties which the founders sought to secure through the second amendment.

The legislation before us is designed to redress a grievous wrong carried out by this body some 17 years ago: the infringement of the people's right to keep and bear arms. By acting now to restore our citizens' second amendment rights, we will be carrying on a tradition begun more than 200 years ago.

Mr. President, James Madison once warned that we should take alarm at the first experiment with our liberties. In my view, we should put an end to the most egregious experiments with the second amendment liberties of the American people by passing S. 49, the Firearms Owners Protection Act.

Thank you, Mr. President. I yield the floor.

Mr. DOLE. Mr. President, 6 years ago, the National Firearms Owners Protection Act was first introduced by Senator McCLEURE. Thanks in large part to his tireless efforts on behalf of the legislation, the Senate is finally passing this crucial bill. Senators HATCH and THURMOND have also contributed significantly over the years to building the consensus needed to secure final passage. Law-abiding gun-owners, dealers, and manufacturers throughout the country owe these Senators a debt of gratitude for working so hard on their behalf to correct the abuses that have occurred under the 1968 Gun Control Act.

As Senator McCLEURE stated on the Senate floor when he first introduced his bill on October 5, 1979: "The legislation \* \* \* is designed to carefully correct a series of abuses without fundamentally altering the law which had led to those abuses." As we proceed to a final vote on this legislation, it is well to keep those last few words of Senator McCLEURE in mind. This bill does not permit everything from mail-order gun sales to street-corner vendors peddling Saturday night specials as some have implied. The truth is this bill maintains the integrity of the 1968 act as it applies to illegal gun manufacture, sales, and purchases. What it will do is put an end to unfair and unjust enforcement practices, bordering, at times, on harassment, undertaken against law-abiding citizens which, if anything, have diverted scarce law enforcement resources away from tracking down and prosecuting the true criminals. It is sound legislation and I am pleased to have played a role in securing its passage as Senate majority leader.

Mr. President, though we may disagree on many of the issues, I would also like to thank Senators KENNEDY and METZENBAUM for cooperating with us in proceeding to and passing this legislation in an orderly way. I would also like to thank Senator BIDEN for his help in working out the time agreement.

Finally, I would like to thank all the staff who have worked on this bill including Mike Hammond and Nancy Norell with Senator McCLEURE; Randy Rader with Senator HATCH; Steve Dillingham with Senator THURMOND; Jerry Tinker with Senator KENNEDY; Scott Green with Senator BIDEN; and Eddie Correia with Senator METZENBAUM.

Mr. HATCH. Mr. President, when Congress enacted the Gun Control Act of 1968, its intent was to reduce violent crime, not to encourage prosecutions for inadvertent infractions of the intricate, complex, and detailed complexities of the act. If we are serious about fighting violent crime, we will enact this bill swiftly. This bill strengthens penalties against violent offenses, makes it a crime for any person—not just a dealer to sell a gun knowingly to a felon—and in other ways focuses our scarce law enforcement resources on violent offenses.

As the law now stands, it lacks a definition for "engaging in the business" which allows law-abiding citizens to be convicted of a felony for selling one or two guns inherited from a family member. It has no mens rea, state of mind, requirements for many offenses, which allows persons to be convicted of a felony on the same basis as a traffic ticket.

We need to redirect our firearms enforcement efforts away from technical recordkeeping violations and toward violent crime. This bill accomplishes that and deserves our support.

I ask unanimous consent to have printed in the RECORD an article from the Wall Street Journal of Tuesday, July 9, 1985, regarding this subject.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, July 9, 1985]

**ZEALOUS ENFORCERS TRIGGER  
RECONSIDERATION OF GUN LAW  
(By David T. Hardy)**

The Senate is expected to take up this week the so-called Volkmer-McCleure Bill. It represents six years of effort to reform the 1968 Gun Control Act, the primary federal law affecting our 200,000 licensed firearms dealers and 80 million firearms owners and collectors. Hastily drafted at a time of national tumult, the GCA was aimed at preventing felons and other unpleasant sorts from owning guns. Along the way it required persons "engaged in the business" of dealing in guns to obtain a license, required such dealers to maintain records of sales, and imposed felony sanctions, forfeiture of firearms and other sanctions on violators.

Enforcement agencies, like most organizations, seek to grow. Over the dozen years following enactment, the one charged under the GCA grew from an IRS subunit, with 214 agents, to a full Treasury bureau—Alcohol, Tobacco and Firearms—with 1,200 agents on gun-related duties. Such explosive growth required especially impressive results. Fortunately for the bureau, the GCA opened the door to easy cases against unsuspecting persons: With strict liability, even the most trivial and unintentional misstep would do.

Agents and informants had but to make a few purchases—all legal—from a collector, then charge him with having "engaged in the business" of gun dealing without a license. For variation, any technical record-keeping error could be inflated into a felony count. The prize for originality, however, went to the agents who located persons who



had received a pardon and charged them with possession of firearms by a felon—Congress having forgotten to take account of executive clemency in defining “felon.” The easy crop of arrests led to a great deal of heartburn later, when the citizens appeared before Senate committees to return the favor.

Among the dozens of cases described, a few stand out:

A Disabled veteran and Boy Scout leader who ran a small New Hampshire gun shop. A BATF informant made him a lucrative and illegal offer. Noting his auto-license number, the gun-shop owner called BATF to urge prosecution. The bureau instead arrested the gun seller, claiming that one of his firearms was technically illegal. At his trial, his chief character witness was the very sheriff who had accompanied BATF on the raid. The judge dismissed the charges and apologized on behalf of the United States.

A former Maryland policeman who, as a French national, had earned his U.S. citizenship by volunteering for the Army during the Vietnam War. He was a collector who also held a dealer's license and was prosecuted for not having logged into his dealer's records some sales from his personal gun collection. At his trial, he proved that BATF's own director had informed Congress that such a procedure was legal. The court, however, accepted the prosecution's argument that the director was wrong and that lawful intent was no defense. The collector became a convicted felon.

A couple who owned a rural New Mexico gun shop. They were charged with seven illegal sales, yet their entire inventory—in which they had invested all their savings—was confiscated. The jury found them not guilty, but the bureau moved to revoke their license. The bureau's own administrative judge ruled in their favor. Yet a year and a half later, the BATF still held their inventory—offering to return it only if they agreed not to sue for false arrest!

Nor were these cases so exceptional prior to 1981, at which point the bureau, under congressional scrutiny, began to scale back its operations. The Senate Subcommittee on the Constitution estimated in 1982 that two-thirds of federal firearms cases were at one point being brought against inadvertent and technical violators, and only 10% were being brought against felons or those who sold to them.

Volkmer-McClure (its authors are Democratic Rep. Harold Volkmer of Missouri and Republican Sen. James McClure of Idaho) takes a direct approach to these demonstrated defects. It defines felon to exclude recipients of full pardons, and dealer to exclude collectors who may make a sale incident to their hobby. For most technical violations it requires proof that the violation was willful. Firearms seized must be carefully identified and linked to a specific violation: If the owner wins acquittal the firearms must be promptly returned. These are hardly revolutionary principles; most of us probably would be surprised to find them disputed. Yet disputed they are, by interest groups that tend to see punishment of firearms owners as a social good in itself.

Although the bill restricts law enforcement, police organizations are among its most enthusiastic backers. The Fraternal Order of Police appeared before the Judiciary Committee to explain why it “strongly supports” the Volkmer-McClure bill: “Many aspects of the Gun Control Act, as it exists, are enforcement nightmares. The act out-

laws, and imposes felony penalties upon, a wide range of conduct in which ordinary, honest citizens engage.” The National Sheriffs' Association, in a frank statement whose theme should be inscribed on the Capitol's walls, stated: “If you have the resources to prosecute unintentional violators of the Gun Control Act, give them to our members, and we will use them instead to prosecute murderers, rapists, armed robbers, and burglars.

Can the proper needs of law enforcement be reconciled with respect for individual rights? Yes, if policy makers concentrate on details and do not paint with a broad and dangerous brush. Volkmer-McClure represents exactly the type of detail work that is needed.

Mr. DURENBERGER. Mr. President, I support S. 49, the legislation offered by my distinguished colleague from Idaho [Mr. McClure].

The need for this legislation is well documented and its passage is long overdue.

The primary thrust of this bill is aimed at amending the Gun Control Act of 1968 to change its most onerous provisions and institute guarantees of gun owners' civil liberties which were omitted from the act. To understand how those guarantees were omitted, we should examine the historical background of the 1968 act.

What ultimately became the 1968 Gun Control Act originated in 1963 as a relatively modest measure to require police notification before mail-order firearm purchases. Over the following years, as the gun control controversy expanded, so did the proposed legislation. It finally came to the floor in 1968 in a politically charged atmosphere. Those who sought extensive Federal regulation of gun owners fought for registration and permit systems; those who opposed it primarily fought against these proposals. The Gun Control Act was not a coordinated piece of legislation, but a hodgepodge of proposals which neither side particularly wanted, inserted piecemeal as the legislative battle seesawed back and forth. No sooner was it enacted—as part of the Omnibus Crime Control and Safe Streets Act—than a new push was started for amending the bill.

A second piece of legislation, entitled the Gun Control Act of 1968, was passed, which amended various provisions of the first bill, making it apply to rifles and shotguns as well as pistols, creating a collectors' licensing system, amending provisions for review of license denials, and generally clouding the issue to a still greater degree.

The end result has allowed:

Entrapment of law-abiding citizens who are enticed into accidentally violating one of the technical commands of existing law. Most existing provisions do not require proof of criminal knowledge or intent, so that cases can be made on inadvertent violations.

Use of vague and undefined requirements to make cases against law-avoiding citizens. Among the worst of these is the requirement that persons “engaged in the business” of dealing in guns obtain a license. Many gun collectors have been enticed into two, three, or four gun sales out of their collection over a period of 6 months, then charged with having engaged in the business.

Abusive confiscations of these collections on the ground they were “intended to be used” in violation, and frequent refusal to return the collection even after the collector is acquitted.

Bureaucratic harassment by frequent “fishing expeditions” into dealers' records. Current law allows entry into a dealer's shop and a search of his records and inventory on the agent's whim, without warrant or probable cause.

A complete misdirection of effect. Although existing laws are aimed mainly at keeping felons from obtaining guns, only 10 percent of BATF's gun cases are against felons in possession or those selling to them. Only 4 percent of guns confiscated meets their own definition of “crime guns.”

The bill would redirect the law's focus away from law-abiding Americans and increase the focus on genuine criminals.

Through procedural reforms, this bill will advance a more even balance between the constitutional rights of the law-abiding citizens, and the legitimate law enforcement efforts of the Bureau of Tobacco and Firearms [BATF] and individual States.

This legislation places procedural safeguards on the blatantly unfair practices of the BATF relating to seizure and retention of firearms. At the present time, anyone accused of a registration violation must immediately forfeit not only the improperly registered firearm, but all the guns he owns, even if the others are properly registered. This is in direct conflict with our principles of civil liberties—BATF is assuming an accused is guilty until proven innocent. Those who violate the 1968 Gun Control Act should be punished, but enforcement must be consistent with the fundamental right to due process.

S. 49 will also enhance the freedom of Minnesota's sportsmen who enjoy traveling to other States for recreational purposes. State laws that prohibit the interstate commerce of firearms and ammunition would be nullified, allowing travelers to transport unloaded and inaccessible guns across State lines. And, interstate sales of firearms would be lawful as long as the transaction complies with the legal conditions of sale in both States, making it possible for the out-of-state

hunter to replace a lost or stolen rifle under certain conditions.

This initiative will protect the rights of dealers of weapons and ammunition by specifically defining a manufacturer and his activities, and be relaxing Federal regulations with regard to innocent errors in recordkeeping.

Perhaps the provision I support the most in this bill, however, is that one which requires mandatory sentencing for persons convicted of using a firearm in the commission of a Federal crime, and makes stricter the penalties for repeat offenders. We must make it clear that anyone convicted of misusing a firearm is going to prison without exception. As most criminal justice studies demonstrate, it is the swiftness of apprehension and certainty of punishment that deters crime.

Opponents of the legislation have offered, among several amendments, one to impose a waiting period and another to ban snubbies or short-barreled handguns. The questions of what to ban or whether or not one ought to wait should be answered by State policymakers. Some States have adopted a waiting period. Others have rejected it. In April 1982, for instance, Maryland's legislature voted down an extension of its waiting period, and one of the major counties in Kentucky rejected a waiting period ordinance—Kentucky's legislature having earlier rejected a similar bill at the State level. There is no reason to override their decisions and impose a Federal statute to dictate local questions.

It is unfortunate that this bill has been misunderstood and characterized as "pro-gun." I do not view it as being pro- or anti-gun, but rather as a vehicle for protecting the rights of the law-abiding citizens while strengthening penalties for those who violate the law. The reforms set out in my colleague's legislation are necessary steps to ensure fair, efficient enforcement of the 1968 Gun Control Act. It is for this reason that I am voting in favor of S. 49.

Mr. MATTINGLY. Mr. President, I rise in support of Senate bill 49, the Federal Firearms Owners Protection Act. This legislation is similar to an amendment offered to last year's continuing resolution which I supported along with a clear majority of my colleagues. As a cosponsor of the so-called McClure-Volkmer bill in both the 97th and 98th Congresses and of this measure, I am pleased that at last the Senate will have the opportunity to vote on legislation which is designed to protect the constitutional rights of gun owners and to remove unnecessary Federal burdens and restrictions on law-abiding citizens, while protecting and advancing legitimate law enforcement efforts.

For some years now, momentum has been gathering to reduce these burdens by imposing limits on the agen-

cies' tendency to regulate every activity. If anyone doubts the need for these limits, I suggest that he take a look at the U.S. Code and the Code of Federal Regulations. That comparison clearly demonstrates what to me is a disturbing fact—that administrative regulation far outweighs legislation in volume and in detail. This is disturbing because it is not how the system is meant to work. It is not career bureaucrats but individuals elected by the people who are charged with the responsibility of creating the rules which govern the lives of our citizens. But bureaucrats and regulators increasingly have assumed this responsibility.

Gun owners have seen the danger of agency lawmaking. In the late seventies, for example, they were nearly forced into a computerized gun registration devised by an agency. Such a scheme was clearly not the intention of Congress, for Congress had rejected such a registration plan when it enacted the law. Fortunately, the regulation did not take effect, largely because firearm owners protested vocally in some 60,000 comments opposing the rule. Those sheer numbers have something to say to us today. They say that the law-abiding, gun-owning public realizes the danger of administrative lawmaking and opposes it.

Senate bill 49 provides needed guarantees against similar incidents of regulatory overstepping in the future. It alters the existing grant of authority to a Secretary to make whatever rules he deems reasonably necessary to carry out the law. Under S. 49, regulations must be necessary as a matter of fact, not merely reasonably necessary as a matter of judgment. The deletion of the term "reasonably" narrows the boundaries of an agency's discretion, discretion which has been at times exercised in an abusive manner. The practical effect of this clarification is to ensure that regulations are necessary to carry out the terms of the law and are in fact based on the law itself. In addition, the provision ensures that such regulations represent the least restrictive method of carrying out the intent of the law. S. 49 subjects the agency rather than the law-abiding citizen to stricter liability. This is as it should be.

Earlier I mentioned the computerized registration incident. The Federal Firearms Owners Protection Act specifically states that it is the intent of Congress that no registration system be established. This in no way will thwart law enforcement's investigation of criminal cases in the future. Record turn-in requirements remain as they are under current law.

The fact is, S. 49 will enhance law enforcement. The measure codifies the Treasury's authority to get access to a dealers' records for the purpose of tracing weapons in a criminal investi-

gation; it clearly states those classes of persons, including felons, the mentally incompetent, and drug abusers, who are prohibited from possession, receipt, transportation, or shipment of firearms; and it establishes higher penalties than those under current law for the use of a firearm in the commission of a felony.

This legislation, which has been the subject of numerous hearings and revision, is a balanced, reasoned approach to protecting citizens' constitutional rights while maintaining and furthering effective, legitimate law enforcement. I urge its adoption.

Mr. SYMMS. Mr. President, when we first considered the Gun Control Act of 1968, we were told that those localities with restrictive gun laws had less crime committed with firearms than areas with more lenient gun laws. Some of that data used to support the Gun Control Act of 1968 was deceitful. The proponents of gun control would pick a city here or a State there. The total data base was from 5 or 10 cities in a handful of States.

The same thing is happening now. We are told that gun laws work in Massachusetts, that they work in the District of Columbia, and that they work in the city of Chicago. We are not told that some of the cities cited in the past—those with less restrictive gun laws, such as Phoenix and Tucson—are much safer than the District of Columbia or Chicago. Their homicide rates are well below half those of the cities with restrictive gun control laws. Finally, we are not told just what is meant by "gun control laws are working."

Since the 1976 adoption of the Bartley-Fox restrictive gun law, Massachusetts has gone from the 19th to the 11th most violent State. Its homicide rate has basically mirrored the rest of the region—except that handguns are involved in 34 percent of Massachusetts' homicides, they are used in only 24 percent of Maine's, 19 percent of Vermont's, and 5 percent of New Hampshire's. As you can see, all those other New England States are significantly safer than Massachusetts. Moreover, studies conducted by the U.S. Justice Department have concluded that the gun law has not worked. The law didn't change the regulation of handgun acquisition or carrying, it merely punished those carrying without a license. And the impact has been negligible in terms of punishing criminals. Fewer criminals than ever are being imprisoned for carrying a weapon. Those few who are imprisoned now are more likely to be persons without serious criminal records while the real criminals make greater use of jury trials, technical arguments against evidence, or merely free on bail.



The only impact has been to increase the number of criminal trials which involve appeals, juries, and constitutional technicalities, or the number of trials which cannot be carried out due to flight from the jurisdiction. The criminal justice process has been slowed, and an increasing number of persons guilty only of technical or inadvertent violations have been punished. The crime rate, especially street robbery involving guns, has risen dramatically in States with restrictive gun laws. For example—in Massachusetts, and particularly in Boston.

A recently completed survey of felons around the country, commissioned by the U.S. Justice Department—conducted by Professors Peter Rossi and James Wright of the University of Massachusetts—shows that Massachusetts felons are more likely to be armed than are felons in other States. They are more likely to own handguns and to carry handguns regularly. Thus, the restrictive Bartley-Fox law has certainly not disarmed the criminal. Rather, it seems to have encouraged street robbery—the type of robbery most likely to occur when citizen self-defense is impaired by law.

The Wright-Rossi survey also shows that criminals in Massachusetts are less likely to be concerned about confronting an armed victim than are felons in States where civilians have more freedom in acquiring and carrying guns, such as Arizona and Oklahoma.

The District of Columbia virtually banned handguns beginning in early 1977. The result was immediate—despite many distortions from the anti-gun crowd. Between 1976 and 1981, the murder rate rose from 26.9 per 100,000 to 35.1. With the 1982 adoption of a mandatory penalty for using a gun in a violent crime, D.C.'s homicide rate has fallen back to 28.1 in 1984. In spite of the 7 point drop, this was still a net rise of 4.5 percent while the national homicide rate is now 9 percent lower than it was in 1976. Based on these statistics, one can see that the national murder rate fell twice as fast as the District of Columbia's has, and DC's rate has only fallen since adopting a mandatory penalty for misusing guns in violent crimes.

Another example gun control proponents cite is Chicago, which imitated the District's gun freeze with an ordinance taking effect in October 1983. The distorted interpretation of the effect of that gun law has it "working" because the homicide rate fell between 1981 and 1982, the year before the gun law took effect. A closer look shows that the number of killings in Chicago rose between 1982 and 1983 and rose again between 1983 and 1984. During that time, the homicide rate nationally has continued a 4-year decline.

The general uselessness of gun laws is perhaps best shown by the overall long-term trends. Violent crime in the United States has been falling for the past 4 years—particularly gun-related violent crime—even though handgun availability has been increasing over three times as fast as the population, and even though handguns constitute a greater and greater percentage of the firearms market. Not only is the violent crime rate falling, but so is the firearms accident rate and the overall suicide rate.

In Canada, since adopting a tough gun law, the violent crime rates have been rising, and the suicide rate has been rising. I'm not sure exactly what "gun control" laws are supposed to do, but the evidence seems to associate these laws with increases in crime rates. I was under the assumption the goal was to reduce crime.

I think it's time we quit burdening the average law-abiding citizen with laws based on the pretense that criminals get their guns through regulated channels—based on the supposition that the average citizen cannot be trusted.

The average citizen can be trusted, and that is the basis of American democracy. The data clearly indicates that the average citizen does not misuse his firearm. Instead, each year, over 300,000 Americans use their handguns for protection from criminals. As demonstrated in the cities and States which have adopted restrictive "gun control" laws, the end result has been to lessen criminal concern about being shot by a potential victim and to increase the safety of streets—not for the law-abiding, but rather for the criminal.

We must not allow the Federal Government to continue hamstringing law-abiding citizens with redtape and senseless restrictions simply because these citizens exercise the constitutional right of firearms ownership for self defense, sport, hunting, or other purposes. A Federal presence with firearms must be targeted toward violent criminals. S. 49 will achieve that end and for that reason I support the bill both as a tool of better law enforcement and as a guarantee of the constitutional right to firearms ownership for American citizens.

Mr. DOMENICI. Mr. President, the Constitution guarantees to each citizen the right to keep and to bear arms. Unfortunately, the Gun Control Act of 1968 unduly and unnecessarily burdens that right, while failing to achieve its goal of ebbing the tide of violent crime. While we must keep guns out of the hands of the criminal element, we cannot do so at the expense of innocent, law-abiding citizens. The Gun Control Act of 1968 has ensnared many innocent gun dealers and owners in the technicalities of its provisions while criminals have been un-

deterred by it in their efforts to obtain and use firearms.

Under the 1968 act, violent crime has continued unabated, yet many honest gun owners and dealers have been branded as law breakers because of their inability to abide by the technical provisions of the act. This result was not intended by the drafters of the act. By eliminating the burdensome and unnecessary provisions of the act which infringe on the rights of honest gun owners and by toughening the provisions for willful violations of our firearms laws, we can best achieve the original intent of the drafters of the act and protect the rights of our citizens.

I have cosponsored the Federal Firearms Owners Protection Act because it protects the constitutional rights and civil liberties of law-abiding gun owners without diminishing the effectiveness of law enforcement measures against the misuse of firearms. It does this by eliminating those provisions of the 1968 act which only served to set a trap for unwary, yet otherwise honest, gun owners and dealers and by directing enforcement toward willful violations of Federal firearms law. It ensures that the rights of firearms owners are observed and increases the penalties for willful misuse of firearms. I therefore support the Federal Firearms Owners Protection Act and encourage others to do so.

Thank you, Mr. President.

Mr. QUAYLE. Mr. President, I wish to add my endorsement to S. 49, the Firearms Owners Protection Act, that Senator McClure has reintroduced in this 99th Congress.

The McClure-Volkmer bill was first introduced in 1979. It was in response to the need for reform of the Gun Control Act of 1968. Since 1979 the McClure-Volkmer bill has been working its way through the legislative labyrinth. During its travel through this maze, I suspect that every word of every phrase of this legislation has been studied for every conceivable meaning. In the 98th Congress this body voted on two separate occasions, 63-31 and 77-20 in favor of this legislation. I might point out that last term, the bill was reported by the Senate Judiciary Committee unanimously, something of a rare feat from that diverse group. I mention this point only to refute the recent charges that this measure is being rushed to the floor without the necessary time for analysis in committee. This legislation has stood the test of debate for the last 3 years, it has had the support of the Senate in the past, and has the support of 51 cosponsors today. In addition it is noteworthy that the bill has the full support of the firearms rights community as well as the administration.

Mr. President, recent statistics published by the FBI, State, and local law enforcement officials, show that there has been a decline in the number of crimes committed in this country. I believe that we will see additional progress made in this area with the implementation of the enforcement aspects of this bill. The sentencing provisions of this legislation will put out the notice that we are indeed serious in our commitment as a Nation to combat crime in the United States. The increased penalties make clear this commitment. This is a necessary second step since the Comprehensive Crime Control Act of 1983 laid out the foundation for our renewed effort to strengthen our criminal justice system to combat the increased crime against our people and property. Sure and certain punishment as a direct response to criminal action has shown some positive results. Last year, I was pleased to report to the people of my home State of Indiana that crime declined in the United States. Preliminary reports by the FBI for 1984 show a 3-percent decrease in crime as compared to the previous year. I would like nothing more than to be able to continue to make reports in the years to come.

Mr. President, I have one final point that I would like to make on behalf of this bill. There is a difficult balance which we are trying to achieve through these revisions in the Gun Control Act of 1968. We look to protect the rights of our citizens to be free of governmental constraints without easing our commitment to the battle against crime in this country. I believe that this bill strikes a good balance in these vital interests. Critics have focused upon the first half of this equation, suggesting that people should not have the rights afforded under this legislation. We are a country proud of our freedoms. It is this freedom which makes this country a great Nation. The citizens of this country have a right to be free in their persons and property. The fight against crime is the struggle for this freedom. I will be voting in favor of S. 49 as a vote for the protection of our freedoms.

Mr. BIDEN. Mr. President, the subject of considering changes to the 1968 Federal Gun Control Act has been a topic of much debate in the Judiciary Committee for the past several Congresses. Last year alone it took the better part of four committee meetings and 6 months to finally agree on a compromise bill that was unanimously reported by the committee. As the ranking minority member of the Judiciary Committee I believe this issue has received careful scrutiny and this bill is a product of compromise and revision.

Mr. President, in the 97th Congress when this bill was introduced, I had

major concerns that it would gut many important law enforcement provisions in the 1968 Gun Control Act. It was for that reason that I raised concerns about provisions that would make it easier for convicted felons to gain access to guns and permit the interstate mail order sales of guns. The Treasury Department and some of my colleagues on both sides of the aisle raised similar concerns and there was agreement to offer substitute language to the original text of the bill. I give credit to Senator HATCH and the National Rifle Association for their willingness to compromise and develop a revised bill that would strike a fair balance between unnecessary restrictions and regulations on lawful ownership of rifles and handguns and the legitimate interests of law enforcement in carrying out their responsibilities. I believe the compromises that are now a part of this bill have resulted in a balanced piece of legislation that protects the rights of private gun owners while not infringing on law enforcement's ability to deal with those who misuse guns or violate laws.

During my 12½ years as a Member of this body, I have never believed that additional gun control or Federal registration of guns would reduce crime. I am convinced that a criminal who wants a firearm can get one through illegal, nontraceable, unregistered sources, with or without gun control. In my opinion a national register or ban of handguns would be impossible to carry out and may not result in reductions in crime.

There will be several amendments offered today that warrant close attention and I will listen to the authors' argument very carefully before deciding how I will vote. However, on the whole, I am satisfied with the revisions to the bill made in committee, and I believe this bill makes improvements to existing law.

Mr. SASSER. Mr. President, even before the ink was dry after the 1968 Gun Control Act was signed into law, many Members of Congress has second thoughts about the effects of their action.

That action amounted to a sweeping legislation attempt to curtail crime, political assassination, and social upheavals marked by extreme violence. In that climate of "Do something, do anything," firearms and the lawful owners of firearms were made scapegoats in a simplistic attempt to answer exceedingly complex human problems.

Only the citizens caught up in the maze of the 1968 Gun Control Act can adequately and persuasively convey the effect this ill-conceived law has had on their lives. Their stories poignantly reveal the end results of a vague and complex law which impacts much more on law abiding citizens who happen to own firearms than it impacts on violent criminals. This Con-

gress must provide, by reform of the Gun Control Act of 1968, protection for scores of Americans who would otherwise fall prey to the misdirected 1968 law.

Although it was touted as a measure to curb crime, the Gun Control Act does not deal, or even purport to deal, with misuse of firearms. It is purely and simply a regulatory statute designed to control the transfer of firearms and to make each transfer a federally recorded and federally controlled transaction. That is the importance of the statute.

That significance has been lost amid all of the rhetoric about the 1968 act and its companion statutes. The Gun Control Act of 1968 is not directed at misuse of firearms, rather it is a highly technical, strict regulatory scheme that thrusts burdensome recordkeeping requirements on all who chose to legally own or engage in the business of selling firearms.

Put another way, most provisions of the Gun Control Act of 1968 deal with regulatory crimes rather than violations of a criminal, moral nature. And whenever you are dealing with regulatory crimes—a wrong only because the law says it's wrong—you will have people who have no intention of breaking the law caught up in the technical maze spawned by the Gun Control Act.

Literally anyone can inadvertently become a victim of the technical requirements of Federal gun laws. Yet any and all violations of that act are felonies, subject to criminal penalties. Under its provisions, no matter how diligently one tries to comply, an innocent technical mistake will result in a criminal record.

Try, if you will, to conjure up any other statute or regulatory law which calls for criminal penalties to be levied for a recordkeeping error. And bear in mind that under the Gun Control Act of 1968 your motives, your intent, matters little.

The Federal gun law can be likened to Government imposed speed limits, artificial numbers set by lawmakers. It doesn't matter what your motives are: if you exceed the speed limit, you have violated the law, no matter how unintentionally. At least in this instance the motorist is given signpost commands every few miles.

However, the Nation's firearms owners and dealers have not been given clear, identifiable signals governing firearms transactions. Instead, firearms owners and dealers must obey the commands of a vague, ill-defined, and arbitrary law. And unlike the motorist caught in a traffic violation, subject to a fine, a citizen charged with a recordkeeping violation under the Gun Control Act is labeled a felon for life.



Mr. President, passage of the McClure bill—S. 49 will be a step in the right direction. It will redirect the law away from a regulatory preoccupation and instead target truly violent criminals. For this reason, both the National Sheriffs Association and the Fraternal Order of Police testified in support of the bill in committee.

I urge my colleagues to join me in supporting the recommendations for change of the Gun Control Act of 1968 as contained in S. 49.

Mr. GRASSLEY. Mr. President, I want to commend the Bureau of Alcohol, Tobacco, and Firearms and the various private interest groups involved for working with us on crafting a reasonable reform to the Gun Control Act of 1968. That law had led to a number of abuses in the past by officials hostile to the right of law abiding citizens to own guns.

In the 97th Congress, I chaired four committee hearings where witness after witness revealed that they had been treated as criminals when they committed technical bookkeeping errors related to firearms. Some of these people had, in fact, been found innocent of any wrongdoing, but hostile government officials refused or unjustifiably delayed the return of firearms and other property seized for evidence against them.

The McClure-Volkmer bill alleviates many of the problems that exist in the present law. The bill eliminates the ban on interstate sales of firearms and thereby allows gun buyers to travel around for the best bargains. It permits gun dealers to conduct business with out-of-State residents as long as the transaction does not violate either State's laws. At the same time, this bill does not allow mail order handgun sales as some have feared. Nonlicensed persons cannot be expected to know the gun laws of every State and municipality and so the ban on interstate sales by them remains.

The gun tracing powers of the BATF are preserved and, at the same time, because of language that I commend BATF for agreeing to, the possibility of national gun or gunowner registration is forever banned without explicit congressional action.

This bill also defines "engaged in the business", which will preclude the present unwarranted prosecutions of gun collectors and hobbyists for legal gun sales.

This bill also cracks down on real criminals who use firearms while committing a felony. Unlike current law, where criminals are released through probation or parole, McClure-Volkmer imposes mandatory penalties where there is no probation or parole, nor release on any basis for the genuine gun-toting criminal.

Therefore, Mr. President, I am pleased to be a cosponsor of S. 49, and

I recommend an expeditious consideration and passage of this bill.

(By request of Mr. DOLE, the following statement was ordered to be printed in the RECORD:)

● Mr. HATFIELD. Mr. President, the issues touching upon gun control are intensely emotional and highly political. Gun control advocates argue that studies, similar to a 1977 crime victimization report which indicated that handguns were the instruments of 10,000 murders and another 550,000 crimes of violence, point to the compelling need for stringent handgun laws. On the other hand, opponents of stricter gun laws strenuously maintain the necessity of guarding citizens' right to keep and bear arms guaranteed by the Constitution. They further argue that there is no demonstrable evidence to support the claim that stricter gun laws reduce violent crime.

For these reasons, Congress has been unsuccessful in enacting any meaningful change in the Gun Control Act of 1968, a law which has been widely criticized for punishing law abiding citizens who own, buy, or sell guns, while at the same time failing to provide the intended support to Federal, State, and local law enforcement officials in their fight against crime and violence. S. 49, under consideration by the Senate today, represents the first major effort to address reported deficiencies in the 1968 act.

For many gun dealers and owners, enactment of the 1968 Gun Control Act has imposed burdens and restrictions on their rights to sell, purchase, and hold firearms which were not intended by Congress. The evidence seems to suggest that a disproportionate number of enforcement activities have focused on gun owners and dealers who have been charged and/or prosecuted for inadvertent and often technical violations of the act. Because of widespread confusion among gun dealers, collectors, and owners about the act's definition of being engaged in the business, individuals have had their collections or inventories confiscated and have been charged for selling firearms without a license. The overwhelming majority of these people were conscientious citizens who because they did not understand that act's requirements has to pay a heavy price. Despite the fact that in many cases the charges were dropped or the person found not guilty, it was months and even years before the confiscated firearms were returned.

With passage of the 1968 act, Congress made it clear that it is not the purpose of Federal firearms laws to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession or use of firearms appropriate to the purpose of—any—lawful activity. Rather it is the purpose of such laws to provide support to

Federal, State, and local law enforcement officials in their fight against crime and violence. S.49 is an attempt to bring our Nation's firearms law in compliance with that stated purpose. Basically S. 49 would:

First. Eliminate restrictions on the sale of firearms by licensees to out-of-State residents, providing the sale conforms to the laws of the States of both buyer and seller and that the transaction takes place face to face.

Second. Require that criminal intent be proved before individuals could be prosecuted for violation of Federal firearms laws.

Third. Clarify requirements for obtaining manufacturer, importer, and dealer licenses.

Fourth. Exempt ammunition dealers from the act's requirements.

Fifth. Restrict the right of inspection of licensees by Federal agents.

Sixth. Restrict the Treasury Department's authority to require licensees to submit reports based on records kept pursuant to the act.

Seventh. Prohibit the issuance of any regulations designed to create a central registry of firearms.

Eighth. Restrict the grounds for seizure for firearms involved in violations of the act.

Ninth. Provide the limited right to carry an unloaded, inaccessible firearm in interstate commerce from one State where possession is lawful to another where possession is also lawful.

Tenth. Permit dealers to sell guns at events sponsored by any national, State or local organization devoted to the lawful uses of firearms. Thus dealers would be allowed to sell guns at responsible, legitimate, organized gun shows where a Federal agent may easily visit and inspect to ensure lawful gun sales.

Eleventh. Close the present loophole in the 1968 act that prohibits the importation of "Saturday Night Specials" but allows the importation of parts for these guns.

Twelfth. Close the loophole in the National Firearms Act that allows individuals to bypass Federal restrictions on the possession of automatic weapons.

