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Thomas H. Muscio

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GUN REGISTRATION: WILL IT HELP?

“[I]t took only one madman to bend the curve of history with a single cheap Italian carbine. And there wasn't a law in the land that could have stopped him from obtaining the gun.”¹

Many people contend that gun registration will aid in preventing the numerous crimes that take place in the United States today.² If the gun used to kill President John F. Kennedy had been registered, would the result have been any different? The result probably would have been the same. Consequently, the thesis of this comment is that registration of firearms is not the answer to crime and violence in our country. What is needed is a system which will keep guns out of the hands of people such as Lee Harvey Oswald.

This comment will analyze the constitutionality, purpose, and propriety of gun registration so that the reader might better understand the problems involved in gun control legislation. The author will then present a proposal which may help prevent tragedies such as the senseless killing of a national leader.

Some authorities suggest that various federal and state firearm registration proposals may partially solve the nation's crime problem.³ Gun enthusiasts disagree.⁴ There is presently no federal law

¹ C. BAKAL, *THE RIGHT TO BEAR ARMS* 1 (1966).

² A. KRUG, *FIREARMS REGISTRATION COSTS VS. BENEFITS* 1 (1970). Gun control advocates cite seven benefits of gun registration.

1. It would enable law enforcement agencies to solve crimes by determining the ownership of firearms through a tracing of firearm serial numbers.
2. It would enable police to arrest persons carrying unregistered weapons.
3. It would make it more difficult for undesirables to obtain weapons.
4. It would reduce the number of firearms owned by individuals and this would result in fewer crimes being committed.
5. It would help prevent suicide.
6. It would help prevent firearm accidents.
7. It would substantially increase the rate of return of stolen firearms to the rightful owners.

See R. CLARK, *CRIME IN AMERICA* 101 (1970).

³ A. KRUG, *FIREARMS REGISTRATION COSTS VS. BENEFITS* 1 (1970).

⁴ *Id.* Those opposed to firearms registration maintain that these benefits do not in fact accrue from a firearms registration program. They say that:

1. Criminals do not register their firearms.
2. Many firearms used by criminals are stolen and tracing them by serial number would only lead to an innocent person, perhaps causing that person to be falsely accused.
3. If a criminal were to be apprehended while committing a crime, possession of an unregistered firearm would only constitute a minor, additional charge, which could be placed against him. Where there is no evidence of a crime being committed, police do not have authority to search persons or homes for unregistered firearms without a search warrant.
4. Virtually all of the states already have laws which either require a permit for the carrying of concealable firearms or prohibit it altogether.

that requires an individual to register his rifles, shotguns, or handguns. However, certain types of weapons listed in the Gun Control Act of 1968 are regulated by the federal government.⁵ Although a California gun owner is not required to register his rifles, shotguns, or handguns, he must possess a license to carry a concealed weapon.⁶ In 1968 a bill was introduced in the California legislature which called for the statewide registration of all rifles,

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5. The presence or absence of registration is not a determining factor in either suicides or accidents.
 6. It should be up to the individual to keep a record of the serial numbers of his own firearms in case of theft. There is no need for the government to assume this function for the firearms owner.
 7. The high costs of instituting and maintaining a firearms registration program would not be justified in terms of the extremely limited benefits which it could be expected to provide.
 8. Registration would be used as a subterfuge to eventually deny firearms ownership to legitimate citizens.

⁵ Gun Control Act of 1968, Pub. L. No. 90-681 (Oct. 22, 1968). This law is administered by the Alcohol, Tobacco and Firearms Division, Internal Revenue Service, United States Treasury Department. These are the major provisions of the law:

