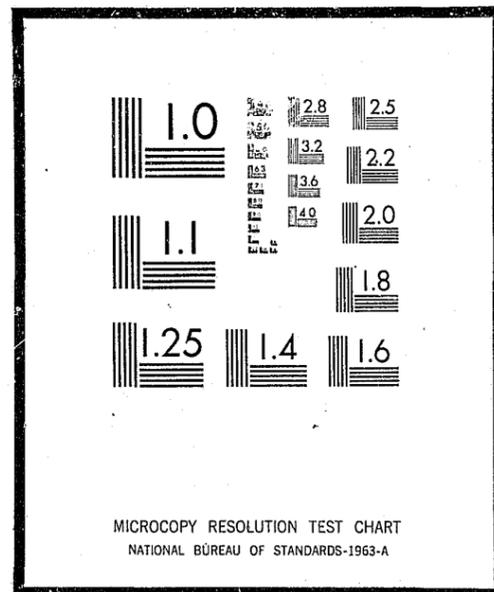


NCJRS

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U.S. Department of Justice.

U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
WASHINGTON, D.C. 20531

Date filmed,

11/19/75

REPORT OF THE NEW YORK STATE COMMISSION OF
INVESTIGATION CONCERNING THE AVAILABILITY,
ILLEGAL POSSESSION AND USE OF HANDGUNS IN
NEW YORK STATE

COMMISSIONERS

Howard Shapiro, Chairman

Earl W. Brydges, Jr.

Ferdinand J. Mondello

Edward S. Silver

Nathan Skolnik
Deputy Commissioner

Joseph Fisch
Chief Counsel

Andrew P. Donlevy
Assistant Counsel

Raymond C. Rudden
Walter J. Maxwell
Investigators

Edward J. Kirk
Chief Investigator

Albert Sohn
Chief Accountant

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
I. THE "SULLIVAN LAW" AND AMENDMENTS	4
II. NATURE AND EXTENT OF THE PROBLEM	7
A. Homicides	7
B. Robberies	9
C. Crime Survey by the Law Enforcement Assistance Administration and Bureau of the Census	14
D. The Handgun Tracing Study	15
E. Youth Gangs	20
F. Statistics in the Medical Examiner's Office ...	26
III. THE HANDGUN VIOLATOR IN THE CRIMINAL JUSTICE SYSTEM	30
A. The New York City Police Department Handgun Survey	30
B. The Commission's Study	34
C. The Commission's Robbery Survey	38
D. The District Attorneys' Policies in the Handling of Handgun Cases	39
E. Schools and The Family Court	43
F. The Federal Law	49
G. The Licensing Laws	53
IV. THE SHOOTINGS CONTINUE	57
V. RECOMMENDATIONS	58

REPORT OF AN INVESTIGATION CONCERNING
THE AVAILABILITY, ILLEGAL POSSESSION
AND USE OF HANDGUNS IN NEW YORK STATE

INTRODUCTION

On September 19, 1972, Governor Nelson A. Rockefeller directed this Commission, among other things, to evaluate "the administration of justice in New York City."

During the course of this inquiry, it became clear and significant that the frequently mentioned crime problem in New York City was no exaggeration. Equally significant and alarming were the statistics that highlighted the seriousness of the special problem of the availability, illegal possession and increased use of firearms, particularly handguns, in the commission of crimes in New York City.

The New York City Police Department has estimated that there are approximately 1,000,000 illegal handguns in New York City. This condition poses a real threat to life, property and the security of the people of this City and State. The Commission therefore determined that an investigation should be undertaken to ascertain and to disclose the nature and extent of the handgun problem. The Commission also decided that the handgun study should be done on a State-wide basis.

It should be noted that in 1964, this Commission conducted an investigation and issued a report and recommendations concerning the then existing pistol licensing procedures in this State. The Commission was therefore also interested in ascertaining what changes, if any, have occurred in this State in the licensing of handguns during the intervening ten years since its earlier study and report.

In conducting this investigation, inquiries were made and statistics gathered from various law enforcement agencies and units throughout New York State. Particular attention, however, was given to the larger urban population centers where illegal possession and use of handguns are serious problems. Members of the Commission's staff visited District Attorneys and Police Chiefs in a number of cities including Buffalo, Syracuse, Rochester, Albany, Utica, Schenectady, Binghamton and Cortland. They also interviewed police officials in Nassau, Suffolk and Westchester Counties. Conferences were held with various police officials in New York City concerning their views and statistical data relative to the handgun problem. Moreover, since this problem is nationwide in scope, appropriate federal officials were also surveyed in the Commission's inquiry.

In order to reduce the cold, hard statistics into a more meaningful assessment of the problem, various individuals

who had recently come face to face with the handgun menace were interviewed. These citizens described vividly how their lives, both economic and personal, have been disrupted by criminals who apparently have an endless supply of guns which they use for criminal purposes, and little concern about punishment, if apprehended by the law.

The facts gathered in this investigation and other substantial information, were presented by the Commission at a public hearing which was held in New York City beginning on April 23, 1974 and which concluded on May 1, 1974.

Public officials who testified at the hearing included: United States Senator Jacob K. Javits; Raymond N. Kiely, Regional Director, Bureau of Alcohol, Tobacco and Firearms (United States Treasury Department); Judge David Ross, New York City Administrative Judge; Judge Joseph B. Williams, Family Court of the City of New York; District Attorneys Eugene Gold (Kings County), Richard H. Kuh (New York County), Mario Merola (Bronx County); Sidney Baumgarten, Assistant to Mayor Abraham D. Beame of the City of New York; James M. Taylor, First Deputy Police Commissioner, New York City Police Department; Howard A. Metzdorff, Deputy Chief Inspector, New York City Police Department; George Maher, Inspector, Nassau Police Department; Lee Thomas, Senior Investigator, New York State Police; Dr. Dominick J. Di Maio, Acting Chief Medical Examiner of the City of New York.

I. THE "SULLIVAN LAW" AND AMENDMENTS

The basic law in New York State which prohibits the illegal possession of concealed weapons is the statute commonly referred to as the "Sullivan Law." The following brief history of the genesis of this statute is interesting and enlightening.

At the start of the second decade of the Twentieth Century, Tammany Hall ruled the political arena of New York City. The successor to "Boss Tweed" as leader of the New York City political machine was Timothy D. Sullivan, who was known as "Big Tim." Although history has tended to relegate "Big Tim" mainly to political activities and maneuvering, he nevertheless has also played a role in attempting to improve conditions for personal safety and security in this State.

In New York City in 1911, it was only a misdemeanor to carry a concealed weapon without a license. Pawn shops lined Park Row selling guns for \$3.00 to \$6.00. Gangs, made up predominantly of youths, prowled the lower East Side searching for victims to rob, maim and kill. This situation became quite intolerable.

A group of prominent citizens formed the "Legislative League for the Conservation of Human Life." This committee was supported by such eminent personages as Dr. Simon Baruch (the father of Bernard Baruch), Nathan Straus, John Wanamaker and John D. Rockefeller, Jr. "Big Tim" Sullivan, genuinely outraged

by the wanton carnage on the streets, allied himself with this committee and from his position as State Senator in the Legislature proposed sweeping changes in the penal law. From the floor of the Senate, "Big Tim" made a rare speech citing recent examples of senseless slaughter on the streets of New York City caused by the easy availability of handguns. In one instance, a truck driver accidentally ran over a young boy. The father of the boy shot and killed the truck driver. In another case, a woman with her five-year old child, came between two rival gangs shooting at one another. The mother was shot and killed.

A new law was passed in the Legislature and was signed by the Governor. That law made it a felony to carry a concealed weapon without a license. Because of "Big Tim's" efforts in enacting this legislation, history and common usage has attached his name to that legislative document. Thus, the "Sullivan Law" has become the catch-all name when describing penal sanctions for the carrying of a concealed weapon in this State. Amendments have been engrafted on the "Sullivan Law" since its passage in 1911, however, its basic philosophy has remained the same throughout the years.

Under New York State's present penal law, illegal possession of a loaded firearm, that is, where the user is unlicensed, is a Class "D" felony punishable by up to seven

years in state prison.* Illegal possession of a loaded handgun in the user's home or place of business is a Class "A" misdemeanor punishable by a term of imprisonment of up to one year. However, illegal possession of a loaded handgun under any conditions where the user has been previously convicted of a crime is a Class "D" felony punishable by up to seven years in state prison. These provisions of the "Sullivan Law" constitute one of the strictest statutory sanctions against illegal possession of weapons as compared to any of the other states of this country. Accordingly, since 1911, New York State has manifested a strong public policy determination against the unlicensed possession of guns. In later sections of this report, reference will be made to the Federal laws regarding the manufacture, sale and transportation of handguns and other dangerous weapons as well as the licensing laws in this State.