Mr. President, the high level of violent crime in our country is truly a national disgrace. It is estimated that in the United States one murder occurs every 25 minutes, one forcible rape every 7 minutes, one robbery every 59 seconds and one aggravated assault every 49 seconds. I am horrified by these statistics and am committed to supporting legislation which protects the sanctity and quality of human life. My record is clear on this fact, and I will continue in my efforts to bring an end to violence both within and between nations, races, and families.

One of the questions before the Senate today is how best to decrease

the number of handgun deaths in America. I have examined data from cities and counties which have implemented sweeping handgun control measures in an effort to reduce handgun deaths. At this time, I am not persuaded that broad handgun control legislation would provide the needed assistance to enforcement officials to reduce the number of deaths. However, I will continue to monitor all such data and reassess my position should such evidence demonstrably point to a successful reduction in handgun deaths.

Additionally, I will continue to support legislative efforts to control the proliferation of "snubbies" and "Saturday Night Specials" now menacing this country. A major study conducted by Cox News Service in 1981 found that snub-nosed guns, both cheap and expensive, domestic and foreign made, were the overwhelming weapon of choice among modern criminals. Evidence from 18 major cities indicated that two out of every three handguns used in violent crimes were handguns with barrels protruding no more than 3 inches beyond the cylinder. Furthermore, the study found that historical records show that since 1835, 10 out of 15 assassins and would-be assassins have chosen extra-small pistols in their assaults on Presidents and other political figures.

Let me also make it clear, however, that my support of legislation to restrict the production or sale of "snubbies" will be predicated on a clear and precise definition of what kind of firearms are to be controlled. I will continue to oppose any definition which is too broad and may infringe upon the public's right to own and use legitimate handguns.

Mr. President, I supported and was a cosponsor of an almost identical measure to S. 49 introduced by the distinguished Senator from Idaho during the last Congress and I will support this bill today. As I stated before, this issue is a very emotional one and I commend all Senators involved in negotiations which have led to the Senate's consideration of S. 49. In my view, the ability of the bill to address both the legitimate concerns of gun owners and the needs of our Nation's law enforcement community has been improved as a result of the tireless efforts of these individuals.●

Mr. MURKOWSKI. Mr. President, the Federal Firearms Owners Protection Act should be a turning point in the way we treat and perceive gun owners. The vast majority of gun owners, exercising their constitutional right to bear arms, are peaceful, law-abiding citizens and should be treated that way. This bill will give gun owners more freedom to enjoy our firearms without meaningless Government intrusion. At the same time this law will tighten the regulations

against hardened criminals who use guns for violent acts.

In our society firearms play an important role both for recreation and for personal protection. In Alaska, other than fishing, hunting is the most popular sport. About a quarter of all Alaskans annually buy hunting licenses and most hunters use guns. The story only begins here. Guns also play a primary role of protection in Alaska's wilderness. The Alaska Department of Fish and Game advises all people who go into the "bush" to carry a sidearm.

Nationally, the reality for gun ownership is very similar to Alaska's—primarily for personal and family protection. It has been estimated that almost half of all households have a gun. The prevalent ownership of guns indicates the pervasive feeling in our country that firearms are necessary for self-protection, especially when peoples' homes and families are concerned.

The present law, pursuing meaningless technical violations as opposed to criminal misuses, focuses against gun dealers and hobbyists. The Senate Subcommittee on the Constitution has found that 75 percent of Federal firearms prosecutions are clearly aimed at ordinary citizens who have neither criminal intent nor knowledge they were breaking the law. This bill would allow the Secretary of the Treasury to revoke gun dealer licenses only for willful violations of the recordkeeping law and not permit revocation of licenses for inadvertent errors or technical mistakes.

Every violation of the 1968 Gun Control Act is a Federal felony, there are no misdemeanors and no standards of intent. The worst criminal is no different than the citizen who makes an honest mistake. As a result, there is no incentive to go after the hardened criminals when it is just as easy to make cases involving honest law-abiding citizens. The record in a series of hearings—conducted by Senator DECONCINI and former Senator Bayh—has clearly shown that the Bureau of Alcohol, Tobacco and Firearms has been preoccupied with meaningless cases to the detriment of pursuing hardened criminals.

This law provides that all persons who commit Federal crimes of violence involving a firearm would receive a mandatory sentence. Under this law there would be no possibility of probationary sentences, parole or the sentence running concurrently with the underlying offense. Rather than the current 1-to-10 year sentence, this law would mandate a sentence of at least 5 years on the first conviction and 10 years on the second.

I hope my colleagues will join us and help redirect the Federal Gun Control Act. The time has come to remove the stigma from law-abiding gun owner-

ship and to give priority to prosecuting hardened criminals.

Mr. LEVIN. Mr. President, I will vote against S. 49 because it increases the burdens on law enforcement officials in protecting Americans from crimes committed with "Saturday Night Specials." I support the desire of proponents of S. 49 to eliminate or modify provisions in the 1968 law which place unreasonable or unfair regulatory requirements on dealers and on owners of guns. That is why I voted to table the Mathias amendment, which would have eliminated the requirement that reasonable notice be given prior to inspections.

However, the bill before goes beyond the question of inspections. In the final analysis the bill will make it easier for individuals to cross State lines, often in order to avoid laws of their own States, to purchase "Saturday Night Specials," which have no legitimate sporting purpose.

I can understand the desire of the Congress to ease excessive burdens on legitimate gun dealers. I can understand the Congress desiring to remove unnecessary impediments on the sale of rifles and long guns. But what I cannot understand is why the Congress would seek to increase the burdens on law enforcement officials by increasing the possibility that criminals will obtain "Saturday Night Specials"—for which there is only one clear purpose—a criminal purpose.

Members of the law enforcement community shared this concern. That is why they strongly supported the amendment offered by Senator KENNEDY which would have retained the existing ban on interstate sales of handguns. The International Association of Police Chiefs, the Fraternal Order of Police, and the National Black Law Enforcement Executives wrote to Members of Congress urging that current restrictions on the interstate sale of handguns be retained. According to one chief of police, lifting the current restrictions " \* \* \* would have a devastating effect on law enforcement efforts."

The easing of these restrictions was made all the more unacceptable by the defeat of the amendment which would have provided for a 14-day waiting period for those who would purchase handguns. The waiting period was endorsed by many law enforcement organizations, including the Michigan State Troopers and the Chiefs of Police in Ann Arbor, Livonia, Warren, and Detroit, among other Michigan cities.

It is intended to keep handguns out of the hands of persons with records of violence or drug use.

Mr. President, we need to assist law enforcement officers in their effort to reduce crime. That is why I am opposing this legislation.



Mr. HATCH. Mr. President, I ask for the yeas and nays on passage of S. 49. The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Has all time been yielded back?

Mr. HATCH. I yield back my time.

Mr. KENNEDY. Mr. President, I yield back the remainder of our time.

The PRESIDING OFFICER. All time has been yielded back.

If there be no further amendments to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is: Shall it pass? On this question, the yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. ARMSTRONG] and the Senator from Oregon [Mr. HATFIELD] are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "yea."

Mr. CRANSTON. I announce that the Senator from New Jersey [Mr. BRADLEY], the Senator from Louisiana [Mr. LONG], the Senator from Illinois [Mr. SIMON], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

The PRESIDING OFFICER (Mr. GRAMM). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 79, nays 15 as follows:

[Rollcall Vote No. 142 Leg.]

#### YEAS—79

Abdnor	Garn	Murkowski
Andrews	Glenn	Nickles
Baucus	Goldwater	Nunn
Bentsen	Gore	Packwood
Biden	Gorton	Pressler
Bingaman	Gramm	Proxmire
Boren	Grassley	Pryor
Boschwitz	Harkin	Quayle
Bumpers	Hatch	Riegle
Burdick	Hawkins	Rockefeller
Byrd	Hecht	Roth
Chiles	Heflin	Rudman
Cochran	Helms	Sasser
Cohen	Helms	Simpson
D'Amato	Hollings	Specter
Danforth	Humphrey	Stafford
DeConcini	Johnston	Stevens
Denton	Kassebaum	Symms
Dixon	Kasten	Thurmond
Dole	Laxalt	Trible
Domenici	Leahy	Wallop
Durenberger	Lugar	Warner
Eagleton	Mattingly	Weicker
East	McClure	Wilson
Evans	McConnell	Zorinsky
Exon	Melcher	
Ford	Mitchell	

#### NAYS—15

Chafee	Kennedy	Matsunaga
Cranston	Kerry	Metzenbaum
Dodd	Lautenberg	Moynihan
Hart	Levin	Pell
Inouye	Mathias	Sarbanes

#### NOT VOTING—6

Armstrong	Hatfield	Simon
Bradley	Long	Stennis

So the bill (S. 49), as amended, was passed as follows:

#### S. 49

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Congress finds that the rights to keep and bear arms under the second amendment to the United States Constitution; their rights to security against illegal and unreasonable searches and seizures under the fourth amendment; the protections against uncompensated taking of property, double jeopardy, and assurance of due process of law under the fifth amendment; and the rights against unconstitutional exercise of authority under the ninth and tenth amendments; require additional legislation to correct existing firearms statutes and enforcement policies. The Congress further finds that additional legislation is required to reaffirm its intent, as expressed in section 101 of title I of the Gun Control Act of 1968, that "it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, . . ." or "to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes."

#### TITLE I—AMENDMENTS TO TITLE 18, UNITED STATES CODE (18 U.S.C. (921-928))

##### AMENDMENTS TO SECTION 921

SEC. 101. Section 921 of title 18, United States Code, is amended—

(1) in subsection (a)(10) by deleting the words "manufacture of" and inserting in lieu thereof the words "business of manufacturing";

(2) in subsection (a)(11)(A) by deleting the words "or ammunition";

(3) in subsection (a)(12) by deleting the words "or ammunition";

(4) in subsection (a)(13) by deleting the words "or ammunition";

(5) by amending subsection (a)(20) to read as follows:

"(20) The term 'crime punishable by imprisonment for a term exceeding one year' shall not include (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less: *Provided, however,* That what constitutes a conviction shall be determined in accordance with the law of the jurisdiction in which the proceedings were held: *Provided further,* That any conviction which has been expunged, or set aside or for which a person has been pardoned or has had his or her civil rights restored shall not be considered a conviction under the provisions of this Act, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms"; and

(6) in subsection (a) by inserting new paragraphs (21) and (22) after paragraph (20), to read as follows:

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

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

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

"(C) As applied to a dealer in firearms, as defined in section 921(a)(1)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. The term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or hobby, or who sells all or part of his personal collection of firearms.

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

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

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

"(22) The term 'with the principal objective of livelihood and profit' means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as distinguished from other intents, such as improving or liquidating a personal firearms collection."

##### AMENDMENTS TO SECTION 922

SEC. 102. Section 922 of title 18, United States Code, is amended—

(1) by amending subsection (a)(1) to read as follows:

"(1) for any person (A) except a licensed importer, licensed manufacturer, or licensed dealer to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; and (B) except a licensed importer or licensed manufacturer to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce";

(2) in subsection (a)(2)—

(A) by deleting the words "or ammunition"; and

(B) by deleting the words "or licensed dealer for the sole purpose of repair or cus-

tomizing," and inserting in lieu thereof the words, "licensed dealer, or licensed collector";

(3) by amending clause (B) of subsection (a)(3) to read as follows: "(B) shall not apply to the transportation or receipt of a firearm obtained in conformity with the provisions of subsection (b)(3) of this section,";

(4) in subsection (b)—

(A) by deleting in paragraph (2) "or ammunition" each place it appears;

(B) by deleting clause (A) in paragraph (3) and inserting in lieu thereof the following: "(A) shall not apply to the sale or delivery of any firearm to a resident of a State other than a State in which the licensee's place of business is located if the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States: *Provided, however,* That any licensed manufacturer, importer or dealer shall be presumed, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and publish ordinances of both States,";

(C) by inserting "and" before "(B)" in paragraph 3;

(D) by striking out ", and" in clause (B) of paragraph (3) and inserting in lieu thereof a semicolon;

(E) by repealing clause (C) of paragraph (3); and

(F) by deleting from paragraph (5) "or ammunition except .22 rimfire ammunition";

(5) in subsection (d)—

(A) by deleting "licensed importer, licensed manufacturer, licensed dealer, or licensed collector" the first time they appear and inserting in lieu thereof "person";

(B) by amending paragraph (3) to read as follows:

"(3) is an unlawful user of or addicted to marijuana or any depressant or stimulant substance or narcotic drug (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));";

(C) by replacing the period in paragraph (4) with a semicolon; and

(D) by inserting after paragraph (4) the following:

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

"(6) who has been discharged from the Armed Forces under dishonorable conditions; or

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

(6) in subsection (g)—

(A) by deleting the words "is under indictment for, or who" in paragraph (1);

(B) by amending paragraph (3) to read as follows:

"(3) is an unlawful user of or addicted to marijuana or any depressant or stimulant substance or narcotic drug (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));";

(C) by inserting after paragraph (4) the following:

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

"(6) who has been discharged from the Armed Forces under dishonorable conditions; or

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

(D) by deleting the words "to ship or transport any firearm or ammunition in interstate or foreign commerce" and inserting in lieu thereof the words "to ship or transport in interstate or foreign commerce,

or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which had been shipped or transported in interstate or foreign commerce.";

(7) in subsection (h)—

(A) by inserting after the word "any" and before the word "person" the words "individual who to his knowledge and while being employed by any";

(B) by deleting the words "is under indictment for, or who" in paragraph (1);

(C) by amending paragraph (3) to read as follows:

"(3) is an unlawful user of or addicted to marijuana or any depressant or stimulant substance or narcotic drug (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));";

(D) by inserting after paragraph (4) the following:

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

"(6) who has been discharged from the Armed Forces under dishonorable conditions; or

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

(E) by deleting the words "to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce" and inserting in lieu thereof the words "in the course of such employment to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce,"; and

(8) by inserting after subsection (m) a new subsection to read as follows:

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

#### AMENDMENTS TO SECTION 923

SEC. 103. Section 923 of title 18, United States Code, is amended—

(1)(A) in subsection (a)—

(i) by deleting the words "No person shall engage in business as a firearms or ammunition importer, manufacturer, or dealer until he has filed an application with, and received a license to do so from the Secretary," and inserting in lieu thereof the words "No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Secretary,"; and

(ii) by deleting the words "and contain such information", and inserting in lieu thereof the words "and contain only that information necessary to determine eligibility for licensing,";

(B) in subsection (a)(3)(B) by deleting the words "or ammunition for firearms other than destructive devices";

(2) in subsection (b) by striking out "and contain such information", and inserting in lieu thereof "and contain only that information necessary to determine eligibility for licensing,";

(3) in subsection (c) by adding at the end thereof the following: "*Provided, however,* That nothing in this chapter shall be construed to prohibit a licensed manufacturer, importer, or dealer from maintaining and

disposing of a personal collection of firearms, subject only to such restrictions as apply in this chapter to dispositions by a person other than a licensed manufacturer, importer, or dealer: *Provided further,* That if any firearm is in a licensee's personal collection disposed of by a licensee within one year of its transfer from his business inventory into his personal collection or if such transfer is made for the purpose of willfully evading the restrictions placed upon licensees by this chapter, then such firearm shall be deemed part of his business inventory.";

(4) in subsection (e) by inserting before the word "violated" the word "willfully";

(5) in subsection (f)—

(A) by inserting the words "de novo" before the word "judicial" in paragraph (3);

(B) by adding the words ", whether or not such evidence was considered at the hearing held under paragraph (2)." after the words "to the proceeding" in paragraph (3); and

(C) by inserting at the end thereof the following new paragraph:

"(4) If criminal proceedings are instituted against a licensee alleging violations of this chapter or regulations promulgated thereunder, and the licensee is acquitted of such charges, or such proceedings are terminated, other than upon motion of the Government prior to trial upon such charges, the Secretary shall be absolutely barred from denying or revoking any license granted under the provisions of this chapter where such denial or revocation is based in whole or in part on the facts which form the basis of such criminal charges. No proceedings for the revocation of a license shall be instituted by the Secretary more than one year after the filing of the indictment or information.";

(6) by amending subsection (g) to read as follows:

"(g)(1) Each licensed importer, licensed manufacturer, and licensed dealer, shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, of firearms at his place of business for such period, and in such form, as the Secretary may by regulations prescribe. Such importers, manufacturers and dealers shall not be required to submit to the Secretary reports and information with respect to such records and the contents thereof, except as expressly required by this section. The Secretary, when he has reasonable cause to believe a violation of this law has occurred, and that evidence thereof may be found on such premises may, upon demonstrating such cause before a Federal magistrate, and securing from him a warrant authorizing entry, enter during business hours the premises (including places of storage) of any licensed firearms importer, licensed manufacturer, licensed dealer, licensed collector or any licensed importer or manufacturer of ammunition, for the purposes of inspecting or examining (1) any records or documents required to be kept by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector under the provisions of this chapter or regulations issued under this chapter, and (2) any firearms or ammunition kept or stored by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector, at such premises. The Secretary may inspect or examine the inventory and records of a licensed imported, licensed manufacturer or licensed dealer without such cause or warrant, (A) in the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee; or (B) no more than once in



any twelve consecutive months, upon reasonable notice, but no criminal charges shall be brought against the licensee based upon such inspection except for willful violations of the recordkeeping requirements of this chapter or sales or other dispositions of firearms in violation of section 922(d); or (C) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation. The Secretary may inspect the inventory and records of a licensed collector without such reasonable cause or warrant (A) no more than once in any twelve consecutive month period, upon reasonable notice, but no criminal charges shall be brought against such licensee based upon such inspection except for willful violations of the recordkeeping requirements of this chapter or sales or other dispositions of firearms to prohibited persons; or (B) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation. At the election of a licensed collector, the annual inspection of records and inventory permitted under this paragraph shall be performed at the office of the Secretary designated for such inspections which is located in closest proximity to the premises where the inventory and records of such licensed collector are maintained. The inspection and examination authorized by this subsection shall not be construed as authorizing the Secretary to seize any records or other documents other than those records or documents constituting material evidence of a violation of law. If the Secretary seizes such records or documents, copies shall be provided to the licensee within a reasonable time. The Secretary may make available to any Federal, State, or local law enforcement agency any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition and he may provide information to the extent such information may be contained in the records required to be maintained by the provisions of this chapter, when so requested by any Federal, State, or local law enforcement agency.

"(2) Each licensed collector shall maintain in a bound volume the nature of which the Secretary may by regulations prescribe, records of the receipt, sale, or other disposition, of firearms. Such records shall include the name and addresses of any person to whom the collector sells or otherwise disposes of a firearm. Such collector shall not be required to submit to the Secretary reports and information with respect to such records and the contents thereof, except as expressly required by this section.

"(3)(A) Within thirty days of the absolute discontinuance of the business of a licensee, any records maintained by such licensee under this chapter shall be delivered to the joint custody of the Archivist of the United States and the Secretary to be stored in a records center maintained and operated by the Archivist, unless State law or local ordinance requires delivery to another authority, in which event the Archivist and the Secretary may arrange for delivery to such authority.

"(B) The Secretary shall have access to records stored under this paragraph solely for the purposes of determining from whom

a licensee acquired a firearm and to whom such licensee disposed of such firearm, organizing and preserving such records, and certifying to facts on the basis of such records in any court or any administrative proceeding of the United States or of any State. The Secretary may remove such records from the record center maintained by the Archivist only in connection with proceedings in any court or any administrative proceeding of the United States or of any State.

"(C) The Archivist may promulgate regulations governing the storage, processing and servicing of records stored under this paragraph: *Provided*, That no such regulations may restrict the authority of the Secretary under this paragraph to have access to or to remove such records.

"(D) Notwithstanding any other provision of law, the Archivist shall dispose of records kept by licensed dealers and licensed collectors, and records relating to the disposition of firearms kept by manufacturers and importers, and stored under this paragraph twenty years after such records are received by the Archivist and the Secretary.

"(4)(A) Each licensee shall, when required by letter issued by the Secretary, and until notified to the contrary in writing by the Secretary, submit on a form specified by the Secretary, for the periods and at the times specified in such letter, all record information required by this chapter or such lesser record information as the Secretary in his letter may specify.

"(B) The Secretary may authorize the information to be submitted in a manner other than that prescribed in subparagraph (A) of this paragraph when it is shown by a licensee that an alternate method of reporting is reasonably necessary and will not unduly hinder the effective administration of this chapter.

"(C) No warrant shall issue nor shall any criminal charges be brought against the licensee based solely upon information provided pursuant to the provisions of this paragraph.

"(5)(A) Each licensee shall prepare a report of multiple sales or other disposition whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totaling two or more, to an unlicensed person. The report shall be prepared on a form specified by the Secretary and forwarded to the office specified thereon not later than the close of business on the day that the multiple sale or other disposition occurs.

"(B) Ten years after receiving any report submitted under subparagraph (A) of this paragraph, the Secretary shall deliver such report to the joint custody of the Archivist of the United States and the Secretary to be stored in a records center maintained and operated by the Archivist, subject to the provisions of section 923(g)(3) (B) and (C) of this title. Notwithstanding any other provision of law, the Archivist shall dispose of records stored under this subparagraph ten years after such records are received by the Archivist and the Secretary.

"(C) No record, form, or information delivered, submitted, or forwarded pursuant to this paragraph or paragraph (3) or (4) of this subsection may be kept by the Secretary at a centralized location, nor shall it be entered into a computer for storage or retrieval; and

(7) by amending subsection (j) to read as follows:

"(j) A licensed importer, licensed manufacturer, or licensed dealer may, under regu-

lations prescribed by the Secretary, conduct business temporarily at a location other than the location specified on the license if such temporary location is the location for a gun show or event sponsored by any national, State, or local organization, or any affiliate of any such organization devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors events devoted to the collection, competitive use or other sporting use of firearms in the community, and such location is in the State which is specified on the license. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or other disposition and shall be entered in the permanent records of the licensee and retained on the location specified on the license. Nothing in this subsection shall authorize any licensee to conduct business in or from any motorized or towed vehicle. Notwithstanding the provisions of subsection (a) of this section, a separate fee shall not be required of a licensee with respect to business conducted under this subsection. Except for records directly related to receipts, sales, or other dispositions of firearms made at the temporary premises within the period of time the licensed importer, licensed manufacturer, or licensed dealer conducted the business of which such receipts, sales, or other dispositions were a part, nothing in this subsection shall be construed to authorize the Secretary to inspect or examine the inventory or records of a licensed importer, licensed manufacturer, or licensed dealer at any location other than the location specified on the license. Nothing in this subsection shall be construed to diminish in any manner any right to display, sell or otherwise dispose of firearms or ammunition which is in effect prior to the date of enactment of the Act entitled 'An Act to protect firearms owners' constitutional rights, civil liberties, and rights to privacy'."

#### AMENDMENTS TO SECTION 924

Sec. 104. Section 924 of title 18, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

"(a)(1) Whoever—

"(A) other than a licensed dealer, licensed importer, licensed manufacturer, or licensed collector knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under the provisions of this chapter;

"(B) knowingly makes any false statement or representation in applying for any license or exemption or relief from disability under the provisions of this chapter;

"(C) knowingly violates subsections (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922;

"(D) knowingly imports or brings into the United States or any possession thereof any firearms or ammunition in violation of section 922(l);

"(E) knowingly violates any provision of this section; or

"(F) willfully violates any other provision of this chapter.

shall be fined not more than \$5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine.

"(2) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

"(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

"(B) violates subsection (m) of section 922, shall be fined not more than \$1,000, or imprisoned not more than one year, or both, and shall become eligible for parole as the Board of Parole shall determine."

(2) by amending subsection (c) to read as follows:

"(c)(1) Whoever, during and in relation to any felony, described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), of section 1 of the Act of September 15, 1980 (94 Stat. 1159; 21 U.S.C. 855a), or any crime of violence, including a crime of violence which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device, for which he may be prosecuted in a court of the United States, uses a firearm, or carries a firearm in furtherance of any such crime of violence, shall, in addition to the punishment provided for such felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.) the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (94 Stat. 1159; 21 U.S.C. 855a), or crime of violence, be sentenced to imprisonment of a term of five years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for a term of ten years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the felony described in the Controlled Substances Act (21 U.S.C. 801), the Controlled Substances Import and Export Act (21 U.S.C. 951), or section 1 of the Act of September 15, 1980 (94 Stat. 1159; 21 U.S.C. 855a), or crime of violence in which the firearm was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein: *Provided*, That no person shall be sentenced under this subsection if he establishes to the satisfaction of the court that the use of the firearm was to protect his person or the person of another from perceived immediate danger, other than the danger which was the direct result of the commission of or attempt to commit a felony by either such person, and the court finds that the perceived immediate danger was so perceived in good faith and that a sentence under this section would constitute a severe and substantial miscarriage of justice. The court must provide in writing each finding of fact and law necessary to establish the applicability of this proviso.

"(2) For purposes of this subsection the term 'crime of violence' means an offense that is a felony and—

"(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

"(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

(3) by amending subsection (d) to read as follows:

"(d)(1) Any firearm or ammunition involved in or used in any knowing violation

of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, the seized firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

"(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

"(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

"(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States, or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition."

"(3) The offenses referred to in paragraph (1) and (2)(C) of this subsection are—

"(A) any crime of violence, as that term is defined in section 924(c)(2) of this title;

"(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

"(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

"(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

"(E) any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title; and

"(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition."

#### AMENDMENTS TO SECTION 925

SEC. 105. Section 925 of title 18, United States Code, is amended—

(1) in subsection (c)—

(A) by deleting the words "has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act)" and inserting in lieu thereof the words "is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition";

(B) by inserting the word "transportation" after the word "shipment";

(C) by deleting the words "and incurred by reason of such conviction," and

(D) by adding after the words "the public interest," the words "Any person whose application for relief from disabilities is denied by the Secretary may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. In a proceeding conducted under this subsection, the scope of judicial review shall be governed by section 706 of title 5, United States Code. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice."; and

(2) in subsection (d)—

(A) by deleting the words "may authorize" and inserting in lieu thereof the words "shall authorize";

(B) by deleting the words "the person importing or bringing in the firearm or ammunition establishes to the satisfaction of the Secretary that"; and

(C) by inserting before the semicolon in paragraph (3) the following: ", except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled"; and

(D) by deleting the words "may permit" and inserting in lieu thereof the words "shall permit".

#### AMENDMENTS TO SECTION 926

SEC. 106. Section 926 of title 18, United States Code, is amended by—

(1) inserting "(a)" before "The Secretary" the first place it appears;

(2) inserting the word "only" after the word "prescribe";

(3) deleting the words "as he deems reasonable" and inserting in lieu thereof the words "as are";

(4) deleting the words "The Secretary shall give reasonable public notice, and afford interested parties opportunity for hearing, prior to prescribing such rules and regulations" and inserting in lieu thereof the words: "*Provided*, That no such rule or regulation promulgated after the effective date of this Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established: *Provided further*, That nothing



in this section shall be deemed to expand or restrict the Secretary's authority to inquire into the disposition of one or more firearms pursuant to a criminal investigation."; and  
(5) inserting at the end thereof the following:

"(b) The Secretary shall give not less than ninety days public notice, and shall afford interested parties opportunity for hearing, prior to prescribing such rules and regulations.

"(c) The Secretary shall not prescribe regulations that require purchasers of black powder under the exemption provided in section 845(a)(5) of title 18, United States Code, to complete affidavits or forms attesting to that exemption."

#### TRANSPORTATION OF FIREARMS

SEC. 107. (a) Chapter 44 of title 18, United States Code, is amended by inserting between section 926 and section 927 the following new section:

##### "§ 926A. Interstate transportation of firearms

"Any person not prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport an unloaded, not readily accessible firearm in interstate commerce notwithstanding any provision of any legislation enacted, or any rule or regulation promulgated by any State or political subdivision thereof."

(b) The table of sections for chapter 44 of title 18, United States Code, is amended by inserting between the item relating to section 926 and the item relating to section 927 the following new item:

"926A. Interstate transportation of firearms."

#### EFFECTIVE DATE

SEC. 108. (1) All amendments (including any repeals) made by this Act shall become effective one hundred and eighty days after the date of enactment of this Act. At that time the Secretary shall publish and provide to all licensees a compilation of the State laws and published ordinances of which licensees are presumed to have knowledge pursuant to chapter 44 of title 18, United States Code, as amended by this Act. All amendments to such State laws and published ordinances as contained in the aforementioned compilation shall be published in the Federal Register, revised annually, and furnished to each person licensed under chapter 44 of title 18, United States Code, as amended by this Act.

(2) The provisions of section 103(5)(C), 104(2), 105, and 107 of this Act shall be applicable to any action, petition, or appellate proceeding pending on the effective date of this Act. In considering any petitions for Presidential pardons submitted by persons convicted of violations of chapter 44 of title 18, United States Code, prior to the effective date of this Act, the Congress recommends that consideration be given to whether the violation would have been punishable under this Act, and to the purposes and findings contained in the preamble thereto.

#### TITLE II—AMENDMENTS TO TITLE VII OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

SEC. 201. Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (sections 1201, 1202, and 1203 of the appendix to title 18, United States Code) is hereby amended to read as follows:

"Sec. 1201. (a) In the case of a person who violates section 922(g) of title 18, United States Code, and who has three previous convictions by any court referred to in section 922(g)(1) of title 18, United States

Code, for robbery or burglary, or both, such person shall be fined not more than \$25,000 and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g) of title 18, United States Code, and such person shall not be eligible for parole with respect to the sentence imposed under this subsection.

"(b) As used in this title—

"(1) 'robbery' means any crime punishable by a term of imprisonment exceeding one year and consisting of the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected to bodily injury; and

"(2) 'burglary' means any crime punishable by a term of imprisonment exceeding one year and consisting of entering or remaining surreptitiously within a building that is property of another with intent to engage in conduct constituting a Federal or State offense."

Mr. HATCH. Mr. President, at the conclusion of this historic debate, I pause to express my deep appreciation to those who have been key to this bill to protect vital second amendment rights. First and foremost has to be Senator McCURE, who is the author of the bill, who has worked many hours, days, months, and years to bring about these second amendment right protections. Without him, we would not have had the bill on the floor, and I personally express my appreciation and my esteem for my colleague from Idaho. Senator THURMOND, who devoted tireless hours to hearings and markups in the Judiciary Committee, made this debate possible, and I think he deserves a great deal of credit. Senator DOLE was key to the consideration in the Judiciary Committee last year and scheduled it as majority leader this year. I personally very much appreciate his work. Others in the Judiciary Committee were essential to this debate. For instance, Senators KENNEDY, BIDEN, LAXALT, EAST, GRASSLEY, and others.

On the House side, we owe our thanks to Congressman HAROLD VOLKMER, who has for years championed this bill. We appreciate the work he has done, and we hope he feels good about this action today.

We received great assistance from the Reagan administration and the President himself. In particular, we should commend Deputy Assistant Secretary of the Treasury, Ed Stevenson, and general counsel at BATF, Jack Patterson.

Finally, I think we would be remiss to overlook those competent Senate staff members who have devoted years to amending and mastering our complex Federal firearms laws:

Steve Dillingham, with Senator THURMOND; Scott Green, with Senator BIDEN; Mike Hammond and Nancy Norell with Senator McCURE; Ed Correl, with Senator METZENBAUM, Sheila

Bair, with Senator DOLE, and last, but not least, my own staffer who has devoted so many hours and so much time and effort and expertise to this, Randy Rader. I personally thank him and express my appreciation for the support he has given me on this bill.

Mr. THURMOND. Mr. President, I am very pleased that this legislation has finally passed. It has been hanging around for several years. Senator McCURE introduced this bill. We held hearings in the Judiciary Committee and finally reported it out several years ago, but it never did pass the Congress. I commend him as the author of this bill for the hard work he has done in connection with it.

I should also like to commend the able Senator from Utah, the member of the Judiciary Committee whom I appointed to handle this bill on the floor of the Senate, for the skilled manner in which he has handled it. He is an able legislator and did a fine job.

I wish to also express my appreciation to our able majority leader for scheduling this bill and the excellent cooperation he has given in connection with it.

The Judiciary Committee, I think, is to be commended, various members whose names I will not take time to call. The administration is to be commended and others who had a part in it. I think we have a splendid piece of legislation, and I hope it passes the entire Congress.

Mr. McCURE. Mr. President, I know that what I am about to say will be repetitious of what has been said by the distinguished floor manager of the bill, but I cannot help but add my own words of appreciation to those who have made it possible for us to get to the point of passage of this legislation.

Congress, in 1968, passed what was then known as the 1968 Gun Control Act. As I said in my remarks earlier, the title itself says what is wrong with it because it focused attention on the object rather than the misuse of the object.

This bill today is indeed a firearm owner's protection act, but it is also a crime control bill, not a gun control bill.

I wish to thank the distinguished Senator from South Carolina, the chairman of the Judiciary Committee [Mr. THURMOND], for his help not just today, not just this year but over the last 2 or 3 years as we worked to get this bill through the committee to the point where we could bring it to the floor where, as has been demonstrated today, it has overwhelming support. I, too, thank my distinguished colleague from Utah, the floor manager of the bill, a member of the Judiciary Committee without whose help it would have been impossible to get to this point.

There are several parts of the bill that have his stamp on them. He has improved the bill as a result of amendments he offered in the Judiciary Committee last year which we were able to work out and integrate into the bill which I had proposed earlier.

Also, I thank the distinguished majority leader, without whose assistance this measure would not have been on the floor today for consideration. We have sought this opportunity for a long time, and with his help we have received that opportunity.

While we are talking about those who are deserving of thanks, I want to add my thanks to Ed Stevenson, of the Treasury Department and Jack Patterson with the BATF, because they have been very helpful and steadfast in that help in getting us to this point.

I should like to add to the list of those who have been thanked on the staff—and I join in the thanks Senator HATCH has expressed to the committee staff members—my own personal staff: Mike Hamm and Nancy Norell, who have worked with me for many years on this particular issue.

Also, there are some outside individuals and organizations that deserve some commendation, and it is difficult to know where to start. In writing down my list of those to thank, I decided that the best way I could do it was to do it alphabetically and therefore run the risk of offending everyone rather than just one or two. But without the help of these organizations, we would not have gotten to the point we are at today.

The Citizens for the Right to Keep and Bear Arms, John Snyder; the Firearm Hard Core, with Neil Knox, a former member of the staff of NRA; the Gunowners of America, with Larry Pratt. The National Rifle Association, with its former executive vice president, Harlan Carter, who in the past gave us invaluable assistance, and its current executive vice president, Ray Arnett.

I know that much will be written about this bill and the vote today, and there will be a lot of talk about the success of the gun lobby. With due respect to the organizations I have just listed, they would be the first to say that, while their contributions were important, the real strength did not lie in a Washington lobby. It lies in the grassroots of America. It lies with the millions of Americans who own firearms and cherish the right to own firearms, as well as the millions of Americans who believe that the second amendment to the Constitution of the United States means what they believe it to say—that the Constitution guarantees to all citizens the right to keep and bear arms. It is to those millions of Americans across this land, who have let their Senators know where they stand on the issue, that the victory today belongs.