1. Prohibits, with certain exceptions, the transportation, shipment or receipt of firearms or ammunition in interstate or foreign commerce by other than federal firearms licensees (over-the-counter sale of ammunition to non-residents excepted).
2. Requires the licensing of manufacturers and importers of, and dealers in, firearms and ammunition.
3. Requires the licensing of collectors who acquire or dispose of firearms or ammunition as curios or relics in interstate or foreign commerce.
4. Requires a permit from the Alcohol, Tobacco and Firearms Tax Division for the importation of firearms or ammunition (importation of military surplus firearms prohibited).
5. Prohibits over-the-counter sales of rifles or shotguns, or rifle or shotgun ammunition, to persons under 18, and handguns, or handgun ammunition, to persons under 21.
6. Permits sale of rifles and shotguns to residents of a contiguous state that authorizes such sales under a sworn statement procedure.
7. Permits sale, under a sworn statement, of rifles or shotguns to non-residents who are engaged in hunting or competition and whose firearms have been lost or stolen or have become inoperative.
8. Prohibits non-licensees from selling, trading, giving, transporting or delivering firearms to non-resident non-licensees.
9. Permits the lending or renting of firearms to non-residents for temporary use for lawful sporting purposes.
10. Prohibits shipment, transportation or receipt of firearms in interstate or foreign commerce by fugitives from justice, unlawful users of narcotics or drugs, adjudicated or committed mental defectives, persons under indictment or convicted of a crime punishable by imprisonment for more than one year.
11. Prohibits sale or delivery of firearms or ammunition by licensees in violation of state or local law.
12. Requires that all firearms imported or manufactured on or after December 16, 1968, have serial numbers.
13. Prohibits the shipment, transportation or receipt of stolen firearms or ammunition, or firearms from which the serial number has been removed, obliterated or altered.

⁶ CAL. PEN. CODE § 12050 (West 1970).

shotguns, and handguns.⁷ This bill was defeated. Nevertheless, it is a good example of legislation that gun control advocates would like to see enacted either on a state or national basis. It required the owner of a firearm to have the firearm registered and pay a registration fee. The owner was required to be licensed and was obligated to notify the California Department of Justice upon any transfer of possession. Existing legislation,⁸ which prohibits felons, drug addicts, mental incompetents,⁹ and minors from possessing concealable weapons, was expanded to prohibit such persons from owning *any* type of firearm.¹⁰

Any legislation of this type is likely to be subject to constitutional objections which are usually raised as a defense to state prosecutions involving the alleged illegal possession of a firearm. The essence of such a constitutional objection is that the second amendment confers a right on the individual to "keep and bear arms" which overrides the power of the state to regulate firearms.¹¹

THE SECOND AMENDMENT

Supreme Court Holdings

The application of the second amendment of the United States Constitution has been at issue in only four Supreme Court decisions.¹² In *United States v. Cruikshank*,¹³ the defendants were found to have deprived two citizens of their "right to bear arms." In *Presser v. Illinois*,¹⁴ the defendant claimed he was being deprived of

⁷ A.B. 2096, Cal. Leg., (1968).

⁸ CAL. PEN. CODE § 12021 (West 1970). "Any person who is not a citizen of the United States and any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or who is addicted to the use of any narcotic drug, who owns or has in his possession or under his custody or control any pistol, revolver, or other firearm capable of being concealed upon the person is guilty of a public offense, and shall be punishable by imprisonment in the state prison not exceeding 15 years, or in a county jail not exceeding one year or by a fine not exceeding five hundred dollars (\$500), or both."

⁹ CAL. WELF. & INST'NS CODE § 8100 (West 1971): "No person who is a mental patient in any hospital or institution or on leave of absence from any hospital or institution shall own or have in his possession or under his custody or control any firearms whatsoever."

¹⁰ See note 7 *supra*. This proposed bill prohibited the people in this category from possessing rifles and shotguns. This is an extension of Section 12021 which prohibits possession of only concealable weapons.

¹¹ U.S. CONST. amend. II. "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

¹² *United States v. Miller*, 307 U.S. 174 (1939); *Miller v. Texas*, 153 U.S. 535 (1894); *Presser v. Illinois*, 116 U.S. 252 (1886); *United States v. Cruikshank*, 92 U.S. 542 (1876).

¹³ 92 U.S. 542 (1876).

¹⁴ 116 U.S. 252 (1886).

his "right to bear arms" when he was charged with unlawfully marching in the city of Chicago with an unauthorized body of armed men. In *Miller v. Texas*,¹⁵ the defendant claimed his "right to bear arms" was infringed by a state law prohibiting the carrying of a pistol on a public street.

In each decision the Court set forth two basic rules of law: The second amendment does not confer on an individual the "right to bear arms;" and the amendment operates only as a restriction on Congress so that Congress will not prevent the states from forming and maintaining their own militia or National Guard.

