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SYMPOSIUM: GUN CONTROL

TAKING GUNS SERIOUSLY: COMMON SENSE GUN CONTROL TO KEEP GUNS OUT OF THE HANDS OF KIDS AND CRIMINALS

SENATOR RICHARD J. DURBIN*

“We have a responsibility to the victims of crime and violence. It is a responsibility to think not only of our own convenience but of the tragedy of sudden death. It is a responsibility to put away childish things - to make the possession and use of firearms a matter undertaken only by serious people who will use them with the restraint and maturity that their dangerous nature deserves - and demands. For too long we have dealt with these deadly weapons as if they were harmless toys. Yet their very presence, the ease of their acquisition, and familiarity of their appearance have led to thousands of deaths each year . . . It is past time that we wipe this stain of violence from our land.”¹

- Attorney General Robert F. Kennedy

* Dick Durbin, a Democrat from Springfield, is the 47th U.S. Senator from the State of Illinois and the first Illinois senator to serve on the U.S. Senate Appropriations Committee in more than a quarter of a century. He is the state’s senior senator.

Elected to the U.S. Senate on November 5, 1996, Durbin filled the seat left vacant by the retirement of his longtime friend and mentor, U.S. Senator Paul Simon. In addition to the Appropriations Committee, Durbin is a member of the Senate Governmental Affairs, Budget and Ethics Committees in the 106th Congress.

U.S. Senate Democratic Leader Tom Daschle (D-SD) also has appointed Durbin to his leadership team, where Durbin serves as Assistant Floor Leader.

Durbin, 54 was first elected in 1982 to represent the 20th Congressional District in the U.S. House of Representatives. During his service in the House, Durbin took on the tobacco industry and won passage of landmark legislation to ban smoking on commercial airline flights. He continues to fight taxpayer-paid tobacco subsidies and industry marketing efforts aimed at children.

Durbin and his wife Loretta have three children and one grandchild.

1. Dep’t. of Justice, *The Clinton Administration’s Law Enforcement Strategy: Fighting Gun Violence and Keeping Guns Away From Criminals and Our Children* (May 1999) (visited Oct. 13, 1999) <http://www.usdoj.gov/dag/readingroom/dag_foia1.htm>.

GUNS IN THE UNITED STATES:

There are an estimated 250 million guns in America.² Nearly seven million American households keep at least one unlocked, loaded gun in the house, including about 1.6 million homes with children.³

Guns kill 34,000 Americans every year - thirteen children every day.⁴ The rate of gun deaths from homicides and suicides is much higher in the United States than in any other developed country in the world.⁵ Over 70% of murders in the United States are committed with a firearm.⁶

The impact of gun violence has been particularly harsh on children. A teenager in the United States today is more likely to die of a gunshot wound than from all other natural causes of death combined.⁷

In the past few years our nation's schools have been shattered by gun violence.

OCTOBER 1, 1997 - In Pearl, Mississippi, a sixteen year old boy killed his mother then went to his high school and shot nine students, two fatally.⁸

DECEMBER 1, 1997 - Three students were killed and five were wounded in a hallway at Heath High School by a fourteen year old classmate in West Paducah, Kentucky.⁹

MARCH 24, 1998 - In Jonesboro, Arkansas, four girls and a teacher were shot to death and ten people were wounded during a false fire alarm at a middle school when two boys eleven and thirteen opened fire from the woods.¹⁰

APRIL 24, 1998 - In Edinboro, Pennsylvania, a science teacher was shot to death in front of students at an eighth grade dance by a fourteen year old student.¹¹

MAY 19, 1998 - In Fayetteville, Tennessee, three days before his graduation, an eighteen year old honor student allegedly opened fire in a

2. "A World Full of Guns," *ABC News - 20/20*, May 21, 1999.

3. "Poll: A third of U.S. households have guns" *Scripps Howard News*, June 15, 1999.

4. Department of Justice, "Fighting Gun Violence and Keeping Guns away from Criminals and our Children", May 1999.

5. Harold H. Reader, *Are Guns the Next Tobacco?*, 28-SPG Brief 2, (1999).

6. "1998 National Gun Policy Survey of the National Opinion Research Center: Research Findings", Smith, Tom W., *National Opinion Research Center*, University of Chicago, May, 1999.