* New York Penal Law, Sec. 265.00 et seq. The 1974 Legislature amended this section so that possession of a weapon with intent to use the same -- previously a Class "D" felony -- is now a Class "C" felony. A conviction for this crime is now punishable by up to 15 years imprisonment. The amended section also provides that conviction for violation of this statute subjects the defendant to the mandatory imprisonment provision of §60.05 of the Penal Law. This amendment became effective September 1, 1974.

II. NATURE AND EXTENT OF THE PROBLEM

During the past ten years, criminal activities, particularly violent crimes, have increased at a dramatic rate. Throughout New York State, for the years 1969 to and including 1973, 3,531,089 crimes of all types were reported. On the average, over 700,000 crimes were reported during a single year.

For the same period of time, 1,959,823 crimes of all types were reported in New York City -- representing 56% of all crimes reported in the State. On the average, almost 400,000 crimes of all types have been reported in New York City each year during that period.

What was particularly disturbing to the Commission, in connection with these rising crime figures, was the increased use of handguns in the commission of such crimes as homicides, assaults and robberies.

A. Homicides

The rise of homicides in New York City is truly alarming. In 1943 there were 201 homicides; in 1960 there were 390; during 1973 there were 1,669. Homicides increased 328% during the period 1960 to 1973. During this same period there was a total of 12,573 killings in New York City.*

* See Chart, Exhibit No. 2, introduced at the public hearing.

The role of the handgun in these killings cannot be underestimated. For many years the weapon most commonly used in homicides was the knife. However, with the proliferation of easily attainable handguns, the knife has lost its place as the number one killer. According to First Deputy Commissioner James M. Taylor of the New York City Police Department, the handgun has supplanted the knife as the primary weapon in murders (68).*

In 1966 handguns were responsible for 28% of the homicides in New York City. This percentage shot up to an incredible 49% in 1972 with a slight decrease to 47% in 1973. Numerically, there were 184 handguns involved in homicides during 1966, but in 1972 and 1973, this figure swelled to 834 and 795, respectively.**

In other words, according to the above statistics handguns are responsible for more than two homicides a day in New York City.

The personal tragedies of such homicides are incalculable, and unfortunately an everyday occurrence, as illustrated by the following incidents. On October 18, 1973, a 26-year old drug addict with a history of five prior arrests began firing a revolver on West 34th Street in New York City.

* Reference is to the page number of the transcript of the testimony at the Commission's public hearing.

** See Chart, Exhibit No. 3, introduced at the public hearing.

Before he was fatally wounded by two New York City Transit Police officers, he had shot and killed two innocent citizens and wounded two others. One of the deceased, a 53-year old man, left a wife and two sons, age 12 and 15. The other victim was a 60-year old man who left his wife. The two wounded men were aged 73 and 38. Of the two weapons recovered from the gunman, one was over 50 years old and untraceable. The other weapon had been purchased in South Carolina only six months before this incident. There is no way to assess fully the physical and emotional, economic, or social damage that was caused as a direct result of the indiscriminate sale of these weapons and their illegal possession.

B. Robberies

While homicides illustrate most vividly the growing handgun menace, they are by no means the only crime problem caused by the seemingly ever present handgun.

Robbery is defined broadly as the forceful stealing of property from another. This can range from an encounter on a deserted street to a sophisticated bank robbery. In either case, the prospect of having one's money taken at the point of a gun, held by a nervous and sometimes frightened assailant is terrifying to the normal citizen. The records of the New York City Police Department show that during the five-year period

from 1969 through 1973, there were 373,200 robberies in New York City.* Thus, there is a very good chance that the average New Yorker will sometime sooner or later become either a victim or a witness to a robbery.

There has been however, since 1971, when an all-time high of 88,994 robberies in New York City was reached, a decline in robberies. But there can be little comfort from this trend because, during this same period of time, there was a marked increase in robberies in which handguns were used. In other words, even though there were less robberies reported in 1973, more of these robberies were committed by the use of a handgun. In 1969 there were 13,705 handgun robberies. There has been a fairly steady increase so that in 1973 there were 20,422 handgun robberies. The fact is that in almost 30% of all robberies committed in 1973, a handgun was the principal weapon used;** here again, the handgun has replaced the knife as the criminal's favorite weapon. According to Deputy Police Commissioner James M. Taylor ". . . when we did a study for the first nine months of 1972, the most predominant method of committing a robbery was by means of a knife. During the same period in 1973 the handgun became the most popular weapon" (71).

Not surprisingly, the handgun is most often used during the commission of a commercial robbery. Small retail

* See Chart, Exhibit No. 4, introduced at the public hearing.

** See Chart, Exhibit No. 5, introduced at the public hearing.

stores are prime targets of the armed robber. During the Commission's public hearing, two individuals, one a proprietor and the other a manager of small retail establishments, gave dramatic testimony as to both the frequency and effect of such robberies.

Mr. "M",* a proprietor of a retail greeting card store located on one of the busiest thoroughfares in New York City, related at the public hearing a series of recent events which can only be described as a "reign of terror." Beginning in the latter part of December 1973, Mr. "M"'s establishment was held up by robbers armed with handguns on three different occasions within a period of only one month. Several years before, there was another armed robbery at the same location. As a direct result of these incidents, Mr. "M" was compelled to hire a security guard at a cost of \$120 a week. The net result is that not only has Mr. "M" lost the monies taken during those robberies, but he has incurred an additional fixed expense because of the need of having a security guard on the premises during store hours. Since most items sold in this establishment have a fixed price, the additional costs must be absorbed by Mr. "M", thus reducing his profits. In consequence, Mr. "M" has decided to sell his business mainly because of a fear for his personal safety. Indeed, during the course of one of the robberies, a gun was held to his head while his cash register

* This individual's name is known to the Commission.

was being emptied.

Mr. "G"* is a manager of a retail establishment, who, like Mr. "M", has been besieged by a rash of armed robberies in recent months. His store is also located on a busy New York City thoroughfare with heavy motor vehicle and pedestrian traffic. Neither the presence of pedestrians or even police officers acted to deter these robberies. He testified that on one occasion two armed robbers entered the store; they waited for a bus to stop at a bus stop in front of the store, thus obscuring the view of two police officers standing directly across the street; one of them then drew a handgun and took the money from the cash register.

The audacity of such criminals was further illustrated by an incident that took place in January of 1974. A man came into the store and tried on several pairs of shoes. He selected a pair of appropriate size and style which he placed on the counter next to the cash register, saying, "I'll take them and I'll also take the money" (272). Since he was pointing a pistol at the manager, the request was promptly obeyed.

Mr. "G" stated that during the past year there have been five robberies or attempted robberies at this store. These incidents are so frequent that the employees have devised a

* This individual's name is known to the Commission.

verbal signal whenever someone suspicious enters the store.

BY MR. DONLEVY:

"Q Is this a plan you have worked out with the other salesmen?

A Right. Well - normally, when suspicious guys come in the store we'll say 'Thirty-four', meaning to get rid of them, or we'll say, 'go get a frank', meaning look for a policeman.

Q Do you use this plan very often?

A We have to use it mostly all of the time." (275)

Mr. "G" also has resided in the same general area where the store is located for some 18 years and had some revealing observations of the not-so-subtle changes that have recently taken place there.

"Q Are there guns in your neighborhood?

A I would say more than -- used to be knives but now there are more guns. Everybody and his brother has a gun." (282)

Mr. "G" further testified that at one time he normally walked home from work; he now considers this far too dangerous and often takes a taxi for self-preservation rather than convenience. Mr. "M" and Mr. "G" are but two merchants in a city that has literally thousands, but their experiences are not unusual or unique.

C. Crime Survey by the Law Enforcement Assistance Administration and Bureau of the Census

On April 15, 1974, the results of a crime analysis survey made by the federal Law Enforcement Assistance Administration and the Bureau of the Census, in Washington, D. C., were released and widely publicized. In the New York Times that day, the headline read "13-CITY CRIME STUDY FINDS NEW YORK IS SAFEST PLACE." The crime statistics for thirteen major cities were analyzed and categorized according to commercial, household and personal crimes. The crimes included in this study were rape, assault, burglary, household larceny, auto theft, and robbery. By averaging all of these crimes and using the crime rate per 1,000 to account for population differences, the study attempted to rank each city using this weighted average. The net result was that Detroit, Michigan, was first with 68 crimes of violence per 1,000 residents and New York City was thirteenth with a figure of 36 crimes of violence per 1,000 residents.