In *United States v. Miller*,¹⁶ where the defendant was convicted of possessing a sawed off shotgun, the Court declared: "In the absence of any evidence tending to show that possession or use of a . . . [sawed-off shotgun] . . . has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the second amendment guarantees the right to keep and bear such an instrument."¹⁷

United States v. Miller was criticized by the Court of Appeals for the First Circuit in *Cases v. United States*,¹⁸ where the defendant was convicted for illegally transporting and receiving firearms. The court explained that even though a state militia could conceivably use a certain firearm in warfare, such a firearm can be regulated if possessed by an individual since it is only the *state's* interest that is constitutionally protected.

It is clear from these cases that the individual citizen lacks standing to use the second amendment as a shield against a state firearms prosecution since the second amendment applies only to congressional legislation which purports to regulate the militia of the states. Since there is no individual right to bear arms, and since the second amendment merely prohibits the federal government from enacting restrictive legislation dealing with a state's formation and maintenance of a National Guard, the second amendment does not prohibit Congress from passing any federal gun control legislation.¹⁹ Thus, it seems that a federal law requiring registration of all firearms would be constitutionally permissible.²⁰ The remaining question is to what degree a state may regulate the ownership of firearms.

¹⁵ 153 U.S. 535 (1894).

¹⁶ 307 U.S. 174 (1939).

¹⁷ *Id.* at 178.

¹⁸ 131 F.2d 916 (1st Cir. 1942).

¹⁹ See note 5 *supra*.

²⁰ Killian, *Federal Registration of Firearms and Licensing of Firearms Owners*, The Library of Congress Legislative Reference Service (1968). "Because the registration of all firearms is necessary to best effectuate the interstate commerce regulation

CALIFORNIA LAW

California law regarding the possessing of arms is explicitly stated in two cases.²¹ In *People v. Camperlingo*,²² the defendant, a convicted felon, was charged with possession of a pistol. He claimed he had a right to possess the pistol under the second amendment. The court said that the "right to bear arms" may be regulated or even entirely eliminated by the state through its police power.

In *Ex parte Ramirez*,²³ the defendant, an alien, was convicted of possessing an automatic handgun. The defendant challenged the state's right to regulate possession of firearms. The court said that the regulation of firearms falls under the police power of the state which is defined as "the power inherent in a government to enact laws within constitutional limits to protect the order, safety, health, morals, and general welfare of society."²⁴

A reading of *Ramirez* with *Camperlingo* indicates that California can constitutionally require that all guns in the state be registered. Authority to pass such a law emanates from the police power of the state²⁵ which has been defined by the Supreme Court of the United States as the power "to preserve, protect, or promote the general health and welfare."²⁶ California, in exercising the police power, has three statutes that call for or relate to the registration of guns. The Penal Code regulates the sale of firearms by dealers,²⁷ and by mail order houses,²⁸ as well as forbidding the obliteration of weapon identification marks.²⁹

The power of the state of California in the field of firearms control became strikingly apparent when the California legislature enacted Senate Bill No. 4 in 1969 which is now Section 9619 of the

of firearms and because the presence of so many firearms in private hands has such a potential and an actual effect on commerce, a federal registration system could be grounded on the Commerce Clause." *Id.* at 18.

²¹ *Ex parte Ramirez*, 193 Cal. 633, 226 P. 914 (1924); *People v. Camperlingo*, 69 Cal. App. 466, 231 P. 601 (1924).

²² 69 Cal. App. 466, 231 P. 601 (1924).

²³ 193 Cal. 633, 226 P. 914 (1924).

²⁴ *Id.* at 649, 226 P. at 921.

²⁵ Under the police power, any state can constitutionally require that all guns be registered.

²⁶ *Miller v. Wilson*, 236 U.S. 373, 379 (1915). This definition appeared in a case where the defendant was charged with employing a woman over the maximum hours allowed by statute. The defendant unsuccessfully urged that the statute was repugnant to the Fourteenth Amendment as an arbitrary invasion of liberty and as unreasonably discriminatory. The Court characterized the statute as one intended as a police regulation, to preserve, protect, or promote the general health and welfare.

²⁷ CAL. PEN. CODE §§ 12073-78, 12350-51 (West 1970).

²⁸ *Id.* § 12079.

²⁹ *Id.* §§ 12090-94.