I very much appreciate the steadfast support we have had and that I have had personally over the many years it has taken us to get to this point.

Mr. DOLE. Mr. President, I will not take much time of the Senate, but I want to express my thanks to the distinguished chairman of the committee, Senator THURMOND, and to the co-sponsors of the bill, the Senator from Utah [Mr. HATCH] and the Senator from Idaho [Mr. McCLURE].

I recall discussing this matter less than 30 days ago with the Senator from Idaho, the Senator from Utah, and the Senator from South Carolina in my office and deciding that it was probably time to face up to this issue.

I believe that the overwhelming bipartisan vote indicates the support this bill has had for probably longer than we would like to think about.

I must say that without the cooperation of Senators on both sides of the aisle who may have voted against final passage but, nonetheless, voted to give us a time agreement, and such organizations as Handgun Control, Inc., who worked with us to get time agreements on certain areas, we probably could have spent several days or a week or longer on this measure.

It is an effort that involved many Senators, including the distinguished Senator from Massachusetts [Mr. KENNEDY], who has a different final view but was willing, with the Senator from Ohio [Mr. METZENBAUM] and others, to let us proceed.

Mr. McCLURE. Mr. President, will the Senator yield?

Mr. DOLE. I yield.

Mr. McCLURE. I had intended to include a remark, a portion of which the distinguished majority leader just made, to make a public note of thanks to Senator KENNEDY. Although he has a different view of what the legislation should be, he was a perfect gentleman at every stage and was very helpful in getting us to the point where we could act on the measure. I appreciate that, and I would be remiss if I had not noted it.

Mr. DOLE. I underscore the cooperation we have had. The distinguished minority leader has been most helpful. We took care of a number of amendments on this bill prior to the recess, thanks to the minority leader, who worked that out for us, and we were able to complete it today.

We have spent a number of hours on this bill, but it is very important legislation, and I believe there should be a clear signal to the House that there is strong bipartisan support. The 79-to-15 vote will indicate that there is a significant majority on each side of the aisle in support of this legislation. I urge my House colleagues not only to look at the vote, but also to look at the debate. There were a number of outstanding debates on this measure

during the session today and prior to the recess.

So I am very thankful to my colleagues for asking me to push this legislation. We were pleased to schedule it. It has been a long time coming.

Again, I congratulate the managers of the bill, Senator McCLURE and Senator HATCH, and the distinguished chairman of the committee, Senator THURMOND, as well as all the staff who worked on it. We sometimes overlook the staff. We recognize each individual and appreciate their assistance.

#### DAVID STOCKMAN

Mr. DOMENICI. Mr. President, I rise to note the departure of the Director of the Office of Management and Budget, David Stockman, announced earlier today.

Obviously, he will serve the country and the President until the August recess. But today he formally announced that he will be leaving.

I have had the privilege of working very closely with Dave Stockman during what I consider to be his extraordinary term of office. He has served as Director of OMB longer than any person before him. The average term of office for an OMB Director has been about 18 months. Dave has served almost 5 years.

He has brought a great resurgence in the effectiveness of that office or agency during his term.

Frankly, seeing his workload and what he has had to do and what he has had to take, I think I understand why previous OMB Directors have served on average 18 months or less.

I believe that one can say without any fear of contradiction that Dave Stockman has done more to educate America, to educate Congress, and, yes, to educate the administration about the realities of Federal spending than any other man in history.

He brought to his job some very unique credentials, a combination of practical and analytical abilities that I believe have made him absolutely invaluable.

That does not mean that he has always recommended things that I approve of. It does not mean that he is not without controversy. But I actually believe that there can be little controversy about the fact that he knows what he is doing and he has been an excellent public servant.

I frankly believe without his work, his dedication, and his tireless devotion to his job, we would have made far less progress in our efforts to slow Federal spending and to educate Congress and the American people on the severe and serious dangers of spending money that comes to us from our people and represents their vital, sincere, and meaningful activities of life and to spend those for almost every-



thing without limit to the point where, instead of being free, we have grown dependent almost to the point where no one is willing to do with less if that comes from the benevolent Federal Government.

Since I have worked closely with him for the past 5 years, I think I can say that without him many of the President's fiscal policies simply would not have materialized.

I know of no one who has the depth of comprehension, the grasp of Federal spending and of the Federal budget as Dave Stockman.

I am constantly amazed by his knowledge and his uncanny ability to analyze the intricacies of the thousands of Federal programs that are now on the registry and part of the inventory of activities of our National Government. I think I can say that in the last 5 years I have seen him explain programs which had previously been totally misunderstood, almost to the amazement of Senators and staffers who have listened and on some occasions where they have been on the committee of jurisdiction for the different programs for as long as 5, 6, and 10 years.

In addition, he has combined his knowledge of the small and microscopic parts of the budget with a sound understanding of the much larger picture of the impact of Federal spending and taxing policies on our entire economy. He has been a great help to me in all of our negotiations during the years and I wish him well in the future.

He will indeed be a tough act to follow. I think the administration will sorely miss him. I only hope—because my concern is about fiscal policy as it affects all our people—that whoever follows will indeed do as well as he in terms of understanding what this National Government's programs are all about and be able to explain them carefully and lucidly to anyone that would care to hear.

I repeat, I do not stand here today in praise of Dave Stockman, indicating that I agree with him on everything. I am sure the President has not agreed with him on everything. Sometimes I think maybe the President should have agreed with him on more things, but, nonetheless, that is for them to decide and he works for the President and has done a good job.

But overall I think he has set a high standard for that office. It will be very difficult in the years to come to find someone who can live up to that standard. In that respect, I hope his successor understands the nature of that job, not only with reference to its complexity but to the nature of the man that he succeeds.

Mr. President, I yield the floor.

I understand the distinguished majority leader will return shortly. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SOCIAL SECURITY CUTS

Mr. RIEGLE. Mr. President, I just want to comment briefly, if I may, on the news coming out of the White House meeting this afternoon that cuts in Social Security that have been proposed are no longer on the table for negotiation in the effort to reduce the Federal budget. That is wonderful news for the retirees and senior citizens in this country.

There has been no justification for trying to cut the cost-of-living adjustments for senior citizens. The Social Security Trust Fund is in sound financial shape. A promise was made in the last election by the President, when he was running, that there would be no cuts in Social Security. And so the news that the Social Security proposed cuts are off the table is very good news.

All of those who have been involved in the fight on the Senate side here on this side of the aisle, the minority leader and others on the Budget Committee with myself who have fought very hard to protect Social Security, feel some very considerable sense of victory tonight with that news.

I hope now we can move on and find a package solution to the budget deficit problem, and hopefully before David Stockman leaves office. I think time is short for us to come up with a deficit reduction package. If it should continue to drift along until he leaves and a new person has to be brought in as Director of Management and Budget, I think it will make the job more difficult.

So I hope now that we could move with a new sense of urgency, now that Social Security has been set to the side, to deal with the remaining issues, come up with the best package we can, reduce the deficit as much as possible and reach that compromise, report it out, bring it back to the House and Senate and try to have that matter resolved before we leave early in the month of August. I think it is feasible to do that if we make that our No. 1 priority, and I hope that we would.

Mr. DOMENICI. Mr. President, I would not have even been here to have heard the news of what is on and off the table at the budget conference had it not been an accident of my being here. But from what I understand, just so we will have the record straight, TIP O'NEILL said it is off the table, JIM WRIGHT has said it is off the table, and the distinguished minority

leader of the U.S. Senate, ROBERT BYRD, of West Virginia, said it is off the table. I think that is the record. In the case of one of the three, it has been off the table from the beginning. In the case of two from the House, it was maybe on the table until a couple of weeks ago, but it has been off since then.

So while my friend from Michigan thinks there is rather some explicit news, I do not think it is any different than where we were a couple of weeks ago in the case of two of those that he speaks for, and in the case of another it is no different than we have had for 2 or 3 months.

We are still in the process of trying to get a budget. If we are going to take \$33 billion off the table, we have got to find \$33 billion somewhere else. If we take just Social Security—it is \$21 billion—we have to find \$21 billion somewhere else. So I think we are still in that position. I do not think things have changed.

Mr. RIEGLE. Mr. President, let me just respond to the Senator from New Mexico and say that my understanding of the report I received from the White House meeting was that indeed the three individuals that he cited said it was off the table, but also that David Stockman then said obviously it was off the table, and then there was no dissent to that view, I am told, from the President or from the majority leader or anybody else.

So if there is something that somebody can add that would indicate that that is not the case, it would be well to have it on the record. But the report that I have been given is that that is what took place at the meeting.

Mr. DOMENICI. Let me just say to my friend from Michigan, when you are going to put something on the record you have to know what you are talking about and since I was not there and I have heard three or four different explanations, I cannot clarify the record.

I just heard the distinguished majority leader, who was there, say it was still on the table; that we had to find the savings for it and the House had no way to give us the savings, that they had no offer of how you would get the savings that were in this budget and, therefore, it was still on the table.

David Stockman is not available. I tried to call him a while ago to ask him about his retirement and he is en route home, so I cannot confer with him.

I do not care to bother the President about a private meeting he had, so I cannot clarify the record.

All I know is when I go to conference tomorrow we will see what the House has to offer and whatever they would like to take off the table I am anxiously awaiting to see what they

will be putting back in its place. If they want to take that and some other things off and want to say we will cut something else, we will retain something else, I assure you and those who are worried about the deficit in the House that I anxiously await their offer.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. BYRD. I am reminded of the poem about the six blind men of Indostan. The distinguished Presiding Officer will probably remember that while the six blind men felt the same elephant, they all pictured it differently—one thought it was like a fan; one thought it was like a rope; one thought it was like a tree, and so on, and so on.

So I guess I have to say that I think both Senators are right—each in his own light—as to interpretations of the White House meeting. The distinguished Senator from New Mexico is correct when he said that the minority leader of the Senate had taken the position that Social Security was off the table and it had never been on the table as far as the minority leader is concerned. When he said that he had heard that the Speaker had said it was "off the table," and the majority leader in the House said it was "off the table," I think that is accurate. I think the Senator was also accurate in indicating that neither the distinguished majority leader of the Senate nor the President himself had said it was "off the table." I think the distinguished Senator from Michigan is also accurate when he said he had been told that the OMB Director, Mr. Stockman, conceded that Social Security was off the table. As I remember, that is correct. The OMB Director, after having heard the Speaker [Mr. WRIGHT] and the minority leader of the Senate, I think conceded—and I think he said he conceded—that "Social Security is off the table." So I do not see anything in the statements of either of the two kind Senators that is inaccurate as far as I am concerned. I think I will leave it like it is.

Mr. DOMENICI. I thank my good friend.

Mr. RIEGLE. I thank the Senator.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### LEGISLATIVE CALENDAR

Mr. DOLE. I would like to inquire of the minority leader if he is in the posi-

tion to pass any or all of the following calendar items: Calendar No. 186, Calendar No. 190, Calendar No. 211, and Calendar No. 213.

Mr. BYRD. Mr. President, all of the calendar items enumerated by the distinguished majority leader have been cleared on this side of the aisle.

Mr. DOLE. Mr. President, I ask unanimous consent that the calendar items just identified be considered en bloc, agreed to en bloc, and that all amendments and preambles be considered and adopted en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### REDUCTION OF PAPERWORK ASSOCIATED WITH THE OUTER CONTINENTAL SHELF LANDS ACT

The Senate proceeded to consider the bill (S. 1068) to eliminate unnecessary paperwork and reporting requirements contained in section 15(1) of the Outer Continental Shelf Lands Act, and sections 601 and 606 of the Outer Continental Shelf Lands Act Amendments of 1978, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike out all after the enacting clause, and insert the following:

That this Act may be referred to as the "OCS Paperwork and Reporting Act".

Sec. 2. (a) Section 15(1) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1343(1)), is amended by—

- (1) adding the word "and" after "activities;" in paragraph (C);
- (2) deleting paragraph (D); and
- (3) redesignating paragraph (E) as paragraph (D).

(b) Title VI of the Outer Continental Shelf Lands Act Amendments of 1978 is amended by deleting section 601 (43 U.S.C. 1861).

(c) Title VI of the Outer Continental Shelf Lands Act Amendments of 1978 is amended by deleting section 606 (43 U.S.C. 1865) and inserting in lieu thereof the following:

#### "INVESTIGATION OF RESERVES OF OIL AND GAS IN OUTER CONTINENTAL SHELF

"Sec. 606. The Secretary of the Interior shall conduct a continuing investigation to determine an estimate of the total discovered crude oil and natural gas reserves by fields (including proved and indicated reserves) and undiscovered crude oil and natural gas resources (including hypothetical and speculative resources) of the Outer Continental Shelf.

"The Secretary of the Interior shall provide a biennial report to Congress on June 30 of every odd numbered year on the results of such investigation."

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

#### VALIDATION OF CONTRACTUAL RELATIONSHIPS BETWEEN THE UNITED STATES AND VARIOUS NON-FEDERAL ENTITIES

The Senate proceeded to consider the bill (S. 953) to validate contractual relationships between the United States and various non-Federal entities, which had been reported from the Committee on Energy and Natural Resources, with an amendment:

On page 1, strike line 6, through and including line 1 on page 2, and insert the following:

"U.S.C. 803(e) by deleting 'Commission' and inserting in lieu thereof 'Commission'."

So as to make the bill read:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Power Act (Act of June 10, 1920, 41 Stat. 1063; 16 U.S.C. 791a et seq., and Acts amendatory thereof and supplementary thereto) is amended in section 10(e) (16 U.S.C. 803(e)) by deleting "Commission," and inserting in lieu thereof "Commission: Provided, however, That no charge shall be assessed in those cases where the United States has heretofore entered into a contract with a licensee which provides that the licensee may build and own powerplants utilizing irrigation facilities constructed by the United States and which further provides that all revenues from such powerplants and from the use, sale, or the disposal of power therefrom shall be and remain the property of the licensee."*

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

#### CONDEMNING THE PASSAGE OF RESOLUTION 3379 IN THE UNITED NATIONS GENERAL ASSEMBLY

The Senate proceeded to consider the bill (S.J. Res. 98) condemning the passage of resolution 3379 in the United Nations General Assembly on November 10, 1975, and urging the U.S. Ambassador and U.S. delegation to take all appropriate actions necessary to erase this shameful resolution from the record of the United Nations, which had been reported from the Committee on Foreign Relations, with an amendment to strike out all after the resolving clause, and insert new language.

Mr. D'AMATO. Mr. President, I rise today on behalf of Senate Joint Resolution 98, a resolution condemning an event which occurred 10 years ago. On November 10, 1975, the United Nations, passed a resolution equating Zionism, the doctrine that Jews have a right to political self-determination in a territorial homeland of their own, with racism and discrimination. Senate Joint Resolution 98 strongly condemns this action of the United Nations General Assembly and calls upon the parliaments of all countries which value freedom and democracy



to repudiate this shameful U.N. resolution.

It is not surprising that the United Nations is criticized for lacking integrity. UNGA Resolution 3379 on Zionism not only singles out for slanderous attack the national movement which gave birth to the State of Israel, but acts as a catalyst for anti-Semitism around the globe. The most striking example of the effect of the U.N. resolution is the Soviet Union's persecution and harassment of its Jewish population. Teachers of Hebrew are severely punished and the number of Jews allowed to emigrate has dropped to a mere trickle. This U.N. resolution is simply unfounded in any reality. Israel and the Jewish people have consistently displayed their respect and affection for all races and all creeds. Jewish philanthropies are world renown for their generosity; just recently, the people of Israel selflessly opened their arms to the thousands of black Ethiopian Jews who fled starvation and persecution of the Mengistu regime.

The claim of resolution 3379 is false and is a vicious attack on the Jewish people and the nation of Israel. Ironically, the very racism which resolution 3379 purports to preclude, it actually supports. Anti-Semitism is one of the oldest and widely practiced forms of racism in the world. This racism took the lives of over 6 million Jews in Nazi-Europe just 40 short years ago. We must ensure that such racism does not exist in the United Nations.

Unfortunately, UNGA Resolution 3379 was neither the beginning nor the end of a campaign by several United Nations' members to undermine the nation of Israel. Earlier this year, it took a U.S. veto to defeat a U.N. Security Council vote to condemn Israel once again. The purpose of the United Nations was corrupted with passage of UNGA Resolution 3379. Instead of the United Nation being an arena for peaceful solutions to international problems, it has demonstrated that it is a forum where international tensions and crises are created.

Senate Joint Resolution 98 cannot erase the tragedy of 10 years ago. It can, however, rally the opinion of this nation which prides itself on racial and ethnic equality and opportunity and, in turn, rally world opinion. Although we are only one vote in the United Nations, I believe we should make a concerted effort to reverse UNGA Resolution 3379.

Mr. President, I want to thank my good friends and colleagues who have sponsored this resolution with me, and I especially thank Senators LUGAR and PELL for their assistance with this resolution in the Senate Foreign Relations Committee. I ask that this bill be passed by the Senate.

Thank you, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

The joint resolution was engrossed, ordered to a third reading, read the third time, and passed.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

The joint resolution, as amended, and the preamble, as amended, are as follows:

Whereas, on November 10, 1975, the thirtieth session of the United Nations General Assembly adopted Resolution 3379 which sought to legitimize the lie, first perpetrated at the United Nations General Assembly by representatives of the Union of Socialist Soviet Republics in 1963, that Zionism is a form of racism; and

Whereas Resolution 3379 of the thirtieth United Nations General Assembly directly contravenes the most basic principles and purposes of the United Nations Charter and undermines universal human rights values and principles; and

Whereas that infamous resolution threatens directly the integrity and legitimacy of a member state by singling out for slanderous attack the national movement which gave birth to the State of Israel; and

Whereas the adoption of Resolution 3379 by the thirtieth United Nations General Assembly constituted one of that organization's darkest moments and may fuel the flames of antisemitism and anti-Zionism; and

Whereas the United States Congress sharply condemned the passage of Resolution 3379 ten years ago "in that said resolution encourages antisemitism by wrongly associating and equating Zionism with racism": Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress—*

(1) soundly denounces and condemns any linkage between Zionism and racism;

(2) considers UNGA Resolution 3379 to be a permanent smear upon the reputation of the United Nations and to be totally inconsistent with that organization's declared purposes and principles;

(3) unequivocally states that the premise of UNGA Resolution 3379 which equates Zionism with racism is itself clearly a form of bigotry; and

(4) formally repudiates UNGA Resolution 3379, and calls upon the Parliaments of all countries which value freedom and democracy to do the same.

#### PHILLIP BURTON WILDERNESS

The bill (H.R. 1373) to designate the wilderness in the Point Reyes National Seashore in California as the Phillip Burton Wilderness, was considered, ordered to a third reading, read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the votes by which the various measures were passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGES FROM THE HOUSE

At 4:35 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2401. An act to amend title 5, United States Code, to establish certain reporting requirements applicable in the case of any agency proposing to carry out removals, reductions in grade or pay, or other adverse personnel actions incident to closing, or changing the functions of any of its field offices;

H.R. 2558. An act designating the United States Post Office Building to be constructed on the property on the northwest corner of the intersection of Florence Avenue and Central Avenue in Los Angeles, California, as the "Leslie Nelson Shaw Sr., General Mail Facility of the United States Postal Service";

H.R. 2672. An act to redesignate the New York International and Bulk Mail Center in Jersey City, New Jersey, as the "New Jersey International and Bulk Mail Center", and to honor the memory of a former postal employee by dedicating a portion of a street at the New York International and Bulk Mail Center in Jersey City, New Jersey, as "Michael McDermott Place"; and

H.R. 2694. An act designating the United States Post Office Building located at 300 Packerland Drive, Green Bay, Wisconsin, as the "John W. Byrnes Post Office and Federal Building".

#### ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

S. 1141. An act relating to certain telephone services for Senators.

The enrolled bill was subsequently signed by the President pro tempore [Mr. THURMOND].

#### MEASURES REFERRED

The following bills were read the first and second time by unanimous consent, and referred as indicated:

H.R. 2558. An act designating the United States Post Office Building to be constructed on the property on the northwest corner of the intersection of Florence Avenue and

Central Avenue in Los Angeles, California, as the "Leslie Nelson Shaw Sr., General Mail Facility of the United States Postal Service"; to the Committee on Governmental Affairs.

H.R. 2672. An act to redesignate the New York International and Bulk Mail Center in Jersey City, New Jersey, as the "New Jersey International and Bulk Mail Center", and to honor the memory of a former postal employee by dedicating a portion of a street at the New York International and Bulk Mail Center in Jersey City, New Jersey, as "Michael McDermott Place"; to the Committee on Governmental Affairs.

H.R. 2694. An act designating the United States Post Office Building located at 300 Packerland Drive, Green Bay, Wisconsin, as the "John W. Byrnes Post Office and Federal Building"; to the Committee on Governmental Affairs.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1440. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, the results of a study on a one year test of expanded commissary shopping privileges for reserve component members; to the Committee on Armed Services.

EC-1441. A communication from the General Counsel of the Department of the Treasury, transmitting a draft of proposed legislation to repeal the requirement that United States currency notes be reissued after redemption; to the Committee on Banking, Housing, and Urban Affairs.

EC-1442. A communication from the Acting Secretary of the Federal Maritime Commission, transmitting, pursuant to law, a notice of "Public Interest" determination; to the Committee on Commerce, Science, and Transportation.

EC-1443. A communication from the Secretary of Transportation, transmitting a draft of proposed legislation to modify the fees charged for the guarantee of obligations authorized by Title XI of the Merchant Marine Act, 1936; to the Committee on Commerce, Science, and Transportation.

EC-1444. A communication from the Secretary of the Interior, transmitting, pursuant to law, a certification of expenditures statement on the Lowell National Historical Park; to the Committee on Energy and Natural Resources.

EC-1445. A communication from the Secretary of Commerce, transmitting a draft of proposed legislation to amend the Tariff schedules of the United States to permit the importation of furskins from the Union of Soviet Socialist Republics, and/or other purposes; to the Committee on Finance.

EC-1446. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations for the Student Assistance General Provisions—Selective Service Registration Requirement; to the Committee on Labor and Human Resources.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PACKWOOD, from the Committee on Finance, without amendment:

S. 1404. An original bill to require the President to respond to unfair trade practices of Japan (with additional views) (Rept. No. 99-102).

● Mr. PACKWOOD. Mr. President, the bill I am reporting today requires the President to use his existing authorities to respond to the unfair trade practices of Japan. This is a historic and sobering watershed.

I have, together with many of my Finance Committee colleagues who voted this bill favorably reported on April 3, 1985, worked over the years to defend and improve the international trading system. I believe in the inherent justice and economic benefits of free trade. All nations and people benefit when the rules of comparative advantage are permitted to operate freely. The freedom of these rules to operate depends on open markets.

These principles have not operated as expected in the case of Japan. The existence of complicated and deeply rooted Japanese barriers has altered the forces that normally guide an open market. Regardless of whether these barriers are intended to frustrate foreign competition, they constitute a major hurdle in gaining access to the Japanese market. Years of negotiation, pleas, threats, exhortations, demands, and talk have failed to persuade Japan to undertake the difficult but necessary task of opening its markets in a truly meaningful fashion.

Yes, our exports to Japan have grown over the years, but so slowly and after so much effort that a cynicism has been generated about the real meaning of one Japanese market opening announcement after another.

What is puzzling about this situation is that the Japanese Government should not recognize its own self interest. A nation as heavily dependent on export markets as is Japan should behave in a manner intended to preserve those markets.

A nation whose exports have benefited from the demands of consumer societies has chosen to deny its own consumers free access to the world's efficient bounty.

Now, I know some people question whether Japan really has barriers. Well, aside from the many visible import barriers which are the subject of current and past trade negotiations, Japan appears to excel in the creation of invisible barriers. The committee report being filed with this bill outlines some of these barriers.

Frankly, I am not interested in the explanation for Japan's endemic resistance to imports. Japan has important international obligations which require that Japan, not the rest of the world, discern a means of opening its markets.

The bill I am filing is the result of years of frustration with Japan. But this bill is not a form of protectionism, nor does it mandate retaliation.

Rather, this bill requires that the President eliminate Japanese unfair trade practices, and failing that, offset the effect of those barriers on the merchandise trade balance. At a minimum, the President's actions must increase U.S. access to the Japanese market by an amount equivalent to Japan's increased access to the U.S. market resulting from an end to Japanese auto export restraints. To the extent the President fails to achieve such access to the Japanese market, he is required to limit Japanese access to the U.S. market. In that event, the President is directed to retaliate against competitive Japanese exports, including, but not limited to, telecommunications, automobiles, and electronics. The President's actions must be announced 45 days after enactment and be implemented 90 days following enactment.

Mr. President, we all recognize that the entire trade imbalance, or even most of the imbalance with Japan, is not attributable to Japanese import barriers. But other contributing factors to our deficit with Japan do not ameliorate the effect of Japanese trade barriers. Many other countries experience the same difficulty we do in obtaining access to the Japanese market. Japan is now too important to the trading system, both as a source of exports and as a potential market for imports, to continue its current policies. A country with the immense trade surpluses accumulated by Japan has a special responsibility to liberalize access to its markets. Japan has yet to respond even to its ordinary responsibilities.

I noted at the outset the importance of this bill. I regret that we have come to this point. I would have preferred resolving our differences in a more amicable manner. It is unfortunate that we have been forced to resort to this weapon in an exasperated effort to open Japan's markets. I am sure my colleagues still hope Japan will respond in a manner that will spare them and us the certain costs of retaliation. The choice is Japan's.

In this regard, I note the Japanese Government's announcement of tariff reductions on a long list of items. This is a beginning, although I see no reduction in tariffs on items of great interest to the United States such as plywood, chocolate, and cigarettes. But these reductions must be followed by an even greater effort to remove the invisible barriers.

I want to commend Senator DANFORTH who initiated this bill, as well as Senators BOREN, BAUCUS, BENTSEN, and GRASSLEY. Although their names are not listed for parliamentary reasons on this original bill reported by the Finance Committee, they should all be listed as sponsors.●



### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. PROXMIRE:

S. 1400. A bill to amend title XVIII of the Social Security Act to provide that the blend of 50 percent regional and 50 percent national prospective payment rates shall be permanent; to the Committee on Finance.

S. 1401. A bill to amend the Deficit Reduction Act of 1984 to make the application of the revised wage index prospective and to provide for periodic updating of that index; to the Committee on Finance.

S. 1402. A bill to amend title XVIII of the Social Security Act to provide that add-ons to the reimbursement limits for home health agencies may no longer be made for hospital-based agencies; to the Committee on Finance.

By Mr. HEINZ:

S. 1403. A bill to extend for three years the existing duty free treatment of certain needlecraft display models, and for other purposes; to the Committee on Finance.

By Mr. PACKWOOD, from the Committee on Finance:

S. 1404. An original bill to require the President to respond to unfair trade practices of Japan; placed on the calendar.

By Mr. HEINZ (for himself, Mr. MITCHELL, and Mr. SYMMS):

S. 1405. A bill to amend the Internal Revenue Code of 1954 relating to the method of payment of taxes on distilled spirits; to the Committee on Finance.

By Mr. DeCONCINI:

S. 1406. A bill to make permanent the formula for determining fees for the grazing of livestock on public rangelands; to the Committee on Energy and Natural Resources.

By Mr. THURMOND (by request):

S. 1407. A bill to provide for the recovery by the United States of the costs of hospital and medical care and treatment furnished by the United States in certain circumstances, and for other purposes; to the Committee on the Judiciary.

S. 1408. A bill to amend the Trading with the Enemy Act in order to terminate the Office of Alien Property, and for other purposes; to the Committee on the Judiciary.

S. 1409. A bill to amend chapter 31 of title 28 of the United States Code; to the Committee on the Judiciary.

S. 1410. A bill to provide for interim designation of United States attorneys and United States marshals by the Attorney General; to the Committee on the Judiciary.

### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PROXMIRE:

S. 1400. A bill to amend title XVIII of the Social Security Act to provide that the blend of 50 percent regional and 50 percent national prospective payment rates shall be permanent; to the Committee on Finance.

S. 1401. A bill to amend the Deficit Reduction Act of 1984 to make the application of the revised wage index prospective and to provide for periodic updating of that index; to the Committee on Finance.

S. 1402. A bill to amend title XVIII of the Social Security Act to provide

that add-ons to the reimbursement limits for home health agencies may no longer be made for hospital-based agencies; to the Committee on Finance.

(The remarks of Mr. PROXMIRE and the text of the legislation appear earlier in today's RECORD.)

By Mr. HEINZ (for himself, Mr. MITCHELL, and Mr. SYMMS):

S. 1405. A bill to amend the Internal Revenue Code of 1954 relating to the method of payment of taxes on distilled spirits; to the Committee on Finance.

#### DISTILLED SPIRITS TAX PAYMENT ACT

Mr. HEINZ. Mr. President, I am today introducing a bill to revise the way in which the Federal Government collects Federal excise tax [FET] on distilled spirits. The change I propose would simply remove the present bias for imported spirits inherent in the present tax collection system.

At present, the Government has two systems for collecting FET—one for domestic spirits and one for imports. The Government assesses FET on domestic spirits when they leave the distiller for the wholesaler. This cost must be borne by the wholesaler until he receives payment from the retailer. However, for imported spirits, the Government assesses the FET only when the spirits reach the retailer.

The costs of stocking domestic spirits is therefore a tremendous burden upon wholesalers. They must prepay the FET on domestic spirits, but they do not have this burden with imported spirits. Most liquor wholesalers are small businessmen who can ill afford to tie up 40 percent of their inventory costs in FET. On average, a wholesaler must carry the FET burden for 47 days between the time he buys his stock and receives payment from the retailer.

Effective October 1, 1985, with the new tax increase, more than \$560 million in working capital will be required solely to prepay this tax. The cost of annual interest on this amount exceeds \$74 million. In percentage terms, 80 percent of this burden will fall upon wholesalers and the States; 16 States, including my State of Pennsylvania, are control States, in which the State acts as both wholesaler and retailer. The Pennsylvania Liquor Control Board estimates that Pennsylvania will gain \$2 million yearly in interest if domestic distilled spirits were treated as imports are.

More equitable treatment of American small businessmen and State governments is clearly warranted. In light of the mounting trade deficit, we cannot afford to collect taxes in such a way as to give yet another advantage to foreign producers in our markets. This bill would create one system for all spirits, which will remove the present pro-import bias and defer FET

assessment to the time when the wholesalers sell their product to retailers. The Government will receive the same amount of tax, but without hurting U.S. businessmen and products.

Under this bill, payment procedures for the Federal Excise Tax on distilled spirits would be made consistent for both foreign and domestic liquor by broadening the definition of bonded premises to permit the conclusion of wholesaler and control State warehouses. Currently, only supplier facilities for domestic products and customs bonded warehouses for imported liquor are treated as bonded warehouses. By including wholesaler and control State warehouses as bonded premises, the present procedure of levying Federal Excise Tax on domestically produced or bottled liquor remains intact, but simply occurs at a later point in the distribution process. In addition, suppliers would have the option of transferring goods in bond between spirit plants without triggering a tax obligation. Thus, products would only be subject to FET when removed from a wholesaler's warehouse. Bonded dealers would still be required to post an adequate bond to ensure full payment of FET.

This bill provides an equitable and sound way of removing the preferential treatment afforded to imported spirits while ensuring that the Federal Government still collects the full amount of taxes due. This should alleviate the prepayment burden which is currently carried by small businessmen and control States. I urge my colleagues to join with me in cosponsoring this bill and working with me to eliminate this bias against U.S. goods and businessmen.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1405

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE: AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Distilled Spirits Tax Payment Act of 1985".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 2. TRANSFER OF DISTILLED SPIRITS BETWEEN BONDED PREMISES.

Section 5212 is amended to read as follows:

"Distilled spirits on which the internal revenue tax has not been paid or determined as authorized by law may, under such regulations as the Secretary shall prescribe,

be transferred in bond between bonded premises in any approved container. For the purposes of this chapter, the removal of distilled spirits for transfer in bond between bonded premises shall not be construed to be a withdrawal from bonded premises."

#### SEC. 3. ESTABLISHMENT OF DISTILLED SPIRITS PLANT.

Section 5171 is amended by—

(a) striking from subsection (a) the phrase "or processor" and inserting therein "processor or bonded dealer;" and

(b) deleting from subsection (b) the "and inserting thereafter "or as a bonded dealer."

#### SEC. 4. DISTILLED SPIRITS PLANTS.

Section 5178(a) is amended by adding the following new paragraph after paragraph (4) to read as follows:

"(5) BONDED DEALER OPERATIONS.—

"(A) Any bonded dealer establishing a distilled spirits plant shall, as described in his application for registration, purchase bottled distilled spirits from primary source of supply exclusively for resale at wholesale.

"(B) Any person qualified as a bonded dealer may only resell exclusively to a wholesale dealer in liquor, to an independent retail dealer subject to the limitation set forth in subparagraph (D), or to another bonded dealer with the express written consent of the primary source of supply.

"(C) Each person before establishing premises as a bonded dealer, must maintain an inventory of distilled spirits of at least 10,000 wine gallons. In the event a bonded dealer, once established, fails to maintain such a level of operations the bonded dealer shall cease operations as such, and immediately withdraw the distilled spirits on determination of tax in accordance with a tax payment procedure established by the Secretary.

"(D) Any person who is a bonded dealer shall not be considered as selling to an independent retail dealer if the bonded dealer has a greater than 10 percent ownership interest in, or control of the retail dealer; the retail dealer has a greater than 10 percent ownership interest in, or control of the bonded dealer; or where any person has a greater than 10 percent ownership interest in, or control of both the bonded and retail dealer. For purposes of this subparagraph, ownership interest, not limited to stock ownership, shall be attributed to other persons in the manner prescribed by section 318.

"(E) For purposes of subparagraph (A), the limitation for resale at wholesale to independent retail dealers does not apply to Control States or political subdivisions thereof.

"(F) Any person who is qualified as a bonded dealer may, under such regulations as the Secretary shall prescribe, store tax-paid distilled spirits, beer and wine and such other beverages and items (products) not subject to tax or regulation under this title on such bonded premises."

#### SEC. 5. DEFINITIONS.

Section 5002(a) is amended by—

(a) amending subsection (a)(2) to read as follows:

"(2) DISTILLED SPIRITS OPERATIONS.—The term 'distilled spirits operation' means any operation for which qualification is required under subchapter B including the operation of a bonded dealer;" and

(b) inserting after subsection (a)(15) the following new paragraphs:

"(16) BONDED DEALER.—The term 'bonded dealer' means any wholesale dealer who has elected to establish a distilled spirits plant

and engages in the business of purchasing distilled spirits from the primary source of supply for resale exclusively at wholesale to independent retail dealers or other wholesale dealers. The term bonded dealer shall include Control States and political subdivisions thereof.

