

CORD

Lying and Buying: Using False Information to Obtain Firearms

Item Type	House Minority Staff Report
Download date	2025-04-20 17:05:36
Link to Item	https://hdl.handle.net/20.500.14300/935

In the Matter of:

*Special Investigations Briefing
Using False Information to Obtain Firearms*

*House Committee on Government Reform
March 21, 2001*

*Miller Reporting Company, Inc.
735 8th Street, S.E.
Washington, DC 20003-2802
(202) 546-6666 FAX: (202) 546-1502*

*Original File 0321GUN.ASC, 87 Pages
Min-U-Script® File ID: 1360022174*

Word Index included with this Min-U-Script®

Page 1

[1] COMMITTEE ON GOVERNMENT REFORM
[2] SPECIAL INVESTIGATIONS BRIEFING
[3] LYING AND BUYING -
[4] USING FALSE INFORMATION
[5] TO OBTAIN FIREARMS
[6] Wednesday, March 21, 2001
[7] 9:34 a.m.
[8] Room 2203 Rayburn House Office Building
[9] Washington, D.C.

Page 2

[1] MEMBERS PRESENT:
[2] Henry A. Waxman, Presiding
[3] Carolyn McCarthy
[4] Joe Hoeffel
[5] Jan Schakowsky
[6] Dennis Kucinich
[7] STAFF PRESENT:
[8] Phil Schilliro, Minority Staff Director
[9] Phil Barnett, Minority Chief Counsel
[10] David Rapallo, Minority Counsel
[11] Ellen Rayner, Minority Chief Clerk
[12] Earley Green, Minority Assistant Clerk
[13] Teresa Coufal, Minority Staff Assistant
[14] Lorran Garrison, Staff Assistant

Page 3

CONTENTS

[1] **PRESENTERS: PAGE**
[2] Robert H. Hast 16
[3] Managing Director
[4] Office of Special Investigations
[5] General Accounting Office
[6] Accompanied by:
[7] Patrick F. Sullivan
[8] Assistant Director
[9] Office of Special Investigations
[10] and
[11] John W. Cooney
[12] Senior Special Agent
[13] Office of Special Investigations
[14] Tony Orza 51
[15] Director of Government Relations
[16] Legislative Counsel
[17] Handgun Control, Inc.
[18] M. Kristen Rand 58
[19] Legislative Director
[20] Violence Policy Center
[21]

Page 4

PROCEEDINGS

[1]
[2] **MR. WAXMAN:** Good morning. I'd like to
[3] welcome everyone to this special investigations
[4] briefing. This special investigations briefing is
[5] a forum organized by the minority for members of
[6] the Government Reform Committee and other members
[7] of Congress to hear the results of an important and
[8] timely investigation that may not receive a full
[9] hearing elsewhere.

[10] The title of today's briefing is "Lying
[11] and Buying: Using False Information to Obtain
[12] Firearms." We will be joined today by agents of
[13] the Office of Special Investigations at the General
[14] Accounting Office. At my request they conducted an
[15] undercover investigation into the effectiveness of
[16] the National Instant Criminal Background Check
[17] System. This system was established pursuant to
[18] the Brady Handgun Violence Prevention Act and they
[19] will give a briefing to members and provide copies
[20] of their written report.

[21] We will also hear presentations by Tony
[22] Orza, director of government relations and

Page 5

[1] legislative counsel for Handgun Control, and M.
[2] Kristen Rand, legislative director for the Violence
[3] Policy Center. We invited representatives from the
[4] National Rifle Association and the National
[5] Association of Federally Licensed Firearms Dealers
[6] but they declined to appear today.

[7] Since it was passed, the Brady Act has had
[8] substantial success. The FBI background check
[9] system went on line on November 30, 1998 and as of
[10] this week, over 20 million NICS—the national
[11] instant background checks—have been performed.
[12] About half were conducted by the FBI and the other
[13] half were done by states that have agreed to run
[14] the checks themselves.

[15] In the two years and four months since the
[16] NICS checks started the FBI alone has blocked gun
[17] purchases to over 169,000 people. Of these, over
[18] 4,700 were fugitives on the run. The FBI estimates
[19] that participating states have denied about the
[20] same number of prohibited people the opportunity to
[21] buy weapons.

[22] Despite these successes, which are

[1] significant, the GAO report reveals a major flaw in
[2] the current system. As the GAO investigators will
[3] describe shortly, they were successful in using
[4] false driver's licenses to buy guns from licensed
[5] dealers in five different states. They made the
[6] licenses using off-the-shelf software and they
[7] succeeded in their undercover buys in every state
[8] where they attempted to buy the guns.

[9] In their report the GAO agents describe
[10] the ease with which they made these purchases.
[11] They explain that the problem with the current
[12] background check system is that it conducts only a
[13] negative check. That means the system takes
[14] whatever name the dealer provides and searches for
[15] a criminal history but it never checks to see if
[16] that name is real or if that name is the name of
[17] the person actually trying to purchase the gun.
[18] The name could be Bugs Bunny and as long as there
[19] is no criminal record on file, the gun can be sold.

[20] This sale can occur regardless of the fact
[21] that the buyer may have committed serious felonies,
[22] may have been involuntarily committed to a mental

[1] institution or may have committed domestic abuse.

[2] In addition, the system never checks to
[3] see if the name on the driver's license belongs to
[4] the person buying the gun. We rely on the gun
[5] dealer to verify this information. But, as GAO
[6] found, these are the people most interested in
[7] making the sale. In fact, my staff found instances
[8] in which suspect dealers sold guns to kids using
[9] IDs that were clearly not their own—children five
[10] years younger than the minimum age to buy a gun and
[11] eight years younger than the IDs that they were
[12] using.

[13] The GAO report finds that the current
[14] system, and I quote, "cannot ensure that the
[15] prospective purchaser is not a felon or other
[16] prohibited person whose receipt and possession of a
[17] firearm would be unlawful."

[18] Well, this is simply unacceptable. The
[19] weaknesses in the NICS background checks are a
[20] threat to public safety. We need a system that can
[21] distinguish between real and fictitious people.

[22] I want to give my two colleagues that are

[1] here with me and others that may be joining us in
[2] the next few minutes an opportunity to make some
[3] comments before I recognize our witnesses today. I
[4] want to call on Mrs. McCarthy.

[5] **MRS. McCARTHY:** Thank you, Mr. Waxman.

[6] I'd like to thank Congressman Waxman for
[7] requesting an investigation into ways criminals
[8] simply get around the Brady law and purchase
[9] firearms. This is a serious problem. I would also
[10] like to commend Special Agent Cooney and Special
[11] Agent Sullivan of the GAO's Special Investigation
[12] Office for conducting such a thorough and
[13] professional investigation.

[14] Since coming to Congress I have heard time
[15] and time again of the need to enforce the gun laws
[16] we already have. Well, it's extremely difficult to
[17] enforce laws that have loopholes. Since 1998 the
[18] Brady law has prevented over 611,000 felons from
[19] attaining firearms.

[20] After reviewing the findings from the GAO
[21] report I was shocked to learn how easy one can use
[22] loopholes to get around the Brady law. This occurs

[1] because we have several states that do not verify
[2] identification of firearm purchasers. Instead a
[3] negative check is run that simply searches for any
[4] criminal information on the name input by the gun
[5] dealer. This negative check, which is the minimum
[6] provision under the Brady law, does not ensure the
[7] valid identification of a prospective gun
[8] purchaser.

[9] However, the DOJ temporarily retains
[10] records on approved firearm sales based on NICS
[11] background checks in order to audit the NICS
[12] system. These audits help prevent fraud and abuse
[13] of the background check system but they usually
[14] occur after the purchase of a firearm. These
[15] audits allow the FBI to identify those cases where
[16] the NICS was used for unauthorized purchases, such
[17] as if a check is run on people other than actual
[18] gun purchasers and to protect those buyers against
[19] invasions of privacy.

[20] But the overall problem still remains.
[21] How can we prevent gun trafficking between states
[22] when all it takes is a simple fake ID to fool the

[1] system? How can we expect our law enforcement
[2] officers to enforce laws with loopholes?
[3] The FBI does an outstanding job ensuring
[4] an instant check background but they simply possess
[5] the information that we give to them. We need to
[6] ensure the positive identification of a potential
[7] firearm purchaser before a sale is made. The
[8] longer this loophole is left open, the longer we
[9] allow potential felons to obtain firearms.
[10] From a legislative perspective there are
[11] several ways we can improve the NICS system and
[12] keep guns out of the wrong hands. The first
[13] involves introducing legislation, which I actually
[14] am working on, that provides for a positive ID
[15] check while doing a NICS background check.
[16] The second is providing funds to state
[17] governments to assist their computer upgrades of
[18] state records. As this chart illustrates, many
[19] states still need to get all their files in a
[20] computerized format. The more files we have on
[21] line, the easier it is to conduct an immediate
[22] background check.

[1] And lastly, we need to close another
[2] loophole in the law, one that allows firearm
[3] purchasers at gun shows without a background check.
[4] We know what the problems are. It's time
[5] for Congress to stop ignoring them and start saving
[6] lives. And I thank everybody for being here.
[7] **MR. WAXMAN:** Thank you very much for your
[8] statement and for your leadership on this issue.
[9] I now want to recognize Mr. Hoeffel.
[10] **MR. HOEFFEL:** Thank you, Chairman Waxman,
[11] and thank you for including me here today. I
[12] commend you for this study and I commend the
[13] gentlemen from the GAO for the professional work
[14] that they've done and I'm looking forward to seeing
[15] the video and hearing your testimony.
[16] I have a particular interest in this
[17] field, Mr. Chairman. I am anxious not only to make
[18] sure that the background check system works—and
[19] certainly Americans think it's working; we think we
[20] can rely upon this background check and it is
[21] troubling to find that it is a negative review and
[22] therefore not foolproof at all. But I have

[1] discovered, because of some tragedies back in my
[2] district outside of Philadelphia, that there's
[3] another loophole we ought to look at in addition to
[4] the one properly identified by Congresswoman
[5] McCarthy about the gun shows. We have an exemption
[6] in the law that requires no background check, no
[7] waiting period and no recordkeeping for the
[8] purchase of antique guns or replicas of antique
[9] guns. We define antiques as guns manufactured
[10] before 1898. A replica, of course, could be a
[11] modern manufacture of an old gun. They're
[12] considered, I think, historically as collector's
[13] pieces, things that are no great threat to society
[14] but, in fact, they are.
[15] A year and a half ago at Norristown State
[16] Hospital a disgruntled employee took a replica of
[17] an 1857 revolver, took two workers hostage, ended
[18] up shooting them both and killing one of them.
[19] This is with a black powder replica of an 1857 Colt
[20] revolver.
[21] Last December in Delaware County,
[22] Pennsylvania outside of Philadelphia another

[1] disgruntled employee went back to his workplace
[2] with a replica of an antique gun. He was stopped
[3] before he could shoot his former supervisor, which
[4] was allegedly his goal that day. Of particular
[5] interest is that this disgruntled employee who had
[6] a history of mental illness tried to buy a gun at a
[7] federally licensed gun dealer and a background
[8] check was conducted and he was turned down because
[9] of his history of mental instability.
[10] He then, knowing that there is no
[11] requirement for a background check for an antique
[12] or a replica, went to a mail order catalogue, got
[13] this replica and was about to use that to commit a
[14] crime.
[15] When this first happened in Norristown,
[16] Mr. Chairman, I asked the Treasury Department for a
[17] report on what kind of records were available
[18] regarding crimes committed with antiques and
[19] replicas. There's no federal requirement that such
[20] reports be given to the national government, the
[21] federal government, but even without that
[22] requirement Treasury had 775 cases on record over a

[1] three-year period of crimes committed with antiques
[2] or replicas of antiques, including 15 homicides.
[3] So clearly there's a huge gap here in our federal
[4] law.

