

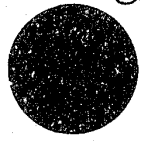
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S. HRG. 102-1108

STOP ARMING FELONS ACT



102-1108



HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION
OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

ON

S. 2304

A BILL TO AMEND TITLE 18, UNITED STATES CODE, TO PERMANENTLY PROHIBIT THE POSSESSION OF FIREARMS BY PERSONS WHO HAVE BEEN CONVICTED OF A VIOLENT FELONY, AND FOR OTHER PURPOSES

MAY 5, 1992

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STOP ARMING FELONS ACT

TUESDAY, MAY 5, 1992

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:02 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Paul Simon (chairman of the subcommittee) presiding.

Also present: Senators Hatch and Specter.

OPENING STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. The subcommittee hearing will come to order.

I have been pleased to join my distinguished colleague, Senator Frank Lautenberg—and we use the phrase “distinguished colleague” with much too much ease, but in this case it is an apt description of my colleague from New Jersey—in introducing legislation that takes away the ability of the Bureau of Alcohol, Tobacco and Firearms to grant firearms privileges to felons.

It is amazing that we are spending \$4 million a year to grant firearms to people who are convicted felons. We have spent \$20 million over the last decade.

In 1965, legislation was passed to provide convicted felons the opportunity to apply to BATF for firearms privileges. It was done at the request of the Winchester Firearms Co., whose parent company had been convicted of a felony.

What we are doing is using valuable time of people who should be out working on really important things. Instead, they are spending time seeing to it that convicted felons have the right to have weapons.

I am pleased that 200 agents were sent recently to Los Angeles to help stem the violence there, but they ought to be doing that and not trying to see that people who don't deserve weapons are getting them.

Let me just cite a few examples. In 1986, the Bureau restored firearms privileges to an individual who committed burglary in 1977. The same year this felon's privileges were restored, he was found guilty on five counts of sexual assault.

Sherman D. Williams pleaded guilty to the felony offense of illegally selling machineguns. He was relieved of the disability, even after neighbors described him as kind of strange acting and local law enforcement officers said he would be a threat to the commu-

nity if armed. But he had no arrest records to substantiate their fears, and he was given that right.

Robert Christopher Gunn pleaded guilty to two separate counts of delivery of a controlled substance and received 3 to 20 years for each count. He has been given the right to have a gun, and you go through the rest of these.

We clearly are not using our taxpayers' money wisely in this field and we are not protecting the public as we ought to be. I am pleased to have as my first two witnesses my colleague I mentioned before and the chief House sponsor, Representative Larry Smith, who I just read recently is retiring. Someday Senator Lautenberg and I are going to be old enough to retire too, Congressman Smith. [Laughter.]

Senator LAUTENBERG. Speak for yourself, Mr. Chairman.

Mr. SMITH. Into my district, no doubt.

Senator SIMON. I don't know if you have a preference, but if not, I will yield to my Senate Colleague, Senator Lautenberg.

PANEL CONSISTING OF HON. FRANK R. LAUTENBERG, A U.S. SENATOR FROM THE STATE OF NEW JERSEY; AND HON. LAWRENCE J. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

STATEMENT OF HON. FRANK R. LAUTENBERG

Senator LAUTENBERG. Thank you very much, Mr. Chairman, for your kind comments, for holding this hearing, and for all of your help in developing and promoting this legislation. I would like to say for the record that we really are equal partners in this effort.

Mr. Chairman, as you know, the Stop Arming Felons or SAFE Act would close two loopholes in current law that allow convicted felons to possess and traffic in firearms.

The bill would abolish a procedure by which the Bureau of Alcohol, Tobacco and Firearms can waive Federal firearm restrictions for individuals otherwise prohibited from possessing firearms. It also would preempt a practice by which States give violent felons the ability to possess guns.

As you noted in your opening remarks, the amazing thing about this legislation is that it is needed in the first place. How can it be, at a time of rising violence throughout our Nation, that our laws put guns into the hands of convicted violent felons? It defies common sense; but it is true.

Generally speaking, as one would expect, felons are prohibited by Federal law from possessing firearms. However, there are two gaping loopholes. I call them the guns for felons loopholes.

First, Federal law states that if all the felon's basic civil rights have been restored under State law, that is rights like the right to vote, the right to hold public office, and the right to sit on a jury, then the conviction is wiped out and all firearm rights are restored. This is true unless the restoration of rights explicitly maintains the firearms ban.

Many States now automatically restore the civil rights of convicted felons. Sometimes, the restoration is effective immediately after the felon serves his or her sentence. Sometimes the felon must wait a few years.

As a result of this loophole, which was added with little debate—you noted that—in 1986, even persons convicted of violent crimes can legally obtain firearms.

Mr. Chairman, I think most Americans would agree that this loophole makes no sense whatsoever. Given the severity of our crime problem, we ought to be looking for ways to get tougher, not easier, on convicted felons. How can the Government claim to be serious about crime and then turn around and give convicted felons their firearms back?

According to some theories, the criminal justice system is supposed to rehabilitate convicted criminals. But in reality, many of those released from prison soon go back to their violent ways. According to the Justice Department, of State prisoners released from prison in 1983, 62.5 percent were rearrested within only 3 years. Knowing that, how many Americans would want convicted violent felons carrying firearms around their neighborhood?

As you know, Mr. Chairman, our bill would close this loophole. Under the legislation, persons convicted of violent felonies would be banned from possessing firearms regardless of whether a State restores other rights.

Now I want to turn to the second guns for felons loophole.

Even if a felon's civil rights have not been restored under State law, the individual can still apply to the Federal Bureau of Alcohol, Tobacco and Firearms. Upon application, ATF performs a broad-based field investigation and background check. If the Bureau believes that the applicant does not pose a threat to public safety, it can grant a waiver.

Since 1985, well over 2,000 waivers have been granted at a cost to taxpayers of nearly \$10,000 per waiver. The total cost for the years from 1985 to 1991 for handling those waivers exceeded \$20 million.

Think about that, Mr. Chairman. You and I both sit on the Budget Committee and are always looking at ways to help solve our deficit problem. Clearly, in a time of skyrocketing deficits and pressing domestic needs, American taxpayers shouldn't have to pay \$20 million to put guns in the hands of convicted terrorists, rapists, and armed robbers. It is perverse, to say the least.

It is also placing innocent Americans at risk. Even after ATF performs a full-blown investigation, there is no way to be sure that a convicted felon isn't going to go out and commit another crime. In fact, there is real cause for concern. Criminals granted relief have later been rearrested for crimes ranging from attempted murder to rape and kidnapping.

And finally, Mr. Chairman, the guns for felons loophole is wasting scarce ATF resources. ATF agents have better things to do than conduct indepth investigations on behalf of convicted felons. They should be able to do the job that they are committed to, and that is on the streets, pursuing criminals.

I know, Mr. Chairman, that you agree that this simply has got to stop. Our bill would eliminate the relief procedure altogether. Taxpayers shouldn't be forced to pay a single penny to arm a felon.

I appreciate, Mr. Chairman, that many Americans are very concerned about any effort that could lead to unreasonable restrictions on the rights of law-abiding citizens to get access to guns for sport-

ing or other lawful purposes, so I want to emphasize something. This is an anticriminal bill. It is a protaxpayer bill. It would have no adverse impact on law-abiding citizens.

I also want to emphasize that we are not criticizing the many dedicated men and women who work for ATF. To the contrary, the role that they play is vital, and they deserve our appreciation and support. The problem in this case is not with the Bureau but with the law that they are obligated to implement.

In summary, Mr. Chairman, firearm violence, as everyone here knows, has reached epidemic proportions, and we have a responsibility to the victims and those who could be victims to take all reasonable steps to keep this violence to a minimum. Keeping firearms away from convicted felons is the least that these innocent Americans should be able to expect.

Thank you, Mr. Chairman.

Senator SIMON. Thank you very much, Senator Lautenberg.

[Text of Senate bill 2304 follows:]

102D CONGRESS
2D SESSION

S. 2304

To amend title 18, United States Code, to permanently prohibit the possession of firearms by persons who have been convicted of a violent felony, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 3 (legislative day, JANUARY 30), 1992

Mr. LAUTENBERG (for himself, Mr. SIMON, Mr. DIXON, and Mr. METZENBAUM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to permanently prohibit the possession of firearms by persons who have been convicted of a violent felony, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Stop Arming Felons
5 (SAFE) Act".

6 **SEC. 2. RESTORATION OF CIVIL RIGHTS AFTER CONVIC-**

7 **TION.**

8 Section 921(a)(20) of title 18, United States Code,
9 is amended by striking the period at the end and inserting

1 “, or such restoration of civil rights occurs following con-
2 viction of a crime of violence (as defined in section
3 924(c)(3)).”.

4 **SEC. 3. ADMINISTRATIVE RELIEF FROM CERTAIN FIRE-**
5 **ARMS PROHIBITIONS.**

6 (a) **IN GENERAL.**—Section 925(c) of title 18, United
7 States Code, is amended—

8 (1) in the first sentence by inserting “(other
9 than a natural person)” before “who is prohibited”;

10 (2) by striking the second and third sentences;

11 (3) in the fourth sentence—

12 (A) by inserting “person (other than a nat-
13 ural person) who is a” before “licensed im-
14 porter”; and

15 (B) by striking “his” and inserting “the
16 person’s”; and

17 (4) in the fifth sentence, by inserting “(i) the
18 name of the person, (ii) the disability with respect
19 to which the relief is granted, and, if the disability
20 was imposed by reason of a criminal conviction of
21 the person, the crime for which and the court in
22 which the person was convicted, and (iii)” before
23 “the reasons therefor”.

24 (b) **APPLICABILITY.**—The amendments made by sub-
25 section (a) shall apply to—

1 (1) applications for administrative relief and ac-
2 tions for judicial review that are pending on the date
3 of enactment of this Act; and

4 (2) applications for administrative relief filed
5 and actions for judicial review brought after the date
6 of enactment of this Act.

○

Senator SIMON. We have been joined by Senator Hatch, and before I call on you, Congressman Smith, I will ask if Senator Hatch wishes to make an opening statement or any comment at this point.

**OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S.
SENATOR FROM THE STATE OF UTAH**

Senator HATCH. Well thank you, Senator Simon. Mr. Chairman, I appreciate it.

The right of the people to keep and bear arms is a hallmark of American liberty, and the Founding Fathers considered this right to be such a fundamental right that they included it in our hallowed Bill of Rights. Now, I know that some of my friends who champion the Bill of Rights overlook it, but this right of the people is there, in the second amendment.

Those who are convicted of violating the law, of course, forfeit many of their rights. Upon completion of their sentence, a number of those rights can be restored.

Under Federal law, those who are convicted of a crime punishable by imprisonment for more than 1 year are disabled from obtaining a firearm. Federal law permits such individuals to apply to the Secretary of the Treasury for relief from such a disability. The Secretary

* * * may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.

Thus, the Secretary may very carefully consider any application for such relief in restoring this constitutional right.

A proposal to eliminate completely the opportunity of those convicted of violent felonies and drug trafficking crimes to seek restoration of their right to possess a firearm has merit. This bill goes much further by also disabling all persons convicted of nonviolent crimes from seeking restoration of the right to possess a firearm.

I have some concerns about the breadth of the bill. It may be that some of those who are convicted of some nonviolent crimes can legitimately demonstrate a need for a firearm and would not be a threat to public safety. The Secretary, after all, would continue to review these applications in detail.

Similarly, I am concerned by the bill's stripping of the right of the applicant denied relief by the Secretary to petition the district court for review of the denial.

So, these issues, as limited as they are, I thought I would raise here today just so people realize that some of us feel very deeply about this. I do have tremendous concerns about the bill but would be interested in working to try and resolve them.

I welcome both of our distinguished Members of Congress to the committee at this time.

Senator SIMON. Congressman Smith?

STATEMENT OF HON. LAWRENCE J. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. SMITH. Thank you, Mr. Chairman. I appreciate the opportunity to come before you to testify on the Felon Gun Prevention Act, which is what we call it in the House. This is a terribly important crime issue that is beginning to gain public notice, and I feel that this committee is ahead of the curve in addressing this subject now.

Let me just say, Mr. Chairman, that my cosponsor and very dear friend, Ed Feighan from Ohio, Congressman Feighan, is unable to be with us today and so I am addressing the committee on his behalf as well. I believe he may have some testimony to be supplied for the record.

[The prepared statement of Congressman Feighan, as submitted by Congressman Smith, follows:]

TESTIMONY OF REPRESENTATIVE EDWARD F. FEIGHAN

MR. CHAIRMAN, I WOULD LIKE TO THANK YOU FOR HOLDING TODAY'S HEARING. I HAVE GREAT ADMIRATION FOR YOUR LEADERSHIP IN THE FIGHT AGAINST OUR NATION'S EPIDEMIC OF GUN VIOLENCE. I COME BEFORE YOU TODAY AS A PARTNER IN THE STRUGGLE TO KEEP GUNS OUT OF THE WRONG HANDS.