"(17) PRIMARY SOURCE.—The term 'primary source' means a domestic or foreign distiller, producer, or bottler, or an authorized primary United States importer or agent for distilled spirits produced outside of the United States."

#### SEC. 6. PERSONS LIABLE FOR TAX.

Section 5005(b)(1) is amended to read as follows:

"(1) LIABILITY OF PERSONS INTERESTED IN A DISTILLED SPIRITS PLANT.—Every proprietor or possessor of, and every person in any manner interested in the premises of a distilled spirits plant, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits."

#### SEC. 7. DETERMINATION OF TAX.

Section 5006 is amended by—

(a) amending subsection (a)(2) to read as follows:

"If the Secretary finds that a bonded dealer has not accounted for the proper amount of distilled spirits received by him or a distiller has not accounted for all the distilled spirits produced by him, he shall, from all the evidence he can obtain, determine what quantity of distilled spirits was actually received by the bonded dealer or produced by such distiller, and an assessment shall be made for the difference between the quantity which should have been accounted for at the rate of tax imposed by law for every proof gallon"; and

(b) amending subsection (b)(3) by inserting after the word "packages" and before the phrase "as authorized by law" the following: "on the bonded premises of a distilled spirits plant".

#### SEC. 8. CREDIT FOR WINE CONTENT, ETC., ON COLLECTION OF TAX ON DISTILLED SPIRITS.

Section 5006(a) is amended by adding after paragraph (2) the following new paragraph (3) to read as follows:

"(3) The credit for wine content and for flavors content provided under section 5010 shall be determined and allowable as a reduction in the rate of tax on the payment of the tax under section 5061 by the proprietor of the distilled spirits plant, bonded dealer or other taxpayer liable for the payment of the excise tax on such products."

#### SEC. 9. LOSS OR DESTRUCTION OF DISTILLED SPIRITS.

(a) Subsections (a)(1)(A) and (a)(2) of section 5008 are amended by adding "bonded dealer," immediately after "distilled spirits plant".

(b) Subsection (c)(1) of section 5008 is amended by striking the words "of a distilled spirits plant."

(c) Subsection (c)(2) of section 5008 is amended by striking the words "distilled spirits plant" and inserting in lieu thereof the words "bonded premises".

#### SEC. 10. TIME FOR COLLECTING TAX ON DISTILLED SPIRITS.

Section 5061(d) is amended to read as follows:

"In the case of distilled spirits withdrawn from a bonded premise, the last day for filing a return (with remittances) for each semimonthly return shall be the last day of the second succeeding return period; except that a State or political subdivision thereof which engages in the selling, or offering for sale, of distilled spirits may file their return

monthly (with remittances), and the last day for filing shall be the last day of the succeeding month."

#### SEC. 11. EXEMPTION FROM OCCUPATIONAL TAX NOT APPLICABLE.

Section 5113(a) is amended by adding immediately after the last sentence the following new sentence to read as follows: "This exemption shall not apply to a proprietor of a distilled spirits plant whose premises are used for operations of a bonded dealer."

#### SEC. 12. TECHNICAL, CONFORMING AND CLERICAL AMENDMENTS.

(a) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 5003(3) is amended to delete the term "certain" from the sentence.

(2) Section 5214 is amended by redesignating subsection (b) as (c) and inserting a new subsection (b) to read as follows:

"(b) EXCEPTION.—Subsections (a) (1), (2) (3), (5), (10), (11), and (12) of this section shall not apply to distilled spirits withdrawn from premises used for operations as a bonded dealer."

(3) Section 5215(a) is amended by inserting a period after the word "plant" and striking the words "but only for destruction, denaturation, redistillation, reconditioning, or rebottling."

(4) The first sentence of section 5232 is amended to read as follows:

"Distilled spirits imported or brought in to the United States, under such regulations as the Secretary shall prescribe, be withdrawn from customs custody and transferred to the bonded premises of a distilled spirits plant without payment of the internal revenue tax imposed on such distilled spirits."

(5) Section 5362(b)(5) is amended by adding the following sentence to read as follows: "This term will not apply to premises used for operations as a bonded dealer."

(6) Section 5551(a) is amended by inserting after the term "processor" at each place it appears the phrase "bonded dealer."

(7) Section 5601(a) (2), (3), (4), (5), and (b) are amended by inserting "bonded dealer" immediately before the word "processor" at each place it appears.

(8) Section 5602 is amended by inserting "warehouseman, processor or bonded dealer" immediately after the word "distiller".

(9) Section 5115, 5180 and 5861 are repealed.

(b) CLERICAL AMENDMENTS.—

(1) The table of sections for part II of subchapter A of chapter 51 is amended by striking out the item relating to section 5115.

(2) The table of sections for subchapter B of chapter 51 is amended by striking out the item relating to section 5180.

(3) The table of sections for part IV of subchapter J of chapter 51 is amended by striking out the item relating to section 5861.

#### SEC. 13. TRANSITION RULE.

Until December 31, 1985, each wholesale dealer who is required to file an application for registration under section 5171(c) whose operations are required to be covered by a basic permit under the Federal Alcohol Administration Act (27 U.S.C. 203 and 204) and who has received such basic permits as an importer, wholesaler, or as both, and has obtained a bond required under this subchapter shall be qualified to operate bonded premises until such time as the Secretary takes final action on the application. This section shall not apply to any wholesaler whose bonded distilled spirits inventory is less than 10,000 wine gallons. Any Control



State or political subdivision thereof that has obtained a bond required under this subchapter shall be qualified to operate bonded premises until such time as the Secretary takes final action on the application for registration under section 5171(c).

**SEC. 14. LIQUIDATION OF TAX PAID DOMESTIC DISTILLED SPIRITS INVENTORY.**

(a) No domestically produced or bottled distilled spirits in the inventory of a bonded dealer on the effective date of this Act on which the Federal excise tax has been paid shall be subject to the filing of an excise tax return and the payment of excise tax as required under section 5061.

(b) Limitation on eligibility for exemption from tax. No person shall be entitled to exemption from the filing of an excise tax return or the payment of excise tax under paragraph (a) unless he has in his possession such evidence of the inventories with respect to which the exemption is claimed as may be required by the Secretary of the Treasury or his delegate under this subsection.

**SEC. 15. EFFECTIVE DATE.**

The provision of this Act shall take effect on October 1, 1985.

By Mr. DECONCINI:

S. 1406. A bill to make permanent the formula for determining fees for the grazing of livestock on public rangelands; to the Committee on Energy and Natural Resources.

**LIVESTOCK GRAZING FEES**

Mr. DECONCINI. Mr. President, I am today introducing a bill which would make permanent the present formula for determining livestock grazing fees on public rangelands in the 16 contiguous Western States.

The present grazing fee formula was established by the Public Rangelands Improvement Act of 1978 and is scheduled to expire at the end of the current fiscal year. This formula was the result of many years of study and negotiation involving agricultural interests, environmental groups, the executive branch, and Congress. Each year, the formula is adjusted to reflect annual changes in the lease rates for private grazing lands and annual fluctuations in livestock prices, whether upward or downward. I am convinced that the formula has worked well during the 7 years it has been in effect.

These are difficult times for agriculture in the United States, and this is no less true for those who depend on livestock production to earn a living. Retaining the present grazing fee formula could mean the difference between making a living or going broke for many ranchers. It is essential that we take steps to insure that livestock producers are able to stay in business and are treated fairly and equitably.

I recognize that, in the coming weeks and months, negotiations will be taking place on a comprehensive list of rangeland management issues. This legislation is being introduced at this time because I believe that a reasonable grazing fee schedule is essential to

the survival of the livestock industry and should be adopted without delay.

By Mr. THURMOND (by request):

S. 1407. A bill to provide for the recovery by the United States of the costs of hospital and medical care and treatment furnished by the United States in certain circumstances, and for other purposes; to the Committee on the Judiciary.

S. 1408. A bill to amend the Trading With the Enemy Act in order to terminate the Office of Alien Property, and for other purposes; to the Committee on the Judiciary.

S. 1409. A bill to amend chapter 31 of title 28 of the United States Code; to the Committee on the Judiciary.

S. 1410. A bill to provide for interim designation of U.S. attorneys and U.S. marshals by the Attorney General; to the Committee on the Judiciary.

**LEGISLATION RELATING TO REIMBURSEMENT OF CERTAIN MEDICAL COSTS, WINDUP OF OPERATIONS OF THE OFFICE OF ALIEN PROPERTY, GIFT ACCEPTANCE, AND INTERIM APPOINTMENTS OF U.S. ATTORNEYS AND U.S. MARSHALS**

Mr. THURMOND. Mr. President, on behalf of the administration, I am today introducing four pieces of legislation. The first relates to the recovery of the costs of medical care that the United States provides in certain circumstances; the next to the windup of operation of the Office of Alien Property within the Department of Justice; the third to the acceptance of gifts and donations by the Department of Justice where there would be no conflict of interest; and the final to the interim appointments of U.S. attorneys and U.S. marshals by the Attorney General.

The first bill is entitled "To provide for the recovery by the United States for the costs of hospital and medical care and treatment furnished by the United States in certain circumstances, and for other purposes." It provides that in any case where the United States is authorized or required to furnish medical care and treatment to a person injured as a result of a third party's negligence, the United States has an independent right to recover from the negligent party the reasonable value of those services it furnishes.

The purpose of the next bill is to simplify and consolidate the administration of the accounts maintained by the Justice Department's Office of Alien Property and the Department of the Treasury for the funds received from the disposal of alien property that vested in the United States under the Trading With the Enemy Act. According to the Justice Department, substantially all of the litigation and claims adjudication arising out of the administration of the World War II Alien Property Program have now ended, and the funds should be closed out.

The third piece of legislation would authorize the Attorney General to accept any gift, donation or bequest of real or personal property to aid the Department of Justice in carrying out its functions. No gifts could be accepted if it attaches conditions that are inconsistent with applicable laws or regulations. The bill would also require the Attorney General to promulgate rules for accepting gifts to ensure that no gifts are accepted under circumstances that would create a conflict of interest for the Department.

The final measure would amend sections 546 and 565 of title 28, United States Code, to provide of interim appointments to fill vacancies of U.S. attorneys and U.S. marshals by the Attorney General, rather than the judges of the U.S. district courts.

Mr. President, I ask unanimous consent that bills I am introducing on behalf of the administration and the letters of transmittal, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,  
Washington, DC, March 21, 1985.

Hon. GEORGE BUSH,  
President, U.S. Senate,  
Washington, DC.

DEAR MR. PRESIDENT: Enclosed for your consideration and appropriate reference is a draft bill entitled "To provide for the recovery by the United States of the costs of hospital and medical care and treatment furnished by the United States in certain circumstances, and for other purposes."

Originally passed in 1962, the Federal Medical Care Recovery Act (the "Act") was enacted primarily as a response to the United States Supreme Court's ruling in *United States v. Standard Oil*, 332 U.S. 301 (1947), wherein the Court held that absent congressional authority, the Federal Government could not recover the cost of Government-furnished medical care or loss of services of its personnel caused by the negligence of some third party. Prior to passage of the Act, a significant amount of money was lost each year because of the Government's inability to require reimbursement. Essentially, the Act provides that in any case where the United States is authorized or required to furnish medical care and treatment to a person injured as the result of another party's negligence, the United States has an independent right to recover the reasonable value of those services from the negligent party. The Act was specifically designed to operate in such a manner so as not to affect the right of the injured person to recover his damages from the responsible party.

The purpose of the enclosed draft bill is to amend the Federal Medical Care Recovery Act, Title 42, United States Code, Section 2651, *et seq.*, so as to remedy various impediments to recovery created by the abolishment of tort liability as the basis of a cause of action in certain jurisdictions. In particular, the proposed changes address issues raised in the case of *Heusle v. National Mutual Insurance*, 628 F.2d 833 (3rd Cir. 1980), wherein the Court held that because the Government's right to recovery is predicated upon tort liability, and since Pennsyl-

vania has abolished tort liability in favor of a no-fault system, there could be no recovery of the Government's medical expenses.

This proposal is the product of discussions with, and information provided by, the various Federal agencies with significant interest in the Federal Medical Care Recovery Act, i.e., the Veterans Administration, the Department of Health and Human Services, and the Department of Army, Navy, and Air Force.

The amount collected under the Act is of significant concern to this Department. Pursuant to provisions of 28 CFR § 0.45(g), the Department of Justice's Civil Division has responsibility for supervision of all matters arising under the Federal Medical Care Recovery Act. In 1963, the first year of collections under the Act, Federal agencies recovered \$259,227.62. Collections have steadily increased since that time, and in calendar year 1981 a total of \$22,261,123.74 had been recovered for medical expenses. Between 1963 and 1981, collections under the Act totaled \$197,476,250.87.

Much of the increase is undoubtedly the result of the inflation reflected in the reasonable cost of medical care in federal facilities as prescribed by the Office of Management and Budget. For example, in 1968 the Department of Defense's daily rate for inpatient care was \$49.00 per day. Effective January 4, 1982 the cost for the same care is \$406.00 per day.

The most significant statistics, however, are in the number of claims asserted and recovered. Since 1968 the in-patient rate has increased nearly 800 percent but the total amount recovered has increased only slightly in excess of 350 percent. In calendar year 1978, recoveries were in excess of \$1,000,000.00 less than the year before. In 1980, agencies asserted 916 claims less than in 1979. It appears as if recoveries in recent years are not keeping up with inflation. One reason is that the number of claims that can be successfully asserted under the narrow authority of the Act is steadily decreasing due to recent changes in the insurance industry and state laws governing tort liability as a measure of recovery.

The proposed amendment leaves paragraph (a) of section 2651 intact and merely introduces a new paragraph (b) that extends the basis of the Government's right to recovery to circumstances where a state has abolished or limited traditional tort liability as a cause of action, and has in lieu thereof established or authorized a system of compensation not grounded upon tort liability. The United States is further deemed to be a third-party beneficiary of any such compensation plan, and the medical expenses incurred by the party receiving the medical care. These provisions make it clear that the United States is intended to be a recipient of any reimbursement benefit afforded by the state's compensation plan and that in those states where reimbursement is dependent upon the injured party, it makes clear that the injured party has incurred the amount expended by the Government.

Paragraph (c) contains the provision formerly found in paragraph (b) and contains some additional language for clarification as the result of the new paragraph (b). The "Veterans' Exception," formerly paragraph (c), is merely redesignated as paragraph (d) and remains unchanged.

Additionally, the proposed amendment provides for a new section designated as § 2654 and establishes a new deposit and accounting procedure for funds collected pursuant to the Act or to any other right the

United States possesses for the recoupment of medical care costs. The amended procedure authorizes the deposit of these recouped funds to the appropriation from which the care or treatment was charged. This would alter the current requirement for depositing these monies into general Treasury revenues when they are recovered. The purpose of this amendment is to provide an incentive for aggressive recovery actions and to allay the criticism by hospital commanders and directors of the present practice which requires a hospital to spend its operating funds for required treatment and administrative costs associated with the Federal Medical Care Recovery Act program, but with no opportunity to recover directly any portion of those funds or costs.

By amending the Federal Medical Care Recovery Act in the manner set forth in the enclosed proposal, it will be unnecessary to consider proposals that deal with agency recovery authority on a piecemeal, agency-to-agency basis. On behalf of the Attorney General, I recommend prompt and favorable consideration of the enclosed proposed amendments.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this legislative proposal to the Congress and that its enactment would be consistent with the objectives of the Administration.

Sincerely,

PHILLIP D. BRADY,  
Acting Assistant Attorney General.  
S. 1407

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the first section of Public Law 87-693 (42 U.S.C. 2651) is amended—*

(1) in the first sentence of subsection (a)—  
(A) by striking out "a right to recover" and inserting in lieu thereof "an independent right to recover"; and  
(B) by inserting "or his insurer," after "from said third person";

(2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(3) by inserting after subsection (a) the following new subsection:

"(b) In any case in which the United States is authorized or required by law to furnish hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) to a person who is injured or suffers a disease, and the laws of the State in which such injury or disease occurred have abolished or limited tort liability as a cause of action and, in lieu thereof, have created or authorized a system of compensation or reimbursement for medical expenses pursuant to a policy of insurance, contract, medical or hospital service agreement, or similar arrangement for the purpose of paying, contributing, or reimbursing expenses for hospital, medical, surgical, or dental care and treatment furnished to that person, the United States shall be deemed to be a third-party beneficiary of such a policy, contract, agreement, or arrangement, and, for purposes of this Act, expenses for hospital, medical, surgical, or dental care and treatment furnished to such person by the United States or paid for by the United States shall be deemed to have been incurred by that person as a result of that injury or disease. The United States shall be subrogated to any right or claim that the person, his guardian, personal representative, estate, dependents, or survivors have under such policy, contract, agree-

ment, or arrangement to the extent of the reasonable value of the care and treatment so furnished or to be furnished."

(b) The first section of Public Law 87-693 is further amended in subsection (c), as redesignated by subsection (a)(2) of this section—

(1) by striking out "such right" and inserting in lieu thereof "the rights conferred by subsections (a) and (b) of this section"; and

(2) by inserting "insurance carrier or other entity responsible for the payment or reimbursement of medical expenses or the" before "third person who is liable" each place it appears.

SEC. 2. Section 2 of Public Law 87-693 is amended by adding at the end thereof the following new subsection:

"(d) Notwithstanding section 3302 of title 31, United States Code, or any other provision of law, all sums collected pursuant to this Act, or collected for the types of care and treatment described in the first section of this Act pursuant to any other right the United States may possess, shall be credited to the appropriation from which the costs of such care and treatment were paid, except that such sums shall be available only in such amounts as are provided in appropriation Acts."

SEC. 3. (a) The amendments made by the first section of this Act shall apply to all cases in which the United States is authorized or required by law to furnish hospital, medical, surgical, or dental care and treatment, whether such care and treatment is furnished before, on, or after the date of the enactment of this Act.

(b) The amendment made by section 2 of this Act shall apply to all sums collected by the United States on or after the date of the enactment of this Act, whether the claim for such moneys arose before, on, or after such date of enactment.

HON. GEORGE BUSH,  
President, U.S. Senate, Washington, DC.

DEAR MR. PRESIDENT: Enclosed herewith for your consideration and appropriate reference is a draft bill to amend the Trading with the Enemy Act, so as to complete the administration of property vested during World War II. Also enclosed is a statement of purpose and justification for the draft bill. The Department of Justice recommends favorable action on this proposal.

The Office of Alien Property is responsible for the administration, liquidation, distribution and disposition of the interests in alien property which vested in the United States under the Trading with the Enemy Act in World War II. While approximately \$900 million of enemy property was processed by the office since its beginning, substantially all litigation and claims adjudication arising out of the Trading with the Enemy Act has now been terminated.

Three accounts remain "open" with relatively small collections. Present law requires that the books of the Office of Alien Property be audited annually by independent auditors. Also, a separate account for funds received must be maintained by the Department of the Treasury. It is possible that the administrative expenses incurred by the Departments of Justice and the Treasury in collecting, transferring, and distributing future collections could consume a significant portion of the amounts collected and distributed. The purpose of the draft bill is to simplify and consolidate the administration of these funds and reduce the costs of such administration.



On behalf of the Attorney General, I recommend that the enclosed proposal receive prompt and favorable action.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this draft bill to the Congress and that its enactment would be in accord with the program of the President.

Sincerely,

PHILLIP D. BRADY,  
Acting Assistant Attorney General.

S. 1408

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Trading with the Enemy Act is amended:*

(1) in section 39 (50 U.S.C. App. 39) by striking out subsections (b) through (e) and inserting in lieu thereof the following new subsection:

"(b) The Attorney General shall cover into the Treasury, to the credit of miscellaneous receipts, all sums from property vested in or transferred to him under this Act—

"(1) which he receives after the date of enactment of this section, or

"(2) which he received prior to such date and which, as of such date, he had not covered into the Treasury for deposit in the War Claims Fund, other than any such sums which the Attorney General determines in his discretion are the subject matter of any judicial action or proceeding;" and

(2) in section 6 (50 U.S.C. App. 6) by striking out "law:" and all that follows in such section and inserting in lieu thereof a period.

HON. GEORGE BUSH,  
Vice President, U.S. Senate,  
Washington, DC.

DEAR MR. VICE PRESIDENT: Enclosed for your consideration and appropriate reference is a draft bill entitled "The Department of Justice Gift Acceptance Act."

The Department of Justice currently has no general statutory authority to accept gifts. The inherent power of the Federal Government to accept gifts is well recognized. *United States v. Burnison*, 339 U.S. 87 (1950). But without specific authorizing legislation, no federal official may properly accept gifts or contributions for particular agencies (as distinguished from the general fund) to augment Congressional appropriations. See, e.g., 46 Comp. Gen. 689 (1967); 36 Comp. Gen. 268 (1956), 16 Comp. Gen. 911 (1937). Thus, when the Immigration and Naturalization Service (INS) wished to accept donated horses for the use of its Border Patrol, it was necessary for the Department to submit to Congress proposed legislation authorizing the INS to accept gifts. A general gift acceptance authority for the Department would end the need for piecemeal legislative solutions.

There are a variety of ways that the Department could use the statutory authority to accept gifts. For example, this authority would permit the Department to accept donated materials or funds for the use of the library. It is probable that there may be many opportunities to accept gifts or bequests of books and it would be unfortunate to have to continue to refuse to accept these benefits. This is particularly important in light of the growing research needs of the Department.

Under this proposal no gift could be accepted by the Department if it attaches con-

ditions that are inconsistent with applicable laws or regulations. The bill also prohibits the acceptance of a gift that requires the expenditure of appropriated funds unless such expenditure has been authorized by an act of Congress. The Attorney General is required to promulgate rules for accepting gifts to ensure that no gifts are accepted under circumstances that will create a conflict of interest for the Department.

There is enclosed a section-by-section analysis for your review. This authority would provide vital assistance to the Department. We look forward to the prompt consideration of this legislation by the Congress.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this legislation to Congress.

Sincerely,

PHILLIP D. BRADY,  
Acting Assistant Attorney General.

S. 1409

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Department of Justice Gift Acceptance Act".*

SEC. 2. (a) Chapter 31 of title 28, United States Code, authorizing the Department of Justice to accept gifts under certain circumstances, is amended by inserting between section 525 and section 526 the following new section:

"Sec. 525A. Department of Justice Gift Acceptance Authority

"(a) The Attorney General is authorized to accept and utilize, on behalf of the United States, any gift, donation, or bequest of real or personal property for the purpose of aiding or facilitating the work of the Department of Justice. No gift may be accepted—

"(1) that attaches conditions inconsistent with applicable laws or regulations, or

"(2) that is conditioned upon or will require the expenditure of appropriated funds unless such expenditure has been authorized by an Act of the Congress.

Gifts from foreign governments may be accepted only pursuant to section 7342 of title 5, United States Code.

"(b) The Attorney General shall promulgate rules and regulations for accepting gifts pursuant to this provision, to ensure, among other things, that no gifts are accepted under circumstances that will create a conflict of interest for the Department of Justice.

"(c) Gifts and bequests of money and the proceeds from sales of property received as gifts or bequests that are not immediately useable by the Department of Justice may be credited to any appropriation or fund that is available for similar purposes, to remain available until expended upon order of the Attorney General.

"(d) Gifts, bequests of property, and property acquired from the proceeds credited to appropriations or funds pursuant to subsection (c), and which are no longer required by the Department of Justice for its needs and the discharge of its responsibilities, shall be reported to the Administrator of the General Services Administration for transfer, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949.

"(e) Property accepted pursuant to this section and the proceeds credited to appro-

priations or funds pursuant to subsection (c) shall be used, to the extent possible, in accordance with the terms of the gift or bequest.

"(f) For the purpose of Federal income, estate, and gift taxes, property accepted under subsection (a) of this section shall be considered a gift or bequest to or for the use of the United States."

(b) The table of sections for chapter 31 of title 28, United States Code, is amended by inserting between the item relating to section 525 and the item relating to section 526 the following new item:

"525A. Department of Justice Gift Acceptance Authority".

SEC. 3. Section 501 of the Controlled Substances Act (21 U.S.C. 871(c)) is hereby repealed.

OFFICE OF THE  
ASSISTANT ATTORNEY GENERAL,  
Washington, DC, March 21, 1985.

The VICE PRESIDENT,  
U.S. Senate,  
Washington, DC.

DEAR MR. VICE PRESIDENT: On behalf of the Attorney General, I am submitting for the consideration of the Congress, the attached proposed legislation to amend Sections 546 and 565 of Title 28, United States Code, to provide for interim appointments of United States Attorneys and United States Marshals by the Attorney General rather than the Judges of the United States District Courts.

Presently, interim appointments to fill vacancies occurring in a United States Attorney's or Marshal's position are made by the cognizant United States District Court pursuant to 28 U.S.C. 546 and 565 until the President, with the advice and consent of the Senate, appoints a permanent United States Attorney or Marshal. Although United States Attorneys and Marshals are directly accountable to and act under the supervision and control of the Attorney General, the Court is not obligated to consult with or even consider the views of the Attorney General in making an appointment. The proposed amendments are more consistent with the fundamental concept of separation of powers between the Judicial and Executive Branches of government. The need for the Courts to have this power of appointment because of the inability to communicate rapidly with Washington has long since passed.

In addition, the serious disruptions and delays of the business of the Federal Courts which may result from a vacancy could be greatly alleviated. In the recent past some courts have appointed attorneys to fill vacancies who have not been subjected to a Federal Bureau of Investigation background investigation prior to their appointments. This poses serious problems for the Department because of the possible presence of classified and other extremely sensitive information within the United States Attorney's and Marshal's offices.

The proposed legislation would not change or limit the present requirement that all Presidential appointments be submitted to the United States Senate for confirmation. The Department of Justice respectfully urges that this proposal receive prompt consideration.

The Office of Management and Budget has advised that there is no objection to the

submission of this proposal from the standpoint of the Administration's program.

Sincerely,

PHILLIP D. BRADY,

Acting Assistant Attorney General.

Enclosure.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 546 of Title 28, United States Code, is amended to read as follows:

"Sec. 546. VACANCIES.

"(a) In the case of a vacancy in the office of United States attorney, the Attorney General may designate a United States attorney to perform the functions and act as United States attorney. The Attorney General shall not designate as United States attorney a person to whose appointment by the President to that office the Senate refused to give its advice and consent.

"(b) Such person may serve until the earliest of the following events:

"(1) the entry into office of a United States Attorney appointed by the President, pursuant to Article II, Section 2 of the Constitution;

"(2) the expiration of the thirtieth day following the end of the next session of the Senate; or

"(3) the expiration of the thirtieth day following the refusal of the Senate to give its advice and consent to the appointment by the President of the person designated by the Attorney General."

SEC. 2. Section 565 of Title 28, United States Code, is amended to read as follows:

"SEC. 565. VACANCIES.

"(a) In the case of a vacancy in the office of United States Marshal, the Attorney General may designate a person to perform the functions and act as United States Marshal. The Attorney General shall not designate as United States marshal a person to whose appointment by the President to that office the Senate refused to give its advice and consent.

"(b) Such person may serve until the earliest of the following events:

"(1) the entry into office of a United States marshal appointed by the President, pursuant to Article II, Section 2 of the Constitution;

"(2) the expiration of the thirtieth day following the end of the next session of the Senate; or

"(3) the expiration of the thirtieth day following the refusal of the Senate to give its advice and consent to the appointment by the President of the person designated by the Attorney General."

#### ADDITIONAL COSPONSORS

S. 49

At the request of Mr. McCLURE, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 49, a bill to protect firearm owners' constitutional rights, civil liberties, and rights to privacy.

At the request of Mr. HATCH, the name of the Senator from California [Mr. WILSON] was added as a cosponsor of S. 49, supra.

S. 140

At the request of Mrs. HAWKINS, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 140, a bill to amend the Child Abuse Amendments of 1984

to encourage States to enact child protection reforms which are designed to improve legal and administrative proceedings regarding the investigation and prosecution of sexual child abuse cases.

S. 150

At the request of Mr. HATCH, the name of the Senator from Nevada [Mr. LAXALT] was added as a cosponsor of S. 150, a bill entitled the "Freedom of Information Reform Act."

S. 361

At the request of Mr. MOYNIHAN, the names of the Senator from West Virginia [Mr. BYRD] and the Senator from Georgia [Mr. MATTINGLY] were added as cosponsors of S. 361, a bill to amend the Internal Revenue Code of 1954 to make permanent the deduction for charitable contributions by nonitemizers.

S. 426

At the request of Mr. WALLOP, the names of the Senator from New York [Mr. MOYNIHAN] and the Senator from Oregon [Mr. PACKWOOD] were added as cosponsors of S. 426, a bill to amend the Federal Power Act to provide for more protection to electric consumers.

S. 635

At the request of Mr. KENNEDY, the names of the Senator from South Carolina [Mr. HOLLINGS], the Senator from Hawaii [Mr. INOUE], the Senator from Rhode Island [Mr. PELL], and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of S. 635, a bill to express the opposition of the United States to the system of apartheid in South Africa, and for other purposes.

S. 850

At the request of Mr. THURMOND, the name of the Senator from Alabama [Mr. DENTON] was added as a cosponsor of S. 850, a bill to create a Federal criminal offense for operating or directing the operation of a common carrier while intoxicated or under the influence of drugs.

S. 855

At the request of Mr. PRYOR, the names of the Senator from Arkansas [Mr. BUMPERS] and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 855, a bill for the relief of rural mail carriers.

S. 865

At the request of Mr. MATHIAS, the names of the Senator from Oklahoma [Mr. BOREN], the Senator from Florida [Mrs. HAWKINS], the Senator from Nevada [Mr. LAXALT], the Senator from Michigan [Mr. RIEGLE], and the Senator from West Virginia [Mr. ROCKEFELLER] were added as cosponsors of S. 865, a bill to award special congressional gold medals to Jan Scruggs, Robert Doubek, and Jack Wheeler.

S. 867

At the request of Mr. ROTH, the name of the Senator from Michigan

[Mr. LEVIN] was added as a cosponsor of S. 867, a bill to amend title XIX of the Social Security Act to provide coverage for hospice care under the Medicaid Program.

S. 980

At the request of Mr. TRIBLE, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 980, a bill to amend title I of the Housing and Community Development Act of 1974.

S. 983

At the request of Mr. McCLURE, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 983, a bill to provide for limited extension of alternative means of providing assistance under the School Lunch Program and to provide for national commodity processing programs.

S. 1018

At the request of Mr. GORTON, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of S. 1018, a bill to amend the National Labor Relations Act to clarify the meaning of the term "guard" for the purpose of permitting certain labor organizations to be certified by the National Labor Relations Board as representatives of employees other than plant guards.

S. 1026

At the request of Mr. PRESSLER, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 1026, a bill to direct the cooperation of certain Federal entities in the implementation of the Continental Scientific Drilling Program.

S. 1084

At the request of Mr. GOLDWATER, the name of the Senator from Oregon [Mr. PACKWOOD], the Senator from Washington [Mr. GORTON], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Nevada [Mr. HECHT], and the Senator from North Dakota [Mr. BURDICK] were added as cosponsors of S. 1084, a bill to authorize appropriations of funds for activities of the Corporation for Public Broadcasting, and for other purposes.

S. 1147

At the request of Mr. HATCH, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 1147, a bill to amend the orphan drug provisions of the Federal Food, Drug, and Cosmetic Act and related laws.

S. 1162

At the request of Mr. HART, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 1162, a bill to amend the Nuclear Waste Policy Act of 1982 to require the Secretary of Energy to incorporate transportation impacts into the selection process for repositories of high-level radioactive wastes.



S. 1224

At the request of Mr. McCURE, the names of the Senator from Maine [Mr. COHEN], the Senator from Minnesota [Mr. DURENBERGER], the Senator from South Carolina [Mr. HOLLINGS], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Mississippi [Mr. STENNIS] were added as cosponsors of S. 1224, a bill to limit the importation of softwood lumber into the United States, and for other purposes.

S. 1250

At the request of Mr. HEINZ, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 1250, a bill to amend the Internal Revenue Code of 1954 to extend the targeted jobs tax credit for 5 years, and for other purposes.

S. 1259

At the request of Mr. THURMOND, the name of the Senator from Hawaii [Mr. INOUE] was added as a cosponsor of S. 1259, a bill to correct certain inequities by providing Federal civil service credit for retirement purposes and for the purpose of computing length of service to determine entitlement to leave, compensation, life insurance, health benefits, severance pay, tenure, and status in the case of certain individuals who performed service as National Guard technicians before January 1, 1969.

## SENATE JOINT RESOLUTION 98

At the request of Mr. D'AMATO, the names of the Senator from Indiana [Mr. LUGAR], the Senator from Rhode Island [Mr. PELL], and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of Senate Joint Resolution 98, a joint resolution condemning the passage of Resolution 3379, in the United Nations General Assembly on November 10, 1975, and urging the U.S. Ambassador and U.S. delegation to take all appropriate actions necessary to erase this shameful resolution from the record of the United Nations.

## SENATE JOINT RESOLUTION 115

At the request of Mr. LEAHY, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of Senate Joint Resolution 115, a joint resolution to designate 1985 as the "Oil Heat Centennial Year."

## SENATE JOINT RESOLUTION 139

At the request of Mr. HATCH, the names of the Senator from Illinois [Mr. DIXON], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of Senate Joint Resolution 139, a joint resolution to designate the week of December 1, 1985, through December 7, 1985, as "National Home Care Week."

## SENATE JOINT RESOLUTION 146

At the request of Mr. SIMON, the names of the Senator from New Jersey

[Mr. BRADLEY], the Senator from North Dakota [Mr. BURDICK], the Senator from Arkansas [Mr. BUMPERS], the Senator from Illinois [Mr. DIXON], the Senator from Connecticut [Mr. DODD], the Senator from Nebraska [Mr. EXON], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Hawaii [Mr. INOUE], the Senator from Massachusetts [Mr. KERRY], the Senator from Vermont [Mr. LEAHY], the Senator from Michigan [Mr. LEVIN], the Senator from Ohio [Mr. METZENBAUM], the Senator from Wisconsin [Mr. PROXMIER], the Senator from Michigan [Mr. RIEGLE], the Senator from Maryland [Mr. SARBANES], the Senator from Nebraska [Mr. ZORINSKY], the Senator from Rhode Island [Mr. CHAFFEE], the Senator from Maine [Mr. COHEN], the Senator from California [Mr. WILSON], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Arizona [Mr. GOLDWATER], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Wisconsin [Mr. KASTEN], the Senator from Indiana [Mr. LUGAR], the Senator from Maryland [Mr. MATHIAS], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Indiana [Mr. QUAYLE], the Senator from Pennsylvania [Mr. HEINZ], and the Senator from Ohio [Mr. GLENN] were added as cosponsors of Senate Joint Resolution 146, a joint resolution designating August 1985 as "Polish American Heritage Month."

## SENATE JOINT RESOLUTION 147

At the request of Mr. HATCH, the names of the Senator from Nevada [Mr. LAXALT], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from California [Mr. CRANSTON], and the Senator from New Jersey [Mr. LAUTENBERG] were added as cosponsors of Senate Joint Resolution 147, a joint resolution to designate a calendar week in 1985 as "National Infection Control Week."

