

ORIGINAL

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
JUDICIARY COMMITTEE HEARING

ENFORCEMENT OF EXISTING GUN LAWS

LINCOLN MEMORIAL ROOM
UNION LEAGUE OF PHILADELPHIA
140 SOUTH BROAD STREET
PHILADELPHIA, PENNSYLVANIA

THURSDAY, DECEMBER 2, 1999, 9:30 A.M.

BEFORE:

HON. THOMAS GANNON, CHAIRMAN
HON. PATRICK BROWNE
HON. LITA COHEN
HON. STEPHEN MAITLAND
HON. KEVIN BLAUM
HON. FRANK DERMODY
HON. BABETTE JOSEPHS
HON. KATHY MANDERINO
HON. JOSEPH PETRARCA

ALSO PRESENT:

HON. GEORGE KENNEY
HON. CURTIS THOMAS
HON. CONNIE WILLIAMS

DEBORA CUNNINGHAM, CSR-RPR
REPORTER-NOTARY PUBLIC



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1 CHAIRMAN GANNON: The House Judiciary
2 Committee will come to order. This meeting is to
3 conduct hearings on the enforcement of existing
4 gun laws.

5 Our first witnesses are the Honorable
6 Edward Rendell, Mayor Of the City of
7 Philadelphia, and Commissioner John Timmone, y,
8 Commissioner for the Philadelphia Police
9 Department.

10 Mayor Rendell and Commissioner
11 Timmone, you may proceed when you're ready.

12 MAYOR RENDELL: Thank you, Mr. Chairman
13 and Members of the Committee.

14 Let me begin by thanking you for what
15 has been over a year-long consideration of ways
16 to curb gun violence in the Commonwealth of
17 Pennsylvania. This is my second time testifying
18 before the full Committee, and I've testified
19 before Subcommittees on this very same issue.

20 If you will recall my testimony last
21 year when I testified on behalf of House Bill 46,
22 Representative Cohen and Representative Evans'
23 bill, you will recall what I said then, and I
24 will repeat in briefer form today, that I believe
25 the answer to gun violence does not come in one

1 simple package. There is no silver bullet, and
2 there's no ideological correctness to this
3 issue.

4 The NRA and law enforcement officials
5 who say that we must have better enforcement to
6 our existing laws and that judges must, in fact,
7 hand out severe penalties for people that violate
8 gun laws, those individuals are absolutely
9 correct.

10 We must have increased law enforcement
11 both in its effectiveness and its efficiency and
12 in the results produced by our court system in
13 dealing severe penalties to those individuals who
14 violate our gun laws.

15 But to people that say that that alone
16 can't be the same answer, handgun control
17 advocates, many people on this committee, myself,
18 our own great District Attorney, Lynne Abraham,
19 we say that that's one approach and a very needed
20 approach to the problem, but in the end we must
21 also find a way to restrict access to handguns so
22 that juveniles and prior felons and people with
23 criminal records cannot easily receive handguns
24 through illicit gun trafficking. We are also
25 correct.

1 And many of us advocate for both of
2 these steps. And there are people who say that
3 the answer to gun violence lies in educating our
4 children, in prevention programs, in finding
5 alternatives to keep kids from turning to crime
6 in the first place, improving economic
7 opportunity for young people as they enter their
8 teenage years, those people. Again, many of us
9 also fall into that category. Those people are
10 undoubtedly correct.

11 I note today's hearing focuses on ways
12 to step-up law enforcement, to use existing laws
13 and new laws like Attorney General Fisher's
14 suggestion to strengthen law enforcement's
15 response to gun violence. I will cover that in
16 my remarks.

17 I want you to know at the outset that
18 it is my strong belief, a belief grounded in 20
19 years in law enforcement, a belief grounded in
20 eight years as the elected mayor of the largest
21 city in the Commonwealth, a city that has the
22 highest percentage of gun violence in its overall
23 crime rate, higher than any other city in
24 America, that we have to do all of these things.

25 We have to take action. I'm calling in

1 the most respectful way I can for this Committee
2 to move House Bill 46 to the floor of the House,
3 and let's begin an attack on all fronts to reduce
4 gun violence in the Commonwealth.

5 As I said last year, and I will move
6 through this quickly, the statistics in
7 Philadelphia and in Pennsylvania are chilling.
8 Between 1988 and 1997 deaths by firearms rose 61
9 percent in Pennsylvania and 102 percent in
10 Philadelphia.

11 We have gone from a high of 414
12 homicides in 1996, a high in this decade, of
13 which 81 percent were via firearm, to this year
14 we will come in at around 285 homicides, a
15 tribute to the work of Commissioner Timmone and
16 his police department. But still of the 285
17 homicides, 80 percent are projected to be as a
18 result of firearms.

19 That's also true in Philadelphia for
20 robberies. Of 12,000 robberies in 1997, 53
21 percent were at the point of a gun. Of 6,100
22 aggravated assaults, 2,300 were at the point of a
23 gun.

24 Going back to robberies, one-third of
25 those gun-point robberies were committed by

1 juveniles using firearms.

2 For those of you who think that this is
3 only a Philadelphia problem, I want to just show
4 you again -- we submitted these before, but I
5 want to show you again a map of the Commonwealth
6 of Pennsylvania.

7 In light blue are counties where
8 commission of these crimes by firearm increased
9 from 1 percent to 99 percent. In dark blue, and
10 shockingly in most parts of the middle of the
11 state, dark blue indicates that these crimes by
12 firearm increased by over 100 percent.

13 Take a look at the map by homicide by
14 firearm. This is a change between '96 and '97.
15 Note the dark blue right in the middle of what we
16 refer to as the "T". So for those of you that
17 think that this is an urban problem only, this is
18 clearly evidence to the contrary.

19 Pennsylvania robberies by firearms,
20 same period, same thing. Light blue. Dark
21 blue. Not just Philadelphia, not just
22 Pittsburgh, but throughout the entire
23 Commonwealth. Assaults by firearms, same
24 picture, light blue 1 to 99 percent, dark blue,
25 100 percent.

1 Now, over the course of time, the last
2 two decades, we in Pennsylvania and you the
3 Pennsylvania legislature have taken strong steps
4 to deal with all violence and particularly gun
5 violence.

6 My first year as District Attorney my
7 office was asked, and we did enthusiastically,
8 draft a new Death Penalty Bill for the
9 Commonwealth. The Death Penalty Bill was passed
10 by the legislature in 1978, has been on the books
11 and hundreds of Pennsylvania juries have returned
12 death penalty verdicts. Not all of them, but
13 almost all of them involving death as a result of
14 the use of firearms.

15 In 1982, in my second term as District
16 Attorney, I drafted -- and many of the people on
17 this Committee or the Senate Judiciary Committee
18 sponsored a mandatory sentencing bill for people
19 who commit the five most serious felonies with
20 the use of a firearm. It called for a mandatory
21 minimum sentence of at least five years.

22 The bill in most parts of the state has
23 been effective. In Philadelphia its effect has
24 been muted because of the response of some, and
25 by no means all, but some of our judiciary.

1 With gun offenses in Philadelphia,
2 convictions have almost doubled. The number of
3 jail terms netted out by these convictions has
4 increased over the last few years by 120
5 percent.

6 All of the tough law enforcement
7 weapons that you as a legislature have given us
8 have paid off. Consider a statistic that is
9 almost unbelievable. In 1993, there were 26,000
10 intimates in our state penitentiary system. In
11 1996, in just 3 1/2 years, that number increased
12 30 percent to 34,000 inmates.

13 So we are taking strong law enforcement
14 measures. We are sentencing people to longer
15 periods of time. Our prison population, those
16 that are sent to prison for the most serious
17 offense, often gun violence, has increased by 30
18 percent. And yet these figures still exist.
19 This pattern still grows and grows and grows.

20 Now, in 1995 introduced by Senator Fumo
21 and supported by many people here, Section 6111-G
22 made it a felony to knowingly and intentionally
23 sell or deliver a gun if he or she has reason to
24 believe that the gun is intended to be used in
25 the commission of a crime.

1 he sold them to his name. He sold them wearing
2 dark glasses and probably a cap pulled down
3 heavily over his ears.

4 The person that bought the gun who
5 later uses it to commit a murder, even if we were
6 willing to make a deal with a murderer to testify
7 against someone who sold him a gun, the chances
8 that the murderer would be able to identify that
9 person are almost nil.

10 And to take the person who bought the
11 gun and say, hey, your gun was used in a murder
12 in Philadelphia, he will say, gee, it was
13 stolen. You didn't report it was stolen. I
14 forgot. The police never catch anybody anyway.
15 I didn't know it was stolen. I kept it in my
16 house and, gosh, someone must have come in and
17 stolen it. I kept it in my car. I had no idea
18 it was stolen. It is almost impossible to link
19 that person up.

20 But your statute, Senator Fumo's
21 statute, says that we also have to prove that the
22 individual had a reasonable belief that the gun
23 is intended to be used in the commission of a
24 crime.

25 You will hear from experts in criminal

1 law like District Attorney Abraham and District
2 Attorney Stiles that proving that that type of
3 knowledge, imputing that type of knowledge is
4 very difficult because when a kid buys a gun from
5 a store purchaser on the street, he doesn't say
6 to the store purchaser, hey, buddy, I need that
7 gun because I'm going to rob that corner grocery
8 store.

9 If he says anything he says, boy, it's
10 rough out here. I need this gun to defend
11 myself. Bingo. No prosecution.

12 Attorney General Fisher's excellent
13 legislation, which I know has been endorsed by
14 the Pennsylvania District Attorneys Association,
15 excellent legislation, it simply strengthens the
16 penalties. It doesn't make them mandatory. We
17 still would have problems with judges enforcing
18 them, but we should do them.

19 We should pass General Fisher's bill
20 because it sends a message. And some judges may
21 choose to use those increased penalties in a way
22 that sends a message to individuals which
23 hopefully deters others. That alone, even
24 combined with what you did in 1995, isn't going
25 to solve our problems.

1 United States Attorney Stiles and
2 District Attorney Abraham will tell you, and I'll
3 leave it to them to give you the full report,
4 that in our efforts to have stronger law
5 enforcement, we entered into an agreement, the
6 City, the Police Department and the District
7 Attorney's office, to take cases where people
8 with felonies who were found to have guns who if
9 tried in the Philadelphia Courts might get an
10 average of 4 months in prison, but in Federal
11 Courts the Federal guidelines call for 59 months
12 in prison.

13 We have begun a program -- and we are
14 the first big city in America and the second city
15 after Richmond, Virginia to enter into a program
16 -- and the NRA endorsed the program, and
17 challenged me to do it. And we did it because I
18 thought it was right. And it has had results.
19 It has had significant results. But, again, not
20 enough.

21 One gun a month legislation we believe
22 is not the total answer, but we believe is a very
23 important and necessary component of what we do.

24 In Pennsylvania, 9 percent of the
25 purchasers buy 30 percent of the guns. The ATF

1 will tell you that less than 1 percent of guns
2 are reported stolen. Yet we now know that
3 multiple purchasers in Philadelphia -- of all the
4 guns that commit crimes, we can trace close to 25
5 percent of those guns to multiple purchasers.

6 Another 20 percent we cannot trace
7 because of obliterated serial numbers. But any
8 police officer or ATF will tell you when the
9 serial numbers are obliterated, they are
10 obliterated because it is a result of gun
11 trafficking and multiple purchases.

12 So almost half of the crime guns used
13 are as a result of multiple purchasers. That's
14 .4 percent of all of our purchases in
15 Philadelphia and the Philadelphia area.

16 In '96 we had 25,000 purchasers. 103
17 of them were involved in sales that would be
18 prescribed by one gun a month. That's .4
19 percent. But 5,000 of the 38,000 guns actually
20 purchased, 5,000 of those would have been taken
21 off the street. Those are the guns that are used
22 to commit crimes.

23 There is no question that one gun a
24 month is desperately needed in this
25 Commonwealth. There is no question that

1 stepped-up law enforcement is desperately needed
2 in this Commonwealth.

3 I commend General Fisher's bill to
4 you. It should be passed. I commend House Bill
5 46 to you. It should be passed.

6 And lastly I always hear, the people of
7 Pennsylvania don't want gun control legislation.
8 I believe they want legislation to curb gun
9 violence. In fact, as you recall, we used a
10 Republican polling firm, the American Viewpoint,
11 to do a poll.

12 That poll found that in Pennsylvania 71
13 percent of the people statewide would favor
14 legislation to reduce handgun trafficking by
15 limiting handgun purchases to one per month.
16 Seventy-one to 24 it was favored. Shockingly, in
17 rural and suburban areas, 76 to 25 percent it was
18 favored.

19 I know that people in the legislature
20 never consider voting on whether it will help
21 them or hurt them in reelection, but we did ask
22 that as well. Would you be more or less likely
23 to vote to reelect your state legislator if he or
24 she supported this legislation to reduce handgun
25 trafficking by limiting handgun purchases to one

1 per month. Seventy-one percent statewide said
2 that they would be more likely. Sixteen percent
3 said they would be less likely.

4 Twelve guns a year is enough for any
5 law-abiding Pennsylvanian. Strengthen law
6 enforcement. Make it easier for law enforcement
7 to crack down on people who violate our laws.
8 Pass House Bill 46, one gun a month.

9 Commissioner Timmone.

10 COMMISSIONER TIMMONEY: Thank you, Mr.
11 Mayor. Good morning, and thank you for the
12 opportunity to come here today to discuss this
13 very important issue of gun violence.

14 We started this year, 1999, with random
15 gunfire in South Philadelphia to bring in the new
16 year where a young 11-year-old boy was shot in
17 the head. Just two nights ago a man in West
18 Philadelphia was shot at 42 times and killed.

19 Philadelphia, as the Mayor said, owns
20 the dubious distinction of having consistently
21 80, 81, 82 percent of its homicides committed by
22 guns. It is the highest of the ten largest
23 cities in America.

24 There are two main reasons for this
25 dubious distinction. One is the legislative

1 framework that allows easy access to guns. Two,
2 the lenient fashion in which courts deal with the
3 gun offenders.

4 I don't think anybody will argue with
5 the proposition that convicts and kids should not
6 have access to guns. Unfortunately, as a result
7 of loopholes in the laws, such access is easy and
8 available.

9 Let me give you some examples, and the
10 Mayor mentioned some, from our ATF Philadelphia
11 Police Department Task Force. The most obvious
12 one is the store purchase where so-called
13 legitimate gun purchasers are limited to the
14 number of guns they purchase by the amount of
15 cash they have in their pocket.

16 It's quite common and very lucrative
17 for a legitimate purchaser to purchase firearms,
18 particularly handguns, in bulk. These guns can
19 then be sold on the streets of Philadelphia to
20 the highest bidder. The seller then claims the
21 guns are stolen and then pockets the profits.

22 In addition to the profits driven by
23 store purchasers, many individuals with clean
24 records buy guns for family members or boyfriends
25 who are prohibited from such purchases.

1 Our office, working with the ATF,
2 recently conducted an operation at a gun show
3 outside the City where we observed a young woman
4 who bought several guns that were picked out by
5 their boyfriends. Those guns are then taken back
6 down to Philadelphia. A check of the boyfriends
7 revealed all of them had records and were unable
8 to purchase the guns.

9 Similar illegal gun purchases take
10 place at flea markets. We have the Pennsylvania
11 Instant Check System that allows the immediate
12 purchase of handguns when the applicant provides
13 a Pennsylvania driver's license or state
14 identification card.

15 All you need to do is get a phoney
16 driver's license or put down fictitious
17 information on the identification card and you
18 can get guns with no problem.

19 For example, the Instant Check does not
20 have access to the Philadelphia Active Warrant
21 System. You can't check. It is not on-line.
22 You can't check to see if somebody is wanted on a
23 warrant.

24 The Instant Check System cannot access
25 Philadelphia juvenile records prior to 1995. Yet

1 people with a juvenile record prior to 1995,
2 depending on the charge and conviction, will be
3 prohibited by law of making such a purchase.

4 Another sign of the ease at which legal
5 guns can be obtained in Pennsylvania is the
6 recent appearance of Pennsylvania as a leading
7 source state for legal guns to other states.

8 Traditionally, this dubious distinction
9 belonged to southern states. In the last three
10 or four years on ATF's national records, we
11 started to see Pennsylvania become a source
12 state, and now in the last year come into the top
13 ten of the source states. And the bar is going
14 up as opposed to going down.

15 As southern states, as the Mayor
16 mentioned, have begun to restrict and pass
17 sensible legislation, we have the dubious
18 distension of filling the void created by the
19 laws in some southern states.

20 At the end of October, the Philadelphia
21 Police Department made 3,648 gun arrests. We
22 have already seized over 4,000.

23 We will at the end of this year seize
24 about 5,000 guns. Let me give you some point of
25 reference.

1 In New York City in 1990, New York City
2 has its highest rate of homicide ever.
3 Twenty-three hundred people were killed in New
4 York City in 1990.

5 In 1990, the New York City Police
6 Department in its worst year confiscated 18,000
7 guns. The Philadelphia Police Department, we
8 will come in at 285 homicides, the lowest
9 homicide rate in 15 years. A pretty good year.

10 The Philadelphia Police Department will
11 confiscate the equivalent of 25,000 guns. So in
12 our best year we have confiscated the equivalent
13 of 25,000 guns as compared to New York in its
14 worst year where they confiscated 18,000. The
15 problem, again, easy access.

16 One of the strategies we are trying in
17 Philadelphia, the Mayor mentioned it, is
18 Operation Cease-Fire which is a collaborate
19 effort between the local and federal prosecutors
20 to arrest, indict, and then prosecute people
21 engaged in gun activities and gun violence.

22 To date, with almost a year in
23 operation, there have been 200 cases, half of
24 which involve gun traffickers that have been
25 indicted and will be prosecuted by Mr. Stiles'

1 office.

2 It's a step in the right direction.
3 It's a real good step in the right direction, but
4 it doesn't help all our problems in this area.

5 We need to effectively curb the supply
6 of guns and the easy access to guns. We need
7 that plus a strong law enforcement. Law
8 enforcement, I think I can say, we're holding up
9 our end of the bargain. We probably need to do a
10 better job, and the courts need to do a better
11 job. The legislature has to chip in with some
12 reasonable legislation. And a first good step
13 would be one gun a month.

14 I keep hearing the Mayor heckled as
15 being somehow against the Constitution. When I
16 go to community groups, no matter where I go in
17 Philadelphia, when I explain to them one gun a
18 month 12 guns a year, if you have 144 guns after
19 12 years, if you think of it, if you are married
20 you can double that. People just shake their
21 head, yet this man is constantly being attacked
22 as being somehow against the Constitution.

23 We in law enforcement we need your
24 help. It is dangerous in the streets of
25 Philadelphia for the average person. It is also

1 dangerous for the Police Department. We are here
2 to plead, to beg, to cajole, whatever is
3 necessary, to get the attention of America.
4 Thank you very much.

5 CHAIRMAN GANNON: Thank you,
6 Commissioner Timmoney. Any questions?
7 Representative Cohen.

8 REPRESENTATIVE COHEN: Thank you,
9 Mr. Chairman. I'm Lita Cohen, State
10 Representative from Montgomery County.

11 Mayor Rendell, thank you for touting
12 House Bill 46. As you and I know, at your urging
13 I am the prime sponsor of this Bill. I certainly
14 agree that it is necessary in our efforts to stop
15 the wrong people from doing the wrong things with
16 guns.

17 Commissioner Timmoney used the word
18 cajole. I think we'll have to turn it back to
19 you and beg and plead with you to do a very quick
20 lobbying job because as I understand it presented
21 to us next week will be the amendment that's
22 coming from the Senate concerning restricting
23 municipalities from suing the gun manufacturers.

24 In addition to stopping us from having
25 a seat at the table, as we have in the tobacco

1 settlement, it also would then restrict us from
2 sharing in any monetary settlements.

3 I shutter at the thought of, for
4 example, our police and our law enforcement
5 agencies receiving legitimate guns for legitimate
6 law enforcement purposes and having them be
7 defective and injure or explode and severely hurt
8 our own law enforcement agencies. So I think --
9 and would be restricted from any kind of a
10 lawsuit under this current bill that's going to
11 come to us.

12 I urge you to lobby the Legislature of
13 the dangers of this kind of action, not so much
14 for the single purpose of protecting our own law
15 enforcement agencies.

16 MAYOR RENDELL: Very quickly, I
17 obviously agree with you. Although we have
18 chosen not to see that yet, because I have played
19 a central role in trying to bring about
20 successful negotiations with the gun
21 manufacturers for voluntary restriction, those
22 negotiations have not produced very much fruit.

23 I don't know what my successor will do,
24 but he should have that option. You don't even
25 restrict people from suing tobacco companies.

1 You don't restrict people from suing automobile
2 companies.

3 What a message it would send if the
4 Pennsylvania legislature with statistics like
5 this in a poll on one gun a month banned the
6 right to sue, banned our right to sue as a police
7 department, banned individuals' rights and
8 municipalities' rights to sue for any reason.
9 Why single this out?

10 If I were other industries, I would be
11 knocking on your door to pass similar
12 legislation. And you are going to be hard put to
13 explain why you did it for the gun industry and
14 didn't do it for any other industries, didn't do
15 it for the chemical industry, didn't do it for
16 people who produced tractor-trailers, for people
17 that produce all sorts of pharmaceuticals and
18 drugs. I would be knocking on your door if I
19 were another industry shortly after you did it.

20 It's insanity. It sends out awful and
21 terrible messages. It is not helping us get at
22 this problem.

23 We have a problem. You don't need me
24 to put up those maps of Pennsylvania again We
25 have a problem in this state. That would be the

1 absolute wrong answer.

2 Thank you for reminding me. We will
3 get out something as quickly as we can.

4 CHAIRMAN GANNON: Representative
5 Roberts.

6 REPRESENTATIVE ROBERTS: Thank you,
7 Mr. Chairman. Thank you, Mr. Mayor and Mr.
8 Commissioner for being here.

9 I don't really have a question, but to
10 follow up on what Representative Cohen just said,
11 it's no accident that this Bill is in the
12 Senate. Having passed the Senate Judiciary
13 Committee, it could go to the Senate floor any
14 time and we could pass it or concur in it
15 depending on how it comes to us when we are in
16 session Monday and Tuesday and perhaps Wednesday
17 of next week.

18 This is a national effort by the
19 National Rifle Association nationwide. Something
20 like 14 states have already passed some version
21 of a bill which would prevent municipalities and
22 political subdivisions from suing gun
23 manufacturers, which for me tells me the NRA is
24 simply an arm of the manufacturing powers in this
25 country.

1 And it seems to me, although I agree
2 that you are perfectly correct in you're trying
3 to negotiate with the National Rifle Association
4 for voluntary restraints, that whatever kind of
5 arm's-length negotiation you thought you had is
6 all over.

7 Whatever you are saying to them, they
8 are in Harrisburg and they are running this thing
9 this month.

10 MAYOR RENDELL: I agree with you.
11 What's happening in other states is just very
12 disheartening, very disheartening.

13 REPRESENTATIVE ROBERTS: I would expect
14 that it would not have a difficult time passing
15 with a number of us here voting no and making our
16 speeches. I think the Governor's already
17 indicated that he will sign it.

18 I would suggest that tomorrow is the
19 day to file your suit.

20 CHAIRMAN GANNON: Representative
21 Williams.

22 REPRESENTATIVE WILLIAMS: Thank you
23 very much. Your show-and-tell, Mr. Mayor, of the
24 gun deaths and crimes that crimes committed with
25 handguns is very telling.

1 I agree that -- I've been working to
2 try to get something like that drafted where we
3 would have special courts and special sentencing
4 like the Attorney General's, but his is a
5 suggested sentencing.

6 I would like you to talk a little bit
7 about how we might be able to convince the rest
8 of the State and the DA's Association which is
9 not in favor so much of special courts for people
10 that have already committed crimes who have
11 committed another crime with a gun, how we might
12 be able to convince them of its value.

13 MAYOR RENDELL: It's been a while since
14 I've been a district attorney, so I'll let
15 District Attorney Abraham field that.

16 I think special courts have some
17 value. When we did our very effective career
18 criminal program, we had a special group of
19 courts try career criminal cases. It
20 significantly enhanced results.

21 I will say, though, for example, in
22 General Fisher's bill there is no reason why --
23 well, I know the legislature can't in and of
24 itself raise sentencing guidelines. It can only
25 make recommendations to the Guidelines

1 Commission.

2 But adopting General Fisher's bill and
3 giving stronger penalties without either raising
4 the guidelines or making the sentence mandatory
5 really makes it a toothless tiger.

6 The General is doing all that he can.
7 I don't mean to be critical of him. Only
8 increased guidelines or mandatory sentences are
9 going to ensure that you are going to get the
10 type of results that you want.

11 And even as the Commissioner said and
12 I'm sure the DA is going to tell you, even then,
13 even when we have mandatory sentences, many of
14 our judges find just the most fallacious ways of
15 getting around the mandatory sentences.

16 We have gun-point robberies in
17 Philadelphia that are found by judges to be only
18 theft simply because they want to avoid giving
19 the mandatory minimum of five years.

20 The District Attorney, I'm sure, can
21 tell you legions about that.

22 I will talk to the DA's Association. I
23 know you'll have a chance to talk to our great
24 District Attorney. Raising guidelines or
25 mandatory sentences I think are hand and glove

1 with special courts.

2 REPRESENTATIVE WILLIAMS: Thank you,
3 Mr. Mayor. I feel if we can't prosecute the way
4 that we need to, then we are not able to enforce
5 the existing laws and we will have a much more
6 difficult time doing new laws. Thank you.

7 CHAIRMAN GANNON: Representative
8 Petrarca.

9 REPRESENTATIVE PETRARCA: Thank you,
10 Mr. Chairman.

11 Mayor, we have gone over this before.
12 In my part of Westmoreland County, the schools
13 were closed this past Monday for hunting season,
14 the first day of hunting season.

15 My district -- my overwhelmingly
16 democratic district I believe is adamantly
17 opposed to gun control. I don't support gun
18 control and I will not vote for gun control.

19 My question is, what happens -- what do
20 I tell my constituents -- what happens when one
21 gun a month doesn't work? Where do we go from
22 here? And what can we do as a Legislature? And
23 what can I do as a legislator that does not
24 support gun control to help you?

25 You talk about the problems with

1 judges, liberal judges in Philadelphia. I don't
2 believe that is that much of a problem in other
3 areas of this Commonwealth.

4 What can we do sort of short of gun
5 control legislation, those of us that don't
6 support that, to help you?

7 MAYOR RENDELL: I agree you don't have
8 the same problems with judges in other parts of
9 the state. You get much better sentencing
10 responses to people that use guns.

11 Having said that, you don't want me to
12 show you the map again. My guess is that
13 Westmoreland County has had significant increases
14 in
15 -- and I'll bring out the maps again -- gun
16 violence robberies, gun violence homicides, gun
17 violence assaults. It is not stopping.

18 You have judges that basically do their
19 job. So I'm sort of confounded about what to
20 tell you.

21 I will also tell you that one gun a
22 month only applies to handguns. The vast, vast,
23 vast majority of hunters in the State of
24 Pennsylvania do not hunt with handguns, they hunt
25 with long guns. And even those that choose to

1 hunt with handguns, they can buy 12 a year.

2 They can have a separate handgun for
3 hunting every day they go out hunting for almost
4 two weeks. And they can rotate. I don't know
5 how long hunting season is, but they can have a
6 separate handgun for every day.

7 This doesn't infringe on the rights of
8 any law-abiding citizen, No. 1. No. 2, it will
9 work. It has worked.

10 Did you hear the Commissioner?
11 Virginia used to be the No. 1 exporting state in
12 the eastern part of this country. It no longer
13 is because they can't have multiple purchases.
14 We are becoming -- we've got to stop it.

15 If you look at this as legislation that
16 somehow affects the rights of hunters or somehow
17 affects the rights of a Pennsylvanian who wants
18 to carry a gun to feel secure on his or her
19 person or in his house, you're wrong. Twelve a
20 year. He has unlimited long guns and 12 handguns
21 a year.

22 We have to actually face up to the
23 problem and start thinking in common sense. We
24 can't -- we can't -- I don't mean -- we have to
25 talk, I think, sense to our constituents and say,

1 hey, folks, this has nothing to do with you.
2 This has nothing to do with you. Your life is
3 not going to change. If you want to buy a
4 handgun, you can buy a handgun once a month. You
5 can have 12 a year.

6 If you want to hunt with that handgun,
7 fine. If you are a hunter and you use long guns,
8 you can buy 20 a month. But we do draw lines.
9 Pennsylvania doesn't allow you to buy a bazooka
10 for hunting. It doesn't allow you to buy a
11 bazooka for defending your own home.

12 One gun a month is a reasonable line.
13 You have all of the good judges. We have the
14 laws on the books. Pass General Fisher's law.
15 Make it mandatory. I would make it mandatory
16 I'd make it a mandatory year. You'll have to
17 build a whole lot more prisons, but I would make
18 it mandatory. A felon with a gun, one year in
19 prison, mandatory.

20 Get ready to build the prisons, but
21 make it mandatory. At the same time restrict
22 access in a way that doesn't hurt an individual.

23 Don't be afraid -- and I don't mean
24 you, but as a body we shouldn't be afraid of the
25 NRA. The NRA lobbied hard against Brady, yet

1 polls showed that 65 percent of their membership
2 favored the Brady Bill.

3 They spent tons of money trying to
4 defeat the Brady Bill. Sixty-five percent of
5 their own membership was for the Brady Bill.

6 I hope you took a look at the poll. I
7 know I gave everyone a copy in Harrisburg last
8 year. Rural voters favor one gun a month. Rural
9 voters would be more likely to support a
10 legislator who passed one gun a month.

11 One gun a month is reasonable. People
12 aren't dumb. They understand what we're are
13 trying do. They understand that 12 guns a year
14 is enough for them.

15 I know you to be a thoughtful and
16 extremely bright legislator on a whole host of
17 issues. It makes me sad. It makes me sad to
18 hear you say those things.

19 CHAIRMAN GANNON: Representative
20 Kenney.

21 REPRESENTATIVE KENNEY: Thank you,
22 Mr. Chairman.

23 Mr. Mayor, Mr. Timmone, thank you for
24 your leadership on this issue.

25 Commissioner Timmone, you mentioned

1 3,600 gun arrests, I believe, in the City of
2 Philadelphia.

3 How many of those were illegally-owned
4 guns? Or were they all illegally-owned guns?

5 COMMISSIONER TIMMONEY: Some were
6 legally owned.

7 REPRESENTATIVE KENNEY: Were they
8 simply breaking gun laws or were these criminals
9 that didn't purchase these guns legally anyway?