7. Department of Justice, "Fighting Gun Violence and Keeping Guns away from Criminals and our Children", May, 1999.

8. Tom Wilemon & Brad Branan, *Pearl Struggles to Heal*, SUN HERALD, Oct. 12, 1997, at A1.

9. Ted Bridis, *Praying Students Slain*, LEXINGTON HERALD-LEADER, Dec. 2, 1997, at A1.

10. Peter Katel, *Five Killed at Arkansas School*, USA TODAY, Mar. 25, 1998, at 01A.

11. Jonathan Silver, *Stuns Edinboro*, PITTSBURGH POST-GAZETTE, Apr. 26, 1998, at A-1.

parking lot at a high school killing a classmate who was dating his ex-girlfriend.¹²

MAY 21, 1998 - Two teenagers in Springfield, Oregon were killed and more than twenty people were hurt when a fifteen year old boy allegedly opened fire at a high school. The boy's parents were killed at their home.¹³

APRIL 20, 1999 - In Littleton, Colorado, two teenagers entered their high school with two 12 gauge shotguns, a 9 millimeter semiautomatic rifle and a 9 millimeter semiautomatic pistol and opened fire killing thirteen innocent people.¹⁴

These school shootings have challenged lawmakers to find answers to address the problem of gun violence.

THE FEDERAL GUN LAWS:

The federal gun laws have been enacted in response to national tragedies. Support for the first national gun law, the National Firearms Act of 1934, grew during the 1920's and the era of Prohibition as a way to stop widespread mobster shootings and turf wars.¹⁵ The law imposed a tax of \$200 on the transfer of any machine gun or sawed off shot gun.¹⁶ The tax was intended to discourage the spread of these firearms and may have served as a disincentive in 1934, but the tax has not been changed in over fifty years.

Following the assassinations of Martin Luther King, Jr. and presidential candidate Robert Kennedy, Congress passed the Gun Control Act of 1968.¹⁷ This law banned the sale of mail-order guns and placed minimum safety standards on imported guns to raise their purchase price.¹⁸ No standards were adopted for domestically manufactured guns and to this day, there are more safety restrictions on domestically manufactured toy guns than real guns.¹⁹

The Gun Control Act of 1968 imposed restrictions on who could legally receive or possess firearms.²⁰ The Act prohibits the sale of firearms to any person who

12. *Tennessee High School Senior Kills Fellow Student*, LOS ANGELES TIMES, May 20, 1998, at A16.

13. *Shootings*, PORTLAND OREGONIAN, May 21, 1999, at A16.

14. Patrick O'Driscoll, *The Day Innocence Died: It Began with a Chilling Prophecy*, USA TODAY, Apr. 22, 1999, at 04A; Robert Tomsho & Vanessa O'Connell, *Gun-Show Sale of Shotguns Becomes Part of Probe of High-School Shooting*, WALL ST. J., Apr. 26, 1999, at A11.

15. 26 U.S.C. § 5801-5862 (1935).

16. 26 U.S.C. § 5811(a) (1935).

17. *See generally* 18 U.S.C. § 922 (1998).

18. *Id.* § 922(a)(1)(A).

19. Eva H. Shine, Comment, *The Junk Predicament: Answers Do Exist*, 30 ARIZ. ST. L.J. 1183, 1202 (1998), *citing* Gunfree, *Junk Guns FAQs* (visited Feb. 24, 1998) <<http://www.gunfree.org/csgv/junkfaq.htm>>.

20. *See generally* 18 U.S.C. § 922.

- is a fugitive from justice;
- is under indictment for, or has been convicted of, a crime punishable by; imprisonment for more than one year;
- is an unlawful user of a controlled substance;
- has been adjudicated as a mental defective or committed to a mental institution;
- is an alien unlawfully in the United States;
- was discharged from the armed services under dishonorable conditions;
- has renounced U.S. citizenship;
- is subject to a court order restraining him or her from harassing, stalking or; threatening an intimate partner or child or;
- is a person who has been convicted of domestic violence.

18 U.S.C. 922(g).²¹

The Brady Handgun Act of 1993, followed the shooting of President Ronald Reagan and his press secretary, Jim Brady in 1981.²² The Brady Act mandated a five-day waiting period and a background check prior to buying a handgun to ensure that the purchaser was not a prohibited purchaser under the Gun Control Act of 1968.²³ In November of 1998, the five-day waiting period expired.²⁴

Although the mandatory five-day cooling off period has expired, background checks have remained in place.²⁵ Between March 1, 1994, and November 29, 1998, 312,000 felons, fugitives and other prohibited purchasers were denied a sale of a handgun.²⁶ On November 30, 1998, the National Instant Criminal Background Check System (“NICS”) was implemented.²⁷ In its first year of operation, the NICS kept over 89,000 felons, fugitives, stalkers and other criminals from purchasing new firearms—an average of 246 illegal gun sales blocked every day.²⁸ According to the Federal Bureau of Investigation, NICS has prevented an estimated 49,000 felons and other

21. *Id.* § 922(d)(1)-(8).