Government Code.³⁰ Many gun enthusiasts regard this statute as the most advanced piece of state legislation in existence. The statute reads as follows:

It is the intention of the legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, and such provisions shall be exclusive of all local regulation, relating to registration or licensing of commercially manufactured firearms, by any political subdivision as defined in Section 1721 of the Labor Code.³¹

Section 9619 preempts for the state government the entire field of firearms regulation, registration and licensing. This law effectively nullified gun registration laws in Beverly Hills and San Francisco,³² and prevented passage of other local anti-gun ordinances. Gun enthusiasts have recommended this law as a model for other states.³³

THE PRACTICALITY OF GUN REGISTRATION

The foregoing analysis has served to make explicitly clear the fact that both federal and state governments have the authority to require that all guns be registered, but the question still remains as to the worthiness of such legislation. Basically, there are three arguments against gun control. The first is that gun registration will not achieve its purpose of decreasing crime. Secondly, there is a fear of what gun registration could lead to in the future. Finally, there is the argument that the cost of gun registration would be exorbitant and that the expenditures would be more effectively spent in other areas. In examining the validity of these arguments, one should keep in mind that firearm registration is designed to prevent or decrease the number of crimes involving guns by keeping guns out of the hands of felons, drug addicts, mental incompetents and minors.

Will Gun Registration Work?

There are many conditions which affect the frequency and form of crime, and there is some evidence that gun registration is not one

³⁰ CAL. GOV'T CODE § 9619 (West Supp. 1971).

³¹ *Id.* A political subdivision is stated to include: "any county, city, district, township, public housing authority, or public agency of the State, and assessment or improvement districts." CAL. LAB. CODE § 1721 (West 1955).

³² SAN FRANCISCO, CAL., MUN. CODE § 610 (1968). "It shall be unlawful for any person within San Francisco to own, possess or control an unregistered firearm."

In 1969, a conviction under this ordinance was upheld in *Galvan v. Superior Court*, 76 Cal. Rptr. 642, 452 P.2d 930 (1969). It should be noted, however, that Senate Bill No. 4 became effective five months after the decision in *Galvan*.

³³ AM. RIFLEMAN, Dec. 1970, at 23.

of these conditions.³⁴ Relevant statistics show that gun registration does not have an appreciable effect on crime. Author Alan Krug studied data from law enforcement agencies across the country to find out whether registration had been a useful tool in the solution of crimes or the apprehension of criminals. He sent a questionnaire with an explanation of the survey to all fifty states requesting each agency to report on any cases of criminal homicide, aggravated assault or robbery which it knew to have been solved through the tracing of a firearm by serial number during the ten-year period 1959-1968. The 44 states completing the questionnaire reported that only six homicides and six robberies were solved³⁵ through the use of gun registration.³⁶ This seems to indicate that gun registration does not aid in

³⁴ UNIFORM CRIME REPORTS, CRIME FACTORS vi (1969).

Since the factors which cause crime are many and vary from place to place, readers are cautioned against drawing conclusions from direct comparisons of crime figures between individual communities without first considering the factors involved.

Crime is a social problem and the concern of the entire community. The law enforcement effort is limited to factors within its control. Some of the conditions which will affect the amount and type of crime that occurs from place to place are briefly outlined below:

1. Density and size of the community population and the metropolitan area of which it is a part.
2. Composition of the population with reference particularly to age, sex, and race.
3. Economic status and mores of the population.
4. Relative stability of population, including commuters, seasonal and other transient types.
5. Climate, including seasonal and religious characteristics.
6. Effective strength of the police force.
7. Standards governing appointments to the police force.
8. Policies of the prosecuting officials and the courts.
9. Attitude of the public toward law enforcement problems.
10. The administrative and investigative efficiency of the local law enforcement agency, including the degree of adherence to crime reporting standards. Interestingly, there is no mention in the FBI list of the impact of firearm control on crime.

³⁵ A. KRUG, FIREARM REGISTRATION COSTS VS. BENEFITS 7 (1970).

³⁶ *Id.* at 6. Gun registration information was available to these agencies from a number of sources.