I AM PROUD TO COUNT YOU AS A STALWART SUPPORTER OF THE BRADY BILL, BUT I CAN'T PASS UP THE TEMPTATION TO EXPRESS MY FRUSTRATION THAT EVEN YOUR BEST EFFORTS CAN'T KEEP THE BRADY BILL FROM BEING HELD HOSTAGE TO AN ELECTION-YEAR WHIRLWIND OF CRIME BILL POLITICS. PERHAPS THE TIME IS COMING TO MOVE THE BRADY BILL SEPARATELY -- AND LET PRESIDENT BUSH DECIDE WHETHER HE WANTS TO DEFY THE POLICE AND THE AMERICAN PEOPLE ON THIS ISSUE.

BUT I AM HERE TODAY IN SUPPORT OF A SEPARATE STRATEGY IN THE FIGHT AGAINST CRIME. YOU AND I, AS WELL AS REPRESENTATIVE SMITH AND SENATOR LAUTENBERG, HAVE PLEDGED OURSELVES TO BRING AN END TO ONE OF THE MOST OUTRAGEOUS BOONDOGGLES THAT OUR NATION'S TAXPAYERS HAVE EVER HAD PERPETRATED UPON THEM.

I'M TALKING, OF COURSE, ABOUT THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS' APPEALS PROCESS PERMITTING CONVICTED FELONS TO REGAIN THE RIGHT TO CARRY GUNS.

WHEN CRIMINALS ARE CONVICTED OF A FELONY, SOCIETY PUNISHES THEM BY STRIPPING THEM OF BASIC RIGHTS LIKE VOTING, SERVING ON JURIES AND RUNNING FOR OFFICE. FEDERAL LAW ALSO TAKES AWAY THEIR RIGHT TO OWN A GUN.

BUT IN ORDER TO PROTECT GUNMAKERS WHOSE PARENT COMPANIES COMMITTED FELONIES, CONGRESS IN 1965 PERMITTED APPEALS OF THE LOSS OF GUN PRIVILEGES. THE APPEALS WERE ALSO EXTENDED TO MOST INDIVIDUAL FELONS. AND THE McCLURE-VOLKMER ACT OF 1986 EVEN OPENED THE APPEALS PROCESS TO GUN-WIELDING FELONS, THE MENTALLY INCOMPETENT, DRUG USERS, AND ILLEGAL ALIENS.

THE RESULT OF THIS STEADY EROSION OF OUR CRIMINAL LAW IS THAT OVER 22,000 PROHIBITED PERSONS HAVE RUSHED TO APPEAL IN THE LAST DECADE. ABOUT ONE-THIRD HAVE WALKED AWAY WITH REINSTATED GUN PRIVILEGES.

AS I HAVE STATED, THIS PROGRAM IS NOT JUST AN OUTRAGE -- IT HAS ALSO WASTED \$20 MILLION IN TAXPAYER DOLLARS OVER THE LAST FIVE YEARS. LAST YEAR ALONE, THE BATF SPENT OVER \$4 MILLION IN TAXPAYER DOLLARS HELPING THESE CONVICTED FELONS GET THEIR GUN RIGHTS BACK.

IT'S WORTH CONSIDERING JUST THREE OF FELONS THE BATF DECIDED SHOULD CARRY GUNS:

* JEROME SANFORD BROWER, WHO CONSPIRED TO SHIP ARMS TO HELP TRAIN TERRORISTS IN LIBYA;

* SHERMAN DALE WILLIAMS, WHO WAS CAUGHT SELLING ILLEGAL MACHINE GUNS TO A FEDERAL AGENT, AND

* JOHN WAYNE YOUNG, WHOSE HISTORY OF SEX OFFENSES GOES BACK TO AGE 13;

NOT SURPRISINGLY, SOME OF THESE FELONS ARE ALREADY BEING ARRESTED FOR NEW CRIMES.

THIS LOOPHOLE IS WASTEFUL, OUTRAGEOUS AND IT CODDLES CRIMINALS -- BUT IT CAN BE STOPPED. IN THE HOUSE, REP. LARRY SMITH AND I HAVE INTRODUCED THE FELON GUN PROHIBITION ACT, WHICH WOULD END THESE APPEALS. WE ALREADY HAVE THE SUPPORT OF 30 OTHER LAWMAKERS OF BOTH PARTIES.

YOUR BILL IS SOMEWHAT BROADER, SINCE IT SEEKS TO INSURE THAT STATE RELIEF STATUTES DO NOT TRUMP THE FEDERAL BAN ON FIREARMS POSSESSION BY FELONS. ALTHOUGH THIS MEASURE IS NOT PART OF OUR BILL, I THINK IT IS A WORTHY EFFORT.

OUR BILLS WOULD ALLOW THE BATF TO GET BACK TO THE BUSINESS OF LAW ENFORCEMENT. THE MILLIONS OF DOLLARS WE SAVE COULD BE USED TO FIGHT GANG VIOLENCE, DRUG SMUGGLING, AND WHITE-COLLAR RIP-OFF ARTISTS, OR TO PROVIDE MORE POLICE OFFICERS, PRISON CELLS AND DRUG TREATMENT. OR IT COULD BE RETURNED TO THE TAXPAYERS WITH AN APOLOGY FOR WASTING THEIR

INVESTMENT IN THEIR COUNTRY'S SAFETY AND THEIR CHILDREN'S FUTURE.

OUR LEGISLATION MAY NOT MAKE EX-CONVICTS HAPPY. BUT IT WILL HELP LAW-ABIDING GUN-OWNERS, THE POLICE, AND ORDINARY AMERICANS KNOW THAT THE GOVERNMENT IS ON THEIR SIDE IN THE WAR AGAINST CRIME.

MR. CHAIRMAN, FOR ME THIS ISSUE IS PERSONAL: JUST LAST WEEK, POLICE IN MY HOME CITY OF CLEVELAND ARRESTED LAWRENCE CALLOWAY - - A CAREER CRIMINAL WITH A STRING OF FELONY CONVICTIONS -- AS HE TRIED TO BUY A 9MM PISTOL AT A GUN SHOW. I DON'T WANT THIS FELON, OR ANY OTHER, TO SHOW UP AT THE BATF IN FIVE YEARS ASKING TO CARRY GUNS IN THE NEIGHBORHOOD WHERE MY CHILDREN PLAY.

I BELIEVE THAT THESE BILLS ARE THE BEST WAY TO END THIS PROGRAM. BUT I AM PREPARED TO WORK HARD FOR ANY OTHER METHOD THAT WORKS, SUCH AS DEFUNDING THIS PROGRAM OR ATTACHING A RIDER TO A CRIME BILL. I HAVE NO PRIDE OF AUTHORSHIP: ENDING THIS WASTEFUL OUTRAGE THIS YEAR -- BY ANY MEANS NECESSARY -- WILL BE ONE OF MY TOP PRIORITIES DURING THE REMAINDER OF THE 102ND CONGRESS. I COMMEND YOUR EFFORTS.

THANK YOU.

Mr. SMITH. First, I would like to compliment you and this committee for their work on the issue of gun violence in general and the Brady bill in particular. The epidemic of gun violence is one of our Nation's most devastating diseases, and unfortunately it has not even begun to go into remission.

The Brady bill is an important first step, but there is an entire panoply of gun issues ranging from overpowered assault weapons to underpowered Saturday Night Specials.

Senator SIMON. Let me just acknowledge, and I understand Senator Lautenberg has another meeting—

Senator LAUTENBERG. I am sorry, Congressman. I will review the testimony with interest, and I thank you, Mr. Chairman.

Senator SIMON. We thank you, Senator Lautenberg. Both Congressman Smith and I are accustomed to people walking out while we are speaking—

[Laughter.]

Mr. SMITH. Absolutely.

Senator LAUTENBERG. I didn't mean to do it, Mr. Smith. [Laughter.]

Senator SIMON. Congressman Smith?

Mr. SMITH. Is he on this committee?

Senator SIMON. He is not.

Mr. SMITH. There are gun issues ranging from overpowered assault weapons to underpowered Saturday Night Specials that this committee, the Congress, and our Nation should address in the coming years.

Before 1965, this committee would not have needed to address the issue of firearms disability relief. It was simply illegal for any felon to possess a firearm. But in 1965, an unexpected event opened a loophole in this prohibition on guns. Because of fraud committed by the parent company of the gunmaker Winchester, the law threatened to drive Winchester out of business. Congress responded by permitting companies to appeal their loss of gun privileges to the Bureau of Alcohol, Tobacco and Firearms.

However, unfortunately, this loophole, this exemption designed for one company has been used as a second-chance club by tens of thousands of felons. Over 22,000 exconvicts have rushed to appeal in the last decade, and about one-third have walked away with reinstated gun privileges.

In the last 5 years, the program has cost taxpayers over \$20 million, as you indicated, Mr. Chairman. Last year alone, BATF spent over \$4 million in taxpayer hard-earned dollars helping these convicted felons get their gun rights back.

Now, who are these enterprising exconvicts who want to carry guns in our neighborhoods? A few who have successfully appealed, Mr. Chairman you mentioned one, Sherman Dale Williams. There is a Jerome Sanford Brower, who conspired to ship arms to help trained terrorists in Libya. He has gotten his gun-carrying privileges back. A John Wayne Young, who was convicted of assault and robbery, whose history of sex offenses goes back to age 13, he got his gun privileges back. And another sex offender who got his firearm rights restored was convicted of molesting his 14-year-old stepdaughter, and unfortunately the BATF argued that his felony was nonviolent.

It is obvious that this loophole is wrong. It is wasteful, it is outrageous, it rewards criminals, and it must be stopped.

We have heard a lot of rhetoric and finger-pointing right from Washington lately, Mr. Chairman, about who can be tough on crime, but no one should want the Federal Government in the business of granting gun furloughs. What few anticrime dollars we have should be spent on the police and fighting crime, not in rewarding felons.

While many people agree that this BATF program cannot be permitted to continue as it is, some say that if we limit relief to only nonviolent felons it would be acceptable, and I am afraid I heard that theory emanating from our friend, Senator Hatch.

Putting aside the elitist and morally dubious idea that we can separate out good exfelons from bad exfelons, this plan is really not practical for our judicial system.

If you narrow the program to merely nonviolent felons, how do you prevent the drug kingpin who is convicted of the nonviolent crime of tax evasion from applying for firearms relief, or a man arrested for manslaughter who plea bargains down to reckless endangerment—how do you prevent that person from getting their waiver approved? Should that person be granted relief? Under a narrower program, that exconvict would and might still be entitled to apply, so I would certainly oppose narrowing the legislation.

That brings me to my last point. Last week's Wall Street Journal has documented how the National Rifle Association has launched a massive ad campaign to recruit new members. This campaign targets the criminal justice system as being too easy on criminals and too meek in its attempts to keep crime off our streets, and I am sure later this afternoon you will hear that testimony from the NRA.

If the NRA does not endorse, in its entirety and most stringent form, this attempt to end these felon gun restoration programs, then the organization's rhetoric is really nothing more than cynical hypocrisy. The existing law only works to the benefit of convicted felons and it doesn't affect law-abiding citizens in the slightest.

If the NRA can, with a straight face, urge tougher criminal penalties on the one hand and endorse a program that rearms felons on the other, then they will truly lose any credibility to act on behalf of the law-abiding citizens, which is the majority of Americans, since their watchword has been, until now, "keep the guns out of the hands of criminals." We have heard it over and over and over.

Again, I want to thank you, Mr. Chairman, for inviting me to testify on this issue and for being such a strong supporter of this particular issue and a prime cosponsor here in the Senate. I offer all of my help, as does Mr. Feighan, as we seek to protect our communities from the scourge of gun violence.

I don't think there is a single greater testimony that can be received by this committee than just to see what happened this past week in Los Angeles, where unfortunately guns out on the street again killed people. You will find, Mr. Chairman, that some of those guns were in the hands of convicted felons.

Thank you very much.

Senator SIMON. I thank you.

I have just two questions. My colleague, Senator Hatch, mentioned nonviolent people, felons, should not be prohibited. The one instance you cite, selling weapons to Libya, would probably be considered a nonviolent crime, is that correct?

Mr. SMITH. Probably, at least under the theory under which BATF has been operating, if you deduce that theory from the applications that they have approved on people who have committed significantly violent crimes—at least most Americans would believe so.

I, like Senator Lautenberg, would frankly want to commend the BATF people. I think most of them feel that this is a waste of very valuable resources for their agency, and I would hope that they would be very much in favor of significantly reducing or stopping completely this loophole about having to go out and spend thousands of man-hours a year tracking down these convicted felons who have made application for reinstatement of their gun privileges. They certainly have a lot more to deal with than that, as you indicated, just by virtue of what happened this past week in Los Angeles and in other cities around the country.

Senator SIMON. And we are spending somewhere, as I understand it, between \$3,000 and \$10,000 apiece to get this privilege back to people who are convicted felons, and you and I have both had to go through the experience out in our State of Illinois and your district in Florida of running into people who are desperately in need of medical assistance, and we have to tell them there is nothing we can do for you.

Mr. SMITH. Mr. Chairman, as you are well aware, because you are someone who knows my district and has been in Florida on occasion, I have a lot of elderly people. Ten thousand dollars would buy an organ transplant or a heart transplant to save a life, to extend a life 10, 20, or 30 years.

If you give the vast majority of Americans a choice between spending that \$10,000 to do that for their mother or father or for their wife or husband against \$10,000 that might be spent to give a shipper of weapons to Libya or a convicted armed robber and sexual child molester his gun privileges back, what do you think the majority of Americans would choose?