[5] And I know that Special Agents Cooney and
[6] Sullivan, as part of their work on the chairman's
[7] request, uncovered how easy it is, with the
[8] encouragement sometimes of gun store clerks, to buy
[9] replicas and antiques. Without any paperwork at
[10] all they purchase one. It's not the old-fashioned-looking
[11] black powder revolver that you might think
[12] an antique would look like. It's apparently an
[13] 1893 33 revolver that will be part of the
[14] demonstration today that looks like a modern gun,
[15] works like a modern gun, could be used as a modern
[16] gun but can be purchased without any background
[17] check at all.

[18] So I'm hopeful that we can make this need
[19] to close the antique and replica loophole part of
[20] our efforts to have a common-sense extension of
[21] existing gun safety regulations. Thank you.

[22] **MR. WAXMAN:** Thank you very much, Mr.

[1] are not supposed to have guns do not have those
[2] weapons. And I really look forward to the
[3] testimony and the suggestions that you have today.
[4] Thank you.

[5] **MR. WAXMAN:** Thank you very much.
[6] Now I want to introduce our first
[7] presenters on this panel. Mr. Robert H. Hast is
[8] the managing director of the Office of Special
[9] Investigations at GAO. He'll provide a statement.
[10] He's joined by Patrick F. Sullivan, assistant
[11] director, and John W. Cooney, senior special agent.
[12] These agents will be available for questions.

[13] Mr. Hast, I'm going to give you the floor
[14] and I want to thank you and your associates for the
[15] work you've done for us.

[16] STATEMENT OF ROBERT H. HAST, MANAGING DIRECTOR
[17] OFFICE OF SPECIAL INVESTIGATIONS
[18] GENERAL ACCOUNTING OFFICE
[19] ACCOMPANIED BY PATRICK F. SULLIVAN,
[20] ASSISTANT DIRECTOR, AND JOHN W. COONEY,
[21] SENIOR SPECIAL AGENT,
[22] OFFICE OF SPECIAL INVESTIGATIONS

[1] Hoeffel.

[2] Ms. Schakowsky, would you make an opening
[3] statement?

[4] **MS. SCHAKOWSKY:** I just want to thank you,
[5] Mr. Chairman, for conducting this hearing and also
[6] to thank my colleague, Representative McCarthy, for
[7] her incredible leadership on this issue.

[8] I come from a district that also has been
[9] victimized by gun violence. The summer before last
[10] we had a horrendous shooting of some men who were
[11] coming home from synagogue by a shooter named
[12] Benjamin Smith who fortunately was, in fact, turned
[13] down for legal purchase of a weapon because of a
[14] background check but then was able to purchase the
[15] weapons that he used to murder from a straw
[16] purchaser who made many, many purchases and then
[17] was able to sell them illegally.

[18] We have so many loopholes that need to be
[19] closed and as long as we're in a mode right now of
[20] saying that we should enforce the law, we'd better
[21] make sure that all of the resources are available
[22] to us to do just that—to make sure that those who

[1] **MR. HAST:** Thank you, Mr. Waxman.

[2] We're here to discuss the results of the
[3] undercover investigation requested by Mr. Waxman to
[4] demonstrate the difficulty of preventing the
[5] illegal purchase of firearms. As background, the
[6] Brady Handgun Violence Prevention Act of 1993
[7] required the attorney general to establish the
[8] National Instant Criminal Background Check System
[9] known as NICS. Operated by the FBI, NICS is a
[10] computerized system that accepts inquiries from
[11] federal firearm licensees or FFLs. It then
[12] searches the backgrounds of prospective firearm
[13] purchasers for criminal or other disqualifying
[14] information.

[15] Specifically we purchased firearms acting
[16] in an undercover capacity and using counterfeit
[17] identification. We were to do so in states that
[18] rely on the instant background check and do not
[19] require fingerprinting or a waiting period for such
[20] purchases. We selected five states: Virginia,
[21] West Virginia, Montana, New Mexico and Arizona.

[22] Using off-the-shelf software, a scanner, a

Page 18

[1] laminator, a color laser printer and fictitious
[2] personal information, we created a counterfeit
[3] driver's license for each state.
[4] In short, using bogus identification and
[5] acting in an undercover capacity, two special
[6] agents were able to purchase seven firearms, a
[7] number of magazines and ammunition in the five
[8] states. They did so at randomly selected gun
[9] stores, pawn shops and a sporting goods store, all
[10] entities that were licensed by the federal
[11] government to sell firearms.
[12] The FFLs we contacted, with the possible
[13] exception of one, adhered to the existing federal
[14] and state law regarding the mechanics of such a
[15] purchase. Further, we were successful on every
[16] attempt we made to purchase weapons. After
[17] purchasing the firearms we test-fired them and
[18] found them all, including an antique revolver, to
[19] be operable and in good condition.
[20] Consistent with the Brady Act, in the five
[21] states we found that the instant background check
[22] does not positively identify purchasers of

Page 19

[1] firearms. Rather, it is a negative check that
[2] cannot ensure that the prospective purchaser is not
[3] a felon or other prohibited person whose receipt
[4] and possession of a firearm would be unlawful.
[5] Similarly, in one state, Virginia, the
[6] addition of requiring a state criminal history
[7] check was also a negative check.
[8] Allow me to briefly describe our various
[9] undercover efforts. In all five states we were
[10] able to use counterfeit identification that went
[11] undetected by the various sales persons in the NICS
[12] background check. New Mexico and Arizona, however,
[13] presented additional gun purchasing matters. In
[14] Santa Fe, New Mexico when the NICS background check
[15] for one agent came back as delayed, the pawn shop
[16] salesperson suggested that a companion agent
[17] purchase the chosen 9 millimeter semi-automatic
[18] pistol in his name but then transfer it to the
[19] first agent. The first agent would thus not be on
[20] record as having purchased the pistol.
[21] The NICS background check for the second
[22] agent based on his counterfeit New Mexico driver's

Page 20

[1] license came back immediately as a proceed-to-sell
[2] response. The first agent then used his credit
[3] card to purchase the pistol in the companion
[4] agent's name. Since this action could possibly
[5] violate the Brady Act, we have referred the matter
[6] to the appropriate law enforcement entity.
[7] The first agent also purchased hollow
[8] point ammunition based on the salesperson's
[9] statement that it was the best ammunition he had to
[10] penetrate a bullet-proof vest.
[11] In a Tucson, Arizona gun store an agent
[12] purchased two firearms. One was a 38 caliber five-shot
[13] revolver manufactured in Spain in about 1893.
[14] The salesperson stated that a NICS check was not
[15] required on the 38 revolver because it was over 100
[16] years old.
[17] In various Arizona gun stores the agents
[18] observed other firearms that had been manufactured
[19] before 1899 and were thus exempt from the NICS
[20] check. These included antique rifles, revolvers
[21] and derringers of various calibers. Although some
[22] were priced in the thousands of dollars and were

Page 21

[1] collectors' items, many others were priced between
[2] \$100 and \$300. Indeed we paid \$100 for the antique
[3] Spanish-manufactured revolver that you see on the
[4] table.
[5] When told by a gun store salesperson in
[6] Tombstone that he could purchase the antique
[7] firearms without any identification or paperwork
[8] the agent responded, "Let me see if I understand.
[9] I can buy any of these old revolvers, all of which
[10] look like they're in good condition, and buy the
[11] ammunition without showing you any identification?"
[12] After the salesperson answered in the
[13] affirmative the undercover agent stated, "Some of
[14] these revolvers look like modern guns." The clerk
[15] assured the undercover agent they were real guns.
[16] This completes my statement. At this time
[17] we will play a brief video of our undercover
[18] purchasers and the test-firing of the weapon. We
[19] will then describe the purchased weapons, which are
[20] on display on the table, and answer any questions
[21] you may have. Thank you.
[22] [Video shown.]

Page 22

[1] **MR. COONEY:** Mr. Waxman, this first
[2] purchase here is the 9 millimeter semi-automatic in
[3] Richmond, Virginia. This gun store was located
[4] directly across the street from the Virginia State
[5] Police headquarters. This shows myself and Agent
[6] Sullivan just coming in and out of the store with
[7] the weapon.

[8] This next purchase is at a sporting goods
[9] store in Bunker Hill, West Virginia where we
[10] purchased the Bersa 380 semi-automatic pistol.

[11] This next segment is from Billings,
[12] Montana where we purchased the Russian SKS assault
[13] rifle and the Ruger 22 semi-automatic assault
[14] rifle.

[15] In Santa Fe we had a hidden camera inside
[16] the store where we were purchasing the Tec 9 semi-automatic
[17] pistol.

[18] This was Tucson, Arizona and you should
[19] have a transcript to follow along with this. We
[20] purchased the 38 revolver and the 25 semi-automatic
[21] pistol at this location.

[22] This next segment coming up is where we

Page 23

[1] test-fired all the weapons at the United States
[2] Secret Service indoor range.

[3] That's the end of the tape, Congressman.
[4] We'd now like to come up and show you some of the
[5] weapons and answer your questions.

