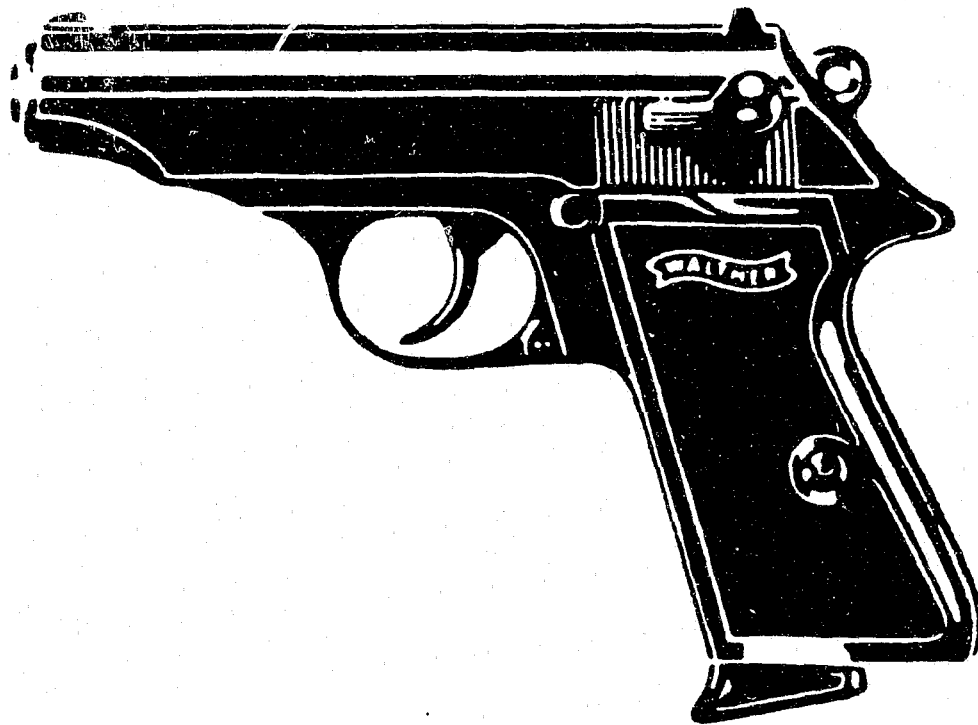


GUNS GONE BAD

*From police holsters
to criminal hands*



Report of

Assemblyman John J. Faso

Ranking Minority Member, Assembly Codes Committee

to

Assemblyman Clarence D. Rappleyea

Assembly Minority Leader

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U.S. Department of Justice
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SUMMARY

The December 1993 report, *Guns for Sale*, documented the Cuomo Administration's disposal of 6,807 used state law enforcement and militia weapons into the private sector, despite the Governor's extreme gun control stance. As a follow-up, this report focuses on the extent to which former New York State law enforcement weapons have been used in crimes in New York and other states. Also included are further details of some of the 16 weapons deals described in *Guns for Sale*, and of additional state weapons transactions not mentioned in the previous report.

Findings

From our examination of state inventory and contract documents, and of weapons confiscation records generated by or in the possession of law enforcement agencies in six different jurisdictions, we found:

1. More than two dozen former New York State agency weapons later seized as criminal evidence -- including one gun linked to a 1991 incident in which two New York City Housing Authority police officers were wounded, and another confiscated following a 1993 Los Angeles shooting spree that left two people dead.
2. Several recent cases in which state agencies violated Penal Law provisions concerning acquisition and disposition of weapons, Finance Law provisions concerning sale or purchase of state property, or both.
3. Further examples of lax inventory controls, sloppy record-keeping, and other questionable weapons management practices by state agencies, including one agency that allowed its officers to become personally involved in the resale of their own and their colleagues' guns.

Additional State Weapons Dispositions

In addition to the 6,807 guns whose disposition was documented in *Guns for Sale*, state records show that more than 1,100 other used state agency and authority weapons were disposed of by sale or trade to private gun dealers since 1983. These additional weapons included machine-guns, assault rifles, and numerous semiautomatic pistols with magazine capacities in excess of 10 rounds.

Many thousands of additional New York State agency and authority weapons, mostly revolvers inventoried in the early 1980s, were also apparently traded in, although their actual disposition was not documented. Meanwhile, at least one state agency, the Division of Parole, is moving ahead with plans to upgrade its arsenal -- from .38 caliber revolvers to 9mm pistols.

What Parole plans to do with its current inventory of handguns is unclear. What is certain is that this agency alone could easily place an additional 1,000 used state weapons into private hands.

I. FROM COPS TO CRIMINALS

A limited sample of serial numbers was drawn from confiscated weapons records in New York City, Los Angeles, and Miami. Combined with information of a confidential nature obtained from law enforcement sources in Buffalo, Chicago and Detroit, the results of this sampling prove that former New York State weapons have come into the possession of criminals in major metropolitan areas.

More than two dozen handguns previously owned by New York State law enforcement authorities have recently been confiscated in connection with crimes. These include one allegedly used to commit two separate murders, four involved in cases of attempted murder or assault with a deadly weapon, and five tied to drug-related offenses.