1. Since 1938, all firearm dealers, regardless of their state of residence, have been required to keep complete records of all firearm transactions as required by the Secretary of the Treasury under the provisions of the Federal Firearms Act of 1938, 52 Stat. 1250, and the Gun Control Act of 1968, Pub. L. No. 90-618, which superseded the Federal Firearms Act as of December 16, 1968. These records include the make, model, type, caliber or gauge and serial number of each and every firearm (rifle, shotgun or pistol) new or used, received or sold, the date such firearm was received or sold, the name and address of the person or business from whom the firearm was received, or to whom the firearm was sold, as the case may be. These records must be maintained by the dealer permanently and made available to law enforcement officers upon request.
2. All firearms held within the state by the military are registered.
3. All handguns are registered in Hawaii, Michigan, Mississippi and New York.
4. All handguns are registered for which permits are issued in Alabama, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa,

apprehending the criminal in the majority of crimes involving firearms. People who argue that it does, assume that the criminal will drop the gun at the scene of the crime or will discard it where it will eventually be found. If the gun is not found, it is impossible to trace the criminal through the use of registration information. It should be noted that the information from the Krug survey relates only to the solution of crimes after the fact, and the registration facilities then in existence were not nearly as extensive as a national registration system would be. This survey, however, does indicate that gun registration would aid in the solution of relatively few crimes involving firearms.

Who Registers Guns?

Millions of Americans are hunters, target shooters, and collectors who use guns safely and deplore the criminal use of firearms.³⁷ However, they believe that gun registration will inconvenience the law-abiding citizen and have no appreciable affect on the problems of crime and domestic violence.³⁸ It does not seem likely that any person planning a crime involving a firearm would register his gun first. Furthermore, a convicted felon who possesses a gun at the time a registration law is passed, will not register that gun because he is already in violation of the law by simply possessing it.³⁹ It is doubtful that a penalty for possessing an unregistered firearm will deter the person who plans to use the firearm for criminal purposes. If the penalty for the commission of the crime⁴⁰ and the penalty for perpetrating the crime with a firearm⁴¹ do not deter him, then the added penalty for possessing the unregistered firearm certainly will not. Thus, if a gun registration law were passed, one could not expect

Maine, Maryland, Massachusetts, New Hampshire, New Jersey, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Virginia, Washington, West Virginia, and Wyoming.

5. There is registration of high powered rifles in Mississippi and West Virginia.

6. A number of states have voluntary registration.

³⁷ See generally, *Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 91st Cong., 1st Sess., at 112 (1969) [hereinafter cited as 1969 *Senate Hearings*].

³⁸ *Id.* at 79. Two Texas police officer organizations have gone on record against legislation that would require the registration of handguns. Minnesota lawmen have called for the resumption of mail order sales, the repeal of mandatory penalties for those committing crime with firearms, and repeal of the ammunition registration.

Various law enforcement groups in California were opposed to gun registration. See 7 AM. CRIM. L. Q., *California Peace Officers and D.A.s Adopt Gun Control Legislative Policy* 253 (1968-69).

³⁹ See CAL. PEN. CODE § 12021 (West 1970).

⁴⁰ Penalties for California crimes typically involving firearms are: five years for burglary (*Id.* § 461); and five years for robbery (*Id.* § 213).

⁴¹ *Id.* § 3024. The additional penalty for committing a crime with a firearm is two years unless one has already been convicted of a felony, in which case the punishment is four years.

the penalty for possessing an unregistered gun to operate as a meaningful deterrent to those who are inclined to act unlawfully or those who are already acting illegally by possessing a firearm.

Firearm crimes would still occur even if all guns were registered. Criminals would still obtain guns without complying with registration laws by making the guns, buying them from unscrupulous individuals or stealing them. In the case of a registered gun, stolen from the owner and used by the thief in a crime, there is the added difficulty that the innocent owner might be accused. Furthermore, a person who wanted to perpetrate a crime with a gun already registered could file off the serial number, leaving little chance of tracing the gun. Tampering with a serial number is a crime,⁴² but why should this deter such a person when there is a more severe penalty for the crime he is about to commit?⁴³

General Fears of Gun Enthusiasts

Gun owners are not totally opposed to suggestions from registration advocates,⁴⁴ but they are generally opposed to gun registration for fear of what it might lead to.⁴⁵ If future legislation would call for the registration of a certain type of firearm, what would stop legislators from later requiring that all firearms must be registered?