22. *Id.* § 922(s).

23. *Id.*

24. *Id.*

25. 18 U.S.C. § 922(t)(1).

26. Bureau of Justice Statistics, “An Estimated 312,000 Handgun Sales Blocked During the 1994-1998 Brady Interim Period,” June 15, 1999.

27. *Id.*

28. “Commerce in Firearms in the United States” February 2000, Dept. of Treasury Bureau of Alcohol Tobacco & Firearms.

prohibited persons from purchasing firearms.²⁹ During this same period, state background checks have prevented an estimated 100,000 prohibited purchasers from obtaining firearms.³⁰

Many critics of the Brady law have questioned its effectiveness by pointing to the low number of federal prosecutions in this area.³¹ This analysis ignores the benefits of preventing prohibited purchasers from getting a gun in the first place.

The criticism also ignores the facts. In the past six years, violent crimes committed with guns - including homicides, robberies and aggravated assaults - fell by 27% between 1992 and 1997, and the nation's violent crime rate has dropped by nearly 20% during the same period.³² Federal and state authorities are working more closely to develop comprehensive strategies of addressing gun violence.

Nationally, firearms convictions are up dramatically, and in 1996, 22% more criminals were incarcerated for either state or federal weapons offenses than in 1992. (from 20,681 to 25,186).³³ The number of federal prosecutions of high-level firearms offenders (those sentenced to five or more years) is up by more than 25% since 1992.³⁴

THREE COMMON SENSE GUN CONTROL MEASURES TO REDUCE GUN VIOLENCE:

Given the current state of the law, there are several common sense measures that would go a long way in preventing kids and criminals from getting a gun.

1. Background Checks at Gun Shows:

Last spring, the issue of background checks at gun shows was hotly debated in the Senate. The impetus for this debate was the growth of sale of guns at gun shows and the tragedy in Littleton.³⁵ Since the enactment of mandatory background checks under the Brady law, the country has seen an

29. FEDERAL BUREAU OF INVESTIGATION, NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) THE FIRST SEVEN MONTHS (NOVEMBER 30, 1998 - JUNE 30, 1999) (1999).

30. *Id.*

31. General Accounting Office, *Gun Control: Implementation of the Brady Handgun Violence Prevention Act* (1996) (visited Oct. 13, 1999) <<http://www.farther.com/stamey/GAOReport.htm>>.

32. Statement of the Department of Justice, Before the Subcommittee on Criminal Justice and Youth Violence concerning Firearms Prosecutions, March 22, 1999.

33. *Id.*

34. *Id.*

35. See 145 CONG. REC. S4240-01 (Apr. 27, 1999) (statement of Sen. Durbin).

exponential growth in purchases at gun shows and flea markets where background checks are not required.³⁶

There are more than 4,000 gun shows held annually in the United States.³⁷ A joint Treasury and Justice Department report reviewed 314 ATF investigations involving more than 54,000 weapons purchased at gun shows.³⁸ Felons were involved in nearly half of the purchases and, in a third of the cases, the weapons were subsequently used in the commission of crimes.³⁹ The report described nonlicensed vendors who would advertise their lack of background checks to bring in clients. “Criminals can purchase guns with no worry of a background check and no record kept of the transaction.”⁴⁰

Senator Lautenberg introduced a bill, of which I am an original co-sponsor that would have closed the gun show loophole.⁴¹ Following a week of debate, the bill passed as an amendment to the Juvenile Justice bill in a tie breaking vote cast by Vice President Gore.⁴²

In the House of Representatives efforts to close the gun show loophole had a different fate. In the dead of night, the House passed an National Rifle Association (NRA) drafted version of Senator Lautenberg’s bill as an amendment to its gun control initiative.⁴³

The differences between the Senate bill and the NRA backed House alternative are substantial. The NRA proposal had a much narrower definition of gun shows and required at least fifty firearms to be sold by at least ten vendors at an event specifically sponsored for firearms sales.⁴⁴ If fifty guns were sold by nine vendors at a flea market, no background checks are required.

The House proposal limited the definition of gun show vendor to persons selling from a fixed location.⁴⁵ Therefore, a person could wander around selling guns and not be subject to the restrictions. The Senate bill would cover any vendor who sells guns at a gun show.⁴⁶

The House proposal shortens the time for background checks to twenty-four hours. This means if a gun show is held on a Saturday and a question arises about the buyer’s eligibility through the Insta-check system, law

36. DEP’T. OF THE TREASURY, DEP’T. OF JUSTICE AND BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, GUN SHOWS: BRADY CHECKS AND CRIME GUN TRACES 12 (1999).