It is a somewhat crass way of putting it, but it is an absolutely unfortunate, inescapable reality that you and I and the rest of the Members of Congress have to deal with every day.

Our role in Washington has always been a matter of choices. What do we choose to fund, what do we choose not to fund? And I would believe if you put this to a vote, the vast majority of Americans—even members of the NRA, those law-abiding citizens that are members, good, decent people, would most likely choose not to give felons back the right to carry a weapon if it meant taking that money from some other program which would be very, very valuable.

So I don't think you can put it in any more basic terms than that, Mr. Chairman.

Senator SIMON. We thank you very, very much for your leadership and your testimony.

Mr. SMITH. Thank you very much.

Senator SIMON. Our next witness is Andy Vita, the Chief of the Firearms Division of the Bureau of Alcohol, Tobacco and Firearms, and he will be accompanied by Mr. Buckles, Deputy Chief Counsel.

We are pleased to have you here, Mr. Vita, and we look forward to getting some wisdom from you here now.

STATEMENT OF ANDREW L. VITA, CHIEF, FIREARMS DIVISION, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, ACCOMPANIED BY BRADLEY BUCKLES, DEPUTY CHIEF COUNSEL, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Mr. VITA. Good afternoon, Mr. Chairman. In the interest of time and with your approval, I would like to provide a statement to synopsize the written testimony which I will submit for the record.

Senator SIMON. It will be. And let me just say to all the witnesses, we are going to confine your oral testimony to 5 minutes so we can have time for questions and we will enter your full statements in the record.

Mr. VITA. Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today and provide you with testimony regarding our response to S. 2304, the Stop Arming Felons Act.

I will begin by saying as the Agency which has enforced the Gun Control Act since its inception, that has diligently administered the relief provisions mandated by Congress, we are convinced that this bill is properly focused. However, we do have several suggestions to offer the subcommittee concerning the scope of persons that will be affected by this amendment and for other amendments to the provisions it addresses.

Our track record in the granting of relief applications has been consistent since Congress first passed the enabling law in 1965. ATF has approved approximately one-third of the applicants it has received. In each instance, we have only granted approvals in those cases which were clearly warranted after the completion of a rigorous background investigation. Individuals with convictions for violent crimes are likely to be rejected.

We have provided you with additional data regarding our relief program in an attachment to our written presentation.

Since the current law was amended in 1986, an amendment which changed the definition of a crime punishable by imprisonment for a term exceeding 1 year, we have found the relief issue has been intensified. We have been placed in a position of having to conduct expensive background investigations only to find that the applicant does not need relief.

Since 1968, the law has provided that no disability exists if the conviction has been pardoned, expunged, set aside, or if the convicted person has had their civil rights restored. It assumes that State laws are relatively uniform regarding these procedures and that they are being granted on an individualized affirmative basis.

Unfortunately, these assumptions are not correct. As a general rule, it is no longer correct to say that a convicted felon is prohibited from possessing firearms. This fact has produced far more adverse impact on efforts to keep firearms out of the hands of violent felons and drug traffickers than the problems currently associated with the process of relief.

We believe that all individuals who have been convicted of violent felonies and all individuals who have been convicted of serious drug offenses should not be eligible for relief. In determining who these individuals are, we would suggest that the bill be patterned after the definition of a violent felony and serious drug offense, as contained in 18 U.S.C. 924(e).

We would also recommend that all other categories of disabled individuals be barred from relief consideration except those individuals who have been dishonorably discharged from the Armed Forces as a result of a nonviolent offense.

This would serve to narrow the field of relief applicants to only those individuals who have been convicted of nonviolent crimes and/or those individuals who have been dishonorably discharged for nonviolent offenses. It would also relieve us of the awesome responsibility of attempting to predict the future conduct of individuals whose odious past histories gives us all cause for concern.

While it is true that no one's rap sheet looks attractive, it has been our experience that the core of relief applicants are persons who are not recidivists and who for many years have led exemplary lives since they were convicted for a nonviolent offense. Our suggestion to allow these individuals, both civilian and military, to be entitled to seek relief is based on that experience.

In suggesting that some categories of individuals be allowed to seek relief, we would also urge the subcommittee to consider requiring such applicants to provide and pay for drug screening, subject to the discretion of the Secretary.

A study of the persons we granted relief to from 1985 through 1989 revealed that 47 grantees were rearrested on new offenses. Of those 47, we found that 20 had records of substance abuse, including alcohol, in their original offense, their subsequent arrest, or both.

Finally, we urge the subcommittee to consider a further reform to section 921(a)(20) that would require that pardons, set asides, expunctions, and restorations of civil rights for all felony convictions expressly authorize the individual to ship, transport, receive, or possess firearms.

In spite of the many problems we have encountered in pursuing this affirmative process of restoration, we have established high standards for impartiality, thoroughness, and concern for the public safety. We believe that any individual whose past violent criminal performance has demonstrated a disregard for these values should be held to even higher standards before their firearms privileges are restored.

At this point, Senator, I will be happy to answer any questions you might have.

Senator SIMON. Thank you very much.

When you talk about saying that persons convicted of a serious drug offense or violent felony are the persons who would be excluded from getting their weapons back, what about the example that was used of somebody convicted of income tax evasion—they couldn't get them on the drug offense but they knew they were getting too much money. Do they get their weapon back under this proposal?

Mr. VITA. They would have an opportunity to apply for relief, Senator. They would not automatically get their rights restored. There would still be an affirmative review process that we would administer or the States would administer, depending on the way the legislation worked out.

Senator SIMON. And the case of the person who was involved in arms sales to Libya?

Mr. VITA. That again, Senator, as defined by the law would not be a violent felony. Therefore, they would be eligible to apply for relief, which would not mean they would automatically get their rights restored, but through the affirmative review process we would have an opportunity to conduct a thorough investigation of that individual before granting relief.

Senator SIMON. But in this case that has been done.

Mr. VITA. Yes, in that one case that you alluded to it had been, yes sir.

Senator SIMON. And you mentioned, I think, 47 cases where people subsequently were found guilty or arrested over how long a period?

Mr. VITA. That was a 5-year period, from 1985 to 1989.

Senator SIMON. And how much does it cost you per case to investigate?

Mr. VITA. That is something, Senator, I would have to research and provide for the record. I know over the period of about 5 years it cost us approximately \$3.5 million a year to administer that program. I would have to research to find out what it cost us for each investigation, which I can provide.

Senator SIMON. \$3.5 million, and on an average year, you restore how many licenses?

Mr. VITA. I believe our records show that there is about 300 a year, Senator.

Senator SIMON. 300 a year.

Mr. VITA. We conduct about a thousand investigations and normally approve approximately a third.

Senator SIMON. So you are talking about a little more than \$10,000 a case, on the average.

Now, when you talk about—and maybe I misunderstood, but you are talking about some kind of a fee to cover this, is that correct?

Mr. VITA. We would favor a fee for service in that regard, yes.

Senator SIMON. And what kind of fee would you be talking about?

Mr. VITA. Well, it would be a fee that the applicant would have to pay. As of right now, I couldn't tell you exactly what that fee would be, but appropriate to the cost of conducting the investigation.

Senator SIMON. When you say appropriate to the cost of conducting the appropriation, you are talking about something like \$10,000 then?

Mr. VITA. If that is what it worked out to. There is a lot of administrative costs that go into our activity aside from just processing the application, maintaining the records on relief applicants, and also continuing and publishing records regarding those people that have been granted relief on a quarterly basis.

Senator SIMON. So what we are really saying is we would permit rich former felons to get their guns back, is that correct?

Mr. VITA. That I don't know, Senator.

Senator SIMON. Well, it looks like we are approaching that.

In terms of State law, how many people are getting guns back? Do you have any idea?

Mr. VITA. Not on a numerical figure, Senator. There are so many different States with so many different laws and regulations regarding that, it is very difficult for us to assess how many are getting their rights back.

Senator SIMON. And in terms of the cost, the \$3.5 million has been a fairly stable figure, not going up, or is it gradually climbing up, or what are we talking about?

Mr. VITA. It has been fairly stable for the last 3 or 4 years, and I think next year we anticipate or we project about \$3.6 million.

Senator SIMON. OK; and of the 300 who are given their privileges back, how many of those were convicted of drug sales or serious felonies, violent felonies?

Mr. VITA. That I would have to research, Senator, but I don't believe too many of them are. I think that is one of the issues that we resolve administratively within our own Agency. When the thorough background investigation is done, if an individual's character, record, or reputation indicates that they would be a danger to the public safety, we would not grant a relief in that case.

Senator SIMON. All right, but just off the top of your head—and maybe your counsel or someone else from your bureau has some idea—of the 300, are we talking about 30, 60, 100, or 150 people who have been convicted in connection with drugs or violent crime?

Mr. VITA. I would say the percentage would be very little if any, Senator.

Mr. BUCKLES. I don't really know. I would suspect it would be more like a handful of that number would have that type of—

Senator SIMON. So, if we changed the law to make it apply only to those who have been convicted of violent crimes and those who have been convicted of drug abuse, we are really not changing the program very much?

Mr. BUCKLES. Well one of the things it would do is alter the number of applications we would have to investigate. It may not alter the number of reliefs finally given, but it would certainly make a lot of people ineligible and save the resources of investigating those to begin with.

Senator SIMON. Some of my colleagues may have additional questions they may wish to ask for the record.

Thank you very much.

Mr. VITA. Thank you, Senator.

[The prepared statement of Mr. Vita follows.]

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Statement by Andrew L. Vita

Chief,

Firearms Division

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear today and testify concerning S. 2304, the "Stop Arming Felons (SAFE) Act."

S. 2304 would amend the Gun Control Act of 1968, in two major respects. First, it would preclude individuals from obtaining relief from Federal firearms disabilities. Second, the bill would amend the definition of "crime punishable by imprisonment exceeding one year" to provide that persons convicted of crimes of violence would still be considered "convicted", notwithstanding a restoration of civil rights. I would like to briefly address each of these issues.

Under current law, a person convicted of a crime punishable by imprisonment for a term exceeding one year may not lawfully possess, receive, ship, or transport firearms. In addition, other proscribed persons, *i.e.*, fugitives from justice, persons committed to mental institutions or adjudicated mentally incompetent, persons dishonorably discharged from the Armed Forces, citizens who have renounced citizenship, illegal aliens, and illegal drug users or addicts, are also under these disabilities.

Pursuant to the Act, ATF may grant relief from these disabilities where it is determined that the applicant for relief will not be likely to act in a manner dangerous to public safety and that the granting of relief would not be contrary to the public interest.

I have attached to my testimony certain statistics concerning ATF's handling of relief applications.

The bill would have the effect of precluding prohibited individuals from obtaining relief regardless of the nature of the crime for which the person was convicted. Thus, the bill makes no distinction between felons who committed a violent crime and those whose felonies were non-violent. Persons other than individuals, i.e., corporations, partnerships, and associations, would continue to be eligible for relief.

While we support the intent of the bill to permanently bar certain individuals from possessing firearms, e.g., fugitives from justice, persons committed to mental institutions or adjudicated mentally incompetent, citizens who have renounced citizenship, illegal aliens, and illegal drug users or addicts, we have reservations about the imposition of a permanent disability on persons who have committed non-violent felonies, e.g., tax violations, where possession of firearms generally does not pose any threat to the public safety. We have similar reservations about disqualifying from relief individuals dishonorably discharged from the Armed Forces as a result of a non-violent offense.

Therefore, we recommend that the bill be narrowed to preclude from relief fugitives from justice, persons committed to mental institutions or adjudicated mentally incompetent, citizens who have renounced citizenship, illegal aliens, illegal drug users or addicts, and those felons whose disability arose from acts of violence or serious drug crimes. To accomplish this recommendation, the bill should refer to the definition of violent felony and serious drug offense in section 924(e). This is the definition which is used for purposes of imposing the mandatory penalties provided by the Armed Career Criminal Act, and is broader than the definition of crime of violence contained in section 924(c) which only includes Federal crimes.

The second major provision of the bill would amend the definition of "crime punishable for imprisonment for a term exceeding one year" in section 921(a)(20). Under current law, any conviction for a crime punishable by imprisonment for a term exceeding one year which has been expunged, set aside, or pardoned or with respect to which the convicted person has had civil rights restored is not considered disabling for purposes of the Act unless such expunction, setting aside, pardon or restoration expressly provides otherwise. The rationale behind this provision was to require Federal adherence to any individualized State determination removing a convicted persons's firearms disabilities. In addition, it was predicated on the assumption that State laws regarding pardons, expunctions, set-asides and restoration of civil rights uniformly restore firearms rights unless they are expressly withheld. Further, it assumed that the pardon, expunction, set-aside or restoration is done on an individualized basis

rather than occurring automatically at the expiration of a prescribed period of time. It also assumes that State officials handling these procedures restore firearms rights unless otherwise stated.

Unfortunately, our experience has shown that these assumptions are not correct. The procedures for pardons, expunctions, set-asides and restorations among the various States are far from uniform. Such proceedings do not generally erase the legal existence of prior convictions nor remove all State disabilities imposed on felons. Neither do they uniformly involve a considered judgment whether the individual deserves the pardon, expunction, set aside or restoration. In fact, in some States, civil rights are restored automatically, upon a persons's completion of or discharge from the sentence, thereby permitting dangerous felons immediately to purchase a firearm upon their release.