## SENATE CONCURRENT RESOLUTION 46

At the request of Mr. ANDREWS, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of Senate Concurrent Resolution 46, a concurrent resolution to express the sense of the Congress regarding Americans missing in Southeast Asia.

## SENATE RESOLUTION 140

At the request of Mr. BENTSEN, the name of the Senator from Vermont [Mr. STAFFORD] was added as a cosponsor of Senate Resolution 140, a resolution urging the President to impose a trade boycott and embargo against Nicaragua.

## SENATE RESOLUTION 177

At the request of Mr. KENNEDY, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of Senate Resolution 177, a resolution to assure Israel's security, to oppose advanced arms sales to Jordan, and to further peace in the Middle East.

## AMENDMENTS SUBMITTED

## ANTIAPARTHEID ACTION ACT

ROTH (AND McCONNELL)  
AMENDMENT NO. 435

(Ordered to lie on the table.)

Mr. ROTH (for himself and Mr. McCONNELL) submitted an amendment intended to be proposed by them to the bill (S. 995) to express the opposition of the United States to the apartheid policies of the Government of South Africa and to encourage South Africa to abandon such policies; as follows:

On page 19 after line 21 add the following new section:

TO MAKE UNITED STATES' POLICY TOWARDS  
SOUTH AFRICA CONSISTENT

SEC. 12. The provisions of this Act, and any rule or regulation issued pursuant thereto, shall preempt any law, ordinance, rule or regulation of any of the several States, or any subdivision or entity created by any State, or the District of Columbia or any territory or possession of the United States which relates to the goal of peaceful change in South Africa, the reinforcement of United States opposition to apartheid, the ending of the policy of apartheid practiced by the Government of South Africa or any other purpose of this Act.

ROTH (AND OTHERS)  
AMENDMENT NO. 436

(Ordered to lie on the table.)

Mr. ROTH (for himself, Mr. McCONNELL, and Mr. DODD) submitted an amendment intended to be proposed by them to the bill S. 995, supra; as follows:

At the appropriate place in the bill, insert the following:

## SOUTH AFRICAN AIRWAYS

SEC. (a) Notwithstanding any other provisions of law, including any international agreement, the Federal Aviation Administration shall take such action as necessary to assure that no aircraft owned or operated by South African Airways may be permitted to land in the United States on or after a date which is sixteen months after the date of enactment of this legislation.

(b) Notwithstanding the provision of subsection (a), the Federal Aviation Administration shall promulgate regulations to provide for the landing of such aircraft in the event of an emergency.

FIREARMS OWNERS'  
PROTECTION ACTSYMMS (AND METZENBAUM)  
AMENDMENT NO. 437

Mr. HATCH (for Mr. SYMMS, for himself and Mr. METZENBAUM) proposed an amendment to the bill (S. 49) to protect firearms owners' constitutional rights, civil liberties, and rights to privacy; as follows:

On page 29, strike out lines 5 through 14 and insert in lieu thereof the following:

## TRANSPORTATION OF FIREARMS

SEC. 107. (a) Chapter 44 of title 18, United States Code, is amended by inserting between section 926 and section 927 the following new section:

## "§ 926A. Interstate transportation of firearms

"Any person not prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport an unloaded, not readily accessible firearm in interstate commerce notwithstanding any provision of any legislation enacted, or any rule or regulation promulgated by any State or political subdivision thereof."

(b) The table of sections for chapter 44 of title 18, United States Code, is amended by inserting between the item relating to section 926 and the item relating to section 927 the following new item:

"926A Interstate transportation of firearms."

SYMMS (AND OTHERS)  
AMENDMENT NO. 438

Mr. SYMMS (for himself, Mr. METZENBAUM, Mr. HATCH, Mr. McCLEURE, Mr. KERRY, and Mr. KENNEDY) proposed an amendment to the bill S. 49, supra; as follows:

On page 29, strike out lines 5 through 14 and insert in lieu thereof the following:

## TRANSPORTATION OF FIREARMS

SEC. 107. (a) Chapter 44 of title 18, United States Code, is amended by inserting between section 926 and section 927 the following new section:

## "§ 926A. Interstate transportation of firearms

"Any person not prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport an unloaded, not readily accessible firearm in interstate commerce notwithstanding any provision of any legislation enacted, or any rule or regulation promulgated by any State or political subdivision thereof."

(b) The table of sections for chapter 44 of title 18, United States Code, is amended by inserting between the item relating to section 926 and the item relating to section 927 the following new item:

"926A. Interstate transportation of firearms."

## ANTI-APARTHEID ACTION ACT

SYMMS AMENDMENT NOS. 439  
THROUGH 507

(Ordered to lie on the table.)

Mr. SYMMS submitted 69 amendments intended to be proposed by him to the bill S. 995, supra; as follows:

## AMENDMENT No. 439

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 31, 1987".

## AMENDMENT No. 440

On page 39, line 4, strike out "The President" and insert in lieu thereof "The Secretary of State".

## AMENDMENT No. 441

On page 39, line 5, strike out "the chairman of the Committee on Foreign Relations of the Senate" and insert in lieu thereof "The Majority Leader of the Senate".

## AMENDMENT No. 442

On page 39, line 5, strike out "Speaker of the House of Representatives" and insert in lieu thereof "The minority leader of the House of Representatives".

## AMENDMENT No. 443

On page 39, line 20, strike out "unrestricted".

## AMENDMENT No. 444

On page 39, line 22, strike out "black" and insert in lieu thereof "non-white".

## AMENDMENT No. 445

On page 39, line 17, strike out "abolishing" and insert in lieu thereof "moderating".

## AMENDMENT No. 446

On page 39, line 24, insert the following "(F) ending coerced abortions within South Africa".

## AMENDMENT No. 447

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "thirty-seven".

## AMENDMENT No. 448

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "thirty-six".

## AMENDMENT No. 449

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "thirty-five".

## AMENDMENT No. 450

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "thirty-four".

## AMENDMENT No. 451

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "thirty-three".

## AMENDMENT No. 452

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "thirty-two".

## AMENDMENT No. 453

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "thirty-one".

## AMENDMENT No. 454

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "thirty".

## AMENDMENT No. 455

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "twenty-nine".

## AMENDMENT No. 456

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "twenty-eight".

## AMENDMENT No. 457

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "twenty-seven".

## AMENDMENT No. 458

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "twenty-six".

## AMENDMENT No. 459

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "twenty-five".

## AMENDMENT No. 460

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "twenty-four".

## AMENDMENT No. 461

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "twenty-three".

## AMENDMENT No. 462

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "twenty-two".

## AMENDMENT No. 463

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "twenty-one".

## AMENDMENT No. 464

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "twenty".

## AMENDMENT No. 465

On page 39, line 7, strike out "eighteen" and insert in lieu thereof "nineteen".

## AMENDMENT No. 466

On page 39, line 8, strike out "twelve" and insert in lieu thereof "twenty-five".

## AMENDMENT No. 467

On page 39, line 8, strike out "twelve" and insert in lieu thereof "twenty-four".

## AMENDMENT No. 468

On page 39, line 8, strike out "twelve" and insert in lieu thereof "twenty-three".

## AMENDMENT No. 469

On page 39, line 8, strike out "twelve" and insert in lieu thereof "twenty-two".

## AMENDMENT No. 470

On page 39, line 8, strike out "twelve" and insert in lieu thereof "twenty-one".

## AMENDMENT No. 471

On page 39, line 8, strike out "twelve" and insert in lieu thereof "twenty".

## AMENDMENT No. 472

On page 39, line 8, strike out "twelve" and insert in lieu thereof "nineteen".

## AMENDMENT No. 473

On page 39, line 8, strike out "twelve" and insert in lieu thereof "eighteen".

## AMENDMENT No. 474

On page 38, line 8, strike out "twelve" and insert in lieu thereof "seventeen".

## AMENDMENT No. 475

On page 39, line 8, strike out "twelve" and insert in lieu thereof "sixteen".

## AMENDMENT No. 476

On page 39, line 8, strike out "twelve" and insert in lieu thereof "fifteen".

## AMENDMENT No. 477

On page 39, line 8, strike out "twelve" and insert in lieu thereof "fourteen".

## AMENDMENT No. 478

On page 39, line 8, strike out "twelve" and insert in lieu thereof "thirteen".

## AMENDMENT No. 479

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 2, 1987".



## AMENDMENT No. 480

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 3, 1987".

## AMENDMENT No. 481

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 4, 1987".

## AMENDMENT No. 482

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 5, 1987".

## AMENDMENT No. 483

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 6, 1987".

## AMENDMENT No. 484

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 7, 1987".

## AMENDMENT No. 485

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 8, 1987".

## AMENDMENT No. 486

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 9, 1987".

## AMENDMENT No. 487

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 10, 1987".

## AMENDMENT No. 488

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 11, 1987".

## AMENDMENT No. 489

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 12, 1987".

## AMENDMENT No. 490

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 13, 1987".

## AMENDMENT No. 491

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 14, 1987".

## AMENDMENT No. 492

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 15, 1987".

## AMENDMENT No. 493

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 16, 1987".

## AMENDMENT No. 494

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 17, 1987".

## AMENDMENT No. 495

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 18, 1987".

## AMENDMENT No. 496

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 19, 1987".

## AMENDMENT No. 497

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 20, 1987".

## AMENDMENT No. 498

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 21, 1987".

## AMENDMENT No. 499

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 22, 1987".

## AMENDMENT No. 500

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 23, 1987".

## AMENDMENT No. 501

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 24, 1987".

## AMENDMENT No. 502

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 25, 1987".

## AMENDMENT No. 503

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 26, 1987".

## AMENDMENT No. 504

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 27, 1987".

## AMENDMENT No. 505

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 28, 1987".

## AMENDMENT No. 506

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 29, 1987".

## AMENDMENT No. 507

On page 39, line 8, strike out "March 1, 1987" and insert in lieu thereof "March 30, 1987".

FIREARMS OWNER'S  
PROTECTION ACTHATCH (AND OTHERS)  
AMENDMENT NO. 508

Mr. HATCH (for himself, Mr. DOLE, and Mr. McCLURE) proposed an amendment to the bill S. 49, supra; as follows:

On page 21, strike out lines 2 through 22 and insert in lieu thereof the following:

"(a)(1) Whoever—  
"(A) other than a licensed dealer, licensed importer, licensed manufacturer, or licensed collector knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a

person licensed under the provisions of this chapter;

"(B) knowingly makes any false statement or representation in applying for any license or exemption or relief from disability under the provisions of this chapter;

"(C) knowingly violates subsections (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922;

"(D) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(1);

"(E) knowingly violates any provision of this section; or

"(F) willfully violates any other provision of this chapter,

shall be fined not more than \$5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine.

"(2) Any licensed dealer, licensed importer, licensed manufacturer or licensed collector who knowingly—

"(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

"(B) violates subsection (m) of section 922, shall be fined not more than \$1,000, or imprisoned not more than one year, or both, and shall become eligible for parole as the Board of Parole shall determine."

On page 8, strike out lines 8 and 9 and insert in lieu thereof the following:

(B) by amending paragraph (3) to read as follows:

"(3) is an unlawful user of or addicted to marijuana or any depressant or stimulant substance or narcotic drug (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));"

On page 8, strike out lines 23 and 24 and insert in lieu thereof the following:

(B) by amending paragraph (3) to read as follows:

"(3) is an unlawful user of or addicted to marijuana or any depressant or stimulant substance or narcotic drug (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));"

On page 10, strike out lines 1 and 2 and insert in lieu thereof the following:

(B) by amending paragraph (3) to read as follows:

"(3) is an unlawful user of or addicted to marijuana or any depressant or stimulant substance or narcotic drug (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));"

On page 21, line 24, after "any" insert "felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (94 Stat. 1159; 21 U.S.C. 855a), or any".

On page 22, line 5, after "such" insert "felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.) the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (94 Stat. 1159; 21 U.S.C. 855a), or".

On page 22, line 14, strike out "included that imposed for the " and insert in lieu thereof "including that imposed for the felony described in the Controlled Substances Act (21 U.S.C. 801), the Controlled Substances Import and Export Act (21 U.S.C. 951), or section 1 of the Act of Sep-

tember 15, 1980 (94 Stat. 1159; 21 U.S.C. 855a), or".

On page 1, line 3, strike out "of citizens".  
On page 1, line 7, strike out "their" and insert in lieu thereof "the".

On page 2, line 2, strike out "their" and insert in lieu thereof "the".

On page 5, line 19, strike out "the sale or" and insert in lieu thereof "the activity involving firearms, including the sale or other".

On page 5, line 24, strike out "opposed to" and insert in lieu thereof "distinguished from".

On page 7, line 12, strike out the colon and insert in lieu thereof a semicolon.

On page 12, line 13, strike out "is so" and insert in lieu thereof "is in a licensee's personal collection".

On page 12, lines 15 and 16, strike out "disposition or any acquisition" and insert in lieu thereof "transfer".

On page 14, line 3, strike out "explicitly" and insert in lieu thereof "expressly".

On page 14, line 3, beginning with "the Act", strike out through "privacy" on line 5 and insert in lieu thereof "this section".

On page 14, line 20, after "inspect" insert "or examine".

On page 14, lines 22 and 23, strike out "for a reasonable inquiry" and insert in lieu thereof "in the course of a reasonable inquiry".

On page 15, line 4, strike out "to prohibited persons" and insert in lieu thereof "in violation of section 922(d)".

On page 15, line 5, strike out "inspections or inquiries" and insert in lieu thereof "inspection or examination".

On page 15, line 15, strike out "inspections or inquiries" and insert in lieu thereof "inspection or examination".

On page 15, line 23, strike out "such procedure" and insert in lieu thereof "The inspection and examination authorized by this subsection".

On page 16, line 21, strike out "explicitly" and insert in lieu thereof "expressly".

On page 16, strike out lines 22 and 23 and insert in lieu thereof "by this section".

On page 17, lines 8 and 9, strike out "tracing firearms" and insert in lieu thereof "determining from whom a licensee acquired a firearm and to whom such licensee disposed of such firearm".

On page 22, lines 19 and 20, strike out "or destructive device".

On page 22, line 21, strike out "the good faith".

On page 22, line 21, insert a comma after "danger".

On page 22, line 23, insert a comma after "person".

On page 22, strike out line 24 and insert in lieu thereof the following: "court finds that the perceived immediate danger was so perceived in good faith and that a sentence under this section would".

On page 22, line 25, strike out "justice and" and insert in lieu thereof "justice".

On page 23, line 1, strike out "such" and insert in lieu thereof "The".

On page 27, line 22, strike out "925" and insert in lieu thereof "926".

On page 30, strike out lines 16 through 19 and insert in lieu thereof the following:

SEC. 201. Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (sections 1201, 1202, and 1203 of the appendix to title 18, United States Code) is hereby amended to read as follows:

"SEC. 1201. (a) In the case of a person who violates section 922(g) of title 18, United States Code, and who has three previous

convictions by any court referred to in section 922(g)(1) of title 18, United States Code, for robbery or burglary, or both, such person shall be fined not more than \$25,000 and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g) of title 18, United States Code, and such person shall not be eligible for parole with respect to the sentence imposed under this section.

"(b) As used in this title—

"(1) 'robbery' means any crime punishable by a term of imprisonment exceeding one year and consisting of the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected to bodily injury; and

"(2) 'burglary' means any crime punishable by a term of imprisonment exceeding one year and consisting of entering or remaining surreptitiously within a building that is property of another with intent to engage in conduct constituting a Federal or State offense."

#### KENNEDY (AND OTHERS) AMENDMENT NO. 509

Mr. KENNEDY (for himself, Mr. MOYNIHAN, Mr. METZENBAUM, Mr. MATSUNAGA, and Mr. KERRY) proposed an amendment to the bill S. 49, supra; as follows:

On page 7, lines 8 and 9, strike out "firearm" and insert in lieu thereof "shotgun or rifle".

#### MATHIAS AMENDMENT NO. 510

Mr. MATHIAS proposed an amendment to the bill S. 49 supra; as follows:

On page 14, line 24, after "(B)" insert "for routine compliance inspections."

On page 14, line 25, strike out ", upon reasonable".

On page 15, line 1, strike out "notice."

On page 15, line 9, after "(A)" insert "for routine compliance inspections."

On page 15, lines 10 and 11, strike out ", upon reasonable notice."

#### INOUE (AND OTHERS) AMENDMENT NO. 511

Mr. INOUE (for himself, Mr. MATSUNAGA, Mr. KENNEDY, Mr. METZENBAUM, Mr. MOYNIHAN, and Mr. KERRY) proposed an amendment to the bill S. 49, supra; as follows:

On page 10, lines 21 and 22, strike out "a new subsection to read as follows:" and insert in lieu thereof "the following new subsections:"

On page 11, line 3, strike out the closing quotation marks and final period.

On page 11, between lines 3 and 4, insert the following:

"(c) It shall be unlawful for any person to deliver any handgun to any other person after negotiating for the sale of such handgun to such person, before the expiration of 14 days after the date of the first payment for such handgun is received from the buyer of same, except that the delay period provided for herein shall not apply—

"(1) When the chief law enforcement officer of the purchaser's place of residence cer-

tifies, by notarized statement to the seller, that the immediate delivery of the handgun to the buyer is, to his knowledge, necessary to protect against a threat of immediate danger to the physical safety of the buyer;

"(2) when the purchaser provides proof that he has purchased another handgun within the previous twelve months and that in such purchase he complied with the 14 day waiting period; or

"(3) to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors."

#### NOTICES OF HEARINGS

##### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. McCLURE. Mr. President, I would like to announce for the information of the Senate and the public the scheduling of a public hearing before the Committee on Energy and Natural Resources.

Wednesday, July 17, 1985, beginning at 9:30 a.m., in room SD-366 of the Dirksen Senate Office Building the committee will consider the following nominations:

Charles A. Trabandt, of Virginia, to be a member of the Federal Energy Regulatory Commission for a term expiring October 20, 1988.

Russell F. Miller, of Maryland, to be deputy inspector general of the U.S. Synthetic Fuels Corporation for a term of 7 years.

Those wishing to testify or to submit written statements for the hearing record should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510.

For further information regarding this hearing, please contact Nan Morrison at 202-224-7143 regarding the nomination of Mr. Trabandt, and Richard Grundy at 202-224-2564 regarding the nomination of Mr. Miller.

#### AUTHORITY FOR COMMITTEES TO MEET

##### SUBCOMMITTEE ON NATURAL RESOURCES DEVELOPMENT AND PRODUCTION

Mr. DOLE. Mr. President, I ask unanimous consent that the Subcommittee on Natural Resources Development and Production of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, July 9, to hold an oversight hearing on impact on the coal industry of the Office of Surface Mining's proposed rulemaking to collect permit application fees.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON THE JUDICIARY

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, July 10, in order to discuss and vote on amendments to Senate Joint Resolution 13, proposing an amendment to the Constitution re-



lating to a Federal balanced budget and tax limitation.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ADDITIONAL STATEMENTS

##### REALIZING PRODUCTIVE POTENTIAL IV

● Mr. HEINZ. Mr. President, in my last statement I began to look at what the public thought about the United States' trade and industrial problems. Today, I would like to continue doing so with a fourth entry in a series on the deindustrialization of America.

America's declining productivity and economic strength is a problem that has affected the majority of our populace. Across the Nation, we have seen plant closings, the loss of jobs, and the disappearance of market share. Recent polls, published in the April/May issue of Public Opinion, indicated that the American public favored some kind of protection of American industry and jobs.

The question, then, is what kind, and how much, protection do the people want? One poll listed a number of measures which would reduce the trade balance between the United States and Japan, and respondents were asked to vote "yes" or "no" on each suggestion. The least popular measure was subsidizing American products so that they could better compete with Japanese exports. This strategy only received a 61 percent "yes" vote. Legislation which required Japanese imports to contain a specific amount of American-made materials was more favored, receiving a 72 percent "yes" vote. The third most popular measure, garnering a 77 percent "yes" vote, required Japanese companies in the United States to hire American workers. The last suggestion, negotiating with the Japanese Government to open their market to American exports, received a tremendous 84 percent "yes" vote.

For a poll, these statistics represent an astounding response. In many public opinion surveys, a rate of agreement on a single response of over 60 percent is rare. Here, we have consistently obtained better than 60 percent responses. Clearly Americans are fed up with unfair Japanese trade practices, and they are demanding immediate, aggressive action on the part of the American Government.

We can draw a second conclusion from this data: That Americans want a positive, pro-trade solution, instead of harmful, trade-blocking measures. While a large majority, 60 percent, voted for subsidizing American products over no action at all, it was still the least favored solution. In contrast, the most popular solution, negotiating for open markets, was clearly a call for a free-trade solution.

The second poll question confirms this conclusion. This survey asked, "would you like to see the United States trade more with Japan, less, or about as much as it does now?" Thirty-three percent were indifferent, preferring to maintain the status quo; only 21 percent wanted less trade, and 46 percent of those polled wanted to see more trade with Japan.

Finally, a third question asked respondents to vote for restrictions on imports or for encouraging free trade and competition in order to solve our trade problems. An overwhelming majority of 73 percent preferred a "system that let more American goods and services into Japan and Western Europe, and more goods from those countries into the United States."

Unfair foreign trade practices are causing the loss of American jobs and a decline in United States industries. This poll data clearly shows that the American people are fed up with the situation, and they are demanding that we, as Members of Congress, act quickly and authoritatively.

Mr. President, I have over the past weeks proposed a number of pieces of legislation that would constitute such action, most recently S. 1356, the LICIT bill, which would provide a foundation for a new, more aggressive trade policy. I hope all Senators will consider that bill carefully and heed the message contained in the poll data I have cited. Americans clearly want action, and they prefer that it be constructive and market-opening. In future comments I plan to discuss what tactics might best achieve that objective.●

##### NEW TITLE III LEGISLATION TO BENEFIT THE NATION'S HISTORICALLY BLACK INSTITUTIONS

● Mr. PRYOR. Mr. President, last week, my colleague from Illinois, Mr. SIMON, introduced S. 1328, the Institutional Aid Amendments of 1985, legislation which seeks to strengthen programs under title III of the Higher Education Act of 1965. I am proud to cosponsor this measure, which clarifies the scope and direction of the title III programs.

S. 1328 includes a provision for the establishment of the Black College and University Act, a program that specifically addresses the special needs of the Nation's historically black institutions. The Black College and University Act would assist in the improvement and maintenance of campus facilities, provide workshops and other activities for faculty development, and establish new curriculums to focus on those areas underrepresented by black Americans.

The historically black institutions in my State of Arkansas have established themselves as integral parts of the

community, and despite considerable hardship, continue to provide educational options and access for a number of young black students. One of these institutions, the University of Arkansas at Pine Bluff, has begun to direct its attention and resources toward developing more effective teacher education programs. Several weeks ago, I shared with my colleagues information with regard to UAPB's Educational Warranty Program, which provides assistance to teacher education graduates for 3 years after matriculation. The university has the distinction of being the first and only traditionally black institution—among only five other universities across the country—to implement this program. With Dean of Education Dr. George Antonelli and Chancellor Dr. Lloyd Hackley at the helm, UAPB is emerging as an innovative force in the field of teacher education.

Dr. Hackley has written a thoughtful and timely paper entitled "The Decline in the Number of Black Teachers Can Be Reversed," which will appear in the fall issue of "Measurement: Issues and Practice." I ask that Dr. Hackley's article be printed in the CONGRESSIONAL RECORD so that all my colleagues can benefit from his insight and research.

##### The paper follows:

##### THE DECLINE IN THE NUMBER OF BLACK TEACHERS CAN BE REVERSED

Currently, America is engaged in a renewed thrust toward educational excellence. It has become clear that a large number of youngsters have been allowed to move through our education systems without having acquired sufficiently high levels of literacy and mathematics skills. Most states have begun to study their education systems and to implement recommendations designed to improve drastically educational outcomes from pre-school through postsecondary institutions. Herein lies a dilemma: The drive toward improved educational standards is catching unprepared thousands of persons who currently, through no fault of their own, are ill-equipped for higher standards and greater rigor. Unlike previous eras, which saw many persons from deprived cultures overcome higher academic requirements with motivation and a firm grasp of the "basics," many of today's youngsters have had their motivation to strive weakened by the same process that undereducated them. The dilemma stated above is exacerbated considerably by the real national need to improve educational quality. Stated often recently, the title of the dilemma is "Excellence and Equity."

Among other problem areas, serious questions have been raised about the quality of graduates leaving our teacher education programs and the relationship of their competence to the effectiveness of public schools. The public has demanded finally that schools of education fulfill their stated commitments and responsibility. The legitimate demand for higher educational quality is causing many states to respond by focusing simply on raising admission and progression criteria and by implementing more stringent licensing and certifying examinations. Such actions alone will not bring

about higher quality in our teacher education programs. Certainly limiting admission to those students who already are well educated may give the appearance of an improved program. A more responsible response, however, must take into consideration the current state of affairs in education and the problems in academic programs in secondary schools and the general education component of university curricula so that enhanced academic abilities are developed in larger numbers of students. Raising academic hurdles before the education is improved that comes before the hurdles will have unanticipated outcomes for the entire teaching profession.

One of the tragic consequences of America's drive toward educational excellence is the serious decline it is causing in the number of Black teachers employed in America's school systems. Projections from current statistics indicate that within a decade, there will be a very low percentage of Black teachers in America's schools. A cursory look at current productivity levels, retirements and changes in careers bear out dire predictions.

As current teachers grow older and retire, the racial composition of the teaching force will change. Since the beginning of competency testing in Louisiana in 1978, only 15 percent of the 1,394 Black students from public institutions who took the NTE achieved a passing score (Donald Kauchak, *Phi Delta Kappa*, May, 1984, p. 627.) In 1981, Florida certified approximately 200 Black teachers out of an overall total of 5,500, a Black representation of 3.6 percent. If pass rates do not improve, projections of 1986 Texas teacher education graduates indicate that Black teachers will constitute less than one percent! (Emphasis mine) (G. P. Smith, *AACTE Briefs*, November, 1984.)

The specter of the NTE is very probably scaring Black students away from the teaching profession, since they are aware of the poor performance Blacks are achieving on the examination. The percentage of Blacks sitting for the examination in Louisiana declined from 31 percent in 1978 to 13 percent in 1982. During the period 1979-80 to 1981-82, teacher education enrollments at the two largest Predominantly Black Institutions declined at the junior level by 32 percent and at the senior level by 49 percent. (Kauchak)

It is our conviction at the University of Arkansas at Pine Bluff (UAPB) that many more Black students are intellectually capable of profiting from a college education, but there is a greater need to remove the effects of educational deprivation that resulted from weak educational programs in secondary schools. The ability to perform well on standardized academic achievement examinations, to make satisfactory progress in college and to achieve a qualifying score on such "follow-on" examinations as the NTE are related for the most part to quality education in public school in a core of courses that include the five "basics"—reading, mathematics, language arts, social studies, and science—as well as literature, history, philosophy, foreign language, and fine arts—the education on which we supposedly focus from kindergarten through the sophomore year in college.

Rather than merely lament the inevitable, we at UAPB have implemented an ambitious, comprehensive plan designed to make long-term improvements in the situation, at least in one state. As we began our effort, nearly four years ago, certain fundamental propositions were kept in mind: First, it is

absolutely essential that America's education system be improved dramatically, including especially those units which produce teachers.

Second, the students who choose to major in teacher education nationally have the lowest average achievement scores in each high school graduating cohort.

Third, the decline in educational quality in America has been accompanied in particular by a decline in the number of courses students are required to take in the liberal arts, sciences and humanities, both in public schools and in postsecondary institutions.

Fourth, there is a greater relationship between the quality of education students have received in basic skills and in liberal arts, sciences and humanities from kindergarten through the sophomore year in college and the major portion of the NTE than there is between professional education courses and the NTE.

Fifth, Black students are not genetically incapable of performing well on standardized examinations of academic achievement.

Sixth, it is not acceptable to have an education system evolve that is not staffed by persons who represent the entire socio-economic structure of this country.

At UAPB, the effort began on campus where schisms existed between the Division of Arts and Sciences and the Division of Teacher Education. The chief executive officer made it clear to all faculty and staff that education from kindergarten through the sophomore year in college was assessed very directly by the NTE. Further, it was explained that most "follow-on" examinations, such as the NTE, the Nursing Licensure Examination, and the Army ROTC test, for example, indicate considerably more about the totality of the educational quality of the entire university than they do about a particular program.

Step two consisted of a complete academic program review of the entire Teacher Education Division, with a view toward establishing current, relevant curricula, admissions criteria, progression controls, and graduation standards. This allowed staff in teacher education to assess the level of education of each candidate prior to allowing admission into the professional education sequence, and to indicate the areas in which students needed assistance in order to meet standards. All professional education courses have been transferred to the Division of Teacher Education, even those secondary education methods courses, such as mathematics—education, which formerly were housed in Arts and Sciences. The current educational level of students requires a reduction in courses in methods and pedagogy and an increase in liberal arts courses to produce graduates who are better educated over-all. It is much easier to improve teaching techniques on-the-job than it is to improve basic skills and subject matter content.

In an effort to make certain that sufficient resources were directed into those areas in which students needed special academic assistance, and to make certain that adequate academic progression safeguards were operational, the third step was to organize UAPB into two units, an upper and a lower division. The lower division was named University College. The "college" has administrative responsibility for initial academic assessment, advisement, placement, basic skill development, tutorials, and for assuring that general education requirements and other academic courses and standards are met before students are al-

lowed to move into the upper division, or major academic programs.

In the fourth stage, the chief executive officer became personally involved in conditioning the form the new state educational initiatives would take so that the drive toward excellence would include safeguards for equity and would eliminate situations which prevent Black students from real educational achievements. In this regard, the Chancellor served on both the committee formed to write new accreditation standards for Arkansas' public schools and the Quality Higher Education Study Committee. On both committees, the Chancellor was an advocate for those standards which would make certain that students not be allowed to move very far in the school system before having their educational progress assessed and having deficiencies corrected. In particular, standards were recommended to assure that the five basics—reading, mathematics, language arts, social studies and science—as required for competency would be required of all students prior to the ninth grade. Minimum competency assessments were established at the end of the third, sixth and eighth grades rather than at the end of high school, as is generally the case in other states which require such an examination. Although there is some reluctance to admit it, records indicate that following integration, there was a drain of high quality students from Traditionally Black Institutions to Traditionally White Institutions, just as took place in athletics. Thus, the Chancellor involved himself in efforts to improve educational outcomes in public schools not only to improve generally the education received by Black students, but also to improve the quality of the pool of students who were enrolling at UAPB.

In addition to the Chancellor's efforts, UAPB's Dean of Education and a UAPB student (the only student appointed) served on the Arkansas Teacher Education, Evaluation and Certification Committee.

Step five consisted of the implementation of workshops, seminars, and special courses in test-taking techniques to assist students in translating general knowledge into responses required to perform well not only on the NTE, but also on other standardized examinations of educational competence. Another aspect of these activities was to reduce test-anxiety by indicating certain routine pitfalls and by simply familiarizing students with various test formats.

In step six, we instituted UAPB's Educational Warranty, the first TBI to initiate such, and only the sixth university in America to do so. Although the warranty deals primarily with those graduates who have passed the NTE and have been employed in a school system, it must be seen in the entire educational context within UAPB's overall educational initiatives.

The warranty is the end of a process that begins when a student enrolls at UAPB. Thus, only after the student has been treated to University College, testing seminars, special classes, an advising system, and a close interactive system that involves our counseling center, Arts and Sciences Division, and the Division of Teacher Education will the warranty be applied. Students who do not participate in required functions will not be granted the warranty. The specific conditions of the warranty are:

1. The Warranty can be activated by either the student or the school district.
2. After a problem has been identified in either delivery or the content, a teacher training team will meet with the student.



3. The teacher training team will be composed of the Dean of the Division of Education, student advisor, content specialist from Arts and Sciences and/or procedural specialist from the Division of Education, as well as the local school district supervisor.

4. The teacher training team will study the situation and make recommendations regarding course work, consultation or counseling.

5. A baseline will thus be established from which a gain improvement will be documented.

6. Our Warranty will cover professional aspect of our students for 3 years after graduation.

Because of the requirement to specify weaknesses in each graduate, principals and superintendents will be required to improve their evaluation techniques and there will be a decline in arbitrariness and capriciousness. Since school administrators will be required to specify weakness in our "product," we in the University will be able to improve our preservice training, including arts and sciences components of the total educational curriculum.

In fall 1984, UAPB hosted and co-sponsored a conference entitled "Educational Excellence and Equity." The primary purpose of the conference was to communicate accurately to 100 carefully selected individuals some of the fundamental causes of the stall in Black progress in education in Arkansas. The conference recommended that we establish a continuing conference so that individuals would be connected with the university and would be provided with information and other assistance needed to deal in the communities with the multifaceted problems facing Blacks in education.

UAPB initiated also an Advocacy Center for Equity and Excellence in Teacher Education. The center was established with a grant from UAPB's Education Excellence Fund. The program is designed to address specifically the poor showing by Blacks on standardized examinations, to increase the number of Black teachers and to improve the performance of Black students and Black teachers in education and on standardized examinations. The program will be conducted with free workshops for teachers, students and parents and will deal with matters such as test-taking, study skills, core curricula and gifted talented programs.

#### CONCLUSION

There are some very strong indicators that our approach is educationally sound. In 1980 and 1981, UAPB pass rates on the Nursing Licensure Examination, at first sittings, were 40% and 55.5% respectively. In the three most recent sittings, the pass rates were 67%, 95% and 100%. Our ROTC students achieved a 100% pass rate on the examination which the Army had predicted would fail 75% of UAPB's students because the passing score was set at the equivalent of 17 on the ACT and UAPB's average last year was 10.5. More specifically for teacher education, our pass rate on the NTE increased from 42% in 1983 to 73% in 1984. UAPB has led the state in enrollment growth for three consecutive semesters: 4% in summer 1984; 7.6% in fall 1984, and 9% in spring 1985. We experienced a 17% increase in white student, on-campus enrollment in fall 1984; and in spring 1985, we have 190 more Black students than we had in spring 1984.

I would be among the first to state that the quality of education has suffered during the past two decades and that teacher education programs in particular are badly in

need of modification. I am convinced also, however, that one does not knowingly solve one problem by creating another. Educational leaders who would claim to be responsible would not attempt to improve the quality of teachers by focussing entirely on increasing hurdles required to enter the profession. Not only would program quality remain low, but also there could very well be an escalation of the teacher shortage among Blacks, women, and persons from lower socio-economic levels. If the objective is simply to reduce the number and social, economic and racial spectrum of persons going into the teaching profession, then higher admission, progression, graduation and certification requirements implemented without having made sure that all students have been afforded a quality education will suffice. If, on the other hand, the objective is to improve the quality and quantity of persons going into and remaining in the field, an entirely different set of solutions is in order.