10 COMMISSIONER TIMMONEY: The vast
11 majority got them illegally or you couldn't have
12 a situation where you have a parolee who has an
13 argument with a neighbor and shoots the
14 neighbor.

15 REPRESENTATIVE KENNEY: That gun is
16 seized?

17 COMMISSIONER TIMMONEY: Yeah.

18 REPRESENTATIVE KENNEY: He was legal?
19 He got it legally?

20 COMMISSIONER TIMMONEY: The girlfriend
21 purchased it and gave it to her boyfriend.

22 REPRESENTATIVE KENNEY: Let me ask you
23 this. Is that 3,600 guns or individual persons?

24 COMMISSIONER TIMMONEY: Individual
25 persons that have a BOFA charge. They may have a

1 robbery charge also.

2 REPRESENTATIVE KENNEY: What happened
3 to those? Were they put in jail?

4 COMMISSIONER TIMMONEY: I have no
5 idea. Judge McCaffery and District Attorney
6 Abraham?

7 REPRESENTATIVE KENNEY: One of the
8 comments that the Commissioner made is not only
9 access, but leniency of the court system.

10 I represent law-abiding citizens in
11 Northeast Philadelphia that play by the rules.
12 Our question is, if you are illegally -- if you
13 break the law -- and Mr. Mayor mentioned build
14 prisons. I have never had one constituent ever
15 complain in my office about building prisons and
16 locking criminals up. I think that's what we
17 should do.

18 My concern is those 3,600 individuals,
19 is the system letting them on the street which
20 then has an additional threat? Not only did they
21 have access to the guns maybe illegally, but now
22 you are imposing an additional threat by allowing
23 them -- slapping them on the wrist and saying go
24 get another illegal gun and do whatever you do?

25 COMMISSIONER TIMMONEY: There's some of

1 that. There's also an issue of leadership. For
2 example, you would get some attitudes within the
3 State of Pennsylvania that guns -- guns are seen
4 as okay in the State of Pennsylvania, and as many
5 as you want.

6 That attitude, I think, focuses down
7 into the attitude of judges also. You can get
8 them easy. What's the big deal?

9 I think if you put up reasonable
10 legislation, for example one gun a month, and
11 that you're serious about it, and that message
12 comes from the stop, that also filtered down to
13 judges and their thinking.

14 We've clearly got to beef up that
15 area. Just as difficult is the issue of access.
16 With access, criminals and kids get their hands
17 on guns. It is too easy to get guns in the State
18 of Pennsylvania, far too easy.

19 MAYOR RENDELL: I know. You are
20 absolutely right. There is too much leniency.
21 The DA is going to tell you about that chapter
22 and verse. There was too much leniency when I
23 was DA a long time ago. Judge McCaffery can tell
24 you about that.

25 REPRESENTATIVE KENNEY: Following up

1 Representative Petrarca and his questions, okay,
2 we do one gun a month. These 3,600 people are
3 still out on the street because you don't put
4 them in jail for breaking that one gun a month.
5 I'm for building more prisons.

6 MAYOR RENDELL: Then I suggest you
7 amend General Fisher's Bill and make it a
8 mandatory flat one-year prison sentence. Again,
9 our judges, and the DA will tell you, will find a
10 way to get around it or they will try. Amend the
11 Bill and make it mandatory one year,
12 Representative Kenney. That would be the best
13 way to proceed.

14 REPRESENTATIVE KENNEY: Commissioner,
15 getting back to that 3,600 number, do we know how
16 many of those were sent to jail? Somewhere, not
17 that you need it today.

18 COMMISSIONER TIMMONEY: I can get that
19 information to the Committee.

20 REPRESENTATIVE KENNEY: Thank you.

21 CHAIRMAN GANNON: Representative
22 Dermody.

23 REPRESENTATIVE DERMODY: Good morning,
24 Mr. Mayor. Thank you, Commissioner for appearing
25 before us this morning.

1 I'd just like to talk a little bit
2 about your testimony regarding mandatory
3 sentences and the sentencing guidelines.

4 I've been on the Sentencing Commission
5 since I've been in the Legislature, and I'm now
6 Chairman of the Pennsylvania Commission on
7 Sentencing Relief where we come up with the
8 guidelines for various crimes.

9 General Fisher's Bill would enhance
10 guidelines for firearms violations which makes
11 some sense to me. But I do have a problem with
12 when you mentioned leniency. I don't see that.
13 I was in the DA's office for six years in
14 Allegheny County. I don't see the leniency that
15 you talked about elsewhere in the Commonwealth
16 that we see in Philadelphia.

17 I'm not a big fan of mandatory
18 sentences. Even as a prosecutor there was always
19 the case where we didn't want to implement the
20 mandatory. I didn't. The DA didn't. The judge
21 didn't. The victim didn't. Yet we are facing
22 this mandatory sentence that the Legislature, who
23 knows nothing about the crime that was committed,
24 says we have to impose.

25 I guess what it gets to is we continue

1 where we are making criminal justice policy based
2 on problems that appear to be only in
3 Philadelphia.

4 I think throughout the State if there's
5 a firearm violation, the guidelines are adhered
6 to as they are today. If they are enhanced, so
7 be it. We will have to take a look at that. The
8 judges will have to enforce and follow the
9 guidelines and be forced to at least file a form
10 that says why they deviated from those
11 guidelines.

12 I just wonder if there's another way
13 besides driving state-wide policy because there's
14 a problem here in Philadelphia.

15 I don't think a mandatory sentence is
16 the answer anyway. Go ahead.

17 MAYOR RENDELL: When I was DA -- and
18 now you're forcing me to put my DA hat on, I
19 never had a problem with a mandatory sentencing
20 bill. Because if I thought there was an
21 exception, a 77-year-old woman is on a porch and
22 being harassed by juveniles throwing rocks at
23 her, etc. She takes a gun out and fires a shot
24 in their general direction to warn them. That's
25 technically a violation that might trigger

1 mandatory sentencing.

2 I always had the guts not to prosecute
3 that case. That's what prosecutorial discretion
4 is all about. We vest prosecutors with
5 discretion in every crime.

6 I had the discretion when I was a
7 prosecutor to bring charges of murder one or
8 voluntary manslaughter. So I had the same type
9 of discretion built into the law.

10 That's the way that the cases that are
11 aberrations where mandatory sentences shouldn't
12 be applied, that's the way we made sure we don't
13 have those aberrations, prosecutorial
14 discretion.

15 You're asking us a difficult question,
16 if it is a Philadelphia problem. I don't know
17 what the answer is. I might suggest merit
18 selection of judges. That's another difficult
19 issue for all of you to deal with.

20 Again, you don't have a problem with
21 sentencing, Representative Dermody, you have a
22 problem with increasing gun violence.

23 Let me say that in the rest of the
24 State you don't have a problem with leniency, you
25 don't have a problem with enforcement of the

1 laws, although we still can do better as
2 Commissioner Timmone, but again, I won't bring
3 out those charts, you have a problem with
4 increasing gun violence, homicides, robberies and
5 assaults. You have a serious problem.

6 So you can't sit there and blindly tell
7 us that everything is okay in Westmoreland County
8 or everything is okay in Allegheny County. It
9 may be okay in the way you are dealing with the
10 end product, but it isn't okay at the front part
11 because your rates are going up, too. It is time
12 for us to act in Pennsylvania.

13 CHAIRMAN GANNON: Thank you,
14 Mr. Mayor. You just said that, you know, trying
15 to reduce homicides, robberies and assaults,
16 which is why it is my impression that most of
17 those crimes are not committed with weapons.

18 MAYOR RENDELL: I can only talk about
19 Philadelphia. Maybe the U.S. Attorney's Office
20 of ATF can talk about this. Roughly 40 percent,
21 if you lump the ones we can trace back to
22 multiple purchases and put in the percentage of
23 guns we can't trace because their serial numbers
24 are obliterated. That doesn't happen by
25 accident, Mr. Chairman.

1 Roughly 40 percent of the crime guns in
2 this county come from multiple purchases.
3 Remember, every multiple purchase is legal.

4 John Jones, no criminal record, walks
5 in and buys twelve 9 millimeter pistols,
6 automatic pistols. He is doing it -- we all know
7 why he's doing it. It is as clear as the nose on
8 our face why he's doing it. He's going to take
9 them and he's going to sell them. Not
10 immediately anymore because they have gotten
11 wiser and smarter as the police and ATF have
12 become more effective. So 40 percent of the guns
13 that are used for crimes, 40 percent come from
14 multiple purchases.

15 Remember, we are restricting -- I don't
16 want to pull out my charts again. We are
17 restricting 130 purchases out of the 25,000 that
18 are made. That's what one gun a month would do.

19 CHAIRMAN GANNON: Isn't it true that
20 even under existing law, if I sell a weapon to
21 someone --

22 MAYOR RENDELL: On the street?

23 CHAIRMAN GANNON: On the street. The
24 law now requires me to go through a dealer and
25 also to do an instant check, so I have broken

1 existing law by selling a weapon. I've already
2 broken the law for selling a weapon without
3 following the existing law. I sold that
4 illegally.

5 MAYOR RENDELL: I want to go back to my
6 original comment about Senator Fumo's
7 legislation. No. 1, it is virtually impossible
8 to prove that there was even the physical act of
9 a sale because John Jones who buys those twelve
10 millimeter pistols, he goes a month later into
11 the streets of Philadelphia and he's wearing dark
12 glasses. He sells at night. He's probably
13 wearing a ski cap pulled way down over his head.
14 There's almost no visible way he can be
15 identified. He sells it to some 16-year-old kid
16 or some 32-year-old multiple robbery-convicted
17 felon.

18 Even if we trace it back to him, and he
19 may have already obliterated the serial number,
20 but even if we trace it back to him, how do we
21 prove it was him who sold it?

22 The police bring him in and interrogate
23 him. He may often say, I have nothing to say
24 because we can't force people to say anything, or
25 he says, it was stolen. Why didn't you report

1 it? Gee, I don't think the police ever get any
2 of that stuff back. Boom.

3 Secondly, under your laws we have to
4 prove that he had reason to believe that a young
5 man or the 33-year-old felon he sold it to was
6 going to commit a crime.

7 As I said, if there's ever any
8 discourse at all, the discourse is usually, it is
9 tough out here, I need a gun to protect myself or
10 family. Bingo. That's the problem. That's the
11 problem.

12 You can't just do it by law
13 enforcements. Again, remember what I said at the
14 beginning. I'm all for every measure you can use
15 to strength it. I'm obviously too much of a hawk
16 because I think mandatory sentences would be a
17 great idea and many of you don't in the Fisher
18 Bill.

19 We've got to do both. It is
20 inescapable. We've got to do both. It's time.
21 We owe it to the people that are getting killed
22 and maimed. We owe it to the old people who are
23 afraid to go out of their homes.

24 I will tell you most respectfully there
25 are old people that are afraid to go out of their

1 homes other than just in Philadelphia. I mean,
2 this isn't the canvas of Alice in Wonderland
3 anymore. Things have changed. Maybe it never
4 was, but it certainly isn't any more in 1999. As
5 we enter the new millennium, it's not.

6 CHAIRMAN GANNON: It seems to me that
7 the reason he was wearing a ski mask and dark
8 sunglasses and wanted his identity hidden was he
9 was breaking the law. That wouldn't change.

10 MAYOR RENDELL: That wouldn't change.
11 No one who is breaking the law wants to be found
12 out. Wouldn't you agree or disagree that perhaps
13 deterring someone, a strong deterrent from
14 somebody getting a bright idea of purchasing
15 weapons with the idea that I'm going to go into
16 Philly or Pittsburgh and sell them out of the
17 trunk of my car would be far more effective or
18 far more towards reaching the goal that we all
19 want to reach of reducing gun violence than
20 putting another page to Title 18?

21 MAYOR RENDELL: When you talk about
22 deterrents, he's got a legal right to buy those
23 twelve 9 millimeters. Gosh, we can't get you all
24 to restrict the purchase of handguns to 12 a
25 year. We can't ever restrict the purchase of

1 handguns any other way. So he's got a legal
2 right to buy that.

3 How can we deter him? Again, the ATF
4 and Police Task Force each year locks up more and
5 more for this type of trafficking.

6 CHAIRMAN GANNON: That brings me to my
7 point. If I'm going to go up and buy 11 or 12
8 guns because I have my own reasons, that's my
9 right, and I have no illegal intent or any agenda
10 for dealing with those guns illegally, I don't
11 care who knows.

12 If I'm buying 12 guns to sell on the
13 streets of Philadelphia, I don't want anybody to
14 know about that.

15 My thought is, you are deterring
16 somebody that has an illegal intent, but you are
17 not deterring anyone who says, I don't care who
18 knows that I've made multiple purchases because I
19 collect them or whatever reason.

20 MAYOR RENDELL: One gun a month has a
21 collectors exception. Let's assume just for a
22 second -- I know there are other witnesses,
23 particularly Judge McCaffery has to get back to
24 court. Let's just assume -- because this is
25 interesting -- let's assume -- you said there

1 might be a reasonable explanation for why someone
2 would want to buy twelve 9 millimeter pistols at
3 one shot.

4 I tried to think about that. I don't
5 want to get citizens ticked off at me. I tried
6 to think about that. One of the things I thought
7 about was if he's a collector. There's a
8 collectors exception in Representative Cohen's
9 Bill.

10 Another reason I thought is maybe --
11 and this wouldn't be my choice for a holiday
12 gift. Maybe he wanted to give everyone in his
13 office a 9 millimeter automatic pistol for a
14 holiday gift. He gets a gift certificate in
15 their name.

16 He's got 12 office employees, Jones,
17 Smith, Parker, Brown, whatever. He buys 12 gift
18 certificates for 9 millimeters in their name.
19 They come in and it doesn't violate the one gun a
20 month law.

21 Other than that, can you fathom -- if
22 you can, you are smarter than I am. I'm not the
23 smartest guy around. Can you fathom another
24 legitimate reason for buying twelve 9 millimeters
25 pistols in one stop?

1 Can anybody? I don't want to make this
2 a quiz because I know sometimes politicians don't
3 do so well on pop quizzes.

4 Wearing my other hat, can anybody think
5 of anything other than a collector? By the way,
6 no collector collects twelve 9 millimeter -- 12
7 of the same pistol. That's a nonunique pistol.
8 No one collects 12 Saturday Night Specials. We
9 have a collectors exception in there anyway.

10 Other than buying for the office or
11 buying for every member of his family, which he
12 can do with gift certificates, can anybody think
13 of a legitimate reason?

14 Again, I've thought about it for
15 several years now. I wish I knew.

16 CHAIRMAN GANNON: I want to thank you,
17 Mayor Rendell and Commissioner Timmoney for
18 coming before the Committee and presenting
19 testimony. It's been very helpful and
20 instructive and informational, and we appreciate
21 you expressing your views.

22 MAYOR RENDELL: Again, I want to thank
23 you, Mr. Chairman, and your council. I know
24 sometimes I sound like a broken record. You
25 always give us the ability to come and say our

1 peace.

2 CHAIRMAN GANNON: Thank you.

3 Our next witness is the Honorable Judge
4 Seamus McCaffery, Judge of the Philadelphia
5 Municipal Court.

6 Welcome, Judge McCaffery. You may
7 begin when you're ready.

8 JUDGE MCCAFFERY: Thank you. First of
9 all, I'm not rushing back to court. I'm actually
10 rushing back to Fort Dix where I'm a Lieutenant
11 Colonel in the military this week.

12 One, I'd like to thank everybody for
13 inviting me here to discuss some of the problems
14 we have with the Courts or I should say violence
15 and dealing with the courts.

16 I'd like to start off by just giving
17 you a little background about myself. I'm the
18 first and only retired 20-year police officer
19 ever elected as a Trial Judge here in
20 Philadelphia County.

21 I've also now been in the military 31
22 years. I've carried a gun for over 30 years. As
23 a matter of fact, I'm certified. I'm probably
24 one of the only certified judges in the
25 Commonwealth of Pennsylvania in handguns and

1 assault weapons.

2 As a matter of fact, I just completed
3 the FBI sub-machine gun school last week. The
4 President Judge just loved giving me off for
5 that.

6 The bottom line is, you're talking to
7 somebody who is not a novice when it comes to
8 guns. I also have two of my three sons that are
9 both cops. My third is soon to be a police
10 officer.

11 I tell a lot of people, especially in
12 my courtroom, that when you look at the news at
13 night and you see all the dead bodies being
14 carried off our streets, did anybody ever think
15 of who notifies the families of those dead
16 people? Well, I did that for years as a homicide
17 detective.

18 I say all of this by saying to you, 1,
19 I'm extremely well versed in weaponry; 2, I'm
20 very serious about guns and what they do to our
21 citizens. I take it very, very seriously.

22 Some years ago, I actually strenuously
23 went after creating a gun court here in
24 Philadelphia because I, too, felt that guns were
25 not given the serious -- how would you say --

1 concern that they should have been.

2 To date, we have not created that gun
3 court. As a trial judge, I received a lot of
4 remanded gun cases to my courtroom. I handle
5 them myself. I want to just share with you some
6 of the things that go on in our system and
7 basically dealing with 6106 and 6108, violations
8 of the Uniform Firearms Act.

9 When an individual is locked up in
10 Philadelphia County for a gun, the officer takes
11 him into custody and they obviously go downtown.
12 Charges are given out by the District Attorney's
13 Office, one of which is usually 6106, making it a
14 felony to carry a "concealed weapon" on him.

15 Now, often times what you run into here
16 in Philadelphia County is the police arrive on
17 the scene and the guy is standing there with a
18 gun in his hand. The individual throws the gun.

19 The bottom line is when it comes in
20 front of a judge for a preliminary hearing, it is
21 not concealed and therefore it is remanded.
22 There goes your felony.

23 What does that mean? It is a serious
24 charge, which I believe just several years ago
25 was increased from a misdemeanor to a felony.

1 Carrying a concealed deadly weapon is now thrown
2 out.

3 As such, we are looking obviously at a
4 limited amount of jail time the individual can
5 get. Then what we have is the following. I'm
6 just saying this by way of sharing with you my
7 frustrations.

8 We have what is known as 6013 or Rule
9 1100. I'm sure you're all aware what happens
10 there is an individual has to come to trial
11 within a certain time frame.

12 Because of the volume of cases here in
13 Philadelphia County, often times by the time
14 discovery is turned over and the case is then
15 listed for trial, we are looking at cases with
16 80, 100, 110 days already in the system and not
17 having one first listing in a trial room. Not
18 first listing.

19 Or should the case have been listed in
20 a trial room, we find that the following occurs:
21 1, discovery is incomplete and not turned over,
22 therefore the case can't go on, another
23 continuance date; 2, police officers or witnesses
24 don't show up in the courtroom because of
25 whatever.

1 As a judge, it becomes very frustrating
2 because now cases are going well over 120 days,
3 and next thing you know our defense bar,
4 rightfully so, bring up what is known as a motion
5 for dismissal under Rule 6013. As a trial judge,
6 that's what happens. The volume of cases that we
7 have here in our system is absolutely
8 incredible.

9 Ballistics reports -- it's tough to get
10 a case in front of a trial judge, especially with
11 a first or second listing when you have all
12 discovery including a ballistic report.

13 I'm sure Commissioner Timmonev can tell
14 you that right now there are so many guns in the
15 system that our Firearms Identification Unit
16 cannot have all of the reports necessarily
17 prepared and submitted to everyone, including the
18 Court, for trial.

19 What does that do? That means you
20 can't put the case on. Again, we are seeing more
21 and more cases going by the wayside because of:
22 1, the volume; 2, 6013 and Rule 1100; and 3,
23 cases that are being remanded at the preliminary
24 hearing.

25 So what I'm saying to you basically is

1 the following: These cases are coming in front
2 of me. We are talking misdemeanors now. If, the
3 case goes to trial -- and by the way, ladies and
4 gentlemen, not every case goes to trial. A lot
5 of these cases that aren't dismissed or
6 discharged for whatever reason, either they're
7 stipulated out and the individual has a plea
8 bargain, i.e., 12 months reporting probation, or
9 then it goes to trial.

10 If it goes to trial and I find him
11 guilty, I give him a jail sentence. I know it is
12 pretty novel around here, but that happens,
13 believe it or not. I impose a jail sentence.

14 We in Philadelphia are the only courts
15 in the Commonwealth of Pennsylvania that have
16 Municipal Courts. What that means is there are
17 25 of us. There are only five trial judges.

18 What it basically entails is anybody
19 found guilty or anybody that doesn't make the
20 sentence imposed has an automatic right of de
21 novo appeal. I'm sure you all know what that
22 means.

23 Every time I give somebody a jail
24 sentence, every time I give somebody a sentence
25 that he or she does not like, they automatically

1 appeal me to the Court of Common Pleas.

2 So basically what you are looking at is
3 that the prosecutors have to go through a myriad
4 of problems just to get an individual convicted
5 of a crime.

6 The arrest, the scheduling within 120
7 days, discovery, witnesses, judges if they do, in
8 fact, impose a serious sanction for having a
9 weapon, now we are right back in the Court of
10 Common Pleas again with a whole new trial.

11 So as you can see, the complexity is
12 far greater here in Philadelphia County than you
13 would see in Allegheny County, Westmoreland
14 County and some of the other counties in the
15 Commonwealth of Pennsylvania.

16 We have our own inherent problems here
17 in Philadelphia County. That's basically one of
18 our bigger problems.

19 As I mentioned at the start of this, I
20 hate every night seeing my sons that are cops
21 going out. And I have got to personally pat them
22 down to make sure they have bullet-proof vests
23 on.

24 Guns in Philadelphia County are really
25 a problem. They really are a problem. I think a

1 lot of it deals with what is going on in our
2 system overall. The system is -- the fact that
3 we just can't get these cases on in either a
4 timely fashion or in a way where a serious and
5 significant message is sent to these bad guys, if
6 you carry a gun, you are going to jail.

7 Again, the system is set up so that
8 it's really tough for a prosecutor, in my
9 opinion, to get that case through. It is
10 basically set up, in my opinion again, where the
11 defense attorneys have a lot of latitude when it
12 comes to defending these cases.

13 Again, they can sit back and wait to
14 see if discovery is provided. They can sit back
15 and see if witnesses and police officers aren't
16 there. They can make their 6013 motions. They
17 can then if they don't like the outcome of the
18 trial automatically de novo right to the Court of
19 Common Pleas. So you are talking about an
20 elongated process that doesn't exist anywhere
21 else in the Commonwealth of Pennsylvania.

22 So I do take this whole issue of guns
23 and violence very seriously because, like I said,
24 I have sons out there. I know personally from my
25 own experience what guns can do. I personally

1 notified families of victims for years.

2 I can't speak for everybody in our
3 court, but that's pretty much what goes on here,
4 at least the beginning level, the preliminary
5 level of our system.

6 That's pretty much all I have to say.
7 I hope I was at least a little informative. How
8 about some questions.

9 CHAIRMAN GANNON: Thank you, Judge
10 McCaffery. Any questions?

11 Representative Josephs.

12 REPRESENTATIVE JOSEPHS: I used to
13 practice a little bit in the Philadelphia courts
14 long ago. And we had those problems then, so I
15 can imagine what they are now.

16 I'm glad that you talked about them
17 because I don't find it very helpful in this
18 exercise to shift the blame to another part of
19 government. Oh, we'd do okay if it weren't for
20 those judges.

21 I think all of us are together in this,
22 judges as well as legislators and law enforcement
23 people.

24 What would you suggest? Do we need
25 more resources in the Philadelphia Courts? Do we

1 need more judges? Do we need computerizing?
2 Should the State be appropriating more money?

3 JUDGE McCAFFERY: I was elected in
4 1993. At the time I took the bench, I was
5 averaging about 26 trials a day. Right now I'm
6 doing 49 cases.

7 If you can imagine, one motion to
8 suppress is taking an hour, hour and a half and
9 you still have 47 other matters to handle, by the
10 end of the day the trial judges are very, very
11 stressed out. They are extremely stressed out.

12 What happens is -- again, I'm not
13 talking for the Court, and I'm not speaking for
14 all the other judges. What I start to see is
15 judges are getting burnt out because of the
16 volume. Because of that, they are trying to move
17 cases.

18 How do you move a case? You either
19 give it a date and continue it or you discharge
20 it. Why? Because an aggressive police officer
21 who may be in five different courtrooms isn't
22 there at that moment, therefore the judge can
23 discharge the case.

24 Or, last but not least, they are just
25 forcing these cases on or forcing these cases

1 out. I personally at sentencing get a chance to
2 look at the actual extract from prior contacts.
3 It is appalling, in my opinion, when I can stand
4 up and hold up a document that goes probably 7, 8
5 feet long of arrests with just about all of them
6 discharged, dismissed, discharged, dismissed all
7 the way down the line. I'm talking about guys
8 with priors.

9 You need to understand we are dealing
10 with big volume. Our numbers are limited. The
11 young prosecutors that our wonderful District
12 Attorney puts in our room are overwhelmed.

13 They walk into work and they will be
14 handed 30 cases for tomorrow morning. They walk
15 in front of a horrendous volume.

16 Again, I invite you all to come over.
17 I'm in Court 603 every day. Come in and watch
18 it. The volume is unbelievable. The stress that
19 the young Public Defenders and young DA's are
20 under is absolutely incredible.

21 In my opinion, things are really
22 starting to fall apart. How do you address it?
23 Obviously, I think the DA's Office needs a lot
24 more support so they can get discovery in a
25 timely fashion. Have more prosecutors there to

1 handle these cases.

2 And also for you guys from out West, my
3 circle of friends are all gun folks. We're
4 shooters. I'm not a hunter, but I've been in the
5 military. I teach ground combat. I'm very much
6 into weapons.

7 I don't know anybody that could get one
8 a month. I have lots of guns. I just can't
9 imagine buying more than one gun a month. I know
10 that may sound funny coming from a gun guy. When
11 I talk to a lot of these folks, we are shooters.
12 We are avid shooters. We are avid gun
13 collectors. My biggest hobby right now is
14 learning about these different types of things
15 and the history of weaponry, things like that.
16 Again, it comes from my background in law
17 enforcement and the military.

18 There are a lot of folks out there.
19 There's a real concern about this dichotomy, this
20 spread. We feel there's a need for something to
21 happen, especially here in Philadelphia.

22 As the Mayor pointed out, the mandatory
23 sentencing, I think we really need to look at
24 things like that because there are situations
25 where people that should be going to jail are not

1 going to jail.

2 That's strictly my own, by the way,
3 opinion.

4 CHAIRMAN GANNON: Representative
5 Manderino.

6 REPRESENTATIVE MANDERINO: Other
7 counties that do not have the Municipal Courts,
8 the same gun-related charges that you are hearing
9 in Municipal Court would in their counties go
10 directly to Commonwealth Court. The District
11 Judges would not hear them.

12 JUDGE MCCAFFERY: Not Commonwealth
13 Court.

14 REPRESENTATIVE MANDERINO: I mean
15 Common Pleas Court. Excuse me.

16 JUDGE MCCAFFERY: The District Justice
17 will handle the preliminary hearing. Keep in
18 mind out in the other 66 counties it is
19 different. In the other 66 counties you have a
20 police officer reading a report to a District
21 Justice. And under the law we are mandated to
22 look at all of the evidence in light most
23 favorable to the Commonwealth and only prima
24 facially are we looking for that level of
25 evidence.

1 The District Justice will then hold it
2 for the Court of Common Pleas. Once that case
3 comes in front of a CP judge, there is no other
4 right of appeal, de novo right of appeal. That
5 is the highest.

6 Here in Philadelphia we have that
7 impediment of a Municipal Court where every time
8 somebody is found guilty or sanctions are given
9 that they don't agree with, boom, they have that
10 automatic trial right.

11 Again, it adds to the problem of having
12 these cases handled readily.

13 REPRESENTATIVE MANDERINO: But your
14 court, Municipal Court, is doing the preliminary
15 hearings now?

16 JUDGE MCCAFFERY: Our court does
17 preliminary hearings.

18 REPRESENTATIVE MANDERINO: And also
19 doing the trials?

20 JUDGE MCCAFFERY: Trials for all
21 misdemeanors.

22 REPRESENTATIVE MANDERINO: At least
23 with regard to this one area of streamlining, if
24 we streamline, what it would do is take Municipal
25 Court out of the trial portion of this.

1 JUDGE MCCAFFERY: Only if you increased
2 the sanctions to felonies. We handle
3 everything. Again, we had suggested a gun court
4 here in Philadelphia. And literally when we were
5 looking at the issue the Legislature increased it
6 to a felony, so it took that level out of our
7 court.

8 The creation of a gun court, in my
9 opinion, would significantly help.

10 REPRESENTATIVE MANDERINO: Remind me.
11 I know this is something you work with every
12 day. If we had a mandatory one-year, as the
13 Mayor suggested, sentence for a gun violation,
14 that would still have --

15 JUDGE MCCAFFERY: Automatic de novo
16 right of appeal.

17 REPRESENTATIVE MANDERINO: That would
18 still have folks, unless it was added on with
19 other convictions, going to county prisons not
20 state prisons. Am I correct?

21 JUDGE MCCAFFERY: It depends on the
22 language. If it is 11 to 23 months it stays
23 within the county. If it is 1 to 2 years, here's
24 the deal. If it is a mandatory one year, is it
25 going to be 6 months to 12 months? If so, it

1 stays in the county. Or if it is a mandatory
2 minimum of one year and it's 12 months to 24
3 months, that's State time. It takes it out of
4 Philadelphia County.

5 REPRESENTATIVE MANDERINO: Thank you.
6 Thank you, Mr. Chairman.

7 CHAIRMAN GANNON: Representative
8 Dermody.

9 REPRESENTATIVE DERMODY: A question,
10 and it's on procedure mainly.

11 You discussed the situation with 6106
12 or a felony violation of the Uniform Firearms Act
13 being reduced to a misdemeanor.

14 That would still be a violation of the
15 Uniform Firearms Act. Right?

16 JUDGE MCCAFFERY: Under 6106 it will be
17 remanded back to us in our court.

18 REPRESENTATIVE DERMODY: Would the
19 charge still be a violation of the Uniform
20 Firearms Act?

21 JUDGE MCCAFFERY: 6106. 6108 will be
22 discharged at the preliminary hearing.

23 REPRESENTATIVE DERMODY: My question is
24 this: Is there any way that it would still be a
25 misdemeanor violation of the Uniform Firearms

1 Act? I haven't looked at the act in a while.
2 Why couldn't the system just say that all
3 violations of the Uniform Firearms Act shall be
4 heard in the Court of Common Pleas as opposed to
5 sending them to Municipal Court where you can get
6 that trial?