However, in those crimes where handguns are most frequently used, specifically robberies, both individual and commercial, the statistics for New York City give no reason for optimism. For instance, in the category of individual robbery (a more vivid appellation would be "street stick-up"), New York City ranks sixth, tied with Cleveland, Ohio. In the category of commercial robberies, such as bank and mercantile holdups, New York City ranked fifth. Actually, the study shows that

while New York City ranks thirteenth on an over-all basis, in the area of crimes that often involve the use of handguns, New York City ranks fifth and sixth. It is small consolation to New Yorkers that there are other cities with higher incidences of robberies when during the year 1973, there were over 70,000 robberies committed in New York City.

D. The Handgun Tracing Study

In view of the fact that New York City has very strict gun control and licensing laws, a study was undertaken to determine the origin and flow of the vast quantity of illegal guns into the City. This was a joint study made by the federal Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (hereinafter referred to as ATF) and the New York City Police Department. The Police Department reviewed all handgun cases in this City between January 1, 1973 and July 31, 1973 - over 5,000 cases. All the serial numbers were recorded with the exception of such weapons as starter's pistols, home-made guns and weapons with defaced serial numbers which could not be raised. These serial numbers (for over 3,000 guns) were sent to the ATF where they were traced through their various owners, where practicable, and then ultimately to the location of the original purchase. The results of that study are as follows:

Traced to states other than New York	1,343
Traced to New York State	1
Traced to foreign countries	13
Stolen (various states)	365
Legal handguns not reported stolen	22
New York City Permit holders	48
Other Permit holders	<u>10</u>
sub-total	1,802
Non-traceable weapons (starter's pistols and homemade guns)	111
Companies no longer in business, or no records kept	781
Military handguns	31
Duplicate requests	97
Guns involved in routine tests, or surrendered by permit holder	<u>184</u>
sub-total	<u>1,204</u>
TOTAL	3,006

The handguns that were traced to states other than New York came primarily from four southern states. South Carolina accounted for 427, Florida and Virginia had 176 each and 156 came from Georgia. In all, 69% of these illegal handguns came from these four southern states. Not surprisingly, it is relatively easy to purchase handguns in these states.

A random sampling of these cases indicated that approximately 58% of the cases involved defendants who had a

prior arrest record. Also, a check of the 1,343 cases indicated that in 97% of the cases the possessor of the weapon was not the original purchaser. It is evident that there is a black market existing in New York City obviously catering to individuals with criminal propensities. The criminal's demand for handguns which are only useful in the furtherance of criminal activities, is easily met by an almost unlimited supply of handguns obtained in other states with little or no meaningful regulation and lax enforcement.

Illustrative of this problem is the case of the L & J Gunshop in Hampton, Virginia, (85) where the two licensed owners were selling guns from the trunk of their car to anyone who had the purchase price. On September 17, 1973, the New York City police executed a search warrant at an apartment in Bronx County and a terrible gun battle ensued. Three police officers were wounded before the six occupants of the apartment were arrested. A search of the dwelling revealed six weapons, four of which were handguns, one .38 calibre revolver and three 9 MM semi-automatic pistols. All of these handguns were traced to the L & J Gunshop in Virginia. The Ballistics Laboratory of the New York City Police Department was able to determine that these weapons had been used in the following crimes:

- (1) A homicide in Brooklyn on January 3, 1973;
- (2) Two Housing Authority Police Officers were shot on January 12, 1973 in Brooklyn;

- (3) Two New York City Police Officers were fired on in Brooklyn on January 25, 1973;
- (4) Two New York City Police Officers were fired on in Brooklyn on March 2, 1973;
- (5) Shots were fired during a bank robbery in Bronx County on July 18, 1973;
- (6) A Transit Authority Police Officer was shot and killed in a subway station in Bronx County on June 5, 1973.

While these particular weapons were purchased illegally, in Virginia, many more are purchased legally by a resident of a state (usually one of the four noted above) and subsequently transferred to another for importation to New York City. Others are bought through the use of fraudulent identification and then shipped north.

The report of the joint tracing study conducted by ATF and the New York City Police Department states that four residents of South Carolina were able to purchase over 3,000 handguns from a local licensed dealer. Since there is no limit to the number of weapons a resident can purchase, these transactions are not per se illegal. In fact, 500 of these weapons were purchased in a single transaction. Before this operation was brought to an end by law enforcement officials, most of these weapons had found their way into the hands of criminals in New York City. Sixty-seven of these weapons were seized during the first half of 1973 but not before they were used to murder, rob and assault.

Purchasing weapons, whether illegally or legally, is not the only method by which guns come into the hands of criminals. The Regional Director of the Bureau of Alcohol, Tobacco and Firearms testified at the public hearings that the trucking industry alone loses, through thefts, approximately 1,000 guns each month from the interstate shipment of firearms (201).

The joint tracing study also found that over 20% of the weapons studied were stolen. These thefts were as follows:

From autos (outside New York State)	4
Burglaries & Robberies (outside New York State)	27
From Dealers (outside New York State)	58
From Manufacturers (outside New York State)	20
Burglaries and Robberies (in New York City)	91
In New York State (outside New York City)	6
In transit	96
Unknown	<u>63</u>
Total	365

Typical of the situations where guns are stolen from manufacturers, is the case of Criterion Die and Machine Company, which recently moved its operations from New York to another state. In May, 1967, 102 revolvers were stolen during a burglary at the company's plant. In that same year, 60 handguns were missing, presumably stolen by employees. In February,

1969, 600 handguns were stolen while en route from New York to Alabama. In March 1969, burglars took 600 handguns. On June 24, 1971, burglars absconded with 454 handguns. Finally, on October 1, 1971, 100 handguns were taken from a company truck on a New York City street. During January of 1970, the Police Department, by using undercover police officers, was able to purchase 26 guns from four different employees of this manufacturer. In all, 1,916 handguns were stolen from this company and were ultimately purchased by criminals on the black market.

Many guns are also stolen from Military establishments but, since the armed services do not keep adequate records of their weapons, law enforcement agencies cannot trace the stolen guns.

E. Youth Gangs

During the course of this investigation, the Commission learned that in recent years there had been a resurgence of youth gangs in the City of New York, particularly in Bronx County. According to the police, these youth gangs have in their possession a wide range of weapons including handguns, rifles, sawed-off shotguns, machine guns and explosive devices.

Sergeant Craig Collins of the New York City Police Department testified at the Commission's public hearing concerning this problem. Sergeant Collins has been a police

officer for twenty-six years. During the last ten years, he has been involved with youth problems and has been assigned to the "Gang Intelligence Unit" in Bronx County for the past three years analyzing the structure, personnel and activities of the various gangs. He testified that information has been compiled indicating that there are approximately 104 gangs in the Bronx with a verified membership of 4,000 and an estimated membership of 8,300. On a city-wide basis there are 8,261 verified gang members with the total number of gang members estimated at about 19,000. Contrary to youth gang propaganda, these groups generally are not organized and dedicated to rectifying inequities in the social system but in fact, are exclusively dedicated to anti-social activities and crime.*

The compiled figures of the gangs' known involvement in crime are unbelievable. During 1973 there were 41 gang-related homicides; 308 robberies by gang members; 514 assaults; 73 rapes; 408 burglaries, and 580 illegal possession of deadly weapons cases; in all, a total of 1,924 known crimes were committed. In 762 of these cases, guns were used by the gang members.

* See, The New York Times, article entitled "Brooklyn Youth Gangs Concentrating on Robbery", August 1, 1974; the New York Daily News, article entitled "Call City Terrorized by Youth Gangs", August 8, 1974; and The New York Times, article entitled "Youth Gangs Here Are Found More Violent and Better Organized", August 9, 1974.

The youth gang's ability to obtain and use weapons transforms the traditional concept of youth gang warfare from minor dysfunctional social behavior to a very serious law enforcement problem. The unreliable and often erratic homemade "zip gun" has become passe' with the relatively easy availability of diverse weapons, particularly handguns and hand-held sawed-off shotguns. These hand-held sawed-off shotguns are carried, by use of a shoulder strap, underneath the outer clothing. They are extremely effective on a short range basis and are capable of severing head and limbs with one pull of the trigger.

At the Commission's public hearing, two former youth gang members, Mr. "A" and Mr. "B",* gave testimony of their personal experiences as gang members. Mr. "A", who was twenty years old, stated that he had begun his gang activity at age ten. He testified that each gang is composed of "Divisions" with a hierarchy usually composed of a President, Vice President, Secretary, War Lord or War Counsellor, and Spokesmen. There are normally about 40 or 50 individuals in each "Division." Mr. "A" stated that there were 86 "Divisions"** in his particular gang which he estimated was the third largest gang in the city. Mr. "A" rose in the ranks to become "Supreme Spokesman"

* The true identities of both these young men are known to the Commission.

** The number of "Divisions" could not be confirmed by the New York City Police Department.

of the entire gang while at the same time he was President of a "Division."

