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RECENT LEGISLATIVE ACTIVITY

Beth A. Diebold

Arrested! How Gun-Control Issues Have Placed a Halt on Juvenile Justice Reform

"The fact is, guns have converted school-yard fights into school-yard murder."

Rep. Robert C. "Bobby" Scott (D-VA)

"I do not believe that gun control laws work. In fact, I believe gun control laws can actually have a negative effect."

Rep. Joseph Barton (R-TX)

I. Introduction

The Littleton, Colorado incident of April, 1999 shocked the nation with its reports of the twelve murdered high school students and one teacher from Columbine High School. In response, Congress launched a series of hearings regarding the increasing numbers of violent crimes committed by juveniles and re-doubled its efforts to pass meaningful legislation aimed at increasing

the accountability of juvenile offenders. Yet that horrific event wasn't enough to enable Congress to reach a legislative agreement. Although both Senate and House committees developed bills to address the issue of juvenile violence, none of that legislation ever reached President Clinton's desk. Unfortunately, the issue of gun control effectively halted progress on juvenile justice legislation.

The Senate bill, entitled The Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999 (S. 254), and approved in May, 1999, included both juvenile accountability measures as well as gun control provisions. The major gun control provisions in that bill involved a strict definition of what constitutes a gun show, and required background checks on all sales at gun shows, including sales between private collectors. House legislation that addressed the gun show issues was included in two separate proposals, including H.R. 2122, the Mandatory Gun Show Background Check Act, which was ultimately rejected by the House, and H.R. 902, the Gun Show Accountability Act, the final vote on which is currently pending. The gun show issues, however, have brought the legislative branch to a virtual impasse, causing the entire matter of juvenile justice legislation to remain unresolved at the close of the 106th Congress.

This article will address the gun show debate that has stalled the resolution of juvenile justice legislation. The questions yet to be resolved center around what are known as the "gun-show loopholes," and deal with the increased ease with which individuals, be they general consumers or convicted criminals, can obtain a gun when it is purchased at a gun show. Currently, both houses of Congress are addressing what type of venue qualifies as a "gun-show," whether or not background checks should be mandatory when individuals purchase guns from

private sellers at gun shows, and how much time the FBI should be allowed to perform the background checks.

II. Advent of the Gun Show

Until 1986, the Federal Firearms Act required persons engaged in the business of selling firearms to obtain a Federal Firearms License (FFL), and limited the locations at which firearms could legally be sold. With the passage of the Firearms Owners' Protection Act of 1986, also known as the "McClure-Volkmer Act" for its congressional sponsors, then-Senator James McClure, R-ID, and former Representative Harold Volkmer, D-MO, the locations at which firearms could legally be sold were expanded. Licensed dealers were permitted to conduct business at temporary locations such as at gun shows in addition to the location of sale that is specified on a FFL license. The McClure-Volkmer Act also created opportunities for private, unlicensed citizens to buy and sell guns by legalizing such sales when the firearms sold were part of the seller's personal collection.

According to a study conducted by the Violence Policy Center (VPC), a national educational organization that works to reduce the numbers of deaths from firearms in the U.S., one of the results of McClure-Volkmer has been the increase in the number of gun shows since its passage, most likely because the venue enables private citizens to both buy and sell firearms without the hassle of first obtaining a license. For example, licensed dealers are required to follow certain criteria under federal law, including using federal sales forms and restricting the sales of firearms to persons over age 18 for rifles and shotguns and over age 21 for handgun sales. An unlicensed seller is more likely to appeal to any consumer, legal or not, because the sale involves less paper-work. However, according to gun control proponents, legalizing this type of sale has delivered

more guns into the hands of both juveniles as well criminals anxious to avoid creating a paper-trail of their firearms purchases.

The VPC study points out that both convicted Oklahoma City bomber Timothy McVeigh as well as Branch Davidian leader David Koresh frequented gun shows and were able to stock-pile weapons by making such legalized purchases at gun shows. However, opponents to gun show legislation point to a Justice Department study in which arrested persons were asked where they had obtained their guns. The study revealed that only two percent of these individuals had obtained firearms from gun shows.