7 JUDGE MCCAFFERY: It could be done.
8 Absolutely. That's something that you folks have
9 to do. Our jurisdiction is up to M1.

10 REPRESENTATIVE DERMODY: Why would we
11 have to do it? Couldn't the DA or the President
12 Judge make a decision right now? We are
13 concerned about violations of the Uniform
14 Firearms Act. We are concerned about guns and
15 how they're treated in Philadelphia County. We
16 have a problem that's greater than anywhere
17 else.

18 Why not take and say in Philadelphia
19 County, all violations of the Uniform Firearms
20 Act can't be heard at Municipal Court and will
21 now be heard in Court of Common Pleas? Could
22 they do that today?

23 JUDGE MCCAFFERY: That could possibly
24 be done. It is jurisdictional. It is
25 legislative.

1 REPRESENTATIVE DERMODY: In every other
2 county a misdemeanor is heard in Common Pleas
3 Court.

4 JUDGE MCCAFFERY: Right. We are a
5 different court. We are a different court. Keep
6 in mind, too, one of the other problems that the
7 prosecutor has at the preliminary hearing is they
8 have to get that case in front of a judge in 3 to
9 10 days under the law.

10 It's very, very tough for them to have
11 the prosecutor at the preliminary hearing already
12 showing that the guy doesn't have a license to
13 carry, things like that.

14 The judges seem to feel, hey, we are
15 not prosecutors, we're not defense attorneys, the
16 burden is on the Commonwealth. If the
17 Commonwealth doesn't show that burden at the
18 preliminary hearing, the case is remanded pretty
19 much. That's the kind of difficulty they are
20 dealing with.

21 CHAIRMAN GANNON: Thank you,
22 Representative Dermody. Judge McCaffery, as I
23 understand, on misdemeanors you actually have the
24 trial?

25 JUDGE MCCAFFERY: That's correct, up to

1 Misdemeanor 1.

2 CHAIRMAN GANNON: That's nonjury?

3 JUDGE MCCAFFERY: Nonjury waiver trial.

4 CHAIRMAN GANNON: You also do the
5 preliminary hearing and also the arraignment?

6 JUDGE MCCAFFERY: The arraignment is
7 done in Philadelphia County by a bail
8 commissioner. The actual preliminary hearing is
9 done by a Philadelphia Municipal Court Judge.
10 That Judge will either hold it for court for all
11 felonies charged or remand it back to our court
12 and our criminal trial rooms, which I am one of.
13 I don't do preliminary hearings, I do the
14 trials.

15 CHAIRMAN GANNON: It seems from what you
16 are saying that one of the problems that you have
17 is after you've gone through this misdemeanor
18 trial, that the Defendant now has a right to
19 appeal de novo to the Common Pleas Court. He's
20 starting from square one all over again.

21 JUDGE MCCAFFERY: The Commonwealth,
22 again, has the burden of getting the witnesses
23 in, getting everyone ready for another trial at
24 the Court of Common Pleas.

25 CHAIRMAN GANNON: I would imagine that

1 would be a little bit frustrating that you went
2 through this process.

3 JUDGE MCCAFFERY: Frustrating? I had
4 hair once.

5 CHAIRMAN GANNON: The other thing from
6 what you're saying, I guess where we're looking
7 at some of the crimes that are already on the
8 books and raising up the degree from say a
9 misdemeanor to a felony, that's taking
10 jurisdiction away from your court. It lightens
11 your work load, but I guess it creates other
12 problems.

13 JUDGE MCCAFFERY: Well, again, keep in
14 mind a lot of the sad examples I'm sure the
15 District Attorney will put forward will not be in
16 our court but the Court of Common Pleas. Don't
17 think by getting it out of the Municipal Court
18 you're going to solve a lot of problems.

19 I'm sitting here right now trying to
20 collect transcripts of, individual pulls a gun
21 out of the trash can and pistol-whips you, gun
22 discharges, clips part of your ear, and it is
23 remanded back in front of me for a misdemeanor at
24 a preliminary hearing.

25 I'm trying keep track of these types of

1 things so we can hopefully make some changes here
2 because, quite frankly -- and you as a former
3 prosecutor, you can understand -- you can't
4 believe the cases that are being remanded.

5 Why are they being remanded? I don't
6 know. To me, there's problems that need to be
7 addressed. Luckily, we have the folks now that
8 are going to address them, I hope.

9 CHAIRMAN GANNON: So what you are saying
10 is you are getting cases back or remanded that
11 you kind of feel shouldn't come back, that should
12 stay up.

13 JUDGE MCCAFFERY: My understanding of
14 the law -- there's a lot of stuff that's going on
15 right now that we find, I should say, pretty
16 serious matters being remanded as misdemeanors
17 that, in fact, should be held for court as
18 felonies.

19 That's a problem you have when you have
20 the type of system you have here in
21 Philadelphia. Again, it is not endemic of the
22 municipal court system, you are talking about a
23 lot of these other horror stories you will hear
24 come out of the CP Court as well, different cases
25 or facts coming out of there. It is not

1 Philadelphia Municipal Court judges. You will
2 find a lot of problems dealing with the system,
3 if you will.

4 CHAIRMAN GANNON: I'm just trying to
5 get a clear reading of what you are saying or
6 what I understand. It looks to me like it's a
7 continuing circle. It goes up to the CP, gets
8 remanded back because it has been downgraded to a
9 misdemeanor. The trial is held in your court.
10 It's appealed de novo back up to CP.

11 JUDGE MCCAFFERY: We are the gate way.
12 Everything comes through Municipal Court,
13 everything. The actual preliminary hearing must
14 go in front of a Municipal Court judge.

15 The Municipal Court judge at the
16 preliminary hearing makes the determination
17 whether or not it should be held for court on all
18 felonies, whether or not it should be remanded
19 back because at the preliminary hearing the
20 Commonwealth didn't have the necessary evidence
21 to hold them prima facially keeping in mind that
22 all the evidence must be looked at in a light
23 most favorable to the Commonwealth.

24 But even at that level, the
25 Commonwealth didn't meet their burden and

1 therefore it must be remanded for misdemeanors
2 back to Municipal Court.

3 Once we go through those hurdles of
4 discovery, getting witnesses in and putting a
5 case on at trial, and if the individual should be
6 found guilty, boom, that's when de novo right of
7 appeal comes in and the whole process starts all
8 over again with the exception of the preliminary
9 hearing.

10 CHAIRMAN GANNON: You talked about the
11 idea of a gun court. Apparently that's an idea
12 that you've been working on for a while.

13 How do you envision that would help to
14 solve some of the problems with the system you
15 are in right now and also with dealing with the
16 issue of gun violence?

17 JUDGE MCCAFFERY: Gun courts have been
18 created in a wide variety of states throughout
19 the nation right now. They have been received
20 and are overwhelmingly successful.

21 What they do is basically put together
22 a group of judges that are serious players and
23 they take this stuff seriously and they handle
24 things in the serious nature that they should
25 be.

1 Those types of gun courts work. It is
2 proven that they work. I think they can work
3 here in Philadelphia County if the right people,
4 the Board of Judges or the President Judge,
5 whomever is responsible for its creation, would
6 put it together as long as you have individuals
7 that stay focused and basically understand what
8 the law is and how to apply the law and make sure
9 those cases get on.

10 Again, one of the problems we're having
11 -- I don't have the statistics in front of me,
12 but an inordinate amount of these cases are
13 walking out the door. They are not getting to
14 trial. They are walking out the door under 6013
15 and the Rule 1100 problem that we're having.

16 That is connected, in my opinion, to
17 the volume of cases. It is just tough for the
18 folks over here to get these cases on in front of
19 a judge.

20 CHAIRMAN GANNON: Thank you very much,
21 Judge McCaffery, for coming before the Committee
22 and sharing your thoughts on this very important
23 issue.

24 Our next witnesses are the Honorable
25 Lynne Abraham, District Attorney for the City of

1 Philadelphia, and Michael Stiles, Esquire, United
2 States Attorney for the Eastern District of
3 Pennsylvania.

4 Welcome, District Attorney Abraham and
5 Mr. Styles. You may proceed when you're ready.

6 MS. ABRAHAM: Representative Gannon, it
7 is my pleasure in being able to come before you
8 and the Members of the Committee on this
9 important discussion.

10 I had -- before I lose my train of
11 thought on some of the issues that have been
12 raised prior to my sitting here, I wanted to
13 cover them.

14 First, with regard to Mr. Timmoney's
15 statement about mandatory minimums, it is already
16 discretionary with the Commonwealth whether to
17 proceed on mandatory minimum sentences or not.
18 So we do have that discretion all over the
19 Commonwealth.

20 I think if you want to discuss that
21 further, I just wanted to remind you -- I'm sure
22 you knew it. I just wanted to remind you that we
23 don't always proceed on mandatory sentencing
24 cases when we believe that it shouldn't be a
25 mandatory sentence case.

1 I think the district attorneys, many of
2 whom, by the way, stood for election as judges
3 this year throughout the Commonwealth and almost
4 every one of them was successful, are mindful of
5 their own prior discretion and how they'll handle
6 matters as judges.

7 I do believe, however, that with
8 respect to Representative Joseph's remarks, I
9 don't agree with them at all. I think blame must
10 go where it is assigned.

11 Our judges -- and this is not unique to
12 Philadelphia -- deserve -- those who are not
13 following the law and fully carrying out their
14 duties, do deserve the blame for some of the
15 criminal conduct on the streets. I want to place
16 it where it should belong.

17 We have many fine judges in
18 Philadelphia, but some of the judges, as referred
19 to by Judge McCaffery, are not doing, in my
20 judgement and his judgment, what they ought to be
21 doing.

22 I do believe that there are reasons for
23 more resources both in the prosecutor's office
24 and elsewhere. However, I believe that insofar
25 as Philadelphia is concerned, because we have

1 many more cases of gun-related violence than
2 almost anyplace else in the Commonwealth, it
3 would be extremely helpful -- and I know if
4 Commissioner Timmone were here he would agree
5 with me that if you have three or four
6 ballisticians with thousands and thousands of
7 guns, it is practically impossible to do gun
8 ballistics tests and have them done in a timely
9 fashion.

10 Frankly, as a former judge of both
11 Municipal Court and the Court of Common Pleas, I
12 can tell you there really isn't any real purpose
13 to having a ballistics report ready for a
14 preliminary hearing other than to delay the case
15 so long that the case is dismissed. That's the
16 real reason for ballistics tests. It is a
17 mechanism. It's a tool.

18 Judge Stiles, my former colleague on
19 the bench, shared the same issue. It really is a
20 discovery tool which has no reason in rhyme or
21 any other fashion, to have a ballistics test to
22 show that the gun is operable for a preliminary
23 hearing when that shouldn't be required. It
24 ought to be presumptive. It ought to be, like
25 anything else in a preliminary hearing, prima

1 facia. The actual proof of operability comes, if
2 at all, at the time of trial.

3 We didn't support, Representative
4 Little, a gun court. And I think Judge McCaffery
5 just said the same thing I did but in a different
6 way.

7 If we have the same judges doing the
8 same thing you are doing now in both Municipal
9 and Common Pleas Court, then to have a gun court
10 and allow them to do the same thing does little.
11 It's not going to speed up ballistics. It's not
12 going to speed up convictions. It's not going to
13 assure convictions. It's just going to have a
14 judge doing something.

15 And my experience tells me -- and I've
16 been at this a little while. My experience tells
17 me that as far as the jurisdiction of a judge,
18 you can't, unless there's some constitutional
19 change that I'm not aware of that is in the
20 offing, restrict a judge who's elected to be a
21 judge of a general jurisdiction to just gun
22 court. It's just not going to work.

23 I think it is a great mechanism for
24 putting more judges on the bench. I'm not going
25 to get into that. That's a political issue, but

1 it's not going to accomplish what I think. What
2 I think it's going to accomplish is as a
3 prosecutor and a judge it's extraordinarily
4 frustrating on both sides to have a list which is
5 so horrendously long which does not include in
6 both Municipal Court as well as Common Pleas
7 Court -- Municipal Court has summary cases plus
8 violations of probation after the list.

9 And in Common Pleas Court it includes
10 extensive pretrial motions, longer even than
11 Municipal Court and an extraordinary length of
12 violations of probation hearings after the
13 regular list.

14 And also, finally, I don't want to make
15 this a Philadelphia issue because if this
16 degenerates into a Philadelphia issue, we're dead
17 in the water and we might as well admit it. This
18 is an issue that's much broader and much deeper
19 than Philadelphia.

20 And also as a gun owner -- I'm a
21 licensed and registered gun owner since the
22 1960s. I support gun control. And I agree with
23 the Mayor in his support of House Bill 46 because
24 I also appeared before you, Representative
25 Gannon, Representative Cohen, and others. I

1 still support it. It's a good start. And I
2 believe that we ought to do that.

3 One final question that I think was
4 raised -- actually two. With regard to 6111 G5,
5 the Bill I believe that had been previously
6 referenced about prosecuting those who sell guns,
7 to me, the Mayor may have said, it is sort of
8 like the turkey on the table with the tail neatly
9 folded in. A beautiful artistic representation
10 of how a turkey ought to be presented on
11 Thanksgiving day, but the tail is absolutely
12 useless.

13 6111 G5 is useless because, as a matter
14 of law, we would have to prove what was in the
15 mind of the buyer and the seller. And the buyer
16 of the gun, who would be our main witness, is
17 usually the person who has the major felony
18 charge against him. In other words, he's a
19 robber, he's a rapist, he's a burglar. He has a
20 long felony record. He goes to somebody. The
21 person sells him a gun.

22 For him to testify that the seller knew
23 that he was going to use the gun for criminal
24 purposes is to have the felon testifying against
25 the gun seller. And as a credibility matter,

1 that's just not going to work.

2 So it was a great idea. Good
3 intentions, as all I believe your efforts have
4 been in this respect. It is execution that has
5 been unworkable.

6 I suggest, frankly, that one of the
7 things that I want to talk about among a lot of
8 others -- and I'll try to go as quickly as I can
9 -- is Senate Bill 806 which is a constitutional
10 amendment which would prevent our Pennsylvania
11 Supreme Court from making it impossible for
12 police officers throughout this Commonwealth from
13 doing their duty in a thoughtful and constructive
14 way.

15 It is probably something that ought to
16 be revisited if as a member of this body you are
17 again considering how we can make a major impact
18 on violent criminals.

19 Hunters, sportsmen, people that love to
20 shoot at targets -- I don't mind clay pigeons.
21 The real ones, the Higgins pigeons shoot, I'm
22 sorry, with all due respect to my pigeon-shooting
23 friends, forget it. I'm not in favor of that.
24 Clay pigeons I don't care. Real ones I think is
25 stupid. That's not sport.

1 I think that we ought to look at 806
2 because one of the major things that this body
3 must feel as a frustration to it is when you have
4 done every single thing you can possibly think of
5 to stop illegal gun use possession, is to pass
6 great statutes which the Supreme Court overrules
7 by such cases such as Commonwealths versus
8 Hawkins, Commonwealth versus Jackson and
9 Commonwealth versus Cue which effectively
10 eliminated the police department from relying on
11 the very thing that they rely on all the time,
12 and that is police radio calls.

13 Hundreds of thousands of police calls,
14 sometimes even millions in many jurisdictions,
15 are information that the police officer is acting
16 on, man with a gun, robbery in process, homicide,
17 arson in process, whatever the crime is.

18 Under those cases, man with a gun, even
19 with the description, the police officer's hands
20 are tied from making a valid, lawful arrest based
21 on the reliance on a police radio call. You
22 might as well tell the police officers, just
23 conduct an investigation out on the street corner
24 when it is practically impossible and when the
25 man you are looking at or the woman has a gun

1 which may kill you.

2 Commonwealth versus Mottos, which is
3 the so-called coerced abandonment case, just a
4 police officer drawing up to anybody in the
5 Commonwealth for the mere informational purpose,
6 whether it is with knowledge of anything going on
7 or just a police officer's well-honed suspicion
8 to ask that person a question means that the
9 person is -- the person is permitted to run if
10 the person knows he's going to lose the race with
11 the police officer, all he -- and it's mostly
12 he. I don't want to eliminate she. All he or
13 she does is reach into his or her pocket and
14 start throwing stuff out. Because if he's going
15 to be caught, then he is going to claim coerced
16 abandonment. And under Mottos and the cases that
17 have followed it, all that is going to be
18 suppressed, every gun, every drug. They're all
19 going to be suppressed.

20 In White and Lablong, search and
21 seizure of automobiles, many of our judges
22 believe that once a defendant is out of a car,
23 because of White and Lablong, if the police
24 officer happens to go in and do a search for any
25 reason really, that's going to be dismissed

1 because the officer has to first hold the
2 defendant, hold the car, and then go get a search
3 and seizure warrant.

4 So while we're looking at courts,
5 Representative Joseph, I don't want you to forget
6 that while our Supreme Court -- I have the
7 greatest respect for the Court. I'm a member of
8 the Court of this Commonwealth. I was a judge in
9 this Commonwealth. I'm not ascribing bad motives
10 to them.

11 I believe that Pennsylvania law ought
12 to be just coextensive with the United States
13 Constitution. That will protect everybody.

14 I think 806 is one of those ways to do
15 it because you can fight all you want about
16 whether it is a Philadelphia problem or a
17 Lackawanna problem or an Elk County problem. One
18 of the things we must not fail to look at is the
19 Supreme Court of Pennsylvania and how they have
20 handled these cases among other issues.

21 I think what we really want to do today
22 is discuss not only how we may make arrests more
23 effective, but how we may take a sense of feeling
24 that Philadelphia and other great cities
25 throughout this Commonwealth can make its

1 citizens feel safer.

2 There is no doubt that guns are closely
3 associated not only with homicides and other
4 violent crimes, but with accidents and suicides.
5 I don't want this moment to pass without
6 recognizing that.

7 The Journal of the American Medical
8 Association just last week did a study that
9 showed that -- you can of course -- it is like
10 any study, you can object to it or disregard it
11 or distinguish it from something else. I don't
12 think there's any doubt in anybody's mind that
13 people go out and buy guns for a variety of
14 reasons.

15 If I buy a gun for protection, which I
16 have bought two of them, by the way, there's
17 always a chance if my house is burglarized both
18 of them are going to be stolen and used or
19 somebody is going to have a gun drawn on me, and
20 let's be fair about it, most people are not going
21 to draw a gun on somebody who already has his
22 out, cocked, and ready.

23 I think what has to be done is taking a
24 look at how we can effectively address the issue
25 of guns being used by people who have a mind to

1 commit suicide, to kill their wives and children
2 and husbands and loved ones and to go into
3 schools and shoot up the schools even when the
4 guns have been purchased lawfully.

5 I believe that this horrendous paroxysm
6 of violence that has overtaken the county for the
7 most part, interestingly enough, is not happening
8 in large cities, it's happening in small towns
9 and villages and small cities all over this
10 country.

11 And nobody ever has to invoke any other
12 names but Pearl, Mississippi and Columbine,
13 Colorado and Evansburg, Pennsylvania -- Edenburg,
14 Pennsylvania.

15 I listened to the Mayor of Edenburg
16 talk the last time when we listened to House Bill
17 46. It is absolutely astounding what's
18 happened. Now it's in Hawaii and California.

19 Frankly, when those mass homicides
20 happen, sometimes they get only a little over
21 three-quarters of an inch in some of our
22 newspapers. It's only when it's like a Columbine
23 that we see it.

24 It's my considered judgement that while
25 I have regard for any organization which has a

1 product or an item to sell or tout, over the past
2 several years I think the NRA is really
3 frightened. I think they are really frightened
4 at the eroding support that they are having
5 within their own membership.

6 Just this past week the insurance
7 companies announced that they are not going to
8 defend the NRA and gun manufacturers against the
9 defective product issues.

10 I don't know where the bill that the
11 Senate is going to hear next week is going to
12 go. I rather suspect, unfortunately, it is going
13 to pass.

14 I know that there's already a
15 constitutional challenge mounted against it. It
16 is my considered judgment that no matter what
17 happens, whether it is ultimately successful or
18 not, the courts are to be open to the maximum
19 extent even with all of the problems to the
20 people, not closed to subdivisions like the City
21 of Philadelphia or any other city in the
22 Commonwealth.

23 There are a lot of other things that we
24 are doing to help enforce the laws. A couple of
25 them I think are worthy of note.

1 I think, first, we ought to pay
2 recognition and homage to a couple of wonderful
3 local programs which I commend to your
4 attention. William Mackey, who is here or he was
5 here, anyway. William Mackey of City-wide
6 Improving and Planning, I believe that he and I
7 join together in a community effort to have no
8 toy guns sold in any of our toy stores. No
9 action figures which have guns or violent figures
10 depicted and violent videos. That's something
11 that's important and I think ought to be looked
12 at to something as a goodwill gesture and ought
13 to be statewide issue.

14 We have engaged in Philadelphia in
15 goods for guns through the Philadelphia
16 Antiviolence Antidrug Network. The President of
17 the United States and governors and mayors across
18 this country have recognized the gun buy back or
19 we call it goods for guns. We don't want to make
20 it look like we are buying back guns.

21 I myself contributed a thousand dollars
22 to this effort through a foundation I started
23 because I believe that gun buy backs or goods for
24 guns are really important. It helps save lives.

25 I think there are lots of things that

1 have been accomplished with the great cooperation
2 of the City of Philadelphia, the Police
3 Commissioner, my colleague and friend, Mike
4 Stiles, which I think have created a dent, an
5 important dent, on gun violence, and that is the
6 child of FAST, Federal Alternatives to State
7 Trials, which Senator Arlen Specter and I came up
8 with about eight years ago.

9 It is the federal alternative to local
10 trials where we know or have reason to believe
11 that the crime will be treated differently in
12 federal court than in state court because of the
13 -- we don't have laws such as felony possession
14 which I hope you will support, as I do.

15 The new program called Operation
16 Cease-Fire that Mike Stiles will speak about, I
17 support it wholeheartedly. We have two district
18 attorneys assigned to the United States
19 Attorney's Office, cross designated, plus three
20 assistant U.S. attorneys prosecuting Philadelphia
21 gun cases which if they were handled right and if
22 the judges enforced the law and if there were
23 some different laws, which I'll talk about in a
24 moment, on the books, we wouldn't need this. We
25 wouldn't need to rely on our federal courts.

1 But for felons in possession, it is a
2 mandatory minimum sentence of five years. And my
3 pal here is getting 5-year sentences, 10-year
4 sentences, 15-year sentences for armed career
5 criminals that we might get probation or a county
6 prison sentence with time given for good time and
7 earned time.

8 It is really a Pennsylvania disgrace
9 that this is permitted to happen. I support
10 Operation Cease-Fire's efforts. And as long as
11 I've been in office, we have been doing that.

12 Another program that does have
13 potential is the new program that we started in
14 the 24th and 25th Police District. Because I
15 just don't want to just talk about legislation, I
16 want to talk about prevention. And I'll get to
17 legislation in one more minute.

18 In the 24th and 25 Police District, in
19 East Philadelphia, that is the place where our
20 young people are most likely to kill or be
21 killed. It has the most -- the highest homicide
22 ranking of any police district in Philadelphia.

23 We started a youth violence induction
24 project in that jurisdiction with the
25 Philadelphia anti-drug anti-violence network

1 about which I spoke a moment ago with their
2 street workers, with the juvenile court, the
3 adult court, Philadelphia Safe and Sound, Police
4 Department, and public/private ventures.

5 This is a high-risk high-reward kind of
6 project. We have picked out a hundred of what we
7 believe to be the most violence-prone or the
8 people most likely to be killed, juveniles and
9 young adults.

10 They are given intensive supervision by
11 probation officers. These kids are given job
12 training and job opportunities. They are given
13 in-home visits. They have youth workers go out
14 and interact with them. They are offered drug
15 treatment and alcohol treatment when they need
16 it.

17 We don't want to see them die. We
18 don't want to see them in prison. If this
19 program works, and it is too soon to say whether
20 it will work, but we are hopeful because of it,
21 and it came as a result of my visit to Boston to
22 see what they are doing, this will go a long way
23 to coming back to you and talking about a
24 statewide project.

25 Finally, with regard to preventative

1 programs, I want to talk about a program called
2 Don't Fall Down in the Hood. This is a program
3 that my office through my Juvenile Deputy, John
4 Delaney, came up with. What Don't Fall Down in
5 the Hood is, is every young offender in Juvenile
6 Court about which the Mayor spoke, who is found
7 -- adjudicated a delinquent for possession of a
8 firearm, the DHS, Department of Human Service
9 Youth Homicide Review Team, the Institute for
10 Development of African American Youth, Saint
11 Gabriel's Hall, and my office all take all these
12 kids. And it is only for possession, not for use
13 of a firearm, simple possession.

14 They are subjected to, in addition to
15 any other sentence, a three-month program
16 specifically designed for these young people.
17 The first two months of Don't Fall Down in the
18 Hood are these young people, mostly boys, must
19 attend a class four days a week from 3:30 to 7:30
20 when a lot of their moms are at work and these
21 kids have the potential for getting into the most
22 mischief.

23 In addition to that they must attend
24 school every Saturday. They receive academic
25 support for their schools as well as instruction

1 in entrepreneurial skills. It keeps them off the
2 street.

3 They also are then taken on class
4 trips. They go to the morgue where they see real
5 dead bodies killed by real live bullets. They
6 know that nobody is getting up from the table.
7 They are taken to McGee and other rehabilitative
8 hospitals to speak to young men, just like
9 themselves, who are hemiplegic, quadriplegic,
10 paraplegic, to tell those kids, look, don't end
11 up like me. This is where I am and this is how I
12 have to exist forever.

13 They go to the prisons. We take them
14 to funeral homes. We do all things that we
15 possibly can to talk to them about the
16 consequences of gun-related crime so that we can
17 save them.

18 I have plenty of business. I don't
19 need any more. And Philadelphia and other
20 jurisdictions don't need any more youth offenders
21 becoming our adult offenders.

22 Finally, I think legislatively there
23 are some terrific things we can do. Besides the
24 special unit which I am hoping to get funding
25 for, which will carefully track probation

1 violators who or parole violators who are engaged
2 in gun crime, I do believe that one handgun a
3 month is essential. I believe it should be given
4 a second look. And I'm hoping that that will be
5 reconsidered.

6 I support General Fisher's Operation
7 Hard Time initiative to promote changes in the
8 gun laws to make instead of felons in possession
9 a misdemeanor of the first degree, a felony of
10 the second degree.

11 I wrote a letter to the Pennsylvania
12 Commission on Sentencing that recommends that the
13 offense gravity score for violations of firearms
14 be from a 4 to 5 to a 9. That would mean a
15 minimum sentence of 18 to 30 months in prison
16 because those with offense gravity scores that
17 are low but prior record scores that are high
18 only get county prison time which because of
19 overcrowding means that they will be immediately
20 or very shortly after paroled.

21 I think also guns and drug crimes like
22 armed career criminals, drugs and gun offenses
23 that are handled by the United States Attorney's
24 Office can be changed. And I think it ought to
25 be a separate offense to possess guns in

1 furtherance of drug crimes.

2 Right now if you are arrested with a
3 gun, if the gun isn't in the possession of the
4 person dealing the drugs, we lose the gun
5 charge. Therefore I believe that since guns and
6 drugs are inexplicitly linked, there ought to be
7 a change in our law to make it a crime to have a
8 gun with drugs.

9 The final thing, with regard to having
10 a gun with an obliterated serial number, the act
11 is altering or obliterating the marks on a gun.
12 Since many of our offenders have guns with
13 obliterated serial numbers as a practical --
14 again, this gets to be the tail on the turkey,
15 very attractive and impractical.

16 We cannot prove in a court of law that
17 the person in possession of the gun beyond a
18 reasonable doubt is the person that did the
19 obliteration of the serial numbers, therefore it
20 is very difficult to prosecute those kinds of
21 offenses. And we don't bother because it is a
22 waste of prosecutorial resources. They are too
23 few and far between to do that.

24 I believe that all of these things
25 ought to be considered. These are more than

1 Philadelphia issues. Philadelphia just has more
2 of them. These are statewide and really national
3 issues that I commend to your attention.

4 And I thank you very much for convening
5 this committee yet again to deal with a very
6 difficult and important issue.

7 CHAIRMAN GANNON: Thank you.

8 Mr. Stiles.

9 MR. STILES: Thank you very much.
10 Thank you for inviting me.

11 My background is very much like
12 Lynne's. I've been a United States attorney
13 since 1993. Before that, for ten years I was a
14 common pleas court judge in Philadelphia. And
15 for 12 years before that I was in the
16 Philadelphia District Attorney's Office and left
17 there to run for judge when I was First Assistant
18 District Attorney.

19 I would like to briefly talk to you a
20 little bit about Operation Cease-Fire which you
21 have heard about its successes and some of its
22 limits, and answer any other questions you might
23 have.

24 Operation Cease-Fire has been in
25 existence for almost a year, since January of

1 this year. And the District Attorney is correct
2 that before that we had an active system
3 established by Lynne and Senator Specter and Mike
4 Balsam who was the U.S. Attorney before me to
5 review state cases for federal prosecution.

6 Back in the past, federal alternatives
7 to state trials was in existence, but not
8 anywhere near to the extent in terms of what we
9 have done for firearms cases in the last year.

10 We would average about 60 firearm cases
11 a year for federal prosecution until Operation
12 Cease-Fire was funded and put together. And this
13 year up until now we have 211 federal firearm
14 indictments and expect in the next couple of
15 months 40 to 50 more. So we'll have over 250
16 federal firearm indictments this year,
17 quadrupling the number of cases that we have
18 tried previously.

19 We were funded \$1.5 million. Congress
20 funded us to establish this operation. And you
21 have heard we have three Assistant United States
22 Attorneys, thanks to Lynne, two Special Assistant
23 United States Attorneys who are District
24 Attorneys who she has sent to our office to try
25 these cases. We have a paralegal in her office

1 and one in ours reviewing firearms arrests. We
2 have five Philadelphia police detectives and five
3 ATF agents who review and put these cases
4 together.

5 We focus on serious violent offenders,
6 felons in possession of firearms, armed career
7 criminals who by definition have three or more
8 either violent convictions or significant drug
9 convictions, drug traffickers in possession of
10 firearms and illegal gun traffickers.

11 Federal sentencing statutes call for
12 persons with two or more violent crimes who are
13 arrested in possession of a firearm for a
14 sentence of about five years. Three or more
15 convictions is a mandatory 15-year armed career
16 criminal category, a mandatory 15-year
17 conviction.

18 If you are a drug dealer found in
19 possession of a firearm, there's a mandatory
20 five-year firearm sentence which must be served
21 consecutive to whatever the sentence is for the
22 drug offense. That will depend, of course, on
23 how many drugs there are. The weight of the
24 drugs will determine the federal sentence for the
25 drugs.