Such improvement cannot be developed by confining one's attention to the University. Not only will the improvement in the quality, quantity and population spectrum require participation from all segments within the University, but also legislatures, public schools, parents and related groups must be involved in the reformation. ●

#### CONTINUED BUSINESS SUPPORT FOR EXIMBANK DIRECT LOAN PROGRAM

● Mr. HEINZ. Mr. President, I would like to bring to the attention of my colleagues a letter written by Mr. Jerry J. Jasinowski, executive vice president and chief economist of the National Association of Manufacturers.

Mr. Jasinowski is concerned about the Exim Bank funding provisions in the recent Senate budget reduction package. Specifically, he questions the effectiveness and efficiency of the I-MATCH proposal which would replace the Bank's direct loan program.

As we all know, the Export-Import Bank was created to encourage more aggressive American marketing and to improve U.S. exporting in foreign markets. Given current world conditions, it will inevitably be a major part of any comprehensive trade program we design. Today, with trade wars threatening in the West as well as the East, and with tremendous budget deficits weakening our economy, our ability to compete and trade internationally becomes a major determinant of this Nation's economic and political well-being. The importance of programs which enhance our world exporting abilities cannot be understated.

Eximbank's direct loans are one such program. In contrast, there are serious questions concerning the I-MATCH Program and its ability to provide adequate funding for exports. As Mr. Jasinowski points out in his letter, the "I-MATCH Program is distinctly inferior to the direct loan program." In addition to being awkward and unworkable, it would effectively cost the Government \$40 million more

per year than the current direct loan program. Instead of creating budget savings, the new program would actually contribute to the deficit in real terms.

The United States needs an active, constructive approach to its international trade problems. As Mr. Jasinowski also notes, Eximbank can be a strong, positive component of a comprehensive export policy. Mr. Jasinowski's correspondence, on behalf of the National Association of Manufacturers, indicates that there is broad business support for the Bank and its current direct loan program. I hope the conferees on the budget resolution retain the direct loan program, and I ask that the text of Mr. Jasinowski's letter be printed in the RECORD.

The letter follows:

JUNE 12, 1985.

HON. PETER V. DOMENICI,  
U.S. Senate, Dirksen Senate Office Building,  
Washington, DC.

DEAR SENATOR DOMENICI: We remain troubled by the so-called I-match proposal contained in the Senate budget reduction package which would replace Eximbank's direct loan program. We are concerned that I-match is an inferior export promotion proposal and would actually widen the deficit.

To claim that the budget deficit is reduced by substituting I-match for Exim direct loans takes advantage of accounting practices in the budget process which do not recognize that Exim credits are loans which are repaid with interest. This very point was recognized by Exim President Draper in March 20 testimony before the Senate Appropriations Subcommittee on Foreign Operations when he stated: "My feeling is that the Eximbank direct loans should never have been in the budget in the first place because they are authorizations of loans that collect interest . . ."

In the same testimony, Mr. Draper went on to estimate that I-match as proposed by the Administration would cost the government \$40 million more annually than the equivalent direct loan program.

In addition, I-match is distinctly inferior to the direct loan program. I-match provides no way for the U.S. to respond to the increasingly aggressive use of mixed credits. Real questions exist about the willingness of commercial lenders to participate in the program. Hence, the proposal relies almost completely on the Private Export Funding Corporation (PEFCO), a small financial institution designed to supplement Exim's direct lending. And perhaps most objectionable, the budget savings supposedly achieved represent little more than accounting gimmickry rather than real budget savings.

A key component of a positive trade program in this country is to maintain a strong Exim direct loan program, certainly until such time that an international agreement can be reached which genuinely and demonstrably restrains official credit practices of other nations. With other nations still supporting 25-50% of their manufactured exports through official financing, we do not feel that time has arrived. It is for this reason that we would prefer to see a budget reduction incorporating the approach to Eximbank funding adopted by the House.

Development of a credible deficit reduction package is vital to restoring U.S. inter-

national competitiveness. We all recognize that the reduction of the federal budget is of paramount importance in dealing with the high value of the dollar. We support that effort. But the U.S. Government is kidding itself if it thinks that this nation's international competitiveness problems will be solved simply by deficit reductions. There is a whole range of other policies that are essential to improving trade performance, and the Eximbank direct loan program is one of those.

Foreign firms are not likely to give up markets they have gained over the past four years without a fight. In fact, in the event that exchange rate realignment helps to close the competitive gap between U.S. and foreign firms, we can expect to see greater, not less, foreign reliance upon export financing to maintain market positions. To give up the proven Eximbank direct loan program, which is universally understood and accepted by domestic and foreign users, for an unknown and more expensive program such as I-match makes no sense.

When the Eximbank functions properly, it is an effective tool in U.S. export expansion benefiting not only principal exporters but also their suppliers located throughout the country. Much has been made of Exim funding going to a few large exporters. In fact, Exim backs up dozens of major American exporters of capital goods products. These firms in turn have literally thousands of major suppliers located nationwide. For example, in a typical nuclear power plant export in the \$1 billion range, 52% of the project value goes to a large number of major suppliers located in approximately 30 states. For one commercial aircraft company, as many as 3,000 major suppliers are typically involved with the sale of U.S. planes overseas. And in the international construction industry, a study has just been completed demonstrating similar "ripple" effects through the U.S. economy. In short, there are a lot of "invisible exporters" in this country who would lose substantial business orders unless Eximbank existed to counter the aggressive financing practices of other nations.

We would be glad to discuss our views on this subject in more detail at any time.

Sincerely,

JERRY J. JASINOWSKI,  
Executive Vice President and Chief  
Economist, National Association of  
Manufacturers.●

#### FROZEN EMBRYOS: POLICY ISSUES

● Mr. GORE. Mr. President, I want to bring to the attention of my colleagues an article that appeared in the June 13, 1985 issue of the *New England Journal of Medicine*, one of our Nation's most prestigious medical journals. The article is authored by three distinguished professors at the University of California, San Diego.

The article, entitled "Frozen Embryos: Policy Issues," discusses the myriad social, ethical, and public policy considerations raised by embryo freezing, one of the astounding new reproductive technologies that are so dramatically affecting our world.

Recent developments in embryo technology now enable us to freeze, store, and then transplant fertilized embryos. While this new technology

offers many people, who might otherwise remain childless, the wonderful opportunity to become parents, it clearly raises a number of serious ethical questions that must be addressed by our society. For example, under what conditions should this technology be employed, and when, if ever, should it be prohibited? Moreover, what is the status of the embryo itself once it is removed and frozen? The article concisely presents some of those issues.

In considering the implications of this new technology, the article also calls for the creation of a national commission to examine these and other critical bioethical issues. I especially want to call this portion of the article to my colleagues' attention.

Last month, I introduced S. 1255 to establish the National Commission on Bioethics. The purpose of the commission is to examine precisely the questions discussed in the article. A national bioethics commission is needed to enable our society to start the search for answers to the many difficult and complex dilemmas that the application of new medical technologies to human beings is beginning to create.

I ask my colleagues to give careful consideration to the issues raised in this article.

Th article follows:

#### SPECIAL REPORT—FROZEN EMBRYOS: POLICY ISSUES

Freezing of live human embryos in cleavage stages was highlighted in the U.S. media a year or so ago when an American couple died in a plane crash, leaving an heir in the United States and two frozen human embryos in an infertility center in Melbourne, Australia. Media attention focused on the legal status of the embryos with respect to inheritance, but other broader issues have been cited as well. Because freezing of embryos as an adjunct to external human fertilization (in vitro fertilization) is beginning to be done in the United States, such issues will have to be addressed, as they have been in both Britain and Australia.

In this article, we examine the issues associated with freezing of human embryos and the suggested approaches to resolve them. Our chief conclusion is that the United States should, very promptly, launch a comprehensive deliberative process with respect to further developments associated with in vitro fertilization, before establishing binding public policy at any level.

Since the first birth following in vitro fertilization occurred in England in 1978, the original procedure or modifications of it have been adopted by a rapidly increasing number of infertility clinics around the world. With respect to frozen embryos, the first births following uterine implantation of a frozen and thawed embryo have been reported in Australia and the Netherlands. The available information indicates that three normal infants (including one pair of twins) have been born in Melbourne after freezing and thawing, and two other twin infants born in the Netherlands may also have been from frozen and thawed embryos. Two similar pregnancies terminated spontaneously, and several others with unknown outcomes have been mentioned. No such births have yet been recorded in the United

States, but at least one clinic has acknowledged that it has trials in progress.

Freezing of embryos is attractive in connection with in vitro fertilization for several reasons. First of all, pharmacologically induced superovulation has been found to increase the efficacy of the in vitro fertilization procedure. Frequently, more fertilized eggs are produced than can be usefully transferred to the uterus in a single attempt. Surplus embryos, if frozen, can be used in later attempts if the first transfer does not result in pregnancy—which is more often the case than not. Freezing can avoid the discomfort and cost of repeated laparoscopy.

Secondly, at least theoretically, freezing can further increase the efficacy of in vitro fertilization, which results in much less than one birth per four embryo-transfer attempts. The pharmacologic induction of superovulation may, through indirect hormonal effects on the uterus, reduce implantation rates. If so, frozen storage of embryos could allow transfer to the uterus in a later, pharmacologically undisturbed cycle, with possibly higher efficacy.

Thirdly, freezing allows greater latitude and logistic convenience in determining the time of transfer to the uterus. It expands treatment options as well.

#### DOES FREEZING RAISE ISSUES BEYOND THOSE OF IN VITRO FERTILIZATION?

Freezing of human embryos raises two issues that go beyond those raised by in vitro fertilization in general. The first concerns a possible increased risk to the embryo as a result of thermal manipulation. The second arises from the fact that freezing indefinitely lengthens the period of embryonic existence outside and independent of the maternal body. This heightens the autonomy of the embryo and increases the options regarding its subsequent fate.

With respect to the risk to the embryo, there are only limited data on human embryos, since systematic study has been inhibited by policy restrictions on their investigational use. Beyond the Melbourne experience already referred to, there is only brief mention of continued development of frozen and thawed embryos under culture conditions. The limited number of observations provide no statistically reliable conclusions about the risk to offspring associated with transferring frozen and thawed human embryos back to the uterus for development.

Considerable data are available, however, on other mammalian species. Research on cryoprotection and freeze-thaw regimens has led to a steady improvement in methods. Over the past decade, an increasing proportion of frozen and thawed embryos of both farm animals and laboratory mice have remained viable and normal after transfer to the uterus. For example, as many as 90 percent of frozen eight-cell mouse embryos develop in vitro after thawing, and fully two thirds of frozen and thawed embryos transferred to the uterus yield offspring, with no evidence of an abnormality attributable to freezing and thawing.

Data are also available on possible deterioration of embryos in long-term frozen storage. In a recent study of eight-cell mouse embryos exposed to the equivalent of 2000 years of radiation at normal background levels, there was no detectable effect on their development.

Animal studies, therefore, are reassuring with respect to the risk of abnormalities induced by freezing of embryos. It is not clear,



however, whether these studies can be projected directly to the human species. The criteria for judgment of embryo damage in human beings are necessarily more stringent because of special concern about effects on the human brain and because of ethical considerations.

The second issue raised by freezing is that, in providing an indefinite but reversible cessation of development, it not only offers advantages but also introduces options that may or may not be beneficial. In effect, freezing not only disconnects an embryo from its production cycle in the donor but greatly facilitates transfer to non-donors, thereby expanding the possibilities enormously.

Disconnection from the particular cycle of the donor offers other benefits to the donor. If the first effort has been successful, frozen spare embryos could be used for a second child; in vitro fertilization does not cure infertility (for example, blocked oviducts) but merely circumvents it. The second effort could be made at the convenience of the patient, permitting family planning. If the success rates of in vitro fertilization were greatly enhanced, a young fertile couple might wish to store frozen embryos obtained through in vitro fertilization early in their marriage. By practicing effective contraception (sterilization?) they could request transfer of their own frozen and thawed embryos when they chose to.

It has also been suggested that one cell might be removed from an early embryo, and the remainder frozen. The one cell might be used for genetic diagnosis when a family history appeared to require it. If the diagnosis was favorable, the remainder of the embryo (which according to animal experiments would presumably be able to continue normal development) might be returned, after thawing, to the uterus of the donor.

Isolation of embryos from the genetic parents as a result of embryo freezing was illustrated in the Melbourne case. The embryos' only chance of continued development in this situation depends on transfer to the physiologically prepared uterus of another woman. In a recipient who was anxious to have a child but unable to, this would in effect be embryo adoption—an option also available whenever spare embryos are produced that the donor no longer wants. There has been one report of the successful transfer of an embryo (not previously frozen) to the uterus of a nondonor. This required that the menstrual cycles of the donor and recipient be matched to ensure that the recipient's uterus was physiologically receptive. Frozen embryos can be thawed and transferred at the optimal time in the recipient's cycle. The same applies to any transfer to nondonors, whether for purposes of surrogacy or for transfers over long distances, as might be useful in extraterrestrial colonization.

#### SOCIAL AND ETHICAL IMPLICATIONS OF FREEZING

The technical possibilities generated by freezing of human embryos raise major social and ethical issues. Perhaps most fundamental is the fact that lengthening the embryo's external existence increases its independence from its parents. In an abortion the embryo's survival is immediately opposed to the interest of a woman who wants to terminate the pregnancy. In in vitro fertilization, embryo survival and maternal interest are not opposed, since the embryo's development, at least theoretically, can continue in a uterus other than that of the genetic mother. Without freezing, however,

the option is restricted, since the external embryo ordinarily develops for only two to three days—generally too short a period to locate a synchronized recipient.

The frozen embryo, moreover, not only acquires greater independence but is unchanged over an extended period. The connection to the parents may be further attenuated by time. For example, the embryo will presumably not undergo substantial biologic changes over a period of 30 years, but the egg donor will be aging and losing the capacity to receive the embryo back for intrauterine nurture. Does the passage of time alter the social, moral, and legal status of the frozen embryo? Is the donor's status as mother and decision maker changed?

Another important issue, raised earlier by in vitro fertilization itself, is heightened by embryo freezing: Should research be carried out on early human embryos? Freezing allows accumulation of embryos for later use in research, which is important both logistically and for the provision of increased numbers for statistically reliable comparisons. However, the impact of freezing on research is not easily assessed. Britain's committee of inquiry concluded that the practice of freezing would actually reduce the number of spare embryos available for research. Indeed, this expectation was one justification for the committee's decision (by a nine-to-seven majority) to sanction deliberate creation of human embryos for research.

Whether in terms of research or of other possible uses of human embryos, the issues raised by freezing go beyond those of in vitro fertilization itself. Given the potentially indefinite duration of the frozen state, it is desirable to specify permissible uses in advance. Without freezing, options are restricted by the short time span of external development. With freezing, choices may be presented months or even years after storage. Also, these are the matter of the relative decision-making roles of the mother, father, professionals, and government. Even more complex is the question of the social, moral, and legal status or personhood of the early human embryo. Though the embryo is frozen and thus for the moment inanimate, both the embryo and the issue of its status remain very much alive.

#### PUBLIC POLICY CONSIDERATIONS

The inheritance rights of the human embryo were raised publicly with respect to the two frozen embryos in Melbourne, but does an external human embryo have any rights at all? Embryo status and rights have been a major issue in connection with abortion. In vitro fertilization presents the issue in a new context, one in which the mother's rights are not nearly so immediately involved. The frozen embryo, isolated in developmental stasis for an indefinite period, raises a number of difficult questions that appear to be unprecedented.

For example, to whom do such embryos "belong"—to living parents, to the estate of deceased parents, to the storage facility that maintains them, to the state? If they are not "property," what are their social relationships? Who is responsible for their welfare? Do they, under some circumstances, become wards of the state? For the first time, we are directly confronting such questions about embryos as immature entities that are capable of maturing into adults but are physically independent of their parents.

Frozen human embryos are not the only novelty that may be presented to policy makers by the technological progression

under way in human reproduction. What should be the broad objectives for public guidance and policy in this emerging complex area? What criteria should be used in choosing among the proposed alternative policies? Before examining specific steps, a number of considerations are worth mentioning.

(1) The early human embryo has only recently become visible and susceptible to intervention. Public bodies in several countries agree that the human embryo is entitled to "respect," but they have articulated no consensus on what "respect" means as a limit to specific treatment or use. Moreover, changing states in the developmental transition from a fertilized egg to an infant have not been distinguished.

(2) In the United States adults have constitutionally protected rights to reproductive choices without interference by the state. Moreover, an embryo formed from the gametes of an adult couple has a strong continuing relationship to the couple, who are recognized socially and legally as the parents. The role includes a *prima facie* involvement of genetic parents in decisions about the welfare of their offspring.

(3) Production of offspring is recognized and approved as a legitimate adult aspiration. Infertility is regarded as a misfortune and, increasingly, as an impairment of health. Despite a world tending toward overpopulation, the majority of U.S. citizens favor medical efforts (including in vitro fertilization) to relieve or circumvent infertility in married couples.

(4) The approved medical emphasis on reproductive health also appears to extend to mitigation of genetic disease and birth defects. Thus, in vitro fertilization is part of a broader front of genetic and developmental techniques.

(5) Effective and safe application of scientific knowledge to medical practice (e.g., in vitro fertilization) requires suitable clinical trials. Such trials are a form of experimentation on human subjects and require special attention to ethical principles and human rights.

(6) Public policy that is unclear or deficient with respect to emerging reproductive options puts an excessive burden on the courts, which are not necessarily well equipped to resolve issues that are simultaneously ethical and technical. A suitable deliberative and nonconfrontational forum may be better able to propose policies to anticipate and minimize legal controversy and conflict.

(7) In decision making with respect to health, patients and physicians are the primary participants—particularly in dealing with details of individual cases. Where a public interest must be brought to bear, it should not displace or constrict the parental and professional roles.

(8) The medical interest in better reproductive health rests on a half century of scientific advance. There are circumstances that justify restrictions on research, especially involving human beings, but restriction carries its own risk and cost, which must also be assessed.

#### THE IMMEDIATE POLICY OPTIONS

What public-policy steps are needed now to deal with embryo freezing and other foreseeable technical advances? In general, public-policy options in response to new techniques range from active promotion through *laissez faire* to statutory prohibition, with many intermediate choices. When

constraint is thought to be necessary, a regulatory process is initiated.

Clinical use of in vitro fertilization, including embryo freezing, began several years earlier in Britain and Australia than in the United States. Similarly, public-policy formation with respect to these matters began earlier in Britain and Australia, and the two countries have conducted studies and taken some action. The British government's committee of inquiry eschewed total prohibition of embryo freezing or of in vitro fertilization but proposed "the establishment of a new statutory licensing authority to regulate both research and those infertility services which we have recommended should be subject to control." The committee spelled out a number of conditions and limitations—for example, that human embryos should not be cultured or subjected to investigation more than 14 days after fertilization, and that any unauthorized uses of a human embryo in culture should be regarded as a criminal offense. In fact, the committee made 63 recommendations, some of which bear on questions raised here. The recommendations amount to a full-fledged regulatory system, both for clinical reproductive services and for research using human embryos. Comparable but not identical steps have been taken in Australia. In the United States, the only government report on in vitro fertilization was issued in 1979 by a short-lived Ethics Advisory Board within the Department of Health, Education, and Welfare (now Health and Human Services).

That department's regulations on fetal research require approval by an ethical body before any research on in vitro fertilization can be supported by the department. When such a research proposal was accepted on scientific grounds by the National Institutes of Health, the secretary asked the Ethics Advisory Board to examine all aspects of the matter with the widest possible public participation. The board concluded, among other things, that research on embryos less than 14 days after fertilization was ethically acceptable though there were also valid ethical objections. The board avoided dealing with other issues, and in any case, freezing was not considered an option at that time. Four successive secretaries chose not to act on the report of the Ethics Advisory Board (presumably because of political tension surrounding the abortion issue), and the board itself was dissolved not long after it had issued the report. In consequence, a de facto ban on federal support of in vitro fertilization research has existed since then. The history reflects the controversial nature of reproductive options, including in vitro fertilization, in the current U.S. political climate and, possibly, the reluctance of policy makers to become involved in another divisive struggle similar to that over abortion.

Meanwhile, there has been growing concern in the United States about a related biomedical advance: gene transfer. This is considered to be a possible approach to genetic disease that also carries unevaluated potential for eugenic application. Congressional hearings on this subject were held in 1982. Subsequently, legislation was passed by the House to create a national deliberative commission on the subject. More recently, the same House subcommittee held hearings on in vitro fertilization and embryo freezing, and its chairman, then Congressman (now Senator) Albert Gore, Jr., indicated an interest in having these subjects included in the charge to a national commission as well.

These events in Britain, Australia, and the United States suggest a common view that a comprehensive deliberative approach should precede specific policy decisions in the complex and controversial area of reproductive options. Does the effort already made abroad render superfluous a comparable deliberative effort in the United States? Certainly, the British and Australian experience will help to illuminate the U.S. discussion. It is equally clear, however, that the circumstances here—social, legal, and political—are sufficiently different to require independent deliberation. Moreover, the deliberative process is itself important, not only because of the possibility of generating new approaches, but because it can better inform all parties, help move toward a consensus, and establish the credibility of the process in the national community.

One of the first items on the agenda of a national commission clearly should be to determine whether the government is to be involved at all in decisions about new reproductive options and, if so, at what level. In the United States, unlike Britain, the usual locus of authority for laws relating to reproductive matters is the state, not the national government. It is not unlikely, therefore, that state legislatures may wish to consider regulation of in vitro fertilization or embryo freezing. The possibility is a strong argument for establishing a national deliberative body to inform policy development at all levels of government. Such a commission should encourage deliberation by all groups, public and private, so that the pluralism of our values can be reflected both in whatever public policy emerges and in the mechanisms for its implementation. An underlying consensus will be necessary to buttress any public policy in so fundamental a matter as human reproduction.

Assuming that a national focus is being established, are additional steps required? Major concern about freezing centers on the uses to which frozen and thawed embryos might be put, beyond transfer to the uterus of the egg donor. If a national commission were established, it would be several years before recommendations could be made and considered. This has been the timeframe in both Britain and Australia. Meanwhile, increasing numbers of frozen embryos may be produced, with increasing uncertainty about their status and fate.

To minimize the problem, we suggest the following steps. The clinical community involved with in vitro fertilization should voluntarily limit use of embryo freezing to the initial purpose—i.e., to circumvent infertility in patients. Freezing should be carried out only with surplus embryos obtained from a clinically justifiable laparoscopy, and on thawing, embryos should be returned to the uterus of the donor, usually after an unsuccessful first attempt to transfer unfrozen embryos. Thawed embryos should be transferred to a nondonor only with the consent of the donor and an institutional review board or hospital ethics committee. Frozen embryos should be kept in storage for not more than five years or until the establishment of relevant public policy. Under such a voluntary arrangement, experience could be gained with freezing through clinical trials as an adjunct to in vitro fertilization but without public anxiety that other purposes might be served that had not been carefully considered. The purpose of the arrangement would be to avoid precipitate limitation of freezing for purposes that appear to be publicly acceptable, out of suspicion and fear of unsanctioned purposes, such as uncontrolled experimentation.

## ARKANSAS WINNERS OF THE 36TH ANNUAL INTERNATIONAL SCIENCE AND ENGINEERING FAIR

● Mr. PRYOR. Mr. President, each of my colleagues is aware of the annual International Science and Engineering Fair [ISEF], dedicated to inspiring greater interest among students in the fields of pure and applied science. This year's competition, held the week of May 12 through May 18 in Shreveport/Bossier City, LA, marked the fair's 36th year. I am especially proud to recognize the three project winners from my State, all of whom were awarded multiple honors in the competition.

Todd Harrison Rider, a 16-year-old junior at Old Main High School in North Little Rock, was the recipient of several honors in the engineering category, for his project entitled, "How Can Rocketry Staging Be Improved?" Todd sought to design and evaluate a more efficient system of rocketry staging. For his efforts, this young man was presented the First Award sponsored by the American Astronautical Society, the National Aeronautics and Space Administration's [NASA] First Award, and the General Motors ISEF Fourth Award.

In the physics division, 17-year-old Rudolph (Rudy) J. Timmerman, a senior at Wickes High School in Wickes, was presented the First Award sponsored by the American Association of Physics Teachers, the General Motors ISEF First Award, and from the American Vacuum Society (Vacuum Technology Division), yet another First Award. Rudy's project, involving the Rutherford alpha scattering experiment, performed this process using new techniques to detect and count alpha particles. The gathered data was used to verify the Rutherford scattering formula. The magazine, *Scientific American*, plans to publish Rudy's project in a later issue.

The third Arkansas winner at this year's competition was also a multiple honoree in the engineering category. Eighteen-year-old Eugene Sargent, of Fayetteville, AR, received First Awards from the Bell Electronic Systems Division, General Motors Corp., the Junior Engineering Technical Society, and the General Motors ISEF Division. This Fayetteville High School senior was also presented a Third Award sponsored by the American Intellectual Property Law Association and the Grand Award from the Patent and Trademark Office/U.S. Department of Commerce. Eugene developed a system for the acquisition of three-dimensional images. The excellence of his project secured his slot as one of two winners of the Glenn T. Seaborg Nobel Prize Visit Award. The recipients of this prestigious honor travel to Stockholm, Sweden, all ex-



penses paid, to attend the Nobel Prize ceremonies in December. I am extremely proud that this outstanding young man captured this top honor from among 618 student winners from each State and 14 foreign countries.

Each of these fine young people is especially deserving of our recognition and continued support. My sincerest congratulations to Arkansas' three award-winning young scientists.●

#### NEW DEVELOPMENTS ON CYPRUS CAUSE FOR CONCERN

● Mr. LAUTENBERG. Mr. President, I rise to express my concern over recent developments in the occupied area of northern Cyprus, including the approval of a new constitution by the Turkish Cypriots and their holding of parliamentary and Presidential elections.

These actions represent an attempt by the Turkish Cypriots to consolidate their illegal republic in the occupied area of northern Cyprus. This goal was openly acknowledged by Rauf Denktash, landslide victor in the republic's first Presidential elections on June 9, who said, after casting his vote in northern Nicosia on June 23 that "This election completes the final circle in the establishing of this republic."

These actions violate the spirit of United Nations Security Council Resolutions 541 and 550, which declare that the attempt to create a Turkish Republic of Northern Cyprus is invalid and will contribute to a worsening of the situation in Cyprus. Moreover, attainment of this goal will not be helpful to the resolution of the Cyprus conflict. The continued steps to legitimize the secession of the Turkish Cypriot community from the Republic of Cyprus could seriously damage efforts of the U.N. Secretary General to bring about a fair and final negotiated settlement to the problems of the country by solidifying the Turkish Cypriot commitment to a separate state.

On a subtler level, the attempted establishment of a Turkish Cypriot Republic reinforces the separation of the Greek Cypriot and Turkish Cypriot communities which in itself is counterproductive to a negotiated settlement on Cyprus.

Despite these disturbing developments, I am encouraged that the Secretary General of the United Nations made public on June 11 his receipt of a positive response from the Greek Cypriots on Cyprus about their acceptance of a documentation which will provide the basis for a U.N. sponsored settlement. The documentation outlines how the negotiations will proceed, and is a positive step toward a resolution of the Cyprus conflict.

I sincerely hope that the holding of elections and the adoption of a Turkish Cypriot constitution will not

damage the search for peaceful resolution of the conflict on Cyprus.●

#### A NEW ERA FOR NATIONAL PARKS

● Mr. DURENBERGER. Mr. President, we have reached a watershed mark in policies related to the National Park System. Since its inception, the National Park System has grown from 35 units to 334 units which not only includes 48 national parks, but national monuments, national historic areas, national parkways, national recreation areas, national wild and scenic rivers, national preserves, national seashores and lakeshores, national scenic trails, and the national capital system here in Washington, DC.

In the 1960's and 1970's the public demand for recreation grew and the Federal Government responded by establishing over 125 new units of parks and recreation areas, setting aside bits and pieces of cities, rivers, lakes, hills, mountains, and plains to provide recreational opportunities for the American people.

The demand for recreation continues today—if you can do it outside, people are doing it. But the Federal Government's response is markedly different. We can no longer afford the expansion policies of the 1960's and 1970's. In 1980, Congress authorized the addition of 15 new units, 10 of these were part of the Alaska National Interest Lands and Conservation Act, the remaining five were monuments and historical sites.

In 1982, Congress established the Harry S. Truman National Historic Site, and in 1984 the Illinois-Michigan Canal National Heritage Corridor Act was enacted.

We're hard pressed to keep up with the recreational demands of the American public. Land acquisition has slowed, and while park facilities have been repaired and improved other resources within the park have suffered.

The Park Service has done a commendable job with limited resources. But the millions who visit the parks every year leave their undeniable imprint and we're hard pressed to keep up.

We're at a watershed—the beginning of a new era in how we fulfill the National Park Service's mandate to preserve and protect the wonderful resources of the parks for the enjoyment of present and future generations.

Mr. President, we have a new Director down at the National Park Service, William Penn Mott. He brings with him the wisdom of experience as well as new ideas—ideas on how to fulfill the Park Service's mandate in a new era.

Mr. President, I ask that Mr. Mott's speech at Yellowstone National Park on June 8 be inserted into the Record.

I would urge all of my colleagues to read his remarks and think about how we can best begin this new era.

The speech follows:

REMARKS BY WILLIAM PENN MOTT, DIRECTOR OF THE NATIONAL PARK SERVICE, BEFORE THE GREATER YELLOWSTONE COALITION, SATURDAY, JUNE 8, AT YELLOWSTONE NATIONAL PARK

It is with great pleasure and honor that I am here today to address such a distinguished and important gathering of people. You represent people who are concerned about and committed to one of the most important undertakings of humankind—the preservation of the natural world—a rapidly diminishing and finite resource.

Through the centuries before our time, civilizations with growing numbers of people and with ever advancing technologies have moved across the face of the Earth, leaving in their wake an increasingly transformed landscape. Sometimes good, sometimes bad. We have perhaps all too slowly, but certainly more surely, come to recognize the finite limits of the Earth. If there is any question, views from outer space have confirmed this fact. We have come to appreciate the importance of retaining some portion of our world in its natural state, not only for its sheer esthetic, spiritual, and emotional appeal, but more importantly to preserve for the future the opportunity to discover relationships and benefits to mankind, animals, and plants.

We all know that the geography on which we meet today represents the victory of an idea whose time had come. One hundred and thirteen years ago marked the legal recognition of an important idea by the establishment of Yellowstone National Park—the first of its type in the Nation—and perhaps even more importantly, the first of its type in the world. You all know the story of the proliferation of the idea—to the point where now there are about 2,618 national parks and equivalent reserves in 137 nations of the world. "One of the greatest ideas we ever had," as I believe Wallace Stegner once put it. Certainly, it is one of the greatest and noblest causes to evolve in the history of humankind. And you—we—are a part of its continuation.

But we must not rest on our laurels. No sooner than the first national park was born, and as others came forth to flesh out a budding system, problems and threats to their ideals—to their integrity and welfare, became apparent. Clearly, the new laws alone did not solely safeguard the budding system and its guiding ideal, nor will the old laws or the new laws of the future provide complete safeguards. There will and must always be eternal vigilance springing from those guardians who care, and that is what is represented by those assembled here today. Caring.

I want to talk more about the Yellowstone situation later. But first I want to step back and share some thoughts on the bigger picture—the National Park Service as an organization designed to protect the natural scene and to provide a means to accommodate the human enjoyment of it.

"... To conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

That's what the 1916 Organic Act, which established the National Park Service and the National Park System, mandated as a

purpose. The act is known well to most of you. Some of you know it by heart.

That act has been interpreted, dissected, written about, argued over, and given about every conceivable scrutiny one could imagine. I think that most who have been through those gyrations and exercises have generally agreed that the act boils down quite simply to some point of balance between preservation and public enjoyment. But that still doesn't totally solve the problem. What is the proper balance?

Let me suggest that there is an important part of that phrase which hasn't seemed, heretofore, to capture enough attention, and that is the last phrase which says, "... as will leave them unimpaired for the enjoyment of future generations." This phrase needs to be given much more weight in the equation, and by so doing, I want to say that I believe it means exactly what it says—unimpaired for future generations! Which I translate simply to mean as stewards we must not and should not use up the resource or diminish its inherent natural and historic values. When in any doubt, we must err on the side of preservation. Should we subsequently find ourselves wrong, we can always provide for more use. But over-use now or in the future will not let us easily restore a loss of resource value or character which, once gone, is irretrievable. Research can provide the data to establish the carrying capacity of a park limiting its use to protect its natural and cultural values.

This is not to say that we cannot and should not provide for public enjoyment of the park. It is my heartfelt commitment to see the NPS provide for the greatest amount of high quality public enjoyment of the resource that can be supplied. But we must be absolutely assured that we are operating, with no significant, and particularly no irretrievable, loss of resource quality.

There still remains a great challenge in the application of that magic "purpose" phrase of our Organic Act. We must identify the appropriate use capacities of the parks. But the tilt, if any, must be to the preservation side, if there is any doubt, until we are sure otherwise. I believe the National Park Service has a great and central challenge ahead in assuring that we manage our natural and historic resources in such a careful manner as to assure that we "leave them unimpaired for the enjoyment of future generations," and I want to provide major emphasis in this area. There is another subject that I want to share with you that relates to the historic beginning of the NPS which has to do with the phrase "Crown Jewels" (describe and complete story).

With these thoughts in mind, I would like to turn to our local environment—Yellowstone. The Greater Yellowstone Coalition has often made reference to the Yellowstone ecosystem as representing "the largest essentially intact ecosystem remaining in the temperate zones of the Earth." This is a critically important statement! Be that the case, it should tell us something. The area's special natural attributes, coupled with the threats to its integrity due to humankind's proliferating activities, demands national attention. We recognize our controversies. The management of the Park's elk and bison has been volatile for over 80 years. We have gas, oil, and geothermal leases abutting the park boundary. We have more recently become aware of the dire straights of the grizzly bear—one of the last remaining great symbols of the wild beauty of our Nation.

We absolutely cannot stand idly by and permit the loss of this magnificent animal from the confines of our lower 48 States. The saving of the grizzly must be elevated to the level of a national campaign! It is a campaign we must win! Or we may not be able to save ourselves.

Now I would appear to be totally naive and unfair to say all of the foregoing and not recognize that there are some very serious competing concerns to the contrary in all of this. The presence of man is now very much a part of the greater Yellowstone scene, and that is not likely to change. There are a lot of interests at stake in any final resolution of securing a healthy, relatively natural functioning sustainable ecosystem amid man's development and use of that same general environment. There are private and governmental entities with major interests at stake and roles to play.