The "Gangs" and "Divisions" usually operate from clubhouses located in abandoned buildings, apartments or basements. Rent is never paid for any of the clubhouses simply because the landlords and superintendents are afraid of the gangs.

BY MR. DONLEVY:

"Q Exactly what were they afraid of?

A You know, like if they squealed, maybe you come and got them.

Q When you say 'got them', what do you mean?

A You know, cut them up, hurt them, shoot them." (357)

As indicated by the crime statistics cited above, the possibility of being shot by members of a gang is not illusory. However, most of the carnage results from internecine warfare among rival gangs. It follows, therefore, that the best equipped gang is the most powerful and dominant. It was not surprising to hear that there has occurred in the last few years the phenomenon of an "arms race." The arsenals amassed by these young men, many under sixteen years of age, have been incredible. Mr. "A" testified that in his "Division" alone there were twenty or more handguns, ten shotguns, various rifles and at one time, allegedly, a machine gun was purchased in Chinatown.

Apparently the acquisition of these weapons presented little or no trouble to the gangs.

"Q How would you go out and get a handgun?

A If I wanted a .38 I would put out the word that I needed a .38, you know. They would go to the connections. The next two days, you know, I would probably have it.

Q What about other weapons?

A Well, shotguns, it is the same way, you know." (365)

The only problem encountered in acquiring weapons was raising the money to purchase them on the black market. Very often this was accomplished by criminal activities such as robberies and burglaries (366). On one occasion, money was raised in a somewhat more unusual manner. According to Mr. "A", Paramount Pictures was producing a motion picture, based on the life of a civil rights leader, in Brooklyn. Since youth gangs were needed for various roles in the movie, Mr. "A" testified that he and members of his gang were hired both for "speaking roles" and as extras. Several thousand dollars was paid to the gang during the course of the filming and Mr. "A" stated that he always submitted more names for payment than had actually performed. In the words of Mr. "A": "We were beating Paramount for money" (361). The money that was collected was used to purchase, among other things, "clothes, guns . . . knives, machetes" (362).

The image of rival gangs meeting on a deserted street armed with knives, chains, and "zip guns" does not comport with present methods of gang confrontations. Illustrative of today's gang fights is Mr. "A"'s description of an altercation with a rival gang in Mount Vernon, Westchester County. Small groups of two and three members of his gang, well armed, were dispatched to the Mount Vernon gang's clubhouse, each group traveling from different directions. All the groups met at a predetermined location in close proximity to the rival gang's clubhouse where the door was battered down and a hail of bullets unleashed.

"Q What did you do when you kicked down their clubhouse door?

A Fire them up . . .

Q Shoot at them?

A Shoot them, you know, stab them. Hurt them, as many as you can, and try and get away." (363)

According to Mr. "A", the gang's arsenal of weapons is usually kept in their clubhouse or in the apartment of one or more members. In March, 1974, the Youth Gang Task Force of the Police Department executed a search warrant at one of these apartment armories in Bronx County. The police found two sawed-off shotguns, two automatic rifles, three or four handguns and over a thousand rounds of ammunition.

Mr. "B" is an eighteen-year old former gang member. He testified that there were twenty-eight "Divisions" in his gang and his "Division" had approximately one hundred and fifty members. He estimated that his "Division" possessed "at least forty" guns, .22's, .38's, shotguns, and M-1 rifles which were bought by the gang on the black market. Mr. "B" testified that two of his friends, ages nineteen and fourteen, were shot and killed in gang fights; the younger one was shot down on the day of his fourteenth birthday. On another occasion, a member of his gang found an eleven-year old boy with a loaded .32 calibre Savage revolver. The weapon was taken from the boy and placed in the gang's arsenal.

F. Statistics in the Medical Examiner's Office

At the public hearing, the Commission had the benefit of testimony by Dr. Dominick J. Di Maio, the Acting Chief Medical Examiner for the City of New York. Dr. Di Maio is a specialist in pathology and has spent most of his 34-year career in this field, in the Office of the Medical Examiner. The Medical Examiner's Office is responsible for investigation of, among other things, all homicides, suicides, and fatal accidents that occur within any of the five boroughs of New York City.

At the request of the Commission, the Medical Examiner's Office was able to compile figures showing the incidence of handguns in homicide cases during the period from 1969 to 1973.

The following are the total number of homicides and suicides caused by gunshot wounds.

1969	- -	598
1970	- -	750
1971	- -	901
1972	- -	1,059
1973	- -	1,004

The total number for the year 1973 is not complete since there are some cases which are still under investigation. In this five-year period there were a total of 4,312 gunshot homicides and suicides.* Dr. Di Maio estimated that 90% of these cases involved handguns (150). Significantly, the Medical Examiner's figures indicate that 59% of all homicides and suicides are caused by gunshot wounds.

Dr. Di Maio also stated that the handgun has supplanted the knife as the principal weapon used in homicides. He said:

". . . I think that is due to the Saturday Night Special. You can buy a gun very, very cheaply, so it is easy to get a gun." (152)

Perhaps the most disturbing trend noted by Dr. Di Maio is the increase in the number of adolescents involved in handgun deaths. During the period of 1969 through 1973, there were two

* These figures include a certain number of justifiable homicides as well as suicides which would not be included in the Police Department's homicide figures.

deaths in each of these years involving children under the age of nine. In the age group of 10 to 14, the number of deaths has doubled from a low of six in 1969 to twelve in 1973. In the age category of 15 to 19, the figure has risen from forty in 1969 to one hundred in 1973. During this five-year period there were a total of 369 gunshot deaths of adolescents.

According to statistics in the Medical Examiner's Office, a significant portion of these deaths are a result of accidental shootings.* The fact is that children who find guns tend to play with them and the consequence, too often, is tragedy. For example, in 1973, a ten-year old boy found a .38 calibre revolver in the apartment of his friend. The ten-year old proceeded to demonstrate to his friend a game called "Russian Roulette." He then spun the cylinder, raised the weapon to his own right temple and squeezed the trigger. The bullet entered the child's right eye and penetrated the brain. Death was instantaneous.

Another case in the Medical Examiner's files involved several 12-year olds who were playing with a .22 calibre weapon in an apartment hallway. The Medical Examiner's report described the scene:

* Kings County District Attorney Eugene Gold, in his testimony at the public hearing, stated that in a study done in Cleveland in 1973, it was found that a firearm purchased to protect a family is six times more likely to kill a family member or a friend (500).

"Hallway entrance to apartment. This is empty except for deceased and carton box of garbage. Deceased lying face down in a pool of blood, arms at sides, and legs extended. Blood arises from mouth and nose deceased and two friends of same age were playing with a gun which discharged, killing the victim."

The cause of death was a .22 calibre bullet wound of the chest, lungs and heart.

In another case, a six-year old boy shot his four-year old sister with a .38 calibre revolver. The bullet entered the girl's left eye and penetrated the brain causing the child's death. The weapon was a Smith and Wesson owned by the children's father. According to the police report of this homicide, the father, for protection, had purchased the weapon from a man on a street corner who was selling them out of a brown paper bag, ammunition included, for \$150. In any event, while he was asleep one evening, his six-year old son discovered this weapon and while playing with it killed his four-year old sister.

Age is no defense against a misdirected bullet. In one case, a man was incensed by the manner in which his wife was dancing at a party one evening. He thought it was too "sexy." At the conclusion of the party, she took her 10-month old baby to bed with her. The husband entered the bedroom and said he was going to kill her. A shot rang out and the 10-month old baby lay dead from a bullet wound of the chest, lungs and heart.

In another case, a woman shot her husband, her six-year old son and her baby son. The baby was the only one who survived. The wife stated that the devil made her do it.

In a case where a ten-year old was shot and killed, sustaining wounds in the abdomen, aorta and kidney, there were conflicting stories as to the cause of the killing. This youngster was killed by a storekeeper who claimed to have problems with break-ins and burglaries. He stated that he heard noises in the rear of the store and shot the child. Others claimed that the storekeeper was constantly complaining about children making noise in the backyard. In any event, he shot the child with a .25 calibre automatic pistol which he claimed was given to him by a customer for safekeeping.

III. THE HANDGUN VIOLATOR IN THE CRIMINAL JUSTICE SYSTEM

A. The New York City Police Department Handgun Survey

It is obvious from the statistics and sample cases already discussed that the handgun has become a major law enforcement problem. Since New York has stringent statutory sanctions against the illegal possession of handguns, it becomes important to ascertain what type of penalties are actually meted out to the violators of the "Sullivan Law." The New York City Police Department requested its Criminal Justice Liaison Division, under the command of Inspector Michael J. Farrell, to make a

survey of the disposition of cases where individuals were arrested for the illegal possession of handguns.