1 This is mostly a Philadelphia program,
2 although my jurisdiction covers the Eastern
3 District of Pennsylvania. And we have not just
4 Philadelphia County prosecutions, but other
5 counties in Southeast Philadelphia that we have
6 Operation Cease-Fire in.

7 In Philadelphia, as you've heard, we
8 led the nation in use of guns in violent crimes.
9 We heard 82 percent of homicides are committed
10 with firearms in Philadelphia. That compares to
11 a national number of about 66 percent nationally
12 are homicides committed by firearms.

13 Robberies, in the City of Philadelphia,
14 55 percent are committed by firearms. That
15 compares to the nationwide figure of about 41
16 percent.

17 My belief, and I speak for myself now,
18 and I do have to make sure I say this,
19 particularly because it is on tape, U.S.
20 attorneys, unlike district attorneys and mayors,
21 do not set policy. There's one justice
22 department. The President of the United States
23 and the Attorney General of the United States
24 sets policy for the Justice Department, but I can
25 talk to you about my experiences and my beliefs

1 with regard to this level of firearms violence in
2 Southeastern Pennsylvania and Philadelphia.

3 I think there is a culture -- I said
4 this a year ago when we started Operated
5 Cease-Fire. I think there is a perception among
6 criminals that carrying a firearm alone does not
7 really raise a risk of any significant jail
8 time.

9 If a criminal gets up in a morning and
10 decides whether he, or once in a while she, is
11 taking his or her firearm with him, it's not a
12 calculation if I get caught with this alone I
13 will have to do some serious time in jail. More
14 firearms are carried, so more crimes are
15 committed from firearms.

16 I think that perception is being
17 changed to some extent and in some instances
18 antidotally. We've arrested -- ATF and the
19 Philadelphia Police have arrested people in
20 Philadelphia under Operation Cease-Fire and they
21 say, oh, no. I heard about this.

22 One guy said, my wife told me about
23 this program. She heard about it on television.
24 You mean to tell me I'm getting prosecuted
25 federally? You mean I'm really going to have to

1 do five years or more?

2 It is beginning to have some impact. I
3 think it's been a great success in that respect.
4 It has followed to some degree the example of
5 Project Exile in Richmond, Virginia.

6 I chose not to name it Project Exile
7 because I did not want to give the impression
8 that it's exactly like Exile for this important
9 reason for you, I think.

10 In a city like Philadelphia or any
11 large city, we cannot replicate what Project
12 Exile is doing in Richmond because in essence
13 they have taken all the firearms cases that
14 qualified under federal law for federal
15 prosecution, and they can do that.

16 In almost three years of operation
17 they've had 518 indictments. We could not do
18 that in the United States Attorney's Office in
19 the Eastern District of Pennsylvania.

20 We have in a normal year about 600
21 indictments overall. That includes significant
22 organized crime cases and white collar cases and
23 police corruption cases and many other things
24 that we do and do well.

25 You heard the Commissioner say there

1 were 3,600 firearms arrests. The United States
2 Attorney's Office can't take all of those cases.
3 Frankly, again, personally, philosophically, I
4 think it is local responsibility, that kind of
5 crime patrol is. We can help. We can
6 supplement, but we can't do and ought not do the
7 lion's share.

8 That's why I am very encouraged and
9 support legislative proposals that's would raise
10 the penalties under the Crimes Code, State
11 penalties for firearms violations.

12 I've reviewed the proposal Attorney
13 General Fisher made. I would support it. I
14 would ask you to consider whether some mandatory
15 sentence provisions as opposed to just
16 guidelines.

17 That I was judge, as Lynne was, for ten
18 years. Guidelines in State Court can be
19 disregarded or not followed, as you all know,
20 simply by a one sentence explanation by the trial
21 judge. That can't happen in Federal Court.

22 In Federal Court, guidelines are really
23 a euphemism for requiring the judge to follow
24 those guidelines unless the prosector says this
25 defendant has given us substantial assistance in

1 other cases and therefore merits a departure from
2 the guidelines.

3 So I would suggest in addition to the
4 very legitimate proposals that you think about
5 the level of prior criminal activity, prior
6 convictions that would cause the legislature to
7 say it is reasonable when somebody has three
8 prior violent convictions.

9 We can't tolerate that person caring a
10 gun any longer. Upon that conviction there
11 should be a mandatory five years, whatever you
12 think is appropriate.

13 As I say, I don't set policy so I don't
14 have a personal position on one gun a month, but
15 that is an issue that the President of the United
16 States and the Attorney General have taken a
17 position on in support of one gun a month
18 legislation. And I do see in our firearms
19 trafficking cases significant use of straw
20 purchases where persons without records are
21 recruited to go buy firearms, and up to 90 a
22 month.

23 We had a case recently where the
24 Defendant's name was Gregory Stiber. He was
25 selling firearms, believe it or not, out at a

1 Christian bookstore in Germantown that he owned
2 and operated.

3 He used four straw purchasers who
4 bought 90 guns within a five-month period for him
5 to sell out of the book store to criminals
6 illegally which were used in crimes.

7 That's a summary of what we're doing.
8 It is with great support from the Mayor, from the
9 District Attorney, and from the Police Department
10 as well as Federal agencies.

11 I appreciate the opportunity to be
12 invited here to tell you about it and will be
13 happy to answer any questions.

14 CHAIRMAN GANNON: Thank you, Mr.
15 Stiles.

16 Representative Josephs?

17 REPRESENTATIVE JOSEPHS: Thank you, Mr.
18 Chairman. I must say I was really surprised
19 District Attorney Lynne Abraham didn't agree with
20 my comments.

21 But I wanted to ask, and I thank you
22 both for being here and both for the good jobs
23 that you do. I wanted to ask Mr. Stiles because
24 I -- the District Attorney gave us the answer.

25 There's a national movement by the

1 National Rifle Association to cut off the civil
2 access to the Courts by municipalities and
3 political subdivisions to sue manufacturers for
4 some of the lax supervision.

5 Some of the way that some of these
6 products work, you know, along the lines of
7 trying to get some sort of involuntary
8 supervision that even our most charming and very
9 good negotiating Mayor is not able to get within
10 one inch of them.

11 Can you tell the committee, Mr. Stiles,
12 what while either your personal or official
13 opinion is of the bills that we may be dealing
14 with next week that would make sure that we as a
15 city could not sue gun manufacturers?

16 MR. STILES: In an a word, No. Three
17 days ago, I guess maybe the end of last week,
18 Representative Evans called and asked me that
19 question.

20 And I knew--I think you can understand
21 this--there are 94 United States Attorneys across
22 the--around the country. The Justice Department
23 has to speak with one voice.

24 And individual U.S. Attorneys don't set
25 the policy. So I knew that I would not able to

1 answer him immediately on what the position of
2 what the Justice Department was.

3 And frankly, I don't think it's
4 appropriate to give my personal view on this.
5 But as a result of that inquiry, as we speak,
6 there are at least ten components in Washington,
7 D.C. in the Justice Department trying to answer
8 that question as quickly as they can for me to
9 relay it to Dwight Evans.

10 And I will be happy to do that for you
11 as well. And I told them yesterday that I don't
12 know whether we're going to get an answer in time
13 for you or not. But they are working on that.
14 And that's the best I can tell you.

15 REPRESENTATIVE THOMAS: The District
16 Attorney has been able to definitely--I have seen
17 probably the best of all cooperation between
18 local and the federal offices and dealing with
19 this issue and a lot of other issues.

20 I want to thank you for that. I want
21 to thank Mr. Stiles for that--what you do.
22 Question to both of you. One, as you know for a
23 number of years we were caught in this debate of
24 the 10th amendment.

25 At what point should the federal

1 government interfere with states' ability to do
2 what was best for the citizens of that state?
3 And we came up with the Preemption Doctrine and
4 all of that.

5 Now, I think we're going through the
6 same debate with respect to counties and the
7 Commonwealth. And so my question was to--whether
8 or not you're advocates of uniformity, whether
9 there should be a Uniform Firearms Law which
10 really dictates to 66 counties as to how those
11 counties should deal with issues which might be
12 problematic in one county but not problematic in
13 another, or whether or not we should allow
14 counties through their legislative bodies to do
15 what's in the best interest of their county,
16 especially when you have clear evidence that
17 there's a problem that's more endemic to this
18 county than it would be someplace else.

19 So that's my question. Would you
20 advocate for uniformity and believe that we're on
21 the right track by repealing all local ordinances
22 dealing with some of these issues? And I'm
23 trying to strengthen a uniform policy. Or would
24 you purport counties being able to act in its
25 best interest?

1 MR. STILES: I am going to give you a
2 quick answer. And part of it is ducking again
3 because we really do have this limitation on
4 being a policy setter. But I will tell you.

5 In my role as United States Attorney
6 dealing with 94 U.S. Attorneys around the
7 country, I am constantly arguing that individual
8 U.S. Attorneys also have discretion to deal with
9 the problems that are unique to their particular
10 districts. And we ought not have the same
11 uniform requirements imposed on us.

12 REPRESENTATIVE THOMAS: Well, what I
13 was thinking about is that some areas where the
14 state has exercised jurisdiction, it has provided
15 enabling legislation which allows counties to
16 then structure situations that might be endemic
17 to that county but not exceed the state law.

18 Because I think their -- part of the
19 struggle that we're having, albeit a legitimate
20 struggle, that when we talk about 3600 gun
21 arrests in Philadelphia County -- I think that
22 Representative Cohen is legitimate.

23 And when -- and I'm using
24 Representative Cohen as an example. It's
25 legitimate when she raises that question that we

1 don't have that same problem in Montgomery
2 County. Or somebody raised the question that it
3 doesn't exist in Elk County.

4 I think, as in the interest of the
5 people that they represent, they have a right to
6 raise those legitimate concerns.

7 But by the same token I don't think
8 that we should do things in Philadelphia County
9 or Allegheny County that completely frustrates
10 the efforts of people in those other counties.

11 But what I would like to see happen is
12 the District Attorneys Associations, which
13 stretches across Pennsylvania, pretty much have
14 their hand on problems which are endemic in too
15 many of these counties.

16 I would like to see them come with some
17 recommendations -- and if -- to how we can
18 fashion legislative prescriptions which helps
19 people in these places that need help right away
20 and at the same time provide some relief for
21 people in the other places who will be facing the
22 same problem in years to come. I think once that
23 happens then we can get past some of the struggle
24 that we're having.

25 MS. ABRAHAM: Well, I'm going to make a

1 county proposal to you, Representative Thomas. I
2 don't speak from the Pennsylvania District
3 Attorneys' Association. I'm the Legislative
4 Chair.

5 My office plays a very active role, as
6 you well know, in matters of importance. My
7 sense tells me that no District Attorney even in
8 the most or in the least crime plagued area will
9 agree that a gun can't kill.

10 And I think it's better if you want to
11 impose a formal meeting between some interested
12 legislators and District Attorneys about issues
13 other than gun crime because I could never agree
14 to anything that denigrates gun crime in
15 Philadelphia or Pennsylvania.

16 If you wanted to have some ideas on the
17 table that you and your fellow legislators want
18 to discuss with us while not binding the
19 association, I believe that we're a bunch of
20 reasonable men and women.

21 We would be honored to come to a place
22 of mutual convenience to discuss with you all in
23 an informal setting matters of mutual interest
24 across a wide range of ideas.

25 We'll give you our view of it. You can

1 give us your view of it. And you never can tell.
2 We might able to reach an accord. I mean George
3 Mitchel did it in Ireland so far. So I don't
4 think the gulf between the legislators and the --
5 and the District Attorneys all that much in many
6 areas.

7 So I think we can breech some gaps. I
8 don't know about gun crime, but there may be some
9 other issues we can talk about.

10 REPRESENTATIVE THOMAS: And I guess my
11 last question would run to this whole question of
12 liability. How far should the law stretch in
13 order to send a message that, one, if you buy a
14 gun legally but put it in the hand of someone
15 illegally and that person in turn uses that gun
16 in a way that is of loss of life or serious
17 bodily injury that this original party that --
18 who was negligent in their management or care of
19 that firearm will have to suffer some liability
20 for the harm that it's caused?

21 MS. ABRAHAM: I think Mike is deferring
22 to me. I think you have to look at what we're
23 talking about Representative Thomas. In and of
24 itself, a gun is inherently lethal. If you gave
25 me a gun, if I came to you and I said, Dad give

1 me your gun.

2 And I want to go out in the backyard
3 and shoot some squirrels. And we're living in
4 rural Pennsylvania, and I accidentally shoot some
5 a kid who -- I'm shooting at a squirrel, but I
6 miss. Somebody -- my sense tells me that
7 criminally there wouldn't be much likelihood that
8 you would be prosecuted.

9 Now, you might be sued. And you would
10 be sued civilly. But if I'm -- if you have a gun
11 in the house or in your store and I have access
12 to it, and you do not take the care to keep it
13 where I can't get it, and I do get it and I kill
14 myself or I go out and kill some child or adult
15 or I use it to commit a robbery, one of the
16 burdens, Mr. Thomas, of keeping a lethal weapon
17 in your possession -- it's not the same as an
18 automobile, although an automobile can kill, too.

19 But this is inherently lethal. And an
20 automobile is not inherently lethal. This
21 firearm -- if I take it and use it to commit a
22 crime or to kill somebody, there are many
23 instances, although not all in Philadelphia and
24 across the Commonwealth, where you could be
25 charged.

1 Not would be, but could be charged with
2 keeping this dangerous instrumentality in a place
3 where I could get it. And I use it to commit a
4 crime.

5 So one has to be careful about what you
6 do with lethal weapons around ones home. And
7 there are issues of not only criminal but civil
8 liability that follows depending on the unique
9 circumstances of each case.

10 REPRESENTATIVE WILLIAMS: Thank you,
11 Representative Gannon. I appreciate you allowing
12 me to participate in this hearing today. I have
13 been doing some work on this issue, especially on
14 the gun courts and legislation that would follow
15 Operation Cease-Fire and the legislation
16 enrichment.

17 It's been interesting. And I wanted to
18 ask Mr. Stiles a number of questions on this.
19 You mentioned that you see cases from outside
20 Philadelphia County.

21 Can you tell me the percentage of cases
22 that come from the suburbs and also what your
23 area of U.S. Attorney -- where you cover? And
24 how many other areas in Pennsylvania, how many
25 other people cover it?

1 MR. STILES: There are three U.S.
2 Attorneys in Pennsylvania, three districts. I'm
3 the eastern district of Pennsylvania. There are
4 nine southeastern counties in Pennsylvania. I
5 can't tell you.

6 I can get you the information in terms
7 of how many Cease-Fire case indictments we have
8 outside the Philadelphia area. But I don't have
9 that off the top of my head.

10 I would say they are probably not more
11 than ten or fifteen percent. But I particularly
12 made clear to other counties outside Philadelphia
13 that this is not a Philadelphia program.

14 This is available. And we've done
15 cases in Reading, Allentown, and elsewhere and
16 have set up programs like the program that we
17 have with the District Attorney in Philadelphia
18 for review and referral to our office for federal
19 prosecution.

20 REPRESENTATIVE WILLIAMS: I have
21 introduced a bill which is House Bill 1459 which
22 is the is the Gun Court Bill that we mentioned
23 before that the District Attorney doesn't like.

24 But part of that bill covered the
25 issues of mandatory sentences of five years for

1 the same kind of felonies that are coming to the
2 Federal Court. You mentioned to, and am I wrong
3 in assuming that would this be helpful to have
4 this kind of thing in a state court in some kind
5 of state court system so that you could go on
6 doing the same kinds of things that you do on the
7 whole broad range of subjects.

8 MR. STILES: Absolutely. It's really
9 where it belongs. We -- and the federal
10 government has never been considered. And I
11 don't think it should be considered to have the
12 line share responsibility for crime control or
13 crime problems.

14 We will do certain cases on the margins
15 which we've done well for a long time with
16 federal agencies of expertise. But we don't try
17 -- if we try one homicide case a year that might
18 have some federal jurisdiction, the District
19 Attorneys tries all those.

20 We don't do any rapes. We do very few
21 robberies. We do some car-jackings. But we are
22 not, I don't believe, meant to try all the
23 firearms cases. And frankly, I think one of the
24 purposes of these federal projects is to result
25 in state legislative reaction just like this, to

1 bring the balance back to where it should be in
2 terms of local prosecution. I am all in favor of
3 it.

4 MS. ABRAHAM: I believe that if we had
5 sentencing guidelines like the federal sentencing
6 guidelines where the judges follow the guidelines
7 -- you know, you can follow them.

8 You cannot follow them. I mean, I fill
9 out those reports all the time. They are
10 meaningless. I mean, you really don't want to
11 have a kid in Forrest County for the same offense
12 that a kid in Delaware County -- I won't use
13 Philadelphia County.

14 You don't want to have disparate
15 sentences. The guidelines that we have still
16 allow for wild fluctuations between what happens
17 in one county and what happens in another. But
18 if you have real guidelines, that and -- I was on
19 the Sentencing Commission.

20 And I am not taking a shot at the
21 Pennsylvania Commission on Sentencing. I served
22 on that commission for five years, so been there
23 and done it.

24 The problem is that it's not required
25 which judges have the discretion to go up and

1 down and find the Defendant who is obviously
2 guilty of an offense, guilty of a lesser offense,
3 to dismiss a felon, to remand it to municipal
4 court so it can be tried two times.

5 You also have to consider two things.
6 One is making our sentencing guidelines just
7 similar to -- and they're very burdensome in the
8 federal court. They are tough, like the
9 Philadelphia phone book used to be very thick and
10 very complex.

11 But that eliminates one thing. And
12 maybe -- and I know this is radical. But I'm not
13 afraid to talk about radical changes -- if we
14 might want to look at the constitutional change
15 that made the Municipal Court in Philadelphia
16 different from all other courts.

17 We might want to make those Municipal
18 Court judges -- just so I don't get in trouble
19 with my former colleagues -- common place court
20 judges and not have a two tiered system in
21 Philadelphia.

22 So that serves -- I don't know that
23 serves our purposes any longer. I mean it has
24 some good points. I did it for four years, loved
25 the Court, loved the men and women on the Court.

1 You know, time marches on. I'm sure that will
2 get headlines, that will get me into trouble.

3 Hey listen, you know what? People are
4 dying in the street. That's radical. Trying to
5 form a solution isn't radical. It's just forward
6 thinking.

7 Now, I'm not saying you should do it.
8 I'm saying maybe you should look at it. Do we
9 want to do it? We won't need a gun court if we
10 do it that way. So maybe we'll have something
11 else to talk about.

12 MR. STILES: It also -- I think that
13 discussions reinforcing the need to upgrade gun
14 offenses, whether you take everything you try in
15 municipal court and put it into common pleas
16 court, maybe more than you have to do.

17 But if you think that a firearms
18 offenses should no longer be misdemeanors -- and
19 aside from guidelines, judges with everything
20 that they have to try and everything that they
21 have to dispose of -- a misdemeanor is a signal
22 to say probation.

23 I mean, I believe that there are
24 classifications of crimes. And if the
25 legislature thinks as I think you should, that

1 firearms offenses ought to be more seriously
2 categorized, then let's make them a felony.
3 Let's apply some mandatory penalties to them.
4 And that moves it out of municipal court anyway.

5 REPRESENTATIVE WILLIAMS: Well, that
6 was the purpose -- the intent of my legislation
7 was to move it to a different level. And I
8 appreciate the Judiciary Committee for having
9 these hearings today so that these kind of issues
10 can be discussed in a public forum. Again, thank
11 you.

12 REPRESENTATIVE KENNEY: Thank you, Mr.
13 Chairman. I think you're both very --
14 Commissioner Timoney mentioned 3600 gun arrests.
15 U.S. Attorney Stiles mentioned it. And
16 Representative Thomas mentioned it. And Madam
17 District Attorney, you and your written statement
18 talk about the first four months of 1999.

19 And I guess you referenced 150,000
20 people. I think crime was always the number one
21 issue. They left. The reason they left--you're
22 here. I'm still here.

23 MS. ABRAHAM: I'm staying. I know you
24 are.

25 REPRESENTATIVE KENNEY: But here's what

1 I have. Here's where my constituents have a
2 concern. Page one at the bottom. Assistant
3 District Attorneys and my felony nonjury units
4 disposed of a 145 gun cases and 90 of them
5 resulted in a conviction. Now, my constituents
6 think those 90 went to jail. Did they go to
7 jail?

8 MS. ABRAHAM: A lot of them didn't.
9 Some got probation. Some got county prison
10 sentences, some, depending on the case. And
11 obviously I have to look at the case. Some of
12 them got jail sentences because of prior
13 probation violations or parole violations.

14 I think there is some reason for
15 concern of your constituents. I am very
16 concerned as I also have been about the prison
17 cap. And I think our judges ought to sentence
18 more people to state prison. But they don't.

19 REPRESENTATIVE KENNEY: But of those
20 90, how many do you think went to jail?

21 MS. ABRAHAM: You know what? I don't
22 have the sentence in front of me, Representative
23 Kenney. But I can tell you that as soon as I get
24 them.

25 REPRESENTATIVE KENNEY: How many did

1 not go to jail because there is no room in the
2 county prison?

3 MS. ABRAHAM: Well, I don't believe --
4 I'm not speaking for judges. But I'm speaking
5 for myself as a judge. I never ever considered
6 the fact that there was no room in the jail to
7 put a defendant who should have been there.

8 That's for someone else to think. But
9 other judges do think, Well, I've got this robber
10 coming up next. Maybe -- and I've got this guy
11 who is just in possession of a firearm. Maybe I
12 won't send him to jail.

13 I'll save the room that we have for the
14 next guy. My records -- if I'm an offender --
15 Kathy MacDonald just handed me some figures. I
16 can answer your questions.

17 My prior record score means that I
18 should go to jail. I should go to jail or
19 prison, either one.

20 REPRESENTATIVE KENNEY: Are jail and
21 prison the same thing?

22 MS. ABRAHAM: Well, prison to me is
23 state prison. Jail is like county jail. That's
24 the connotation that I make. And I think that's
25 a distinction that maybe those of us in the law

1 profession use.

2 Representative KENNEY: So on state
3 roads they're jails and --

4 MS. ABRAHAM: That's jail. That's a
5 county prison or county jail. I always use
6 prison in the sense --

7 REPRESENTATIVE KENNEY: Well, let me
8 put it this way. My constituents don't want them
9 on the street.

10 MS. ABRAHAM: Oh, sure they don't.
11 Sure they don't.

12 REPRESENTATIVE KENNEY: So therefore,
13 we're putting them -- I guess my concern is --
14 what you're saying is, there are judges that do
15 make sentence decisions based on whether there's
16 room at the prison.

17 MS. ABRAHAM: Well, there's a lot of
18 these cases where the judge found them guilty.
19 Or there were other cases that -- where we had --
20 for example, the issues I raised previously,
21 where there was an illegal search or a throw-down
22 case where we negotiated rather than loose the
23 case.

24 So some got probation. Some of them
25 are pending. Some of them got jail sentences,

1 county prison sentences. And I will get to the
2 exact figures.

3 REPRESENTATIVE KENNEY: So there are
4 those people that should be in prison that are
5 not in prison?

6 MS. ABRAHAM: There are some that
7 should be in county prison, sometimes even state
8 prison, who aren't.

9 REPRESENTATIVE KENNEY: Well, would
10 that be more or less? I mean --

11 MS. ABRAHAM: Well, again, depending on
12 when -- I think it's too general. Frankly, I
13 have to know each individual case because there
14 might be a felony case, like a robbery case, or
15 part of a case that was dismissed or left only
16 with the gun. A jury may have --

17 REPRESENTATIVE KENNEY: What the prison
18 can't issue is the decision made by local
19 government not to build more prisons to house
20 these criminals.

21 MS. ABRAHAM: Well, it's twofold. It's
22 the previous administration agreeing to a cap on
23 the prisons. And those present administrations
24 built a new prison which was filled within a
25 matter of weeks after it was opened.

1 REPRESENTATIVE KENNEY: What do you
2 mean, Agreed to?

3 MS. ABRAHAM: Well, there's a prison
4 cap.

5 REPRESENTATIVE KENNEY: Well, would
6 limit our prison space?

7 MS. ABRAHAM: Oh, sure. The prison cap
8 was in the agreement. It was a consent decree
9 entered into by and between the then Mayor of
10 Philadelphia and the lawyers representing the
11 prisoners that they, the city administration,
12 would agree to cap the prison. That's a consent
13 decree. We agreed to it. I filed a lawsuit.

14 REPRESENTATIVE KENNEY: I'm just trying
15 to -- my constituents -- I mean -- but are you
16 saying there's an agreement to limit the amount
17 of people in Philadelphia that can be locked up?

18 MS. ABRAHAM: Yes. Because of the
19 federal prison cap which has been in affect for
20 ten, twelve years now. I mean, I don't agree
21 with it. Judge Shapiro doesn't agree with it.

22 REPRESENTATIVE KENNEY: You know I'm
23 talking about if the City of Philadelphia wanted
24 to spend the money to build a new prison they
25 could.

1 MS. ABRAHAM: I think -- I think that's
2 a different story altogether.

3 REPRESENTATIVE KENNEY: Well, that's
4 what I'm asking. The prison cap story, like,
5 does this local government -- have they decided
6 not to build?

7 MS. ABRAHAM: Oh, no, no, no. I don't
8 think that's the case. I can't speak for the
9 Mayor. But I can't believe that he agreed not to
10 build more prisons.

11 I think what has happened is there have
12 been a variety of issues, not the least of which
13 is, there was a proposal to build another prison
14 up in the northeast on the same location as the
15 other jail facility.

16 And the neighbors absolutely will not
17 have it. And the city council person who
18 represents the district has said in print that
19 she would not agree to any city council proposal
20 for a prison in her councilmatic district.

21 And the bill can't get anywhere with
22 the district counsel persons disapproval. But
23 that doesn't mean that the City of Philadelphia
24 has not agreed to build more prison space. I
25 think the City of Philadelphia wants to build

1 more prison space, and indeed must build more
2 prison space.

3 REPRESENTATIVE KENNEY: Do you agree,
4 Mr. Stiles? You're building a new facility
5 downtown. Is that correct? Is it open?

6 MR. STILES: No. It will open in June.
7 A federal detention center.

8 REPRESENTATIVE KENNEY: And how many
9 rooms at the inn there?

10 MR. STILES: Well, they're for federal
11 prisoners where -- actually people are awaiting
12 trial. And I think the answer is seven or eight
13 hundred persons awaiting federal trial were held
14 without bail or couldn't make the bail.

15 MS. ABRAHAM: I want to add one thing.
16 Those prisoners are being held now in our local
17 jails. Some of them are being held in there.
18 I've forgotten the number. It's not all that
19 great.

20 But those prisoners would be
21 transferred to the new federal correctional
22 facility which would free up at least some, not a
23 significant number. But we're up to over 6,000
24 prisoners in that prison, in the correctional
25 center which is well over capacity and well over

1 the cap by probably 800 or 900.

2 REPRESENTATIVE KENNEY: Will the
3 federal prison -- detention center be full when
4 you open it?

5 MR. STILES: I don't know a detention
6 center or prison anywhere that's not full a day
7 after you open it. Yes. I think the answer to
8 that is it will be. There are a few -- and I
9 don't know the numbers being held in county
10 institutions.

11 Most prisoners, federal prisoners,
12 awaiting trial are being held in other federal
13 institutions and have to be transported in from
14 long distances every day, but yeah, it's not
15 going to provide any relief for state or county
16 prison overcrowding.

17 REPRESENTATIVE KENNEY: Okay, thank
18 you.

19 CHAIRMAN GANNON: Thank you. I want to
20 thank you, District Attorney Abraham and U.S.
21 Attorney Stiles, for attending the hearing today
22 and presenting testimony and sharing your
23 thoughts. And we appreciate it very much.

24 Our next witnesses are the Honorable
25 Dwight Evans of the 203rd Legislative District

1 and the Honorable Andrew Carn of the 197th
2 Legislative District.

3 Representative Carn is a Member of this
4 Committee, and Mr. Dan Siegel, President of
5 Pennsylvania Against Handgun Violence.

6 Welcome, Representative Carn,
7 Representative Douglas, Mr. Siegel, and the 4th
8 gentleman. Could you identified yourself? You
9 may proceed when you are ready.

10 REPRESENTATIVE CARN: Thank you, Mr.
11 Chairman. I would like to thank you for
12 providing the opportunity for testimony on the
13 issues surrounding the enforcement of existing
14 firearm laws and regular regulations within our
15 Commonwealth.

16 As I review the existing laws, it
17 became very clear to me that there existed
18 deficiencies in state and federal law as it
19 relates to the issue of gun safety.

20 Title 18 of the Pennsylvania Code
21 requires that the State Police distribute free of
22 charge to every licensed gun dealer copies of a
23 firearms safety brochure.

24 The brochure is developed by state
25 police and contains a summary of our state's gun

1 laws. Currently, the Commonwealth requires that
2 various law enforcement personnel receive
3 training in the use of firearms.

4 But we do not require safety training
5 for the general populace. This seems a little
6 odd to me because Pennsylvania requires training
7 for measure of an individual's skill with respect
8 to a variety of products and occupations.

9 Whether it's driving a car, or
10 practicing medicine or law, Pennsylvania citizens
11 must pass a test or demonstrate in some way a
12 certain level of proficiency.

13 Pennsylvania law also does not address
14 the issue of safety of firearms products that are
15 sold and operated in the Commonwealth. There
16 are no minimum safety standards for firearms sold
17 in our state and no requirements that safety
18 devices be purchased or incorporated into the
19 design of firearms.

20 It is true that the House approved
21 legislation to provide mandatory purchases of
22 safety locks. However, neither the Pennsylvania
23 code nor the approved trigger-lock bill requires
24 the use of safety devices on firearms.

25 In this case, state law does not

1 provide incentives for gun owners to be
2 responsible. Again, I find this to be strange
3 because we mandate the use of safety devices on
4 other products such as seat belts in cars. If
5 you do not wear a seatbelt while operating your
6 vehicle, you can be fined in our state.

7 I feel that we can be safer and smarter
8 when it comes to firearms also. As a State, we
9 should adopt policies that support responsible
10 gun owners.

11 For this reason, I introduced House
12 Bill 1775 which mandates the purchase of safety
13 locks and provides immunity from civil liability
14 for gun owners who use safety locks.

15 I modeled this provision after language
16 that was adopted overwhelmingly by the U.S.
17 Senate (78-20) and U.S. House (311-115). The
18 immunity provision was supported by prominent gun
19 rights advocates such as Orrin Hatch, Trent Lott,
20 John McCain, and Strom Thurmond.

