

S. HRG. 106-1021

**IMPROVING THE NATIONAL INSTANT CRIMINAL  
BACKGROUND CHECK SYSTEM**

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**HEARING**

BEFORE THE

**COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

—————  
JUNE 21, 2000  
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## **IMPROVING THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM**

**WEDNESDAY, JUNE 21, 2000**

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:12 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators Leahy and Schumer.

### **OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH**

The CHAIRMAN. Today, the Judiciary Committee will examine the operation of the National Instant Criminal Background Check System, known as NICS, which has been in use for approximately 1½ years.

The question over how best to prevent criminals from purchasing firearms has stirred a great deal of debate during the past 15 years. The consensus seems to have developed in support of a fully operational NICS system, which I and other Republicans crafted, especially Senator Dole here, and fought hard to enact. The first Senate vote on the NICS proposal was an amendment Senator Stevens and I wrote. Ironically, it was opposed by gun control advocates.

Senator Dole, one of our witnesses today, eventually took the NICS concept that we had developed and integrated it with the Brady waiting period. The Brady waiting period, which I opposed, was enacted in 1993 and subsequently was sunsetted. Proposals to reinstate the waiting period have not been actively advanced by gun control advocates up until now.

Our focus today is the implementation of NICS, a system based on an idea that the overwhelming majority of law-abiding Americans believe in, an instant point-of-sale background check that prevents criminals and other prohibited persons from obtaining firearms. The NICS system has not yet lived up to its promise. Instead of an instant check, we have a system that too often causes needless delay to law-abiding citizens who are simply exercising their constitutional rights.

System outages are a major culprit. Numerous outages, such as the 4-day outage that coincided with the Million Mom March for gun control, have shut down the NICS for hours or even days at a time. When the system is down, neither Federal nor State background checks can proceed and gun sales cannot occur. According

to FBI data, system outages amounted to over 215.5 hours of down time last year alone.

In light of today's computer technology, law-abiding citizens should not and do not accept such outages as unavoidable. We all know that the computer systems that handle credit card approvals, essentially instant credit checks, process millions of transactions each day and rarely, if ever, suffer significant outages. Clearly, computer hardware and software exists that could enable reliable and consistent processing of NICS background checks.

For this reason, many law-abiding gun owners and dealers see NICS computer troubles as evidence that the Clinton administration is simply not committed to making NICS work. The White House has spent a great deal of time advocating for more gun control laws, but little attention has been paid to improving the computer system that could do much more to keep guns out of the wrong hands. One goal of this hearing is to learn why the NICS computers have such an abnormally high incidence of outages and what the administration should be doing to run them better.

Even when the NICS computer system is running, moreover, NICS is still not an instant check for many people. According to FBI data, the system provides an answer within 30 seconds only 72 percent of the time. Factoring in a denial rate of 2 percent, this means that over 26 percent of transactions are delayed not due to problems in the purchaser's background, but rather because the process is not efficient. In short, the NICS checks as currently administered are needlessly delaying one-quarter of the firearms purchases in America. This is not acceptable. Perhaps the outages and delays would be less troublesome to the public if the administration's commitment to the system were stronger.

According to the FBI, the main reason why background checks are delayed is that the NICS databases contain incomplete State criminal records. For example, the databases might indicate an arrest but not reveal whether that arrest resulted in a conviction. Since a felony conviction but not an arrest is a bar to gun ownership, it is critical to find the ultimate disposition of each arrest. An attempted firearm purchase in such a case is delayed while the FBI researches the outcome of the arrest.

I would like to find a way to encourage the States to provide the best records possible to the criminal databases, but I would also like to do this on a cost-effective basis. Congress has provided approximately \$292.5 million in funding to the National Criminal History Improvement Program, known as NCHIP, to help States automate and upgrade the quality and completeness of their criminal records. In addition, 5 percent of the funds Congress provides for law enforcement under the Byrne Formula Grants are used for improving criminal justice records.

Our assistance has been helpful, but according to the Bureau of Justice Statistics, only 26 States recently reported having 60 percent or more of their final dispositions recorded. Only 11 percent reported 80 percent. This is inadequate. In short, we still have a lot of work to do. We need to find a new and more efficient way of encouraging the States to update their criminal records.

We should also look at possible ways to help States make a commitment to becoming full point-of-contact States for NICS. Full

point-of-contact States are those that agree to conduct all background checks or searchers for firearms purchases rather than relying on the FBI to do so. Two studies recently completed by the General Accounting Office indicate that States acting as NICS points of contact do a better job of conducting background checks than the FBI. States have advantages, including better access to court records and a better understanding of the respective State firearms laws. Senator Leahy and I are sponsoring a proposal to reimburse those States that act as points of contact.

Now, I want to assure the witnesses that I have an open mind and I want to hear their ideas on how to improve NICS. Rather than consume our energies over firearm-related proposals that divide our noble institution, I believe we should focus our efforts on those issues where there is agreement. Improving NICS, making it live up to its promise, is just such an issue.

For that reason, I am looking forward to hearing from our two panels of distinguished and knowledgeable witnesses and I would like to extend a particular welcome to the former Majority Leader of the U.S. Senate, Senator Robert Dole, and to Captain Stuart Smith, a Director of the Utah Bureau of Criminal Identification. Of course, we also have the Honorable Richard Durbin here. We extend an invitation to a former member of the committee who is going to testify, as well.

We are pleased to have on our first panel of witnesses Senator Robert Dole, former Majority Leader and Senator from Kansas, who worked closely with me and others in drafting the NICS law.

Senator Craig Thomas of Wyoming, who was scheduled to testify this morning, is detained in another meeting at this time, so we will make his testimony available for the record.

[The prepared statement of Senator Thomas follows:]

PREPARED STATEMENT OF HON. CRAIG THOMAS, A U.S. SENATOR FROM THE STATE OF WYOMING

I appreciate the Judiciary Committee's invitation to speak today. I am pleased that the Committee is interested in finding ways to enhance the effectiveness of the National Instant Criminal Background Check System (NICS). This hearing is a step in the right direction.

As most of us are well aware, the NICS system was created following passage of the Brady Handgun Violence Prevention Act of 1993. Pursuant to this Act, the Attorney General was charged with establishing a National Instant Criminal Background Check System that any Federal Firearms Licensee (FFL) could contact for immediate information on whether the receipt of a firearm would violate state or federal law.

The Clinton Administration has spent 7 years and hundreds of millions of dollars to create a system to screen firearms purchases. In FY 2000, the NICS system's operating budget was roughly \$70 million. Unfortunately, after the Government spent millions of dollars and worked for years to establish this system, there are still many flaws with this process.