[6] **MR. SULLIVAN:** The first weapon is a 9
[7] millimeter semi-automatic pistol with two full
[8] round magazines. This is a firearm that we
[9] determined was originally acquired by a police
[10] department in Virginia and sold as surplus to the
[11] gun store in Richmond and we were able to purchase
[12] it at the gun store in Virginia.

[13] The next firearm is a Bersa 380 semi-automatic
[14] pistol with an eight-round magazine.

[15] This is considered a replica or knock-off of a more
[16] expensive weapon, a Baretta, which would cost
[17] considerably more than this gun.

[18] The next weapon purchased is the 22
[19] caliber semi-automatic carbine assault rifle with
[20] folding stock. This is a preban weapon
[21] manufactured prior to 1994 and you can see with the
[22] foldable stock it makes it very concealable

Page 24

[1] underneath a trench coat or a jacket.

[2] The next weapon is the Russian SKS 7.62
[3] assault rifle military-style rifle. It's
[4] manufactured—millions of these were manufactured
[5] since the late 1940s. We attempted to trace this
[6] weapon with ATF and they told us that it's
[7] virtually impossible to trace any of these SKS
[8] weapons. They were given to the United States in
[9] bulk so we were unable to determine how this weapon
[10] came to be in this pawn shop in Montana.

[11] We were also able to acquire a 30-round
[12] magazine commonly known as a banana clip to this
[13] weapon. This is the type of ammunition the weapon
[14] fires. It's a 7.6 full metal jacket round,
[15] military-style round.

[16] The next weapon we acquired from the pawn
[17] shop in Tucson, Arizona is the Intratec 9
[18] millimeter pistol model AB10, commonly known as a
[19] Tec 9. It contains a 32-round magazine, which is
[20] also preban in 1994. It's legal to sell this since
[21] 1994 but it's no longer being manufactured.

[22] This weapon, as you can see from the

Page 25

[1] videotape, is favored by drug dealers and street
[2] gangs. We were able to acquire at the same time
[3] from the pawn shop Hydra-Shok hollow point
[4] ammunition. The salesperson claims it will
[5] penetrate a bullet-proof vest similar to vests worn
[6] by police officers.

[7] The next weapon we acquired from Tucson,
[8] Arizona is a 25-caliber semi-automatic pistol,
[9] Italian manufacture. ATF traced this weapon.
[10] Originally it came into the United States in 1970
[11] in Kentucky and found its way to a pawn shop in
[12] Tucson. It's a very concealable weapon. You can
[13] put it in your back pocket.

[14] The last weapon we acquired is the
[15] Spanish-manufactured 38-caliber revolver
[16] manufactured in approximately 1893. This is known
[17] as a half-brake revolver because it opens up by
[18] pulling the breach from the top. It contains five
[19] rounds.

[20] **MR. HOEFFEL:** Mr. Chairman, may I ask Mr.
[21] Sullivan to show that? This is the antique gun and
[22] it clearly doesn't look like an antique. It looks

Page 26

[1] like it's modern and this is the sort of antique
[2] that can be sold without any background check at
[3] all.

[4] So we're not just talking about flint
[5] locks and black powder, older guns that may not be
[6] that usable in a crime. This is a gun you fired on
[7] the range?

[8] **MR. COONEY:** Yes, Congressman.

[9] **MR. WAXMAN:** You weren't asked for a
[10] background check or identification to buy this gun?

[11] **MR. COONEY:** That's correct, sir. It's
[12] exempt under the Brady Act.

[13] I understand Mrs. McCarthy would like to
[14] examine some more of these items closely?

[15] **MRS. McCARTHY:** Actually, people don't
[16] realize how many gangs we have throughout our
[17] communities. Certainly on Long Island we have
[18] gangs from Nassau County out to Montauk.

[19] This is the gun of choice of gangs but
[20] probably the most scary thing is also these
[21] bullets. This kind of bullets can go through vests
[22] that our police officers wear. These are the

Page 27

[1] bullets that kill people. These are the bullets,
[2] with these kinds of guns, that our criminals are
[3] able to get. The damage, if someone is lucky
[4] enough to survive, with these bullets, the damage
[5] is terrible. I know that first-hand. Thank you.

[6] **MR. SULLIVAN:** And lastly, this is the
[7] kind of identification with which we were able to
[8] acquire these weapons. I will just pass this up
[9] front to the members of the committee and we'll
[10] collect this later.

[11] **MR. WAXMAN:** Mr. Hast, is there anything
[12] further you want to tell us?

[13] **MR. HAST:** No, we're prepared to answer
[14] any questions you may have, Mr. Waxman.

[15] **MR. WAXMAN:** Well, I thank you very much
[16] for this presentation and for the work that you've
[17] done. Is it fair to say that every time you
[18] attempted to buy a weapon with a false ID you were
[19] successful?

[20] **MR. HAST:** Yes, it was. That would be
[21] fair.

[22] **MR. WAXMAN:** These IDs, how did you go

Page 28

[1] about getting these fake IDs?

[2] **MR. HAST:** We actually manufactured them
[3] in our GAO building with off-the-shelf software and
[4] a laminator, basically the type of ID that's made
[5] probably on every college campus in the United
[6] States for underage drinking.

[7] **MR. WAXMAN:** You don't have to have
[8] specialized equipment to make them or are they made
[9] with equipment that's pretty widely available?

[10] **MR. HAST:** It's made with equipment that
[11] is widely available.

[12] **MR. WAXMAN:** You think a high school
[13] student can make a false ID like the ones you
[14] showed us?

[15] **MR. HAST:** I'm sure they could, probably
[16] better than we can.

[17] **MR. WAXMAN:** And then that would mean to
[18] me that criminals are able to make those IDs quite
[19] easily, as well.

[20] **MR. HAST:** Absolutely.

[21] **MR. WAXMAN:** Your agents made these false
[22] IDs and then you went to five states and used the

Page 29

[1] IDs to purchase weapons and I'd like to ask about
[2] your experience.

[3] When the agents visited the gun shops they
[4] were using fictitious names and fake IDs. Were
[5] these fictitious names or fake IDs ever detected?

[6] **MR. COONEY:** No, sir, they were not. They
[7] readily taken and accepted by every salesperson in
[8] every store we entered.

[9] **MR. WAXMAN:** Did you ever feel like the
[10] dealer had some suspicions?

[11] **MR. SULLIVAN:** There was only one time in
[12] a store in Richmond where the salesperson
[13] commented, "I haven't seen a driver's license like
[14] this before or recently." I said, "Well, it's an
[15] old one. You can see that I've had it since 1995;
[16] it's getting ready to expire," and he accepted that
[17] explanation as to why the license didn't look as
[18] good as a genuine one would look.

[19] **MR. WAXMAN:** The whole idea of the Brady
[20] bill, and it's been successful, is to check
[21] identifications to see if someone's a criminal or
[22] some other reason why they shouldn't be able to buy

Page 30

[1] a weapon but in this case you had false IDs. Why
[2] wouldn't the FBI system detect the name of that's
[3] being used as a fictitious name?

[4] **MR. HAST:** The reason is that the NICS
[5] check is a negative check. If you use a false name
[6] with false identifiers and you're not unlucky
[7] enough to make up one that happens to be someone
[8] with a criminal record, they find it comes back
[9] that there's not a hit and they're able to proceed
[10] with the sale. You're not identifying who the
[11] person is. You're identifying that that name, date
[12] of birth and Social Security number is not
[13] associated with a criminal record or a mental
[14] health record.

[15] **MR. WAXMAN:** So in other words, when a
[16] name's given to the FBI they really can't determine
[17] whether it's fictitious or belongs to a real person
[18] or not?

[19] **MR. HAST:** Not with the checks they're
[20] doing at the present time.

[21] **MR. WAXMAN:** And let me give you this
[22] extreme example I used in my opening statement.

Page 31

[1] Suppose I went into a gun store and said that my
[2] name is Bugs Bunny and I had a fake ID to show it.
[3] Could I pass the NICS background check and walk out
[4] with a gun?

[5] **MR. HAST:** I'm sure somewhere that would
[6] actually happen.

[7] **MR. WAXMAN:** Although you would hope a
[8] dealer would get suspicious under those
[9] circumstances.

[10] We have this whole arsenal of weapons and
[11] that is pretty disturbing, that all of that fell
[12] right through the cracks of the Brady bill. Do you
[13] consider this problem a threat to the public safety
[14] and how serious a matter is it? How widespread a
[15] matter is it?

[16] **MR. HAST:** I don't know exactly how
[17] widespread it is. It certainly was easy for us to
[18] do that. In my other experience in law enforcement
[19] it is not unusual for criminals, especially—I
[20] spent a good deal of time working credit card
[21] crimes—it's not unusual for criminals to obtain
[22] false ID so I would imagine that this could be very

Page 32

[1] widespread.

[2] **MR. WAXMAN:** Mrs. McCarthy?

[3] **MRS. McCARTHY:** Mr. Sullivan, you were
[4] asked to attempt to buy firearms using false
[5] identifications but your report also mentions other
[6] examples of criminal activity that you came across
[7] unintentionally.

[8] When you were in New Mexico you attempted
[9] to buy weapons from a pawn shop in Santa Fe. What
[10] happened when the pawn shop first submitted your
[11] information to NICS?

[12] **MR. SULLIVAN:** At that time I was using
[13] the undercover name of James Patrick Moran with a
[14] completely fictitious Social Security number and
[15] date of birth. When they ran that name through
[16] NICS it came back as a delay. The delay could have
[17] been for many reasons, most probably being that
[18] there was a criminal record on file for someone
[19] with the name of James Patrick Moran, similar to
[20] the date of birth or similar to Social Security
[21] number I was using.

[22] Later on that day when we returned to the

Page 33

[1] pawn shop Agent Cooney used the undercover name of
[2] Anthony James Stone. He was asked by the sales
[3] clerk, "Well, would you like to purchase the
[4] weapon? Then you can transfer it to your friend on
[5] a bill of sale." Agent Cooney then presented his
[6] counterfeit identification in the name of Anthony
[7] Stone. That sale went immediately through NICS and
[8] then I purchased the weapon myself using the credit
[9] card in the name of James Moran and then walked out
[10] of the store with the Tec 9.

[11] **MRS. McCARTHY:** To follow up on that, we
[12] know that one of the guns that was used in the
[13] Columbine shooting, they actually considered that a
[14] straw buy. So when you went back to the pawn shop
[15] can you tell us what happened after that?