During World War II, the national gun registration records in Poland, France, and Denmark⁴⁶ facilitated the Nazi discovery of which citizens had firearms, and made the confiscation of guns a simple task of checking the lists and seizing the weapons. Nazi-like oppression is not likely in the United States, but some people feel

⁴² *Id.* §§ 12090-94.

⁴³ See text accompanying notes 40 and 41 *supra*.

⁴⁴ 1969 *Senate Hearings*, *supra* note 37, at 231 and 235. Statements from The Firearms Lobby of America and of Franklin L. Orth, Executive Vice President, N.R.A.

⁴⁵ See generally, *Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 90th Cong., 2d Sess., at 94 (1968) [hereinafter cited as 1968 *Senate Hearings*]. Mayor John Lindsay of New York City has urged Congress to pass stricter gun laws similar to the New York Sullivan Law, N.Y. PEN. LAW § 1903 (McKinney 1967). While New York has had some success with its strict gun laws (mostly because the law has limited handguns to only .2% of the population unconnected with law enforcement) figures still show that criminals can get guns, especially handguns. It is significant that of all the methods of inflicting death (guns, knives, bombings, beatings, etc.) it is the use of pistols and revolvers, the purchase and possession of which are strictly controlled, that has shown the most notable increase. People can obtain guns despite the strict New York laws by traveling to an adjoining or nearby state where the gun laws are more lenient. There they can buy guns without being hindered by the strict New York law. This is why Mayor Lindsay wants national gun laws like New York's; and this confirms the fears of gun enthusiasts who feel that if legislators pass some gun control laws, they may want even stricter and broader gun control laws in the future.

⁴⁶ Brown, *Firearm Legislation*, 18 VAND. L. REV. 1376 n.85 (1964-65).

that registration of guns could be only a step away from confiscation.⁴⁷

Cost of Gun Registration

Gun registration would be expensive. In 1968, New York City authorities found that the cost of processing an average application for a pistol permit was \$72.87.⁴⁸ If this application cost figure is projected on a nationwide basis for the approximate forty million firearms owners who own nearly ninety million firearms,⁴⁹ the total cost nationally would be almost three billion dollars.

In 1967, New York City enacted a law providing for the licensing of rifle and shotgun owners and the registration of their firearms. The city administration reported that the ultimate cost of this program could be as high as \$25.00 per gun.⁵⁰ Using this figure to project the cost of registering the ninety million firearms in this country, the total would be just over three billion dollars,⁵¹ which is approximately the same as the total cost figured on a cost per person basis.

The United States spends five billion dollars a year on law enforcement.⁵² If Congress were to appropriate additional funds, these could be spent to increase police salaries, bolster law enforcement agencies, upgrade enforcement facilities and equipment, increase the efficiency of the courts, *or* for the establishment of firearm registration programs. Obviously, it is unreasonable to spend three billion dollars on gun registration when it is not likely that crime will be significantly decreased.⁵³ This is especially true when other more effective alternatives are available on a smaller scale and at a lower cost.⁵⁴

⁴⁷ 1968 *Senate Hearings*, *supra* note 45, at 413. "Be it Enacted" *May Mean Good-bye to Guns!* Harold W. Glassen, President, N.R.A.

⁴⁸ Staples and Clayton, *A Preliminary Cost Analysis of Firearms Control Programs* 63 (1968). This is the cost per owner.

⁴⁹ 1969 *Senate Hearings*, *supra* note 37, at 92.

⁵⁰ N.Y. Daily News, Nov. 15, 1967, at 8.

⁵¹ This three billion dollar cost figure is inflated to some extent. First, the total costs include licensing provisions which do not have to be included in a registration program. Second, nationwide cost per gun figures should be lower than costs figured on a relatively smaller scale of just one city.

There were some costs which were not included in the three billion dollar figure such as costs for collection of registration data and for prosecution of violators. Indirect costs to gun owners were also excluded. Examples of indirect cost to gun owners are notary fees, cost of photographs, fingerprinting, required safety tests or training courses, transportation expenses, lost time from work, and court costs resulting from gun owners' appeals of decisions made by government officials administering the program. Thus, the total cost figure is deflated to some degree also.

⁵² A. KRUG, FIREARM REGISTRATION COSTS VS. BENEFITS 3 (1970).

⁵³ See text accompanying note 35 *supra*.

⁵⁴ See text accompanying notes 55-70 *infra*.