21 In Pennsylvania, we provide full or
22 limited immunity from liability to various
23 individuals and/or organizations as an incentive
24 to do the right thing. Some times immunity is
25 provided to encourage individuals to do important

1 jobs.

2 Here are just a few examples of the
3 people and groups that are provided full or
4 limited immunity in state law: Medical good
5 samaritans. School employees. Volunteer
6 firefighters. Farmers. Little league coaches
7 and officials. State government.

8 In my view, it would be appropriate to
9 protect responsible gun owners from lawsuit, if
10 an unauthorized user, such as a child or a
11 criminal, obtains possession of their weapon.

12 I would stress that this is not
13 mandating use of the safety locks. Nothing in my
14 proposal would require the use of trigger-locks.
15 If a gun owner uses the locks, the gun owner gets
16 immunity. If the gun owner does not use the
17 locks, the gun owner does not get immunity.
18 Under my proposal, immunity is simply an
19 incentive.

20 On many occasions, government provided
21 incentives to its citizens to achieve certain
22 goals. From tax breaks to immunity from
23 prosecution, government often utilizes incentives
24 to encourage different types of behaviors.

25 Mr. Chairman and Members of the

1 Committee, I would like to thank you for
2 supporting my bill when I offered it on the floor
3 of the House a few weeks ago.

4 I understand that there were concerns
5 about full versus limited immunity. I would
6 like to publicly offer to work with you on a
7 compromise that would be acceptable to all
8 concerned. I think that you and I, along with
9 all Pennsylvanians, would agree that encouraging
10 safe behavior with respect to firearms is a
11 laudable and bipartisan goal for state
12 government.

13 I will conclude by returning to the
14 issue of safety standards. Currently, guns are
15 the only consumer product not regulated by any
16 state or federal safety regulations. I find this
17 to be incredible when you consider that one of
18 the primary functions of a firearm is to cause
19 serious injury or death.

20 The lack of safety regulations are one
21 of the major reasons for the proliferation of
22 junk guns. Junk guns are cheap and poorly made
23 weapons that are often used in the commission of
24 crime.

25 There is no expressed language in the

1 federal statute or our state code; which would
2 preclude the implementation of safety regulations
3 for firearms. In addition, federal and state law
4 does permit safety regulations for a host of
5 every day products such as cigarettes, toys, and
6 food.

7 Several states have taken the
8 initiative in this area and established consumer
9 protection regulations. California and
10 Massachusetts have provided the Attorney General
11 in their respective states with this authority.

12 Safety regulations have been
13 implemented in various ways. In California, the
14 government certifies every gun model, while
15 Massachusetts allows the gun industry to
16 self-test.

17 However, the Attorney General can
18 dispute the finding and require an independent
19 test at a certified lab.

20 Some states have made safety standards
21 the responsibility of the state police, while
22 others have appointed an independent board of
23 experts.

24 In my view, the Attorney General is the
25 most appropriate place for assigning

1 responsibility for consumer protection
2 regulations. Currently, Pennsylvania's Attorney
3 General is authorized by the state law to develop
4 policies that protect the state's consumers.

5 In addition to being the state's top
6 law enforcement officer, Pennsylvania's Attorney
7 General is authorized to investigate commercial
8 and trade practices in the distribution,
9 financing and furnishing of goods and services
10 for the use of consumers.

11 The Attorney General is also charged
12 with advising the legislature on matters
13 affecting consumer interests, including the
14 development of policies and the proposal of
15 programs to protect consumers.

16 As a result, I introduced House Bill
17 1777 which would give the Attorney General the
18 authority to develop consumer protection
19 regulations for firearms.

20 I look forward to discussing
21 protections for responsible gun owners and
22 consumer protection regulations with the Members
23 of the Committee and other interested colleagues
24 in the future.

25 I hope that I have provided you with

1 ways that we can improve our state gun laws, and
2 I look forward to working with you in the future.

3 Thank you, Mr. Chairman.

4 REPRESENTATIVE EVANS: Thank you, Mr.
5 Chairman.

6 Mr. Chairman, I'd like to thank you and
7 other members of the committee for this
8 opportunity this morning to give some of my
9 thoughts relating to the issue of firearms
10 safety.

11 This morning has been a rather
12 interesting discussion. You've heard the Mayor
13 of the City of Philadelphia. You've heard the
14 Police Commissioner. You've heard the U.S.
15 Attorney. You've heard the District Attorney.

16 This is the first time in my 19 years
17 of experience in the House that I think we've had
18 a rather open discussion of the issue. I want to
19 address what I think will greatly enhance the
20 enforcement of the existing firearms rules and
21 regulations.

22 As you well know, the laws enacted to
23 deal with this issue focus on enforcement and
24 punishment. It is a law that deals with
25 prevention.

1 In the last decade alone, the
2 Pennsylvania legislature has overturned
3 Philadelphia and Pittsburg's ban on assault
4 weapons, prohibited all local governments from
5 making any gun regulations, prohibited local
6 police throughout the state from questions as
7 once in terms of applicants regarding carrying
8 permits, exempting concealed carrying permits
9 holders from the Brady Act, also the state
10 48-hour waiting period, eliminating the 48-hour
11 waiting period entirely once the instant
12 background check was put into existence.

13 We're here to talk about enforcement.
14 But as a body we have systematically taken away
15 local officials ability to rein inappropriate
16 ownership and the use of firearms.

17 The reason -- I think it's important to
18 understand that you've heard this from the Mayor,
19 the Police Commissioner, and the District
20 Attorney.

21 But I believe that we as a General
22 Assembly have basically created and added more to
23 the problem than to it's solution, knowing that a
24 vast majority of people in this country want to
25 prevent and address, knowing prevention will

1 contribute to a focus on enforcement of gun laws.

2 We started, along with Representative
3 Andrew Carn, Representative Babbette Josephs,
4 Representative Connie Williams, and other people,
5 what is called the Common Sense Firearm Safety
6 Caucus.

7 The Common Sense Firearm Safety Caucus
8 was formed earlier this year in response to the
9 need to offer better prioritized -- to the
10 general assembly relating to the issue of guns
11 and safety.

12 Pennsylvania, in any view, is in a
13 position to enact reasonable and responsible
14 measures that have proven to save lives in the
15 states that have passed them.

16 We're not a large caucus. But we
17 represent the concerns and the wishes of the
18 majority of the people in this Commonwealth.
19 Our mission is to develop and educate legislative
20 strategy, to increase firearm safety and reduce
21 the level of gun violence in Pennsylvania.

22 Some of you may feel the urge to point
23 to the recent reports about violent crime being
24 down in Pennsylvania. While that may be true for
25 much of the country, according to the

1 Pennsylvania State Police in 1998, Pennsylvania
2 violent crime rose by 5 percent.

3 Philadelphia violent crime rose by 10.7
4 in 1998. Philadelphia accounts for 44 percent of
5 the violent crime committed in Pennsylvania last
6 year. The vast majority of Americans support
7 both reasonable gun safety measures.

8 Democrats and Republican alike need to
9 drop this issue about the constitutional issue
10 that shields the gun issue from heightened
11 scrutiny and regulation. Why does that prevent
12 us from a public discussion on limits? We need
13 to let common sense prevail.

14 Sometimes common sense includes
15 rejecting do nothing proposals that actually
16 weakens current law in some instances while at
17 the same time doing nothing to protect our
18 children from injury or promoting safety
19 education and training.

20 Having said that, the Common Sense
21 Firearms Safety Caucus will push legislation that
22 meet it the following criteria: First, we should
23 talk about protecting our children from injuries
24 by limiting access to firearms.

25 Secondly, we should talk about limiting

1 gun purchases to responsible adults. Third, we
2 should promote firearm safety education and
3 training. Fourth, we should stress the local gun
4 control and law enforcement efforts by combatting
5 illegal safety and trafficking.

6 No. 5, we should implement a fair and
7 comprehensive background check system with
8 appropriate safeguards designed to prevent
9 firearm injury and violence.

10 No. 6, we should enhance law
11 enforcement safety by banning assault weapons and
12 junk guns. We know for a fact that a majority
13 of voters including the gun owners say that
14 Pennsylvania laws are not tough enough. Only 6
15 percent believe that laws are too strict.

16 I want to briefly tell you what the
17 Common sense Firearm Safety Caucus thinks is
18 reasonable and responsible for the immediate
19 future.

20 First, trigger-locks, in our view are
21 -- what we did this fall was not tough enough.
22 We need to do more. 91 percent of Pennsylvania
23 voters including 86 percent of gun owners say we
24 should require trigger-locks on all new guns.

25 Crimes committed with handguns has

1 reached a level in Philadelphia that is
2 outrageous. A proposal to limit handgun
3 purchases to one person a month, we do not
4 believe that will limit anyone's right.

5 As you have heard earlier by the Police
6 Commissioner, you can still have 12 handguns a
7 year. 68 percent of Pennsylvania voters, 51
8 percent of Pennsylvania gun owners think it is
9 reasonable. It is a reasonable approach.

10 This approach does not make purchasing
11 a handgun more difficult for anyone except for
12 those who should not purchase one to begin with.
13 87 percent of Pennsylvania voters, 78 percent of
14 voting gun owners say there should be no handgun
15 sales or ownership to anyone under the age of 21.

16 A ban on assault weapons. We must stop
17 this insanity. Pennsylvania voters mirror those
18 at the national level in which 71 percent say a
19 complete ban on assault weapons. These
20 approaches are the right approaches and do not
21 infringe on anyone's rights aside from being the
22 right way to go. They also have the support of
23 the majority of Pennsylvania.

24 I would like to, before I conclude, Mr.
25 Chairman, introduce a gentleman here to my left

1 who is a constituent who started an organization
2 called the Father's Day Rally Committee.

3 And he started that organization, Mr.
4 Chairman and Members of the Committee, because of
5 the violence he knows that was taking place in
6 the City of Philadelphia, particularly in the
7 African American population.

8 And I would like for him to take a
9 couple minutes just to talk about something that
10 is very much real. And we sometimes talk about
11 in Harrisburg things that are not as real.

12 MR. QAYYUM: Thank you very much.
13 First of all let me, Mr. Chairman and Members of
14 the Judicial Committee, thank you for this
15 opportunity to present a brief testimony.

16 First of all, Representative Evans, who
17 happens to be my Representative, gave me this
18 opportunity. And I wanted to thank him.

19 My organization, called the Father's
20 Day Rally Committee, is an organization of
21 African American citizens in the City of
22 Philadelphia.

23 We actually came together ten years ago
24 after the City of Philadelphia had a tremendous
25 record breaking homicide rate of 501 murders in

1 one year. And in the next year it went up to 536
2 murders. We initiated what we call a peace
3 campaign.

4 We actually stood on the corner of
5 Broad and Dried, which is in Representative
6 Thomas's district, and called for a peace
7 movement in the City of Philadelphia to reduce
8 homicides.

9 Since that happened ten years ago, now
10 homicide has dropped in half. My understanding
11 with the police report was that it's even down to
12 200 homicides in the City of Philadelphia.

13 But what we have found out is that even
14 though homicide has dropped, that does not
15 eliminate the number of people being shot. And
16 what people don't like to talk about -- we
17 already talked about homicide numbers. But those
18 homicide numbers also relate to other victims of
19 gunshots.

20 The national figures show that for
21 every one person killed with a gun, there's a
22 hundred wounded. And if you go to any hospital
23 in the country or any rehabilitation center, you
24 would see thousands of young men and women who
25 have been victims of homicides.

1 I would just like to make -- my other
2 comments are not dealing with so much the
3 legislative issue because I'm not a legislator.
4 You are. But from the issue of a father
5 referencing organization and also talking about
6 the moral values which is creating the climate
7 that we feel for the high number of homicides
8 taking place in everybody's community.

9 And as legislators, if you believe in
10 God or don't believe in God, laws are created
11 because you don't believe in God. And I feel
12 everyone sitting in this room is a God-fearing
13 person no matter what your religion is.

14 You have a moral responsibility and
15 spiritual responsibility to establish proper
16 legislation and create laws that will protect all
17 the citizens of this State. And as I sat in this
18 room, and I said to Dwight earlier, it's
19 interesting that we're having this hearing this
20 morning. Really in the room -- as I was looking
21 in the library, most of the books are about the
22 civil war.

23 They're about other wars. They are
24 about bearing arms. I was reading the great
25 speech of former President Lincoln about a

1 divided country.

2 And in some sense, we are moving in
3 that direction again in this country. As I
4 turned on the news last night and looked at what
5 was happening in Seattle -- and you're looking at
6 me and saying, what does this have to do with
7 legislation and about guns? But it's setting the
8 moral character of the country that we're moving
9 into.

10 As I look at the legislators in front
11 of me, most of you, I guess, are maybe younger
12 than I am. But I'm a child of the '60s.

13 And the tone was set then, if you
14 remember as you looked at yesterday's actions in
15 Seattle. The first thing I said to my wife was,
16 I remember those days very well, the '60s and
17 '70s when there was a movement in this country,
18 the Black Power Movement, Civil Rights Movement,
19 or the Antiwar Movement.

20 And we have a tendency to forget where
21 we came from. And I would say to you this
22 morning, I'm pleading to the legislators to think
23 and really study and look at the impact of what's
24 going on in America today.

25 We have a saying in the African

1 American community. We have a saying. When
2 America has a cold, we have pneumonia. And
3 what's going on in America is that black folks
4 are being killed daily and no one is saying
5 anything because we're black folks.

6 But when white folks start getting
7 killed, people start getting upset. That's the
8 way I do that analogy of a cold and pneumonia.
9 But it shouldn't be that. We should not be a
10 divided country or divided city or divided state.
11 We all are citizens of this country. We all have
12 a responsibility.

13 So I would plead with you to look at
14 and think about this as you look at laws. Yes,
15 there's counties in upper Pennsylvania where
16 there's not a problem. Everybody owns guns.
17 Everybody hunts.

18 In Philadelphia, there is a problem.
19 Everybody owns guns. And a lot of folks that own
20 guns are hunting and hunting the wrong folks. So
21 if you do not have a problem with home rule, you
22 need to look at that as one solution.

23 Now, I heard the argument about
24 crossing lines. But once again we have a unique
25 problem in the City of Philadelphia that has to

1 be solved. Limiting it to one gun a month is one
2 solution. Gun locks, as Representative Carn and
3 Evans talked about, is another solution. And
4 there's many more.

5 Our ability to sue gun manufacturers is
6 another solution a lot of us feel will bring
7 issues. So those are issues that we feel are
8 very important in the City of Philadelphia.

9 Let me end by saying that last night I
10 was reading an article in the Black Enterprise.
11 The Black Enterprise is a black business
12 magazine. And the article was about marketing
13 techniques in this country where major
14 corporations are now marketing sneakers,
15 clothing, records, and rap records to urban
16 markets because what they're finding out is if it
17 sells in urban America, it will sell in rural
18 America.

19 They know that white kids buy what
20 black kids are buying. So black kids in this
21 country are having a major influence on your
22 children in the suburbs and the rural areas.
23 That has to be looked at.

24 So we are beginning now to have a
25 common bond racially in this country. Young

1 white kids are acting like young black kids.
2 They're adopting our culture. It's upsetting a
3 lot of you. And I'm sorry if I'm offending
4 anybody, but it's real. It's something we have
5 to look at.

6 I'm saying that in reference to this
7 culture in this country. There's a culture of
8 war. There's a culture of violence. And it's
9 affecting every child whether you're black,
10 you're white, you're Asian, or you're Spanish.

11 We have to put a stop to that.
12 Legitimate serious legislation will help but will
13 not solve it. I'm one that believes that more
14 spiritual conviction will solve our problems.
15 But at the same time I understand we need
16 legislation to solve our problems because
17 everybody does not believe in God, and everybody
18 does not have a moral or spiritual belief.

19 We must have responsible legislation
20 giving the City of Philadelphia the right to sue
21 manufacturers. If that is what we have to do, it
22 needs to be done. Giving the right to one gun a
23 month is a good legislation. And all the other
24 legislations that will eliminate violence in our
25 community must be done.

1 REPRESENTATIVE EVANS: Mr. Chairman, I
2 will finish with this last comment. Basically,
3 as I indicated to you in the last couple years,
4 with the Mayor, with the Police Commissioner and
5 the District Attorney, as you can see, I think
6 that in the City of Philadelphia we have
7 attempted to do the things that we need to do.

8 There's no question that we could do a
9 lot more. But in my view -- and I thank you
10 especially, Mr. Chairman and Members of this
11 Committee, because for the first time we're
12 having an open discussion. But I think we have
13 to go beyond having an open discussion because we
14 have to come up with some outcome.

15 I don't think this is going to be a
16 Democrat/Republican, urban/rural approach to
17 solving these problems, Mr. Chairman.

18 A couple weeks ago when we voted on the
19 trigger-lock bill -- and I certainly wish we
20 would have gone a lot further. But when I looked
21 at that vote, it was 45 Democrats and 50
22 Republicans.

23 You and Representative Godshall took
24 kind of the lead on that particular issue. We
25 need to continue that kind of coalition. But we

1 have to get a little bit more serious. Because
2 if you look at -- since we changed the gun laws
3 in 1994, 1995, particularly in the City of
4 Philadelphia, we have gone from 5,000 permits to
5 33,000 permits in Montgomery County. The number
6 has also doubled and increased.

7 So the question that Representative
8 Thomas raised, in my view, regarding the issue of
9 uniformity, we have to figure out some way. How
10 do we strike a balance?

11 And I think we've been missing -- and I
12 think you are going in the right direction with
13 these hearings. But again, I hope it's not like
14 we always do, Mr. Chairman. We go through the
15 process, but do we really come out with something
16 at the end?

17 I want to thank you for this
18 opportunity to speak before this Committee.

19 MR. CHAIRMAN: Thank you, Mr. Evans.

20 Mr. Siegel.

21 MR. SIEGEL: Thank you, Chairman Gannon
22 and Members of the House Judiciary Committee, for
23 allowing me the opportunity to address this
24 Committee.

25 As you know, I am Dan Siegel, President

1 of Pennsylvanians Against Handgun Violence, the
2 only grass roots gun control lobbying
3 organization in the Commonwealth. I am also a
4 past member of the Board of Handgun Control, Inc.

5 I continue to serve as a spokesman for
6 handgun control in Pennsylvania. I have been
7 involved in the issue of gun control for
8 approximately two decades and have worked with
9 many members of Congress, this Legislature, and
10 this Committee on what is commonly called gun
11 control legislation.

12 I believe that most people who know me
13 will agree that I am basically a moderate when it
14 comes to gun control, and that I understand the
15 practical issues which confront this Committee
16 and the Legislature.

17 I do find it ironic, however, that the
18 reasons stated for this hearing are to consider
19 the levels of federal, state and local
20 enforcement of the laws and regulations
21 concerning firearms within this Commonwealth.

22 According to the invitation that I
23 received, the committee wanted to hold this
24 hearing before reviewing any proposed legislation
25 on this issue.

1 In light of the events of the last few
2 weeks, it is clear that, for whatever reasons,
3 individuals in the Harrisburg legislature have
4 moved forward with a variety of gun control
5 legislation, inconsistent with the stated goal of
6 this committee and this hearing.

7 The problems with gun control in
8 Pennsylvania is not that there are too many laws.
9 The problem with gun control in Pennsylvania is
10 not that there are not new laws which I and
11 others believe should be enacted.

12 The problem with gun control in
13 Pennsylvania stems from the fact that this
14 legislative body has historically meddled with
15 every piece of so-called gun control law on such
16 a frequent basis that it is virtually impossible
17 to determine the effectiveness of any of the
18 legislation.

19 For example, I was a member of the
20 Select Committee to investigate the use of
21 certain automatic and semiautomatic weapons,
22 which was formed in 1994. The majority of this
23 committee's members were individuals who would
24 generally be considered pro-gun.

25 I represented Handgun Control, Inc.,

1 and was the only Representative from a pro-gun
2 control organization. Despite the committee's
3 makeup, we did propose sweeping revisions of
4 Pennsylvania's gun laws. The Committee's final
5 legislative proposal was endorsed by 13 of the 15
6 Members of the Committee.

7 The National Rifle Association's
8 Representative neither supported nor opposed the
9 committee's proposal. When that legislation
10 reached the Senate floor, however, amendments
11 were made which strongly opposed the bill.

12 Among the amendments which passed were
13 the following: One, Elimination of
14 Pennsylvania's 48-hour waiting period for handgun
15 purchases; Two, elimination of Philadelphia's
16 stricter standard for carrying a concealed
17 weapon; and, three, reduction of the fee for gun
18 purchasers.

19 This amendment effectively eliminated
20 funding for any community education programs.
21 Among the amendments which the Senate defeated
22 were: One, an amendment which would have
23 required all persons with permits to carry
24 concealed weapons to have mandatory training;
25 and, two, an amendment which would have precluded

1 persons convicted of ethnic crimes from
2 possessing or owning a firearm.

3 These votes, particularly the
4 elimination of Philadelphia's right to control
5 who receives a concealed carry permit, are
6 particularly ironic because many members of the
7 legislature continue to state their support for
8 as much local control on a variety of issues as
9 possible, yet this legislature has consistently
10 implemented firearms legislation from this
11 viewpoint.

12 For example, when Philadelphia enacted
13 an assault weapons ban, this legislature, led by
14 Senators from Philadelphia, immediately passed a
15 law which preempted all local gun legislation.

16 The final version of the Uniform
17 Firearms Act was passed in June of 1995, and was
18 a significantly watered-down version of the bill
19 which has been endorsed by our bipartisan
20 committee.

21 The amendments which passed, although
22 not numerous in number, were significant in the
23 extent of their impact -- and it is now common
24 knowledge that those amendments have led to
25 Philadelphia being one of the major centers of

1 gunrunning on the entire east coast.

2 In fact, it is because of those
3 amendments that many members of this body, both
4 Republican and Democrat are now strongly
5 supporting one gun a month legislation, commonly
6 called anti-gunrunning legislation. These laws
7 are needed because of the manner in which the
8 Senate, with the House's consent, tampers with
9 the proposed 1995 legislation.

10 Attached to my remarks is a listing of
11 the amendments to the Uniform Firearms Acts since
12 its enactment. Amendments were passed in 1995,
13 1993, and twice in 1998. All of these amendments
14 either further diluted these laws or pushed back
15 the effective date of various provisions of the
16 act.

17 In essence, despite passing the Uniform
18 Firearms Act in 1995, this Legislature has
19 repeatedly done everything it could to delay the
20 implementation of that law.

21 If this Committee wants to know about
22 the effectiveness and enforcement of firearms
23 laws in this Commonwealth, the first thing this
24 Committee needs to do is look at the Legislature
25 in Harrisburg as a whole and understand that the

1 reason that these laws do not seem to be
2 effective or enforced is because this Legislature
3 consistently refuses to allow the enforcement of
4 the laws it passes.

5 When I last addressed this Committee on
6 the issue of one gun a month legislation, I
7 emphasized this fact, and the events of the past
8 few weeks only serve to highlight this. The
9 mandatory gun lock legislation which came out of
10 the House a few weeks ago is feel-good
11 legislation.

12 We already know that 90 percent of all
13 handguns are sold with gun locks, many of them
14 being of an inferior quality.

15 Did this Legislature address the
16 quality of those locks? No. Did this
17 Legislature mandate that guns be stored with the
18 locks on? No. Did this Legislature mandate that
19 guns be stored with locks where children or
20 others may have access to them? No.

21 Gun manufacturers are currently the
22 only industry not regulated by the Consumer
23 Products Safety Commission in Washington. It is
24 also common knowledge that gun manufacturers'
25 products do not reflect the latest technology.

1 For example, we know that gun locks could be
2 installed as a standard feature on handguns, but
3 because there is no requirement to do so, two
4 manufacturers choose not to.

5 The legislation which this Committee
6 apparently has endorsed mandating the use of gun
7 locks will not benefit the citizens of this
8 Commonwealth in any meaningful way. Neither will
9 the legislation approved by the Senate to preempt
10 the right of cities to file lawsuits against
11 manufacturers.

12 The litigation against gun
13 manufacturers, while certainly a unique strategy,
14 is something that cities should avail themselves
15 of. Why? Because of the cost to the cities of
16 gun deaths and gun injuries, which are becoming
17 an epidemic.

18 What this Committee needs to do is
19 examine the initial proposed legislation from the
20 1994 Select Committee, as well as various
21 alternatives put forth since then. These
22 proposals include anti-gunrunning statutes,
23 mandatory sentencing issues, potential regulation
24 of cheap/inferior quality weapons, and other
25 legislation designed both to insure a higher

1 quality/safety level of handguns, and to prevent
2 guns from getting into the hands of minors and
3 others who we all agree should not possess those
4 weapons.

5 How can the courts and police of this
6 Commonwealth enforce legislation passed in
7 Harrisburg when it seems as if at least once a
8 year this Legislature tinkers with the laws?

9 How can the courts and police of this
10 Commonwealth enforce legislation passed in
11 Harrisburg when it seems as if at least once a
12 year this Legislature tinkers with the laws in a
13 way which since 1995 has done nothing but weaken
14 those laws?

15 The reality is that the message which
16 has been sent consistently both from this
17 Legislature and the Governor's Mansion is that it
18 is acceptable to make it easy to obtain weapons
19 and to use them in Pennsylvania.

20 It is time for this Committee not to
21 recommend feel-good legislation because of
22 whatever political agendas may suit the Members
23 of the Committee or others in the Legislature.
24 It is time for this Committee and the entire
25 Legislature to look at our existing laws and to

1 enact amendments which are effective and are
2 designed to address the problems currently
3 effecting the citizens of Pennsylvania.

4 This means that this Legislature and
5 this Committee should do everything it can, as
6 addressed at the prior hearing on one gun a month
7 bills, to eliminate multiple purchases of
8 weapons.

9 It is also time that this Legislature
10 and this Committee make certain that guns do not
11 get into the hands of children. Or, if they do,
12 that those guns have a lock on them so that
13 children do not get hurt.

14 I live in suburban Delaware County, an
15 area which is traditionally considered a safe
16 area. We have had shootings. We have had
17 robberies involving assault weapons, and we have
18 had a variety of incidents involving handguns and
19 long guns over the years.

20 The most tragic incident to me is not
21 the robbery of a nearby Acme with an assault
22 rifle, it is the serious injury suffered by a
23 7-year-old who went into the drawer of a dresser
24 in his apartment and found his father's loaded
25 handgun.

1 That boy looked at the gun and pulled
2 the trigger. He spent weeks at Children's
3 Hospital in Philadelphia recovering from his
4 injuries. Many children are not that lucky.

5 While it would be nice to believe that
6 parents, teachers, and society as a whole will do
7 everything necessary to teach children not to use
8 guns and to stay away from them, we know that
9 this is not a reality.

10 We also know that making the laws
11 weaker means that criminals can get guns easier.
12 Both of these realities are what this Committee
13 and what this Legislature need to consider and to
14 address.

15 Unless and until this Legislature has
16 the fortitude to address these issues and to
17 realize that poll after poll after poll
18 demonstrates that the citizens of Pennsylvania
19 embrace legislation designed to address these
20 problems, these problems will continue to occur
21 and the debate about guns will not go away. More
22 importantly, neither will the deaths and the
23 injuries from those guns.

24 It is time for this Committee to
25 consider and to recommend mandatory gun lock

1 legislation so that after a gun is sold the
2 owners of those weapons store those guns safely.

3 This Committee should also recommend
4 the enactment of anti-gunrunning laws in one of
5 the various forms that has been proposed. And
6 this Committee should do whatever it has to do to
7 keep guns out of the wrong hands. Only then will
8 the citizens of this Commonwealth feel that we
9 are moving forward.

10 The Legislature needs to take the lead
11 and not be led by the pro-gun special interests.

12 I want to thank this Committee for
13 allowing me to address it and hope that these
14 hearings will lead to positive changes in our
15 laws. If Pennsylvanians Against Handgun Violence
16 and I can be of service to this Committee, the
17 Legislature, or to anyone else concerning these
18 issues, we welcome the opportunity. Thank you
19 again for inviting me to speak today.

20 REPRESENTATIVE THOMAS: To bring this
21 issue to the attention of Pennsylvanians all
22 across the State -- and I'm kind of excited. I
23 remember back in '94 and '95 in conjunction with
24 the Philadelphia anti-violence anti-graffiti
25 network we held a series of public hearings and

1 outlined all of these proposals that are now on
2 the table and really couldn't get the momentum
3 going there. So I'm glad that the momentum is
4 there.

5 Now, the only thing I ask, is that --
6 and I think that I've heard my colleagues from
7 other counties say it. The Uniform Firearms Act
8 really had a Philadelphia advocate who was
9 pushing it. A Philadelphia advocate pushed the
10 repeal of all local ordinances because he
11 believed that this should be a uniform policy.

12 I've heard no one bring him in or sit
13 him down and talk to him about uniformity versus
14 individual counties being able to do what's in
15 the best interest of their counties.

16 And a lot of colleagues outside of
17 Philadelphia County what they're saying is why
18 should Philadelphia County jump up and down when
19 your advocates are coming from Philadelphia
20 County?

21 I know in my own caucus it was my
22 caucus leadership who felt that these local
23 ordinances should be repealed and that some of
24 these proposals should not be discussed.

25 So I guess what I'm saying is, thank

1 you for your recommendations, but at some point
2 we have to be honest with each other and we have
3 to call the chips where they fall. And until we
4 can be honest with one another, I think that
5 we're just going to kind of keep going over and
6 over this whole discussion.

7 Thank you, Mr. Chairman.

8 REPRESENTATIVE EVANS: To the
9 gentleman, I hear what he is saying. But when he
10 said, be honest -- I don't think you called
11 names. You just said persons. But my response
12 would be to you, sir, that I think that as you
13 described the momentum, the momentum is
14 happening.

15 The difference that I see from 1999 and
16 1994 is Edinboro. It's Columbine. It's
17 Kentucky. It's Pearl, Mississippi. It's not
18 Pete Jefferson in South Philadelphia who found a
19 handgun and was shot in the head by a 7-year-old
20 or Gloria Brown's daughter.

21 What I see is -- every single day you
22 heard the U.S. Attorney say that 82 percent of
23 the murders last year were with a handgun. It is
24 in the national debate at the Presidential level.

25 It's a national debate.

1 So I don't care if you're Republican or
2 where you're from. I think the difference is the
3 people are ahead of the politicians and the
4 people do want some sense of common sense, a
5 common sense approach.