While the NICS system is designed to screen perspective firearms buyers, I have many questions about its effectiveness. Recently, the General Accounting Office (GAO) completed a comprehensive audit that I requested regarding the NICS system. The GAO audit detailed the effectiveness of the NICS system for its first year—from November 30, 1998 through November 30, 1999. The agency found that while the program does an adequate job in achieving some of its goals there are various areas that must be fixed, including:

- **Unscheduled outages of the NICS System**
  - For example, each and every time the National Instant Criminal Background Check System goes off-line Federal Licensed Firearms Dealers around the country are unable to do business.

- The GAO reported that, “From December 1998 through September 1999, the FBI identified more than 360 unscheduled outages associated with NICS.”
- The system failed to meet its operating accountability standards two-thirds of the time.
- The lack of any credible back-up system.
- The GAO also found that from December 1998 through November 1999 1.2 million, or 28 percent, of all federal firearm checks were not instant.

Mr. Chairman, the GAO report paints a sobering picture of a failure by federal agencies to enforce existing gun laws as Congress intended. The result is that the Second Amendment rights of law abiding citizens are being infringed upon while too often criminals seep through without consequence.

While the Clinton Administration continues to publish reports highlighting the effectiveness of the NICS program, these reports fail to touch upon the lack of enforcement and prosecution of existing gun laws.

Take for example a recent Bureau of Justice Statistics Bulletin titled “Background Checks for Firearms Transfers, 1999.” This publication does a wonderful job of breaking down the number of individuals who have been blocked from purchasing firearms from licensed dealers—for instance in 1999:

- Under a federal background check 81,000 individuals were denied the ability to purchase firearms (71 percent due to a felony indictment or conviction) yet in another Bureau of Justice Statistics Special Report titled, “Federal Firearms Offenders 1992–1998” it states that in 1999 there were only 7,146 defendants charged in U.S. District courts with a firearm offense.

The real question for the Administration is why are they so pleased that 81,000 individuals were denied the ability to purchase a firearm when more importantly there were only 7,146 defendants charged with a firearms offense? I believe the American public will find it interesting that the FBI and ATF have the name and address of these felons who were denied the ability to purchase a firearm, yet there is only a dismal 11.3% chance of getting them prosecuted.

Furthermore, federal prosecutions of firearms offenders have fallen 13 percent compared to 1992. In its last full year, the Bush-Quayle Administration prosecuted 7,621 defendants charged with a firearms offense. In 1997, prosecutions under the Clinton-Gore Administration fell to 5,993. The Clinton-Gore Administration has prosecuted an average of 6,659 accused firearms offenders per year—a 13 percent drop from 1992.

As we continue our oversight of current gun control laws, if it’s found that criminals still get guns and a high number of legal gun purchases are denied, you have to question the effectiveness of additional layers of gun regulations. It is important to recognize that if this program is to be effective there must be meticulous reporting, investigation and prosecution of individuals that are screened by the FBI.

It is my hope that the Judiciary Committee will be able to work with the FBI to reduce the frequency of NICS outages and make the system more effective. Thanks again for allowing me the opportunity to appear before you today.

We also welcome Senator Richard Durbin of Illinois, who requested the other recent GAO report, which concerns options for improving the NICS system.

We are grateful to have you both here today and we will start with you, Senator Dole.

Senator DOLE. I am not in the Senate any longer. You may have something to do. I do not have anything to do for the rest of my life, but—

[Laughter.]

Senator DURBIN. What I have to do is to listen to Senator Dole.

Senator DOLE. Do you want to go first?

The CHAIRMAN. I will solve that problem. We have not listened to the minority yet because I was waiting for Senator Leahy, but Senator Schumer represents the minority, so we will take his statement now, and then shall we turn to Senator Dole? You do not mind, Senator?

Senator DURBIN. No, I am honored.

The CHAIRMAN. I think we still consider him our Senator. Go ahead.



**STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR  
FROM THE STATE OF NEW YORK**

Senator SCHUMER. Thank you, Senator, and I appreciate your holding these hearings and I appreciate both our witnesses. One of them is my roommate in Washington. Can you guess which one?

The CHAIRMAN. I did not realize that, Senator Dole. I am just amazed. [Laughter.]

Senator SCHUMER. Anyway, Mr. Chairman, I was, as you know, very actively involved in writing the Brady bill and I was in the room during the tortuous negotiations which gave birth to the national InstaCheck system. In order to secure enough votes for passage, we agreed to sunset the 5-day Brady waiting period after 5 years and replace it with InstaCheck, a system that would rapidly, and in some cases instantaneously, approve gun purchases.

I was dubious of InstaCheck at the time. I thought it was unworkable. But it was a necessary compromise to pass the most important gun control legislation since 1968, and with a Democratic Congress and a Democratic President, I felt fairly certain we would be able to forestall InstaCheck indefinitely.

Well, so much for my predictions. We are now a year and a half into relying on InstaCheck full time. Is it a perfect system? No. Is there room for improvement? Most certainly. But the NICS system is far better and far more reliable than any of us had the right to expect at the time it was created, and I hope that in this hearing, as we look for ways to improve it, that we also credit the Justice Department for doing an incredible job in making NICS a remarkably effective system that has kept guns out of the hands of criminals without inconveniencing law-abiding gun buyers.

Like Senator Thomas, Senator Durbin and I requested a report from GAO on InstaCheck. Here are the facts. Seventy-two percent of all background checks are completed, start to finish, within 3 minutes. That is an astounding figure. Let me repeat it. Seventy-two percent of all background checks are completed, start to finish, within 3 minutes. Ninety-five percent are completed within 2 hours, and the remaining 5 percent take a matter of days, mostly because State and local governments have failed to report the disposition of felony arrests.

The system is up and running 17 hours a day, 7 days a week, and has been down only 3.4 percent of the time. There has been only one major prolonged outage in 18 months of operations. Of the 4.4 million people who pass through the NICS system, only 10,000 were mistakenly rejected for a handgun. That is six errors for every 10,000 buyers through the system.

Whether you support gun control or oppose it, whether you were dubious of InstaCheck or optimistic, these numbers do not lie. InstaCheck has been an overwhelming success.

But there is one problem with InstaCheck and it has nothing to do with the Justice Department. At gun shows, through the Internet, among straw buyers, an enterprising criminal can avoid a background check and the blame lies here in Congress. We should have a hearing on why nearly 90 percent of the guns traced to crime over the last 3 years were used by someone other than the original buyer of the gun. We should have a hearing on why one-fourth of the guns used in out-of-State crimes come from only four

States. Is that not incredible? One-quarter of the guns used in out-of-State crimes come from four States, Florida, Georgia, Mississippi, and Texas.