[16] **MR. SULLIVAN:** We were successful in
[17] purchasing the weapon. The people in the pawn shop
[18] assured us that it was legal because in New Mexico
[19] you do not need a permit to transfer the weapon.
[20] Indeed we even said to him, "Gee, is this legal?
[21] Can we do this?" and they said, "Yes, you can."
[22] Subsequent conversations we had with the

Page 34

[1] Department of Justice and the ATF, they confirmed
[2] that it's most probably a straw purchase and at the
[3] conclusion of our investigation we forwarded the
[4] information on to the ATF office in Albuquerque and
[5] they will be conducting a follow-up investigation.

[6] **MRS. McCARTHY:** I also understand that you
[7] were able to purchase some Hydra-shok hollow point
[8] ammunition from this fellow, as well. What did he
[9] tell you that this ammunition could do when you
[10] purchased it?

[11] **MR. SULLIVAN:** I told him, after I
[12] selected the Tec 9 to buy, I said I want the most
[13] powerful ammunition you have. I said I may have to
[14] use this against a person who may be threatening me
[15] and I want to make sure it's going to be able to
[16] take these people out. And he said, "Well, the
[17] best I have for you is the Hydra-shok hollow
[18] point." I said, "Will that go through a bullet-proof vest?"
[19] He says, "Absolutely." I said, "Will
[20] that go through a vest like police officers wear?"
[21] He said, "No problem."

[22] **MRS. McCARTHY:** Thank you.

Page 35

[1] What happened out in Tucson, Arizona? I
[2] understand you came across another loophole.

[3] **MR. SULLIVAN:** Yes, Mrs. McCarthy, we did.
[4] We were aware, as federal agents we were aware of
[5] the antique exemption to the Brady Act but to be
[6] quite candid, I never thought it was revolvers like
[7] the one we have on display. In my own mind I
[8] thought it was more like a black powder weapon,
[9] like Mr. Hoeffel was describing from the crime in
[10] his district. However, once we got into the gun
[11] stores in Arizona it became readily apparent after
[12] we engaged in discussion with the store owners that
[13] any weapon manufactured before 1898 was exempt,
[14] which included a lot of collectible weapons, high-priced,
[15] but a lot of very cheap handguns, like the
[16] one you see on display here.

[17] **MRS. McCARTHY:** Just a follow-up. When
[18] you were doing your undercover role as a potential
[19] bad guy, what did he suggest that you do with the
[20] gun?

[21] **MR. SULLIVAN:** Well, for the weapons
[22] manufactured before 1898 it was very clear to us in

Page 36

[1] our discussions, both Agent Cooney and myself, the
[2] discussions we engaged in, that if you felt you
[3] couldn't pass the background check, go ahead and
[4] buy one of the older guns because you won't have to
[5] provide any paperwork or provide any
[6] identification. It was never stated; it was
[7] implied.

[8] **MR. WAXMAN:** Mr. Hoeffel, do you have any
[9] questions?

[10] **MR. HOFFEL:** I do. Thank you, Mr.
[11] Chairman.

[12] Did you have any direct discussions, Mr.
[13] Cooney or Mr. Sullivan, regarding the antiques?
[14] Did you question why this was not subject to a
[15] background check?

[16] **MR. COONEY:** Congressman, in the store, as
[17] you noticed on the tape, I did ask the salesperson,
[18] I told him I didn't understand the law. He
[19] explained that any gun that was over 100 years old
[20] was exempt from the NICS.

[21] Then I said, "I don't understand that. If
[22] it's a gun, it's a gun. Why isn't everybody

Page 37

[1] checked for the NICS?" He said, "Well, that's just
[2] the law and we don't have to check it."

[3] **MR. HOFFEL:** Agent Sullivan, did you feel
[4] that it was implied by some of the clerks that this
[5] was a way around the background check system?

[6] **MR. SULLIVAN:** Clearly implied but you have
[7] to understand, Mr. Hoeffel, we were in Arizona,
[8] which is a very strong gun culture and it was
[9] obvious that it—I don't want to cast negative
[10] aspersions on it but it was just the attitude among
[11] the people dealing the guns that there's a Second
[12] Amendment issue and you're free to purchase these
[13] weapons without any paperwork or encumbrances.

[14] **MR. HOFFEL:** Was it your interpretation
[15] of their attitude that they were there to sell a
[16] gun and they were going to sell that gun?

[17] **MR. SULLIVAN:** Clearly, sir, they're in
[18] business to sell guns.

[19] **MR. HOFFEL:** And they were going to help
[20] you figure out a way to do it?

[21] **MR. SULLIVAN:** That's a fair statement,
[22] sir.

Page 38

[1] MR. HOFFEL: I understand a couple of
[2] times during these purchases in the five states
[3] that there were temporary delays or holds put on
[4] your purchases?

[5] MR. SULLIVAN: Yes, sir. That happened on
[6] two occasions.

[7] MR. HOFFEL: And could you describe those
[8] circumstances for the committee?

[9] MR. SULLIVAN: Yes. One occasion was in
[10] West Virginia. Again I was using the undercover
[11] name of James Patrick Moran. We got a delay but
[12] that cleared up within 24 hours. And again we
[13] don't know the exact reason for the delay, the most
[14] likely reason being that the name was associated
[15] with someone who has a criminal record, not the
[16] exact identifiers. And the same thing happened in
[17] New Mexico.

[18] Following that I changed my undercover
[19] name to Shamus Moran so I wouldn't have to deal
[20] with the James Patrick Moran.

[21] MR. HOFFEL: What was the attitude of the
[22] dealers when these holds were put on as a result of

Page 39

[1] the background check?

[2] MR. SULLIVAN: Two of the dealers
[3] commented that they were afraid they were going to
[4] lose the sale because they commented that this
[5] happens all too often with NICS, that it's
[6] allegedly an instant check system but all too often
[7] a delay occurs and the prospective purchaser just
[8] doesn't want to return to buy the weapon.

[9] MR. HOFFEL: And how did they respond to
[10] that? Did they try to figure out another way to
[11] sell you a weapon?

[12] MR. SULLIVAN: No, no. In no case other
[13] than the one we described in New Mexico did any of
[14] the dealers break any laws or appear to break any
[15] laws. Just the opposite. They all appeared to
[16] follow the letter of the law, exactly what was
[17] required of them under the Brady Act.

[18] MR. HOFFEL: But it would be our job to
[19] make sure the law is adequate to accomplish the
[20] safety regulations we're trying to accomplish.

[21] MR. SULLIVAN: Yes, sir.

[22] MR. HOFFEL: No more questions. Thank

Page 40

[1] you.

[2] MR. WAXMAN: Thank you.

[3] Mr. Hast, you've uncovered what appears to
[4] be a serious loophole in the NICS background check
[5] but I'd like to ask you whether what you found is a
[6] real problem or just a hypothetical problem? Are
[7] you aware of instances where felons or other
[8] prohibited persons have actually used false IDs to
[9] obtain weapons?

[10] MR. HAST: Yes, there are a number of
[11] cases on record where people are in jail and
[12] serving time for purchasing weapons with false ID
[13] and then using those weapons to shoot someone.

[14] MR. WAXMAN: Could you tell us about some
[15] of those cases that you're aware of?

[16] MR. HAST: I think Pat looked into that a
[17] little more than I did.

[18] MR. SULLIVAN: Yes, sir, Mr. Waxman. We
[19] uncovered a few instances; I'm sure there's many
[20] more. The one that comes to mind is one of the
[21] most outrageous and egregious is an incident in
[22] Lakewood, Colorado in which a 14-year-old was able

Page 41

[1] to purchase a Tec 9 semi-automatic pistol similar
[2] to the one we have on the table using false
[3] identification. The identification was a falsely
[4] obtained driver's license from Colorado but it was
[5] obtained by a third person whom the authorities in
[6] Colorado have never identified but the suspect took
[7] this driver's license, went into a pawn shop and
[8] purchased a 9 millimeter Tec 9 and the picture on
[9] the license was actually the third party but he
[10] looked similar enough that it was passable. The
[11] only exception was he was 14 years old and
[12] according to the police officers whom we
[13] interviewed and the district attorney who
[14] prosecuted, anyone could clearly see this was a
[15] young man and clearly not over the age of 21.

[16] And the tragic part of the story, Mr.
[17] Waxman, is that after he obtained this Tec 9 semi-automatic
[18] pistol he shot a police officer with it
[19] in Colorado when he was stopped for a traffic
[20] violation. Now he was prosecuted as an adult and
[21] he's now serving 25 years in the Lineman
[22] Correctional Institution in Colorado.

[1] **MR. WAXMAN:** This is the same weapon you
[2] were able to buy in the State of New Mexico?
[3] **MR. SULLIVAN:** Yes, sir.
[4] **MR. WAXMAN:** And is this the same weapon
[5] that was used in the Columbine shootings?
[6] **MR. SULLIVAN:** To my understanding, yes,
[7] sir.
[8] **MR. WAXMAN:** I understand you were going
[9] to try to interview this person in jail for
[10] shooting the police officer. Were you successful?
[11] **MR. SULLIVAN:** No, sir. We were able to
[12] talk to the warden of the facility and the
[13] defendant's or now the incarcerated person's
[14] counselor. He initially agreed to an interview.
[15] We flew an agent into Colorado, drove two hours to
[16] Lineman Correctional Facility and when we showed up
[17] the young man told us he changed his mind and
[18] refused to be interviewed.
[19] **MR. WAXMAN:** A recent ATF report indicates
[20] that ATF has investigated nearly 200 cases of using
[21] false information to buy weapons in about a two-year period.
[22] This would suggest that the problem

[1] is a serious one. Do you agree with that?
[2] **MR. SULLIVAN:** Yes, sir, I agree with that
[3] statement.
[4] **MR. WAXMAN:** And the ATF report indicates
[5] that 13 percent of its gun trafficking cases
[6] involve false information. Do you think this is
[7] the full extent of the problem? Would there be
[8] cases where false IDs are used but ATF doesn't know
[9] about them?
[10] **MR. HAST:** Yes. There's no way that they
[11] could get 100 percent of all of the cases.
[12] **MR. WAXMAN:** So they think 13 percent
[13] involves using these false IDs but it could be
[14] much, much more than that.
[15] **MR. HAST:** It certainly could.
[16] **MR. WAXMAN:** Mr. Hast, your agents went to
[17] five states. Some people might suggest that that's
[18] too small a sample and that you shouldn't draw
[19] conclusions from a sample of this size and I want
[20] to ask you about this.
[21] Each of these states relies on the instant
[22] background check but does not require