Currently, the gun show is becoming an increasingly common temporary location through which dealers transact business. In addition, gun shows attract large numbers of unlicensed collectors also looking to buy and sell. Because there is no formal definition for what constitutes a gun show, sales often occur between unlicensed individuals who gather together independently for what is commonly-referred to as a "kitchen-table" deal. "Kitchen-table" deals refer to private, un-registered gun sales between consumers who may or may not be licensed. Under the McClure-Volkmer Act, these sales are legal because they occur, arguably, at "gun shows." As individuals involved in these deals point out, the seller does have to show the gun to the purchaser. However, gun legislation proponents argue that this is one way in which individuals seeking to purchase firearms attempt to circumvent laws designed to restrict gun sales.

Proposals in both the House and the Senate seek to provide a working definition of "gun-show" that would limit these venues as sales outlets for both licensed and unlicensed dealers. The House proposal defines a gun show as an event at which there are 50 or more firearms offered or exhibited for sale and 10 or more firearms vendors. This definition would make exempt from the legislation smaller venues. Consequently, any show with

less than 10 “exhibitors” would not be considered a gun-show. The Senate-approved definition of gun show is much more comprehensive, and includes any event at which 50 or more guns are exhibited for sale, regardless of the number of vendors. Proponents of gun control legislation such as the VPC support the Senate definition, as it functions to make nearly any gathering for the purpose of buying and/or selling firearms a gun show, and thus subjects the gathering to the gun control provisions included in the developing legislation.

III. The Brady Law and Instant-Check

To properly evaluate the benefits of either legislative proposal, it is necessary to outline the Brady requirements for criminal background checks. The Brady amendment to the Gun Control Act of 1968 was named for Presidential aide James Brady, who was disabled while protecting then-President Ronald Reagan from an assassination attempt. The law requires FFL dealers to perform a prior background check, referred to as an Instant-check, on any unlicensed individual to whom they are transferring firearms. Ideally, the checks are designed to prevent the transfer of firearms to those individuals who are prohibited by law from obtaining firearms. The law originally required initiation of the check through a local law enforcement officer before the dealer could legally transfer the firearm. While in most cases the results of a background check could be obtained immediately, the law allowed a period of up to 5 days for the checks to be completed. In response to complaints by both dealers and purchasers about the length of time it took to complete a firearms sale, the FBI took over the business of background checks in 1998. Currently, an extended background check must be completed within three business days. At the end of this period, if no complications arise, the seller is able to transfer the firearm to the buyer.

While the Senate bill did not address the period of time allowed for completion of background checks, the House bill included a proposal to allow only 72 total hours, rather than three business days, for the checks to be completed. In other words, if a gun show sale commenced at 10:00 am on a Saturday, authorities would only have until 10:00 am the following Tuesday to complete the check under the House provision. Currently, the law allows authorities until the close of business on Wednesday to complete a check on the same sale. This proposal caused a series of letters, known to those in political circles as the "Ten Commandments," to be written by representatives from ten of the nation's major police organizations, all of whom expressed their dismay at the House proposal. Chief Ronald Neubauer, president of the International Association of Chiefs of Police (IACP) wrote: ". . . [S]imply requiring that a background check be performed is meaningless unless law enforcement authorities are provided with a period of time sufficient to complete a thorough background check. Law enforcement executives understand that thorough and complete background checks take time. The IACP believes that to suggest, as some proposals do, that the weapon be transferred to the purchaser if background checks are not completed within 24 hours of sale sacrifices the safety of our communities for the sake of convenience."

International Brotherhood of Police Officers President Kenneth T. Lyons agreed: "On behalf of the entire membership of the IBPO I wish to express our strong support of the gun-related provisions adopted by the Senate as part of S. 254. . . . The IBPO requests that the conferees continue to focus on the need for adequate time to conduct background checks at gun shows." Lyons went on to cite a Federal Bureau of Investigation inquiry which estimated that over 17,000 disqualified individuals would have been able to purchase a gun if a twenty-four

hour time limit was required for a background check.