SUMMARY AND PROPOSAL

A nationwide or statewide gun registration law is constitutionally permissible.⁵⁵ The question is whether or not such a law would be an efficient method of decreasing firearm crimes. There is evidence that gun registration will not appreciably affect crime⁵⁶ because criminals or persons planning to commit crimes by the use of firearms will not register their guns or will otherwise avoid registration requirements.⁵⁷ Costs would be almost prohibitive.⁵⁸ A combination of these factors and its repugnance to a democratic society⁵⁹ make it clear that gun registration is not even a partial solution to the problem of crime and violence in the United States.

Nevertheless, a method is needed that will prevent persons likely to commit firearm crimes from obtaining guns, so as to decrease the incidence of firearm violence. At the present time, California statutes list the categories of the persons which the legislature deems likely to commit firearm crimes. Such persons are denied the right to possess a pistol, revolver or other concealable weapon,⁶⁰ but the law does not prohibit them from possessing a rifle or shotgun. Two questions immediately arise. First, how are retailers, wholesalers, or private sellers of guns to determine if a buyer is in a prohibited category? Second, since rifles and shotguns are as deadly as handguns, why allow potentially dangerous people access to them?

Present California Law

When anyone intends to purchase a *concealable* weapon from a retailer or wholesaler, that purchaser must fill out a record of sale which is furnished by the dealer.⁶¹ The buyer must then wait five days before he can receive the handgun. During this period the dealer sends the record of sale which includes the legal name, residence and birth date of the buyer to the Bureau of Criminal Identification and Investigation.⁶² If the Bureau determines that the purchaser is prohibited by the Penal Code⁶³ or the Welfare and

⁵⁵ See text accompanying notes 11-26 *supra*.

⁵⁶ See text accompanying notes 34-36 *supra*.

⁵⁷ See text accompanying notes 39-43 *supra*.

⁵⁸ See text accompanying notes 48-52 *supra*.

⁵⁹ See text accompanying notes 46 and 47 *supra*.

⁶⁰ CAL. PEN. CODE § 12021 (West 1970). CAL. WELF. & INST'NS CODE § 8100 (West 1971).

⁶¹ CAL. PEN. CODE §§ 12076-77 (West 1970).

⁶² *Id.* § 13010. This section lists the record keeping duties of the Bureau of Criminal Statistics. *Id.* § 13020. This section lists the public agencies that must supply statistical data to the Bureau of Criminal Statistics.

⁶³ *Id.* § 12021.

Institutions Code⁶⁴ from owning a firearm, the seller is given notice of this fact and forbidden to complete the sale.

The present status of the law is that anyone, including persons in the prohibited categories, may purchase a rifle or shotgun, and no check is made regarding the buyer's status. People in restricted categories should be prohibited from possessing any type of firearm, and a new method is needed to put the seller on notice of the buyer's qualifications. The following is a practical recommendation that gives adequate notice to a seller of firearms as to the buyer's status and goes further by extending existing limitations to include rifles and shotguns.

*Proposed Statute*⁶⁵

Section 1: Any person who is presently prohibited from owning a concealable weapon⁶⁶ is hereby further restricted from owning, possessing or having under his control any firearm or ammunition for a firearm.

Section 2: (A) In any case where a person may not lawfully possess a firearm, the fact of such person's disability with respect to the possession of firearms shall be indicated on the person's driver's license or identification card provided for in the Vehicle Code.⁶⁷ (B) A seller or transferor of any firearm cannot make a sale or transfer to a person whose driver's license indicates such person to be listed under section one. (C) The Bureau of Criminal Identification and Investigation will make conviction records and other applicable information⁶⁸ available to the Department of Motor Vehicles. The Department of Motor Vehicles will use this information in coding the driver's license or identification card of any person in a prohibited category. No immediate transfer of a firearm may be concluded without the buyer or transferee exhibiting a valid driver's license or identification card which is issued after the effective date of this legislation. A person who has a valid driver's license issued before the date of legislation may still purchase a firearm provided such a person waits five days while his status is cleared by the Department of Motor Vehicles.