[1] fingerprinting or a special license. Are there
[2] other states that also rely on the instant
[3] background check as in these five states?
[4] **MR. HAST:** Yes, there are a number of
[5] other states—Alaska, Arkansas, Idaho, Mississippi,
[6] North Dakota, Oregon, Texas, Vermont and Wyoming we
[7] know do the same thing. And in Florida and Kansas
[8] it's the instant check only with a one-day waiting
[9] period.
[10] **MR. WAXMAN:** It's my understanding that's
[11] about a third of the states use this kind of
[12] background check system.
[13] **MR. HAST:** Yes, sir.
[14] **MR. WAXMAN:** And based on what you know,
[15] is this a serious national problem or is it just a
[16] problem affecting a limited number of states?
[17] **MR. HAST:** Well, as mobile as our society
[18] is, I would say with these many states available
[19] it's a national problem.
[20] **MR. WAXMAN:** I understand some states do
[21] much more than the minimum which is required by
[22] federal law for these NICS background checks. For

[1] example, Massachusetts and New York have a much
[2] more rigorous system for background checks. What
[3] additional steps do these states take?
[4] **MR. HAST:** Well, I'm not really an expert.
[5] I know in Massachusetts, New York, New Jersey and
[6] Hawaii they require an applicant to just purchase a
[7] firearm to go to the local police and be
[8] fingerprinted and obtain a license and have a
[9] waiting period that varies.
[10] **MR. WAXMAN:** So if your agents went to one
[11] of those states, for example, Massachusetts or New
[12] York, would they have been as likely to succeed in
[13] circumventing the NICS background check?
[14] **MR. HAST:** No, I do not think so.
[15] **MR. WAXMAN:** Ms. Schakowsky, any
[16] questions?
[17] **MS. SCHAKOWSKY:** Mr. Sullivan, I believe
[18] you bought the antique gun in Tombstone?
[19] **MR. SULLIVAN:** We actually purchased the
[20] weapon in Tucson, Arizona but we visited other gun
[21] stores in Tombstone, ma'am.
[22] **MS. SCHAKOWSKY:** You had a discussion, I

Page 46

[1] understand, with a salesperson in Tombstone about
[2] the purchase of antique guns. I'm wondering if you
[3] could describe that to us. I'm looking at the
[4] transcript here. It's just stunning.
[5] **MR. SULLIVAN:** Yes, Ms. Schakowsky. The
[6] conversation went something like this. We engaged
[7] the clerk in conversation, myself and Agent Cooney.
[8] We saw literally scores of handguns on display, all
[9] of which were pre-1898, all of which required no
[10] background check. We found it somewhat stunning so
[11] we asked the clerk behind the counter, I said,
[12] "Well, let me see if I understand this. I could
[13] buy any one of these guns, all of which look like
[14] they're operable, in pretty good shape, buy the
[15] ammunition; I don't have to show you any
[16] identification, do any paperwork?" He said yes.
[17] I said, "Well, wouldn't I have a pretty
[18] good chance if I buy one of these guns on my way
[19] home tonight, stop in the 7-Eleven and make a cash
[20] withdrawal, because these look real." He goes,
[21] "Absolutely, because these are real guns, no
[22] question about it."

Page 47

[1] **MS. SCHAKOWSKY:** So he agreed that it
[2] would be probable that you could use one of these
[3] guns, do a stick-up, and that was the conversation,
[4] sort of chatting about the purchase?
[5] **MR. SULLIVAN:** But it was clear in the way
[6] we presented ourselves, we looked like we were
[7] typical tourists in Tombstone and we did not
[8] instill any fear in the store owner. He didn't
[9] think we were about to rob him. He took it kind of
[10] tongue in cheek and that's why he laughed. So I
[11] don't want to paint the—
[12] **MS. SCHAKOWSKY:** No, I understand, but it
[13] was like this joking conversation about how this
[14] gun could be used possibly?
[15] **MR. SULLIVAN:** Without a doubt, ma'am,
[16] this is a real gun and you could do a real stick-up
[17] with this and kill somebody with it, yes,
[18] unquestionable.
[19] **MS. SCHAKOWSKY:** Thank you.
[20] **MR. WAXMAN:** Thank you.
[21] Let me just ask you, of all this arsenal
[22] of guns and weapons you were able to buy, and I'm

Page 48

[1] not all that familiar with different weapons but if
[2] somebody was trying to do a lot of damage in 30
[3] seconds or a minute, how many shots could they
[4] fire? Which of those weapons could do the most
[5] damage in the shortest period?
[6] **MR. COONEY:** Well, Congressman, the Tec 9
[7] has a clip of 32 rounds and they will dispense as
[8] quick as you can pull the trigger and the banana
[9] clip is a 30-round banana clip for the SKS 7.62
[10] NATO round and as fast as you can pull that
[11] trigger. So I'd say in less than 20 seconds you
[12] can empty those clips.
[13] **MR. WAXMAN:** Well, hearing your testimony
[14] today and learning what you have to tell us it
[15] seems like if you're a law-abiding citizen and you
[16] want to buy a gun you simply present your driver's
[17] license and there's no question you'll be able to
[18] pass and buy a weapon. But if you're a criminal
[19] and you want to buy a weapon all you have to do is
[20] get this inexpensive software, manufacture some
[21] kind of phoney ID and then go out and buy any of
[22] these weapons, circumventing the law completely.

Page 49

[1] Is it just that easy?
[2] **MR. COONEY:** Yes, it is. That's exactly
[3] what we did.
[4] **MR. WAXMAN:** So if you're a criminal, if
[5] you don't have one of these fake IDs you just go
[6] buy one of these antique weapons and if you don't
[7] want to buy an antique weapon and you want to buy
[8] the state-of-the-art semi-automatics, you just put
[9] together a phoney ID and you can walk out of the
[10] store with anything.
[11] **MR. COONEY:** Yes, that's accurate.
[12] **MR. WAXMAN:** Anything anybody else want to
[13] say before we go to the next panel?
[14] **MRS. McCARTHY:** I'd like to follow up
[15] again because I come from New York and we certainly
[16] have some good laws. Unfortunately, most of the
[17] guns that come into New York to do their dirty work
[18] are from out of state.
[19] I know you answered it to some extent but
[20] I think a lot of people probably don't understand
[21] the negative and the positive checks. Obviously
[22] your agents would not go into those states that

[1] have positive checks because there was more to go
[2] for it.

[3] Obviously here we're legislators and I'm
[4] not going to ask you for an opinion because that
[5] wouldn't be fair to all of you but those states
[6] that have gone beyond the Brady bill as far as
[7] doing background checks, would it be fair to say
[8] that states like New York, states like
[9] Massachusetts, it would be much harder for the
[10] criminal to be able to get their guns?

[11] **MR. COONEY:** Yes, absolutely.

[12] **MRS. McCARTHY:** Thank you.

[13] **MR. WAXMAN:** I want to thank you very much
[14] for the work you've done and your presentation to
[15] us. I think we've learned some valuable
[16] information. Common sense indicates to me that
[17] we've got a problem. Even though the law's been
[18] successful in many ways, we've got a problem that
[19] we have to find a solution to. Thank you very
[20] much.

[21] I want to now call forward Tony Orza,
[22] director of government relations, legislative

[1] counsel for Handgun Control, Inc., and M. Kristen
[2] Rand, legislative director of Violence Policy
[3] Center.

[4] I want to thank you for coming to our
[5] hearing today. We appreciate your being here. Mr.
[6] Orza, why don't we hear from you first?

[7] STATEMENT OF TONY ORZA, DIRECTOR OF GOV-
ERNMENT
[8] RELATIONS, LEGISLATIVE COUNSEL,
[9] HANDGUN CONTROL, INC.

[10] **MR. ORZA:** Thank you very much,
[11] Representative Waxman and Representative McCarthy
[12] and Representative Schakowsky. It's great to be
[13] able to participate in this briefing. At Handgun
[14] Control we appreciate all of the efforts that each
[15] of you has made to reduce gun violence and make our
[16] communities safer. We'd also like to commend the
[17] staff and the GAO for all of their hard work.

[18] For those in the audience who are not
[19] familiar with Handgun Control, we are a nonpartisan
[20] grassroots organization dedicated to reducing gun
[21] violence. The Brady law, which we're discussing
[22] today, is named after Jim and Sarah Brady, the

[1] leaders of our organization and it was 20 years ago
[2] this month that Jim Brady was shot in the
[3] assassination attempt on President Reagan.

[4] Whenever we talk about firearms in our
[5] country we should remember what is at stake. Every
[6] year we lose more than 30,000 Americans to guns and
[7] that includes more than 10 young people each and
[8] every day—10 young lives cut short by gunshots in
[9] school hallways, at a neighbor's home and on street
[10] corners. The media covers a few of the most
[11] sensational incidents but there are countless other
[12] tragedies outside the spotlight.

[13] In the wake of the recent school shootings
[14] there was a lot of talk about parenting, American
[15] culture and values and these are important factors
[16] in discussions about youth violence but we should
[17] not forget the common element in these
[18] tragedies—guns. You cannot shoot someone without
[19] a gun. A child with a knife or a baseball bat
[20] cannot kill and injure dozens. And we will
[21] continue to lose too many lives unless we do more
[22] to stop guns from getting into the wrong hands and

[1] that's why this briefing today is very important.

[2] The Brady law and the National Instant
[3] Criminal Background Check System have stopped more
[4] than 600,000 felons, fugitives and others who are
[5] prohibited from getting guns so we have had a lot
[6] of success with the law but, as the GAO report
[7] shows, more can be done to strengthen our federal
[8] firearm laws.

[9] Clearly, the ease with which the agents,
[10] the GAO agents, used fake identification to
[11] purchase guns demonstrates that state and federal
[12] law enforcement officials need a better way to
[13] screen gun purchasers, at least in the five states
[14] that were studied and the other states that have a
[15] similar process.

[16] But there are other problems with these
[17] firearm purchases. The most serious is the New
[18] Mexico case where it seems that a pawn shop
[19] salesman conspired with the purchaser to get around
[20] the background check requirement, in violation of
[21] federal law. It's also disturbing to see that the
[22] salespeople in West Virginia and Montana were more

Page 54

[1] concerned with losing a sale than ensuring that the
[2] purchaser was not a felon, fugitive or some person
[3] prohibited from buying a gun.

[4] As you move forward to address the
[5] specific issues raised by the GAO report you may
[6] want to consider a number of approaches and we'd
[7] like to help you with any approach you'd like to
[8] pursue.