There were two surveys undertaken by the Criminal Justice Liaison Division. The first of these surveys covered the four-month period between September 1, 1972 and December 31, 1972; the second survey covered the six-month period from January 1, 1973 to June 30, 1973. In these surveys, all arrests were reviewed where the primary charge was illegal possession of a dangerous weapon; also, every fifth case was selected for a more detailed analysis.

Of the cases selected, some were dismissed on constitutional grounds, that is, the arrest was a result of an illegal search and seizure. Others resulted in acquittals, often because of an inability to legally connect the defendant with the contraband in question. However, in its analysis of the results of this survey, the Commission focused only on those cases in the survey which resulted in a conviction. The Commission was thus able to determine whether or not the sentences bore any meaningful relation to the severity of the crime committed.

Of the cases selected for the Police Department's study, in the first survey, there were 164 cases involving the arrest of 208 individuals. (No cases involving juveniles under the age of 16 years were selected.) The local Criminal Courts

processed 138 of these defendants, of which 121 cases resulted in a final disposition. Of these 121 cases, 69 resulted in a conviction. However, only 11 of these 69 defendants who were convicted (16%) received a sentence involving any incarceration. Approximately 85% of the defendants received no prison sentence.

The majority of the defendants convicted (52.2%) received only a fine. The eleven defendants that were imprisoned received the following sentences:

- 4 were for terms under 3 months
- 2 were for terms ranging from 3 to 6 months
- 1 was for a term of 6 months
- 1 was for a term of 9 months
- 1 was for a term of under 1 year
- 2 were for terms of 1 year

In those cases where a Grand Jury handed down indictments, 37 resulted in convictions. However, only five of the 37 (13.5%) received any prison sentence. In these cases the sentences were:

- 1 for a term under 2 months
- 1 for a term under 6 months
- 2 for terms of 1 year
- 1 for a term of 4 years

In the second survey, 342 defendants were chosen for study. A total of 120 defendants were convicted in the local

processed 138 of these defendants, of which 121 cases resulted in a final disposition. Of these 121 cases, 69 resulted in a conviction. However, only 11 of these 69 defendants who were convicted (16%) received a sentence involving any incarceration. Approximately 85% of the defendants received no prison sentence.

The majority of the defendants convicted (52.2%) received only a fine. The eleven defendants that were imprisoned received the following sentences:

- 4 were for terms under 3 months
- 2 were for terms ranging from 3 to 6 months
- 1 was for a term of 6 months
- 1 was for a term of 9 months
- 1 was for a term of under 1 year
- 2 were for terms of 1 year

In those cases where a Grand Jury handed down indictments, 37 resulted in convictions. However, only five of the 37 (13.5%) received any prison sentence. In these cases the sentences were:

- 1 for a term under 2 months
- 1 for a term under 6 months
- 2 for terms of 1 year
- 1 for a term of 4 years

In the second survey, 342 defendants were chosen for study. A total of 120 defendants were convicted in the local

Criminal Courts with the result that only 16 (13.3%) received terms of imprisonment. Here, again, approximately 85% of the defendants received no prison sentence at all. The results were as follows:

- 6 were for terms under 2 months
- 1 was for a term of 2 months
- 1 was for a term of 3 months
- 1 was for a term ranging from 3 to 6 months
- 2 were for terms of 6 months
- 1 was for a term ranging from 6 to 9 months
- 1 was for a term of 9 months
- 3 were for terms of one year

A total of 108 defendants were indicted by a Grand Jury and 62 of these individuals were convicted. Of the 62 convictions, only 13 (21.0%) received terms of imprisonment. Of the 13 defendants imprisoned:

- 7 were for terms of 1 year
- 2 were for terms of 3 years
- 3 were for terms of 5 years
- 1 was for a term of 10 years*

These studies revealed an appalling sentencing pattern with respect to gun crimes which speaks for itself. The fact is,

* This sentence was primarily a result of another conviction for a different crime.

as clearly demonstrated by these surveys, that very few defendants receive jail sentences even though in every one of these cases the defendant could have received a sentence of up to seven years.

B. The Commission's Study

The Commission, disturbed by the results of the Police Department's survey, undertook an independent study. The Commission scrutinized the sentencing practices in felony gun cases in Kings County during the period of March 1973. It was determined from Court records that there were 90 cases where defendants were sentenced upon a plea or conviction on the felony charge of illegal possession of a loaded handgun. In only 4 cases (4.4%) were sentences of one year or more imposed. There were only eight cases (8.8%) where terms of imprisonment were imposed for a year or less. However, the vast majority of these cases, 78 (86.6%) resulted in non-custodial sentences such as fines, probation, unconditional and conditional discharges.

The following are some of the cases reviewed:

In one case, a 39-year old defendant had a history of six prior arrests dating back to 1955. In fact, in 1955 he received a suspended sentence for possession of a loaded gun. In the current case, the witness stated that the defendant brandished a gun and threatened to shoot the complainant. The defendant pled guilty in March 1973 and received a sentence of

five years probation.

In another case, a 44-year old defendant with two prior arrests for possession of a weapon in 1967 and 1968, was arrested when he pulled a gun on the complainant and struck him. He was sentenced in March 1973 to a term of five years probation.

In still another case, a 33-year old defendant with five prior arrests, who in 1971 received a one-year sentence of imprisonment for the illegal possession of a loaded weapon, was charged with firing a gun into the air. In spite of the fact that he had previously been sent to jail for the same crime, (illegal possession of a weapon), in March 1973 he was sentenced to three years probation.

In a fourth case, a 39-year old defendant whose prior arrest record was not available to the Commission, was indicted for firing a shot inside a restaurant. The Assistant District Attorney recommended a jail sentence. The Court imposed a sentence of five years probation.

Finally, a 25-year old male with six prior arrests dating back to 1963, including burglary, assault and robbery, was sentenced to a term of imprisonment in 1966 in the robbery case. In the 1973 episode, the complainant charged that the defendant robbed him at gunpoint of \$350. He was allowed to plead guilty to a reduced charge of possession of a weapon as a felony, and sentenced to a term of one year in jail.

The Commission, in order to extend its study and obtain a broader sampling, selected cases in New York County in which there had been guilty pleas entered to the felony charge of illegal possession of weapons, during the two months of October 1973 and January 1974. There were, respectively, 21 and 10 such cases where sentences had been imposed. Again, as in the Brooklyn study, it should be emphasized that these cases represented guilty pleas entered subsequent to indictment and not necessarily cases where the only charge at the arrest stage was the illegal possession of a weapon. In addition to illegal possession, there were also such additional charges as attempted murder, assault and robbery.

Of the twenty-one felony cases in October 1973, only six defendants received sentences of more than one year in jail. In six other cases the sentence was for one year or less. In eight cases, the sentence was probation and the remaining case resulted in a fine. The 10 cases studied during the month of January 1974 showed that one defendant received a sentence of seven years, one got four years, two were sentenced to three years, three received probation and three were released with conditional discharges. The following are some examples of these cases:

- 1) A 42-year old defendant with a prior arrest for violation of the gambling laws was indicted for attempted murder, discharge of a firearm and possession of a weapon after having

fired three shots at two different people. He entered a plea of guilty to possession of a weapon as a felony and received five years probation.

2) A 25-year old defendant with a prior arrest for petty larceny was apprehended with a .32 calibre revolver and 18 live rounds of ammunition. He was sentenced to five years probation.

3) A 27-year old defendant was indicted for attempted murder, attempted assault, and possession of a weapon. He had a prior record dating back to 1968, including grand larceny, possession of drugs, criminal sale of drugs, and assault. He pled guilty to illegal possession of a weapon and was sentenced up to three years in state's prison. He will probably be eligible for parole after serving one-third of his sentence -- in this case one year.

4) A 60-year old defendant was observed by police officers selling tinfoil containers, presumably narcotics. When he was arrested, he had a loaded .32 calibre pistol in his possession. This particular individual had a prior record dating back to 1932, including gambling, burglary, possession of burglar's tools, assault, possession of narcotics, felonious assault, sale of narcotics (this latter arrest resulted in an eight-year prison sentence). In the current case, he pled guilty to attempted possession of a weapon and the Court sentenced him to five years probation.

C. The Commission's Robbery Survey

The Commission, in order to further determine the extent of the handgun problem went to the records of the New York City District Attorneys* to examine the sentences imposed by the Court in robbery cases. In this survey, the Commission selected all Robbery First Degree cases for the first quarter of 1973. Conviction for Robbery in the First Degree is punishable by imprisonment up to twenty-five years.