Therefore, a prompt development and adoption of a regional plan for the management of the Greater Yellowstone Ecosystem is critical. The preparation must be accomplished by the concerted effort of all major affected entities, keeping in mind that maintaining a wild natural environment must be the foremost objective. This idea has been talked about for decades. It is not my idea. A fair amount has been accomplished through the years to work towards this, but in all too narrowed and fragmented ways. We now have a great deal more scientific information. The time has come to take positive, creative and forceful steps to set an example of how even with human pressures a total ecosystem can be preserved and managed. If we don't start it now, it will never be done—the time is right. Let's forget our petty differences and all work to solve the big picture.

This type of planning needs to be instigated for many park system units. Yellowstone can be an ideal prototype.

Now lest some feel that I am stressing preservation, let me reveal to you the commitment I have to public use and enjoyment of the superlative natural and historic resource represented in our great National Park System.

Of course, providing for public enjoyment is an essential part of the 1916 act's mandate. I endorse public use of the parks, and I want to promote as much public enjoyment as possible without irreplaceable loss of the natural and cultural value—but I want that public use to be a quality experience. I am convinced that the American public desires a high quality experience from their park visits—not a mediocre one. If the public demand is greater than the park supply, I feel confident that the public would rather visit a little less often but know that when their turn comes they will be assured a high quality, uncrowded experience, rather than be able freely without restriction to visit as often as they like an find mediocrity. The National Park Service must get on with the research to determine carry capacity for its units so that we can with facts support maximum use numbers. With the help and advice of groups like yours and the American public, I hope that we can work toward the more rapid achievement of identifying that optimum park capacity so that we can assure future generations a high quality visitor experience.

I feel that the parks offer a splendid opportunity for all of us to become reunited and related with our natural environment, as well as with our historical past. I'm not sure who gets the credit for having said it first, but our parks represent a splendid

"university without walls." The opportunities afforded by the parks as a displayer and teacher of how to be better citizens in our environment—are unmatched by other institutions. I believe that the public education and interpretative programs of the National Park Service need to be made a very important element in the operation and budget of every one of the 343 units of the system. It is my intention to support and work with intensity in this area.

There are a lot of ideas in my mind which I would like to further share with you, but my time and your patience is running out. But I leave you with this thought.

Aside from my own ideas and observations which I bring to this job, based on over 50 years of working professionally in the parks and recreation field, I have come to recognize the importance of process. There are a lot of people—both outside and inside of the National Park Service who care, and care deeply, about the parks. And that's just wonderful! We must capitalize on that care, and put it to work. I really want to engender a team effort in our setting forth the precepts of our stewardship of the parks. The 10 regional Directors will act as a board of directors helping and developing our goals and objectives.

Some of you have heard that in my discussions with Secretary Hodel before being selected for the position of Director of the NPS, I identified 12 key points which I would hope to pursue. Mr. Hodel has endorsed these ideas. But they really don't yet represent specific final policy or decisions. Rather, they represent key concepts and processes and a few general objectives. None of them are unalterable. All of them need fleshing out, adding to and subtracting from.

I have shared these 12 points with key members of the National Park Service team, and they in turn are, or will be, sharing them with all of our National Park Service employees. I deeply believe in a team approach to management objective identification and problem solving. An involved employee is more often than not a strongly committed employee. That trends to be just plain human nature. And so I believe it applies equally outside the Service. As we move along, I want to solicit your ideas by some process yet to be put into place. I will look forward to your input.

I deeply believe that there is a widespread sentiment across the Nation which favors the strong protection of our parks, and also one which thrills at the experiences and the inspirations they offer. We want to capture that nationwide commitment and put it to work for us. We look to all of you here for playing a major role in that process.

Together, we can accomplish a great deal and further assure the prospect of being able to pass the units of the system on "... in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

Thank you.●

#### SOVIET JEWRY

● Mr. GORE. Mr. President, I once again call your attention, and that of my colleagues, to the plight of Soviet Jewry.

Many of us have been active in the crusade for their freedom; many words have been spent on this cause. Yet, so much more is needed. We must tell



the world just how desperate their situation has become.

Over the last 10 years, Jewish emigration has dropped drastically. Today, it is virtually nonexistent. Imprisonment for petty or fabricated violations is on the rise. Harassment and torture is widespread. False hopes for freedom are raised then cruelly destroyed.

Such is the case of the Berengut family from Baku, Russia's fourth largest city. Three members of the family, Sam, Asya, and their 17-year-old son, Mark, applied for and were granted permission to leave Russia in 1981. They now reside in Memphis, TN.

According to their plan, upon the safe exit of Sam and Asya, the Berenguts' middle son, Boris and his wife Bachrus would apply for an exit visa. Boris and Bachrus are promising young physicians with one child. In the next stage of the plan Isya, 34, the Berenguts' elder son, and his wife Katherine, both engineers, would apply for permission to leave. Isya and Katherine have two children.

Upon the exit of Sam, Asya, and Mark, Boris and Bachrus applied for and received permission to emigrate. In order for Jews to leave Russia, they must secure an invitation from a first-degree relative in Israel. Israel is the only country to which Russian Jews may emigrate. Their law requires that Jews waiting to emigrate must give up their jobs and homes and take their children out of school. In anticipation of their spring departure, Boris and his wife relinquished their professional positions, took their son, Emil, out of school, and sold all their belongings, including furniture.

On April 6 their hopes were shattered. The family's permission to leave was revoked, without any explanation. Boris and Bachrus were told they would never be allowed to work in Russia again. Their son would not be allowed to attend school. They were left without any means of supporting themselves in an apartment without furniture. They survive with the help of Isya, the oldest son, and an aunt who brings them food and gives them money.

The Berengut case is tragic and is, sadly, not unique. It is up to us to alert the world to their plight and so many other people like them, struggling desperately to escape persecution and injustice.

The Berenguts' application for emigration will be reviewed in September. I urge you to speak out on their behalf in hopes that this year may bring an end to their suffering.●

#### TRIBUTE TO LYDIA VINS

● Mr. D'AMATO. Mr. President, on May 19 of this year a brave and noble lady, Mrs. Lydia Vins, passed from our

midst. Mrs. Vins was a leader in the Ukrainian Evangelical Baptist movement in the Soviet Union. For her defense of civil rights of Christians in her homeland, she spent 3 years, from 1971-74, in a labor camp. In 1979, she joined her son, Pastor Georgi Vins, in the United States after the United States exchanged two Soviets agents for Pastor Vins and four other Soviet human rights activists.

In her new home in Elkhart, IN, Mrs. Vins continued her tireless efforts on behalf of her coreligionists in the Soviet Union. She was active in the International Representation for the Council of Evangelical Baptist Churches of the Soviet Union, founded by Pastor Vins. She also served as director of external representation for the Council of Prisoners' Representatives, an organization that attempts to aid the families of evangelical Christians imprisoned for their faith in the Soviet Union. Even in her advanced years, Mrs. Vins traveled extensively in the free world, calling attention to the suffering of Christians in the Soviet Union. She worked tirelessly to expose the fraudulent facade of lofty pronouncements behind which Soviet authorities strive to mask the persecution of those citizens who continue to practice their religious faith.

Lydia Vins' entire life was one of spiritual devotion and earthly trial. Her husband, Pastor Peter Vins, was arrested three times in postrevolutionary Russia and finally disappeared in one of Stalin's labor camps during the great terror of the late 1930's. Her son, Georgi, served 3 years in a labor camp from 1966-69, another year at mandatory labor in 1970, and was sentenced in 1975 to a total of 10 years in prison camp and exile. Georgi's eldest son Peter spent a year in prison camp for having been a member of the Ukrainian Helsinki Monitoring Group and was beaten and threatened on several occasions by KGB thugs.

Mr. President, the persecution of the Vins family and their endurance in the face of this persecution is but one chapter in the tragic experience of the Evangelical Baptist movement in the Soviet Union. It is, unfortunately, an unfamiliar chapter to most Americans. We hear too little of the fates of persons like Pastors Gennady Kryuchov, Dmitri Minyakov, and Nikolai Baturin, or Vitaly Varavin and Mikhail Khorev, to name just a few. At last count, the Soviet Union had imprisoned more than 200 Evangelical Baptists.

Through the efforts of Lydia Vins and Pastor Georgi Vins, we have learned much of what we now know about the systematic Soviet persecution of Evangelical Baptists. Now, knowing, we must not remain silent. We must call the Soviet Government to account for these and many other violations of the religious and human rights provisions of the Helsinki ac-

cords, and we must demand that the Kremlin live up to past agreements before we accept their signatures on new ones.

The greatest possible tribute to Lydia Vins, in my opinion, would be to further the cause of religious freedom to the best of our ability, so that her dream that her countrymen may someday enjoy the exercise of this fundamental freedom may be realized. After all, if the leaders of the Soviet Union will not keep this basic promise they made to their own people when they signed the Helsinki Final Act, how credible can be any promises they make to us?●

#### THE ENDANGERED SPECIES ACT

● Mr. CHAFEE. Mr. President, one of my top priorities as chairman of the Subcommittee on Environmental Pollution is to have a bill extending the Endangered Species Act [ESA], one of the world's strongest and most important environmental laws, passed by the Congress and signed into law. As we make progress in our efforts to clean up our rivers and toxic dumps, we must not lose sight of the need to maintain biological diversity. That is what the ESA is all about.

Earlier this year we held several hearings in Washington, DC, to examine how well the act is working. During the first week of July, we continued this process with a hearing in Montana to review the plight of the grizzly bear in the Northern Continental Divide ecosystem. The grizzly is classified under the ESA as a threatened species in the lower 48 States. Since the bear is the subject of some controversy in both the Yellowstone ecosystem and the northern ecosystem, I spent several days in Montana meeting and talking about grizzlies with experts from the U.S. Park, Fish and Wildlife, and Forest Services, as well as the Montana Fish and Wildlife Department. Representatives from environmental groups, backcountry guides, local landowners, ranchers, and businessmen also had an opportunity to explain how they thought the law was working and whether the grizzly bear is making a comeback in the northern ecosystem.

As you know, the goal of the ESA is recovery. After identifying a particular species as endangered or threatened, we work on improving the habitat and health of that species so that it can exist on its own without the need for management under the act. In contrast to what I discovered about grizzlies in the Yellowstone ecosystem 2 years ago, the news from Montana and the Northern Continental Divide ecosystem is encouraging. We are making significant progress.

The ability and willingness of people in that area to coexist with this majes-

tic, albeit powerful and potentially fierce, animal are living examples of a true conservation ethic. Unfortunately, the existence of some "nuisance" bears is a reality. People living 40 or 50 miles away from what is generally recognized as "bear habitat" occasionally need to have Government officials trap or kill a particular bear that is threatening their families and homes. This doesn't happen often but when it does the Government should respond quickly in an attempt to trap and relocate the bear to an area where he cannot do harm and will not be harmed. Only as an absolute last resort, after several relocation tries have failed, do officials even consider killing the problem bear. This is as it should be.

Government officials and other experts are now working on various test methods to make grizzlies more wary of people. These experts should be encouraged to continue such tests because, if they are successful, the number of conflicts between humans and bears will decrease and the need to trap and relocate grizzlies will also decrease.

This report on grizzlies in Montana is upbeat. The ESA is working well and the bear is doing well. With the assistance of trained, responsive Government officials, people can peacefully coexist with grizzly bears. The law does not need to be changed and I will continue to work for extension of this important law, the Endangered Species Act.●

#### PENTAGON PURCHASES

● Mr. GOLDWATER. Mr. President, much has been said on the floor of this Senate about the wasteful habits of the Pentagon and so much has been written in the Washington newspapers that I have not always agreed with, but I feel strongly inclined to put into the RECORD an article written by Mr. Fred Hiatt and Mr. Rick Atkinson, both of the Washington Post, on a subject explaining, in very thorough detail, exactly what has happened to the problems of the Pentagon as a result of some of these over-identified and over-publicized bad mistakes in buying.

No one can understand a \$600 toilet seat; a \$3,000 pair of pliers, or a \$400 hammer. But, in reading this article that I am going to put into the RECORD, one can see just how much abuse this Congress has heaped on the Pentagon, and how much it has cost the taxpayers of this country just to force the Pentagon into these unneeded expenditures. I think a reading of this article would supply many answers to many constituents' letters. I think a reading of this article will provide my colleagues with a much better understanding of the many problems

the Pentagon faces in providing adequate defense for this country.

I ask that this article, from the Washington Post of July 4, 1985, be printed in the RECORD.

The article follows:

#### TO PENTAGON, OVERSIGHT HAS BECOME OVERKILL

(By Fred Hiatt and Rick Atkinson)

Along with the Pentagon's wish list in the 1985 defense budget, Congress asked for a little paper work on the side.

First, the Defense Department had to supply more than 20,000 pages of detailed justifications for the money requested.

Piled atop that were 440 reports and 247 studies demanded by Congress on such national security arcana as "Military Jacket Linings," "Protection of Marine Corps Name and Insignia," "Hawaiian Milk," and the lyrical "Acquisition of Power Operated Collators for Use in Facilities Other Than Printing Plants."

Furthermore, before a dispirited Pentagon stopped counting in 1983, Defense Department witnesses in one year logged 1,453 hours of testimony before 91 congressional committees and subcommittees. During the same year, the military responded to 84,148 written queries from Capitol Hill and 592,150 telephone requests, numbers most officials believe are on the rise.

As viewed from the Pentagon, Congress is more problem than solution in the controversial art of arming the armed forces.

"It has ceased to work over the last 10 to 15 years. It's anarchy up there, total anarchy," Navy Secretary John F. Lehman Jr. said of Congress. "It is by no means carrying out its constitutional responsibilities."

Congress meddles in the defense of the United States to an extent unimaginable in the parliaments of other western democracies, dictating everything from the type of coal the military can burn to which engines can be overhauled on Navy ships.

Many critics, including more than a few on Capitol Hill, believe that micromanagement of the military has cost billions of dollars and led Congress to scrutinize trees rather than forests, minutiae rather than the broader strategy of American defense.

But those stricken with the urge to tinker point to such horror stories as \$600 toilet seats and contend they are actually saving billions, whereas the Pentagon and White House have bungled effective oversight.

"Given the track record over at the Pentagon, I think they can use some outside help," said Sen. Carl Levin (D-Mich.), "particularly if it comes free."

Congressional fiddling partly also reflects classic pork barrel politics. While the defense budget gobbles up one-third of all federal spending, it accounts for nearly 70 percent of the money that Congress can control (as opposed to untouchable entitlement programs such as Social Security).

As congressional oversight of the Pentagon has expanded, so has the orbiting flock of lobbyists, industry associations, political action committees, think tanks and journalists. If America's business is business, as Calvin Coolidge once remarked, then it can be argued that much of Washington's business has become defense business.

In recent weeks, Congress again weighed in on national defense with the fiscal 1986 defense authorization. The House alone pondered 170 reforms and other amendments, including such nitty-gritty as requiring Pentagon reports on all contracts signed by businesses on Indian reservations and

barring the move of an induction center in Wilkes-Barre, Pa.

"Now they're really screwing things up," said Richard D. DeLauer, the outspoken defense undersecretary who recently resigned to become an industry consultant. "What the hell do they know?"

In truth, some of the best-intentioned reforms have thickened the procurement mire by inserting additional layers of bureaucracy and triggering unforeseen consequences.

"I think a large number of today's procurement problems were yesterday's procurement solutions," Sen. Sam Nunn (D-Ga.) said in a recent interview. "I think every time we have a procurement problem, we pass a new rule or regulation and so forth."

"And I really think what they've got over there [in the Pentagon], if you're a smart bureaucrat, is a checklist of about 200 things. And once you've checked those off, there's nothing in there that says you've got to have common sense."

#### \$10 BILLION IN IMPEDIMENTS

Last month, the Navy noticed a remarkable amendment that had been quietly added to the 1986 defense bill by Rep. Duncan L. Hunter (R-Calif.). It would have required many of the U.S. warships based in Japan to sail 8,000 miles to the West Coast for maintenance overhauls.

The proposal "would have destroyed foreign home porting, disrupted 5,000 families and would have increased the cost of maintenance 10 times," according to one Navy captain. Although the Navy suspects West Coast shipyards put the idea in Hunter's head, an aide to the San Diego congressman insists "it came to him in a vision."

To counterpunch, the Navy deployed a large squad of lawyers, cost analysts, senior officers in Hawaii and Washington, political advisers and the U.S. ambassador to Japan, Mike Mansfield.

Hunter finally agreed to scuttle the idea. In return, the Navy promised to bring one destroyer home early for overhaul on the West Coast, a move that will add \$14 million to the cost, according to John P. Palafoutas, Hunter's administrative assistant.

An ancient congressional axiom holds that every legislator covets a slice of the defense pie—now a \$300 billion pie—for the folks back home. Sen. Levin of Michigan is typical in his practice of issuing frequent press releases cataloguing his efforts to promote M1 tanks, Marine Corps armored vehicles and other Michigan-made weapons.

But the combination of defense pork barrel and other "legislative impediments" tacks an extra \$10 billion onto Pentagon spending every year, according to Lawrence J. Korb, assistant secretary of defense.

"You can't have it both ways," Korb said. "You can't have a completely efficient Defense Department and still have political decisions determining how you buy things."

Among innumerable examples of "impediments":

Since 1973, as a subsidized favor to the U.S. coal industry, Congress has required that American military bases in Europe burn American coal, a gesture the Pentagon says adds at least \$45 per ton just in shipping costs.

In the same vein, Congress last year forbade U.S. military bases in West Germany to convert any of 3,000 pre-World War II coal boilers to oil, thus requiring continued operation of "antiquated, inefficient and environmentally damaging equipment at a



much greater cost," according to Pentagon documents.

The Senate version of the 1986 defense budget includes \$60 million for 150 Captor mines, which is 150 more than the Navy requested. Despite Navy assurances that its 1,750 Captors on hand are enough, Sen. John Glenn (D-Ohio) insisted that the mines would be a wise addition to the U.S. inventory. Captor mines are made in Akron.

The House version of the 1986 budget includes \$31.3 million for research into a submarine communications system called blue-green laser. The Pentagon requested only \$18 million. Rep. Robert W. Davis (R-Mich.) pushed the extra money as a kind of inverse pork barrel because his constituents dislike the current communications system, a huge and intrusive thicket of wires and antennae called ELF running through vast stretches of the Michigan forest.

Davis hopes that by accelerating blue-green, he can render ELF (for extremely low frequency) obsolete; the Navy says that may prove true, since the House leached the extra \$13 million out of the ELF budget.

The Navy has informally proposed saving money by moving 100 servicemen and a handful of civilians working for the chief of naval education from Pensacola, Fla., to Nashville. Just the hint of such a move has the Florida delegation "beside themselves," barraging Lehman with telephone calls, according to a Navy official.

"I don't think we can get into the minute details [of the budget]," said Rep. Earl Hutto (D-Fla.), "but it's true that nobody wants a base closed."

In fact, Congress has taken extraordinary pains to block Pentagon efforts to close or scale down dozens of bases. Laws have been enacted to prohibit the closing of Fort De Russy, a sandy patch west of Waikiki Beach in Honolulu, and the U.S. Naval Academy dairy farm.

When the Army took aim at its obsolete post at Fort Monroe, Va., Congress declared the place a national historic monument.

#### THE SHEPHERDS ON THE HILL

Ten years ago, four congressional committees wrote legislation on defense. Today, according to a Navy tally, the Pentagon is shepherded by 24 committees and 40 subcommittees.

Defense is no longer a cottage industry in the nation's capital. The House Armed Services Committee alone fields a professional staff of 54, reflecting the elevenfold growth in House staff members since 1946.

The top dozen defense contractors list 125 Washington representatives, which doesn't count the independent consultants they hire to lobby on specific issues.

Competition on Capitol Hill for a piece of the defense action—particularly if an issue has snared media interest—is so intense that Pentagon witnesses may appear again and again before different panels, often repeating the same testimony. Since January 1982, Defense Secretary Caspar W. Weinberger has spent 147 hours—the equivalent of nearly four work weeks—testifying in 54 appearances on the Hill.

At the same time, congressional military experience has declined, which Pentagon officials believe has widened the gulf between the military and legislative points of view. Ten years ago, 71 percent of the House Appropriations Committee members and 73 percent of the House Armed Services Committee members had military records; today, the numbers have dwindled to 55 percent and 63 percent, respectively.

And many less-experienced members, the Pentagon complains, are egged on by a

fickle press corps that seizes on partial test results to raise doubts about weapons in development but rarely reports on those weapons if they end up working well in the field.

"I think Mel Levine's father bought his automobile for him, and the most Barbara Boxer ever bought was a hot tub. Now they're both procurement experts," DeLauer said caustically of two reform-minded Democratic representatives from California.

"Are there too many people involved? It's part of democracy, is my answer," Sen. Levin said. "It's better than the Pentagon on an unchecked rampage."

#### THE FORKLIFT FACE-OFF

When the Founding Fathers designated Congress "to make rules for a government and regulation of the land and naval forces," it is doubtful they ever envisioned anything quite like the Air Force bomb loader.

In the late 1970s, the Air Force began buying a glorified forklift to hoist nuclear munitions into B52 bombers. Because the B52 bomb loader "was expensive and was a maintenance nightmare," according to Air Force documents, Congress last year insisted that a competition be held to determine who would build the new bomb loader for the B1 and Stealth bombers.

The Air Force dutifully complied and found a "clear winner" in Pacific Car and Foundry, a firm in Washington State.

The runner-up model, made by AAI Corp. of Cockeysville, Md., which built the old B52 loaders, would cost 44 percent more, according to the Air Force.

Skeptical of the Air Force analysis, Congress waded into the fray.

With the three Maryland representatives on the House Armed Services Committee and powerful committee staff member Anthony R. Battista supporting AAI, a subcommittee spent a full day hearing testimony on the matter—which accounted for about one-hundredth of 1 percent of the Pentagon's budget request—before bucking it up to the full committee for more hearings on May 22.

The competition results were shunted aside, and the issue awaits resolution in conference committee with the Senate later this summer.

"I don't think it was the most burning issue to everybody on the committee," one Maryland staff member admitted. "There were lots of perplexed looks from members wondering why the hell they were spending so much time on a relatively innocuous matter."

The bomb loader was hardly an exception. Of 1,860 line items submitted by the Pentagon in the 1984 budget, the House changed 1,190 and the Senate 1,160, according to a study by Armed Forces Journal.

The annual whittling, padding, stretching or truncating of virtually every program led former defense undersecretary Frank C. Carlucci to say in an interview, "You have thousands of ideas of what to do to reform the system, many of them very good ones. But without some stability in the budget, damn few of them will work."

The standard response from Capitol Hill is that Congress must trim the Pentagon's requests like a butcher trims fat.

In the past three years, according to the Senate Appropriations Committee, Congress has lopped \$53 billion from Defense Department wish lists without killing a single major weapons system.

"They're right about the micromanagement, and it saves the taxpayers billions of dollars," said Richard Seelmeyer, an aide to

Rep. Joseph P. Addabbo (D-N.Y.), chairman of the House Appropriations defense subcommittee.

#### RULES BEGET MORE BUREAUCRATS

But the micromanagement goes beyond cutting and adding funds.

Pentagon officials complain that, while attacking their bloated bureaucracy, Congress continually swells the works force with new requirements, reforms and positions.

Consider, for example, section 203 of Public Law 91-441, which regulates how the government reimburses defense contractors for military-related research.

To obey it, the Pentagon has seven technical reviewers, 12 negotiators, 11 on-site reviewers, 18 technical evaluators, 15 administrators, six documentors, and 17 auditors. Total cost in one year: \$4.6 million.

The defense industry has 1,450 other workers preparing technical brochures, 45 negotiators and 30 people hosting the government evaluators, and additional annual charge of \$93 million billed to the government.

The Grace commission, finding little benefit in all that regulation, said of PL 91-441, "The law and implementation procedures have established a large and cumbersome paper flow."

In February, Georgetown University's Center for Strategic and International Studies issued a blueprint for Pentagon reform, endorsed by all but one living defense secretary, that said Congress "is lost in the trees of program management, unable to see—far less to influence—the policy forest."

Many in Congress concurred. Meanwhile, the House and Senate Agriculture Committees are waiting for the Pentagon's semi-annual "Report on Dairy Products." The Small Business Committees are demanding their monthly "Procurement From Small and Other Businesses."

And someone, somewhere in Congress, has instructed the military to submit R00403-071, "Proposed Minor Construction Projects Costing More Than 50 Percent of the Maximum Amount Specified by Law for Minor Construction Projects." ●

#### FLAG DAY

● Mr. HATCH. Mr. President, recently our country celebrated the 21-day period from Flag Day, June 14, to Independence Day, July 4, which had been set aside by Congress "as a period to honor America in public gatherings and activities at which the people can celebrate and honor their country in an appropriate manner." (Public Law 94-33).

This past weekend, Americans everywhere had an opportunity to pay tribute to this country and the ideals for which it stands, and to pause and reflect for a moment upon the significance of our flag and our freedom.

Henry Ward Beecher wrote more than a century ago:

A thoughtful mind when it sees a nation's flag, sees not the flag only, but the nation itself; and whatever may be its symbols, its insignia, he reads chiefly in the flag the government, the principles, the truths, the history which belongs to the nation that sets it forth.

The flag which is so prominently displayed during this time of year has

always been the living symbol of our Nation and its people. The Stars and Stripes symbolize the 50 States in the Union and the Original Thirteen Colonies, but the true meaning of the flag is not found in its colors or patterns or fabric, but rather, in the historic legacy of the American people.

As Americans, we can be proud of our hard-won heritage. This country was founded upon the principles of freedom, liberty, and justice for all, and our Government was established as a government of the people, by the people and for the people. Today, these same founding principles which guided the early colonists have made our Nation strong. Over the years—from the first shot at Concord and the early battles of the American Revolution to later battles fought in Europe, Asia and on the seven seas—the flag has continued to represent a nation comprised of people who have never ceased in their devotion to liberty and freedom and truth. The flag has been a symbol for every generation which has marched and fought and died in order to preserve the sovereignty of this Nation.

As a child, I was thrilled to see the flag waving, as we sang the "Star Spangled Banner," at parades, ball games, or public gatherings. And today, I still have that same thrill here in Congress as I watch the flag flying over the Capitol and realize that as a governing body we are committed to what this country stands for: freedom, equality, opportunity, and most importantly, justice for all.

Our forefathers sacrificed everything they had—even their lives—to make sure we live in a land of freedom and choice. It is our responsibility to make sure this freedom and opportunity are preserved for our children and our children's children.

At this patriotic time of the year, let us pause and reflect upon the founding principles of this Nation and what it means to live in the land of the free and the home of the brave.●

#### WHITE HOUSE MEETING ON THE DEFICIT

Mr. DOLE. Mr. President, I would just say as we leave that we had a very good discussion this afternoon at the White House. The distinguished minority leader and myself, the Speaker of the House, the distinguished majority leader, Mr. WRIGHT, and the distinguished ranking Republican leader, Mr. MICHEL, were present. I believe I can correctly state that we left there with some feeling of optimism. But I would also indicate that when you put together a compromise, it is not together until it is together.

So far as this Senator is concerned, there was not anything agreed to. There was discussion about Social Security COLA's, discussion about defense, the House numbers and the

Senate numbers. I think it is fair to say there were statements by some who indicated they would not support COLA freezes, but I believe I correctly made the point that if we are going to talk about something being off the table, we have to find some way to substitute a portion of its, a rather significant portion of it.

I was encouraged by the meeting, when the President of the United States takes 1 hour and 45 minutes and the leaders of the Congress take 1 hour and 45 minutes to sit down and discuss the most important issue in this Nation, the deficit, and everybody comes out with a lot of good feeling. There were no agreements but not too many disagreements, though no positions were stated.

I hope all the conferees will be present tomorrow, all the conferees of the House and the Senate. I hope this is the beginning of a successful conclusion which will bring us meaningful deficit reduction without any increase in taxes. I am very optimistic that we can achieve that goal in the next 10 days.

Mr. President, I have just been reminded that we are going with the conferees tomorrow.

#### ORDERS FOR WEDNESDAY

##### ORDER FOR RECESS UNTIL 11 A.M.

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11 a.m. tomorrow, Wednesday, July 10.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### ORDER FOR RECOGNITION OF CERTAIN SENATORS

Mr. DOLE. Mr. President, I ask unanimous consent that following the two leaders under the standing order, there be a special order in favor of the Senator from Wisconsin [Mr. PROXMIER] and the Senator from California [Mr. CRANSTON] for not to exceed 15 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### ORDER FOR ROUTINE MORNING BUSINESS

Mr. DOLE. Following the special orders just identified, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond the hour of 12 noon with statements limited therein to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PROGRAM

Mr. DOLE. At the hour of 12 noon under the provision of rule XXII, the Senate will begin a live quorum to be followed by a cloture vote on the motion to proceed to S. 995, South Africa. Rollcall votes can be expected throughout Wednesday's session in connection with S. 995, the African bill.

#### RECESS UNTIL TOMORROW AT 11 A.M.

Mr. DOLE. Mr. President, there being no further business to come before the Senate, I move that, in accordance with the previous order, the Senate stand in recess until Wednesday, July 10, 1985, at 11 a.m.

The motion was agreed to, and the Senate, at 8:38 p.m., recessed until Wednesday, July 10, 1985, at 11 a.m.

#### NOMINATIONS

Executive nominations received by the Senate July 9, 1985:

##### DEPARTMENT OF STATE

Thomas Michael Tolliver Niles, of the District of Columbia, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Canada.

Joe M. Rodgers, of Tennessee, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to France.

##### IN THE AIR FORCE

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

##### To be lieutenant general

Maj. Gen. Leonard H. Perroots, xxx-xx-xx-xx, FR, U.S. Air Force.

##### IN THE ARMY

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 1370:

##### To be lieutenant general

Lt. Gen. James A. Williams, xxx-xx-xxxx, age 52, U.S. Army.

The following-named officers, under the provisions of title 10, United States Code, section 3037, for appointment as the Judge Advocate General and Assistant Judge Advocate General, respectively, U.S. Army, in the grade of major general:

Maj. Gen. Hugh R. Overholt, xxx-xx-xxxx, U.S. Army.

Brig. Gen. William K. Suter, xxx-xx-xxxx, U.S. Army.