[9] In the past, Handgun Control has
[10] recommended that the Bureau of Alcohol, Tobacco and
[11] Firearms modify the firearms transactions form, the
[12] Form 4473, to require that the buyer show two forms
[13] of personal identification, proof of residence in
[14] the state, such as a utility bill, and a local
[15] telephone number. The ATF could make that
[16] modification under its clear statutory authority to
[17] determine the form and content of required records.
[18] That would be a helpful step forward the ATF could
[19] take without legislation.

[20] We would also support a more comprehensive
[21] approach that would involve changing the instant
[22] background check system from what the report calls

Page 55

[1] a negative check to a positive check, where law
[2] enforcement confirms the identity of the purchaser.
[3] And Representative McCarthy, I think you suggested
[4] that you were going to try to take that approach.
[5] I think that as you pursue that it would be helpful
[6] to talk to the FBI, ATF, state and local law
[7] enforcement and figure out how they could implement
[8] it in a practical way because it would involve
[9] different databases that they would have to access.

[10] While this GAO report raises some specific
[11] issues about background checks, a more general
[12] consideration of the Brady law may also help us
[13] keep these issues in perspective. As you may
[14] recall, it took about seven years to get the Brady
[15] bill enacted into law. Clearly we can't take that
[16] same amount of time when addressing a problem like
[17] this. We can't allow people tomorrow to start
[18] going out and manufacturing IDs and getting
[19] firearms, criminals who should not have them.

[20] So why it took so long is that the gun
[21] lobby fought tooth and nail against the Brady bill
[22] and when they couldn't stop it they tried to weaken

Page 56

[1] it.

[2] So there are a number of problems. For
[3] example, law enforcement has only three business
[4] days to reduce the records of a prospective
[5] purchaser who could be a criminal, a stalker,
[6] mentally incompetent or otherwise prohibited from
[7] buying a gun. And last year the FBI testified that
[8] three business days was simply not enough time to
[9] complete all background checks. The bureau said
[10] that in the first 18 months of the NICS system more
[11] than 6,000 criminals and other prohibited people
[12] were able to get guns because the FBI did not have
[13] enough time to complete the background check. And
[14] the FBI and the ATF and state and local law
[15] enforcement then have to spend valuable time and
[16] resources to try to get the guns back.

[17] So because the gun lobby does not want to
[18] burden gun buyers, they put an additional burden on
[19] law enforcement. Regrettably, that is the way the
[20] gun lobby approaches every sensible proposal to
[21] make our gun laws stronger. It values easy access
[22] to guns over protecting public safety. That is why

Page 57

[1] they continue to oppose other efforts to address
[2] problems with the Brady law that allow criminals to
[3] get guns—things like the gun show loophole and Rep
[4] Hoeffel was here but he left; he's got legislation
[5] to close the antique firearm loophole.

[6] So as you address this we urge you to put
[7] aside phoney rhetoric from the gun lobby and try to
[8] come up with a good, comprehensive solution. When
[9] it comes to our firearm laws, the overriding value
[10] must be preventing crime and making communities
[11] safer. We need background checks on all gun sales
[12] and adequate time for law enforcement to prevent
[13] criminals from getting guns.

[14] That is the common sense approach
[15] supported by the vast majority of American people,
[16] including gun owners. They know that law-abiding
[17] hunters and sportsmen, as well as legitimate
[18] lobbyists and collectors, have nothing to fear from
[19] complete and thorough background checks. In the
[20] final analysis, more must be done to strengthen the
[21] Brady law and prevent criminals, juveniles and
[22] other prohibited purchasers from getting guns.

Page 58

[1] We commend you for bringing attention to
[2] the problem of firearm purchases with fake
[3] identification and we look forward to working with
[4] you toward a solution. Thank you.

[5] **MR. WAXMAN:** Thank you, Mr. Orza.
[6] Ms. Rand?

[7] STATEMENT OF M. KRISTEN RAND,
[8] LEGISLATIVE DIRECTOR, VIOLENCE POLICY CENTER

[9] **MS. RAND:** Thank you, Representative
[10] Waxman. I would also like to thank all of you for
[11] your hard work in reducing gun violence in America
[12] and I'm very pleased to be here today to talk about
[13] this important investigation.

[14] The Violence Policy Center is a nonprofit
[15] think tank. We do a lot of research in the area of
[16] gun violence and work to reduce gun violence.

[17] The General Accounting Office study that
[18] we've heard about this morning, firearms purchased
[19] from federal firearm licensees using bogus
[20] identification, starkly demonstrates the ease with
[21] which counterfeit driver's licenses and other fake
[22] identification can be used with ease to purchase

Page 59

[1] firearms in five states.

[2] The Violence Policy Center has closely
[3] followed the implementation of the NICS system, the
[4] instant background check system, and we're aware
[5] that it's not perfect, although as Tony pointed
[6] out, it has prevented more than 600,000 felons,
[7] fugitives, domestic abusers and other prohibited
[8] individuals from getting access to guns. But the
[9] GAO study highlights particular areas in which the
[10] NICS clearly needs improvement.

[11] Although we're troubled by the results of
[12] the study we're frankly not surprised. The
[13] Violence Policy Center, when we looked at the
[14] switch-over from the—previously the Brady bill
[15] allowed five business days to complete a background
[16] check. In 1998 that system switched over to what
[17] we call the instant background check system. BPC
[18] analyzed the switch-over in a study we called
[19] "Paper Tiger" and essentially predicted that there
[20] would be problems, including the fact that the
[21] system is only a negative check and relies most
[22] heavily on the buyer's name.

Page 60

[1] Other problems that we identified were
[2] that states' systems are not automated, a lot of
[3] the data is not available; some records of some
[4] prohibited categories, particularly with respect to
[5] domestic violence and mental health records, are
[6] inaccessible to the system; the data is not updated
[7] in the fastest possible manner; and there are
[8] always glitches. I mean we read about in the gun
[9] press every time around Christmas the NICS goes
[10] down; it's overloaded.

[11] So we recognize the NICS is a work in
[12] progress and that there do need to be improvements
[13] made.

[14] And unfortunately our research has also
[15] shown that this problem with background checks may
[16] not be limited just to gun buyers. In 1992 the
[17] Violence Policy Center looked at the background
[18] checks performed on applicants for federal firearms
[19] licenses, the standard gun dealer's license. At
[20] that time there were more gun dealers in America
[21] than gas stations.

[22] Our research uncovered the fact that the

Page 61

[1] Bureau of Alcohol, Tobacco and Firearms had issued
[2] federal firearms licenses to two dogs. A spokesman
[3] from the post explained that the dogs would clearly
[4] pass a record check designed for human beings. And
[5] while this is an extreme example and related to the
[6] problem we're seeing today, we think it's
[7] indicative of the problems you encounter with a
[8] system that can't positively identify an individual
[9] and serves only as a negative check.

[10] Some of the other things that we found
[11] interesting about the study were some of the issues
[12] surrounding the Internet. We've tried to do some
[13] research looking at how easy is it to buy illegal
[14] weapons over the Internet. It's really hard to
[15] tell unless you actually initiate the transaction
[16] and we would urge that more research be done in
[17] that area.

[18] We recognize also that the solution to
[19] this problem is multi-faceted and very complicated
[20] and we would urge that we not jump to conclusions
[21] in the search for some simple solution to this
[22] complicated problem. But we think that it starkly

Page 62

[1] demonstrates things that can't happen and things
[2] that the National Rifle Association is busy trying
[3] to push as we speak, things that would dilute the
[4] effectiveness of the NICS, such as reducing the
[5] three business days that's currently allowed to
[6] finish the background checks, diluting the
[7] usefulness of the audit log, which allows the FBI
[8] to monitor the system and weed out fraud in the
[9] system. The NRA has sued to require immediate
[10] document destruction so the audit log isn't really
[11] usable.

[12] Also, it points out the need to keep the
[13] number of licensed gun dealers at a manageable
[14] level. As I mentioned earlier, in 1992 there were
[15] more gun dealers in America than gas
[16] stations—245,000. Today we've gotten that down to
[17] around 66,000, a much more manageable level, but
[18] clearly the more individuals who have access to the
[19] background check system the more likely we're going
[20] to see the kind of fraud that we saw today.

[21] So we look forward to working with you all
[22] to identify things that will improve the system.

Page 63

[1] We have some suggestions in our written testimony
[2] regarding steps that could be taken with respect to
[3] the conduct of dealers and we look for more
[4] investigation in this area. It's very important
[5] work that the Government Accounting Office
[6] performed and it's very important for the public to
[7] be aware that the instant check system is good but
[8] it needs to be made better. Thank you.

[9] **MR. WAXMAN:** Thank you both very much for
[10] your presentation and we'll review all the specific
[11] recommendations that you've given us orally and in
[12] your written testimony.

[13] I just want to ask you to react to this
[14] GAO report because the conclusion that I reach from
[15] listening to the GAO special agents is that a
[16] criminal or a kid or anyone else can phony up an ID
[17] and go in and buy a weapon of any sort. Is that
[18] the conclusion that you've reached?

[19] **MS. RAND:** As I said, we weren't
[20] necessarily surprised but I must say that the
[21] uniformity with which the agents were able to make
[22] the purchases, the fact that no dealer questioned

Page 64

[1] the legitimacy of the identification, it's really
[2] shocking, particularly when you factor in the types
[3] of weapons that they were able to purchase. Many
[4] of these weapons are virtual assault weapons, if
[5] not specifically defined as such under federal law.
[6] It's just plain scary the ease with which these
[7] weapons were obtained with fake IDs.

[8] **MR. ORZA:** It's very disturbing. Also,
[9] we've talked a little bit about the attitude of the
[10] federal firearm licensees, the dealers. You had
[11] five places, five businesses that were visited and
[12] in three of those the attitude was so lax and they
[13] were actually trying to help people get around the
[14] law. That's very disturbing.

[15] It reminds us all that people are trying
[16] to sell a product, that profits are involved here
[17] and that we need to really make sure that we're
[18] thinking always about public safety when we look at
[19] these transactions and we look at how to improve
[20] the NICS system.

[21] **MS. RAND:** I also think it reinforces the
[22] fact that dealers have a responsibility beyond just

Page 65

[1] contacting the NICS and relying on that as
[2] assurance that the buyer is legitimate. Dealers
[3] have duties that go beyond that. If they know or
[4] have reason to know that a buyer's in a prohibited
[5] category they should think twice before they sell
[6] that gun.