The bill's amendment to section 921(a)(20) would provide that with respect to crimes of violence, the person would be reconsidered convicted under the Gun Control Act irrespective of any restoration of civil rights. We support this provision but believe that it should be extended to those convicted of serious drug offenses as well. In addition, the amendment should be extended to provide that pardons, expunctions, set asides and restorations of civil rights expressly authorize the person to ship, transport, receive or possess firearms. If our recommendations were adopted, the proposed amendment to section 921(a)(20) would require non-violent felons to receive a pardon, expunction, set aside or restoration of rights expressly restoring firearms rights and it would preclude violent felons and

persons convicted of serious drug crimes from having their firearms rights restored.

As an alternative to the bill's amendment to section 921(a)(20), we would recommend deleting the reference in section 921(a)(20) to "restoration of civil rights" and provide a procedure whereby a person could obtain relief from firearms disabilities in the State in which convicted. We submit this alternative proposal because the "restoration of rights" provision has proven to be extremely troublesome to administer, particularly since Federal courts have given differing interpretations to its meaning. For example, certain courts have held that a State restoration procedure relieves persons convicted of Federal crimes, and other courts have held that a "partial" restoration of firearms rights, *i.e.*, right to possess longguns but not handguns, removes the Federal disability as to the firearms rights which have been restored.

Our proposal would retain the principle that Federal law should recognize any individualized State determination removing a convicted person's firearms disabilities and yet require an affirmative act by the appropriate State authority to restore a person's firearms rights. The only exception would be that we would not recognize State restorations where the person was convicted of a serious drug offense or violent felony. This would be consistent with our proposal to make such individuals ineligible for Federal relief as well.

Finally, the inclusion of language to require individuals to provide and pay for drug screening, subject to the

discretion of the Secretary, would be a significant step in closing an existing gap in the relief process. With the passage of the Gun Control Act, Congress has consistently recognized the importance of keeping firearms out of the hands of drug users. Drug screening of relief applicants would provide an effective means of further determining a relief applicant's eligibility for restoration of their firearms rights.

Thank you for the opportunity to express our views to you on this very significant issue.

I'll be happy to take your questions at this time.

Attachment

- During the 10-year period covering 1981 through 1991, we conducted 13,790 relief investigations. We granted relief to 5,598 applicants and denied relief to 3,498 applicants. In the remaining 4,694 relief investigations, we determined that the granting of relief was not required because of various factors, e.g., the applicant was ineligible under State law, the application was withdrawn or abandoned, the applicant was ineligible because of being on parole or probation, or the applicant was not disabled under the law.
- We conducted a 5-year study of relief grantees covering the period of 1985 through

1989. We found that out of 1,781 grantees, only 47, an average of 2.6 percent per year, had been rearrested since the granting of relief. This recidivist rate is indicative of the exacting job we have done in this affirmative process.

- During the 5-year period of fiscal years 1985 through 1990, we expended over \$17,471,000 for relief from disabilities investigations.

Senator SIMON. Our next panel, Dewey Stokes, the president of the Fraternal Order of Police and a veteran before this committee; Richard Wells, the cochairman, of the Legislative Committee of the National Association of Police Organizations; Chris Sullivan, the legislative director of the International Brotherhood of Police Officers; and Josh Sugarmann, the executive director of the Violence Policy Center.

We are very pleased to have you here, and since your name is listed first here, we will call on Dewey Stokes first.

PANEL CONSISTING OF DEWEY R. STOKES, NATIONAL PRESIDENT, FRATERNAL ORDER OF POLICE; RICHARD WELLS, CO-CHAIRMAN, LEGISLATIVE COMMITTEE, NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS; CHRIS SULLIVAN, LEGISLATIVE DIRECTOR, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS; AND JOSH SUGARMANN, EXECUTIVE DIRECTOR, VIOLENCE POLICY CENTER

STATEMENT OF DEWEY R. STOKES

Mr. STOKES. Mr. Chairman and members of the committee, I want to thank you for the opportunity to testify today. We have submitted written testimony, and if it will assist I would like to just give a brief summary of the testimony because I believe you have heard most of the items that we covered—the cost of felons being granted the privilege of owning a firearm at a cost of \$3.5 million a year to the ATF. I believe that those funds could obviously be expended in greater efforts on behalf of the ATF in their investigation of criminals and gangs and gang violence today.

We of the FOP applaud your efforts to instill S. 2304 into law and its intent to correct two major loopholes that we have heard here today, that have been testified before and talked about. For ATF to be forced to waste time and money and manpower on this year I find to be repugnant to law enforcement in this country. To waste that time to give felons the right to legally own a firearm is ludicrous. We believe that that waste of manpower and public funds could be expended in greater areas, and some of them you have talked about and outlined here today.

We would like to see a return to the pre-1968 gun law act when it was clearly defined what a felon was and who a felon is throughout the country. As you heard here earlier, each State sets up a separate area dealing with the convicted felon and when he or she may possess a firearm and when he or she possesses their civil rights. We believe that there are Federal guidelines and guidance needed in this area in the future, and as it was prior to the 1968 gun act.

I will let our testimony speak for itself, but convicted felons today make up over 60 percent of the crimes committed in this country every day. If we can impede those felons from getting a firearm and save taxpayers money, tell me what is wrong with that program.

Why give them the right to legally own a firearm to abuse and misuse it again? Why give drug dealers the right to own a firearm to protect their stash, to coerce and intimidate the public, as we have seen in the past? We find this in law enforcement repugnant.

We find that law enforcement officers are more at danger with a felon in possession of a firearm. Today in this country, we see felons that are sentenced to life imprisonment serving 6 years, 8 years, or 10 years. If that is a life sentence, that is not what was intended by the law.

We believe that law enforcement needs a stricter judicial following of the law, not a weakening of the cases that we see here where ATF and public funds are wasted to accommodate a felon.

I don't understand what is a violent crime. Some people would argue that rape is not a violent crime. I would argue the contrary, that rape is a violent crime, and anyone that uses a firearm in the commission of that is a rapist, is a violent offender.

I would argue that a person that abuses his or her right to transmit legal firearms in this country and abuses it, such as Mr. Floyd who came to Ohio and purchased firearms legally over the counter and went back to Philadelphia and resold those weapons, hundreds of them, and one of them was used to kill a police officer—I would find that that person committed a violent act. He provided the implement to commit that violent act.

And as you heard, the Bureau of Justice statistics over 1983, 62.5 percent of these people are rearrested within 3 years. That to me is a danger that we put on the streets of America that the loophole in the law that was intended to correct a problem went overboard—overboard in its correction and has permitted more felons to own firearms and to prey on our public and our streets today unnecessarily.

I ask you to please close this loophole, these two loopholes, and to extend it to those people who commit crimes where they abuse the right to own, operate, or sell firearms, where those individuals are using it in violent crimes, and to extend it to cover those people that are out there preying on our society and making life more difficult for citizens and for law enforcement.

We cannot afford to let the violence in this Nation continue to perpetuate itself as it has over the last few years. Give back to the citizens the right to deprive the convicted felons—not law-abiding citizens but convicted felons—give them the right to protection, to say to them that they cannot legally own a firearm in this country. Give back to law enforcement another tool to impede felons from preying on our citizens and making law enforcement a little bit more dangerous than it is today.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Stokes follows:]



GRAND LODGE
FRATERNAL ORDER OF POLICE

520 SOUTH HIGH STREET, SUITE 205 • COLUMBUS, OHIO 43216-5885 • (614) 221-0160 • FAX (614) 221-0815

DEWEY R. STOKES
NATIONAL PRESIDENT

TESTIMONY OF
DEWEY R. STOKES
NATIONAL PRESIDENT,
FRATERNAL ORDER OF POLICE
BEFORE THE
U.S. SENATE JUDICIARY SUBCOMMITTEE ON
THE CONSTITUTION
MAY 5, 1992

Mr. Chairman, Members of the Committee:

I thank you for this opportunity to testify concerning S. 2304, legislation concerning firearms disability relief.

There is an old saying that you'll hear if you spend any time with working police officers. It goes, "Get me once, shame on you. Get me twice, shame on me."

The process of spending scarce dollars, and scarcer manpower, on restoring to felons the privilege of legally owning a gun seems to me to be little more than helping them to "get us twice." I don't understand why we do it and, I assure you, the rank and file officers I represent don't understand either.

An effort to curtail this practice should be supported.

In the first place, it is unnecessary. Truly rehabilitated convicts can apply for a pardon or expungement of their convictions. Doing away with the conviction does away with the disability. The Federal relief process is only another way to do the same thing.

In the second place, it is expensive and not only in the terms of dollars. To do this properly means a full field investigation of the applicant. This costs thousands of dollars. Even if we made the applicants pay for it, we can't replace the work time of ATF agents and support personnel. What is the workload cost for this procedure -- \$3.5 million per year. Gentlemen, that is close to, or greater than, the annual effort of the ATF agents in any of your States for capturing armed criminals, bombers, and arsonists. This is a ridiculous waste of resources.

Also ridiculous are the efforts of some lobbyists who oppose the relief provision attempting to place the blame for the provision on the Bureau. Unfortunately, the clear direction which the law has taken since 1968 is to allow more felons access to guns and to push the Bureau of Alcohol, Tobacco and Firearms to be more lenient in considering reliefs from disability.

In 1968, when Congress passed the Gun Control Act, it established a pretty simple definition of what kind of conviction would bar someone from legally possessing a firearm which had moved in interstate commerce. If a person were convicted anywhere of a crime punishable by more than one year imprisonment, they couldn't legally receive or possess a gun. Generally, to be able to regain the privilege of receiving a firearm, they had to obtain either a pardon from the President (if the crime was Federal) or get relief from ATF.

Of course, there was an important restriction in order to be able to get relief -- the person could not have been convicted of a crime which involved a weapon.

The definition of a disabling crime established a uniform standard throughout the United States. To some this seemed like a good idea for a Federal law. Personally, I don't know why spending money to give felons their guns back was a good idea.

In 1986, however, significant changes were made in the law. The definition of a disabling conviction was changed dramatically. Now it depends on what the State law says where the person was convicted. The different States say a lot of different things. Some say a convicted felon doesn't lose his or her privilege of owning a firearm if they were convicted of mass murder. Some States say it is determined by the size of the fine. In addition, a conviction doesn't count if the convict receives a pardon, an expungement, a relief, or gets their civil rights restored.

"Getting civil rights restored" is a good one. It can mean that if a person gets back their right to vote they can also get a gun. Instead of requiring that a pardon or restoration of rights must expressly give back the privilege of owning a gun, the law now says a former convict can get back their guns if the pardon or restoration is silent on the issue.

I hope this committee will consider that, since 1986, tens of thousands of felons now automatically regain the privilege of having firearms with no questions asked.

The relief from disability law was also changed in 1986. Anyone can now apply. It doesn't matter what the crime was or whether or not a weapon was involved. If they don't like A.T.F.'s decision, they can now go directly to a U.S. District Court for a review. I don't suspect that any reasonable person thinks someone was going to go to court and claim that ATF was too easy on them.

The point of that change was to encourage the Bureau to call the close ones in favor of giving the applicant their guns back.

I am sure that other witnesses would assign other interpretations on events, but if I may, I think the bottom line is that the actual direction taken by the law since 1968 has been to allow more felons legal access to guns and to make it more difficult on ATF to deny those who apply for the relief investigation.

In spite of this, my friends in the Bureau have consistently made the best they could of this. Only about one of every four people who request an application from ATF will submit it. Of those who do submit it, only one in three will be granted relief. Less than five percent of the people who receive it are ever rearrested.

My question, however, is not whether ATF does a good job, but why we have been making them do this particular job? Why is it in the public's interest to have a special program, no matter how well carried out, to allow people who have committed the most serious of crimes to have guns?

Why when it is hard to come up with the resources to put more ATF agents on the street to go after armed criminals do we require such significant resources to make it possible for former convicts to be armed legally? I think the \$3.5 million being spent each year could be utilized in a more effective manner by ATF if they were given the option in this matter.

From the point of view of the Fraternal Order of Police, and those whom we represent, this is exactly the type of program we find which causes citizens to question whether our criminal justice system makes any sense.

On behalf of the Fraternal Order of Police and our 237,000 members, I applaud this committee for looking into this issue. I will be happy to answer your questions.

Senator SIMON. Thank you, Mr. Stokes, for an excellent statement.

Richard Wells?

STATEMENT OF RICHARD WELLS

Mr. WELLS. Good afternoon, Mr. Chairman.

I appear here today in my capacity as legislative——

Senator SIMON. Pull that microphone just a little closer to you there.

Mr. WELLS. I appear here today in my capacity as legislative chairman of the National Association of Police Organizations, consisting of more than 135,000 rank-and-file officers from across the United States.

I am here today to offer NAPO's support to S. 2304, the Stop Arming Felons Act of 1992, which you and Senators Lautenberg, Dixon, and Metzenbaum have sponsored.

However, while I am here I wish also to express NAPO's thanks to you and the other members of the subcommittee for the overall leadership and support you have provided on law enforcement issues.