6 They don't think that just having gun
7 safety in and by itself is going to solve it.
8 We've got to talk about the court system. We can
9 talk about the media. We can talk about all
10 those aspects, but we need to do a better job and
11 start talking about it because the only reason
12 cities are using the courts in the first place is
13 because we as Legislators in Harrisburg, in
14 Washington, and in other places have failed, in
15 my view, to offer some real common sense
16 approach.

17 So people figure, well, like the only
18 option I have is the courts. That's why they go
19 to the courts, because they don't feel they have
20 any other option.

21 So when you say, speak honestly, I
22 don't disagree with you. I don't care if it's a
23 Democrat or a Republican.

24 REPRESENTATIVE THOMAS: Well, let me
25 just give you two examples. One, the Bill that

1 the Senate voted on 31 to 10 --

2 REPRESENTATIVE EVANS: Eleven.

3 REPRESENTATIVE THOMAS: 39 to 11 to
4 prohibit counties like Philadelphia from suing
5 gun manufacturers. The one Philadelphia vote --

6 REPRESENTATIVE EVANS: Two.

7 REPRESENTATIVE THOMAS: Well, the one
8 Philadelphia vote was the Minority Chairman of
9 the Appropriations Committee.

10 REPRESENTATIVE EVANS: Now, who's that?

11 REPRESENTATIVE THOMAS: Representative
12 Fumo.

13 REPRESENTATIVE EVANS: Thank you.

14 REPRESENTATIVE THOMAS: And I don't
15 know of anybody who has talked to the Senator
16 about what I hear is where he is.

17 The other example, and I don't want to
18 prolong it because I remember we went through the
19 gun debate in '94-'95. We as Democrats were in
20 the majority. The Speaker came down out of the
21 Speaker's Box to the floor and had serious
22 concerns about Philadelphia's so-called ordinance
23 and about our interest at the time to move this
24 issue to some reasonable recommendations.

25 Okay. And I don't know about your

1 tenure, but I have never seen a Speaker come down
2 out of the Speaker's Box and have serious
3 concerns.

4 And I'm not coming down on those
5 people. In that case, I'm talking about Mr.
6 Deweese, the Chairman who was the Speaker at the
7 time.

8 I think that we have to include them in
9 the conversation because I think that we can get
10 anywhere as long as we talk to each other about
11 what the problem is. But I've never seen
12 Chairman DeWeese at any of these hearings and
13 I've never seen Senator Fumo at any of these
14 hearings.

15 That's the only thing that I'm saying.
16 They have to be included because any legislative
17 proceedings have got to have the support of the
18 leadership regardless of what caucus you're in,
19 even if we're saying in Philadelphia. We've got
20 to have that.

21 If We have a problem that's epidemic to
22 Philadelphia, then Philadelphia has to be on
23 board with that problem. Either that or the date
24 is wrong or there's a misinterpretation of what's
25 going on.

1 REPRESENTATIVE CARN: I would like to
2 respond by saying that none of us are monolithic
3 in our thinking. There are a lot of perspectives
4 on this issue.

5 Clearly, all Philadelphians do not
6 agree on how to address this matter. But I'm
7 just hoping that -- and I do recognize that it is
8 the will of the people and whatever districts we
9 represent that determines how we vote on these
10 issues.

11 So when we're talking about everybody
12 being on board, I would expect Senator Fumo's
13 constituency to get him on board if they feel
14 that they do not agree with him.

15 So as one legislator to another, it's
16 still up to the people to have the will to force
17 us to do what we need to do in the Legislature.

18 REPRESENTATIVE: Mr. Siegel, a question
19 that's been on my mind for a while. I've heard
20 the term used a number of times by the witnesses,
21 and I thought that maybe you could, since you're
22 on that committee, give me a definition of an
23 assault weapon.

24 MR. SIEGEL: Well, there are a number
25 of definitions of assault weapons. There's a

1 Federal definition which deals with guns based on
2 certain characteristics.

3 In the Committee we have the State
4 Police definition which is basically -- they were
5 referring to cheap guns used in crimes and
6 included a lot of handguns.

7 I'm not sitting here saying that. I
8 mean, there's so many. There are a variety of
9 definitions. That's the problem, and I
10 acknowledge the problem.

11 When you are trying to target a
12 specific gun or something -- and that's why I'm
13 not here trying to suggest that you do that.

14 But there are some definitions. Some
15 deal with the size, the distinguishing features,
16 whether there's certain things on it, certain
17 things with capacity, and that's with all of it.
18 You could have a different definition.

19 And I know -- don't think that. If
20 this Committee wants to go forward looking at
21 guns based on just their physical
22 characteristics, that is the way that's going to
23 do it.

24 So I understand your question. There
25 are so many different definitions. That's the

1 problem with the assault weapons debate. And
2 that comes from someone that's involved with it
3 on one side of it.

4 But I don't think you should be looking
5 at a particular gun X, Y, Z. Look at safety
6 issues, training issues, and those issues which
7 affect all weapons because there are 200 million
8 guns out there already.

9 We've got to deal with what's out
10 there, not necessarily one gun because it looks
11 more evil than another.

12 CHAIRMAN GANNON: Thank you very much,
13 gentlemen, for being here, and Representative
14 Carn and Representative Evans.

15 Well, Representative Carn, you're a
16 Member of the Committee. Representative Evans,
17 you're welcome to join the Committee for the
18 remainder.

19 Our next witness is Major Ronald J.
20 Hackenberg, Director of Records and
21 Identifications with the Pennsylvania State
22 Police, and Mr. Ronald Plesco, Esquire, Executive
23 Policy Specialist, Legislative Affairs Office of
24 the Pennsylvania State Police.

25 They are going to take just a couple of

1 minutes to set up their presentation. But what I
2 would like to do for the remainder of the hearing
3 -- I'm going to bring the witnesses up in
4 panels. That will expedite the hearing a little
5 bit. So we're working with the witnesses and
6 getting the panels together. So the remainder of
7 the witnesses will be heard in panels to expedite
8 things.

9 We'll return in about one minute with
10 Major Hackenberg and Mr. Plesco.

11 (Break.)

12 MAJOR HACKENBERG: Mr. Chairman,
13 Committee Members, on behalf of the Pennsylvania
14 State Police, I welcome this opportunity to
15 address the House Judiciary Committee and testify
16 on the issues surrounding the enforcement of
17 existing firearms laws and regulations within
18 this Commonwealth.

19 The fundamental purpose of Act 17 of
20 1995, the Uniform Firearms Act, was to provide
21 support to law enforcement in the areas of crime
22 prevention and control.

23 Under the Uniform Firearms Act,
24 individuals who have been convicted of specific
25 enumerated offenses or fall under other

1 conditions identified in the Act, are prohibited
2 from possessing, using, manufacturing,
3 controlling, selling, or transferring firearms.

4 The Uniform Firearms Act establishes
5 criteria where firearms are prohibited from being
6 carried without a license. For instance, it is
7 illegal to carry a loaded firearm in any vehicle
8 or a concealed firearm except in an individual's
9 place of abode or fixed place of business without
10 a valid Pennsylvania license to carry firearms.

11 A violation of this section is graded a
12 felony of the third degree unless the individual
13 has a license that expired within the last six
14 months or would otherwise be eligible to obtain a
15 valid license to carry a firearm. In such
16 circumstances, the violation is graded a
17 misdemeanor of the first degree.

18 Additionally, no individual, except
19 persons exempt from licensing or possessing a
20 valid Pennsylvania license to carry firearms, is
21 permitted to transport firearms in a vehicle.

22 With regard to carrying firearms in
23 Philadelphia, individuals are prohibited from
24 carrying a firearm at any time upon the public
25 streets or on public property in the City, unless

1 the individual is licensed to carry a firearm.

2 Moreover, the Act provides that any
3 person who knowingly and intentionally delivers
4 or provides a minor with a firearm in violation
5 of this chapter, commits a felony of the third
6 degree.

7 The Pennsylvania State Police, within
8 our responsibility to administer the Act, has
9 established the Pennsylvania Instant Check System
10 (PICS) to conduct background checks to determine
11 an individual's eligibility to carry a firearm or
12 obtain a license to carry firearms.

13 In conducting PICS background checks,
14 the Pennsylvania State Police searches data bases
15 covering Pennsylvania criminal history, juvenile
16 records, wanted person files, protection from
17 abuse files, mental health, and national records
18 that include federal and other states' criminal
19 history record information, national wanted
20 files, protection orders, mental health, military
21 records, and renounced citizenship information.

22 A toll-free telephone number has been
23 established for firearm dealers and county
24 sheriffs for instantaneous access to the PICS
25 background check process.

1 The Uniform Firearms Act additionally
2 regulates the sale and transfer of firearms
3 within the Commonwealth. Licensed Pennsylvania
4 firearm dealers are required to conduct a
5 background check through PICS to determine an
6 individual's eligibility to acquire a firearm.

7 The dealers are also required to
8 complete certain forms promulgated by the
9 Department. The Act requires an
10 application/record of sale to be completed on all
11 handgun transactions. The form is not required
12 for the sale of long guns, although the
13 background check is still necessary.

14 However, private transfers of long guns
15 are not required to be conducted through a
16 dealer. Accordingly, a background check is not
17 conducted to determine the individual's
18 eligibility to possess the firearm.

19 With the requirements for firearm
20 dealers in Pennsylvania to complete and maintain
21 specific documentation related to the sale and
22 transfer of firearms, dealers are also directed
23 that any confidential information obtained on an
24 individual shall only be used for the sole
25 purpose of a firearm background check

1 transaction.

2 Use of the PICS background check system
3 for any purpose other than the sale or transfer
4 of firearms or use of information obtained for
5 the purpose of the background check in violation
6 of the Act is a felony of the third degree.

7 The Uniform Firearms Act also requires
8 dealers to maintain specific records and collect
9 fees for PICS background checks, \$2.00, and
10 surcharge fees, \$3.00, on firearm transactions
11 subject to sales tax.

12 Unlike the Gun Control Act of 1968
13 which requires the Bureau of Alcohol, Tobacco,
14 and Firearms to ensure federal firearm licensing
15 compliance with federal laws and regulations, the
16 Uniform Firearms Act clearly assigns the
17 Pennsylvania State Police the responsibility for
18 the administration of the Act.

19 But dealer compliance, investigation,
20 enforcement, and auditing of the Pennsylvania
21 licensed firearm dealers is not regulated or
22 exclusively delegated to the Pennsylvania State
23 Police.

24 Individuals attempting to acquire
25 firearms through a purchase or transfer through a

1 dealer are required to complete the
2 application/record of sale and/or the applicable
3 federal firearm transaction records forms.

4 An individual misrepresenting him or
5 herself by making a false written or oral
6 statement in an attempt to acquire a firearm in
7 violation of this Act commits a felony of the
8 third degree.

9 Unlike the Federal Gun Control Act of
10 1968, an individual attempting to acquire a long
11 gun through a licensed Pennsylvania firearm
12 dealer is not required to complete an
13 application/record of sale under the Uniform
14 Firearm Act which requires self-certification as
15 to the accuracy of the information and
16 identification provided in order to acquire the
17 firearm.

18 The State application/record of sale
19 form used for all handgun transactions clearly
20 identifies those circumstances for which an
21 individual is prohibited from acquiring a
22 firearm.

23 Without reading and completing the
24 form, an individual may not know what may or may
25 not be prohibited. Without the signed document,

1 enforcement of this section is difficult.

2 Early in the PICS operation it became
3 evident that some individuals did not realize
4 that they are prohibited from possessing and
5 acquiring firearms.

6 Individuals who had been acquiring long
7 guns before November of 1998 were not required to
8 go through the background check process.

9 Also, before PICS, background checks
10 did not encompass as many database searches.
11 Individuals who are denied through the PICS
12 check, under the Act and within 30 days of a PICS
13 transaction, may challenge a denial
14 determination.

15 Based upon records obtained through
16 extensive research, when further information is
17 located to determine that an individual is not
18 prohibited under the Uniform Firearms Act or
19 Federal Firearms Law, a denial determination can
20 be reversed.

21 The Pennsylvania State Police have
22 developed an administrative regulation for
23 enforcement of violations of the Uniform Firearms
24 Act.

25 Meetings with the Bureau of Alcohol,

1 Tobacco, and Firearms have been held to discuss
2 and develop enforcement strategies and provide
3 for timely and efficient exchange of
4 investigative information.

5 Procedures have been established for
6 the multi-agency investigations and provide for
7 follow-up contact with the State Police Firearm
8 Division as to the status of investigations.

9 Investigations are prioritized as they
10 relate to individuals who have records indicating
11 crimes of violence, multiple prohibiting
12 offenses, habitual drug offenses, protection
13 orders requiring confiscation of firearms, and
14 prohibiting mental health records.

15 The Pennsylvania State Police and
16 agents from the Bureau of Alcohol, Tobacco, and
17 Firearms meet regularly to exchange information
18 on investigations and coordinate enforcement
19 efforts.

20 As a result, cases are being
21 investigated by State Police, local law
22 enforcement agencies, and federal authorities for
23 prosecution of individuals who allegedly have
24 been providing false written or oral statements
25 to firearm dealers in their efforts to illegally

1 acquire firearms.

2 The PICS has also identified fugitives
3 from justice as they attempted to acquire
4 firearms. Warrants are verified and law
5 enforcement agencies are contacted immediately by
6 PICS staff.

7 To date, 142 fugitives have been
8 identified and taken into custody as a result of
9 the PICS firearm background check.

10 In conclusion, the Pennsylvania State
11 Police would like to express our appreciation to
12 the Pennsylvania firearm dealers for their
13 continuing support of the PICS, and to local,
14 state, and federal law enforcement agencies, who
15 continue to support and enforce the primary
16 objective of the Uniform Firearms Act and safety
17 of the people of our Commonwealth.

18 MR. PLESCO: Mr. Chairman, in the
19 interest of time, what I handed out to the
20 Members of your Committee are two pamphlets. One
21 is Major Hackenberg's testimony, and the other is
22 a pamphlet about the Pennsylvania check system.

23 What that is, it is a Power Point
24 presentation that instead of going through the
25 whole thing for the Committee, I'd like to just

1 highlight some of the slides in the presentation.

2 The first slide that appears behind you
3 is a slide that is also on top of Page 4 in your
4 handout. That slide is a listing of databases of
5 the Pennsylvania Instant Check System in
6 Pennsylvania.

7 They are as follows: The Pennsylvania
8 criminal record history to include juvenile
9 criminal record history, action of, to include
10 juvenile criminal record history, active
11 protection from abuse orders, mental health and
12 the missing, and wanted files, as Major
13 Hackenberg just told you.

14 Major Hackenberg emphasized and I'd
15 like to emphasize about the 142 people who went
16 into the dealership trying to purchase a gun.
17 And what happened was it was verified. And those
18 142 individuals were arrested either on that
19 evening or thereafter.

20 And they did not purchase a gun. The
21 Major gave you a status of about two per week.
22 That status right there, that 142, shows that the
23 system is working as designed and as written by
24 you, the Members of the Legislature and this
25 Committee.

1 A few slides down and towards the back
2 of the presentation, I believe on Page 5 or 4 --
3 what I would like to do is give you a rough
4 overview of what's happened since the invention
5 of the system.

6 For those of you that know, the system
7 went up on July 1 of 1998. For handguns, it went
8 up on November 30th. For long guns and therefore
9 all firearms, it went up after November 30th of
10 1998.

11 All firearm purchases were required to
12 go through the system to check the background of
13 the person trying to buy the gun.

14 And since its inception as of 11/26 to
15 last week, there has been over 671,000
16 transactions, calls to the system.

17 As you recall, the only individuals
18 permitted to use this system are those -- the
19 sheriffs in this state and also firearms dealers
20 in this state. Those individuals can only use it
21 to process a record of sale/transfer a sale of
22 firearms, or they can also use it -- the sheriffs
23 use it to process the application for license to
24 carry.

25 Since that time, the automated part of

1 the system has maintained about the 62 percent
2 efficiency level. What that means is that 62
3 percent of calls to the system are handled in an
4 automated fashion.

5 The system does not transfer those
6 calls outside. The operator of the system gives
7 a yes or no that this person is permitted to
8 purchase or have a license or this person is not
9 permitted to have a license to purchase.

10 Next slide, please. Thank you. Total
11 denials to date. Of the 671,000, there has been
12 17,400 denials to date. Of those, the
13 Pennsylvania State Police have received
14 administrative challenges in roughly a little
15 over half, 8,306.

16 The denial challenges, of those
17 received, 3,333 have been reversed. So the
18 system we are running -- approximately about 1
19 percent to 2 percent of the people who have
20 called have been denied. And of those, those who
21 have taken the administrative challenge, it's
22 3,333 to date.

23 Next slide, please. Thank you. On
24 behalf of the Pennsylvania State Police I would
25 like to thank you. Sorry for the shortened

1 version, but in the interest of time for the
2 Committee, I would just like to get those
3 statistics out.

4 And the Major and I would be happy to
5 answer -- handle any questions that you might
6 have. Thank you very much. Okay, I'm sorry.

7 REPRESENTATIVE MANDERINO: I just want
8 to make sure I understand sell and purchase and
9 transfer.

10 If I wanted -- walked into a gun store
11 today as the purchaser, today, whether I'm
12 purchasing a handgun or a long gun, I as the
13 purchaser get a background check run on me.
14 Correct?

15 MR. PLESCO: Correct.

16 REPRESENTATIVE MANDERINO: If I am
17 purchasing a long gun for my son to give him as a
18 Christmas present, he doesn't get a background
19 check run on him, I just give him that long gun.
20 Is that correct?

21 MR. PLESCO: In the case of the son,
22 yes.

23 REPRESENTATIVE MANDERINO: Okay. Now,
24 I'm buying a handgun for my son for Christmas.
25 Can I do that or doesn't a background check have

1 to be run on my son before I can give him that
2 gun? That's the part I'm stuck on.

3 MR. PLESCO: I hate to ask you this
4 question. But how old is the son, the
5 hypothetical son in this case?

6 REPRESENTATIVE MANDERINO: I don't know
7 since I don't have a son. I made him up. Tell
8 me. Is he a minor or considered majority?
9 Because it, of course, matters.

10 MR. PLESCO: Right. If the son in
11 question is under the age of 18, the son cannot
12 have a handgun purchased for him. If the son is
13 under the age of 18, the son cannot possess or
14 have a handgun purchased and transferred to him.

15 If that son is over the age of 18, and
16 the Major can clarify this a little further, the
17 son can have it purchased for him. And under
18 Pennsylvania law, the son is exempt from a
19 background check.

20 That sort of goes down the family tree.

21 I could give to my son a long gun or a handgun
22 and transfer it to them and they are exempt from
23 a background check.

24 The same thing with a grandfather to
25 son all the way down to the grandson. It doesn't

1 go off of the family tree. I cannot buy for a
2 cousin or my grandfather cannot buy for --

3 REPRESENTATIVE MANDERINO: Okay. Now,
4 let's take the gun purchase out of the family
5 lineage. I can go into a store and purchase a
6 long gun that I am going to give to my staff
7 person as a Christmas present?

8 MR. PLESCO: No.

9 REPRESENTATIVE MANDERINO: Long gun?

10 MR. PLESCO: Long gun or handgun.

11 REPRESENTATIVE MANDERINO: Either one
12 needs a background check on the person who will
13 be using it?

14 MR. PLESCO: Yes. The purpose of
15 Pennsylvania law and federal law -- both laws
16 consider the transfer of possession, etc., of a
17 firearm, sale of firearm, to be under the
18 National Check System and the Pennsylvania Check
19 System.

20 So in the hypothetical you would have
21 to bring that recipient in to a gun dealer and
22 have that transferred to them, and they would
23 have to be an eligible recipient, meaning they
24 would not be kicked out of the Pennsylvania
25 instant check system or the national check

1 system.

2 REPRESENTATIVE MANDERINO: So today if
3 I walked in a gun shop in Pennsylvania and I
4 purchased 12 guns, whether they are handguns or
5 long guns, technically I can only be purchasing
6 those guns for myself or for my child or my
7 parent?

8 MR. PLESCO: Doesn't go up the family
9 tree.

10 REPRESENTATIVE MANDERINO: Doesn't go
11 up the family tree, only down. So if I walk in
12 and I buy 12 guns today, I better be using all 12
13 of those guns for myself or my 12 children?

14 MR. PLESCO: Actually, it's depending
15 on the type of gun. If it's a handgun, in
16 Pennsylvania you have to fill out two forms, an
17 ATF 4473 form and a Pennsylvania record/sales
18 form. If it's a long gun, you don't have to fill
19 out the Pennsylvania form, but you do have to
20 fill out the federal form.

21 Your hypothetical is correct.

22 REPRESENTATIVE MANDERINO: And those
23 forms that I am filling out, am I filling them
24 out expressing and attempting to transfer that
25 gun to somebody who is eligible, or is that not

1 who they cover?

2 MR. PLESCO: Our forms, the ATF form
3 4473, tells you that you can't do that. Our law
4 tells you that you cannot purchase for a person
5 that is ineligible to receive.

6 REPRESENTATIVE MANDERINO: Right. Now,
7 assuming what I was is -- assuming I am going
8 into a gun store to buy multiple guns with the
9 intent to transfer one or more of those guns to
10 somebody who is eligible for me to transfer them
11 for, is there any part of those pieces of paper
12 that I am filling out that is expressing my
13 intent to transfer them, Or it doesn't matter?
14 You don't know whether I plan to transfer them or
15 not.

16 MR. PLESCO: Right.

17 REPRESENTATIVE MANDERINO: Just after
18 the fact, if I transferred it illegally, I could
19 get in trouble versus if I transferred it to a
20 relative I would be okay?

21 MR. PLESCO: Having not read an ATF
22 4473 form recently, not within the last couple
23 weeks, I will not speak toward that form. But I
24 can speak toward our record of sale form. And it
25 doesn't include any of that.

1 REPRESENTATIVE MANDERINO: Thank you,
2 Mr. Chairman.

3 CHAIRMAN GANNON: Thank you. Those
4 numbers they were showing us about the number of
5 rejects otherwise that you had 8,000 challenges,
6 was that included in that 17,000?

7 MR. PLESCO: Yes, sir.

8 CHAIRMAN GANNON: So of the 17,000, you
9 would have to subtract 8,000 from that. They
10 were challenged. And from that, it was over
11 3,000 that were actually reversed?

12 MR. PLESCO: Right.

13 CHAIRMAN GANNON: So you are talking
14 about 14,000 where the actual rejection was
15 upheld?

16 MR. PLESCO: Yes, sir.

17 CHAIRMAN GANNON: Of the total of over
18 600,000 and something?

19 MR. PLESCO: Correct. Or I should
20 qualify that, 14,000 where it was upheld or that
21 those individuals did not take the next step to
22 appeal.

23 They realized they had something on
24 their record and did not take the next step to
25 appeal this. And those are the cases that we

1 refer out, we investigate with the ATF, etc.

2 CHAIRMAN GANNON: And those folks that
3 are rejected, they are also rejected for long
4 guns as well as handguns?

5 MR. PLESCO: Many. Yes, sir. Any
6 firearm, sir.

7 CHAIRMAN GANNON: Any firearm at all?

8 MR. PLESCO: Yes, sir.

9 CHAIRMAN GANNON: Yeah, Brian.

10 THE SPEAKER: I have a question. It's
11 on the same vain. Of those people that came in
12 and got rejected, is there now in the law any
13 offense for their attempt to purchase a weapon or
14 transfer a weapon when they are not entitled to
15 do so?

16 MAJOR HACKENBERG: Yes, there is. And
17 it's a felony. But it's not quite as simple. In
18 other words, we do not run out and arrest those
19 14,000 people.

20 There are a lot of -- when somebody
21 goes in and gets a rejection, it takes a
22 considerable amount of research to determine
23 whether or not that person can be prosecuted.

24 And even once that's determined we will
25 actually look at it and say, should the person be

1 prosecuted?

2 When we do the research on these,
3 obviously we found 3,333 people that were right.
4 They were intended to -- they were legally
5 allowed to purchase a firearm once we had done
6 sufficient research into it.

7 Secondly, as stated in the testimony,
8 there are a lot of people who have had a lot of
9 offenses that are, I guess you could say,
10 relatively minor.

11 Offenses that were graded felonies many
12 years ago such as minor thefts in the 1960's or
13 earlier that were graded felonies at the time who
14 might have come in to purchase a gun and really
15 not been aware that they were not allowed to
16 purchase.

17 So what we do is we review the
18 rejections. We sit down with ATF. We do this on
19 a regular basis. We take a look on a priority
20 basis and try to pick the best one. The people
21 who have violent felonies in their background,
22 people who have been charged with prior firearms
23 violations, things such as that, before we would
24 move forward and investigate and then
25 subsequently arrest.

1 THE SPEAKER: Isn't it a violation of
2 federal law, too, for that same person?

3 MAJOR HACKENBERG: Yes, it is. That's
4 why we meet with the U.S. Attorney and ATF and
5 decide who is going to pursue it.

6 THE SPEAKER: Okay, then my next
7 question is this. Except in violation of federal
8 law, has the federal government taken any of
9 those cases?

10 MAJOR HACKENBERG: Yes.

11 THE SPEAKER: Okay.

12 MR. PLESCO: On the Federal form and on
13 the State's form. When they have to fill out the
14 State form they swear under felony of unsworn
15 falsification under Pennsylvania law and also
16 under penalty of felony that they have not been
17 convicted of any prohibited offense.

18 And so from a prosecuting attorney's
19 standpoint, they can get them. Mrs. Abraham.
20 Now, the mistake from a paper standpoint is you
21 get them for that and also get them for a
22 separate offense under the separate Felony Under
23 Firearms Act.

24 THE SPEAKER: Okay. Just one point to
25 clarify. We had heard testimony about a bill

1 that's in the Senate that would set up a registry
2 in Pennsylvania of lost or stolen firearms.

3 Isn't it true that that already exists in PCIC?

4 MAJOR HACKENBERG: Yes, it does.

5 THE SPEAKER: Okay. Thanks.

6 CHAIRMAN GANNON: You have a form you
7 call a record of sale form. Do we have --

8 MR. PLESCO: From the previous hearing,
9 sir, there is a copy of it. I will pull one out
10 and get you a copy here if I can.

11 CHAIRMAN GANNON: That is what you use
12 to do a background check, information on that
13 form?

14 MR. PLESCO: On handgun purchases, yes,
15 sir. It's only required to be filled out for
16 purchases of handguns. Purchases of long guns
17 don't fill it out. But we have to supply the
18 information on the ATF 4473 form.

19 CHAIRMAN GANNON: And does the ATF form
20 and this form have the same information?

21 MR. PLESCO: It's similar, but not the
22 same. Our form lists on the back of it all the
23 prohibiting offenses. The ATF form is a little
24 longer than our form and requires a few extra
25 signings.

1 CHAIRMAN GANNON: Correct me if I'm
2 wrong. Is it the ATF form where it actually
3 tells you that you can't transfer this weapon to
4 somebody that is going through a dealer or --

5 MR. PLESCO: My recollection of the ATF
6 form is that it does. Some other State forms do
7 require that. Pennsylvania's record of the sale
8 form does not.

9 CHAIRMAN GANNON: Thank you very much.
10 Thank you very much, Major and Mr. Plesco, for
11 being here today and presenting testimony to the
12 Committee.

13 It's been very helpful. Thank you
14 again. I know you have appeared before. It's all
15 been very enlightening. Thank you, gentlemen.

16 You may proceed when you are ready.

17 MR. BRINSON: Mr. Chairman, thank you
18 very much for hearing us. I appreciate it. I'm
19 sure you stayed for this voluntarily. And I wish
20 that the others had.

21 Those that left, I can assure you I
22 will not vote for them in the next election. Of
23 course, I am not in any of their districts, not
24 even Pat Browne's.

25 We do represent the Lehigh Valley

1 Firearms Coalition, all three of us. And he is
2 from Bucks County. We represent 20 gun clubs and
3 20,000 gun owners.

4 In addition to that, we are affiliated
5 with many other groups across the State, all the
6 way to Allegheny County, representing a quarter
7 of a million gun owners.

8 We appreciate your hearing us. We have
9 sat here and listened to the government present
10 its case. And I am very happy that you will
11 listen to some of us poor citizens now.

12 You have our prepared remarks. I won't
13 go through those in the interest of time. It's
14 been very instructive this morning and this
15 afternoon to listen to the testimony, very
16 informative.

17 And I would like to take just a couple
18 minutes to respond to some of the things that
19 have been said here. I think it will save us
20 time. And as I mentioned, our prepared remarks
21 are there for the record.

22 The perception exists that firearm
23 safety is a big problem, that firearms accidents
24 are a big problem, that children are being killed
25 by guns.

1 In my briefcase I have here a Fed-Ex'd
2 package that I got from the Pennsylvania
3 Department of Health yesterday giving me all the
4 statistics across the State.

5 We had previously pulled all the
6 statistics for Lehigh and North Hampton Counties
7 for the last 12 years to give you an example of
8 what kind of problem we are faced with here.

9 In the past 12 years, since the records
10 have been kept in this detail by the Pennsylvania
11 Department of Health, there have been 1,908
12 accidental deaths in Lehigh and North Hampton
13 Counties. Of those, ten were firearms.

14 Firearm accidental deaths rank 15th as
15 a cause of accidental death. Not one of those
16 was a child 14 and under. Not one. This is 12
17 years in Lehigh and North Hampton Counties where
18 we have very carefully estimated over 500,000
19 guns in Lehigh and North Hampton County and over
20 200,000 gun owners.

21 Gun safety is not a problem. And the
22 Legislators, which you are, should not be wasting
23 their time on gun safety. Gun safety is safe.
24 The gun safety has improved by 60 percent in the
25 last 30 years while the number of guns, handguns,

1 has tripled.

2 Gun safety is not a problem. It is a
3 bogus issue. And it is a bogus issue because
4 there are many people who are literally against
5 guns, for whatever their reasons.

6 Secondly, suicide. This has been
7 mentioned as a cause for some kind of gun
8 controls. Less than half of the suicides in
9 Lehigh and North Hampton Counties are done with
10 guns.

11 One suicide is too many. One
12 accidental death is too many. But it is
13 important to remember that half of the suicides
14 are done without guns.

15 Would the unavailability of guns have
16 prevented suicide? No.

17 Let's go to Japan or Sweden where the
18 suicide rates are extremely high, much higher
19 than in the United States, and there are no guns
20 or no private ownership of guns to speak of.

21 So why don't they have half the suicide
22 rate of the United States? The reason is
23 suicide is caused by depression. It's not caused
24 by guns. It's not caused by poison. It's not
25 caused by bridges. It's not caused by ropes.

1 It's caused by depression. It's a mental
2 illness, and guns don't contribute to that.

3 If guns are not available, people will
4 find other means to kill themselves. They need
5 help, and guns really have very little to do with
6 it.