Robbery is defined by the Penal Law as a forcible stealing of property from another which may be accomplished by actual or threatened use of force. There were 848 cases in this category during the period January 1, 1973 through March 31, 1973. In 305 of these cases (35.9%), a handgun was used during the course of the robbery. It appears that in only 302 of these 848 cases had sentences been imposed; the remaining cases were still pending. In 118 of the sentenced cases (39.0%), the sentence was for a term of imprisonment of under five years while in 133 cases (44.0%), the term of incarceration was over five years. However, in 51 cases (16.8%) the sentences did not include any jail time. That is, the sentences were non-custodial in nature -- fine, probation, conditional or unconditional discharge.

* With the exception of Richmond County.

The obvious inference to be drawn from these figures is that judges generally impose more severe sentences in robbery cases than in illegal possession of weapon cases. It is true that the range of the authorized sentences is greater in robbery cases and that robbery is a more serious crime than mere possession of a weapon. However, when a weapon is possessed illegally by someone, especially a person with a history of prior criminal behavior, the likelihood is that the person intends to use the weapon to the detriment of law abiding citizens. It is therefore fair to assume that the arrest of an individual for the illegal possession of a weapon has, in all likelihood, prevented the commission of a more serious crime. Hence, the difference in seriousness of the two crimes is not that great.

D. The District Attorneys' Policies in the Handling of Handgun Cases

The Criminal Justice System is charged with the responsibility of dealing with all phases of criminal activity. The various district attorneys, occupying critical positions in the System and confronted with a vast increase in crime, have been forced, especially in New York City, to implement various policies and procedures in order to deal with an almost overwhelming caseload. The fact is that it is physically impossible to have every arrest and indictment go to trial. Plea bargaining is one of the primary tools available to the prosecutor in coping with this problem. Even the accelerated rate of plea bargaining

has not significantly reduced the backlog of cases. Many defendants wait months before a trial. This is a hardship for defendants, particularly those who are incarcerated awaiting trial. Long delays can, and often do, weaken the prosecution's case. Witnesses become difficult to locate, sometimes die, memories fade, and justice erodes. It therefore becomes incumbent on the prosecutors to make policy determinations as to which cases ought to proceed to trial and which cases should be disposed of by plea bargaining.

Some of the district attorneys within New York City indicated that the pressures of pending criminal cases require them to handle a charge of illegal possession of a handgun as a comparatively lower priority crime. For this reason, they have tended to dispose of most of the handgun cases (not involving other more serious charges such as robbery) in the New York City Criminal Court. Few handgun cases are presented to the Grand Jury for indictment and trial in the Supreme Court. This is a policy determination based on the indisputable fact that there are insufficient resources available to proceed expeditiously with the very serious felony cases such as murder, rape and robbery.

On the other hand, the District Attorney of Kings County testified before the Commission that he regarded handgun charges, in many cases, as being sufficiently serious to merit indictment. Moreover, the District Attorney, Eugene Gold,

further testified that it was the policy of his office to recommend to the Court that a sentence of imprisonment be imposed where there was a conviction for possession of a handgun in the Supreme Court. He stated that this policy was adopted as a result of the findings revealed in the above mentioned New York City Police Department's study of sentencing in handgun cases and his own subsequent study of such dispositions in his County. However, Mr. Gold testified that this policy had not resulted in a substantial increase in the number of sentences to imprisonment. In his testimony, he reported on a study which he undertook to determine the effect of his above stated policy in sentencing. Mr. Gold studied some 214 sentences for illegal possession of a weapon during the first three months of 1974. He found that in only 12.1% of these 214 cases did the Court impose a jail sentence; over 85% received no jail sentence. Some of these guilty pleas may have been entered before the date of the new policy but in any event, it appeared that in Kings County, few handgun violators were going to jail.

Although this Commission believes that the charge of possession of a handgun is a very serious one and should be dealt with accordingly, it recognizes that both the courts and the district attorneys are pressured today by the great number of cases being processed through the courts. This pressure undoubtedly results in what has become known as administrative plea bargaining. Because this is a complex subject pertaining

not just to the handgun problem but to the entire scope of the criminal justice system, the Commission will deal with this subject in a separate report to be issued in the near future. Suffice it to say that even with the present difficulties encountered by the courts and district attorneys, this Commission believes that high priority should be given to the handgun cases and that more recognition should be accorded to the fact that many of the persons found with handguns are potentially and likely violent criminals. Stated differently, lenient sentences in handgun cases can only serve to exacerbate the present situation. If criminals know that carrying a handgun will only result in a "slap on the wrist", further proliferation of handguns can be reasonably expected in New York City -- where, according to the Police Department, there are already over one million handguns in circulation.

E. Schools and The Family Court

1) Schools

Another compelling argument in favor of imposing strict sanctions against the illegal importation and possession of handguns is the fact that these weapons are becoming available in ever increasing numbers to children under the age of sixteen. Testimony given at the Commission's public hearing by Judge Joseph B. Williams of the Family Court of the City of New York, Eldridge Waith of the Board of Education, Edward Muir of the United Federation of Teachers and by two former gang members, presented a shocking view into the scope and pervasiveness of the problem of children possessing and often using handguns.

Mr. Waith was a member of the New York City Police Department for thirty years, retiring with the rank of Assistant Chief Inspector. A substantial amount of his police duties was devoted to law enforcement matters dealing with young people. In 1972, he was appointed to the position of Director of School Safety for the New York City Board of Education. This position was established in order to afford both teachers and students an adequate amount of safety and security in and around the schools. This office was founded in response to the growing and alarming rise of crimes in the schools, especially violent crimes. As described by Mr. Waith:

"[there was concern] about robberies, assaults, and some fires, sex crimes, such as sexual abuse, some rape cases, extortion, et cetera, a general run of crimes committed basically by students."
(294)

Mr. Waith's office has placed some 1,800 security guards in the New York City schools in an effort to stem the rise in crime and violence. Statistics have been gathered by the Office of School Safety that clearly demonstrate the extent of the problem. Particularly disturbing is the clear pattern of incidents involving the use of handguns. In 1968, there was only one incident involving the use of a handgun, which occurred in a Brooklyn junior high school. In 1969, there were six such occurrences, four of which took place in elementary schools where the children are under the age of eleven. In 1970, there was one incident in a high school. During the following year, 1971, there were six incidents: one in a high school, two in junior high schools, and three in elementary schools. The next year, 1972, showed nine incidents: five in high schools, three in junior high schools, and one in an elementary school. But in 1973, there were twenty-four such incidents: thirteen in high schools, seven in junior high schools, and four in elementary schools. During the first two months of 1974, there were eleven incidents of students involved with handguns. A conservative projection of these figures would indicate that upwards of fifty handgun episodes can reasonably be expected in the New York City schools during 1974.

It should be noted that these weapons are not the homemade "zip guns" which were prevalent during the 1950's.

Mr. Waith testified:

" . . . but now we find the regular guns, .22, .25, most of our reports indicate that the guns we confiscate or guns that are used in incidents in schools are .22's and .25's and not zip guns as it used to be." (303)

Furthermore, there is no certainty that all such incidents are reported.

"Q Are you satisfied that you are getting all the reports of incidents in the schools from all the principals in the school system?

A I would be less than candid if I said every incident is reported. I would think some incidents are not reported." (326)

Indeed, the carrying of a concealed weapon, by its very nature, is often not detected. Therefore, no reasonable estimate can be made as to the extent of children carrying handguns in schools. However, recent incidents in New York City schools seem to indicate that handguns are becoming a serious problem.

Edward Muir, the special representative for school safety for the United Federation of Teachers, testified that his Union's figures show that during the school year from September 1973 to March 1974, there were over 600 cases of teachers assaulted by students. Mr. Muir pointed out the following incidents that took place in New York City schools from February 21 to March 22, 1974.

1) A gang member shot a rival gang member, the bullet passing through the intended victim's hair.

2) A Queens high school student was arrested for carrying a handgun.

3) A Bronx high school teacher captured an intruder who was arrested for carrying a handgun.

4) A .22 calibre revolver was found under the radiator in a stairwell of a Brooklyn junior high school.

5) A student in a Manhattan junior high school was arrested for carrying a handgun.

6) In a Brooklyn junior high school a student was arrested for possession of a loaded "zip gun."

7) Six days later in the same school a student was arrested for carrying a handgun.

8) At a Manhattan junior high school, six shots were fired through a classroom window. Fortunately, no one was injured.

9) An intruder was arrested in a Queens high school carrying a handgun.

10) On March 18, 1974, an elementary school child was found with a .22 calibre revolver loaded with six rounds of live ammunition.

11) At a Brooklyn junior high school, a teacher disarmed a student who was pointing a handgun at another student.

12) A Manhattan junior high school student was shot in the abdomen by a teenage intruder. (344-46)

It was Mr. Muir's opinion, based upon his experience as a teacher and his duties with the Union that there is an "arms race" taking place in the schools. Students are arming themselves at an ever increasing rate. This is attributable to several factors. First, guns are available today to the youngest school children. Second, guns are deemed to represent a position of status in one's peer group. Third, some children claim that they carry guns for protection.