Some former New York State law enforcement weapons, shipped to an out-of-state weapons dealer, have ended up back in New York. Others have begun to surface as far away as California, Florida, Illinois and Michigan, where they have been seized by police in conjunction with weapons violations, drug busts and shootings.

The weapons associated with each of these cases are listed in the table on the next page. The incidents in question are grouped according to the make and caliber of the weapon involved, and are discussed further in the narrative which follows.

Smith & Wesson .357 Caliber Revolvers

In 1990, as part of a contract to purchase new Glock 9mm semiautomatic pistols, the Division of State Police traded more than 4,000 used Smith & Wesson .357 caliber revolvers to Northeast Gun & Supply Company of Billerica, Massachusetts. At about the same time, the Department of Environmental Conservation also traded its .357 caliber revolvers to Northeast for a credit towards the purchase of new Glocks.

TABLE 1. GUNS GONE BAD: FORMER NEW YORK STATE WEAPONS INVOLVED IN CRIMES: 1990 TO 1993

| Make | Model | Cal. | Agency of Origin | Disposed of | Next Owner | Used in | Criminal Incident | Date |
|---------|--------|------|----------------------------|-------------|----------------|---------|---|-----------|
| S&W | 65 | .357 | State Police | 1990 | Northeast (MA) | N.Y.C. | Criminal possession of a weapon (C.P.W.) | Oct. 1990 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | N.Y.C. | Attempted robbery; C.P.W. | July 1991 |
| S&W | 65 | .357 | State Police | 1990 | Northeast (MA) | N.Y.C. | Attempted murder of a police officer; drugs (crack) | Nov. 1991 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | L.A. | Attempted murder | June 1991 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | L.A. | Possession or purchase of a controlled substance | July 1991 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | L.A. | Assault with a deadly weapon; great bodily injury | Sep. 1991 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | L.A. | Robbery | May 1992 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | L.A. | Burglary | Dec. 1992 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | L.A. | Carrying a loaded firearm in public | Jan. 1993 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | L.A. | Spouse beating | Jan. 1993 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | L.A. | Grand theft auto | Feb. 1993 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | L.A. | Spouse beating | May 1993 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | L.A. | Exhibiting a deadly weapon | May 1993 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | L.A. | Assault with a deadly weapon | May 1993 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | L.A. | Felony addict in possession of a firearm | June 1993 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | L.A. | Transporting narcotics for sale | July 1993 |
| S&W | 681M | .357 | State Police | 1990 | Northeast (MA) | L.A. | Battery | July 1993 |
| S&W | 681 | .357 | Environmental Conservation | c. 1991 | Northeast (MA) | L.A. | Possession of a controlled substance | Nov. 1993 |
| S&W | 65 | .357 | State Police | 1990 | Northeast (MA) | Miami | Weapons violation | June 1992 |
| S&W | 13 | .357 | State Police | Unknown | Unknown | Chicago | Drug seizure; C.P.W. | May 1993 |
| S&W | 6904 | 9mm | State Police | 1990 | Northeast (MA) | N.Y.C. | C.P.W.; resisting arrest | June 1991 |
| S&W | 6904 | 9mm | State Police | 1990 | Northeast (MA) | N.Y.C. | C.P.W. | Feb. 1992 |
| S&W | 6904 | 9mm | State Police | 1990 | Northeast (MA) | N.Y.C. | Criminal possession of a controlled substance; C.P.W. | June 1992 |
| S&W | 6904 | 9mm | State Police | 1990 | Northeast (MA) | Detroit | Shooting | June 1993 |
| S&W | 5906 | 9mm | Environmental Conservation | c. 1991 | Northeast (MA) | Miami | Weapons violation | May 1992 |
| S&W | 36 | .38 | Environmental Conservation | c. 1991 | Northeast (MA) | L.A. | Exhibiting a deadly weapon | May 1991 |
| Colt | 1911A1 | .45A | Military & Naval Affairs | Unknown | Unknown | Buffalo | Robbery | June 1992 |
| Walther | PPK | .380 | State Police | c. 1989 | Unknown | L.A. | Murder | Feb. 1993 |

Compiled 4/15/94 by Herb Detrick, N.Y.S. Assembly Minority Ways & Means, from state weapons inventory lists, confiscated gun records, and confidential police sources.