InstaCheck has been a success. It has not been perfect, but frankly, neither have we. There are a series of questions that I will be asking DOJ panelists. For example, there is a disparity between the rejection rates of the point-of-contact States and the NICS States and I am interested in their views on why this is the case. I know that Senators Hatch and Leahy have legislation, which I am proud to cosponsor, that would provide grants to point-of-contact States to cover the costs of InstaCheck. I would like to hear their views on the proposed law. I am also concerned that those adjudicated mentally ill are able to pass a background check and I am interested in ways to make this part of the Brady law more effective.

Having said that, I know we have two very distinguished witnesses, one I have admired mostly from afar and one I have admired mostly from closer up—I will say nothing more—and I look forward to hearing their testimony, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Schumer.

Senator Dole.

**STATEMENT OF HON. BOB DOLE, FORMER U.S. SENATE MAJORITY LEADER FROM THE STATE OF KANSAS, SPECIAL COUNSEL, VERNER, LIPFERT, BERNHARD, McPHERSON HAND, WASHINGTON, DC**

Senator DOLE. Thank you very much, Mr. Chairman and Senator Schumer and Senator Durbin. I was a member of this committee many years ago and enjoyed that opportunity to be a member of the Judiciary Committee. I think I had three or four committees at the time and I had to yield one committee and I gave up the Judiciary Committee. But I have had a longtime interest. I mean, I know what a gun can do to someone, maybe not a handgun or a long gun, and I know World War II is a little different, but it is still a gun and it still has an impact and it can change your life forever.

So I had sort of a longtime interest in trying to figure out, how do we keep guns out of the hands of people who should not have the gun in the first place? So it is a longtime interest, and I think way back in 1979, I offered an amendment that authorized the Federal Bureau of Investigation to initiate a pilot program called the Interstate Identification Index, the III Program, and that was sort of the first effort. I think that laid the foundation, because there had not been many changes since the 1968 gun laws, foundation for Congressman McCollum and I to offer the Instant Check proposal, along with Senator Hatch and many others. We wanted to enable gun dealers, either directly through the FBI or through designated State agencies, to be able to check the eligibility of a prospective gun buyer in real time.

As you know, the 1968 Act prescribed several categories of individuals from purchasing or possessing firearms. Instant Check was to be the vehicle to ensure that persons with felony criminal backgrounds and others, such as illegal aliens—I think there are now nine categories—wanted fugitives, addicts, and mental defectives could not obtain firearms from Federal dealers. We also tried to re-

duce the fraudulent misuse of identity documents presented to the dealer in support of the sworn application.

The III Program was to be permanently authorized and the Instant Check was to be an integral part and would apply to all firearms, long guns, handguns. It was a substitute for the 7-day waiting period proposal of Sarah and Jim Brady and others that would have applied to handgun purchases only, and I will confess that I once sponsored a 21-day waiting period and I read my mail and decided that probably was not a very good idea. But in any event, that was a long time ago.

But eventually, Dole-McCollum prevailed and became law and Virginia became the first State to implement this new law in 1998. I can still remember how this all happened, because I remember Senator Mitchell and I spent a long time. Everybody had gone home for Thanksgiving but us. I think Senator Kohl was around, too, and Senator Hatch was around. They just left us with a conference report which had all these very controversial provisions, in addition to the gun legislation, many other controversial provisions, and we were left to grapple with that and nobody wanted to come back, but everybody wanted to vote. I think I had an Excedrin headache for a couple of days. But finally, we agreed to just pass the conference report and many of us had doubts, as Senator Schumer has pointed out, whether it is going to work, what was going to happen.

But anyway, it became in 1993 the permanent provision of the Brady Act and the 5-day waiting period, of course, applied to handguns only and this was going to be implemented 5 years later. That was part of the compromise, as has been pointed out. Then the temporary Brady 5-day waiting period would expire. I recall this, as I said, quite well, because we had lots of meetings and lots of interested Senators and many, many groups who had different opinions. As I said, Senator Mitchell and I found ourselves on the floor and we were able to hammer out some features of the legislation.

But now, I think very properly, and I want to commend the chairman, you are revisiting the matter, but there is a big difference. The Brady waiting period is no more. That is gone. That has expired, at least at the Federal level. The Instant Check is permanently ensconced. I think, by all accounts, it is probably the greatest thing since sliced bread. I mean, it is certainly not perfect and there are reasons it is not perfect, and I will just make some recommendations that I know all the members are probably more aware of than I.

We have had numerous stories, success stories documented where convicted felons and other disqualified individuals have been barred from purchasing firearms, and I have attached a list of several of these incidents to the end of my statement. They were prepared by the FBI in a NICS operation report of March 2000. Also attached is a pie chart from the same report that indicates the various reasons for denial of requests. Most of them are felony convictions.

I must admit, the numbers are impressive. According to the FBI operations report, since November 1998, when NICS was activated, the Bureau has performed more than five million checks—five mil-

lion checks—and State police points of contact in 26 States have performed an equal number. That is ten million checks since 1998.

Brady handgun checks prevented more than 300,000 bad guys from buying handguns in its 5 years of operation. In 13 months under the present check, almost 180,000 denials were effected, and the operations report at page eight reveals that 72 percent, as has already been pointed out, of the inquires are processed in 30 seconds. Seventy-two percent in 30 seconds, that is about as fast as you go into the grocery store and use your credit card. All but 5 percent are processed electronically within 2 hours. Only 2 percent must be completed by manual checks.

Some States, such as Virginia, have even better response times, and virtually all of Virginia's checks in its own databases are processed within 2 minutes. Virginia also checks gun show sales, as well, and I will attach the summary of that just for the record.

So based on the first year's experience, some changes and enhancements need to be made to improve the system's effectiveness and utilize its capabilities in related fields. However, instead of a technical discussion, improvement of Instant Check has become sort of a political fight of the first order and there has to be some way to resolve all of this. I am no longer in the Senate, so I cannot add or detract anything, but it seems to me that there should be ways to work it out before Congress goes home this year.

But let me summarize the proposals contained in my main statement, which I will submit for the record in a day or two. These are made after review of the FBI, the BJS, and Virginia reports on implementation, and in light of the legislative history as I understand it. The proposals are divided into two categories.

First, I recommend that the focus of the existing law be redirected, both authorizing and appropriations legislation, and second, I recommend several amendments be made to the enabling law.

The first category, it seems to me, are "no brainers." I mean, it seems to me that the NICS system ought to operate 24 hours a day instead of 17, and this will be necessary to improve the operational effectiveness of the system. It is going to be absolutely essential if gun show sales are to be included. I am told it can be done for \$7 million, so it seems to me that it ought to be done.

NICS needs to be backed up by a redundant system in case of a breakdown. I guess this is the one that would cost \$7 million. They have only had, I think, a few breakdowns, but there should be a backup system. We have had a couple of occurrences lately. This can be done, according to the FBI, the upgrade will cost only \$7 million.