7 Of course if a gun is available or if a
8 person wants to kill themselves, half of them
9 will choose a gun.

10 That leads us then to crime. And this
11 is the real problem. Gun safety is not a problem
12 and suicides are not a problem that can be
13 solved by gun control. But gun crime is a
14 problem. And we have heard a lot about that
15 today. Some of the proposals that seek to
16 control gun crime we think are absurd.

17 One of them is the notion that limiting
18 purchases to one -- by the way. If you ask me
19 now do I need or want to buy more than one
20 handgun in any month, my answer will be no.

21 And most of these -- oh, by the way. I
22 want to say something about polls. You know that
23 when Americans are polled and told that it will
24 be possible to cut their taxes in half that 90
25 percent of them say that they would like that.

1 Polls are polls. And it depends on how
2 the question is asked. So if you ask me if I
3 need more than one handgun a month, I will tell
4 you no and I'll show up on a poll as being in
5 favor of limiting handgun purchases.

6 We oppose that. And we oppose it not
7 because anyone needs more than one handgun a
8 month, we oppose it because it is wrong headed.
9 It will solve no problems whatsoever.

10 Criminals are still going to get guns.
11 I'll bet any of you \$10,000 I could walk out of
12 here today and purchase a handgun from someone in
13 law enforcement by midnight tonight. They are
14 available in the black market. If you pay enough
15 money, you will get what you need.

16 So one a month, the reason this bothers
17 us is it isn't going to solve anything at all.
18 No. 1 and No. 2. When it does solve a problem,
19 it will become one a year, and then it will
20 become one every two years if you pass some test.

21
22 A couple of other things I have heard
23 here. The suggestion that kids under 21 years
24 old not be allowed to have Constitutional rights
25 that are available to others in this country.

1 I think that's wrong. I think that if
2 we are going to say that a kid is an adult at 18,
3 a kid is an adult at age 18. They can vote.
4 They can join the military, and they certainly
5 should be able to own a gun.

6 Some of these are working people with
7 families, and they need to defend themselves.
8 And are we going to tell them they can't? That's
9 wrong.

10 The trigger-lock thing -- as one of the
11 previous panelists said, trigger-locks are
12 ridiculous. I know it's going to be politically
13 popular to leave that in Senate Bill 167. I know
14 it's going to make everybody feel good that we
15 did something about gun safety.

16 But remember, gun safety is not a
17 problem and trigger-locks will solve nothing
18 whatsoever. Nothing, Not problems, not
19 accidents, not suicide, and not crime. Anyway,
20 as I understand it, it's stuck in there. I hope
21 somebody gets it out of there. But I guess the
22 reality is it won't happen.

23 Next, lawsuits. I certainly hope the
24 Senate does put in a provision barring lawsuits
25 against gun manufactures.

1 I wish the prohibition would be against
2 any government agency suing any lawful business
3 that makes a legal product, period, unless the
4 product is defective. Of course anyone can sue
5 any manufacturer for a defective product.

6 But I think it is really crazy to allow
7 municipalities to sue law-abiding companies who
8 are legal and are making a legal product in a
9 legal manner, to be able to sue them for doing
10 what they are in business to do.

11 And you can see where it leads from
12 here. If this is allowed, if these lawsuits are
13 not prevented, soon we are going to have
14 municipalities suing the brewers and the vendors
15 and the distillers and doing anything they can to
16 squeeze some bucks out of legal businesses in
17 this country. So we think that is a little bit
18 crazy.

19 There was some discussion about assault
20 weapons. I own a so-called assault weapon. It's
21 a semiautomatic rifle. That's really what it is.

22 And this label has been applied to demonize
23 guns.

24 People who are anti-gun are good at
25 coming up with labels. No crime is done with

1 assault rifles. I think it is 1 percent.
2 So-called assault weapons, that is
3 military-styled semiautomatics, are not
4 convenient for doing crimes, so criminals don't
5 use them.

6 So why are we banning them? Why are we
7 even talking about banning these things? It
8 does not make any sense.

9 In summary, I think the Legislature
10 should do something to reduce what is a real
11 problem. And by the way, as we all know now,
12 violent crime is on the decrease and gun crime is
13 on the decrease. Maybe not in Philadelphia, but
14 it is in the rest of the world.

15 And there are many reasons for that.
16 But if you want to do something to reduce violent
17 crime in this State, in the Commonwealth, what we
18 have to do is we have to enforce the law.

19 And there is a law on the books that
20 mandates a five-year maximum prison sentence for
21 anyone using a firearm in the commission of a
22 felony.

23 DA's are not charging under -- they are
24 not charging under that law. They are not
25 prosecuting under that law. And for that reason

1 these criminals are walking.

2 So if you look at the criminals that
3 are involved in robberies, rapes, and burglaries,
4 and when we catch them, you will see that they
5 have been caught many, many times before and they
6 have been let go.

7 What we are saying is, the most
8 dangerous person in our society is a criminal on
9 the loose who is bent on mayhem and has a gun.
10 We catch them, we should prosecute them and put
11 them away for long periods of time.

12 The DA and I have talked to the DA in
13 Lehigh County, Jim Martin, and to the DA in North
14 Hampton County. And they agree that most DA's
15 around the state are not prosecuting under that
16 law. They use it as a plea-bargaining chip to
17 get plea agreements and to move their cases
18 through.

19 Thank you very much. I appreciate your
20 listening.

21 MR. WORTH: Since I'm the old guy
22 sitting here -- my name a Wallace Worth. I was a
23 prosecutor for nine years, First Assistant
24 District Attorney in Lehigh County, and have been
25 an active trial lawyer for over 40 years.

1 Going to the one gun a month, if I
2 brought one gun a month, my wife would kill me.
3 I don't even buy one a year. But I have a goodly
4 number of guns, probably 30 -- probably over 30
5 handguns.

6 I would say this, that if you pass any
7 type of legislation requiring mandatory use of
8 trigger-locks, you will create a new class of
9 criminal. Because although I have no criminal
10 record, I will become one.

11 Why will I become one? Because I am
12 not going to have anything impede my ability to
13 defend my family in my home as I see fit. And if
14 someone kicks my door -- and by the way, where I
15 live, we have no police agency. That's why we
16 only have a quarter mill municipal tax also. But
17 we have no police department. We take care of
18 ourselves.

19 And if someone would kick my door and
20 come in, you can be sure he is not going to have
21 a trigger-lock on his gun to handicap him. And
22 you may rest assured I will not have a
23 trigger-lock on my firearm either.

24 By the way, Ma'am, you may not buy a
25 handgun for your son. He would have to go in and

1 sign up himself.

2 So much for trigger-locks. They are
3 not going to save lives. Smart guns, if I may --
4 and as I said, I am a very active trial lawyer.
5 Mr. Browne knows me and knows my reputation.

6 I'll tell you some stories. And I will
7 be very brief. A man named Mohammad Ryfryd came
8 here from Syria as an immigrant. He was employed
9 by Lehigh County. He retired. He was a laborer
10 with Lehigh County.

11 He was quite frugal. And he took his
12 life savings and he purchased a delicatessen in
13 Allentown. Three men came in and held him up.
14 They were armed with a 9 millimeter handgun.

15 When he put his hands up, his left hand
16 came up and his right hand came up with an
17 employee's gun. He shot the one armed robber
18 through the head killing him. The other two fled
19 and were apprehended about an hour later by the
20 Allentown Police.

21 That was an armed citizen killing an
22 armed robber. I would also tell you how
23 disgusted I was when I appeared in court with
24 Mohammed. He is a nervous fellow. He speaks
25 with an accent. His English is not perfect.

1 The two criminals who were still alive
2 received 1 1/2 to 3 years. Imagine that. They
3 participated in a felony, a felony, armed
4 robbery, and a life was lost in that act, yet
5 they got 1 1/2 to 3 years.

6 So much for smart guns because that gun
7 would not have gone off if it would have been a
8 so-called smart gun programmed to be used by the
9 owner because the owner didn't even know Mohammed
10 picked it up.

11 Lawsuits. I heard -- and I'm not here
12 to speak for the National Rifle Association, but
13 I heard it somewhat vilified. I guess that 3
14 million of our American citizens are bad people.

15 But on the bit about lawsuits, I
16 compliment the Legislature for even considering
17 -- and I hope that they do pass a law barring
18 these frivolous lawsuits.

19 I suppose as a trial lawyer I could
20 say, please don't pass it. Trial lawyers will
21 make money. Then I can sue the State for selling
22 liquor causing drunken drivers on the highway or
23 the manufacturers of automobiles because they
24 make cars that go well over the speed limit and
25 go 100 miles an hour and there is carnage on the

1 highway. I guess I will be able to sue them
2 also. So officially I should say don't pass it.
3 But truly, it's frivolous.

4 I have, as I said, firearms. I don't
5 have any that are defective. And you can sue
6 anyone. You can sue a person for product
7 liability for producing the defective weapon.

8 Straw purchases were discussed by
9 someone awhile ago. I would tell you, straw
10 purchases are illegal.

11 Now, under the law, we don't need more
12 laws on it. But if you want to pass another one
13 that says straw purchases are illegal, go ahead
14 and do it. It's already there.

15 Assault weapons. So much for assault
16 weapons. They were redefined. You know that
17 assault weapons under the definitions we now have
18 are any weapons with a bayonet lug. In other
19 words, a brown bass used in the American
20 Revolution.

21 The British had a bayonet lug and it
22 wrapped around and went around a front blade.
23 That's an assault weapon.

24 I think when people in their hysteria
25 come up with these laws, they ought to take a

1 look just to see what they are including and see
2 how ridiculous it gets.

3 That's not semiautomatic. That's a
4 muzzle-loader that you have to put a patch and
5 ball in and see that you have four what they call
6 4 FG powder in the flash pan.

7 I notice the State Police exhibit. By
8 the way, I was an instructor at the Police
9 Academy, that's the Allentown Police Academy, for
10 years.

11 I noticed the number of reversals
12 exceeded 3,000. There should be a heck of a lot
13 more reversals. One of the leading men in
14 Allentown was turned down for the purchase of a
15 handgun. He is a very active man. He is a
16 substantial citizen in the community. He didn't
17 know he had a criminal record.

18 And he said, you understand this. The
19 police won't tell me what it is. And I said,
20 well, we will find out.

21 So I called the State Senator who then
22 got through to the police. And he said, well
23 there was something up in Luzern County. So I
24 got the complainant in and he said, yeah, I was
25 born there, Wally.

1 So we checked it out. I had somebody
2 go up and get his record. It seems that he was
3 an enlisted man in the United States Navy during
4 the Korean War or one of the conflicts. And
5 another fellow from Wilkes-Barre also was in the
6 Navy. And they both served on the same
7 battleship. He was discharged a month before the
8 other man.

9 And lo and behold they met one night at
10 the American Legion up at Wilkes-Barre. And they
11 had too much to drink. They went out in the
12 parking lot and they were goofing around and took
13 two hubcaps from a car. Somebody saw them doing
14 it and called the police.

15 And the police came and they said,
16 yeah, they were drunk. And they gave the hubcaps
17 back. The police took him to a district justice
18 and put him in a cell overnight to sober up.

19 The next day they went over to the
20 district justice's office on their own because
21 the policeman told them where it was. And the
22 district justice said, look, you know,
23 technically, it's larceny, a felony.

24 Now, this is back when -- this took
25 place, by the way, almost 50 years ago. They

1 said larceny is a felony? He said, what's a
2 felony? Look, forget it. Go home. Don't drink
3 as much, you guys. Okay? So they left. That
4 was their case. That was the crime.

5 So what happened is somebody picked up
6 this paper -- and I have copies of it anytime
7 anybody wants to see it. The man -- I don't want
8 him embarrassed. They penciled in a plea of
9 guilty to larceny, personally sent him home, told
10 him not to drink alcohol for a while. That man
11 was denied a permit to have a handgun.

12 On June 7th of this year, they had my
13 picture on the front page of the Allentown
14 Morning Call. They had it on another page. On
15 the front page they had my picture with my helmet
16 showing the shrapnel holes through the helmet
17 when I was hit in the head.

18 Several pages back they showed my
19 picture again with a Browning Automatic Rifle. I
20 was a machine gunner when I was 17 years old. I
21 was in battle when I was 18 1/2 in North Africa.

22 The next day that same paper that is
23 owned by a California corporation had an
24 editorial where they lifted me up as being a
25 great soldier, you know, they didn't know I was

1 just about 17 1/2 at that time and that weapon
2 would fire 600 rounds a minute.

3 They had an editorial the next day,
4 June 8th, suggesting the Legislature should pass
5 a law saying no one should be able to own a
6 handgun until he is 21. Makes you wonder,
7 doesn't it, what happened.

8 I have had handguns all my life. My
9 father bought me my first .22 rifle at about 8 or
10 9 years old. He taught me to shoot, the army
11 didn't. He taught me to use guns, and I have
12 never murdered anyone yet and I never committed a
13 crime with a gun.

14 Thank you for your time.

15 CHAIRMAN GANNON: Thank you, Mr.
16 Worth.

17 MR. BARNISKIS: My name is Andy
18 Barniskis. I'm the Legislative Chairman of the
19 Bucks County Sportsmen's Coalition.

20 We, in one way or another, have perhaps
21 5,000 to 8,000 members of sportsmen's clubs in
22 our county and are part of the developing
23 statewide network of similar organizations, that
24 is county coalitions growing into a -- very good
25 at communicating, anyway -- state collision.

1 What I'm going to speak about is gun
2 owners' reservations regarding enforcement of
3 exiting firearms laws.

4 Before I go into my prepared text,
5 which I plan to only give part of and skip over
6 some things because it will be a bit long-winded
7 because we've gotten better data today than what
8 I had quoted, I just want to say that the object
9 of what I'm going to talk about is really the
10 question of definition of crime.

11 At this point I'm kind of going into my
12 prepared text in which I say, almost everyone
13 will agree with the statement that we should get
14 tough on criminals with guns, and in that context
15 enforce exiting firearms laws and keep guns out
16 of the hands of criminals.

17 Yet we find that if you question people
18 what they mean by that, how do they define
19 criminals, everyone has a vision which is
20 remarkably similar. It's usually something like
21 the scraggly street-thug holding up a convenience
22 store, a baggy-drawerred gang-banger in a drive-by
23 shooting, or a psychotic rapist waiting to ambush
24 a jogger in the park.

25 I think we can all agree that the

1 accepted vision that people come up with is the
2 violent criminal. As the words are frequently
3 used today, the career criminal. I think we
4 agree on that.

5 But starting from that shared vision,
6 many of our associates in the firearm rights
7 community readily endorse any legislation that
8 purports to keep guns out of the hands of
9 criminals.

10 What they really mean, of course, is
11 violent criminals, career criminals. And if
12 we're talking about the stereotypes that
13 everybody envisions, certainly we agree that
14 sociopaths like that deserve to be punished in
15 the most severe manner.

16 However, we also are in our way civil
17 libertarians and sincere in our belief that
18 possession of firearms is a human right, a right
19 that our State Constitution says shall not be
20 questioned. That's a direct quote.

21 Like every other human right, we
22 believe it should not be subject to lifelong
23 forfeiture except for the most egregious
24 violations of that right.

25 As with the freedom of speech, freedom

1 of assembly, and all of the other civil liberties
2 Pennsylvanians enjoy, we do not believe that
3 individuals should be denied the right to even
4 bear arms simply for a record of nonviolent
5 indiscretions or bureaucratic or political
6 crimes.

7 We observe that someone convicted of
8 inciting a riot does not subsequently lose their
9 freedom of speech even though they have
10 demonstratively abused that freedom. However, in
11 Pennsylvania, they very likely would lose their
12 right to own a firearm.

13 We recently had the opportunity to
14 review the draft by Representative McIlhinney of
15 the so-called Operation Hard Time legislation.
16 And we heard that that was widely praised by
17 firearm rights advocates as a law that would,
18 "crack down on criminals with guns".

19 We choose this as an example to speak
20 of because, in fact, the legislation does nothing
21 at all to enhance penalties on crimes committed
22 with guns. It merely enhances the penalties for
23 possession and transfer and a few other things
24 basically involving just being in possession of
25 guns by persons with prior convictions of certain

1 crimes already enumerated in Section 6105 of
2 Title 18 of the Pennsylvania Consolidated
3 Statutes.

4 So what we're talking about here is a
5 proposal which specifically embraces the issue of
6 enforcement of existing firearm laws which is
7 what you are supposed to be focusing on today.

8 Our group did not join in the praise
9 for this proposal because we already had observed
10 that while the existing law did enumerate the
11 violent and predatory crimes that we all abhor,
12 it also listed a number of crimes that were
13 nonviolent, bureaucratic, and in some cases
14 entirely political.

15 Thus, this was an example of an
16 existing law that we did not support as it was,
17 much less support more vigorous enforcement of
18 it. Some of our -- I'll just recite a couple. I
19 have a long list. I'll jump over a lot of them.

20 Some of our specific objections to
21 listed crimes were Section 908 relating to
22 prohibited offensive weapons. This is
23 essentially a weapon possession crime in the
24 first place, not a weapon abuse crime.

25 This section could be easily and

1 quickly amended to become even worse with a
2 so-called "assault rifle" or "sniper rifle" ban
3 so that people who today possess a certain class
4 of totally legal sporting weapons, they will
5 become felons and as a result of that, of the
6 possession of perhaps one gun which becomes
7 bureaucratically outlawed, lose their right in
8 Pennsylvania to own any gun.

9 Section 912 relating to possession of a
10 weapon on school property, we say that this
11 section involves a crime that is ambiguous in its
12 interpretation. It may involve a totally
13 innocent noncriminal intent on the part of the
14 convicted person.

15 We observe that its interpretation and
16 enforcement may be substantially different in
17 different regions of the Commonwealth. I think
18 both the State Police and people testifying
19 previously have made that point, that there are
20 entirely different attitudes both among law
21 enforcement and judges and courts throughout the
22 Commonwealth.

23 Section 3302 relating to causing or
24 risking a catastrophe, this is sort of a crime.
25 I, too, have an antidote that I want to bring

1 up. It does not seem to be a crime that always
2 implies a violent intent. You could be
3 convicted, it is my belief, without having a
4 violent intent or even a criminal intent in what
5 you're doing. You just do something foolish.

6 An example that I want to make is our
7 organization -- we typically get maybe a call a
8 month or every six weeks or so from someone who
9 is in the very sort of situation that I'm going
10 to talk about where they went to buy a gun,
11 they're perhaps middle-age, and they discover
12 that they are a criminal.

13 Not only do they discover they can't
14 buy a gun, they discover that now they have to
15 get rid of all the guns they have in
16 Pennsylvania.

17 One example -- the most memorable
18 example that I've gotten was a call from someone
19 who said, I have a juvenile record. I was
20 disbarred from buying a gun and I have to get rid
21 of the gun.

22 I questioned him about what happened.
23 I said, a juvenile record probably shouldn't
24 affect you. They said, well, I have an arson
25 conviction. I said, what did you do? He said, a

1 bunch of us were having a good time. We had
2 firecrackers. He said, I threw a bunch of cherry
3 bombs into a phone booth, a metal phone booth.

4 We got arrested primarily for
5 disturbing the peace, but they pressed an arson
6 conviction on me as a juvenile.

7 My attorney said, you are a juvenile,
8 you have nothing to worry about. Take your
9 medicine. Put it behind you.

10 So I checked the State law, and arson
11 is a juvenile conviction that specifically
12 carries over to adult life that bars you from
13 owning or possessing firearms in Pennsylvania.

14 The point of that story being, here's
15 someone that made a foolish mistake, a youthful
16 prank with no -- obviously not entirely good
17 social intentions, but it was a prank that
18 carried forward into later life and disbarred him
19 from a fundamental human right.

20 Section 5515 relating to prohibition of
21 paramilitary training, this is legislation that
22 we say is entirely political in its nature. The
23 definition of paramilitary training we say is
24 political in nature.

25 It does not entail necessarily or

1 probably -- I should say probably. It doesn't
2 entail violence. It doesn't entail actually
3 committing aggression against anyone. Yet a
4 conviction under this will disbar you from owning
5 firearms for the rest of your life in
6 Pennsylvania.

7 We point out that one of the problems
8 with political crimes is how they are interpreted
9 changes with attitudes. We observed that a lot
10 of these, including this very law, were enacted
11 in a climate of hysteria.

12 When they exist and they stay on the
13 books, sometime in the future when people are
14 hysterical about what some crazy group out West
15 did, they might suddenly start enforcing it more
16 strongly on people who are just getting together
17 to play army, but still not committing
18 aggression, not committing any damage on their
19 neighbors, not threatening to injury anyone.

20 Section 6302, and this will be the last
21 one I cite, relating to sale or lease of weapons
22 and explosives, once again, is this a law that
23 can deal with genuine crime? Yes, it can. Must
24 it necessarily? Not necessarily.

25 Someone who is convicted under selling

1 or leases weapons and explosives illegally may
2 not necessarily be aware that he or the person
3 that is receiving it is going to commit
4 violence.

5 So as I've stated, this is just a
6 partial list of our concerns. We could probably
7 expand this quite a bit after more in-depth study
8 of the cited sections and definitions of offenses
9 and also some questioning. We'd like to get some
10 more phone calls. We wish we could reach
11 everybody in the State who has a story about who
12 was denied possession and ownership of weapons.

13 At this point I would depart from what
14 I already prepared to say because the statistics
15 that the State Police provided are much more
16 useful.

17 One of the observations that we make is
18 that -- I suppose a lot of criminals are stupid.
19 You'd have to be really stupid to go into a
20 background check system knowing you had a record,
21 a well-documented criminal record.

22 As the State Police -- I was going to
23 cite some broad federal statistics. As the State
24 Police reported, so far in Pennsylvania of people
25 who were rejected, the 17,000-odd people, there

1 were 8,306 challenges.

2 Now, I think it's fairly safe to say
3 that not everyone who was rejected and could have
4 challenged did. But let's take that number,
5 8,306 challenged. I guaranty that not one of
6 those people realized that he was a criminal.

7 Why would they walk deeper into the
8 system, rock the boat, rattle the cage, if they
9 thought there was a potential criminal conviction
10 in this waiting for them?

11 Obviously from the statistics, 3,333 of
12 those were reversed. So obviously not only
13 didn't they think they were criminals, they, in
14 fact, weren't criminals at all.

15 These are the sorts of things that
16 really concern us about the broad concept of
17 "enhanced enforcement of existing law", getting
18 tough on crime, cracking down on criminals.

19 Our position is that the mechanism for
20 such harassment should not exist in the first
21 place and that existing firearm laws require
22 extensive reform in that regard before gun owners
23 should begin to endorse stricter enforcement of
24 those existing laws.

25 And we call on the Members of the House

1 Judiciary Committee and General Assembly to look
2 at these things and see if reforms are needed.
3 See if perhaps the itemized laws that disbar you
4 from gun ownership and gun use are perhaps
5 overstepping the bounds.

6 Once again, I think no one has a
7 problem with the violent criminal, the stereotype
8 that I introduced. I don't think anyone has a
9 problem with that. The fact is, as I said, we
10 get about a call every month or six weeks from
11 someone in Bucks County who wants information who
12 has a story like this.

13 Not one of these persons says, I'm a
14 bad criminal, but I want to find out how to get a
15 gun. Typically they say, I didn't know I was a
16 criminal. I went to buy my son his first gun and
17 found out I had to give up all of my guns. That
18 happens. That is happening in Pennsylvania.

19 Lastly, I want to depart and digress a
20 little bit to a philosophical change that I think
21 we've undergone and I think I see gun owners in
22 general going through which is in the past we
23 were, and I'll use the word suckers, for the get
24 tough on crime legislation.

25 One of the things that I've certainly

1 observed and other people are beginning to
2 recognize is the reason we were supportive of
3 anticrime legislation is first, of course, we are
4 good citizens. Nobody supports crime. However,
5 you can talk to a typical gun owner and he will
6 say, these are the people that are making it bad
7 for us. It is the criminals that are going to
8 result in us losing our rights.

9 That, of course, sounds plausible.
10 Then we look at what happened in England. Now,
11 if the United States could pass any laws that
12 made it as crime-free a place as England was in
13 the past prior to its most recent gun laws, it
14 would be a great thing.

15 We're probably not going to reach
16 that. But my point is, England had a very, very
17 low crime rate. There was one crime, one
18 sensational crime. As a result, everyone in
19 England lost their long guns, their rifles,.
20 Their handguns were confiscated. We are called
21 paranoid because we think it might happen in the
22 future.

23 The low crime rate in England had
24 nothing to do with gun rights. People lost their
25 gun rights in spite of having a low crime rate.

1 I, for one, am beginning to ask a lot
2 of my other associates around the State, why are
3 we worrying about getting tough on crime? Why
4 are we endorsing tools that could very well be
5 used against us in the future?

6 I think you are going to begin seeing a
7 change where those of us in the past that were
8 the strongest advocates for "getting tough on
9 crime" are beginning to reconsider that position
10 very carefully.

11 Thank you.

12 MR. WORTH: Mr. Innantuono has referred
13 to me with for some comments. And I know it is
14 tough for a lawyer to be brief, but I will try.

15 I would have a suggestion to make as
16 far as legislation goes. I reviewed it with Jim
17 Martin, the DA up in Lehigh County. Mr. Brinson
18 is right that Pennsylvania has a law stating that
19 you can receive a mandatory five-year sentence
20 for using a firearm in the commission of a crime
21 in addition to the sentence for the substantive
22 crime that you're charged with, like armed
23 robbery carries a penalty.

24 Now, in addition, you can receive five
25 years mandatory at that point. But the way the

1 legislature drew that, they state that that can
2 only be if the district attorney in the
3 respective counties notifies the defense in
4 writing that they intend to pursue that.

5 And what has been happening -- and I
6 was a prosecutor. Everybody is rushing to clear
7 dockets and they plea bargain that away.

8 I would suggest that a possible
9 amendment could be made to the existing law
10 making it mandatory that the district attorney
11 does notify the defense and that that would
12 therefore become a mandatory additional
13 sentence. That way you put teeth into this and
14 you make your laws quite similar to the federal
15 law that is now being enforced in Richmond,
16 Virginia where armed crimes went down 65 percent
17 because nobody wants to be caught with a gun.
18 It's as simple as that.

19 You don't have to go to the Federal Act
20 because Pennsylvania has a good act, but they
21 have to put teeth in it in that fashion. Now,
22 the wording, that's up to however you all do it.

23 One of the things about this 21 years
24 of age being the age you have to reach before you
25 can own a handgun, if someone came to me, I would

1 raise an issue in representing that person who
2 said they were denied the handgun because they
3 are only 18 or 19 or 20.

4 The reason is, in Title 10 of the U.S.
5 Code Annotated, militia is defined. And it sets
6 forth that there are two classes of militia, one
7 is the national guard, etc., the other is all
8 able-bodied males 17 through 42 who are members
9 of the unorganized militia. They also have an
10 exception, people with prior military service,
11 they're part of it, too.

12 I point that out because if you say you
13 cannot have that type of weapon until you're 21,
14 you are almost flying in the face of the federal
15 law that says, in effect, by doing what you would
16 be doing that way, you are disarming or telling
17 the federal government what type of a weapon
18 their militia can have.

19 I point this out to you. It is a legal
20 point that you may want to have your solicitor
21 take a look at because it does say 17 through
22 42.

23 I noticed that when the State Police
24 had their display up there, they referred to the
25 domestic problems, protection from abuse.

1 I will be candid with you and tell you
2 that is the most darned-abused law in the State
3 of Pennsylvania and probably in the United States
4 wherever they have enacted such legislation.

5 What happens, and I'm being candid, the
6 lawyer for the wife wants her to have the house
7 and so forth. So he'll come in with a petition
8 for protection from abuse. I've seen it.

9 The lawyers go out in the hall from the
10 courtroom and they work it out. What the heck,
11 he doesn't want to hit her. He says he didn't.
12 He doesn't want to go here. They enter into that
13 order.

14 I can assure you, sir, 85 to 90 to 95
15 percent of the orders are entered in that
16 fashion. But what happened recently -- in Texas
17 they have a similar act. And of course those
18 matters are disposed of in the state courts.

19 And a doctor by the name of Emerson
20 went in without counsel. It was a domestic
21 matter. And the judge, the state court judge,
22 said well, you say you haven't hit your wife.
23 No, I've never hit her. Then you are not going
24 to be near her anyway, you're breaking up.
25 Right? Yeah. Then why don't we just have this

1 amicable order entered, and they did.

2 Believe it or not, the federal agents
3 went to his house to take his weapons from him,
4 his guns. He was quite an active hunter and so
5 forth. It ends up in federal court, the firearms
6 issue, not the domestic matter.

7 The judge in U.S. versus Emerson ruled
8 the Federal Firearms Act unconstitutional. He
9 went even further than I would. He said it's an
10 individual right to bear arms. And it is a 21 or
11 22 page opinion. I'd be happy to see that your
12 solicitor gets it. I can photocopy it for him
13 and send it to him.

14 I point that out because we have that
15 provision in our law now and it's worth taking a
16 look at. They are not enforcing the Federal
17 Firearms Act in Texas, and I'm sure that this
18 matter will go to the U.S. Supreme Court. It is
19 really forcing the issue. By the way, this case
20 was written up in U.S. News and World Report and
21 Newsweek both.

22 You don't have to keep making laws to
23 help the police too much. I want to help the
24 police. I trained police. But yesterday when I
25 got the National Law Journal, on the cover was a

1 picture of the District Attorney of Los Angeles
2 County in California. They found that police
3 have been going into the rampart section of L.A.
4 and shooting people, taking drugs and selling
5 them and planting drugs on other people to get
6 convictions.

7 The District Attorney, needless to say,
8 was not a part of that. And now there's a big
9 investigation. They have suspended 19 police
10 from that particular precinct.

11 I point that out to you because
12 sometimes it is hard to tell who the good guys
13 are and who the bad guys are. It is tough being
14 a policeman in a free state. It is real easy to
15 be a policeman in a police state.

16 I think that when the gentleman
17 mentioned about being tough on crime, that's what
18 happened when the Republic started to crumble in
19 the '30s. The National Socialist Party promised
20 law and order, and of course we all know what
21 happened.

22 The citizens were disarmed unless they
23 were part of the National Socialist Party, and
24 the rest is history.

25 I hope that was brief enough. I thank

1 you. I thank all of you.

2 CHAIRMAN GANNON: Thank you.

3 REPRESENTATIVE BROWNE. Thank you for
4 your perspective in this issue. I just wanted to
5 get your comments on one proposal that's before
6 us and several of the comments that were made
7 prior to your testify.