2) The Family Court

Deviant behavior by children (under 16 years of age) from truancy to homicide, falls within the jurisdiction of the Family Court. Theoretically, the Family Court has available ancillary services such as psychiatric treatment facilities and counseling so that the emphasis is placed on treating the child's problem rather than punishing the child by isolation from society at large. Thus, anyone under the age of sixteen who engages in criminal activity is referred to the Family Court. Regrettably, the Family Court, according to the testimony of Judge Joseph B. Williams,* lacks sufficient resources to adequately fulfill its objectives; and also for this reason, it cannot and does not maintain detailed records and statistics that would help pinpoint patterns of deviant behavior.

* Judge Williams, since his appearance at the Commission's public hearing, has been appointed to the office of Administrative Judge of the Family Court for the City of New York.

Judge Williams testified that based on the figures that are available and his own personal knowledge, there has been, within the past several years, a substantial increase in the number of cases in which children have used or possessed handguns:

" . . . I am impressed by the number, -- of attempted assaults and robberies that we have now which, in the past, if there were weapons used, they used their knife. Now we are getting more and more that some of these attempts, robberies and even some of these assaults, that more and more the weapon that is used is a handgun." (443)

This phenomenon, according to Judge Williams, can be traced directly to the increasing availability of handguns. They are available because the parents possess illegal weapons which the children may have acquired. There is also some indication that handguns are available on a "rental" basis. The increase of youth gang activity has also created a demand for various weapons.

During the one-year period between June 1972 and July 1973, there were, in the Family Courts of New York City, 539 juvenile delinquency petitions resulting from the arrest of children for possession of dangerous weapons. Unfortunately, these statistics do not show the types of weapons involved. It is safe to assume, however, that a fair percentage of these arrests were for possession of handguns. In any event, since these cases involved children under the age of sixteen, this

large number of cases, in itself, is of great significance and concern.

The Commission's investigation also indicated that juveniles under sixteen were being used on an increasingly frequent basis to carry these weapons at the behest of older persons. This fact was confirmed by Judge Williams, who stated his belief that children were also being used by narcotic sellers to transport and convey drugs. This presents a very serious law enforcement problem. On one hand, adult criminals are using juveniles of this city to aid them in carrying on the nefarious narcotic and handgun traffic in order to shield themselves from police detection and apprehension. On the other hand, when the juveniles are arrested for their involvement in these criminal acts, they are brought to the Family Court where they usually receive treatment far less serious than adults in the Criminal Courts, both because of their status as juveniles and the inadequate resources of the Family Court.

F. The Federal Law

In 1934, the Congress passed the National Firearms Act approving a tax system designed to control the flow and possession of machine guns, sawed-off shotguns and cut down rifles. This was a reaction to the gang wars in Chicago and New York City engendered by the rival criminal syndicates attempting to reap the enormous profits from the illegal sale of alcohol.

The epidemic of bank robberies in the midwest was also a contributing factor.

In 1938, the Federal Firearms Act was enacted regulating the manufacture, distribution and sale of firearms. Both the National Firearms Act and the Federal Firearms Act were aimed at controlling the use and possession of the so-called gangster type weapons such as the sub-machine gun and sawed-off shotguns.

Thirty years later, the Federal government took additional affirmative action by enacting the Gun Control Act of 1968.* Basically, that Act regulates the transportation, shipment or receipt of firearms and ammunition in interstate and foreign commerce. Under Title I of the Gun Control Act, no licensee may ship or transport any firearm or ammunition in commerce to any person, other than a federal licensee. However, there is no provision regulating the importation of the component parts of guns.

The Gun Control Act of 1968 makes it a felony to engage in the manufacture, importation, or sale of firearms or ammunition without a federal license. It is also a felony to purchase a firearm or ammunition under fraudulent conditions, or transport stolen firearms or firearms with defaced serial numbers

* Title 18, United States Code, Sections 921-928, effective December 16, 1968.

across state lines. Also, the Act prohibits the sale and transportation of firearms across state lines to certain individuals such as a person with a prior conviction for a felony, a person under indictment, a fugitive from justice, a narcotic addict, a mental defective, a sale to a minor under the age of 21, or a non-resident of the state where the purchase is to occur.

However, while the apparent statutory intent is to prohibit the sale of weapons to criminals and incompetents, the method used to conform to the statutory scheme impairs the legislative intent. A prospective purchaser of a weapon is required to fill out a federal form (ATF form 4473) certifying that he is not under any of the impediments proscribed by the Gun Control Act. No investigation is undertaken, even of the most rudimentary nature, to ascertain whether any of the answers he has certified are in fact true. The purchaser has only to state that he is not a felon, narcotic addict, mental defective, alien, or fugitive from justice. This form is then given to the licensed firearm vendor who is required to seek identification from the purchaser (usually a driver's license) in order to determine the residence of the purchaser. The net result is that one can purchase as many weapons as one wants without obtaining a license to possess a weapon (no license is required in many states), by

the mere demonstration of residency in the state of purchase. While Title I makes it a felony to give false information in order to purchase a weapon, the application of this stricture is well after the fact, and thus does nothing, in the final analysis, to prevent firearms from coming into the hands of criminals.

In this connection, Raymond Kiely, Regional Director, Bureau of Alcohol, Tobacco and Firearms, United States Treasury Department, testified at the Commission hearing as follows:

"DEPUTY COMMISSIONER SKOLNIK: And in that way it means that it is relatively easy to get the gun, if you really want it.

MR. KIELY: That is correct.

DEPUTY COMMISSIONER SKOLNIK: Despite these regulations?

MR. KIELY: Yes.

COMMISSIONER SILVER: In connection with this form (ATF form 4473) is he limited to any number. Can he buy more than one?

MR. KIELY: Yes, he can. Under the existing laws, yes, he can.

DEPUTY COMMISSIONER SKOLNIK: To pick up this illustration, if there is an unscrupulous dealer and there is an unscrupulous individual in New York State, if he manages one way or another to get to this dealer, he can buy a dozen or a hundred or 200 guns and make a quick turnover as soon as he gets them into New York City.

MR. KIELY: Yes. And in three cases I think we have indications that there were in excess of 30,000 guns so purchased from three federally licensed firearms dealers." (192-3)

G. The Licensing Laws

Gun licensing in New York State falls into two general areas. In the City of New York, and in the Counties of Nassau and Suffolk, application for a license is made to the respective police departments, where the application is processed and approved or rejected. In all other counties of the State, the licensing authority is a local judge of a court of record. A refusal to grant a license may be appealed in the appropriate court in which proceeding the licensing authority must state the reasons for rejecting the application.

The statutory requirements for licensing are found in Section 400.00 et seq. of the Penal Law which provides that the applicant must be of good moral character and never convicted of any felony or of certain specified misdemeanors.

The statute creates two categories of pistol licenses. The first authorizes the issuance of permits for possession in one's home or place of business. The second type of permit allows the licensee to "carry" the weapon concealed on his person. The statute specifically authorizes the issuance of "carry" licenses for bank and express company messengers and guards in certain penal institutions. With regard to other applications for "carry" licenses, which are not based upon the applicant's employment, the statute states that such licenses should be issued when "proper cause" exists. However, no definition is given of "proper cause" and the most frequent reasons listed by applicants, outside of New York City and the Counties of Nassau and Suffolk, are "target shooting" and "hunting."

There is a statutory requirement that the appropriate "police agency" investigate all information contained in the application. In some jurisdictions, this duty falls upon the local police or the sheriff's office. The nature, extent and thoroughness of the investigation, however, varies from county to county. In sum, there is no uniform procedure employed on a statewide basis pertaining to the manner in which these investigations should be conducted.

Nor is there uniformity throughout the State in arriving at the judgment of who should receive a license and under what conditions a license should be issued. For instance, there are 416,000 handgun licenses extant statewide excluding the City of New York. On the other hand, New York City, which has roughly one-half the population of the State, has issued only 28,000 licenses which are now current. Thus, the areas outside New York City accounts for 94% of all handgun licenses in the entire State while only representing approximately 50% of the population.

In 1964, this Commission studied handgun licensing in New York and issued a report summarizing the results of that investigation. The report, now ten years old, found that there was no statutory mandate for safety instructions or required demonstration of an ability to handle a firearm prior to or after the license has been issued. Also, the report noted that, with the exceptions of New York City, Nassau and Suffolk Counties, licenses, once issued,

remain in full force and effect until revoked. There was and is no method by which the licensing authorities can determine if a change of circumstances in the mental or physical health of the licensee had occurred. Thus, persons who may have become hopelessly insane, blind, or otherwise disabled often retain their pistol permits.