I think the primary thing, most of the funding appropriated so far by Congress, over \$310 million, has not been spent on direct assistance to the States to implement the Dole-McCollum check. The aid money has been diverted to other purposes, and although the Bureau of Justice Statistics has published summary data on its NCHIP program, it is not possible to tell exactly how the money was spent. It appears that most has gone to buy automated fingerprint equipment and other hardware not related to NICS. Money for record conversion has largely been spent to automate police arrest records, and as the chairman pointed out in his opening statement, the arrest records may be important, but the conviction

records are the ones you have to have. Virtually no money has been given to courts to automate conviction records.

As a result, the BJS survey last year of criminal history records found that there was a total of 62 million records in various repositories. Of these records, only 23 million disposition/conviction records are available for the checks, and this is the overwhelming reason why the FBI must initially reserve judgment on 28 percent of the inquiries. If we want to make it a better system, then we have got to put the money where it belongs, and that is getting these records and databases up to speed.

The Justice Department has received \$45 million this year for NCHIP and it may not be too late to refocus those funds to direct support of NICS. Seventy-million dollars has been requested for fiscal year 2001, and this ought to be subject to appropriations earmarks and riders that direct funds be spent for automation of conviction and other records directly relevant to NICS inquiries.

We also ought to have funds available to assist States to perform their own checks as well as the FBI checks. We have virtually no money spent for that purpose, and it seems to me that—well, at present, only half the States have their own system and only 14 check both handguns and long guns. Most distressing is the fact that at least one State, South Carolina, has withdrawn and others are on the verge of withdrawing, I think Colorado and Florida. Florida is considering it, but the State legislature has authorized participation. Colorado was about to withdraw last year but reconsidered in the wake of the tragedy in which a multiple murder was committed after the FBI cleared a prospective buyer. It later was discovered that the individual was under a restraining order, but Colorado had not forwarded this information to the FBI. So again, if we had had the records, that guy would not have had the gun.

Small dealers and collectors should be federally licensed again. In 1994, BATF tightened the requirements for these licenses. As a result, the number dropped from about 230,000 to 80,000, and the emphasis was to limit the license to stocking dealers. The small mom and pop dealers were wiped out. The effect has been to take millions of gun show and other sales off the books, and without buyer's certification of eligibility, which is Form 4473, being executed and recorded in dealer records. Ex-dealers still offer their wares at gun shows, but as individuals. But these dealers were gladly in the system at one point and should be readmitted.

Now, these all can be done, these three or four things, without any additional legislation. I will just mention a couple that I think probably require legislation.

It seems to me that you ought to be able to do this check in about 8 hours or less from the time of the initial inquiry. This is well within the parameters of the current FBI response times, with the exception of 2 percent that cannot be resolved online within 2 hours. I think in these latter cases, 2 percent, the Bureau should be authorized to use commercial compilers of criminal history records to obtain a complete record on prospective buyers. These organizations spend hundreds of millions of dollars annually capturing this and much other public record information for background checks of all kinds, both public and private. In the interim, until complete, automated criminal justice records are available,

private checks would reconcile most instances where the police records are lacking.

I think also that check inquiries should be considered as originating from law enforcement, whether from a police agency or a dealer. This will ensure that there will be direct funding from Congress to support the cost of operating NICS.

At the same time, I think NICS should be expanded to handle non-law enforcement background checks when authorized by Federal or State law. Fees collected from these checks can go to offset the cost of the system, provide incentives for States to create or expand their own systems. This funding should be strictly limited and earmarked to improvements in the NICS system and not subject to the type of diversion that we suspect occurred with the NICS funding to date. Funding should not go for secondary purposes, such as AFIS equipment, until primary needs have been satisfied.

Firearms checks should be made at major gun shows by either a State agency, the FBI, or the BATF. Virginia's experience should be the national model. There, for the last year and a half, the State police have set up booths at the 16 major shows. Usually two officers man the booths, equipped with laptop computers. For dealers and others who do not have 800-line telephone access to the State police center, the police will make the checks directly. The State police center is open on weekends. The system is working well. At the smaller shows, there is no booth but the 800 number is used to contact the center. The sales volume at these latter shows is so small that there is little inconvenience for sellers or buyers.

Nationally, there is estimated about three million gun show sales annually, three million. The FBI would need additional resources to handle its share of this workload. The BATF has the manpower that could be utilized, and all but a small percentage of the sales at the shows would be completed in a timely fashion. It seems to me if there are 1 or 2 percent that do not, then they ought to take whatever time they need.

As new technology becomes available, it should be employed to make point-of-sale gun sales and make the checks more accurate. Advances in the state of the art of this technology should be closely monitored with a view in mind of applying them to the retail commerce in firearms.

The FBI should have authority to record permanently approvals and denials of gun sales in III. A recent BJS study revealed that only a very small percentage of denials are prosecuted unless they are included in more serious offenses. There have been strong disagreements as to what is the appropriate time for retention of audit trails. It seems to me it makes sense to keep a record of a gun check until it is completed and until the appeal period has lapsed after a denial.

But it makes no sense, and I certainly never intended that records of lawful transactions cleared by the NICS system be retained by the Federal Government. Denials should be retained in III for law enforcement purposes, and hopefully prosecution, but not the NICS records of lawful purchases. The dealer's records, including the buyer's Form 4473, can be inspected if a valid law enforcement need arises.

And finally, I think the definitions of prohibited persons in Section 922 of the GCA, the 1968 Act, should be revisited in light of the operational experience in performing the checks. Some categories are not appropriate, such as persons who have voluntarily renounced U.S. citizenship. They are not in the country. Even the definition of convicted felon needs revision, according to a NICS advisory group.

I also would suggest maybe a broad-based advisory group be formed to provide guidance to the FBI and the States on operation of NICS. At present, only representatives of law enforcement can perform this vital function, and it is my understanding that the FBI rejected a request last year to constitute a NICS advisory committee from industry and consumer groups. I think that is unfortunate. We ought to have others involved other than just law enforcement, and I think this would certainly go a long way in addressing some of the questions. I think the FBI has scheduled a meeting for more groups in February.

Mr. Chairman, that is a short summary, and I know it has taken more than the 5 minutes, but I understand former members are allowed 10 minutes or 20 minutes or whatever, and I appreciate your not cutting me off. I do hope that these statements can be helpful.

[The prepared statement of Senator Dole follows:]

PREPARED STATEMENT OF SENATOR BOB DOLE

INSTANT CHECK ENHANCEMENTS

A broad consensus exists that the Instant Check program for online background checks of prospective gun buyers has worked well since the FBI began operations in November of 1998. However, some problems do exist that call out for answers. Strong disagreements arise with respect to how best to improve its performance and extend its scope to include gun show sales.