##### IN THE AIR FORCE

The following officers for Reserve of the Air Force (non/EAD) promotion in the grade indicated, under the provisions of section 8371, title 10, United States Code:

##### LINE OF THE AIR FORCE

##### To be colonel

Anderson, Lawrence B., xxx-xx-xxxx  
Chalkley, Craig W., xxx-xx-xxxx  
Ford, Clayton, H., xxx-xx-xxxx  
Gay, Roy C., xxx-xx-xxxx  
Goldsmith, Arnold S., xxx-xx-xxxx  
Gonsior, Bobby L., xxx-xx-xxxx  
Harvey, John F., xxx-xx-xxxx  
Hurley, John A., xxx-xx-xxxx  
Lawson, William H., xxx-xx-xxxx  
Lee, Michael R., xxx-xx-xxxx  
Lorentz, Donald P., xxx-xx-xxxx  
Lucas, James W., xxx-xx-xxxx  
Lyle, Clayton B., III, xxx-xx-xxxx  
Maril, David R., xxx-xx-xxxx  
Mayhugh, Gilbert M., xxx-xx-xxxx  
McIntosh, Robert A., xxx-xx-xxxx  
Putnam, Bobby R., xxx-xx-xxxx



Rambo, Stephen W., xxx-x-  
 Savana, James R., xxx-x-  
 Sehorn, James E., xxx-x-  
 Smith, Craig R., xxx-x-  
 Strones, Martin E., xxx-x-  
 Utterback, Ralph M., Jr., xxx-x-  
 Venett, Emmett, Jr., xxx-x-  
 Webster, Ernest R., xxx-x-

## MEDICAL CORPS

## To be colonel

Blankenbaker, Ronald G., xxx-x-  
 Bryan, Donald W., xxx-x-  
 Massello, Thomas P., xxx-x-

## BIOMEDICAL SCIENCES CORPS

## To be colonel

Parker, Frank M., III, xxx-x-  
 Rich, Robert O., xxx-x-

## JUDGE ADVOCATE

## To be colonel

Scott, Jerry, xxx-x-  
 Tammen, Roger T., xxx-x-

## DENTAL CORPS

## To be colonel

Sabino, Anthony D., xxx-x-

## MEDICAL SERVICE CORPS

## To be colonel

Pickens, James F., II, xxx-x-

## NURSE CORPS

## To be colonel

Atchison, Jean C., xxx-x-

## IN THE ARMY

The following-named Reserve Officers' Training Corps, cadets for appointment in the Regular Army of the United States, in the grade of second lieutenant, under the provisions of title 10, United States Code, sections 531, 532, 533, 2106, and 2107:

Algermissen, Francis E., xxx-x-  
 Allison, James G., xxx-x-  
 Alvarez, John G., xxx-x-  
 Ames, Curtis L., xxx-x-  
 Analla, Anthony W., xxx-x-  
 Arritt, Anthony C., xxx-x-  
 Austin, Douglas R., xxx-x-  
 Baird, Hal D., xxx-x-  
 Baker, Christopher C., xxx-x-  
 Baker, Douglas L., xxx-x-  
 Ball, Shawn D., xxx-x-  
 Bass, David E., xxx-x-  
 Bates, Christopher A., xxx-x-  
 Benavides, Jesus G., xxx-x-  
 Besso, Michael J., xxx-x-  
 Boddie, Joseph H., Jr., xxx-x-  
 Bokor, John E., xxx-x-  
 Bonn, Barton D., xxx-x-  
 Bowman, Robert V., Jr., xxx-x-  
 Boyd, Leona S., xxx-x-  
 Braley, Keith W., xxx-x-  
 Bratina, Steven, xxx-x-  
 Brew, Mitchell E., xxx-x-  
 Brewer, R. C., xxx-x-  
 Brice, Victor J., xxx-x-  
 Brown, Frederick, xxx-x-  
 Bucher, Richard A., xxx-x-  
 Buchholz, Brent J., xxx-x-  
 Bullion, John W., xxx-x-  
 Burton, Paul S., xxx-x-  
 Bush, Hans E., xxx-x-  
 Butler, Mark L., xxx-x-  
 Caddell, Scott J., xxx-x-  
 Calonder, Dean C., xxx-x-  
 Calvo, Mark G., xxx-x-  
 Cannon, Malcom P., Jr., xxx-x-  
 Carpico, Lawrence D., xxx-x-  
 Carson, Charles A., xxx-x-  
 Castrinos, Nicholas L., xxx-x-  
 Celentani, Christina M., xxx-x-  
 Cepeda, Paul G., xxx-x-  
 Chance, Kenneth A., xxx-x-

Chapa, Jose G., xxx-x-  
 Christopher, Gordon, xxx-x-  
 Coleman, Gerald P., xxx-x-  
 Coley, David W., xxx-x-  
 Colondres, Jose R., Jr., xxx-x-  
 Conklin, Daryl L., xxx-x-  
 Conway, Jay J., xxx-x-  
 Conyers, Robert J., xxx-x-  
 Cooper, William B., xxx-x-  
 Couch, Jeffrey S., xxx-x-  
 Cox, Karen R., xxx-x-  
 Crawford, Anthony K., xxx-x-  
 Cromwell, Kevin E., xxx-x-  
 Cuddy, Albert P., Jr., xxx-x-  
 Curtis, Steven P., xxx-x-  
 Czarnecki, John P., xxx-x-  
 Dailey, Steven G., xxx-x-  
 Darden, Darryl C., xxx-x-  
 Davidson, Mark C., xxx-x-  
 Davis, Diana L., xxx-x-  
 Derr, Darryl L., xxx-x-  
 Derzanski, Andrew, xxx-x-  
 Deuel, Alissa B., xxx-x-  
 Dick, Michael G., xxx-x-  
 Donnelly, Patrick, xxx-x-  
 Drayton, Anita M., xxx-x-  
 Duffy, Colleen E., xxx-x-  
 Dunham, James B., xxx-x-  
 Duplechin, Richard E., xxx-x-  
 Durham, Stephen J., xxx-x-  
 Dyke, Dwayne R., xxx-x-  
 Encarnacion, Carlos, xxx-x-  
 Fellone, Victoria J., xxx-x-  
 Fennell, Michael D., xxx-x-  
 Fisher, Dallen E., xxx-x-  
 Fish, Roger G., xxx-x-  
 Flowers, James P., xxx-x-  
 Frost, Ronald A., xxx-x-  
 Gambrel, Paris A., xxx-x-  
 Gibbs, Richard A., xxx-x-  
 Godfrey, Michael, xxx-x-  
 Godfrey, Michael K., xxx-x-  
 Hall, Bruce T., xxx-x-  
 Hamm, Michael K., xxx-x-  
 Hankins, Luther S., xxx-x-  
 Harmon, Mark C., xxx-x-  
 Hayden, Paul A., xxx-x-  
 Haynes, Ronald N., xxx-x-  
 Hearn, Stephen W., xxx-x-  
 Henson, Dexter Q., xxx-x-  
 Hernandez, Steven P., xxx-x-  
 Herring, Curtis W., xxx-x-  
 Hickman, Kyle D., xxx-x-  
 Higgins, William D., xxx-x-  
 Hildebrand, Jay R., xxx-x-  
 Hill, Alex E., xxx-x-  
 Hiner, Frank P., IV, xxx-x-  
 Hinkley, John C., xxx-x-  
 Holsworth, Douglas M., xxx-x-  
 Holt, Steve L., xxx-x-  
 Hood, Thomas M., xxx-x-  
 Hosman, David R., Jr., xxx-x-  
 Hunt, Mark W., xxx-x-  
 Hurst, Kenneth J., xxx-x-  
 Hutchinson, Scott T., xxx-x-  
 Ivey, Anthony L., xxx-x-  
 Jackson, David M., xxx-x-  
 Jackson, Edward A., xxx-x-  
 Jafry, Marilyn A., xxx-x-  
 Jennings, William M., xxx-x-  
 Jimenez, Michael L., xxx-x-  
 Johnson, Barry A., xxx-x-  
 Johnson, Timothy M., xxx-x-  
 Jones, Dana L., xxx-x-  
 Jones, Warren T., xxx-x-  
 Jordan, Patrick F., xxx-x-  
 Juchem, Philip E., xxx-x-  
 Kelley, Lionel P., xxx-x-  
 Kerr, Donald J., xxx-x-  
 Kieffer, Chris M., xxx-x-  
 Kim, Henry Y., xxx-x-  
 Kohl, Ernest R., xxx-x-  
 Kuehl, Strep R., xxx-x-  
 Landsman, James J., xxx-x-

Langford, Robert G., xxx-x-  
 Laskey, Thomas J., xxx-x-  
 Lavalley, Jeffrey S., xxx-x-  
 Leadholm, Jane L., xxx-x-  
 Lee, Bobby E., Jr., xxx-x-  
 Leister, William F., xxx-x-  
 Leong, Bobby D., xxx-x-  
 Luck, Gary E., xxx-x-  
 Lull, Kenneth J., xxx-x-  
 Macartney, Stephen C., xxx-x-  
 Mahoney, Michael T., xxx-x-  
 Manners, Patrick M., xxx-x-  
 Manning, Michael J., xxx-x-  
 Markham, Ronald L., xxx-x-  
 Martin, John P., xxx-x-  
 Marx, Michael J., xxx-x-  
 McCarty, Mark W., xxx-x-  
 McClelland, Kyle M., xxx-x-  
 McConville, James E., xxx-x-  
 McCormick, James L., xxx-x-  
 McCormick, Kip A., xxx-x-  
 McCoy, Reginald C., xxx-x-  
 McDaniel, Larry D., xxx-x-  
 McDavid, John W., xxx-x-  
 McElmoyl, Michael S., xxx-x-  
 McFarland, Scott D., xxx-x-  
 McKittrick, John H., xxx-x-  
 McLaughlin, Steven J., xxx-x-  
 McNamee, Gary S., xxx-x-  
 McPherson, Timothy B., xxx-x-  
 Mitchell, Lance R., xxx-x-  
 Monteith, Alexander E., xxx-x-  
 Montvazquez, Octavio C., xxx-x-  
 Moon, Lawrence J., xxx-x-  
 Moore, Clarence O., xxx-x-  
 Moore, Garry E., xxx-x-  
 Moore, Phillip E., xxx-x-  
 Moore, Robert R., xxx-x-  
 Morales, Norberto, xxx-x-  
 Mountain, Matthew C., xxx-x-  
 Mulford, Wayne W., Jr., xxx-x-  
 Mulloy, Richard L., xxx-x-  
 Murray, Bret D., xxx-x-  
 Musgrove, Sean G., xxx-x-  
 Neville, Paul R., xxx-x-  
 Newton, Clayton T., xxx-x-  
 Newton, Lester D., xxx-x-  
 O'Day, Steven, xxx-x-  
 Odonell, Warren N., xxx-x-  
 Ozoroski, Joseph M., xxx-x-  
 Pak, Chinnhak, xxx-x-  
 Park, Kevin J., xxx-x-  
 Patrick, David T., xxx-x-  
 Paugh, John D., Jr., xxx-x-  
 Payne, Collin L., xxx-x-  
 Pendergrass, Timothy L., xxx-x-  
 Phifer, Jerald L., xxx-x-  
 Phillips, David J., xxx-x-  
 Pine, Shawn M., xxx-x-  
 Pirtle, Christine A., xxx-x-  
 Pitcairn, Douglas J., xxx-x-  
 Poehlitz, Michael W., xxx-x-  
 Presnell, Michael C., xxx-x-  
 Pusateri, Anthony E., xxx-x-  
 Quinton, Jimmy D., xxx-x-  
 Rangel, Gary W., xxx-x-  
 Rice, Patrick M., xxx-x-  
 Richards, Timothy J., xxx-x-  
 Riddle, Thomas C., xxx-x-  
 Roberts, Brian F., xxx-x-  
 Robertson, David G., xxx-x-  
 Robinson, John C., xxx-x-  
 Robinson, Kenneth L., xxx-x-  
 Ruhl, John E., xxx-x-  
 Rush, Edward J., xxx-x-  
 Ryan, John T., xxx-x-  
 Salvitti, Gino, xxx-x-  
 Sawyer, Gregory L., xxx-x-  
 Seal, Terrance C., xxx-x-  
 Sether, Todd W., xxx-x-  
 Shell, Andrew S., xxx-x-  
 Shrout, Ray L., xxx-x-  
 Simmons, Gerald R., xxx-x-  
 Smith, David F., xxx-x-

Smith, Jeffrey F., xxx-xx-xxxx  
 Smith, Peyton E., xxx-xx-xxxx  
 Soboleski, James W., Jr., xxx-xx-xxxx  
 Spratt, James G., xxx-xx-xxxx  
 Stears, Paul J., xxx-xx-xxxx  
 Stewart, John R., xxx-xx-xxxx  
 Sutherland, Christopher A., xxx-xx-xxxx  
 Tarver, Ashley B., Jr., xxx-xx-xxxx  
 Thames, David B., xxx-xx-xxxx  
 Thelen, Mary J., xxx-xx-xxxx  
 Thorpe, James N., xxx-xx-xxxx  
 Twitty, Stephen M., xxx-xx-xxxx  
 Upchurch, Ireland S., II, xxx-xx-xxxx  
 Vincent, Curtis J., xxx-xx-xxxx  
 Voller, Patrick W., xxx-xx-xxxx  
 Walker, Curtis W., xxx-xx-xxxx  
 Waller, Warren J., xxx-xx-xxxx  
 Wasilko, George, Jr., xxx-xx-xxxx  
 Wason, John D., xxx-xx-xxxx  
 Welch, Mark A., xxx-xx-xxxx  
 Wenger, Anthony N., xxx-xx-xxxx  
 Whitaker, Marvin S., xxx-xx-xxxx  
 Whitney, Daniel G., xxx-xx-xxxx  
 Williams, Brian L., xxx-xx-xxxx  
 Williams, Joe H., xxx-xx-xxxx  
 Williams, Ronell, xxx-xx-xxxx  
 Willis, Paul J., xxx-xx-xxxx  
 Wiltse, Jeffrey S., xxx-xx-xxxx  
 Winningham, Robert D., xxx-xx-xxxx  
 Wojcik, Michael A., xxx-xx-xxxx  
 Woodruff, Maureen, xxx-xx-xxxx  
 Wright, Mary A., xxx-xx-xxxx  
 Wyrki, Oliver K., xxx-xx-xxxx  
 Yoder, Keith R., xxx-xx-xxxx  
 Zajac, Joan M., xxx-xx-xxxx  
 Zimmerman, Neal O., xxx-xx-xxxx  
 Zizza, Michael M., xxx-xx-xxxx

## IN THE NAVY

The following-named lieutenant commanders of the Reserve of the U.S. Navy for permanent promotion to the grade of commander in the line, in the competitive category as indicated, pursuant to the provisions of title 10, United States Code, section 5912:

## UNRESTRICTED LINE OFFICERS

Adams, Charles Llewellyn  
 Adkins, Raymond Joseph, Jr.  
 Ahern, Thomas Charles  
 Albertson, Robert Rayburn  
 Andersen, George Michael  
 Anderson, Thomas Edward, Jr.  
 Andresen, Lawrence J.  
 Armstrong, William Shaul  
 Battinger, Eric Wayne  
 Barker, Jimmy Lester  
 Barnum, Kenneth Paul  
 Barrick, Harry Welling, III  
 Bassler, Ned Holliger  
 Bast, William V.  
 Beacham, Frederick Brou  
 Beck, Geroe Harris  
 Behling, Raymond Joseph  
 Belotti, Joseph Peter, Jr.  
 Bender, Edmund Frank, Jr.  
 Bennett, John B.  
 Bensing, Donald Ray  
 Bergh, Gregory H.  
 Best, Frederick Roy  
 Birge, John Heflin, Jr.  
 Bivings, Albert Eugene  
 Blaisdell, James Harling  
 Blake, Richard Dale  
 Blomquist, Roger Neil  
 Bolduc, David T.  
 Boston, Bruce Dennis  
 Bowen, Daniel John  
 Boylan, Christopher  
 Bradford, Cary Scott  
 Brady, Peter Douglass  
 Brewer, Donald Stokes  
 Brians, Wallace S.  
 Briggs, Bruce Kenneth  
 Bronson, Terrence Philip

Brooks, David A.  
 Brooks, Michael Keith  
 Broun, Charles W.  
 Bruce, Stephan Robert  
 Bruwelheide, Dennis Raymon  
 Budds, James Garrett  
 Burbach, Brian Merritt  
 Burr, Frederic Worthington  
 Burroughs, Niles Phillip  
 Buschbaum, Dennis E.  
 Bussard, Clifford Barry  
 Butler, Thomas Albert  
 Bynum, Thomas Lee  
 Cagle, Jerry Dwight  
 Cahill, John J.  
 Campbell, Bruce A.  
 Capra, Robert Arthur  
 Carlin, Stephen Roger  
 Carroll, Patrick William  
 Carson, Phillip Roy  
 Carter, Joseph John, Jr.  
 Casey, John Steven  
 Chaney, David Allen  
 Chesipe, John R.  
 Childress, George David, II  
 Cichucki, Jon L.  
 Clark, John Joseph  
 Clarke, Kathryn Marie  
 Closs, John William  
 Cohn, Donald Tucker  
 Colquitt, Richard Edward, Jr.  
 Colt Marshall  
 Colton, Rodney A.  
 Comins, John Raymond  
 Connell, Mary Kay  
 Conner, Frankie Weldon  
 Coolbaugh, Robert John  
 Cooley, Byron Lester  
 Copper, Bruce D.  
 Costas, John Nicholas Hantse  
 Cox, Nolan Mackey  
 Cruz, Ramon Michael, Jr.  
 Culhane, Edward Carroll  
 Curtis, Grant Bradley, III  
 Cusick, Stephen Kent  
 Custer, Robert Christopher  
 Damato, Charles Richard, Jr.  
 Daniels, David Gray  
 Davis, Gregory Evester  
 Davis, John D.  
 Davis, Leroy William, II  
 Dean, Jeffrey Stuart  
 Derego, Charles Albert  
 Derenluk, Harry Michael  
 Dibello, Michael Frank  
 Dierks, Kenneth A.  
 Dies, Gregory Baird  
 Dipadova, Arthur Anthony  
 Dixon, Gerald Arthur  
 Dodge, Marvin Michael  
 Doegey, Jay Brooke  
 Doherty, James Edward, Jr.  
 Donges, William H.  
 Dorsch, Brian Vern  
 Dorsey, Danny Eugene  
 Downey, Philip Edward  
 Dubinsky, Donald Dennis  
 Durkee, Kendall Grove  
 Eckstrom, Richard Allan  
 Elleson, Stephen D.  
 Ellis, Joseph C.  
 Erickson, Charles Albert  
 Esget, James Arthur  
 Esterl, Charles Thomas  
 Evans, James Ira  
 Faanes, William K.  
 Farrand, Thomas Walter  
 Farrar, David Richard  
 Fauber, Stuart Carter  
 Fehlis, Emmett Donald  
 Felts, William S., Jr.  
 Ferguson, Bruce Collier, Jr.  
 Ferguson, James Lester  
 Ferguson, Jere Claude

Ferranto, Dale Anthony  
 Finch, Randal Craig  
 Findeiss, Lawrence William  
 Fisher, Elphin Barrett  
 Fisher, Raymond Theodore  
 Foltz, Peggy Diane  
 Foust, Gary Lee  
 Frame, Terrance Craig  
 Francis, David Louis  
 Francis, Robert MacKenzie  
 Franklin, Nicholas William  
 Franssen, Roger Allen  
 Frantz, Richard Lamar  
 Frazee, Ronald Leroy  
 Frederick, Lance Andrew  
 Freeman, Parker C.  
 Fritz, Robert Wayne  
 Fry, Richard Lee  
 Gannon, Thomas Hugh, III  
 Garcia, Frank Charles  
 Garden, Bruce William  
 Gardner, Brian Martin  
 Gaskell, Michael Lee  
 Gebhardt, Robert Edward, Jr.  
 Geci, Karl Edward  
 Germann, Glenn Roger  
 Gershon, David Lawrence  
 Gibson, Richard Duval  
 Glisson, Patrick Calvin, Jr.  
 Glynn, William Charles  
 Goodlatte, Peter Roe  
 Gorton, Grant John, II  
 Gosma, James Allen  
 Grant, George Michael  
 Green, Gerald Le Roy  
 Gregory, Edward Alexander, Jr.  
 Grimard, Gregory Paul  
 Grinspoon, Alan Marshall  
 Gross, Thomas M.  
 Grosscup, Richard K.  
 Gunter, Wilkin J., Jr.  
 Gunther, Donald Louis  
 Hall, James Curtis  
 Hansen, Philip Raymond  
 Happ, David Richard  
 Harrer, Max Warren  
 Harris, Eldon D.  
 Harris, Jodie R., Jr.  
 Harris, Wade  
 Hawkins, Charles Frederick  
 Hawkins, Kenneth Bradley  
 Hawley, Robert Lyman, Jr.  
 Heath, Donald Edward  
 Hebert, Joseph Nelo, III  
 Hedman, Kent Sheldon  
 Hess, Glenn E.  
 Hichak, Michael Joseph  
 Hiers, Preston Henry  
 Hinz, Donald Eugene  
 Hirsh, Louis Meyer  
 Hodges, James Edward  
 Hofer, Jeffrey Ritter  
 Holcombe, James Lawson  
 Holeva, Carl  
 Holstrom, Marshall V.  
 Hooper, James Ernest  
 Horals, Brian John  
 Howe, David Blais  
 Hulsey, Frederick Robert  
 Hunt, John Allen  
 Hupp, Alfred Rector, Jr.  
 Hura, Leo C.  
 Hutchins, Stephen Cullen  
 Hynes, Michael W.  
 Jackson, David Allen  
 Jackson, John Adrian  
 Janiec, Jan David  
 Johns, Joseph Howard  
 Johnson, David Patrick  
 Johnson, Robert Borden  
 Johnston, Phillip Lee  
 Johnston, Steven A.  
 Jones, James Moran, Jr.  
 Jones, Roger Alan



Jorgensen, Randolph Alan  
 Josephson, Hardy Richard  
 Katterich, Richard Alan  
 Kaufman, Ronald Melvin  
 Keil, Allen Wilson  
 Kellas, John Calvin  
 Kidder, Jeffrey Brian  
 King, Walter Albert  
 Kloeppel, Daniel Lawrence  
 Kobayashi, Kenneth  
 Kochey, John Gentel  
 Koths, Isabel Margaret D.  
 Kyzer, Braddock Kennrick, Jr.  
 Lacy, William Nelson  
 Lakefield, Bruce Richard  
 Lancaster, George Bonner, Jr.  
 Lange, Richard Herbert  
 Lattomus, Thomas Steele  
 Lausten, Jean Ann  
 Lavin, Mark Anthony  
 Lawson, William Franklin, Jr.  
 Leary, George E.  
 Lee, David Lawhon  
 Lehmann, Ralph Hans  
 Leighty, William Eric  
 Lessner, Dennis William  
 Letts, John Francis, Jr.  
 Levy, Edmund B, III  
 Lewis, John Royal  
 Linn, David Auen  
 Losh, Dennis Michael  
 Loustaunau, Paul Jeffrey  
 Lowe, George Edward  
 Lubrano, Joseph Anthony  
 Luten, James Griffin  
 Lutz, Michael Hilton  
 Lyon, Allan White  
 Macbain, Richard Dennis  
 Maloney, Michael John  
 Maloney, Timothy  
 Maniscalco, Ronald John  
 Martin, David Parker  
 Martin, Harry John  
 Martin, Ronald Reid  
 Martinez, Alexander H.  
 Mason, Obie O.  
 Matthews, Robert Brodnax, Jr.  
 Maturi, Harold John  
 Maxfield, Dennis Wayne  
 Maxwell, Daniel Leslie  
 Maxwell, John Eddie  
 May, Robert Michael  
 Mayon, Michael Howard  
 McAllister, Edward Cain  
 McCants, Bobbie E.  
 McCray, John Henry, Jr.  
 McDonald, Gregory David  
 McDougall, John Scott  
 McEliece, Robert Devereux  
 McGaha, John Robert, Jr.  
 McGee, Bruce Briden  
 McGree, Mark Patrick  
 McKee, Stanley Walter  
 McKenzie, James Harvey  
 KcKewon, Ray Walton, Jr.  
 McLemore, Albert Sydney, Jr.  
 McManus, William Martin  
 McMillen, Cameron Kay  
 McMillian, Nancy Wood  
 McPheter, Gordon Lee  
 McWhirter, Janice H.  
 McWilliam, John D., Jr.  
 Meldrum, Thomas Wilson, Jr.  
 Meo, Joseph Michael  
 Metivier, Marion Eleanor T.  
 Metzler, Larry Edward  
 Muerer, John W.  
 Mills, Nile Dean  
 Miner, John Boyd  
 Mingleorff, George E., III  
 Minnich, John Holloway, III  
 Mitchell, James A.  
 Moccock, William Ralph  
 Monson, Scott Anthony

Montague, Francis B.  
 Morgan, Gregory Charles  
 Moriarty, Christopher Paul  
 Morin, Roger A.  
 Murphy, Dennis Anthony  
 Murphy, Edmund Dennis, III  
 Murphy, Michael Thomas  
 Murray, Steven Allen  
 Mytinger, Helen Ann  
 Nachand, Clyde Raymond  
 Neal, John Steven  
 Nelson, Frederick Dan  
 Nevitt, William Renwick, Jr.  
 Niles, James Hastings  
 Nise, James Richard  
 Noren, John Walton  
 Norton, Edward James  
 Norwood, Bryan Bernard, Jr.  
 O'Brien, William Stanley  
 O'Chmanski, Stanley P., Jr.  
 O'Connor, Joseph Michael  
 Odland, David John  
 O'Gurek, Robert Francis  
 Okerson, John Russell  
 Oliver, Larry Lee  
 Olson, Thomas Paul  
 Opsal, James Kenneth  
 Oshiro, Richard Joseph  
 Osier, Christopher  
 Oswald, Louis John, III  
 Overend, William Jones  
 Owens, John Richard, Jr.  
 Page, Steven George  
 Palmer, Daniel Curtis  
 Palmer, William Ware, III  
 Parks, Steven Greg  
 Passman, Frederick Jay  
 Patterson, Daniel J.  
 Patterson, Ricky Lee  
 Pecic, John Wayne  
 Peck, William Leonard  
 Peloquin, Peter Joseph  
 Pepe, Raymond Alan  
 Peterson, Glen L.  
 Petit, Noel Julien  
 Petite, Mark Henry  
 Phelps, Roy Leon  
 Phillips, Marc Stephen  
 Pickens, James McCaughrin  
 Pignataro, Ronald Allan  
 Pinkney, David Timothy  
 Ploss, Craig Richard  
 Poleshaj, Valentin  
 Porter, Stuart Thomas  
 Pottkotter, Raymond J., II  
 Powell, Robert H. W.  
 Pradon, Stephen Dan  
 Price, John Dudley  
 Pritchard, Robert Arthur  
 Prokasky, Stephen Scott  
 Prunty, Robert Wayne, Jr.  
 Pugh, David Charles  
 Rand, Michael M.  
 Rankin, Richard James  
 Ratner, William David  
 Red, James Neal  
 Reed, Wallace Litchfield, Jr.  
 Rehkopf, James Alan  
 Rehwaldt, Anthony James  
 Reinertsen, Donald Grant  
 Resch, Philip Ray, Jr.  
 Rhodes, Darryl Wayne  
 Ridgeley, Owen Joseph, Jr.  
 Ridgeway, Jessie D.  
 Rightmire, James William, Jr.  
 Rightmyer, Richard Lee  
 Riley, Stephen E.  
 Rineman, Jon Richard  
 Robart, Gregory Paul  
 Robertson, Larry Wesley  
 Robinson, William Alan  
 Rogers, Roy Richard  
 Rome, Daniel Curtis  
 Roshelli, Ronald Joseph

Ross, John Clyde  
 Rothwell, Jeffrey T.  
 Rottler, Howard Colby, Jr.  
 Royall, Michael Bruce  
 Russell, Howard Streeter  
 Ryan, Daniel Kevin  
 Sacia, Roger Ethan  
 Sage, Michael Joseph  
 Samples, Ted Dean  
 Santana, Joshua Eliel  
 Santoni, Frank Peter, Jr.  
 Sato, Stanley Kazuo  
 Scattergood, Robert Alan  
 Scharfe, Mark C.  
 Schaumann, Robert Charles  
 Schiano, Richard James  
 Schierer, Leon Arthur  
 Schneider, Peter Paul, Jr.  
 Schofield, Robert Scott  
 Schott, Frank Theodore, Jr.  
 Schultz, Ronald Haygood  
 Schwedhelm, Martin Henry  
 Scofield, William Thurgood  
 Scott, Robert Warren, Jr.  
 Seabrooks, John Robert  
 Seck, William John  
 Seil, John W.  
 Sein, Lorenzo  
 Senior, Michael William  
 Senness, David Mark  
 Seth, Roy Allen  
 Shelley, Marke Robert  
 Shelton, Michael Chase  
 Sherrill, George Thomas  
 Shirley, Jack Michael  
 Siddon, Robert L.  
 Simonitsch, Mark Andrew  
 Simons, Henry M., III  
 Simpson, Michael K.  
 Simpson, Paul L.  
 Sitz, Joe Harvey, III  
 Silvers, Mark Raymond  
 Skelton, Robert Thomas  
 Smith, Barry Gregory  
 Smith, Barry Lee  
 Smith, John Walter  
 Smith, Ralph Randall  
 Smith, Sue James  
 Smolen, Theodore Francis  
 Somer, John Joseph  
 Soshuk, David Judah  
 Spruill, John Paul  
 Stahlhut, David Michael  
 Stapleton, Stephen Hatley  
 Stefanick, Andrew  
 Stephens, Michael Robert  
 Stevens, Timothy Forrest  
 Stevenson, John G.  
 Stoeppelwerth, Douglas Earl  
 Suellmann, James Walter  
 Sullivan, Raymond Charles  
 Sumner, Robert Lewis  
 Swacker, Robert N.  
 Swanson, Michael Richard  
 Sydnor, Thomas Lee  
 Tappen, Rodney Martin  
 Taylor, John Bruce, Jr.  
 Taylor, John Raymond  
 Taylor, Perry Reece, Jr.  
 Tennyson, Charles Leroy, Jr.  
 Tente, Dennis Joseph  
 Themak, Henry Andrew, Jr.  
 Thomas, Danny Ray  
 Thomas, Jack Richard  
 Thomas, Michael Charles  
 Thomspon, Joe S.  
 Thomson, James Stuart  
 Thorne, Lewis Gibson  
 Timothy, Michael Laddie  
 Toran, Terence William  
 Tredway, Leo Joseph, Jr.  
 Trevathan, Larry Eugene  
 Tribelhorn, Ronald Wayne  
 Udell, Norman Irving

Unruh, Howard Kirk, Jr.  
 Vannatta, John Orvis  
 Vansickel, Michael Eugene  
 Venable, Bruce Stone  
 Vickery, Thomas E.  
 Vivian, John Wendell  
 Walker, Margaret Ellen Steel  
 Wallace, William Carl  
 Wallin, Jeffrey Erling  
 Walsh, Peter Earl  
 Ward, Michael Charles  
 Watkin, George Clarence, Jr.  
 Watkins, Kenneth Stratte, Jr.  
 Watkins, Roger Deryl  
 Watson, Joseph Theil  
 Watts, Patrick R.  
 Weatherup, Mark Robert  
 Weidman, Richard D.  
 Weimerskirch, John Peter  
 Weinert, Bruce Robert  
 Weishaar, Pamela Jean  
 Wennet, Richard Irwin  
 Westberg, Larry A.  
 Westendorf, William Joseph  
 White, Grover Lee, III  
 White, James Henry, Jr.  
 White, Richard Young  
 Whitley, Dewey Leon  
 Whitman, David Allen  
 Whitson, William Frederick  
 Wickham, Joel James  
 William, Eddie Robert, Jr.  
 Williams, Eugene J., Jr.  
 Williams, Reginald Lewis, III  
 Williams, Stephen Wayne  
 Willich, Nicholas A.  
 Wilson, David G.  
 Wilson, Michael Kenneth  
 Wilson, Steven Dale  
 Woodall, Albert Jackson, Jr.  
 Worth, Joseph Christophe, III  
 Yerick, Martin R.  
 Youtsey, Ronnie Howard  
 Zahner, Carl John  
 Zgndstra, Steven Peter  
 Zgolinski, Albert  
 Zmuda, Marcia Louise  
 Zurcher, Robert James

## UNRESTRICTED LINE OFFICERS (TAR)

Baker, Gary Stewart  
 Beckman, Matthew Phillip  
 Bertoglio, James Alan  
 Boyles, Glenn Robert  
 Brady, Patrick Donald  
 Brazell, Mark T.  
 Britts, James Ellsworth  
 Cairnes George W., III  
 Canzonieri, Ronald John  
 Conkey, John A.  
 Dunphey, Floyd P.  
 Fisher, William Harold  
 Frank, Joel Stephen  
 Grupe, David Arthur  
 Gryde, Stanley  
 Hall, Edward Cabot  
 Hastings, John Thomas  
 Hines, Jerome H.  
 Ingalls, Robert D., III  
 Janeczek, Craig Michael  
 Johnson, Jerry Reed  
 King, Michael Reedy  
 Loeslein, George Frederic, Jr.  
 McCulloch, Ben, Jr.  
 Peck, John Phillip  
 Pettit, John Mullin  
 Roberts, John David, Jr.  
 Sameit, Douglas E.  
 Schalk, John Edward  
 Schechinger, Terry Dean  
 Schrade, Lawrence L.  
 Schultz, James Calvin  
 Smart, James Dennis  
 Thompson, Merle Neeley, Jr.

Wootton, Ronald Elwyn  
 Young, John Wesley, Jr.

## ENGINEERING DUTY OFFICERS

Allen, Dale Ivan  
 Andrews, Harry William  
 Abley, Walter Julius, Jr.  
 Corbin, James Dwayne  
 Greene, William Ward B., Jr.  
 Gunderson, Charles Rolf  
 Hennessey, Thomas Vincen  
 Herschkowitz, Robert Lion  
 Laroche, Paul Gerard  
 Manning, Robert Warren  
 Mendenhall, Thomas Leo  
 Parsons, Paul Ivan  
 Paskale, Joseph Martin  
 Riley, John Henry  
 Ryder, Robert Michael  
 Rzepkowski, Ronald Raymond  
 Saunders, Mark Paderick

AERONAUTICAL ENGINEERING DUTY OFFICERS  
(AERONAUTICAL ENGINEERING)

Barrera, Fernando, Jr.  
 Jones, Kenneth John  
 Pagnotta, Alan Richard  
 Roberts, Charles G., Jr.  
 Woods, Raymond Wayne  
 Yatras, Dennis Andrew

AERONAUTICAL ENGINEERING DUTY OFFICERS  
(AVIATION MAINTENANCE)

Ervin, James Edward, Jr.  
 Fitzfugh, John Edwin, II  
 Johnsen, Martin Walter  
 Kornegay, John Carr  
 McClanahan, Michael William  
 Ross, Gary Francis  
 Schachter, Frank  
 Toler, John Rodney  
 Wunder, Bernard Almond

## SPECIAL DUTY OFFICERS (CRYPTOLOGY)

Bennett, Joseph Thomas, II  
 Brown, Larry Duane  
 Coolbaugh, George Henry, Jr.  
 Coppock, Edrick Gerald  
 Cox, Lyle Ashton  
 Dickie, John Nevin  
 Fitzgibbons, Thomas B.  
 Geoghegan, James Conway  
 Hamlett, John Martin, III  
 Jackson, Jack Frank  
 Jensen, Judith Anne  
 Jensen, Ronald Dale  
 Kirkland, James Ray  
 Lewis, Kathleen Mary  
 Mackey, Edward Thomas  
 Marsh, Alfred Burton, III  
 McCarriar, Thomas Lee, Jr.  
 Mitchell, Gregg F.  
 Naugher, Loran Dever, Jr.  
 Norvell, Larry Montgomery  
 Parsons, Lee  
 Radcliffe, Larry Lee  
 Roquemore, Michael Bryan  
 Servis, Ronald William  
 Sincavage, John Thomas  
 Stroud, Joseph Oliver, Jr.  
 Vanzandt, James Edward

## SPECIAL DUTY OFFICERS (MERCHANT MARINE)

Andrews, John Howard  
 Brady, James Joseph  
 Hitchens, Phillip James  
 Oehler, Michael W.  
 Peacock, Robert James, II  
 Ruggles, Clifford L.  
 Scheffer, James Henry

## SPECIAL DUTY OFFICERS (INTELLIGENCE)

Adler, Stanley Edward  
 Adubato, Donald David  
 Anderson, Raymond Dale  
 Brownell, Bruce Elliot  
 Burnham, Charles Davis, Jr.

Clabby, James Albert  
 Clark, Lawrence Francis  
 Clark, Richard Dean  
 Clemmer, Dayne Edward  
 Cooper, Roger Merlin  
 Crowley, Vicki Rene  
 Daniels, Andrew Martin, Jr.  
 Davis, Jordan B., Jr.  
 DiPalma, Elaine Meyer  
 Douglas, John Paul  
 Douthit, James Lynn  
 Dyer, James Russell  
 Ekern, Ronald James  
 Elliott, Earl Carter  
 Evanoff, John  
 Frost, Charles Whitfield  
 Ganne, Patrick Roland  
 Gillespie, Edward Harper  
 Gray, James Lewis  
 Green, Martha Gaylord Clouse  
 Gregory, Robert Edward  
 Griffin, John James  
 Hartman, Jay Thomas  
 Haynes, Robert Calvin  
 Henley, Dale Warren  
 Huss, Stephen Lawrence  
 Ingraham, Marshall Thomas  
 Johnston, Milton Dean  
 Kaltnecker, Steven Richard  
 Kovacinski, Boleslaw Anthon  
 Krimbill, Norman Bobby  
 Lampley, Charles Warren  
 Laxson, Lon Michael  
 Layman, Harvey, Jr.  
 Lee, James Arthur, Jr.  
 Lohmeyer, John Otto, Jr.  
 Manzelmann, James, Jr.  
 Marlowe, Lon Devere, III  
 Matyas, George Frank  
 McGowan, Byron Lee  
 McGowan, David Calvin  
 Meriwether, Gordon K., III  
 Mersky, Peter Bennett  
 Mitchell, Thomas Clark  
 Morris, John Joseph  
 Oshields, Donald Brent  
 Paul, David Loren  
 Philbin, Tobias Raphael, III  
 Putzke, James Jerome  
 Rasmussen, David Lee  
 Ratterman, David Burger  
 Romeo, Michael Gilbert  
 Ryals, Everett Lee  
 Saccio, Joyce Ruth  
 Shirk, Cort John  
 Simak, Robert Erwin  
 Starshak, Joseph Bennett  
 Stentz, Terry Lee  
 Stokich, Theodore M., Jr.  
 Stuart, Robert William  
 Swanson, David Henning  
 Townsend, Susan Elaine  
 Welcker, Brian Dean  
 Welihozkiy, Anatoli  
 Wright, Catherine Schoonmake  
 Wyker, John Joseph  
 Yates, William Ellison

## SPECIAL DUTY OFFICER (INTELLIGENCE) (TAR)

Bartol, Robert Michael

## SPECIAL DUTY OFFICERS (PUBLIC AFFAIRS)

Bowers, Ingrid A.  
 Cotton, Hershell Joseph  
 Eich, Ritchie Kenneth  
 Livesay, James Ray, II  
 Noone, James Anthony  
 Preves, John Charles  
 Smith, Lewis Monroe

## SPECIAL DUTY OFFICERS (OCEANOGRAPHY)

Hughes, Michele Marie  
 Ihle, David Marcus  
 Ley, Gary William