Within months of the completion of the first of these state weapons dispositions, former New York State trooper, criminal investigator, and environmental conservation officer firearms began turning up among confiscated weapons being processed by police departments in New York City, Los Angeles, and Miami, as detailed below:

- ⊕ In October 1990, a New York City police officer seized a loaded .357 caliber revolver from a 32 year-old Bronx resident outside the man's home on University Avenue in the 52nd Precinct. The man was charged with criminal possession of a weapon. This gun had been traded by the State Police to Massachusetts-based Northeast Gun & Supply Co. just a few months earlier.
- ⊕ Another .357 caliber revolver disposed of by the State Police to Northeast in 1990 was confiscated in connection with a July 1991 attempted robbery of an employee of the Cactus Cafe, a Mexican restaurant at 1 West 3rd Street in Manhattan. Before being traded to Northeast, this weapon had been issued to an officer attached to Troop K in Poughkeepsie.
- ⊕ In November 1991, a resident of the Louis Pink project in East New York fired numerous shots from his apartment window at police officers from the New York City Housing Authority who were investigating a previous shooting. Two officers were wounded in the attack, and another suffered mental stress from having shots fired at him. By the time the incident was over, all four occupants of the apartment, including a mother, father, and their two children, had been arrested by police, who also seized 197 vials of crack, cash, and two handguns, including a .357 caliber revolver previously owned by the Division of State Police. Though reported as stolen from the State Police in 1988, this gun was also listed among weapons which the State Police say were traded to Northeast in 1990. It was not clear which disposition record was accurate.

- ⊕ In June 1991, a .357 caliber State Police revolver traded to Northeast in 1990 was confiscated by Los Angeles Police in connection with a charge of attempted murder.
- ⊕ A July 1991 Los Angeles incident involving a used State Police .357 handgun led to an arrest for possession or purchase of a controlled substance.
- ⊕ In September 1991, a former State Police .357 caliber revolver was confiscated in Los Angeles in connection with an "assault with a deadly weapon, great bodily injury" charge.
- ⊕ In May 1992, a former State Police .357 magnum handgun was seized by Los Angeles Police in connection with a robbery.
- ⊕ A December 1992 burglary in Los Angeles led to the confiscation of an ex-State Police .357 revolver. It is not known if this weapon was stolen from a lawful owner, or was previously possessed by the alleged perpetrator of the crime.
- ⊕ In January 1993, Los Angeles Police confiscated a .357 caliber revolver and charged an individual with carrying a loaded firearm in public. The gun had been shipped to Northeast by the State Police in 1990.
- ⊕ In January 1993, Los Angeles Police confiscated a Smith & Wesson .357 caliber revolver, previously owned by the State Police, in connection with a spouse beating incident.
- ⊕ In February 1993, Los Angeles Police seized a former State Police .357 caliber revolver in conjunction with a case of grand theft auto. It is still unclear whether the weapon seized was recovered from a suspect following an arrest, or was actually used in a car-jacking.
- ⊕ In May 1993, another Los Angeles spouse beating incident led to the confiscation of a Smith & Wesson .357 caliber revolver previously traded by the State Police to Northeast in 1990.

- ⊕ In May 1993, charges of exhibiting a deadly weapon were filed by Los Angeles Police in connection with a case involving a former State Police .357 caliber revolver.
- ⊕ A more serious May 1993 incident in Los Angeles resulted in a charge of assault with a deadly weapon (firearm), and the seizure of another ex-State Police .357 caliber weapon of the same type.
- ⊕ In June 1993, Los Angeles Police seized a Smith & Wesson .357 caliber weapon formerly owned by the State Police. This incident led to a charge of possession of a firearm by a felony drug addict.
- ⊕ In July 1993, a Los Angeles Police arrest involving transportation of narcotics for sale resulted in the confiscation of a used State Police .357 magnum handgun.
- ⊕ In July 1993, a battery-related charge led to the seizure by Los Angeles Police of an ex-State Police .357 magnum handgun.
- ⊕ A November 1993 seizure of a former Department of Environmental Conservation .357 caliber revolver by Los Angeles Police was made in connection with a case involving possession of a controlled substance.
- ⊕ A former State Police Smith & Wesson .357 Model 65 revolver was reported seized in connection with a weapons violation in Southern Florida and turned over to Metro-Dade Police. Further details of this incident are currently unavailable. The weapon was traded to Northeast in 1990.
- ⊕ In May 1993, a .357 caliber Smith & Wesson Model 13 revolver, previously owned by the State Police, was confiscated along with other weapons in a drug-related seizure in Chicago. Manufacturer's records indicate this weapon was delivered to the New York State Police Academy in July 1975, although the State Police have provided no confirmation of the actual receipt or disposition dates. The nearly 20 years which have elapsed

between initial purchase and ultimate seizure of this particular item serve as a potent reminder that former law enforcement weapons, originally selected for their quality and rugged serviceability, can have an enduring life on the street.

Smith & Wesson 9mm Pistols

In 1990, as part of a three-way deal for 4,300 new Glock 9mm pistols, the New York State Police traded to Northeast more than 300 barely used Smith & Wesson 9mm pistols acquired from the manufacturer just a year earlier. A compact, blue-black carbon steel pistol with a magazine capacity of 12 rounds, the model in question was an excellent concealable weapon for criminal investigators and other State Police officials who carried them while assigned to Division Headquarters and elsewhere in 1989. It also has proven to be popular with street criminals. The following is a summary of four separate incidents in which some of these guns were seized in connection with crimes:

- ⊕ In June 1991, a New York City police officer spotted a 19 year-old man leaving a building at 860 Bryant Avenue in the Bronx. Upon seeing the officer, the man dropped a gun by a lamp post on the opposite side of the street, and fled over a fence. This individual was subsequently pursued, caught, and charged with third degree criminal possession of a weapon and resisting arrest. The weapon in question, a 9mm pistol issued in 1989 to a State Police officer attached to Division Headquarters in Albany, was one of the 12-shot semiautomatics traded in 1990 to Northeast for a credit toward the purchase of new police sidearms from Glock, Inc.