Another problem inherent in the "good until revoked" license is that there is no systematic method of up-dating other critical information such as address or occupation. An individual may have been granted a license based on occupational "need" but a subsequent change of job, obviating the original "need," will never come to the attention of the issuing authority. Since changes of address often are not reported to the issuing authority, there is no adequate method of locating licensees to determine if any change has taken place during the intervening years that would seriously impair the licensee's ability to use or handle a weapon.

Very often there is also no accurate system employed to determine if a licensee has died. The authorities must frequently rely solely upon the licensee's relatives or executor to turn in both the license and the weapons.

These were some of the situations that existed in 1964. Recommendations in the Commission's report included:

1. Issuance of license for a fixed term to allow for re-evaluation of need and competency on a recurring basis.

2. Minimum age requirement of 18 years.
3. More detailed investigations be undertaken to determine need and competency.
4. Adequate training and instruction in the use and care of weapons.
5. Issuance of licenses upon a demonstration of actual need.
6. Notification by licensees to the appropriate authorities when there is a change of residence.

At the public hearing conducted by this Commission on April 23, 1974, in connection with this investigation, Senior Investigator Lee Thomas of the New York State Police testified that he was in charge of the Pistol Permit Section in Albany, New York, which is the central records' agency for all firearms, firearm licenses, gun dealers and gunsmiths. Senior Investigator Thomas indicated that he was familiar with the Commission's 1964 Report on Pistol Licensing and the recommendations made in that report. He testified that during the intervening ten years there have been virtually no changes in the law encompassing any of these recommendations.

IV. THE SHOOTINGS CONTINUE

The following are examples of some incidents of shootings and killings with handguns which were reported in the newspapers within the two-week period immediately preceding the release of this report.

1. A 17-year old Bronx youth, apparently mistaken by a youth gang for someone else, was shot and killed as he walked out of a grocery store. The fatal shot came from a passing bus.
2. A 23-year old Merchant seaman was shot and killed in an apartment in Brooklyn when a friend reportedly showed off an unlicensed pistol.
3. A 22-year old counter girl in a restaurant in Manhattan was shot to death by hold-up men who held her hostage and carried out their threat to kill her unless the manager of the store opened a safe.
4. A 23-year old shipping clerk fatally shot himself while at work in Manhattan. The police described the shooting as accidental.
5. A 55-year old guard in a restaurant in the Bronx was shot and seriously wounded when he tried to stop a robbery there.
6. A 38-year old Wall Street stock clerk was found shot and lying across the front seat of a car in Astoria, Queens.
7. A guard at City College was shot three times in the head during a gun battle with three men who he believed were about to hold up the school's cafeteria.
8. Two children were wounded when a sniper fired a single shot into a classroom in upper Manhattan.

V. RECOMMENDATIONS

The testimony presented at the Commission's public hearing showed that there are basically two aspects to the illegal handgun problem: (1) the illegal importation of handguns into the State; (2) the enforcement of the laws governing the illegal possession of handguns and their use in the commission of crimes. Both aspects are interrelated.

Federal Action

With respect to the illegal importation of handguns into this State, it is quite clear that the easy availability of handguns in this City and State could be sharply reduced if there were Federal legislation which effectively control the interstate flow of such concealed weapons. In other words, if Federal laws would strictly control the manufacture and sale of firearms in all states of this country, and thus stop the flow of such weapons into the hands of persons with criminal intentions, the problem would be immeasurably alleviated. To that extent, this problem is actually outside the control of New York authorities.

The Commission, accordingly, recommends and urges the enactment of appropriate Federal legislation that would require:

- (1) An outright ban on the manufacture and sale of handguns that are not suitable for legitimate sporting, military or law enforcement purposes, otherwise commonly referred to as "Saturday Night Specials."

(2) The licensing, pursuant to appropriate standards, of all persons who own or seek to purchase handguns so as to prevent the easy sale of handguns to persons having criminal intentions.

(3) The registration of every handgun in the United States to provide an improved system for law enforcement agencies to trace and apprehend those who commit crimes with handguns.

(4) Pending the enactment of such legislation, it is urged that there be established in the Bureau of Alcohol, Tobacco and Firearms, in the Northeastern Region, a separate firearms unit. This unit should have adequate personnel to concentrate its efforts, in cooperation with local law enforcement agencies, on the tracing of handguns that have been transported interstate, illegally, and used in the commission of crimes, and in developing and exchanging intelligence information regarding such illegal operations and in apprehending and prosecuting violators of the law.

State and City Action

With respect to the enforcement of the laws governing the illegal possession of handguns and their use in the commission of crimes, and while awaiting necessary Federal action which realistically cannot be expected in the near future, the Commission recommends:

(1) That a well-planned, state-wide, educational program should be developed and carried out effectively by responsible governmental officials and law enforcement officers, informing the public of the havoc created in our communities by the illegal possession and use of handguns. It should also be made clear to all, and particularly to persons who illegally possess handguns with criminal intentions, that such illegal possession of a handgun is a felony punishable by imprisonment.

As part of that program, a well publicized appeal should be made by the appropriate officials throughout the State requesting all persons in possession of handguns without a permit, to turn in those weapons to law enforcement officials in return for immunity from prosecution for the illegal possession of those handguns.

(2) That the district attorneys and the courts in this State recognize the seriousness of the ever increasing problem of the illegal possession and use of handguns and place a higher priority on such cases; and that the provisions of the recently amended "Sullivan Law"* which makes the crime of illegal possession of a handgun, with intent to use that gun, a Class "C" felony punishable by up to 15 years imprisonment -- and the violator subject to a mandatory prison term in accordance with Section 60.05 of the Penal Law -- be fully adopted in the spirit

* At the conclusion of the Commission's public hearing on May 1, 1974, the Commission recommended the enactment of this Bill which was under consideration at the 1974 Legislative Session.

and letter of the law and given meaningful application and implementation in fulfillment of the purpose of that law.

(3) The Commission adopts and subscribes to the recommendation made by Judge David Ross, the Administrative Judge of the City of New York, that law enforcement officials on all levels be thoroughly informed and trained with respect to the legal and constitutional issues inherent in all criminal cases and particularly in relation to firearms violations.

(4) That the small firearms unit that presently exists in the New York City Police Department be substantially expanded, with adequate personnel, to deal with the illicit gun traffic in the City of New York.

(5) That the procedures relating to the licensing of handguns in areas of this State outside of the City of New York and the Counties of Nassau and Suffolk be reviewed. In those areas, a license for a handgun, once issued, is, in effect, a lifetime license. This procedure affords very little, if any, control or supervision over the licensee or his pistols after the issuance of a license. The Commission recommends what it previously recommended following its investigation in 1964 of pistol licensing laws and procedures in New York State -- that Penal Law Section 400.00 (10) [formerly Section 1903 (10) of the Penal Law] should be amended to provide that licenses to carry or possess a pistol, elsewhere than in the City of New York and the Counties

of Nassau and Suffolk, issued subsequent to the date of this amendment, shall expire on the third anniversary of such license. Further, that all prior outstanding pistol licenses within such jurisdictions shall terminate within three years of the date of enactment of such amendment, at a time and in a manner to be determined by the Board of Supervisors of each county.

CONCLUSION

At the conclusion of the public hearing in this investigation, the Commission said:

"All that we have heard at the public hearing and all that we have said in this statement lead to the worrisome conclusion that although New York State and New York City have strict gun control laws, the extensive illegal possession of handguns and the exceedingly high rate of serious crimes caused by this weapon have produced a troublesome state of affairs. With illegal guns continuing to pour into this state, and as more and more crimes are being committed with them, the people, unfortunately, might well get to accept this condition as routine difficulties. This must not be permitted to happen. Illegal guns and high crime rates are not, and must never be considered or accepted as routine affairs. All of us, the people, the police, the prosecutors and the courts and related agencies must see this terrifying situation for what it is and, individually and jointly, must take the most effective measures to counteract it.

One witness at the public hearing said, in substance, that perhaps what would be very helpful to cut down on the illegal possession of guns, is not so much the authority to impose sentences upon violators of the law, but the knowledge by those individuals that if arrested and convicted, a swiftly imposed jail sentence is a certainty.

A new and meaningful atmosphere must be created to deter persons from the illegal possession and use of handguns." (Underscoring supplied)

More need not be added to that statement except to emphasize that a new and firm approach must be made to this problem and that realistic and effective measures must be utilized to the fullest extent as provided by law.

The Commission hopes that the facts revealed in this investigation and the recommendations made will be productive of new and fresh thinking and constructive action which will assure the people of this City and State greater personal safety and security.

Respectfully submitted,

Howard Shapiro, Chairman
Earl W. Brydges, Jr.
Ferdinand J. Mondello
Edward S. Silver
Commissioners

October 17, 1974.

END