Between November 30, 1998 and December 31, 1999, the National Instant Criminal Background Check System (NICS), has processed almost 5,000,000 instant check requests, according to its Operations Report on its first year of activity. The states have processed almost an equal number (see Attachment 1 submitted with oral statement).

The large majority (72 percent) of the FBI inquiries are processed and approved in seconds. On-line requests from law enforcement are approved in under six seconds. 800 calls from dealers average 30 seconds. In twenty-eight percent of the cases, a deferral of decision results. The overwhelming reasons for the delay are either: (a) mistaken identity or (b) arrest record, but no disposition entry. All but five percent of the deferrals are cleared within two minutes. Another three percent are cleared within two hours. The balance (2 percent) can take several days since a manual check must be made, usually to a county court house.

Half of the states have their own systems. Fifteen check both handguns and long guns. Ten states process only handguns. Their response time varies significantly, but the most advanced states such as Virginia and Georgia have response times that compare favorably with the FBI. Alabama's criminal history records are on the Internet. The other states rely on the FBI, or have state licensing or registration systems. Michigan checks handguns only, but also has a registration system for them. California registers all firearms and has a waiting period with a background check. A state check involves an online check with the FBI as well as its own records. An FBI check initiated by a dealer involves only the records voluntarily contributed from the dealer's state to the FBI and the FBI's own records.

Virginia was the first state to develop an instant check system in 1989, pursuant to the original Dole-McCollum authorizing legislation. Since that time more than 1.8 million Virginia state checks have been made. For several years, Virginia's turn-down rate was only 10 percent. Now, since more police records are in the FBI's Interstate Identification Index, Virginia's rate has doubled to about 22%. But the final clearance rate is faster than the FBI's in most cases. Virginia's disposition (court) records are mostly automated. Also, the Virginia State Police have des-

igned officials in each courthouse to contact if the court record is not otherwise available.

The Bureau of Justice Statistics reports that at the end of 1999, there were more than 62 million criminal history files held by criminal justice agencies throughout the country. Thirty-seven million of these records were in the FBI's Interstate Identification Index (III). Only 23 million records in Triple I had disposition entries in them. This figure did represent a 3 million record gain from 1977, and almost double the 13 million dispositions in III in 1993.

The Brady Act currently provides for "three working days" to complete the check (not including the day in which the inquiry was initially made). After that, dealers are then able to complete the sale to the buyer without a final answer from the FBI. However, if the gun is delivered to the buyer and the FBI subsequently obtains disqualifying information, the FBI immediately notifies the Bureau of Alcohol, Tobacco and Firearms, and the gun is retrieved. In Virginia, the state police retrieve the firearms. Only 16 such retrievals have been made there since 1989.

The Clinton Administration has stated repeatedly that at least 72 hours is needed to complete inquiries. Others contend that 24 hours should be the outside limit to process the inquiry. Gun show sales present a particular problem, since prospective buyers and sellers could not reasonably be expected to wait days after the show is over before the gun could be transferred to legitimate buyers.

It is quite probable that both sides may be able to "have their cake and eat it, too."

The Brady Act of November, 1993 provided for "temporary" five day waiting periods for handgun buyers while background checks were conducted by federal or state law enforcement officials. This provision expired at the end of November, 1998. The Dole-McCollum Instant Check system, first enacted in 1988, was revised and recodified as the National Instant Check System (NICS) in the Brady Act as the "permanent" provisions. It was to be implemented by the FBI at the federal level, not later than the November date.

Instant Check is a dual system in which a check can be performed by the FBI on inquiry directly from a dealer; or the inquiry can come from the dealer through a designated state agency point of contact (POC). Instant Check applies to ALL firearm sales, not just handguns, as was the case with Brady's waiting period provisions.

Brady also authorized the National Criminal History Improvement Program (NCHIP) of federal financial and technical assistance for the states and local governments to automate criminal history records, and develop their own capacities to participate in NICS. Congress has appropriated more than \$310 million to date for NCHIP; another \$70 million is requested for FY 2001. Regrettably, most of the funds have been diverted for other purposes, such as the purchase of automated fingerprint equipment. Hardly any of the funds have gone to state or county courts to automate their records.

The FBI Operations Report for March, 2000 on page 13 states: "Some state court systems have expressed significant difficulties in responding to NICS requests for information, some courts are seeking reimbursement from the NICS for the costs of locating disposition information. Unfortunately, this is not an expense for which the NICS can currently provide reimbursement."

The Bureau of Justice Statistics administers the NCHIP program. BJS has published annual summaries for the expenditures on its web page (<http://www.ojp.usdo.gov/bjs>), but it is not possible to identify exactly how the funds were spent. However, an inspection of the reports reveal that very few grants have been made to state or county courts for court record conversion, or to assist them in participating in NICS. As of June, 1999, 17 states conducted state instant checks, 12 required permits and 4 maintained approval-type systems. At the present time, the FBI conducts checks requested by dealers directly in 25 states.

Since that time no new states have been added. In fact, one state, South Carolina, has already withdrawn. Another state, Florida, may withdraw shortly. Colorado had decided to withdraw, but reconsidered in the wake of a tragedy involving a firearm purchase by a prohibited person—who went undetected by an FBI check since Colorado records had not been sent to NICS. Virginia, the first state to implement Instant Check in 1989 has been providing software and technical assistance for other states upon request, but without federal funding support.

The following are several specific recommendations to reconfigure the Instant Check deadlines, shift the focus of the funding priorities for the NCHIP to improve the operation of NICS, make the checks more relevant, and to accommodate new technology in several areas that will dramatically affect the operation of NICS in the very near future. Some of these recommendations are identical to those in my



oral presentation; others were not included. They should be considered with the recommendations already submitted to the Committee.

#### NICS CHECK DEADLINES

One of the most contentious gun control issues in Congress is the maximum time needed for the FBI and the states to complete an Instant Check if relevant records are not online. Pro-gun forces insist that 24 hours is adequate to perform the check. Strict gun control groups contend that at least 72 hours are needed. As was noted earlier the Brady Act provides for "three working days," not including the day of referral.

According to the FBI's Operations Report, all but about 28 percent of the checks performed by the FBI are completed within thirty seconds. All but 5 percent are completed within 2 minutes. All but 2 percent are cleared within 2 hours. However, in the instances where there is an unresolved question about the identity of the buyer, or there is a police arrest record but no disposition entry, a "manual check" must be made. It can take days to complete the check. Most often this means a phone call to the court house. This may take several days.

This last group of checks is quite significant because in almost half of the cases, there is a final denial.

At the state level, clearance times vary. Virginia was the first state to implement Instant Check in 1989. Since that time Virginia has conducted almost 1.8 million checks (see Attachment 2 submitted with oral testimony). All but about 22% percent of the inquiries are disposed of within a few seconds. Virtually all of the remainder are cleared within 2 minutes.