[7] **MR. WAXMAN:** Congress put in place a
[8] system under the Brady law and that system was to
[9] check out before the purchase of a weapon whether
[10] the individual shouldn't be buying a weapon,
[11] particularly if it's a criminal or a child.

[12] What we see now is that there's a way, and
[13] it's not that hard a way, to by-pass that system.
[14] Common sense would tell me that what we've got to
[15] do is correct it. It's a system that has worked
[16] remarkably well and when you recognize that 169,000
[17] people that should not have been purchasing weapons
[18] were stopped from buying them, that's only from the
[19] FBI and the states have about as good a result, as
[20] well, so you can imagine over 300,000 people in
[21] this country otherwise would have weapons that were
[22] stopped by virtue of the Brady bill. In my view we

[1] ought to make this law work and not let the whole
[2] system be circumvented by this loophole that I
[3] don't think anybody in the Congress ever imagined
[4] would come about when we adopted the law.

[5] **MR. ORZA:** That's a good point. Also, you
[6] have to remember that these were sales by FFLs so
[7] there's this whole secondary market where people
[8] don't even need to have a fake ID because there's
[9] no check at all. And we urge you to consider all
[10] the other loopholes. Representative Hoeffel left
[11] but he's got this antique firearm—

[12] **MR. WAXMAN:** No question. And Mrs.
[13] McCarthy has been trying to plug up the gun show
[14] loophole. I'll recognize her now to ask questions
[15] and would appreciate your responding to the
[16] questions so we can get them on the record.

[17] **MRS. McCARTHY:** Thank you. And thank you
[18] both for your testimony.

[19] Obviously we're in Congress and certainly
[20] you know the problems that we have here trying to
[21] get very simple, common sense laws passed.

[22] I'm sorry that the NRA chose not to be at

[1] this particular hearing because I would have liked
[2] to have heard their response because one of the
[3] things that we hear constantly is that we are not
[4] enforcing the laws that are already on the books.
[5] And certainly I don't think there's anyone here in
[6] Congress that doesn't believe that we should be
[7] trying to enforce the laws that are already on the
[8] books and here we are; we're going to try to force
[9] the laws on the books by closing these loopholes.

[10] You mentioned that over 30,000 people a
[11] year are killed. We hear about 10 children a day
[12] are killed and still we don't bring out the
[13] statistics of over 200,000 people a year injured.
[14] As a nurse I look at that because medical
[15] technology has advanced so much that we can save a
[16] lot more people but no one talks about also what
[17] it's costing our health care system because of
[18] these injuries and I don't want anyone to forget
[19] that because that's something that's very personal
[20] to me.

[21] Going back to the Brady bill, we know it
[22] works. Closing the gun show loophole, which we had

[1] common sense legislation last year for which
[2] couldn't get passed here; we never had another
[3] meeting; we didn't meet with the conferees and they
[4] were just kind of hoping it would die. Well, it's
[5] not going to die. We're certainly going to go back
[6] in the next few weeks and bring bills up onto the
[7] floor to try to do that.

[8] Now one of the things that even before we
[9] had heard this report was that we know now more
[10] than ever that the NICS system has to be brought up
[11] to speed. When we started looking at how many
[12] states are not even anywhere near working with the
[13] NICS law, and they're not, and we have to do
[14] whatever possible, and hopefully my colleagues will
[15] support me on this when we try to get more funding
[16] to bring them up to date. I think that's
[17] important, to give our law enforcement, certainly
[18] the FBI, the tools that they need to do these
[19] background checks.

[20] I'm looking forward to the next couple of
[21] weeks because not to knock the NRA—there are a lot
[22] of good people in that organization that care very

[1] much about gun safety but it's time for them to
[2] start working with us to prevent the criminals from
[3] getting their guns. That is our obligation.
[4] And with this hearing I'm hoping that the
[5] American people will understand that we are only
[6] trying to get guns away from criminals. We're
[7] trying to certainly prevent criminals from buying
[8] their guns and making sure that straw buyers,
[9] underage buyers, cannot get their guns. And the
[10] average citizen has absolutely nothing to worry
[11] about. They have to go through a background check
[12] anyhow and they do.

[13] **MS. RAND:** I think you raise a very
[14] important point, that the goals of the National
[15] Rifle Association aren't necessarily consistent
[16] with public safety and they have telegraphed very
[17] clearly in their publications and recent alerts
[18] that they intend to try to water down the NICS
[19] system. They want to reduce the time allowed for
[20] background checks. They want to increase the
[21] number of federally licensed gun dealers.

[22] And this investigation I think proves

Page 70

[1] without question that we need to go in the opposite
[2] direction—to improve the NICS system; we need to
[3] continue to improve it. It's probably never going
[4] to be a perfect system but it can be much better.
[5] And this investigation exposes, I think, one of the
[6] things that needs to be dealt with immediately
[7] because I think it's the ramifications for what
[8] might go on at gun shows with fake IDs that could
[9] be even worse than what we're seeing in gun stores.

[10] **MR. ORZA:** I think you make a number of
[11] excellent points. I think the statistics about
[12] injuries and also the strain on our health care
[13] system is very important. A recent study found
[14] that firearm violence costs us in indirect and
[15] direct costs about \$100 billion a year and
[16] taxpayers pay about 80 percent of that cost.

[17] So hopefully people will think about this
[18] much more in a public health context and maybe
[19] people will respond if they know that they're
[20] paying for this. Beyond the human suffering and
[21] the terrible toll there, it affects every aspect of
[22] our society. People's way of life has changed.

Page 71

[1] We've got all these metal detectors in schools.
[2] Kids worry about being safe in the schools instead
[3] of learning. So the points you raise are very
[4] important.

[5] And we are seeing—fortunately, the health
[6] care community, the American Academy of Pediatrics,
[7] they work very hard on this issue. They ask people
[8] when a child comes in if there is a gun in the
[9] home. We also saw this organization, Doctors
[10] Against Handgun Injury, working on this. Hopefully
[11] that will help us maybe shift the debate a little
[12] bit more and get away from some of the fear that
[13] the gun lobby raises in people's minds, that we
[14] don't have to take away anyone's gun. We can just
[15] take common sense steps and help everyone across
[16] society.

[17] **MRS. McCARTHY:** I thank you.

[18] Thank you, Mr. Chairman.

[19] **MR. WAXMAN:** Ms. Schakowsky?

[20] **MS. SCHAKOWSKY:** The ATF reports that 13
[21] percent of its gun trafficking cases involve false
[22] information. And given the investigation that we

Page 72

[1] heard reported on today, I'm wondering if you think
[2] that this represents the full extent of the problem
[3] and if you think that there might be cases—perhaps
[4] this would have been better directed to the first
[5] panel but let me get your impression about that—if
[6] there could be cases where false IDs are used that
[7] the ATF doesn't even know about. I'm assuming that
[8] they don't know about these cases until they were
[9] reported, the ones we heard today.

[10] **MS. RAND:** I think that those numbers are
[11] probably based on a small sample of ATF's illegal
[12] trafficking cases and I think what we've learned at
[13] the Violence Policy Center is when you see a small
[14] problem, what appears to be a small problem, it's
[15] usually just the tip of the iceberg. And I'd think
[16] that this problem in the context of gun shows or
[17] maybe some less reputable gun dealers—we know that
[18] even licensed gun dealers contribute substantially
[19] to illegal trafficking—I think we're just seeing a
[20] very small part of this problem.

[21] **MR. ORZA:** I think that's right and I
[22] think the GAO suggested when they were here that

Page 73

[1] they agreed that that was probably a small part of
[2] the problem that they had uncovered.

[3] **MRS. McCARTHY:** Let me ask another kind of
[4] question. During the confirmation hearings on John
[5] Ashcroft there were some concerns raised, as an NRA
[6] member, his overseeing the Brady law activities, et
[7] cetera. I'm just wondering if you would recommend
[8] any concrete steps that the administration and the
[9] Ashcroft Justice Department could take to
[10] strengthen Brady that would reassure you that the
[11] administration is certainly not undergoing any
[12] efforts to undermine Brady or what oversight
[13] activities you would recommend to take to protect
[14] Brady from being weakened from within.

[15] **MS. RAND:** Well, I think we would be
[16] encouraged to see a real continued effort on
[17] increasing the number of records available to the
[18] system, speeding the records getting into the
[19] system. We have a lot of areas where just the
[20] records available needs a lot of work and to a
[21] large degree that is the responsibility of the
[22] attorney general to ensure that that work proceeds

[1] and that adequate resources are put into that.
[2] Other things are maintaining, protecting
[3] the audit log. That is the records that are
[4] collected through the NICS, which then are reviewed
[5] by the FBI specifically to find problems like
[6] this—ferret out fraudulent activity, determine
[7] that it's being used properly.

[8] The NRA has the audit log in its sights
[9] and it would like to see it destroyed and I think
[10] one concrete steps the new attorney general could
[11] take is express his commitment to ensuring that
[12] that stays in place and is used the way it needs to
[13] be used to ensure that there's not fraud—

[14] **MS. SCHAKOWSKY:** When you talk about the
[15] audit log are you talking about the retention of
[16] records?

[17] **MS. RAND:** It's related to records
[18] retention. Currently the FBI retains the records
[19] and there's a proposed rule to have it be 90 days
[20] and they use those records to construct an audit
[21] log, which then analysts go through to determine
[22] whether people are fraudulently contacting the

[1] system, to ferret out this kind of activity, using
[2] fake names, to identify a wide variety of problems
[3] in the system. It's absolutely key to the NICS
[4] working effectively and unfortunately, the NRA has
[5] fought to do away with it essentially.

[6] **MS. SCHAKOWSKY:** So let me get this
[7] straight. So the NRA has targeted, if you will,
[8] getting rid of the retention of records, which
[9] would really prohibit us from ferreting out fraud
[10] and abuse?

[11] **MS. RAND:** That's right. They actually
[12] sued former Attorney General Reno to require her to
[13] immediately destroy the records, which would have
[14] made an audit log virtually impossible.

[15] **MS. SCHAKOWSKY:** These are approved sale
[16] records that we have?

[17] **MS. RAND:** Yes. They are records
[18] generated by the NICS system, yes.

[19] **MR. ORZA:** I think the Department of
[20] Justice, the attorney general should work very
[21] carefully with the FBI to make sure it has all the
[22] resources that it needs. This is a pretty

[1] impressive system. It's available 17 hours a day
[2] and the FBI examiners work very hard and they have
[3] helped capture a number of fugitives and felons
[4] when they find a problem.