- ⊕ In February 1992, New York City Police found another of these Smith & Wesson Model 6904 pistols, loaded, in the possession of a 22 year-old man in the vicinity of 872 Hunts Point Avenue in the Bronx's 41st Precinct. He was charged with criminal possession of a weapon.

- ⊕ In June 1992, New York City Police from the 41st Precinct responded to a complaint regarding a domestic dispute between a woman and her common law husband at 521 East 145th Street. When officers were admitted to the apartment and entered the living room, they found in plain view on the couch cash, drugs and two handguns, including a Smith & Wesson 9mm pistol which, three years earlier, had been carried by an officer assigned to New York State Police Division Headquarters in Albany. This gun was also traded to Northeast in 1990.
- ⊕ In June 1993, the Detroit Police Department responded to a reported shooting in a parking lot outside a tavern. Found near the victim, who had suffered a gunshot wound, was a 9mm Smith & Wesson pistol previously owned by the New York State Police and traded for a purchase credit in 1990.

A different type of Smith & Wesson 9mm semiautomatic pistol, the 14-round Model 5906, purchased in the late 1980s by the Department of Environmental Conservation (DEC), was also traded to Northeast as part of the department's 1990 contract for the purchase of new Glock handguns. In May 1992, one of these weapons was reported confiscated by Miami-area police in connection with an unspecified weapons violation. Additional details about the nature of the offense are currently unavailable. This particular case, however, stands out as an example of the difficulties and challenges associated with trying to trace New York State agency guns after they leave the state's possession. Although this weapon was acquired by DEC over five years ago, and traded nearly three years ago, the agency neglected until January 1994 to report either its acquisition or disposition to the State Police as required by Penal Law §400.00.

Smith & Wesson .38 Caliber Revolver

In May 1991, Los Angeles Police seized a former Department of Environmental Conservation Smith & Wesson Model 36 Chief's Special revolver in connection with a criminal charge of exhibiting a deadly weapon. The required disposition notice for this weapon, showing that it had been traded in about 1991, also was not filed by the agency until January 1994.

Colt .45 Caliber Pistol

In June 1992, Buffalo, New York, police officials contacted the New York State Division of Military and Naval Affairs (DMNA) to advise that a .45 caliber Colt Government Model 1911A1 semi-automatic pistol registered to DMNA allegedly had been used in a robbery at 242 Fulton Street in Buffalo. Although listed on a 1980 DMNA inventory sheet, this Korean War-vintage weapon was never reported to State Police as having been disposed of.

Walther .380 Caliber Pistol

In the 1980s, State Police undercover investigators were armed with Walther .380 caliber semiautomatic pistols, including the seven-shot PPK and short-barreled PPK/S models. With the advent of compact, high-magazine capacity 9mm pistols such as the Smith & Wesson Model 6904, which holds nearly twice as many rounds as the PPK, the State Police moved to upgrade their investigator weapons inventory. Information made available by the State Police indicates that, in early 1989, more than 300 Walthers were turned in by investigators and subsequently disposed of. In addition to these weapons, another Walther, at one time held as evidence in Bronx County, was disposed of to Northeast in 1990.

One of the Walther PPK's previously owned by the State Police was allegedly used in a February 1993 Los Angeles shooting spree that left two persons dead. The firearm in question is being held in "sealed" storage, and personnel assigned to the Los Angeles Police Department scientific laboratory have no access to the gun.

II. BROKEN LAWS

Cuomo Administration officials responded to the original *Guns for Sale* report by insisting that the 16 transactions detailed in the report were legal under New York State law. Further review of state agency weapons acquisition and disposition records shows that state officials engaged in a number of illegal practices while completing both trade-based and other weapons transactions. Included among these violations are: numerous failures to comply with reporting requirements for weapons acquisitions and dispositions; illegal disposal of confiscated weapons; circumvention of the value limitation for no-bid contracts; and disposal of surplus weapons without a valid contract. These violations of state statutory provisions are highlighted and described below.

Failure to Report Weapons Acquisitions and Dispositions

Failing to report the acquisition and disposition of law enforcement agency weapons to the Division of State Police is a violation of Penal Law §400.00, subdivision 12-c, and a Class A misdemeanor. Since 1980, every head of a state agency, commission, or authority which employs persons who may lawfully possess firearms without a license has been required to report, within 10 days of the acquisition or disposition of a firearm, the make, model, caliber and serial number of such firearm, as well as the name and address of the person from whom the weapon was acquired or to whom it was disposed.