There are several reasons for this outstanding capability. Virginia's criminal history records for felony arrests and convictions are almost entirely automated. Most of the county clerks' offices have a computer interface with the state police through the Virginia Supreme Court of Appeals automated system. When a county court record is not available online through the State Court, the state police have direct online access to most county courthouses. In the rest, the police simply contact pre-designated county clerk officials by telephone or fax. Also, the state police have a well trained and experienced staff to conduct the record searches.

A. It is quite feasible to mandate a 24 hour (one working day) turn-around time for a final response. However, there is no particular magic in this number. A much shorter time limitation—8 hours or less—would still result in about 2 percent of the FBI checks unverified.

B. There are several existing federal aid programs where funding could be increased or redirected to automate pertinent county disposition records. The focus must be on capturing ONLY felony, stalking and spouse abuse convictions and restraining orders that are RELEVANT to Brady checks, not all police arrest records, nor all county courthouse records.

C. Until such time as the records are available in a timely fashion directly from criminal justice agencies, the FBI should make use of comprehensive databases compiled by various private background check companies. The use of private compilations should be on a county-by-county basis after the FBI has determined that one or more of the private sources has the appropriate records available online.

#### GUN SHOW CHECKS

The FBI estimates that there are about 3 million gun show sales annually. Until 1994, most of these transactions were at least recorded in the books of small dealers and the prospective buyers were required to certify that they were not "prohibited persons" under federal or state law not eligible to buy guns. These dealers typically did not have formal places of business, but were active sellers and traders at the shows. At that time, the Clinton Administration through the BATF cracked down on the small dealers. The number of dealers' licenses dropped from just under 230,000 in 1994 to about 80,000 today.

As a result, many of these sales since 1994 were "off the books." It is perfectly legal as a matter of federal gun control law, for an individual to sell a firearm to another person from the same state of residence. Most of the gun show transactions currently are unregulated and unchecked unless they are sold by a licensed dealer.

A. There are several approaches to this situation that might be workable. First, follow the "Virginia plan." It has been the national leader and has performed more than 1.8 million checks to date. It has highly automated criminal justice records—including court disposition records—at least at the felony level.

Sixty-two of the state's largest gun dealers are on-line to the State Police. This accounts for 35% of the retail transactions. The initial turn-down rate in Virginia has been about 10%. In recent months, the rate has increased to just over 20%, as

more NICS arrest records without disposition information must be cross-checked. The initial deferral rate by the FBI is 28%. The final denial rate—between 1 and 1.5%—is the same for both Virginia and the FBI. The FBI has plans to have the largest gun dealers online within a year. This will allow for “Unassisted checks” directly from the dealer to the FBI. The FBI estimates that at the national level, approximately 15 percent of the largest dealers conduct about 80 percent of the retail gun sales.

B. For more than a year, the Virginia State Police have been checking gun show transactions through booths at the major gun shows. Licensed dealers can also dial an 800 number. This system seems to be working quite well. At smaller shows, dealers simply use the 800 number.

C. Several states, as a matter of state law, require gun buyers and owners to obtain a special state license with a background check. This is only a partial solution and one that is not politically acceptable in most states. Usually the license is good for a several year period. In the meantime, the individual might become disqualified to purchase or possess firearms. Depending on state procedures for revocation of licenses, an up-to-date check may still be made to ensure that the buyer has not been disqualified since the license was issued.

D. In the alternative, the state driver’s license could be loaded with coded disqualifying information such as a felony conviction. The dealer could swipe the driver’s license through a credit card reader device to “read” the license.

E. The FBI or BATF could set up booths at gun shows in “non-Brady” states (about one half of the states at present). This should be done using federal personnel, or by a contractor. This would entail significant costs, and probably not be very workable or politically desirable. At least a feasibility study should be conducted on this possibility.

F. When disposition information is not available to the FBI immediately, it would be quite possible for the Bureau to obtain the information on-line from commercial background check sources. There are a number of companies who spend hundreds of millions of dollars to capture court house records (see Attachment 3). An evaluation could be made of the validity of the commercial information. This can be done by comparing their data with information supplied from criminal justice sources where disposition information is available. In county jurisdictions where the Attorney General has found the local records to be inadequate, a private “county check” could be made by the FBI, and then verified when records from criminal justice sources become available.

G. BATF regulations on small dealers should be changed to allow them to do business in a regulated manner. Under current ATF policies regarding zoning and business licensing requirements, it is easier for many active gun traders not to be licensed at all and to handle their transactions as individuals—even if they would prefer to be fully licensed and subject to background check requirements.

#### REFOCUSING NCHIP

It is absolutely essential that the first priority for federal assistance be channeled to those jurisdictions where the courthouse records are not automated and where significant delays occur in responding to inquiries. This can be accomplished by Appropriations report language and riders in the four existing funding programs that could be utilized to complete and digitize court records.

A pilot project, funded by Bureau of Justice Statistics, should be set up to compare private “county” checks for dispositions entries in the jurisdictions that are behind. For example, a thousand records could be processed through NICS, then the same checks could be done by accessing private databases. There are many private companies that perform background checks for various public and private purposes. They invest hundreds of millions of dollars annually capturing county courthouse records to build various automated data bases.

This study will demonstrate that, at least on an interim basis, the FBI could utilize automated private data bases until the county records are available online through criminal justice channels. In fact, many governmental entities already rely heavily on private background checks for other purposes. The interim authority should be on a county-by county basis.

Another improvement is to create data bases that are more relevant to Brady checks. For example, a number of states are building DNA data bases on convicted felons. The name identifiers could be used for NICS checks, or simply establish separate data bases for convicted felons. The same is possible for stalkers and spouse abusers. These are usually misdemeanor records at the county court house. Unless a felony is also involved, they typically do not get entered into state or federal data bases unless the state has a law specifically requiring the reporting. Most of these

records are not fully automated. BJS should initiate an NCHIP project to analyze current policies and practices for performing the Brady checks and develop recommendations for improvement. A model database should be designed to meet the specific requirements for Brady checks as defined in Section 922 of the Gun Control Act.

The Justice Department should undertake a comprehensive analysis of the reasons for delay in affirmation of identity or criminal background. Look at the states and counties where most of the problems occur, and direct NCHIP funds at the problem. Use the results of this study to reorder the funding priorities for NCHIP. There are several other Bureau of Justice Assistance grant programs that could be tapped to support the program, such as the Byrne program for local law enforcement assistance.

Congress should set the priorities for NCHIP funding for FY 2001 through Appropriations report language and riders to provide funding for automating court disposition entries and for technical assistance and funding for more states to become POCs.