As current events demonstrate once again, the responsibilities and problems law enforcement officers in America face are complex and many, and the more understanding, assistance, and support we receive from legislators such as you, the better off our country will be.

As Government employees, law enforcement officers are firm believers in the role that government can and must play in preserving and protecting our free society and institutions, and, as the U.S. Constitution declares, protecting and ensuring domestic peace and tranquility.

At the same time, we believe that government must not be static and unresponsive to real public needs, nor should it be wasteful of scarce public resources. It is for this reason that on behalf of the local, State, and Federal law enforcement officers represented by NAPO, I am appearing before you today in support of S. 2304, that would close loopholes in current Federal law permitting convicted felons to own and trade in firearms.

There are several reasons why NAPO supports such legislation. First, we believe that once an individual has been convicted of a felony, at a minimum such an individual should be permanently deprived of his right to lawfully obtain and own a firearm.

Our view on this matter is supported by sheer common sense, for we believe that a felony conviction, be it State or Federal, is a situation as to which a permanent disability to own a firearm is reasonable. This is because we believe that in the process of society's balancing the right of individuals to bear arms with the right of society to protect itself from those who have conclusively demonstrated their criminal tendencies through a felony conviction, the rights of society must prevail.

For whatever may be one's view regarding a civil right to bear arms, we believe that once an individual has been convicted to a felony, entitlement to obtain or own a gun should be extinguished permanently.

Similarly, that a Federal agency is presently involved in entertaining and processing, at substantial public expense, petitions of convicted felons to have their gun ownership rights restored seems utterly wrong-headed and unjustifiable under the circumstances. Indeed, it is one of those situations that have led members of the public to lose confidence in government.

We believe that if a man or woman in the street, or a crime victim, were told that the Federal Government had a procedure costing the public an average of \$10,000 per case to determine whether convicted criminals should have their right to own a gun restored, they would be not only amazed but appalled, and they would be even more shocked to learn that millions of dollars in Government funds have been spent in this unnecessary exercise. Indeed, it is such reports of how Government funds are spent that undermine the peoples' confidence in our ability to use their hard-earned tax dollars wisely.

Nevertheless, under existing law, members of the Bureau of Alcohol, Tobacco and Firearms are forced to conduct detailed investigations concerning whether convicted felons should have their gun ownership rights restored. This procedure places an important law enforcement agency, many of whose agents have been killed in violent confrontations with armed felons, in the business of conducting investigations concerning whether certain convicted felons should be rearmed.

This circumstance is a clear case of "turning the blade inward" upon a law enforcement agency and its officers who are charged with enforcing existing gun control laws and fighting against the scourge of violent crime in our society. To ask a Federal law enforcement agency to decide which convicted felons should be allowed to be armed seems utterly paradoxical and incongruous.

Rather, we in NAPO believe that this wasteful process should be terminated. Conviction of a felony should be attended by a permitted loss of firearm ownership rights, and an effective and courageous law enforcement agency such as the Bureau of Alcohol, Tobacco and Firearms must be removed from the responsibility of having to make case-by-case determinations regarding which convicted felons should be armed.

In short, we in NAPO believe that S. 2304 should be enacted promptly and that the existing procedure should be dispensed with. Indeed, if anything is required it is greater control over the distribution of lethal weapons, such as is contained in the pending Brady bill, which would impose a national minimum waiting period upon handgun purchases, and the DeConcini bill, which has passed the Senate, which would ban the manufacture and distribution of certain assault weapons.

While we in NAPO wait and also urge legislative action on these measures, we also urge prompt support of S. 2304. Thank you.

Senator SIMON. We thank you very much, Mr. Wells.

Mr. Sullivan?

STATEMENT OF CHRIS SULLIVAN

Mr. SULLIVAN. Thank you, Mr. Chairman.

I would like to say at the outset that we support S. 2304. I think my colleagues have done a pretty good job of addressing the relief

from disabilities issues as well as the previous panel, so I am going to concentrate my remarks on the definition of conviction in section 921 of title 18.

Mr. Chairman, as you know, the Firearm Owners Protection Act of 1986 repealed the single Federal definition of a disqualifying conviction that applied throughout the country and replaced it with a definition that relies on the practices of the 50 States, which is how we came to the State loophole on the chart.

It provides for the automatic return of a felon's right to own firearms when the State returns civil rights to former convicts, unless firearms when the State returns civil rights to former convicts, unless firearms rights are expressly prohibited with the return of civil rights. This has resulted in a hodgepodge of laws and court interpretations and has hampered effective law enforcement.

For instance, Mr. Chairman, in Montana and Mississippi, felons never lose their firearm rights, even upon conviction of a felony. These felons could be presented with any type of firearm the day that they are released from prison, indeed when they step outside the prison gates.

Only 10 States have laws which would permanently prohibit felons from possessing any type of firearm. In addition, States such as Colorado, New Mexico, and North Carolina automatically restore firearms rights after a waiting period, which ranges usually between 5 and 15 years. States such as Indiana, Massachusetts, and Maine combine a waiting period with a review process to authorize firearm possession.

The IBPO believes felons, especially those convicted of violent crimes, should forever forfeit their rights to firearm ownership. Therefore, we believe it incumbent upon the Congress to enact a clear national definition of what a conviction is so that no confusion exists among the States on the reinstatement of firearms rights, thereby closing the State loophole.

Section 2 of S. 2304 accomplishes this goal by prohibiting those who are convicted of crimes of violence. We suggest additional changes, as did president Stokes, that would pick up major drug trafficking offenses as well because of the strong and proven relationship between drug trafficking and the possession and subsequent use of firearms.

In conclusion, Mr. Chairman, we have fought hard over the last few years to enact tough drug, crime, and gang legislation. In recent years, we have particularly targeted the violent offender. We see no reason why we should be giving these people their guns back. We support your legislation and will work for its enactment.

[The prepared statement of Mr. Sullivan follows:]



INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS

2011 Crystal Drive, Suite 206 Arlington, VA 22202

703/979-0290

Fax 703/979-0294

AFL/CIO



Testimony Of The

International Brotherhood of Police Officers

Introduction

Good morning, Mr. Chairman, I am Chris Sullivan, Legislative Director for the International Brotherhood of Police Officers, which represents 40,000 federal, state, and local police officers across the country. The IBPO is an affiliate of the Service Employees International Union, the fourth largest union in the AFL-CIO. On behalf of our membership, we are pleased to appear before the Constitution Subcommittee of the Senate Judiciary Committee to indicate our support for your bill S. 2304. In addition, we would like to thank you personally for the leading role you have played in securing responsible drug, crime, and gun legislation during your tenure in Congress. We look forward to continuing this relationship with you.

Definition of Conviction Pursuant to 18 U.S.C. 921

Today we are here to present our views on S. 2304, the Stop Arming Felons Act (SAFE) of 1992. One purpose of the bill would be to permanently prohibit the possession of firearms by persons who have been convicted of a violent felony. In doing so, it would close a loophole created by a provision in the Firearm Owners Protection Act of 1986. As you are well aware, 18 U.S.C. 922(g)(1) currently prohibits convicted felons from possessing all types of firearms. However, the Firearm Owners Protection Act repealed the single federal definition of a disqualifying conviction that applied throughout the country and replaced it with a definition

that relies on the practices of the 50 states. This definition stipulates that "what constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held." In addition, this section holds that "any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for the purposes of this chapter," thereby, providing for automatic return of a felon's right to own firearms when the State returns civil rights to former convicts, unless firearms rights are expressly prohibited with the return of civil rights.

Unfortunately to those in law enforcement who are charged with the investigation, apprehension, and incarceration of violent offenders, this loophole contravenes the original intent of the law, and indeed, common sense. The hodgepodge of state laws and court interpretations has hampered effective law enforcement, especially in regard to felon-in-possession prosecutions. In at least 2 states, felons never lose their firearms rights even upon conviction, and when their civil rights are restored, they are free to possess whatever weapon they choose (Montana and Mississippi). Only 10 states have laws which would permanently prohibit felons from possessing any type of firearm. (Arkansas, California, Connecticut, Hawaii, New Hampshire, Oklahoma, Pennsylvania, Rhode Island, Utah, and Wyoming). Other states allow automatic restoration of firearms rights after a waiting period (Colorado, New Mexico, Louisiana, Kansas, North Carolina). Additionally, some states combine a waiting period with a review process to authorize firearm possession (Indiana, Massachusetts, Maine).

The IBPO believes felons, especially those convicted of violent crimes, should forfeit their rights to firearm ownership permanently. Therefore, we believe it incumbent upon the Congress to enact a clear national definition of what a conviction is so that no confusion exists among the states on the reinstatement of firearms rights. This definition should strengthen the overall

prohibition barring felons from receiving and possessing firearms. Section 2 of S. 2304 accomplishes this goal by prohibiting those who were convicted of crimes of violence as defined in 18 U.S.C. 924(c)(3). We suggest additional changes that would pick up major drug trafficking offenses, perhaps as defined in 18 U.S.C. 924(c)(2). Because of the strong and proven relationship between drug trafficking and the possession and subsequent use of firearms, the IBPO believes that in addition to violent felons, convicted drug traffickers should forever abandon firearms rights.

Relief from Disability Issues

In addition to kicking the issue back to the practices of the states, Mr. Chairman, 18 U.S.C. 925 allows convicted felons another avenue of appeal. If the state or federal laws prohibit the felon from possessing a firearm, the felon can apply to the Bureau of Alcohol, Tobacco, and Firearms for relief from disability. Frankly, we are unsure why felons are allowed both administrative and judicial appeals to once again become armed among law-abiding citizens. However, we in no way are criticizing the work or efforts of ATF. Indeed, ATF is merely carrying out a mandate given to them by Congress, a mandate which they opposed in 1986. In fact, ATF has done an excellent job in the difficult task of processing these reliefs. From FY88-FY90, ATF mailed out 11,740 applications for relief from disability, and received 2907 completed applications which required formal processing. Ultimately, 66 percent of formal applicants were not granted relief.

In addition, it is clear that ATF does its homework in returning firearm rights. From 1985-1989, ATF granted 1781 relief applications, and only 47 persons were rearrested. This amounts to a 2.6% rearrest rate, which would clearly be the envy of many a parole or probation program. However well, ATF administers this program, however, there looms the larger question of why they have this duty at all. S. 2304, Mr. Chairman, would remedy this situation by amending 18 U.S.C. 925 (c), which provides for relief

from disability. Under this section as amended, convicted violent felons, as well as other disabled felons would lose their ability to file for administrative relief from disability. Administrative relief from disability would still be available for corporations, companies, and others within the definition of person under 18 U.S.C. 921 (a) (1) other than individuals. We applaud these changes as well.

Apart from our contention that violent felons should forever lose their gun rights, there remains the budgetary impact on ATF in processing these applications. In fact ATF committed over \$9.6 million from FY88-FY90 and almost \$17.5 million from FY85-FY90 for this purpose. We are quite sure that ATF can find more important uses for this expenditure of resources, including programs where ATF agents work side by side with our members, state and local officers.

Additional Issues

In addition, Mr. Chairman, as you are aware the IBPO has long supported the Brady Bill as one method to keep firearms out of the hands of felons while allowing law-abiding citizens the opportunity to acquire firearms. After many years of effort, we have never been closer to enacting this important legislation. However, the loophole created by the FOIA jeopardizes the potential effectiveness of the Brady Bill because any records check conducted will only show a conviction and would not show whether such conviction results in the loss of firearms rights. A strong definition of conviction is required to ensure that records checks conducted under the Brady Bill will be accurate. As we have long maintained, this will require dedicating substantial resources to improving the criminal records histories.

Conclusion

Mr. Chairman, we have fought hard over the past few years to enact tough drug, crime, gang, and firearms legislation to battle the law breakers in our society. Our goal is to have people live free from fear in their homes, streets, and communities, while

knowing that criminals will be swiftly apprehended and punished. In recent years, because of the depth of the crime problem and an ever-present scarcity of resources, we have particularly targeted the violent offender. We have enacted statutes that provide longer sentences and swifter punishment, and committed tremendous resources to hiring more police, more prosecutors, and more judges, and building more prison space to house these criminals. While the battle is far from over, we are making gains in the war against crime and drugs, and these gains are in part made possible by the more than 500,000 federal, state and local law enforcement officers, who put their lives on the line daily to secure a safer America. At a time when so much effort is being expended, it is illogical that we allow violent felons to regain their ability to possess or purchase firearms, and that ATF is forced to waste precious time and resources by investigating relief from disability petitions from felons who desire firearms. The time is now for Congress to act to permanently prohibit felons from obtaining firearms despite restoration of their civil rights or relief from disability petitions. In this vein, we endorse S. 2304 and look forward to working with you to secure its enactment as one step in our long struggle with crime and drugs.

Senator SIMON. Thank you very, very much.
Mr. Sugarmann?

STATEMENT OF JOSH SUGARMANN

Mr. SUGARMANN. Thank you. I am Josh Sugarmann, executive director of the Violence Policy Center.

We began documenting ATF's relief from disability program in 1989. The result is a 50-page study being released today, "Putting Guns Back Into Criminals' Hands". I would request the study please be submitted for the record, and copies are available today at the hearing.