37. Department of the Treasury, Department of Justice, and the Bureau of Alcohol, Tobacco and Firearms, “Gun Shows: Brady Checks and Crime Gun Statistics.” January 1999.

38. *Id.* at 1.

39. *Id.*

40. Department of the Treasury, Department of Justice, and the Bureau of Alcohol, Tobacco and Firearms, “Gun Shows: Brady Checks and Crime Gun Statistics.” January 1999.

41. S. 995, 106th Cong., Sess. 1 (1999).

42. S. 254, 106th Cong., Sess. 1 (1999).

43. H.R. 2122, 106th Cong., Sess. 1 (1999).

44. *Id.* § 2(b).

45. *Id.*

46. S. 254, *supra* note 40, at § 1635(b).

enforcement only has twenty-four hours to check it out. The Senate bill gives law enforcement up to three business days.⁴⁷ Most gun shows take place on weekends. Under a twenty-four hour rule, a criminal who tried to buy a gun on Saturday would have a free pass if court records were required to finish the check, because the twenty-four hours would expire before the courts re-opened on Monday.

Here are some real-life examples of people who tried to buy guns on a Saturday in recent months, and who were stopped from getting guns because the Brady law allowed law enforcement three business days to track down records. These persons would not have been stopped from getting a gun if the Brady law had only allowed law enforcement only 24 hours to finish the background checks.⁴⁸

In Michigan:

- On February 6, 1999, a person twice convicted of domestic violence battery.
- On April 24, 1999, a person convicted of domestic assault and battery.

In North Carolina:

- On January 2, 1999, a person under indictment for second degree murder.
- On January 23, 1999, a person under indictment for dealing crack cocaine.
- On April 10, 1999, a person currently under a domestic violence restraining order.
- On May 15, 1999, a person convicted of rape in Virginia.

In Texas:

- On January 9, 1999, a convicted murderer.
- On February 6, 1999, a person under indictment for aggravated assault with a deadly weapon.
- On February 27, 1999, a person convicted of aggravated kidnapping with intent to rape a child.

47. S. 254, *supra* note 41, at § 2(c).

48. Department of Justice Statement, "Chilling Real-Life Examples: The Dingell Amendment's 24 hour rule would put more Guns in the Wrong Hands", June, 1999.

In Missouri:

- On February 13, 1999, a person wanted for domestic battery in Illinois.
- On February 27, 1999, a person convicted of illegal possession of explosives in New Mexico.
- On March 13, 1999, a person convicted on separate occasions of armed robbery and burglary in Georgia.
- On April 24, 1999, a person arrested repeatedly for domestic violence and convicted of assault.⁴⁹

The differences in the two proposals demonstrate the difference between meaningful reform and mere window dressing. If Congress is serious about closing the gun show loophole, they should stick with the Lautenberg bill.

2. Make the Brady Waiting Period Permanent

Seven years ago, Congress passed the Brady Bill.⁵⁰ That law contained a provision that required a five-day waiting period before a person can buy a gun.⁵¹ Unfortunately, last November, the waiting period was eliminated when we began using the National Insta-Check system for gun purchasers.⁵² I fully support the use of an instant check system to determine if a putative firearm purchaser is legally barred from owning a gun because of a criminal record. But I believe that it must be coupled with a cooling off period.

This proposal would require that anyone who wishes to buy a handgun must wait three days. There are two exceptions to this requirement.

First, if a prospective purchaser presents a written statement from his or her local chief law enforcement officer stating that the handgun is needed immediately because of a threat to that person's life or that of his family, then the cooling off period will not apply.

Second, if a prospective purchaser lives in a state that has a permit requirement—or conducts its own background checks for handgun purchases—then the federal cooling off period will not apply. I think that both of these are common sense exceptions. Obviously people who have a legitimate and immediate need of a handgun for self-defense should be able to buy one. In the states that have licensing or permit systems, the process of getting a permit acts as a state cooling off period.

49. *Id.*

50. *See generally* 18 U.S.C. § 922.

51. *Id.* § 922(s)(1)(A)(ii)(I).

52. *Id.* § 922(t)(1).

This measure also requires that when a person applies to buy a gun that the gun shop owner send a copy of the application to the local chief law enforcement officer.

In addition, it alters the amount of time that the state or federal government has to investigate a potential purchaser who has an arrest record. Under the law that went into effect on the first of December 1998, if a person with an arrest record applies for a gun, law enforcement will have three days to determine if that arrest resulted in a conviction.⁵³ The measure I introduced would give law enforcement five days.