#### USER FEES FOR INSTANT CHECKS

When the NICS regulations were first promulgated, the FBI wanted to charge dealers (and buyers) to perform the instant checks. This attempt was strongly opposed by the NRA. As a result, Congress has provided full funding to operate NICS at no cost to the dealers or buyers. However, the FBI has never charged state POCs, since this was a "law enforcement service," for which the Bureau traditionally has not charged fees.

The Bureau does charge INS up to \$20,00 each for a million background checks per year on persons seeking immigration benefits. The banking industry is also charged a similar amount for checks on prospective employees, as authorized by Federal law in 1968. These are fingerprint-based checks. INS no longer accepts manual fingerprint cards from US applicants. They must go to an INS facility to have digitized fingerprints and mug shots taken. With the Bureau's new IAFIS system in operation, these checks now are processed in two hours. Under the old manual system, the checks took many weeks or months. When the two print system is in operation, turnaround time will be decreased even more.

It is recommended that ALL Brady gun buyer checks be considered as "law enforcement" checks, whether from a state law enforcement agency (POC) or a dealer.

If all Brady checks are redefined as "law enforcement," dealers should get the same "immunity bath" as a law enforcement for relying on information provided through the Brady system. This was a provision of last year's Lautenberg Gun Show Amendment.

#### EXPANDING THE SYSTEM

A. There are any number of "non-law enforcement" requirements for background checks. NICS should be expanded to cover truck drivers, bounty hunters, child care workers or volunteers, etc. where the information in NICS would be relevant to the profession involved. Many of these checks are already required as a matter of federal or state law. User fees could be collected to cover the entire operating costs of the system. Participating state agencies that perform Brady checks could also participate and share in the revenue stream. This should provide incentives for the states to participate or stay in the system.

B. At the present time the system is online only seventeen hours per day. IT SHOULD BE EXPANDED FOR FULL TIME OPERATION. Significant costs would be involved to move to round-the-clock operations. Hardware and software would need modification and upgrade. This would be essential if the FBI performed gun show checks.

C. As was mentioned above, gun show checks would add at least another 100,000 checks per month over the current workload of 500,000 checks. Additional personnel, equipment and overtime would be needed to handle the increase.

D. The recent shutdowns of the NICS system, in which it was down for almost 3 days in the first instance and almost a day in the second instance, have dramatically underscored the need to have a redundant backup system available in case the primary system goes off-line. The backup could also be available to handle overload situations and non-law enforcement checks. The FBI estimates that this upgrade would cost approximately \$7 million.

#### NICS ADVISORY COMMISSION

In the past, the FBI utilized its general advisory group, the Advisory Policy Board (APB), to advise it on matters relating the NICS. However, there is a separate board

for Instant Check. It consists overwhelmingly of law enforcement officials, and its proceedings are not made public. However, with the Interstate Compact on the interstate exchange of criminal history information now in place, this twelve member group is also getting into the picture. Like APB, this group is composed primarily of law enforcement authorities. There is no representation of the public, or gun manufacturers, dealers or owners.

#### REVISE "PROHIBITED PERSON" CATEGORIES

It is strongly recommended that the list of "prohibited persons" in section 922(c) of the Gun Control Act of 1968 should be revisited. There have been very few changes since the original list was added as a Senate floor amendment to the Act. There was no hearing record for the provision at the time. Several of the categories made little or no sense; others required access to data bases not generally available to law enforcement.

For example, persons who voluntarily renounced U.S. citizenship or their employees were banned. Persons "addicted to stimulants, depressants or other dangerous drugs" and "adjudicated mental incompetents" also were prohibited. Felons were barred forever, no matter whether the conviction was for a violent or non-violent offense. Definitions of the various terms were quite vague or non-existent.

The changes made since that time haven't done much to improve the situation. The Lautenberg Amendment in 1996 added persons who were convicted of spouse abuse or stalking, and the 1994 crime bill added those under certain court restraining orders. Neither of these categories of records are readily available in any uniform fashion.

Other record checks, such as violent juvenile offenders and DUI convictions are not specifically authorized. Several states now treat certain juvenile records as if they were adults. Although the FBI does accept juvenile records, it does not receive many of them from state or local agencies. Also, the BATF issued regulations authorizing access to drunk driving records. These checks only go back six months, and usually involve only criminal convictions, not civil.

The FBI and the states now have sufficient experience in performing Brady checks to be able to make comprehensive recommendations for revision of the "prohibited person" provisions.

#### 89access related data bases

A Brady check, whether done by the FBI or the states individually or jointly, involves access to a variety of related data bases. At the same time, access to other data bases is not available in whole or in part, because of administrative or legislative restrictions.

A. The U.S. Immigration and Naturalization Service operates several databases on persons lawfully admitted to the U.S., as well as individuals who are "criminal" aliens. These are individuals who have been deported, under deportation order, arrested, detained, and convicted and incarcerated. In the federal inmate population, almost a third are "illegal aliens." The federal government provides subsidies amounting to tens of millions annually to states whose criminal justice systems are heavily impacted by criminal aliens.

Under the Gun Control Act, "illegal aliens" are prohibited persons. However, until recently, many out-of-status aliens were not in the NICS system. The INS and FBI did not share information on several of the key INS data bases, even though the INS must provide this information to state and local enforcement by federal law. Since there many Brady "hits" on illegal aliens, the FBI access to other INS files should be expanded.

B. There is much controversy about access to juvenile records, but many states are now making records available, at least for crimes of violence. There is a trend to treat more juveniles as adults. As was indicated earlier, even though the FBI will accept the juvenile records, very few of these records are available to the BUREAU.

C. A particularly thorny issue is the inclusion of mental health and substance abuse records. At present the NICS has access to about 200,000 VA records, but the situation at the state level is quite mixed. In general, there is limited access at best. By BATF regulation, the FBI does look at certain DUI records, but only for the previous six months.

The Department of Transportation maintains a national data base on bad drivers (NDR). By the terms of its enabling legislation, these records are not shared with law enforcement. However, state DMV's routinely share this information with state and local enforcement agencies. After all they are responsible for enforcement of traffic laws. The federal policy is totally unrealistic. This data base may be useful to NICS checks. A pilot study should be conducted on its feasibility.

[Attachment]

## PRIVATE COMPILERS OF CRIMINAL HISTORY RECORDS

A large number of private companies perform criminal history background checks for government and commercial clients. Most of these checks are mandated by federal or state law. These companies spend hundreds of millions of dollars annually to digitize federal, state and local public records of all kinds, including public records from repositories of original entry, such as federal district court, police station house or county clerk's office.

The records are then added to various data bases. When a check is made by one company, it will frequently access and cross reference other bases in addition to its own.