We commend you also, Mr. Chairman, for your leadership and for your efforts to put an end to the abuse of the program, and we urge swift passage of S. 2304.

Our involvement in this issue, strangely enough, began with Alan Gottlieb, who is the head of the Citizens Committee for the Right to Keep and Bear Arms. In 1984, Gottlieb pleaded guilty to tax evasion. As a result, Gottlieb, like other convicted felons, lost the privilege of possessing firearms.

In 1989, we discovered that Gottlieb had regained the privilege of possessing firearms. Upon further investigation, we uncovered the extent of the relief from disability program.

As mentioned before, the program stems from a law passed in 1965 to aid firearms manufacturer Winchester. In 1986, the National Rifle Association-drafted McClure-Volkmer bill dramatically expanded the universe of convicted felons who could once again legally possess firearms.

McClure-Volkmer extended relief privileges to those who had been convicted of crimes involving a firearm, involuntarily committed to a mental institution, or who had violated the Gun Control Act of 1968. The law also expanded the ability of Federal courts to review decisions to ATF to deny relief. Finally, it amended Federal law so that restoration of civil rights by a State automatically restored the privilege of firearms possession unless a State law or individual pardon expressly excluded the ability to possess firearms. Prior to McClure-Volkmer, the Federal relief from disability mechanism was the only way convicted felons could regain their firearms privileges.

By law, ATF must print the names of those granted relief in the Federal Register. We expected to find a short list of those granted relief. Instead, we found thousands of names. The next question we found was who were these people? Although ATF lists the date and court of conviction for those granted relief, the crimes of conviction are not listed. We assumed that, like Gottlieb, most would have committed white collar crimes. We are wrong.

In a random sampling of 30 cases in which we contacted the courts of conviction directly, we turned up sexual assault, drug dealing, even terrorism. Soon after, we reached an agreement with ATF under the Freedom of Information Act to receive 100 cases of those granted relief from disability, which are documented in our report being released today.

Of the 100 cases sampled, 41 percent were involved in either crimes of violence, drugs, or firearms violations. The cases of those granted relief included sexual molestation of children, aggravated

rape, homicide involving a shotgun, illegal possession and sale of machineguns, Federal Firearms Licensee violations, and armed robbery.

After it became clear that those granted relief were not, as we had first assumed, sort of the cream of the crop of convicted felons, the next question we wanted to address was how much did the program cost. We thought at the most it might cost \$½ million a year. Once again, we were wrong.

We found that in fiscal year 1991, the program cost \$4.2 million and consumed ATF staff time equal to 40 personnel. Since 1985, more than \$21 million has been spent to put guns back into the hands of convicted felons.

Under the law, relief can be granted if “* * * the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.” Yet since 1985, 47 of those granted relief have gone on to once again commit crimes.

Under the FOIA, we received the crimes for which the recidivists were subsequently arrested. They included attempted murder, abduction-kidnapping, injury to a child, first degree sexual assault, possession and sale of an illegal machinegun, the sale of cocaine, LSD, and PCP, and perverted practice.

The severity of the original crimes of conviction compared with subsequent crimes committed illustrate the futility of attempting to predict future criminal behavior based on a felon's criminal past.

For example, in 1980, one of those seeking relief committed larceny. He received his relief in 1986. In 1987, he was arrested for attempted murder, two counts.

In a time of increasing firearms violence and limited law enforcement resources, we feel there is no way to justify ATF staff time and budget dollars to put guns back into the hands of convicted felons. We feel it is time to put an end to this convicted felons' second chance club once and for all.

Thank you.

Senator SIMON. Thank you very much.

Mr. Sullivan, you mentioned in your testimony—and since Mr. Vita is still here I may ask him to comment on this too. You suggest additional changes—I am quoting you now—that would pick up major drug trafficking offenses. Apparently those are not covered by convicted felonies right now, am I correct?

Mr. SULLIVAN. It was my understanding, Mr. Chairman, from reading S. 2304 that you permanently prohibited those convicted of violent felonies as defined by section 924(c)(3) of title 18. I had referenced as well section 924(c)(2). I assumed that it didn't pick up those by doing that.

Senator SIMON. OK; my staff confirms what you are saying, that our bill does not cover drug traffickers.

Mr. SULLIVAN. That is true, Mr. Chairman.

Senator SIMON. I guess Mr. Vita—you are nodding your head. I think you are confirming that.

Mr. SULLIVAN. It would pick them up in terms of not allowing them to apply for relief from disability, but under my reading of the bill it did not reference them in terms of the State loophole on permanent prohibition from owning firearms.

Senator SIMON. OK; well that is one of the things that comes out of hearings, we learn defects. Let me assure you we are going to get that one corrected.

Mr. Stokes, Mr. Sugarmann has testified that approximately 40 people at ATF are working full time on this. Do you think you can figure out something better for them to do than to work on this program?

Mr. STOKES. Oh absolutely, and I think ATF, in just the gang situation that they are working on, gang violence, we could use that throughout the country. That would be one area that I think ATF could go into.

The other is just merely saving—I never calculated out, and maybe Mr. Vita could—just what \$3.5 to \$4 million a year would mean to ATF in new agents to help us monitor the gangs and working with the local law enforcement on gang-related crimes, which has been very successful throughout the country.

Senator SIMON. So I understand, and I am sure no one who is listening, I hope, will misunderstand, you are not criticizing ATF as an organization, but simply this law, this loophole in the law that permits them to spend millions of dollars of our resources on rearming convicted felons?

Mr. STOKES. I think that what we testified here to today, no one is criticizing what ATF is doing. ATF is merely doing what the law directs them to do. What we are saying is let us redirect the law to correct and close those loopholes and get a strong definition of a convicted felon, what he or she is doing as a felon.

Prior to 1986, prior to the McClure-Volkmer bill, we had a pretty good definition of what a convicted felon was. And we should ripple that back to the States simply because, as Chris pointed out in his testimony, Mr. Vita did in his testimony, and I believe Congressman Smith testified to, how individuals reacquire their civil rights after their release from prison.

To find that only 10 States out of 50 permanently prohibit a felon from owning a firearm is, I think, a little bit out of whack and I think it needs some Federal guidance in this area.

Senator SIMON. Mr. Wells, you mentioned the Brady bill in your testimony. What is the tie-in between this bill and the Brady bill?

Mr. WELLS. Well, they both have to do with weapons getting into the wrong hands. The Brady bill provides a waiting period where a person just can't go into a gunshop and purchase a weapon and walk out with it. We feel that is very important.

This bill here keeps it out of the hands of people who have been convicted of a felony. If you commit a felony, that shows poor judgment. People who show poor judgment shouldn't have weapons.

Senator SIMON. And those of us who are sponsoring this, we are not suggesting this is going to solve the crime problem—

Mr. WELLS. Absolutely not.

Senator SIMON [continuing]. But it is one piece of the puzzle.

Mr. WELLS. It is another tool for law enforcement to make our job a little bit easier.

Senator SIMON. Mr. Sugarmann, you use the same figure that Mr. Vita did. Forty-seven of those who have been granted relief have gone on to be convicted of crimes again. But since your center spends some time in the area of crime and Mr. Stokes said 62 per-

cent of the crimes committed today are committed by convicted felons, the reality is while we know of 47 individuals who have been granted relief and have since that time been convicted of another crime, the numbers who have actually committed another crime is probably much greater than that.

Mr. SUGARMANN. Well basically we really don't know. I don't believe it was until attention was focused on this issue that ATF even began relooking at the recidivism rates of those granted relief. This is what they have done over just a 5-year period.

What we have found is that those granted relief earlier, in 1985, 1986, or 1987, have higher rates of recidivism. Those granted relief in the past 2 or 3 years have very low rates. They have had less time to commit crimes.

The real answer is we really don't know, and also you have to look at the fact that a lot of those people were granted relief much earlier and finally turned up in the system along the point somewhere, and the question is what crimes were they committing before they finally turned into the criminal justice system.

Senator SIMON. But the reality is, since we don't catch all the people who commit crimes, the probability is that those who have been convicted felons and have been granted weapons, the numbers are probably greater than that even though we don't know for sure; is that correct?

Mr. SUGARMANN. That is correct.

Senator SIMON. Mr. Sullivan mentioned one improvement in the bill that should be made. Do any of the rest of you have any suggestions for improvements that we should make?

Mr. STOKES. Senator, if I could—

Senator SIMON. Mr. Stokes?

Mr. STOKES [continuing]. I agree with Chris on the drug aspect of it and the definition, I believe, has to be clearly defined for the State and local.

As we are talking about here, Mr. Sugarmann is addressing the 100 cases on the violent criminals that were investigated by ATF and granted the right to possess a weapon. My statistics are based on the number of general felons who go into the public and commit recidivism. If we could stop those individuals, well over 60 percent of the crime could be stopped if those felons weren't released.

And when you draw back to the Brady bill and how it fits into the scheme of S. 2304, under Brady law enforcement's major job is the prevention of crime. If we prevent crime, we save the courts, the system money, et cetera.

We believe in the Brady bill, if we have the opportunity to check the Federal Form 4473 prior to the purchase that we can assist—it would alleviate some of the responsibility that is now assumed by ATF because they investigate these felons upon their request. We can prevent those if there is a law in place like the Brady bill and S. 2304. We would prevent those felons from acquiring a firearm to use in at least 41 percent of the 100 cases that Mr. Sugarmann's organization looked into.

So, I believe that when you look at the Brady bill and you look at the overall crime picture, any time that we can decrease a percentage of crime, whether it be 22 percent or 41 percent, or prevent a felon from using a firearm, then I think that we are headed in

the right direction and it is a positive step in curtailing the violence in America and curtailing some of the crime.

We all know that some of the gutless wonders out there committing these crimes, the parasites in our community would not do it if they had to do it with a ball bat or a blackjack or a knife, in most cases. They don't have the intestinal fortitude to confront a physically fit individual. They will prey on our weaker citizens and the citizens in our community that just are crime victims out there that aren't aware of where they are and aware of their surroundings during a period of an attack.

I believe that we are headed in the right direction with both these pieces of legislation.

Senator SIMON. I thank you.

This has nothing to do with the—well, you can't say it has nothing to do, but since we have four people here who are experts in this area of law enforcement, we have just gone through this Los Angeles experience. Are there any reflections that any of the four of you have—I am going to start with Mr. Sullivan—any reflections you have on this whole experience we have had and what we can learn and how we can profit as a nation?

Mr. SULLIVAN. Well I would say, Mr. Chairman, one thing is that unfortunately I think law enforcement is getting somewhat of a bad rap through this whole thing, clearly. I mean, I don't approve of the actions of those officers and in my opinion there was excessive force used, but that is different from convicting them of that.

Second, it is the position of our organization a lot of times that excessive force, in those incidents that happen, are the result of the tremendous stress that officers are under and that if we take some preventative measures to make sure the officers are rotated off the streets and have access to counseling and training and other preventative measures that there will be fewer of those incidents down the line.

Senator SIMON. Mr. Stokes?

Mr. STOKES. First of all, I don't want to second-guess a jury that sat through the weeks of testimony in that case. It is the judicial process of this country, and as a law enforcement officer, one who has testified at many cases, I have not always agreed with the judge's decision nor the jury's decision, because I believe I have never taken an innocent person before the judge or the jury.

So, I believe that the society is upset with the decision of the jury, but that is the judicial system. Whether those officers at the scene overstepped their boundaries as law enforcement officers, if you base it on the film that I am sure everyone here has seen at least a dozen times, you would have to say yes they did and there was excessive force used based on that film. But again, I don't know what the jury did, what the jury heard, and what changed the jury's opinion in that case.

I am concerned about the effects of that case and the effects of those actions on law enforcement officers in this country, and I hope that there are no knee-jerk responses from individuals or from the Government in law enforcement as a whole. Remember that the majority of law enforcement officers out there and the law enforcement working the streets in institutions of this Nation are out there to try and protect the public.

To increase training, increase funding, I believe we are talking about one of those here today. If we can save \$20 million, yes, funding, training, money for agents, money for further training of law enforcement officers in the areas of weapons and how to track weapons and to prevent crime could be better utilized by this \$20 million that has been wasted guaranteeing the rights of felons to possess a firearm.

As I say, as I go around the country, Senator, and talk to our people about this legislation, I have not found one law enforcement officer that is opposed to the concept that is described here in S. 2304, and I believe that you are inherently on the right track and should pursue this to its successful endeavor.

Senator SIMON. I thank you.

Mr. Wells?

Mr. WELLS. Like Mr. Stokes, I don't want to second-guess what the jury did. I mean, I know what I saw on television and I didn't like it one bit, and I am sure no one else in this room or throughout the country did.

The issue of excessive force by police officers, police brutality, whichever name you care to use, is certainly something that has to be addressed and it should be, but like Mr. Sullivan said, we should focus on the stress the police officers suffer out on the street and ways to deal with that.

I think we should also look at the problem that the lowering of standards has caused in our profession. Years ago, if you were convicted of a felony or any crime, you couldn't even become a police officer. That has changed.

I think part of the problem is the qualifications also. When we started lowering height requirements, we started lowering educational requirements, people have come into the field that probably shouldn't be there, and the police academy doesn't always weed them out nor do the psychological tests in the jurisdictions in which they are given.