Several state agencies, including some specifically criticized in the original *Guns for Sale* report, remained in non-compliance with Penal Law §400.00 provisions well into 1994. After review of weapons registration records provided by State Police, it appears that only two of the state agencies which are required to report to the State Police -- namely, the Department of Health and the State Board of Elections -- have been in full and timely compliance with all applicable agency weapons acquisition and disposition reporting provisions since the law went into effect in 1980. Several other agencies appear to be repeat violators.

In May 1989, for example, the State Police warned the Department of Environmental Conservation (DEC) that the failure of its individual officers to report personal weapons acquisitions and dispositions constituted a Class A misdemeanor. The agency immediately had its officers correct their own weapons acquisition records. Four years later, the State Police Central Records Unit discovered individual officers from other police agencies reporting the personal acquisition of DEC-registered guns, indicating that DEC had failed to properly document the disposition of some of its own weapons.

In another case, weapons trace requests made to State Police led to the discovery that the Unified Court System (UCS) also had failed to report the disposition of weapons which it previously had registered. Documents provided by the State Police indicated neither the purpose of the trace requests, nor whether UCS eventually reported these weapons.

Also, while the main office of the Department of Correctional Services appears to be in compliance with reporting requirements for agency weapons acquisitions and dispositions, weapons from individual correctional facility arsenals which were originally reported to the State Police as long ago as 1980 may have been disposed of without being properly reported.

It was only after inquiries from Assembly members and staff that the Department of Environmental Conservation, the Office of General Services (OGS), the Office of Parks, Recreation & Historic Preservation (Parks), and the New York Power Authority (NYPA) attempted to bring their weapons inventory records up to date. But as of March 1, 1994, only OGS Capital Police officials appear to have fully updated their records to conform with the law.

In short, there is little evidence to suggest that state agencies themselves are taking an active role in complying with the law. Meanwhile, the State Police have disavowed primary responsibility for enforcing the reporting law. They say that their principal role is to record information reported by individual agencies, not to enforce full compliance.

Illegal Disposal of Confiscated Weapons

Selling of confiscated weapons previously used in the commission of an offense is a violation of Penal Law §400.05, subdivision 1. In 1990, the Department of Environmental Conservation (DEC) offered to trade 42 confiscated shotguns and hunting rifles to a vendor in part payment for a shipment of new 9mm semiautomatic pistols for the department's environmental conservation police officers and investigators. Since the weapons confiscated by DEC were reported by the department to have been used illegally by hunters, their resale constitutes a violation of state law -- in this instance, a Class A misdemeanor. A number of the rifles and shotguns traded by DEC bore no serial numbers. While it has not been verified whether the missing serial numbers were defaced, or simply never stamped on the guns, the sale of a weapon with a defaced serial number would constitute an additional violation of law.

Circumvention of No-Bid Contract Value Limitation

State Finance Law §174, as amended in 1991, provides for a \$5,000 maximum no-bid limit for commodities purchase contracts issued by state agencies.

The Division of Parole initiated a field trial in 1992 to determine whether to equip state parole officers with 9mm semiautomatic weapons. In conjunction with this pilot project, the OGS Standards and Purchase Group authorized Parole to contact Georgia-based Glock, Inc., directly to purchase "a small quantity of weapons," not to exceed \$5,000, for the trial. Consequently, on March 30, 1992, Parole issued a \$4,695 purchase order to Glock for 15 Glock semiautomatic 9mm pistols. Later, following the awarding to Glock of a competitively bid contract, Parole purchased an additional 250 Glock pistols. Combined with other purchases from Glock in the fall of 1993, expenditures on this contract, as of January 1994, exceeded \$134,000.

Parole's first purchase of pistols from Glock in early 1992 fell just one gun shy of the \$5,000 no-bid limit imposed by OGS. Purchasing even one additional weapon at the \$313 unit price would have pushed Parole over the

\$5,000 no-bid limit by eight dollars, forcing the agency into a competitive bidding situation. But while no contract was required for Parole to purchase 15 new 9mm pistols valued at \$4,695 from Glock in May 1992, copies of documents on file at the agency and the state comptroller's office show that Parole circumvented competitive bidding requirements by accepting into agency inventories a number of "loaned" weapons not formally purchased until after the awarding of a competitively bid contract to Glock in October 1992.

For example, on May 14, 1992, pursuant to the provisions of Penal Law §400.00, Parole registered the serial numbers of the 15 weapons it had acquired from Glock in the no-bid purchase of March 1992. At the same time, however, Parole also registered an additional 17 pistols acquired from Glock. The serial numbers of these 17 pistols later reappeared, along with those of 233 other guns, on a Glock invoice dated November 11, 1992.

Apparently, Glock invoiced Parole for 17 no-bid pistols sometime prior to issuing the May 1992 invoice for the 15 guns valued at \$4,695. But Parole made no payment to Glock for these items until after the 250-gun purchase contract was formally awarded several months later. Paying for the 17 additional weapons in early 1992 would have indicated that Parole's original no-bid deal actually had a value of twice the \$5,000 no-bid threshold set by state law.