IV. Mandatory Background Checks on All Firearms Sales?

Currently, licensed gun dealers are legally required to complete background checks on all sales, even when such sales occur at gun shows. However, private, unlicensed collectors are exempt from this requirement when selling guns from their collections at gun shows. Gun control supporters argue that all sales of firearms at gun shows, even those between private collectors, should require background checks of purchasers. While both the Senate and House bills propose such background checks for all gun show sales, the accompanying provisions in each are somewhat different.

The Senate bill would require that all firearms sales at gun shows be transacted by a federally-licensed dealer as a middle person. The dealer would then be required to conduct the background investigation and maintain all records on the sale. Finally, information regarding the transfer of firearms at gun shows would be required to be forwarded to the Department of the Treasury, enabling law enforcement officials to trace these weapons if they were used in crimes.

Alternatively under the House proposal, a new type of license would be created for currently unlicensed collectors who sell firearms only at gun shows. This new group of individuals, known as "instant check registrants," would have access to the National Instant Check System, allowing them to conduct their own background checks for prospective buyers. However, the House bill would insulate both instant check registrants as well as licensed gun dealers from civil liability for negligent entrustment of a firearm. This provision extinguishes common law remedies present in many

states which enable injured plaintiffs to sue gun dealers for failing to complete background checks.

The stricter Senate bill has received a much more favorable response from gun control supporters than the House proposal. Groups which have openly expressed support for the Senate bill include numerous law enforcement organizations, the Violence Policy Center, Handgun Control, the nation's largest citizens' gun control lobbying organization, and the American Bar Association (ABA). In a letter to Congress, Phillip Anderson, 1998-1999 president of the ABA, urged legislators to include in final legislation "... key gun provisions passed by the Senate," adding that the ABA supported the mandatory background check provisions in the Senate bill as well as the Senate-proposed gun show definition. Anderson concluded, "It is evident there is a growing, widespread public support for Congress to take action to keep guns from young persons and to address juvenile crime. We respectfully urge you to heed this public outcry and produce final legislation that provides more balance."

Opponents of gun show legislation argue, however, that balance is exactly what these bills do not produce. Representative Joe Barton (R-TX), contends that such legislation does nothing more than place an unnecessary burden on law-abiding consumers "since criminals will almost surely lie or simply steal their guns." The Justice Department findings seem to support Barton's assertions. While only two percent of the firearms used in crimes were obtained through gun shows, the study revealed that 35% of the firearms used in criminal activities are obtained via theft or through street dealers. In addition, of the two percent that could be traced back to gun shows, many of the guns were sold through licensed dealers who performed legitimate background checks and transferred the weapons to individuals who "checked-out." The criminals who then obtained the firearms purchased them from these middle

people, or “straw men,” as they are called on the street. In other words, the proposed legislation appears to regulate a practice that is about 98% legal. Consequently, the individuals who are most affected by this legislation are general consumers who are already law-abiding citizens. They just happen to be law-abiding citizens who also choose to own guns.

Opponents also point out that an unlicensed individual wishing to sell guns from her collection could still sell the items through a classified ad, for example, without having to do a background check. In other words, the legislation does not address private sales made in locations other than at gun shows. However, if it is illegal for an unlicensed individual to sell a gun without a background check at a gun show, then it should be illegal for her to sell the same gun through a classified ad. Because the legislation does not completely close the legal loopholes in gun sales, criminals still have avenues through which to obtain firearms, and the original intent of the legislation remains unsatisfied.

V. Conclusion

What is the purpose of the gun show legislation, and are its provisions significant enough that increased intervention efforts for at-risk youth should grind to a halt while the gun show issues are resolved? Legislators argue that the purpose of the different bills is to restrict criminal access to hand-guns, and in turn decrease the number of violent crimes committed by both adults and juveniles. According to Rep. Robert C. Scott (D-VA), “. . . the most troubling statistics involving gun violence concern our young people. . . . Left unaddressed, this problem [of juvenile hand-gun violence] is only going to get worse. You need only look to the availability of firearms to come to that conclusion.”