Section 3: When a person is no longer in a category prohibiting his possession of firearms, he may apply to the superior court in the county of his residence for the purpose of requesting the court to indicate this fact on his driver's license or identification card. Such court shall comply with such application upon

⁶⁴ CAL. WELF. & INST'NS CODE § 8100 (West 1971). *Id.* § 8103. This section restricts persons from possessing a gun who have been adjudicated by a court to be a danger to others as a result of a mental disorder.

⁶⁵ This proposed law is quite similar to A.B. 609, Cal. Leg., (1970), which the California legislature defeated.

⁶⁶ See notes 63 and 64 *supra*.

⁶⁷ The code on the back of the driver's license will read: "P.C. 12021 applies." Although the seller will not know why the buyer is in a prohibited category, he will know that he may not sell a firearm to any such person.

⁶⁸ See note 62 and accompanying text *supra*.

proof that the applicant is no longer prohibited from possessing firearms, and shall inform the Department of Motor Vehicles of its action.

Section 4: (A) Any person listed in section one who owns or has in his possession any firearm or ammunition for a firearm is guilty of a public offense and shall be punishable by imprisonment in the state prison not exceeding 15 years, or in a county jail not exceeding one year or by a fine not exceeding five hundred dollars (\$500), or by both.

(B) A person who transfers a firearm to any person mentioned in section one is guilty of a misdemeanor unless he has shown and reasonably relied upon a driver's license or identification card indicating that such purchaser was not in a prohibited category.

(C) Any person listed in section one who possesses or displays an altered, forged or false driver's license or identification card for the purpose of obtaining a firearm is guilty of a felony.

Application and Cost of Proposal

It should be noted that this proposal will have fewer problems in application than any registration program and it is not repugnant to those law abiding citizens who own firearms. The proposed law will deny any person in a prohibited category from buying a gun, while gun registration depends upon the individual's voluntary action of compliance with the registration law.

The five day waiting period and restriction on an immediate transfer of a firearm in section two (C) makes it impossible for a felon who is on parole or who is getting out of prison to purchase a firearm even though he has a valid driver's license issued before the effective date of legislation. If he tries to purchase a firearm, he must wait five days during which his status will be checked. The check will reveal his prohibited status which will bar his purchase of the firearm.

If a person who is not in a prohibited category wants to purchase a firearm after passage of this legislation without renewing his driver's license, he may do so. However, he must wait five days while the appropriate procedure is followed to clear his status. Consequently, he can still obtain a firearm even if he does not desire to renew his driver's license.

The cost of this proposal would be approximately three million dollars.⁶⁹ A statewide gun registration program would cost an

⁶⁹ Telephone interview with Keith Gaffaney, professional lobbyist for the California Rifle and Pistol Association, in Anaheim, Calif., Nov. 25, 1970. Mr. Gaffaney lobbied for A.B. 639 Cal. Leg., 1970, which was a similar driver's license proposal for firearm sales explained in the text. See text accompanying notes 65-68 *supra*. Although the bill was defeated, he had done research on the proposal and found the cost would be approximately three million dollars.

estimated three hundred million dollars.⁷⁰ Thus, the cost of gun registration would be one hundred times the cost of this proposal. The one hundred to one cost ratio is understandable when one realizes that the proposed law provides that only records of people in prohibited categories must be maintained. This would be a minute number compared to the number of people who would have to be accounted for in a statewide gun registration program which would entail the gathering of records of all gun owners in California.

CONCLUSION

This proposal is not intended to solve the national crime problem or California's crime problem. It is a partial solution that both gun control advocates and gun enthusiasts will welcome. Unquestionably, it is a step in the right direction in that it meets the problem at its point of inception and would substantially stop the flow of firearms to felons, drug addicts, and mental incompetents. The proposal would aid in keeping guns out of the hands of people who would foreseeably use them for violent purposes, and, at the same time, it would not inconvenience the law-abiding citizen.

Thomas H. Muscio

⁷⁰ Telephone interview with Al Coffey, Bureau of Criminal Identification and Investigation, in Sacramento, Calif., Nov. 30, 1970. Mr. Coffey's office has records of three million handguns which is approximately one-eighth of the total number of handguns in the United States. If California likewise has one-eighth of the ninety million guns (rifles, shotguns and handguns), the state would possess a total of twelve million weapons. Using twelve million as the total number of guns in the state and a cost of \$25.00 per gun, *see* note 50 *supra*, one finds that the total cost of a statewide gun registration law would be three hundred million dollars.