Disposal of Surplus Weapons Without a Valid Contract

State Finance Law §174, dealing with the letting of contracts, also provides that no contract shall come into existence between a vendor and a state agency until it is awarded by the Office of General Services (OGS) Standards and Purchase Group and approved by the state comptroller. In October 1992, the Department of Correctional Services (DOCS) asked OGS for permission to trade some 440 surplus Division of Military and Naval Affairs (DMNA) weapons to a vendor in exchange for a \$52,125 credit toward the purchase of 80 new Glock semiautomatic 9mm pistols and electronic and other surveillance gear. The net cost to DOCS of this deal was \$120.85.

On November 5, 1992, the OGS Standards and Purchase Group issued a memorandum to the state comptroller requesting approval for what DOCS had described in its October 1992 letter as an unprecedented deal, one which could "satisfy a pressing need without a monetary exchange." What DOCS did not reveal in its letter to OGS was that the delivery to a private vendor of the surplus DMNA rifles, pistols, and revolvers was already a *fait accompli*. Most, if not all, of the guns had been handed over to a licensed gun dealer on September 16, 1992.

DOCS in effect "paid" for its new guns and other law enforcement equipment before receiving the necessary contract approvals from OGS and the state comptroller. This procedure clearly violated the State Finance Law.

III. QUESTIONABLE GUN MOVES

In the more than four months since the release of *Guns for Sale*, the executive branch has taken little action to remedy problems outlined in the original report. In the case of several agencies and at least one public authority, no attempt was made to comply with state weapons inventory reporting statutes until a member of the Assembly and legislative staff specifically brought reporting violations to the attention of the agencies and the State Police. In the case of the Division of Military and Naval Affairs, an agency with a long history of weapons inventory problems, the only immediate action taken by the executive has been to dispatch a representative of the state inspector general's office to prepare a history of the agency's weapons inventory mismanagement. Meanwhile, a number of that agency's handguns and rifles remain unaccounted for. The following sections list a number of other questionable New York State weapons management practices which were recently uncovered.

Lax Inventory Controls

In New York State, the loss or theft of weapons from law enforcement and military arsenals, in the absence of documentation to the contrary, appears to be accepted as a cost of doing business.

The Division of Military and Naval Affairs is still missing a number of revolvers and rifles, which were either stolen or "lost" due to administrative error. Although three of the missing .22 caliber rifles reportedly have been recovered, DMNA's inventory control failures, had they happened at a federal military facility, as opposed to a state militia arsenal, would undoubtedly have led to a court martial and/or dismissal for the officer under whose watch they were allowed to occur.

Indeed, despite the popular perception that law enforcement officers never relinquish their guns to criminals, police weapons are stolen. Less clear from review of records provided by various New York State law enforcement authorities is the frequency with which state weapons are lost to

theft. The earliest documented instance of a gun theft found in records reviewed by legislative staff was of a Colt .38 caliber revolver stolen more than 30 years ago from the Port Authority of New York and New Jersey. This weapon, and several other stolen guns, are still kept on the Port Authority's inventory list. More recent instances of stolen guns include a Glock 9mm pistol taken from the Department of Environmental Conservation, and a number of State Police weapons reported as "lost or stolen," including a Smith & Wesson .357 caliber revolver, a Smith & Wesson 9mm pistol, and a Walther .380 caliber pistol.

Conversely, in another state weapons-related incident not detailed in the above section on ex-New York State guns used in crimes, a .38 caliber handgun with three live rounds was found in April 1990 in New York City. Discovered by a Transit Authority employee at the Grand Concourse in the Bronx, the rusted but still operable weapon was turned over to New York City Police. It was later determined that the gun, a Smith & Wesson Model 10 revolver, had been part of the 1980 weapons inventory of the New York Power Authority's James A. Fitzpatrick Nuclear Power Plant in upstate New York. The disposition of this public authority gun apparently was not reported to the State Police.

Sloppy Record-Keeping

Among the record-keeping problems identified were inadequate proofing of serial number lists submitted to State Police, incongruous identification of weapons alternately listed as machine-guns and semiautomatic rifles, the apparent disposition of weapons previously reported as having been destroyed or stolen, and the seeming double-trading of weapons.

Some of the weapons acquisition and disposition records supplied to the State Police by state agencies were inadequately reviewed prior to submission, resulting in the misidentification of state agency weapons. One agency reporting the purchase and subsequent disposition of approximately 35 Smith & Wesson 9mm pistols gave obviously incongruent serial numbers for the same items. Purchases listed as TCP2258 and TCP4649 were rendered as TCR2258 and TCR4649 upon disposition. In another purchase

and disposition sequence, six Glock Model 17 pistols acquired by the same agency were registered with the State Police using serial numbers LM130US through LM136US, but were identified with serial numbers LM180US through LM186US upon disposition.

In the mid-1980s, the Port Authority registered a number of Colt AR15 rifles as machine-guns, but later traded them in as "semi-automatic rifles." A Port Authority letter to legislative staff reports that these were semiautomatic rifles. The recipient of these weapons, who no longer holds a Class III federal machine-gun license, also states that the guns were semi-automatic only. Colt has not responded to inquiries from legislative staff regarding whether these semiautomatic rifles are "select-fire" models, meaning they can be used in a full-auto mode.