[5] So it was hard to put this system together
[6] and in the face of a lot of opposition from the gun
[7] lobby so I think that we should have the resources
[8] to make sure that the databases they use are
[9] working well together; it's a complicated process.

[10] So I think there's a lot the attorney
[11] general can do to make sure that we have a really
[12] good functioning NICS system.

[13] **MS. SCHAKOWSKY:** I'm concerned that as we
[14] take your suggestions and work on them to move
[15] forward that we also guard against going backwards
[16] and getting rid of data that's so important to our
[17] law enforcement efforts.

[18] **MS. RAND:** I think that's a real concern.
[19] The NRA has expressed its intent to undermine the
[20] integrity of the NICS in several ways and I think
[21] one thing the new attorney general could do that
[22] would really send a strong message to the NRA is to

[1] declare support for an effective bill to close the
[2] gun show loophole. It's related to the problem
[3] we're discussing here today but that would send an
[4] important substantive and political message to the
[5] NRA that it's more important to keep guns out of
[6] the hands of criminals than to make sure that no
[7] gun owner is ever inconvenienced.

[8] **MS. SCHAKOWSKY:** I'm sure the
[9] congresswoman would welcome his support.

[10] **MRS. McCARTHY:** Actually, we sent a letter
[11] to him yesterday encouraging him with a number of
[12] members, asking him to make sure that the system is
[13] protected and certainly to work on it and to make
[14] sure there are monies in the budget, which I'm
[15] running to in two minutes to defend that, so we
[16] have the monies in the budget to make sure that it
[17] can be improved and certainly encourage him to work
[18] with us on closing the gun show loophole and
[19] working with the president, also.

[20] He did mention during his campaign that he
[21] was willing to work with us on closing the gun show
[22] loophole so I'm hoping to hold him to his word on

[1] that.

[2] **MR. WAXMAN:** Mr. Kucinich?

[3] **MR. KUCINICH:** Thank you very much, Mr.
[4] Chairman.

[5] As a result of the work that you've done
[6] are you aware of any information which is available
[7] regarding people who have purchased firearms
[8] providing false identification and then they've
[9] gone ahead and committed crimes with those firearms
[10] as a result of being able to gain access to them
[11] through lying about their background?

[12] **MR. ORZA:** There was discussed briefly the
[13] situation in Lakewood, Colorado where the 14-year-old was
[14] able to get a firearm. Then there
[15] apparently are 200—I think the GAO may have
[16] mentioned about 200 other cases.

[17] We don't have extensive information about
[18] a lot of those cases. I think we'll want to check
[19] into them and review them because as we look
[20] forward, that may help us figure out how to be
[21] helpful when we reform the NICS system.

[22] **MS. RAND:** Yes, this kind of information

[1] would know this, either the witnesses or members of
[2] Congress; I'm not sure. Is it a separate offense
[3] under the U.S. Code to provide false information to
[4] acquire a firearm?

[5] **MR. ORZA:** If you go and lie on the form
[6] that they were talking about that you fill out, the
[7] 4473, that is a separate offense so you can be
[8] prosecuted for that.

[9] And it's interesting because some members
[10] of Congress have suggested—I think it was
[11] Representative Dingell—that we ought to prosecute
[12] all those people. He estimated there's something
[13] like 170,000 people who had lied on the forms,
[14] estimated, and we support that. We should crack
[15] down on those people.

[16] **MR. KUCINICH:** What's the current penalty
[17] now if somebody lies?

[18] **MR. ORZA:** I forget. I'm not sure if it's
[19] a year, that you can be imprisoned for a year. I'd
[20] have to double-check that.

[21] **MR. KUCINICH:** When people go in and
[22] purchase a firearm—I've never purchased one so I

[1] is very difficult to gather. For instance, we're
[2] still trying to get information regarding the guns
[3] used in the shooting in Santana, California.
[4] Information with respect to tracing and how the
[5] guns were actually acquired and whether fake IDs
[6] were used, that information is often just very
[7] difficult to obtain and that's why it's so
[8] important to have investigations done by people
[9] like the General Accounting Office to identify
[10] these problems because we, as gun control
[11] advocates, don't really have the resources to do
[12] that.

[13] **MR. ORZA:** That would actually be a very
[14] important point. The Department of Justice and the
[15] ATF have done a lot of good work making information
[16] available and if you could urge them to continue
[17] that—we'll see as this new administration begins
[18] its work how much information they share but that
[19] kind of information is very helpful and it gives us
[20] a good picture of how systems are working and how
[21] they're not working.

[22] **MR. KUCINICH:** Maybe anyone on the panel

[1] don't know this—are they warned in some major way
[2] that says look, if you lie on this, you can be
[3] subject to severe penalties?

[4] **MR. ORZA:** Do you have the actual form?

[5] **MS. RAND:** It does require that. I
[6] wouldn't say it's maybe as boldly as we would like
[7] but it does require that the applicants promise
[8] that they're not submitting false information.
[9] It's at the bottom, "I certify."

[10] **MR. ORZA:** It says "criminals punishable
[11] as a felony." It says that "I understand that the
[12] making of a false oral or written statement is a
[13] crime punishable as a felony," so they do mention
[14] that at the bottom of the form.

[15] **MR. KUCINICH:** What I'm getting at, there
[16] is a law that prohibits this; it can be enforced.
[17] If it's not enforced, that's something maybe we
[18] ought to look at.

[19] **MR. ORZA:** I think that's an important
[20] point. If Representative Dingell is right that
[21] there are about 170,000 of these cases it's going
[22] to take a lot of money because let's say you give

Page 82

[1] 100 cases, you'll need 1,700 additional state and
[2] local prosecutors. There was some progress made in
[3] the last Congress in the appropriations to have
[4] some additional federal prosecutors but it's going
[5] to take an awful lot more. If you're really going
[6] to go after 170,000 people, and we think you
[7] should, you've got to devote the resources to help
[8] out law enforcement to do that.

[9] **MS. RAND:** But a problem in that respect
[10] is how do you find these people? In these
[11] instances where they use a fake ID, the dealer
[12] doesn't know that; the person's long gone. There's
[13] no system in place to notify—even if the dealers
[14] knew they were prohibited persons, there's no
[15] system in place to notify law enforcement that an
[16] illegal transaction has occurred. The Clinton
[17] administration proposed such a system but we don't
[18] have that in place. So it's a big hurdle for
[19] prosecutors just to find these people in the first
[20] place.

[21] **MR. KUCINICH:** I understand very clearly
[22] that the essence of this hearing is that people are

Page 83

[1] lying and misrepresenting and apparently they have
[2] the intent to do so. And if they have that intent,
[3] then anyone who has an intent to circumvent a law
[4] will be able to circumvent it. I just think that
[5] it would be interesting to see if there are some
[6] people who are breaking this law who maybe would
[7] think twice if there was some way of making it
[8] mandatory that they're told, "Look, if this
[9] information is false you could go to jail."

[10] **MRS. McCARTHY:** Would the gentleman yield?

[11] **MR. KUCINICH:** Yes.

[12] **MRS. McCARTHY:** I think certainly with the
[13] studies that we've had, the whole idea is
[14] legislation improving the negative and positive
[15] checks because we actually would pick up more
[16] people if we can get legislation through with the
[17] negative and positive checks because then we'd know
[18] somebody's lying. We're certainly going forward
[19] starting right there and I think that's where we're
[20] trying to go here with that.

[21] **MR. ORZA:** Can I make one point about
[22] that, too? Whenever we talk about enforcement it's

Page 84

[1] very important but remember it happens late in the
[2] day. We really want to prevent people from getting
[3] guns in the first place. We can enforce them after
[4] the fact but frequently we've seen a tragedy at
[5] that point.

[6] We think of it in terms of John Hinkley is
[7] in jail, he's serving his time, but Jim Brady will
[8] never walk again. So you have to think about every
[9] step of the process and enforcement is much later.

[10] **MR. KUCINICH:** Thank you.

[11] **MR. WAXMAN:** My only observation on this
[12] issue is if someone's going to deliberately lie and
[13] develop a false ID, they're doing it because they
[14] know that it's so hard for anybody else to know
[15] they've done it. We could hold them responsible
[16] legally; we could even charge them with a felony if
[17] we knew that that's what they were doing, creating
[18] a false ID. But we're talking about people, for
[19] the most part that concerns us, who are felons,
[20] that have committed crimes. They may be purchasing
[21] a gun to commit another crime. And the crime of
[22] false ID is a pretty minor one if it's one that

Page 85

[1] they can get away with so easily.

[2] Under this loophole that we've now found
[3] out about as a result of the GAO report, it's
[4] pretty easy to phoney-up this ID and by-pass the
[5] whole system where we're supposed to find out
[6] whether someone is disqualified from buying a
[7] firearm.

[8] **MR. KUCINICH:** I was wondering, Mr.
[9] Waxman, what if we made the crime for lying about
[10] an ID, since it's so easy to get a gun, according
[11] to this testimony, by submitting false information,
[12] what if you made the penalty so harsh for lying on
[13] that application that it would put the offender in
[14] a position of being punished so severely for lying
[15] that even if they get the gun under false
[16] pretenses, they would find that having lied, they
[17] could be punished just as severely?

[18] **MR. WAXMAN:** I think that's a good idea.
[19] We ought to make it a serious criminal offense if
[20] you have a phoney ID and lie to get a weapon. But
[21] we have to make law enforcement more certain and
[22] that would be more likely if we didn't have this

Page 86

[1] negative check but a positive check. Otherwise
[2] it's just easy to get away with using a false ID
[3] and no one will ever know the difference.
[4] So unless you really think that you're
[5] going to be punished, there's no deterrence for the
[6] threat of punishment that you can easily by-pass,
[7] just as these people are by-passing the whole
[8] system.

[9] Thank you very much, Mr. Kucinich.
[10] Thank you both for your testimony today.

[11] **MS. RAND:** Thank you.

[12] **MR. ORZA:** Thank you very much.

[13] **MR. WAXMAN:** I appreciate everybody who's
[14] participated in today's hearing. This is an issue
[15] that I think we need to work on. We have a false
[16] sense of security if we think the Brady bill under
[17] all circumstances is keeping criminals from getting
[18] guns because, as we've seen from the report today,
[19] for those who are intent on getting a gun who are
[20] not able under the law to purchase it, they can
[21] easily by-pass the whole system.

[22] That concludes our special briefing and we

Page 87

[1] stand adjourned.

[2] [Whereupon, at 11:06 a.m., the special
[3] briefing was concluded.]