There is a myriad of problems. A lot of things go into misuse of power by police and it is not something that one hearing or one committee can solve, but there are certain things that should be done and hopefully will be done, and my organization fully supports that.

Senator SIMON. Mr. Sugarmann?

Mr. SUGARMANN. At the Violence Policy Center, our main focus is looking at firearms violence in America, and looking at the riots that has struck us and of course is not surprising is that looking at the death tolls over 3 days compared to, say the Watts riots before, you are finding a far greater number of people being killed over a short period of time, and that is primarily the result of increased categories of ownership, ownership of specific categories of firearms, increased handguns, assault weapons, and what we are seeing unfortunately is not surprising.

Our concern is that the type of situation, the level of violence we are seeing that occurred in similar situations, is a risk that police and the general public will be facing more and more often. Not only do these riots show the widespread availability of these weapons but unfortunately they act as a catalyst for people to go out and

buy other weapons to protect themselves in a misguided view of handguns being effective self-defense weapons.

Senator SIMON. We have been joined by Senator Specter.

Do you have any comments or questions, Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman. I have a couple of questions.

Mr. Wells, you raise an important point on the training and qualifications of police officers. We have worked on legislation on a police corps which would grant scholarships for 4 years for college graduates to move into the police ranks, and to be fair to those who are already on the force, to give training and some additional advantages by way of Federal assistance to those on the force.

Let us focus for just a minute on the college graduates who would be put into the police departments across the country if we were able to get the police corps legislation passed. Do you think that that would be a significant advance in the attempt to increase judgment, discretion, and education for the enforcement officers to try to prevent things like the King incident?

Mr. WELLS. The better educated the officer is, the better off we all are. I have reservations with the police corps because you tend to take people that just want to pay off their college debt, so to speak, don't really want a career in law enforcement, see this as a way to get a college education.

I think the minimum is to spend 4 years upon graduation and then they are free to move on, am I correct on that, Senator?

Senator SPECTER. Yes, that is correct.

Mr. WELLS. We like to think that people go into law enforcement because they want to be police officers, not to pay off a college debt. The fact that they are college graduates is certainly helpful, but we like them to think that they are career minded, they are going to put in 20 or 30 years in the field, become seasoned officers and not have a constant in-flow and out-flow of inexperienced officers. That is part of the problem also, inexperience on the street.

Senator SPECTER. The projection is that many of those would stay, that once you get into law enforcement, it would be a challenging career aspect. Those of us who have been in law enforcement know how demanding, challenging, and fascinating it is as a career, and there would be an expectation that many who enter the ranks through the police corps would stay there. Only time would tell that. It has to be balanced so that those who are on the police departments today have some benefits, too, so it doesn't all go to the newcomers.

Mr. WELLS. Right.

Senator SPECTER. Let me ask another question. Mr. Stokes, let me pose this to you.

The issue of excessive force is a very complicated one. I saw it when I was district attorney of Philadelphia, on the issue as to provocation and what has to be done. Certainly, as you view those films, you wonder whether the officers shouldn't have stopped at some point when there was the inability of Rodney King to resist. But the jury has handed down a verdict and that is it so far as the State court prosecution is concerned under constitutional principles of double jeopardy.

There is a separate criminal violation under the Civil Rights Act for depriving someone of their civil rights, and that is not barred by double jeopardy and that prosecution may be broad.

Do you see, Mr. Stokes, from your position as president of the Fraternal Order of Police, any problem philosophically with a separate prosecution now being brought under the Civil Rights Act for deprivation of civil rights in a criminal prosecution?

Mr. STOKES. Senator, I believe that law enforcement has always been held to a higher accountability. We understand that, and I believe that the—and I tried to say this the other day on a television show—that this was the opening of a case, not the closing. This was not the final decision.

The actions of those hooligans on the streets of Los Angeles were totally premature and were not representative of the people that live in that area. So, I believe that had they waited until, as Chief Gates said the other day, there is the internal review process that is going on and those officers will be held accountable in that area.

I believe that there is the opportunity, as you have said and we all witnessed in the last day or so, the seating of a Federal grand jury to make sure that the civil rights of the individual was not violated, and I believe that in the end justice will prevail.

I believe that the impatience of those individuals who took to the streets to commit another crime were nothing but opportunists and destructive to the community and destructive to our judicial system, did not give it a chance to function and work as they should have. But we have all witnessed that.

I believe in our justice system and I believe that justice will be done ultimately. Those officers, if they overstepped their lines—and you know as a former prosecutor that law enforcement officers can only use that force which is necessary to overcome the force that they encounter. Once they encounter that force and they overcome it, then they have no legal right to go beyond that to consummate a legal and lawful arrest.

They in fact can make a legal arrest an unlawful arrest, and I believe that that is what we have seen, the public, you and I on the television in that 25 to 30 seconds of that 81-second film that was shown to us. And if we sit down and judge that incident just on that film, then I think we all would come to an obvious conclusion, and I think that is what is so perplexing to us and to the general population at this time.

But that does not justify what took place by hundreds of people that went to that area to perpetrate looting and even death, and what happened to the trucker was to me obscene. I think it was that way, and I think we all found it to be as upsetting as the original incident itself.

Senator SPECTER. Well, I think that is the appropriate call. Whoever violates the law, whether it is excessive force by a police officer or by looters and rioters afterward, has to bear the full brunt of law enforcement and the appropriate prosecutions.

Thank you, Mr. Stokes, thank you gentlemen, and thank you, Mr. Chairman.

Senator SIMON. Thank you all very, very much. I appreciate your being here.

Our final witness, Joseph Phillips, the Federal liaison for the National Rifle Association. And you are——

Mr. PHILLIPS. I am Joe Phillips.

Senator SIMON. OK.

Mr. PHILLIPS. And this is Richard Gardiner. He is our legislative counsel.

Senator SIMON. OK.

Mr. PHILLIPS. I apologize for the confusion.

STATEMENT OF JOSEPH M. PHILLIPS, FEDERAL LIAISON, INSTITUTE FOR LEGISLATIVE ACTION, NATIONAL RIFLE ASSOCIATION OF AMERICA, ACCOMPANIED BY RICHARD GARDINER, LEGISLATIVE COUNSEL, NATIONAL RIFLE ASSOCIATION OF AMERICA

Mr. PHILLIPS. In our written testimony, we have discussed at some length the NRA's views——

Senator SIMON. Can you pull that mike just a little closer there?

Mr. PHILLIPS. In our written testimony, we have discussed at some length the NRA's view on S. 2304. Therefore, I will not belabor the subcommittee with a full discourse. However, there are several points which I would like to make regarding this issue.

First, let me state plainly for the record that the NRA does not believe that there is a legitimate rationale for restoring the firearms ownership rights of individuals convicted of dangerous violent crimes or drug trafficking offenses under any circumstances. We strongly believe that if our judicial system was functioning in the way that it was intended, this would not even be an issue for discussion.

The simple truth is that the most effective way to protect society from the threat of the truly dangerous individuals from obtaining firearms is a more concerted effort to ensure that more of them are kept behind bars, where they belong.

Second, an argument has been made that there is no reason to continue this program, and in fact S. 2304 would simply preclude any further applications by individuals. But interestingly, it does not deny corporations that are nonindividual entities from applying. Obviously, there is at least some tacit recognition that in certain circumstances, there is legitimacy to the restoration petition issue.

In our written testimony are other examples of why this program should be continued, albeit with significant modifications.

However, aside from tightening the law to eliminate any possibility of misapplication, given the explicit statutory language of 18 U.S.C. 925(c), the instance of abuse in this program is minimal at best. In fact, based on reports that we have seen—and coming from the NRA, this is something which some people may believe might pain me significantly—this is one example where the Bureau of Alcohol, Tobacco and Firearms appears to be doing a good job of fulfilling its statutory mission.

Moreover, despite the fact that the Federal district courts do exercise review of BATF in this regard, we have yet to learn of one instance where the decision of BATF has been held to be arbitrary or capricious and overturned by the court.

Third, the NRA agrees that there is no reason for this program's costs to be borne by the public at large. Yet when viewing the relatively modest sums of money expended in the investigation process in the context of a \$1½ trillion budget, it is hard to make the case that this program is a pressing fiscal concern. This is particularly true if one accepts the legitimacy of the notion that there is no price too great to pay to prevent a miscarriage of justice, which I have heard argued on more than one occasion by members of this very body.

As a matter of public policy, after reviewing some of this qualifying convictions among the States, retaining the right of an individual to petition for relief in a modified form does meet the minimum standard of due process and equal protection of the law.

Along with our written testimony is a list of disqualifying laws in various States that would result in an individual being barred from ever owning a firearm. I am sure that most of us would have little disagreement regarding the definition of a violent crime. But given the disparate penalties among the States for various infractions, there exists significant potential for miscarriage of justice if this law is completely changed. This is especially true when considering that it is the States which impose the original sanctions.

For instance, a partial listing of the more egregious State crimes for which an individual may be disqualified include annoying telephone calls in Maryland; cohabitation, adultery, and failure to return library books in excess of \$250 in Massachusetts; consensual sodomy in Michigan; and of contemporary interest for those who hail from Ohio, check kiting is a fourth-degree felony.

We have also gone into greater detail in our written testimony regarding a possible impact of rewriting this law in the wake of a substantially reinterpreted *Roe v. Wade* decision, which might be helpful to members of the subcommittee.

Finally, to put it bluntly, this issue appears to us to be an example of the disingenuous masquerading as the genuine. Although we have no reason to question the sincerity of the Senators who introduced this matter, we are also not aware of where the idea for this legislation originated nor the underlying motives. We have seen far too many fund-raising letters from various gun control organizations on this issue not to be suspicious of the underlying motivations behind this bill.

Unfortunately for the direct mail mavens, we are not in disagreement with what the sponsors of this bill say they want to accomplish and are fully prepared to support it, as outlined in our written testimony.

In closing, I again wish to thank the members of the subcommittee for allowing me the opportunity to testify. The stated goal of the NRA remains to protect society from predatory criminals, as outlined in our bylaws. To the extent that this or other legislation will help to further that objective, you will have the NRA's full support.

[The prepared statement of Mr. Phillips follows:]



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D. C. 20036

TESTIMONY OF JOSEPH M. PHILLIPS
FEDERAL LIAISON
INSTITUTE FOR LEGISLATIVE ACTION
NATIONAL RIFLE ASSOCIATION OF AMERICA, INC.

Mr. Chairman and Members of the Subcommittee:

The National Rifle Association of America is pleased to have the opportunity to provide testimony regarding S. 2304, the "Stop Arming Felons Act". This legislation purports to address an issue on which our position is unequivocal and longstanding.

A cornerstone of the NRA's policy as specifically stated in our governing by-laws is the promotion of public safety and law and order. Our organizational mission is to protect, preserve, and advance policies which contribute to the lawful ownership and use of firearms by law-abiding gun owners as an individual right as described by, but not limited to, the Second Amendment to the U.S. Constitution and the traditions of our Nation. In accordance with this, the NRA does not, has not, or will we ever support allowing those convicted of violent crimes or drug trafficking offenses to recover the right to own a firearm.

The NRA fully supports the stated goal of the Senator from Illinois namely, keeping firearms from those who by the nature of their crime have shown themselves to be an unacceptable or continuing threat to the safety of society at large. The NRA agrees with the Senator that an individual convicted of a serious crime of violence or proven guilty of a more insidious crime

against our society, such as trafficking in drugs, should never be allowed to own or possess a firearm. Frankly, we have lobbied long and hard for increased penalties, and full enforcement of sentences for those who abuse the law. To suggest that there is some legitimate rationale for restoring the right to keep and bear arms of dangerous convicted felons, who by their actions have exhibited callous contempt for even the barest standard of civilized behavior, is absurd.

The NRA also agrees that there is no general public obligation to expend increasingly scarce federal resources in investigating those convicted of less serious offenses against society, such as regulatory or civil violations, who make application for restoration under current law. In the 1968 Gun Control Act, Congress provided that, under certain narrow conditions, restoring the Constitutional protections of the Second Amendment was justified. The changes to the law regarding the right to petition for the restoration of rights was originally drafted to address fundamental questions of due process and equal protection of the law which were occurring in federal district courts regarding firearms. However, when Congress vested the Department of the Treasury with the investigatory responsibilities and restoration powers for certain classes of offenders it failed to provide a means to recover the costs of providing for this statutory provision. Regardless of this oversight, there is no justifiable reason for this practice to continue.

The NRA does not take exception with the narrow applications of current law which allow certain categories of non-violent offenders to petition for review and restoration. But, given the degree of accuracy necessary under the discretionary oversight authority of the Department of the Treasury to regulate the restoration of rights to non-dangerous petitioners, the investigative costs are significant. The NRA strongly believes that the costs of conducting this investigation, regardless of the

final determination of the acceptability of the applicant to have this right restored, should not be borne by the taxpayers.

The NRA believes that costs incurred as a result of a non-violent offender petitioning for restoration of the right to own a firearm under current law, should be borne by the applicant. A non-dangerous petitioner, regardless of the circumstances of their conviction, has been judged by society to have legitimately forfeited a Constitutional right. Allowing select individuals to regain the right to keep and bear arms is not an unreasonable or detrimental extension of due process. However, the benefit to society of restoring this right to an individual is hardly of the same magnitude as the benefit to the individual in having this right restored. Therefore, the cost should be borne by the petitioner and applied in the form of an application fee, reflecting the actual expenditures for the investigation and associated costs.