Among the other record-keeping curiosities uncovered during the search of one agency's inventory and disposition records were at least eight examples of state-owned guns which were reported as both destroyed and traded, including one listed as "destroyed in fire," but subsequently traded to a dealer. Whether these weapons were restored to working condition, traded as is, improperly reported as destroyed, or erroneously reported as traded is unclear.

In addition, at least two other weapons reported stolen from state agencies or authorities were subsequently reported as traded to private firearms dealers. One of these was a former State Police weapon associated with the New York City Housing Authority police shooting incident discussed above. The other was a .38 caliber revolver belonging to the Port Authority which at one point was listed as stolen, but in 1986 was reported traded to a New York City dealer. Whether these weapons were recovered and then traded, or were erroneously listed as traded, is not clear from records made available by the State Police.

Also related to the above cited record-keeping problems is an unusual instance of serial number duplication. Serial numbers are not unique. Similar weapons made by two different manufacturers may have the same serial number. Two different kinds of weapons made by the same manufacturer may have duplicate serial numbers. In April 1988, the Port Authority reported trading two revolvers of different make but with the same

serial number to the John Jovino Co. of New York City. One of these revolvers, a Colt .38 caliber Official Police revolver with a 4" barrel, was registered with the State Police by the Authority in 1980. No official registration form for the other gun, a similarly styled Smith & Wesson .38 caliber Military & Police revolver with a 4" barrel, was contained among copies of registration documents provided by the State Police. Whether these items, both with the same serial number, were two different guns, or only one item incorrectly reported, is unclear.

Lastly, in a "double-trading" incident, the Port Authority reported to the State Police that it had traded two Colt .38 caliber Detective Special revolvers to the Standard Law Enforcement Company of Long Island in 1985. In 1989, however, the Port Authority reported trading these same two weapons, part of an otherwise dissimilar lot, to Standard *again*. Whether they had been reacquired in the interim, or were not actually handed over the first time, was not immediately ascertainable.

Guns-for-Equipment Trades

The loophole in State Finance Law §178 which allows agencies to trade surplus personal property for new equipment of a like kind has been stretched by some agencies to encompass trades of guns for equipment other than guns.

In October 1990, the OGS Capital Police traded five used Smith & Wesson .357 caliber Model 60 revolvers valued at \$135 each to a Rensselaer, New York, gun shop. In return, the shop delivered two Leupold riflescopes, two concealable pistol holsters, and two 4 oz. bottles of break-free liquid to keep weapons from adhering to the holsters. The net cost on this trade was zero.

In November 1992, as previously mentioned, the Department of Correctional Services officially concluded the transfer of some 440 surplus military weapons and a small amount of cash to a private dealer, receiving in return just 80 semiautomatic pistols, plus assorted surveillance gear.

Other records provided by the state comptroller show that the State Police received a \$952.62 credit for the purchase of breathalyzer supplies from a company which has accepted used state weapons in the past. Whether this credit was from the trade-in of used weapons was not clear.

Disposition of Weapons Parts

In February 1994, the Division of Military and Naval Affairs (DMNA) issued a directive stipulating that excess DMNA weapons and weapons parts slated for disposal be accompanied by a recommendation that they be either destroyed or used only for military or law enforcement purposes. This directive was in apparent response to the January 1994 disclosure that state officials were attempting to sell more than 1,000 surplus machine-gun clips then stored at DMNA's Camp Smith armory in Peekskill.

While the proposed sale of surplus DMNA machine-gun clips was canceled within hours of news media inquiries, the DMNA policy directive applies only to DMNA surplus weapons and weapons parts. Recent dispositions of surplus weapons and weapons parts by the Department of Environmental Conservation suggest that other agencies may be following different policies, particularly with respect to the disposition of weapons magazines.

For example, the Department of Environmental Conservation, which was about to transition from one model of semiautomatic pistol to another, ordered more than 50 additional 15-round and 17-round magazines for its old weapons. When the transition to the new model pistol was completed, these additional magazines were rendered obsolete for agency use. The current disposition of these additional magazines is unknown.

Insider Trading of Used Weapons

In 1993, the Department of Environmental Conservation (DEC) approved and facilitated the purchase by its own law enforcement officers of numerous used agency weapons at unit prices as much as \$198 below new weapon market rates. This action raises questions about the appearance of a

conflict of interest and of a breach of the public trust, both clear violations of Public Officers Law §74.

On May 14, 1993, Glock, Inc., sent a fax to DEC in which the gun manufacturer offered to allow individual DEC officers to purchase the agency's used Glock 9mm weapons, which were to have been turned in under the terms of DEC's contract with Glock for purchase of the more powerful but similarly-styled Glock .40S&W caliber pistol.

In correspondence from Glock, DEC was told:

"If someone in your department will handle the paper work on the transfer of the pistols to the individual officers, Glock will allow them to purchase the pistols for \$261.00 ea."

At the time, these 9mm pistols, including both the Glock Model 17 and the more compact Glock Model 19, were selling new in one Albany gun store for \$459.95 to the public and \$371.66 to law enforcement officers.