8 It has to do with the regulation of gun
9 manufacturers. One of the testifyers said that
10 gun manufacturers are the only industry, I guess,
11 that's not regulated by the Product Safety
12 Commission in Washington. That because of that,
13 the guns don't reflect the latest technology.

14 Representative Carn had mentioned that,
15 in fact, they are not regulated under state or
16 federal law. It results in what's called junk
17 guns that are available to consumers.

18 He had proposed House Bill 1777 that
19 allows the Attorney General to set regulations
20 and standards for the regulation, safety
21 regulation of guns.

22 Just some comments generally on that,
23 if you could.

24 MR. BRINSON: If I may, maybe one of
25 the reasons that firearms are so safe is that the

1 federal government and state governments don't
2 regulate them. They are pretty good. There's a
3 lot of competition. Guns are very good.

4 Let us remember that there are 222
5 million, by best estimate, 222 million guns in
6 this county that already exist. They are already
7 in homes and businesses all over this country.

8 To have Pennsylvania begin to set
9 standards for firearms manufacturers is
10 ridiculous. I would suggest that the State
11 Assembly has many, many better things to do than
12 try to regulate gun manufacturers.

13 MR. IANNANTUONO: I would also say just
14 as the vagueness and arbitrary definition of
15 assault weapon has been tossed about for many
16 years, the whole concept of junk guns versus guns
17 that operate more safely is just totally subject
18 to interpretation as well.

19 I think many people know and admit that
20 the whole direction of junk gun terminology was
21 to really try to remove inexpensive guns from the
22 marketplace. And actually it could have driven
23 the problem that we face today by criminals using
24 more effective, powerful weapons than the
25 inexpensive weapons that were used 25 years ago.

1 Again, that's just totally in a state
2 of interpretation. And we feel as citizens
3 that's being used as a means to slowly chip away
4 at methods and ways to eliminate and eventually
5 lead to civilian disarmament.

6 Also there are self-regulatory and
7 self-governing bodies within the firearm industry
8 which cover the design and application of
9 firearms which, as John said, operate very
10 effectively.

11 All it takes is the responsibility to
12 use them properly.

13 MR. IANNANTUONO: They are against gun
14 manufacturers for faulty guns. There are hardly
15 any that operate as they are supposed to
16 operate.

17 By the way, very quickly, it was
18 mentioned before that the primary purpose of guns
19 is to kill people. I would say that's not true.

20 I would say that the primary purpose of
21 guns in our society is for people to defend
22 themselves and their families. And that is done
23 two and a half million -- guns are used two and a
24 half million times every year by American
25 citizens to defend themselves and their families

1 against criminals. Two and a half million times
2 a year.

3 In most cases, not a shot is fired
4 because the gun is very effective in scaring the
5 criminal away. We should keep that in mind.

6 And lastly we should remember that
7 armed citizens kill three times as many criminals
8 in this country every year as the police do. The
9 police cannot defend us. They cannot. There are
10 too few of them. 911 won't work.

11 If there's a rapist or burglar in your
12 house and armed, don't depend on 911 because it
13 isn't going to save you. You need to defend
14 yourself. Americans do. In most cases, as I
15 mentioned, there are no shots fired, but the
16 defense is effective.

17 MR. WORTH: You mentioned a state
18 coming up with some regulations on safety
19 devices, etc. That would scare the heck out of
20 me.

21 I agree with John. No. 1, there isn't
22 a gun safety problem to any extent. You take a
23 1911 Colt, you have four separate safety devices
24 on that gun. I don't know how in the deuce it
25 could be made safer.

1 But oddly enough, when it comes to the
2 sovereign state and the municipalities, the most
3 popular and desired gun -- and I'll never
4 understand it -- among the police are the Glock 9
5 millimeters.

6 I must tell you, in my opinion -- and
7 I've been with their factory experts -- it is the
8 most dangerous gun going for the police. More
9 police shoot themselves in the leg and in the
10 thigh when they draw that gun than any other
11 gun. There is no safety on it. And that's a
12 weapon purchased by the sovereign states and
13 municipalities. I'll never understand it.

14 MR. IANNANTUONO: I've done various
15 things in the consumer industry and just a little
16 bit with the automobile industry. But the one
17 comment I can make about regulation is civil
18 litigation is a much bigger concern for
19 manufacturers than regulation.

20 Regulation is clear cut. You know what
21 the regulation is. You know how much you're
22 going to have to spend to meet regulation. You
23 know how much of that you are going to pass along
24 to the consumer.

25 What gets a lot of discussion in

1 engineering terms or crossover between
2 engineering and legal terms is we know that if we
3 do A, by past experience we will get 17,842
4 lawsuits. If we do B, we'll get fewer lawsuits,
5 but for more money. That's the wrangling that
6 goes on. It is all based on civil liability. I
7 would emphasize not civil lawsuits by the City of
8 Philadelphia or the City of San Francisco, but
9 individuals based on an individual's experience
10 and whether or not their claim because the car
11 was painted red that's why they went through the
12 windshield.

13 Those things all balance out very well
14 in the civil system. The safe car you drive,
15 contrary to popular mythology, is not so much
16 because of regulation as it is because of civil
17 litigation and that it works.

18 CHAIRMAN GANNON: Thank you all for
19 your perspectives today. Thank you very much,
20 gentlemen, for coming before the committee as
21 citizens representing what I believe to be a very
22 important point of view as opposed to most of the
23 other witnesses we heard, the government's
24 witnesses.

25 It is an interesting contrast when

1 citizenry presents their views. I thought some
2 of your characterizations were pretty much on
3 point. Some of the terms, bogus issue, visceral
4 opposition, labels and hysteria, they seem to be
5 the ingredients of the anti-gun click that has
6 apparently embraced our government and a lot of
7 government officials as being a solution for some
8 of the problems that government has.

9 They tend to install that and say this
10 is common sense. I'm wondering in my own mind --
11 because I heard about the one gun a month
12 proposal today. I myself have a proposal that I
13 put forward dealing with the straw purchase
14 issue. And I think it does it in a fashion -- it
15 doesn't put another layer on our Crimes Code.

16 But in my own mind I'm trying to figure
17 out how this one gun a month solves the problem
18 that ostensibly exists.

19 Each of you I'm assuming owns a gun or
20 owns more than a couple. Each one of you has
21 said you've never gone out and bought more than
22 one gun a month. If you did -- one guy said, if
23 I went out and bought one gun a month my wife
24 would probably shoot me.

25 And I think you're absolutely right

1 when you said it's one gun a month today and,
2 it's one gun every six months tomorrow, then it's
3 one gun a year, then it's one gun every other
4 year, then finally it's no guns.

5 Then I think we are in the situation
6 that they are in in England where they are
7 complaining bitterly about an increase in crime.
8 And when they do interviews, the blind screen
9 interviews with criminals and they say, I have no
10 problem. I can go into somebody's house. I know
11 they don't have a weapon. I know they can't
12 defend themselves. Forty percent increase in
13 in-home crime in England. I guess Australia now
14 is on the same route because they have disarmed
15 their citizenry, too.

16 All of these initiatives were the
17 assault of some hysteria that occurred and you
18 have folks out there that have this visceral
19 opposition -- I think that's a good way to
20 characterize it -- due to the popular hysteria
21 that occurs as a result of a tragedy. They use
22 that to get the government to step in and disarm
23 the citizenry.

24 We have had automobile accidents every
25 day, some of them tragic. We have buses go off

1 cliffs where dozens of people are killed, yet
2 there is no cry to do away with buses.

3 Courts -- in fact in this district, the
4 federal court of this district has defined an
5 automobile as an inheritedly dangerous
6 instrumentality, and yet we don't have a cry to
7 take the automobiles away from our citizens
8 because that has been defined legally as an
9 inheritly dangerous instrumentality, not merely a
10 platform to transform people from one place to
11 another.

12 I believe you're right. There are
13 folks out there who have a visceral opposition to
14 guns under any forum and I think that their
15 objective and their goal is to disarm our
16 citizenry.

17 Let me finish. There was some question
18 about why would somebody want to buy more than
19 one gun a month. That's a bogus question because
20 it's a Constitutional right. I have no right as
21 a government official to question your motives
22 for exercising a right that's guaranteed to you
23 under the Constitution.

24 When I have to go and say, why would
25 you do that, that's the wrong question to ask a

1 citizen in this county. In other countries they
2 do where it's easy to be a policeman because it's
3 a police state. That was a good description.

4 MR. WORTH: I agree with every word you
5 said, sir. I can tell you the problem. We have
6 many, many well-meaning citizens who are today
7 what we might call antigun. It's because of
8 ignorance.

9 What they do is their opinions are
10 based on what they hear in the media. We had,
11 for example, Columbine thrown at us for a week
12 and a half on television, the same pictures of
13 the kids running out with their hands behind
14 their necks and a bloody little girl being
15 carried out on a litter.

16 This is intentional. Last week in
17 Allentown, right here in our own state, there was
18 an article that appeared in the Morning Call that
19 an armed robber was chased out of a pizza shop by
20 the owner.

21 You say, holy mackerel, the guy was
22 armed and he ran away from the owner. Yeah,
23 because the owner shot at him. He had a gun.
24 And they didn't once mention that in the paper.

25 We are solicitors for a large school

1 district. I get the national school safety
2 council report. The school year that Columbine
3 took place, caused by two -- I won't even
4 describe the people that did it, only two
5 children in the entire United States were killed
6 by gunfire in a school environment. Three were
7 beaten and stomped to death.

8 Now, where is the gun problem? By the
9 way, the kids at Columbine had bombs and
10 everything else. They were making pipe bombs in
11 the garage. There are catastrophes and
12 disasters. We cannot pass laws making that
13 impossible. You're going to have people with
14 evil hearts and evil minds, too. You can't pass
15 a law against that.

16 But another thing on the media, they
17 showed that Columbine situation in the report I
18 handed up to you people. I said I would like to
19 recount for you an incident about which I am
20 willing to bet none of you have any knowledge of
21 because you never saw anything about it on
22 television. The only national media outlet to
23 cover the incident was the Christian Science
24 Monitor.

25 I don't know, does anybody here get

1 that? I don't.

2 I'll tell you what happened. Back in
3 1990, December 17, it was a Tuesday, two men
4 armed with pistols herded 20 customers and
5 employees of Shoney's Restaurant in Alabama into
6 a walk-in refrigerator and indicated they were
7 going to execute the people. They locked the
8 folks in the refrigerator and continued to hold
9 the manager at gun point and went about robbing
10 the restaurant.

11 A postal clerk by the name of Thomas
12 Glen Carry was finishing his late night dinner
13 with his wife when the robbers came in and took
14 over the restaurant.

15 He hid his 45 caliber Colt government
16 model under his sweater not seeing any immediate
17 opportunity to use it. He didn't want to hurt
18 any innocent people.

19 His wife was one of those scheduled to
20 be executed and herded her off into the cooler
21 where one of the robbers proceeded to collect the
22 wallets and jewelry of the people that were put
23 in the cooler.

24 He separated himself from the other
25 customers and got to a back door to see if he

1 open it, escape and call the police. The door
2 was chained shut.

3 At that point one of the robbers
4 discovered him. When the robber drew on him,
5 Terry pulled his own handgun out from under his
6 sweater and returned fire incapacitating the
7 robber who ultimately survived.

8 The second robber heard the exchange of
9 gunfire and drew on Carry. It was a gun fight
10 between Carry and the second robber that resulted
11 in the robber running out into the parking lot
12 where he died from his wounds.

13 It was at this point that Carry,
14 an armed citizen, told the store manager to phone
15 the police. Not once was that on television.
16 Not once did that appear in the New York Times.
17 Not once was that given national publicity
18 because it did not deliver the media's agenda, to
19 be quite candid with you because our local paper
20 is controlled by an outfit in California. Thank
21 you.

22 CHAIRMAN GANNON: Thank you very much.
23 Our next witness is Mr. Jon Mirowitz, Esquire,
24 President of the Pennsylvania Fish and Game
25 Protective Association and Deputy Sheriff Paris

1 Washington from the Philadelphia Sheriff's
2 Office.

3 Welcome, gentlemen. You may proceed
4 when you're ready.

5 MR. WASHINGTON: Good afternoon. On
6 behalf of John D. Green, Sheriff of the City of
7 Philadelphia, I want to thank you for inviting us
8 here today to give our perspective as far as the
9 Sheriff's Office here in the City and County of
10 Philadelphia.

11 I sat here today and I've heard a lot
12 of information, a lot of pros and a lot of cons.
13 I can tell you from my viewpoint, not as a deputy
14 but as a citizen, that I pray that you take all
15 of this information back and make the appropriate
16 decision.

17 I'm here today to explain what the
18 Sheriff's Office's responsibility is as far as
19 enforcing firearms laws in the City and County of
20 Philadelphia.

21 The State Police have already
22 demonstrated what the Sheriff's Office does in
23 reference to gun permits and the quick check.

24 Another responsibility of the Sheriff's
25 Office is enforcing the laws that you have passed

1 in reference to protection from abuse orders.

2 I can tell you from my experience as
3 the officer in charge for Philadelphia that the
4 orders that come from the courts where the
5 Sheriff is ordered to remove firearms from
6 individuals until the courts have made a final
7 decision, helps us and helps the citizenry of
8 Pennsylvania. All sheriffs throughout the 67
9 counties are responsible.

10 I can tell you I see no need for any
11 additional legislation. The legislation
12 presently in existence is working. And as long
13 as the sheriffs offices have the resources and
14 equipment to do so that, they can carry out those
15 duties without any hindrance whatsoever.

16 Besides being a Deputy Sheriff, I speak
17 to you now as a citizen of Philadelphia and as a
18 citizen of the State of Pennsylvania.

19 We are where we are today because our
20 forefathers bore arms and defended this country
21 we know today. If they had not had firearms, the
22 British would still be in charge. So there is a
23 purpose for firearms.

24 And I do believe that every American
25 has a right to bear and have firearms for

1 self-protection. I am a Philadelphian. I grew
2 up here in Philadelphia. I grew up in North
3 Philly where there is a lot of violence.

4 There are some actions that have to be
5 taken. What those actions are are up to you, the
6 elected individuals that I entrust my safety
7 with.

8 I as a deputy sheriff am responsible to
9 enforce whatever laws and provisions you pass. I
10 just say to you, it's very difficult. There are
11 a lot of sides to this particular argument.

12 But something must be done to protect
13 not only those that have a right to bear arms,
14 but those that have a right to live crime free,
15 to live safely in our society.

16 Again, I can't add any more to all the
17 information that I've heard today. I think at
18 this point you have received tremendous input.

19 I just pray that you take that
20 information and that you don't make it a
21 political issue, you make it a people issue. And
22 that I can go home tonight sound that the elected
23 officials that sit on this committee will do
24 what's right for Pennsylvanians as well as
25 Phillians. Thank you.

1 CHAIRMAN GANNON: Thank you,
2 Mr. Washington.

3 MR. MIROWITZ: Thank you,
4 Representative Gannon. I want to thank the
5 Committee for allowing me to come back. And I
6 want to commend you for your fortitude in staying
7 the day.

8 I was sort of disappointed, although it
9 wasn't unexpected when the media followed Mayor
10 Rendell out before anybody could answer some of
11 his questions.

12 It seemed to be a real popular
13 question, why would anybody want more than one
14 gun a month. Let me tell you about a pistol
15 league here in Philadelphia. Under the Federal
16 Statute, if you buy more than one gun at a time,
17 there is a thing called a multiple gun purchase
18 form that has to be filled out which gets sent to
19 the ATF. Regular old-fashioned paperwork.

20 When we had the State Selective
21 Committee meetings, ATF said, yeah, we get them.
22 We can't usually bother with them. Now we've got
23 money so we have a gun task force and they go out
24 and do things like this.

25 Gentlemen, the pistol club spent a lot

1 of time and put a lot of effort out. They
2 finally raised enough money to buy a bunch of
3 guns for the club.

4 Well, they no sooner did this then here
5 comes Philadelphia's finest along with ATF and
6 other various federal law enforcement agencies
7 and representatives knocking on the door, why are
8 you buying all of these guns? Where are they?
9 We want to see them.

10 What's the problem? What law have we
11 violated? Anybody here prohibited? We just
12 happen to be a pistol club. We are competitive
13 shooters. By the way, we compete nationally,
14 regionally, locally. We are just exercising our
15 rights.

16 But that was our tax dollars at work
17 when they talk about the one gun a month. Those
18 are the guys. That's the money they want to use
19 to go visit and have law enforcement go out and
20 visit, state and local, go pay attention to that
21 group.

22 Why would anybody want to buy more than
23 one gun a month? Representative Gannon, you're
24 absolutely right. It's nobody's business.

25 That's why when we sat on the State

1 Select Committee we provided things like
2 confidentiality of information. If you want to
3 buy a gun, it's not a public record. If you want
4 to get a carrying permit, it's not a matter to be
5 spread in the newspapers.

6 We saw what happened here in
7 Philadelphia when the Daily News printed a list
8 of the federally licensed firearms dealers.

9 Most of them were cops who were trying
10 to set up a second business so when they retired
11 they would have a second income. All of a
12 sudden, here's their home address in the
13 newspaper. Not only that, but they are telling
14 everybody, there's guns here. In other words,
15 they are being targeted for the burglars.

16 That brings me back to another thing.
17 Today's session was about what gun laws are being
18 enforced. When District Attorney Abraham was
19 testifying, she was saying how bad Section 6111
20 G5 was. I happened to be talking to Mr. Siegel.

21 Mr. Siegel and I and District Attorney
22 Abraham all sat on the State Select Committee.
23 To the best of Mr. Siegel's recollection and my
24 recollection, District Attorney Abraham was the
25 source of 6111 G5 that she was bashing today.

1 Talking about going in circles. We are is seeing
2 the same issues time in and time out.

3 Assault weapons. Safety preemptions.
4 Ban this. Ban that. Limit this. Limit that.

5 When I came here today, I drove through
6 the 24th and 25th police districts, Front and
7 Westmoreland. That's the police district where
8 the drugs were found in the police locker room
9 hidden in the ceiling, where they were found in
10 the police lockers, the unassigned lockers.

11 This is the bad land. It is 8th and
12 Butler. It is the place where the only reliable
13 source of income is the drug dealer on the
14 corner. And he probably got that corner from his
15 father who got it from his father in turn.

16 If you want to do something about the
17 crime, get the criminals off the street. Get the
18 drug dealers off the street. They are there
19 every day, day in and day out. They are the same
20 people that are selling the guns on the street.

21 What we did with this Uniform Firearms
22 Act, Act 17, we made that illegal transfer -- we
23 increased the penalties for it. But the drug
24 dealers are still there. His cousin is still
25 selling guns right next to him.

1 You talked about Operation Cease-Fire,
2 Operation Exile. Great ideas. You know who gets
3 busted for that? It is the guy who goes and he's
4 going to get into public transportation. He's
5 kind of poor. He doesn't look real nice. He is
6 kind of scruffy. As a matter of fact, he's
7 probably on disability. He gets armed, goes
8 through the turn-style. All of a sudden here
9 comes two police officers. We see a weapon
10 clipped to the outside of your jacket.

11 They arrest him. They take him into
12 custody. It turns out he is an insulin-dependent
13 diabetic. What they are looking clipped outside
14 his jacket is probably a flashlight, although
15 they put it down in their arrest report that it's
16 an 8-inch knife clipped to the outside of his
17 jacket.

18 In the inventory receipt being
19 conducted no such knife and no such weapon was
20 there. He does happen to be carrying a firearm
21 with various other tools including his insulin
22 and syringes.

23 In any event, about eight hours later,
24 if I remember correctly, he was finally
25 released. In the course of that time, what

1 charges? Carrying a flashlight? Carrying a
2 pocket knife? Did the police tell him -- they
3 went through a search. They took him over to the
4 Philadelphia Police Department and they said, why
5 are you bringing him to us? And they let him
6 go.

7 That's one of those gun law arrests to
8 say nothing of the gentleman who might be going
9 out to the gun range. Under Section 6106 B4 you
10 can go target shooting. You don't need to have a
11 license to go target shooting.

12 That section says, handgun, revolver,
13 pistol or rifle. It doesn't say shotgun. What
14 about the guy that goes to the range to shoot
15 skeet? There's no provision for him. It is one
16 of the things we were trying to address.
17 Everybody said, it's just minor. No big deal.
18 That's the guy that's going to get busted and end
19 up in Operation Cease-Fire.

20 You talked about people that are
21 prohibited who are going to get arrested. You
22 talked about the background checks.

23 At my last presentation I talked about
24 the magistrate court cases. I think you heard
25 some more of the magistrate court cases today.

1 That's the guy who goes in front of the
2 magistrate.

3 The magistrate only gets paid a
4 percentage of the fines and costs he collects.
5 He has a financial interest in making sure
6 everybody in front of him is guilty. That's the
7 only way he gets paid.

8 Is that a fair trial? Does that meet
9 due process requirements of an impartial
10 judiciary? Nope. That's why we got rid of the
11 system. But those convictions are still turning
12 up in the big system. People are still be
13 prosecuted for being in possession of firearms
14 upon those convictions.

15 Why is there so few prosecutions and so
16 many denials? Because so many of the denials are
17 based upon things like the check that shows up
18 from a magistrate's court or a similar name or a
19 similar date of birth.

20 A couple of other things I want to talk
21 about real quick. I know we've been here a long
22 time. Uniform carrying permits. We talked about
23 all of these things. What's been happening with
24 carrying permits? You talked about rising crime
25 rates and falling crime rates, rising death

1 rates. You can't tell.

2 Philadelphia is notorious for playing
3 games with the crime statistics. That's why the
4 FBI won't accept Philadelphia's crime
5 statistics.

6 One thing they can't hide is the dead
7 bodies. We have drug dealers shooting drug
8 dealers. I think they at one point -- meaning
9 the State Police -- were saying that most of
10 them, like over three-quarters, were all
11 drug-related. That's the dead bodies they find
12 on the street. You can't hide them.

13 However, since Act 17 came into effect
14 and mandatory carrying permits were issued in
15 Philadelphia, the body count in Philadelphia has
16 gone down. Even such wildly pro-gun newspapers
17 as the Philadelphia Daily News finally had to
18 concede it in the back of a newspaper article.

19 Not real popular with the media. They
20 want to follow Mr. Rendell and listen to his one
21 gun a month and trigger locks safety issues.
22 Let's get guns out of kids' hands and prevent
23 child gun accidents. Forget the fact that they
24 are at an all-time low. As a matter of fact,
25 child safety is furthered by programs like Eddy

1 Eagle which is for firearm safety. It is no
2 longer the forbidden fruit.

3 What you are looking at with all of
4 these gun control issues is sophistry. In logic
5 it sounds real good, but it is a fallacious
6 argument.

7 It would be like a drunk driver who
8 plows into a bus stop and wipes out a whole bus
9 stop full of people. The police go over and
10 arrest the car and let the drunk driver go.
11 That's what gun control amounts to, concentrating
12 on an inanimate object and ignoring the real
13 problem which is a problem of human behavior.

14 The only people who really need to have
15 crime is government. It is the single biggest
16 justification for government, crime.

17 Anyway, I thank you. I will submit my
18 written presentation at the next session. There
19 are some other things I wanted to address, but
20 due to the time -- again, I commend you for your
21 fortitude. Thank you for the opportunity to
22 present this.

23 CHAIRMAN GANNON: Thank you, Mr.
24 Mirowitz. Thank you, Mr. Washington, for
25 attending the hearing today and sharing your

1 testimony with us. We appreciate it.

2 Our next witnesses are Dr. Shannon
3 Frattaroli, Johns Hopkins University School of
4 Hygiene and Public Health, and Mr. Peter
5 Fiorentino, Mr. Joel Nied and Mr. James J. Mills,
6 Executive Director of the Philadelphia
7 Anti-Drug/Anti-Violence Network.

8 Thank you very much. Dr. Frattaroli,
9 you can begin when you're ready.

10 DR. FRATTAROLI: Thank you. It's been
11 a long morning. And in the interest of not
12 turning it into a long afternoon, I will forgo my
13 written remarks, which remain with five of you,
14 and just make two points.

15 The first point is that I would urge
16 you to not pass the legislation that's currently
17 in the legislature that would give the gun
18 industry immunity from gun lawsuits.

19 These lawsuits are being used to
20 encourage the gun industry to adopt more
21 responsible business practices. I think there's
22 nothing wrong with that.

23 An example of the spirit of these
24 lawsuits can be seen in the NAACP lawsuit which
25 requests no monetary damages, but simply that the

1 industry reform itself.

2 Point No. 2, and this is actually more
3 on point with what I understood the subject
4 matter of this hearing to be, enforcement of
5 laws. When we talk about enforcement of laws,
6 generally we think solely about enforcement of
7 laws which focus on the criminal misuse of guns.
8 That's an important function of government, to
9 punish people who misuse guns.

10 However, I would encourage you to
11 expand your view of what enforcement of gun
12 policies is to include people who aren't often
13 thought in this mix. There's a lot of talk about
14 illegal gun markets and illegal gun sales. We
15 need to be looking at the people who are
16 supplying such purchasers with guns.

17 I would like to respectfully disagree
18 with the Mayor when he said we can't do anything
19 about the man with the sunglasses selling guns
20 out of his trunk. I believe we can. And I would
21 encourage this Committee to again expand their
22 definition of enforcement to include the people
23 in the systems that are supplying guns to
24 criminals and youth who use guns to commit crimes
25 in this city and in this state. I'll end with

1 that. Thank you.

2 CHAIRMAN GANNON: Thank you.

3 MR. MILLS: Good afternoon. I'm a
4 little frustrated currently. I submitted some
5 testimony. I'm going to enter it into the
6 record.

7 I have a job that -- well, let me just
8 talk about me. I was part of the problem in this
9 city in the '70s and '60s. I'm 50 years old
10 now. I had very good access to guns when I was
11 14 years old. When I was even younger than that
12 I had access to guns.

13 In fact, I was arrested for shooting
14 folks when I was 14 years old and incarcerated.
15 All of my teenage life I had access to guns from
16 people like you in your homes. People like you.
17 And the gangs in the streets have even more
18 access now.

19 Now I have a job where I work with gang
20 kids and I work with all the people in the City
21 of Philadelphia around violence. We're primarily
22 an organization that goes around and tries to
23 defuse violence.

24 So if somebody gets killed or somebody
25 is in the hospital and gets shot, we go in and

1 defuse violence in an effort to keep it from
2 snowballing because when one person gets shot,
3 you better believe that the other people want to
4 see the next person get shot. It just goes on
5 and on. It is a cycle, a vicious cycle called
6 violence.

7 It is exacerbated by the fact that our
8 communities -- this is all over the city -- have
9 been flooded with guns. There are guns
10 everywhere. You can go outside and buy a gun.
11 You can go not far from here and you can purchase
12 a gun.

13 Now, it maybe a stolen gun, but in most
14 instances it is in a box. It is in a box. It is
15 a brand new gun.

16 My staff works in communities that is
17 full of these brand new guns. Folks are killing
18 folks. I don't know what you all are talking
19 about, what these guys are talking about. I go
20 to hospital rooms and there are folks in there
21 bleeding from gunshots. I go to the morgue --
22 there's a meeting at the morgue every month to
23 talk about the kids that have been killed in my
24 city.

25 Last year over 100 kids were killed in

1 my city under 21. That ain't no -- this is
2 bodies. These are folks that are dead. 342
3 people died in my city due to homicides. And
4 over 85 percent of them died because of
5 firearms.

6 There's a problem going on here. I
7 don't know why you don't understand that there's
8 a problem and it is spreading because the people
9 from Lehigh Valley are calling me up to their
10 community to talk to them about guns and gangs
11 and talk to them about some of the problems they
12 are having like we are having in Philadelphia.

13 Not only Lehigh Valley, but Scranton
14 and Wilkes-Barre, other places that are starting
15 to duplicate the kind of issues that we face in
16 our cities. This is not a problem just in
17 Pennsylvania. I think sometimes that between
18 Pittsburgh and Philadelphia is a place called
19 Alabama.

20 I don't mean to offend nobody, but I'm
21 kind of pissed. I'm kind of pissed because this
22 ain't no game. It is dead folks and their
23 families that are affected by this stuff. And we
24 got to keep -- we got to stop pussyfooting
25 around. This is a morale issue. It is even

1 bigger than our laws. I don't think you have the
2 wherewithal to solve this. But we certainly can
3 be a part of the solution instead of being a part
4 of the problem. And that's what I see this whole
5 process today as being.

6 I'm an activist. I'm a warrior. It is
7 my mission to make conditions better in my
8 community. It appears to be a mission that's
9 impossible. But every day I go out with the hope
10 that I can help somebody. And I'm just a
11 little -- I'm kind of peeved. I just think that
12 certainly there have been some ideas about doing
13 this, but I think we got to go to higher ground
14 because this is about a morale issue.

15 If kids in my community are dying,
16 trust me -- trust me. Just like drugs, drugs
17 started in my community and spread and it is all
18 over the United States. Trust me, it's the same
19 problem about guns and violence. It is going to
20 spread and it is going to get worse.

21 Why do we need to wait until it gets
22 worse in our other communities? Why do we need
23 to do that? Why do we need to let this thing
24 perpetuate?

25 I think that we need to see this thing

1 as if it could happen to us, if your son got
2 killed.

3 Hearing this stuff that everybody is
4 scared about drugs is foolishness. I was just at
5 the high school two weeks ago. You got kids
6 standing outside the high school. Somebody comes
7 up with an automatic weapon, shoots this kid and
8 kills him. It got nothing to do with drugs.
9 This is about proliferation of guns. Guns.

10 We have created this world for our
11 kids. We as adults have to begin to work
12 together irregardless or irrespective of our
13 positions in life, irregardless of our
14 ethnicity. If you think this thing in my city is
15 a black thing, trust me, right now it's black,
16 but it's going to grow like a cancer. It's going
17 to grow and it is going to start affecting white
18 kids. It will be more than this sporadic stuff
19 of people killing one another. This stuff is
20 going to spread.

21 I don't know why we want to wait until
22 it spreads to your community before we do
23 something about it. That's the end of my
24 comments.

25 CHAIRMAN GANNON: Thank you very much,

1 Mr. Mills. Any questions?

2 Thank you very much for attending the
3 hearing today and presenting your testimony. It
4 should be very helpful in our deliberations.

5 I don't think there are any further
6 witnesses. With that, the House Judiciary
7 Committee hearing on Enforcement of Existing Gun
8 Laws is adjourned.

9 (The hearing was concluded.)

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I hereby certify that the proceedings
and evidence are contained fully and accurately
in the notes taken by me on the within
proceedings and that this is a correct transcript
of the same.


Debora L. Cunningham, CSR-RPR
Notary Public

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