However, the gun lobby’s response is that the legislation is merely part of increasing restrictions on

consumers' rights to purchase firearms. These opponents point out that much of the legislative effects of the gun show bill target law-abiding gun-owners rather than criminals. Although the ability of this group to make its voice heard has placed Congress in a very difficult position, the inability of the legislature to resolve the issue is compromising the safety of the nation's school children. As Rep. Sheila Jackson-Lee (D-TX) stated in a recent news conference, "This is a juvenile justice bill that we are ignoring. We're ignoring the parents of America who are asking us to focus on intervention and prevention. We are hog-tying the juvenile justice bill because there are opponents of the gun safety bill."

Endnotes

1. *Pending Firearms Legislation and the Administration's Enforcement of Current Gun Laws, 1999: Hearings on H.R. 1501 Before the Crime Subcommittee of the House Judiciary Committee, 106th Cong. (1999)* (statement of Robert C. Scott, D-VA) [hereinafter *Firearms Legislation*].
2. Joseph Barton, *Gun Control is Not the Answer*, ARLINGTON MORNING NEWS, August 17, 1999, at 7A [hereinafter Barton].
3. See S. 254, 106th Cong. (1999).
4. See *id.*
5. See H.R. 2122, H.R. 902, 106th Cong. (1999).
6. See 18 U.S.C.S. §922 (1999).
7. See *id.*
8. See *id.*
9. See Kristin Rand, *Gun Shows in America: Tupperware Parties for Criminals* (visited Jan. 23, 2000) <<http://www.vpc.org/studies/tupstudy.htm>> [hereinafter Rand].

10. See 18 U.S.C.S. §922.
11. See Rand, *supra* note 9.
12. See CNN *Inside Politics: Democrats Get Political Ammo From Republican Gun-Control Measure* (CNN television broadcast, May 14, 1999) (Transcript # 99051400V15) [hereinafter *Inside Politics*].
13. See *id.*
14. See *id.*
15. See *id.*
16. Dave Kopel, *Gun Shows Under Attack!* (posted July 16, 1999) <<http://www.nraila.org/research/19990716-GunShows-001.html>>.
17. See *id.*
18. See 18 U.S.C.S. §922.
19. See Rand, *supra* note 9.
20. See H.R. 2122, H.R. 902, 106th Cong. (1999).
21. See *id.*
22. See S. 254, 106th Cong. (1999).
23. See Violence Policy Center, *Loopholes in House Leadership's Gun Show Proposal* (visited Jan. 23, 2000) <http://www.vpc.org/fact_sht/showloop.htm> .
24. See 18 U.S.C.S. §922.
25. See *id.*
26. See *id.*
27. See H.R. 2122, H.R. 902, 106th Cong. (1999).
28. *Ten National Law Enforcement Groups Call on Congress to Close the "Gun Show Loophole,"* U.S. NEWSWIRE (U.S. Newswire, Inc.) Oct. 20, 1999.

29. *See id.*
30. *See id.*
31. *See* 18 U.S.C.S. §922.
32. *See id.*
33. *See* S. 254, 106th Cong. (1999).
34. *See id.*
35. *See id.*
36. *See* H.R. 2122, H.R. 902, 106th Cong. (1999).
37. *See id.*
38. *See id.*
39. Philip Anderson, Editorial, *The ABA for Gun Control*, AUSTIN-AMERICAN STATESMAN, Aug. 11, 1999, at A12.
40. *See id.*
41. Barton, *supra* note 2.
42. *See Inside Politics, supra* note 12.
43. *See id.*
44. *See id.*
45. *Firearms Legislation, supra* note 1.
46. Sheila Jackson-Lee, Remarks at the Senator Ted Kennedy News Conference with Other Democrats on the Juvenile Justice Bill 4 (Oct. 20, 1999).