It is unclear whether the impetus for this suggestion came from Glock or from within DEC itself. Also unknown is whether any agency employees acted as agents for Glock in the disposal of these weapons while at the same time working for the state, or whether any of DEC's used weapons actually left agency premises before being "re-sold" by Glock.

In any event, starting in June 1993, individual DEC officers began buying up the 9mm weapons which were being withdrawn from service and ostensibly shipped to Glock. With only a dozen or so identified exceptions (possibly a reflection of incomplete reporting by individual officers) all of the DEC's used Glock sidearms were acquired by individual officers in the department.

Few eyebrows would be raised if this massive state transfer into private hands of semiautomatic 9mm pistols been made expressly -- and openly -- to allow officers convenient access to an off-duty or spare weapon with which they were already familiar. Though the weapons transferred would be classified as assault guns under legislation recently proposed by the Governor, who better to possess and maintain these high-magazine capacity weapons than an officer of the law specifically trained in their use?

However, agency records do not support the contention that these pistols were exclusively for the long-term use of current DEC officers. Analysis of these records indicates:

- ⊕ At least 74 (nearly 25%) of the Glock 9mm weapons known to have been acquired by individual DEC officers were promptly redistributed to licensed firearms dealers, civilian pistol permit holders, or other law enforcement officers. In most cases, these transfers from DEC officers to other individuals took less than a week. In some cases, the reported turn-around time was one day. Though most of these secondary dispositions were made to New York residents, at least one pistol was disposed of to an individual whose place of residence was listed as Florida.
- ⊕ A number of environmental conservation officers purchased more than one of the agency's used Glocks for other than personal use. In some cases, officers actually bought several weapons, specifically with the intention of disposing of them to third parties. One officer, stationed in the Long Island region, purchased and disposed of at least 13 weapons. Another purchased and later disposed of 17 guns.
- ⊕ Even officers at or above the rank of lieutenant purchased more than a single used Glock for personal use. For example, one supervisory environmental conservation officer bought a Model 19 and at least four Model 17's. Another high-ranking agency official kept a Glock Model 19 acquired in July 1993, but took only a week to transfer to a federal firearms dealer a Glock Model 17 acquired at the end of August 1993.

Available records do not indicate whether the referenced DEC officer weapons transactions with other law enforcement officials, including members of at least ten different local law enforcement agencies, were for work-related purposes or for individual use, nor how much DEC officers received for these weapons upon resale.

What is clear is that agency policy allowed state employees to be placed in a position where their judgement on a major weapons acquisition deal may have been influenced by the prospect of converting used agency guns into cash. The implications of such a policy cannot be understated, especially since DEC is not the only state agency in recent years whose individual police and peace officers may have been "allowed" to purchase used state weapons in less than arm's-length transactions.

IV. CONCLUSION AND RECOMMENDATIONS

Extrapolating from New York's experience, it would appear that in excess of a million used law enforcement, military and confiscated weapons have been returned to the retail market over the past ten years by government agencies nationwide. The vast majority of these firearms are handguns. As detailed in the original *Guns for Sale* report, these weapons at the retail level are reasonably priced, reliable and offer their owners -- legal and illegal -- more bang for the buck.

Next Rearmament Cycle Will Add More Used Guns to Market

New York State has rearmed its State Police force several times since its inception, including twice in the past 12 years. The most recent cycles involved a move from .38 caliber revolvers to .357 caliber handguns, followed by a conversion from .357 handguns to 9mm pistols. Generally, state agency purchases of new weapons are financed in part by trade-ins of old weapons. The state is now initiating the first transactions of a new rearmament cycle, which will involve conversion to state-of-the-art .40 caliber guns. It appears that law enforcement agencies nationwide have followed similar rearmament cycles, and will continue to do so unless changes are made in state and local law enforcement weapons disposition policies.

The effects of New York State's firearms procurement and disposal policies will be felt far into the future, as these weapons continue to resurface in the hands of criminals.

Guns for Sale made several recommendations for corrective measures to deal with the unusual contracting procedures, inadequate record-keeping, and poor inventory controls revealed by that report. In addition, New York

State can take the following immediate steps to begin to alleviate the impacts of recent weapons disposition policies:

- ⊕ Remove the state's weapons inventory program from the hands of the Division of State Police, and turn it over to the Division of Criminal Justice Services, which can focus on providing the centralized service needed to design and maintain a system of checks and balances which will ensure that no more state weapons are delivered into private hands.
- ⊕ Require an annual inventory of state agency weapons by an independent entity.
- ⊕ Strengthen guidelines governing the safekeeping of police and peace officer weapons.
- ⊕ Enact felony-level penalties for violations of state weapons control statutes which will provide the necessary incentive for state weapons managers to treat state-owned weapons with the respect and care that any truly responsible gun owner would afford them.
- ⊕ Become a role model for other states by establishing with the federal Bureau of Alcohol, Tobacco & Firearms a cooperative effort to stem the tide of former law enforcement weapons which have been allowed to fall into the hands of criminals.