The Department of the Treasury should retain the discretion to waive the costs of the application in instances where it can be proven that the need for a firearm is present, but the ability to pay the application fee is absent. While there are those who may question the necessity of this provision it should be noted that there are many states and regions where subsistence hunting, not to mention self-protection from wild animals, is a real issue. If the right to petition for restoration is not to become strictly the purview of the rich, this is an issue that the committee should consider.

Obviously the question regarding the legitimacy of restoring any petitioner's rights, or even of allowing an individual to petition, is legitimate and should be discussed. Of particular concern is the question of why we should not simply strike the right of anyone to apply. S. 2304 would change current law to prohibit any individual fulfilling the standard of disqualification under federal law from making application, although it would preserve the rights of corporations or other legal non-persons to

do so. The NRA believes that the Congress should consider several important issues of fact and law which obviate the need for the over reaching changes proposed by S. 2304.

From either a historical or contemporary perspective there is essentially little controversy regarding what constitutes an "act of violence", in the U.S. or anywhere else in the world for that matter. Murder, rape, battery, armed robbery and other crimes which involve a high potential for physical violence threatening the health or life of a person all qualify as violent crimes. Other crimes, such as drug trafficking, because of the propensity towards violence inherent in its conduct, not to mention the insidious drain on the moral fabric of our nations people, also qualify.

Unfortunately, applying a strict standard involving other disqualifying violations under current federal law cannot be judged by the same yardstick. For example, there are wide disparities among the various states regarding what constitutes a non-violent "criminal violation" for which an individual may be charged with a disqualifying conviction. Under federal law the determination of these disparities is not taken into account. Rather, federal law simply accepts at face value the determination that an individual has been convicted of a crime, the penalty for which would be punishable by a term of imprisonment up to one year.

Proponents of completely striking this provision from current law can make a good case based on the possibility of dangerous individuals being rearmed, which as I have indicated we wholeheartedly concur. But it is also possible to point out that as the law is written there are even more individuals who will be forever punished for what may have been a mistake of circumstance, age, or even geographical indiscretion. In many cases an individual with a non-violent felony conviction, or even some state misdemeanor convictions, involving no present or future threat to society as a whole, would result in an individual being permanently disqualified from ever owning a firearm.

For example there are significant differences between how state laws treat sexual relationships, both those involving individuals under the age of consent, but also regarding acceptable sexual practices among consenting adults. Attached is a list of some of the various state "crimes" which would result in a disqualifying conviction. While I will not review the entire list it is interesting to note in the current relaxed moral climate that many of the infractions are for sexual relations between consenting adults which are all but unenforceable. I am also sure, that most of the Members of this body will agree that the errors of youth do not always portend an incorrigible adult.

For these reasons, the NRA believes that a strong case may be made for retaining the mechanism for specific categories of individuals to apply for the restoration of firearms ownership rights. This is particularly true given the all but unlimited discretion vested with Treasury to make the appropriate determination.

Of special interest to Members of the Subcommittee might be to examine how the changes proposed by S. 2304 would apply in the context of the current debate involving changes to federal laws regarding reproductive freedom. I am sure that few would disagree that there exists the strong possibility that additional disqualifying convictions will be added at the federal level depending on how state legislatures interpret and apply a modification of *Roe v. Wade* by the Supreme Court.

Without arguing the merits of the issue, striking the ability of a woman charged under a restrictive state abortion standard from ever being able to acquire a firearm, particularly in a case where the pregnancy resulted from a rape or incest, seems misguided and unjustified. Reviewing the attached list of other disqualifying convictions should yield other germane examples, as well.

Finally, the NRA is prepared to endorse changes to the overall process to alleviate the surfeit of unnecessary applicants which is currently clogging the process, as well as clarify the minimum

criterion which an applicant must meet. We refer specifically to much needed changes to the application information process, to ensure that those who apply are aware, going into the process, that they are eligible, or ineligible as the case may be. We also believe that current law should be modified to insure that any and all sentences are fully served, and all civil or criminal penalties levied in conjunction with a conviction are satisfied before an applicant is allowed to petition.

In conclusion, to the extent that S. 2304 modifies current law to preclude the possibility that those convicted of violent crimes can legally acquire the right to own a firearm, the NRA is in complete agreement. We urge the Members of this Subcommittee to consider carefully how this goal can be accomplished, and effectuate the changes to this bill to meet this specific goal.

The NRA wishes to once again thank the Members of the Subcommittee for this opportunity. We believe that the right to own a firearm is a fundamental right, indeed, one for which the Founding Fathers thought important enough to give their life. Yet the abuse of this right is of such grievous magnitude to society that those who choose to do so must suffer a certain and severe penalty. The NRA stands ready to assist this body in formulating and implementing those policies which will have a real impact on resolving our common goal, namely ending the epidemic of violence in our Nation.

Examples of various disqualifying convictions under state laws, which under the present language of S. 2304 would result in non-dangerous individuals being disqualified for the right to petition for the right to own a firearm include the following:

- * In Ohio, "No person with purpose to defraud, shall issue or transfer or cause to be issued or transferred a check or other negotiable instrument, knowing it will be dishonored". If the check or other instrument is for the payment of three hundred dollars or more, or less than five thousand dollars, passing bad checks is a felony of the fourth degree. Ohio Code Section 2913.11
- * Any person who uses the telephone in a manner reasonably to be expected to annoy is subject to a fine of not more than \$500 and/or imprisonment for not more than three

years. Maryland Annotated Code (Crimes & Punishments), article 27 section 555A.

- * Sodomy in Maryland is punishable by imprisonment for up to ten years and/or a \$1,000 fine. Maryland Annotated Code (Crimes & Punishments), article 27, section 554. Sodomy under Michigan law is punishable by up to 15 years. Michigan Compiled Laws section 750.158. The offense applies to consenting adults, even of the opposite sex.
- * In Maryland, simple assault and battery is a common law offense. It is not a statutory offense. The court is at liberty to set a punishable in excess of two years.
- * Simple assault and battery in Massachusetts is punishable by imprisonment for not more than two and a half years and/or a \$500 fine. Massachusetts Annotated Laws, chapter 265, section 13A. The offense is deemed to be so petty that a summons instead of an arrest warrant may be issued.
- * Massachusetts also has a number of other laws on the books illustrative of crimes for which the long term penalties do not necessarily exemplify a threat to society as a whole. The following is a partial listing.
 - Failure to return library books in excess of \$250.00
5 years state prison CH. 266 S.99a
 - Removal or Injury of Research Animals
2 1/2 years CH. 266 S.104B
 - Adultery
2 years CH. 272 S.16
 - Polygamy (defined to include being married to one person while co-habiting with another)
5 years CH. 272 S.15
 - Cohabitation
2 years CH. 272 S.16
 - Unlawful attempt to procure a miscarriage
7 years CH. 272 S.19
 - Advertising of means to procure an abortion
2 1/2 years CH. 272 S.20
 - Selling or giving away contraceptives
2 1/2 years CH. 272 S.21
- * Under California law it is unlawful to have sexual intercourse with a female not the wife of the perpetrator, where the female is under the age of 18 years. The offense is punishable by imprisonment for up to five years in the state prison. California Penal Code section 261.5 & section 264. In other words, a 19-year-old male may be imprisoned for having consensual intercourse with a female who is not his wife if she is 17 years, 11 months, and 29 days old.
- * Numerous military offenses carry harsh penalties that are unknown in civilian life. Examples include missing a troop movement, disobeying an order, being absent without excuse, and disrespect. These offenses are peculiar to the military.

Senator SIMON. As I understand, and I have just glanced through your written testimony briefly, you believe that it should apply only to violent crime, assuming that we add the drug trafficking factor in there too?

Mr. PHILLIPS. Certainly, and there was some discussion earlier on regarding what the average American or what the average law enforcement officer would see as the problem.

Now, obviously, when you are looking at the violent criminals, we do not endorse allowing violent criminals to have firearms under any circumstances. The fact that they do obtain these firearms through illegal channels is something that we have tried to increase the penalties for that type of behavior.

However, when you look, as I pointed out, at the various disqualifying convictions under this law—and it is any law for which the penalty may be up to a year regardless of whether or not that individual actually serves a year in prison—it is simply—I am sorry, more than year—then I think that you can point to the disparities among the various State laws and say that there is in fact some legitimacy to restoring the right of certain select individuals to keep and bear arms, so to speak.

This particularly goes to the issue, not to get into what happened in Los Angeles, but certainly I am sure that there are a great many individuals who, being told by the police that they could not protect them or their property, that it is up to you to protect yourself, were somewhat chagrined at the 15-day waiting period that they had to undergo in California prior to purchasing any firearm whatsoever.

Senator SIMON. I have a study by the Bureau of Justice made in 1989, a study of prisoners released in 1983, and about a fifth of those who have been convicted of nonviolent crimes in that 6-year period ultimately later committed violent crimes. It does suggest that those who are willing to violate the law in one area are more likely to violate the law in other areas than most citizens.

Mr. PHILLIPS. Obviously I won't take exception to that. I have looked that over. I cannot comment specifically to that.

However, if you look at the investigation process that BATF goes through before they do grant an applicant—how this fits in with what we believe is a fundamental right to own a firearm, and particularly if there is a need for a firearm, there is legitimacy to allowing individuals—especially when you consider that what we are doing now is we are overturning the States who originally applied the convictions.

If they decide to restore an individual's right, we would be overturning the ability of that individual to then petition the Federal Government for a restoration of those rights when they are basing their disqualifying on the original verdict from the State.

Senator SIMON. But if I followed your oral testimony, you suggested some kind of a payment to cover the costs, is that correct?

Mr. PHILLIPS. We think that is certainly legitimate, and one of the things that we went over in our written testimony. We do not want this to be a program for the rich, as you alluded to. Certainly if you were to look at the other aspects of this legislation in particular, I am sure that the average individual on the street is not out buying pardons, so to speak. The median income of individuals who are pardoned or who have their convictions expunged were

probably significantly higher than the median income for this country.

However, we believe there is a legitimate public interest in putting fees on, at least to make this program as close to self-sustaining as possible. Now certainly you are going to have to make exceptions for individuals who can prove a need but who are not able to marshal the resources to apply for this.

It is obvious that if you have got someone who is in the back hills of West Virginia where the use of firearms is an economic necessity, much less a self-protecting aspect of the whole thing, you have to take that into account, what their financial circumstances are, and make some reasonable assessments based on that.

Senator SIMON. What BATF suggested, among other things that we have drug testing of nonviolent criminals before they be given their rights back—any reaction to that?

Mr. PHILLIPS. When you suggested drug testing of violent criminals—

Senator SIMON. Of the nonviolent.

Mr. PHILLIPS. OK.

Senator SIMON. In other words, their position is apply it to the nonviolent and then have drug testing of the nonviolent who get them back.

Mr. PHILLIPS. I have not heard or seen that and have not really thought about it. Just on the face of the issue, someone who is an habitual user of drugs or alcohol, particularly if it was a factor in their original conviction, I see no reason why we would not support something like that.

Obviously, it would depend on how it was administered and the other circumstances, but I would have no problem with that. It would be something we would like to look at in greater detail before we make a definite commitment.

Senator SIMON. And in terms of nonviolent crimes—I don't know whether you were here for the earlier testimony—someone who was found guilty of weapons trafficking with Libya is a nonviolent criminal, and in the one case the man from Philadelphia buying weapons in Ohio, one of which ended up killing a police officer—any reaction on that?

Mr. PHILLIPS. It was a surprise to me, and I have looked at Federal firearms laws numerous times and did not realize that that was not considered a disqualifying conviction.

In our testimony, we go specifically to those individuals, violent criminals, and one of the points that we make is that it is—a violent crime is pretty well universally recognized as a violent crime. You may get some semantic definitions on it, but everyone generally knows what a violent crime is when they see it.

Senator SIMON. But if someone who has not been convicted of drug trafficking but is convicted of income tax evasion—

Mr. PHILLIPS. I am working my way there.

Senator SIMON. All right.

Mr. PHILLIPS. The other example that we said was particularly of drug trafficking or other crimes which have a high propensity toward violence inherent in their conduct. I would think that under that, gunrunning and gun trafficking and that sort of thing would

qualify under that. So it certainly, as I said, given on how the language of it would be written, we would have no problem with that.

Senator SIMON. If you were to take a poll of NRA members, what is your guess, would they be for or against this legislation?

Mr. PHILLIPS. I think that generally NRA members would support the particular aspects of the bill which go directly to violent criminals. I would say we would probably get universal support for it. I won't project a number on it, but I do think that most of our members realize that there is a fundamental issue of fairness here, and that someone who does in fact have a fundamental need who has served their time, so to speak, and whom the States believe it is legitimate to restore their rights should not continue to be disqualified or permanently disqualified under Federal law, particularly when you go back to the issue that this was a conviction that originated at the State level in the first place.

Senator SIMON. We thank you very much for your testimony.

Mr. PHILLIPS. I thank you.

Senator SIMON. Our hearing stands adjourned.

[Whereupon, at 3:36 p.m., the subcommittee adjourned.]

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