Let me walk you through the process of buying a gun if this law were in place. If you are in a state that does not have a permit system in place, then you go into a store and fill out a purchase form. A copy of that form will be sent to the Insta-Check point of contact for your state and a copy will also be sent to the chief law enforcement officer for where you live.

You will then need to wait three days, whereupon, assuming that you do not have a criminal record or any of the other disqualifying characteristics, you will be able to pick up your gun.

If, on the other hand, when the Insta-Check is run, the FBI learns that you were arrested, then you will have to wait at least five days. That five days will be used to determine if the arrest resulted in a conviction. If it did not, then after five days you can get your gun. If you were arrested and convicted then you cannot get your gun and may be prosecuted.

A three-day waiting period prior to the purchase of a handgun is a minor inconvenience. Yet this inconvenience will go a long way in preventing guns from getting into the wrong hands.

3. Limiting Gun Purchases to One gun a month:

A final common sense measure to reduce gun violence is a limit on the number of handguns a person may purchase in a given month or year. This reasonable limitation could help prevent senseless tragedies.

The tragic murders attributed to Benjamin Nathaniel Smith in Illinois remind us how vulnerable we all can be to acts of hatred.⁵⁴ Unfortunately, Smith's hatred was facilitated by an unlicensed gun dealer who bought sixty-five handguns in two years and then sold two guns to Smith.⁵⁵

While the unlicensed dealer was charged with dealing without a federal firearms license in violation of 18 U.S.C. 922(a), it is often not until after a tragedy occurs that such a person is caught.⁵⁶

53. *Id.* § 922(t)(1)(B)(ii).

54. Cam Simpson and Frank Main, *Smith's Guns and Illegal Gun Dealer Traced Soon After Purchase*, CHI. SUN-TIMES, July 7, 1999 at 1.

55. *Id.*

56. 18 U.S.C. § 922(a).

It is clear that no single person needs to purchase sixty-five handguns in a two-year period for safety or recreation. If our nation had a reasonable limit on the number of handguns a person could purchase in a one-month period or over a year's time, the unlicensed dealer would be unable to build up such a large supply of handguns for illegal sales.

I have called on the NRA to support a reasonable limit on the number of handguns a person should be allowed to purchase per month or per year, without registering as a licensed dealer and following all the legal requirements of dealers (including background checks before sales).

If we can find common ground on a reasonable limit, I would welcome the opportunity to work with the NRA to enact federal legislation to codify that limit in federal law. The potential for preventing easy illegal access to handguns makes this an issue of importance to all Americans.

THE FUTURE BATTLE IN THE COURTROOM?

If Congress fails to enact measures to make guns safer, then the future of this battle may be in the courts. From Boston to Los Angeles, twenty municipalities have sued firearm manufacturers, dealers, distributors, and industry associations, seeking to recoup the billions of dollars spent each year on gun violence.⁵⁷

In November of 1998, the City of Chicago filed a landmark lawsuit against sixteen gun shops surrounding Chicago, twenty-two gun manufacturers and four gun distributors.⁵⁸ The suit charges that the defendants caused a public nuisance, by purposefully marketing and distributing the firearms, so as to facilitate their use and possession in Chicago, where all handguns are banned.⁵⁹

The gun industry universally denounces the suits as unfounded but then fails to trust that judges will share their view. Instead, the gun industry has lobbied state legislatures to pass laws prohibiting the cities and municipalities from bringing the cases. Such proposed legislation is pending in more than twenty states.⁶⁰ Louisiana and Georgia have passed legislation prohibiting governments from suing gun manufacturers thereby nullifying the city of Atlanta's recently filed suit and the city of New Orleans' suit.⁶¹

The outcome of the various city suits will be followed with interest. It is possible that these lawsuits will spark the changes that Congress so far has been unable to deliver.

57. Lisa Gelhaus, *Brooklyn Jury Adds Momentum to Antigun Legislation*, 35-APR TRIAL 96, 98 (1999).

58. Robert A. Clifford, *Judges and Juries Should Target Gun Policies*, CHI. LAWYER, Feb. 1999 at 6.

59. *Id.*

60. Gelhaus, *supra* note 55.

61. S.B. 203, Reg. Sess. (La. 1999); H.B. 189, 145th Leg., Reg. Sess. (Ga. 1999).

CONCLUSION:

The answer to violence in our schools should not be summer vacation. The vast majority of Americans support sensible gun control measures. Support of these common sense proposals is not about more government it's about fewer crime victims. I hope that we can all agree on this goal.