Representative of these organizations are the following:

1. ChoicePoint, Inc., Atlanta, Georgia *www.order.choicepointinc.com*
2. Knoll Background America, 1900 Church Street, Nashville, Tennessee 37203, 615/320-9800, *www.background-us.com*
3. DAC Services, 4110 100th East Avenue, Tulsa, Oklahoma 74146, 800/331-9175, *www.dacservices.com*
4. DBT Online, Inc, 4530 Blue Lake Drive, Boca Raton, Florida 33431, 800/530-4539, *www.dbtonline.com*



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## National Instant Criminal Background Check System (NICS)



Operations Report  
(November 30, 1998 - December 31, 1999)

**EXECUTIVE SUMMARY**

In November 1993, the Brady Handgun Violence Prevention Act of 1994 (Brady Act) was signed into law, requiring Federal Firearms Licensees (FFLs) to request background checks on individuals attempting to purchase a firearm. The permanent provisions of the Brady Act, which went into effect on November 30, 1998, required the Attorney General to establish the National Instant Criminal Background Check System (NICS) that any FFL may contact for information to be supplied immediately as to whether the receipt of a firearm by a prospective transferee would violate federal or state law.

In its first 13 months of operation,<sup>1</sup> November 30, 1998, through December 31, 1999, the NICS has proven to be a highly effective system processing over 10 million inquiries. Each NICS background check includes automated searches of approximately 35 million criminal records, over 500,000 records on wanted persons, over 200,000 subjects of protective/restraining orders, and over one million records on other prohibited persons. Since its establishment, the NICS has ensured the timely transfer of firearms to individuals who are not specifically prohibited under federal law, while denying transfers to more than an estimated 179,000 felons, fugitives, and other prohibited persons.

In many ways, the NICS represents a partnership among the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco and Firearms (ATF), and local, state, and other federal agencies. For example, the FBI worked together with ATF and local and state law enforcement to design the NICS. State and federal agencies contribute records on disqualified persons for inclusion in the NICS. States may serve as points of contact (POCs) to support their FFLs in conducting NICS checks. Among the most significant examples of this partnership is that in addition to preventing more than 2,400 wanted persons from purchasing firearms, the FBI's NICS examiners have actively contacted local, state, and federal law enforcement agencies to provide information that has resulted in the apprehension of many of these fugitives from justice.

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<sup>1</sup>Note: This NICS operations report covers the period of November 30, 1998, through December 31, 1999, and updates the statistical information in the seven month report released on September 9, 1999. Future reports will be published annually and will encompass transactions on a calendar year (January-December) basis.

## RESULTS FROM THE FIRST YEAR OF NICS OPERATIONS

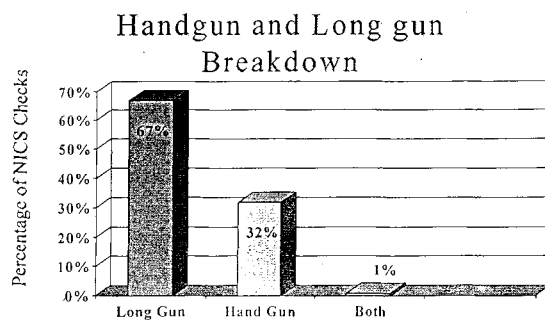
Number of NICS Checks

In the first 13 months of operation, the NICS completed 10,030,963 background checks. Of these, 5,044,574 were handled by the FBI, while 4,986,389 were handled by state POCs. The chart below shows queries by month, divided between FBI and state POCs.

NICS TRANSACTIONS		
	<i>State</i>	<i>Federal</i>
<i>November 98 (one day only)</i>	6,626	14,570
<i>December 98</i>	379,660	491,984
<i>1998 Totals</i>	386,286	506,554
<i>January 99</i>	315,869	275,486
<i>February 99</i>	369,647	326,676
<i>March 99</i>	399,574	353,509
<i>April 99</i>	341,128	305,584
<i>May 99</i>	311,736	264,536
<i>June 99</i>	306,825	262,668
<i>July 99</i>	303,485	285,991
<i>August 99</i>	363,503	339,891
<i>September 99</i>	382,779	425,848
<i>October 99</i>	435,325	510,376
<i>November 99</i>	459,161	545,172
<i>December 99</i>	611,071	642,283
<i>1999 Totals</i>	4,600,103	4,538,020
<i>Project to Date</i>	4,986,389	5,044,574



With the establishment of the NICS, background checks were required for the first time in connection with the purchase of long guns. Experience has shown that there are significantly more NICS inquiries for long gun purchases than for handgun purchases, as illustrated below.



**Note:** NICS inquiries require information as to whether the purchase is for a long gun, handgun or both. NICS does not include information pertaining to the number, make, model or serial number of the firearm(s) being purchased.

**Immediate Proceeds – There is No Disqualifying Information in the NICS**

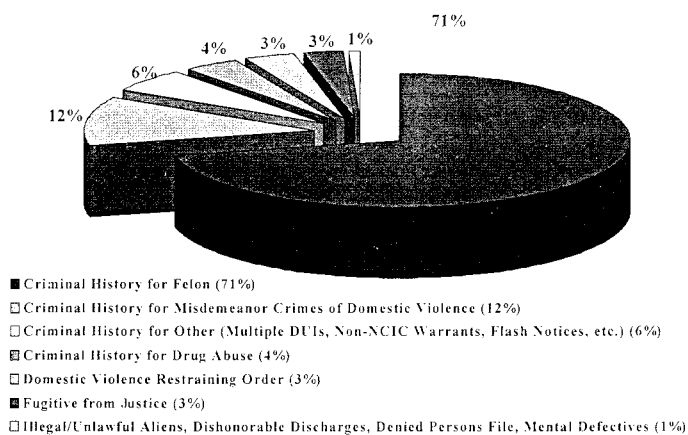
Of the total 5,044,574 NICS checks handled at the federal level, 4,890,399 were processed through the Call Center, where 3,494,311 (72 percent) resulted in an immediate proceed determination to the FFL.<sup>4</sup> This indicates that no records regarding the prospective buyer have been located by the NICS, and that the Brady Act does not prohibit transfer of the gun. It takes 30 seconds or less to provide an immediate proceed after information is entered into NICS.

<sup>4</sup>The remaining 154,175 NICS checks were processed through the FBI's Operations Center. These include overflow calls from the Call Center, processing of permit checks, and initial searches from FFLs in POC states that experience difficulty with their state system.

### Denials

Since November 30, 1998, the FBI and the state POCs each have performed approximately one-half of the NICS checks. Even though the FBI tracks the number of denials that it issues, the FBI does not routinely receive information about denials from the state POCs. In the first year of NICS operation, the FBI blocked 89,836 illegal gun sales, a denial rate of about two percent. Based on the information received from individual states, the FBI estimates that a comparable number of denials have been issued by the state POCs, for an estimated total of 179,000 denials under the permanent provisions of the Brady Act.<sup>5</sup> The FBI denials by prohibited category are illustrated as follows:

### FBI Percentage of Denials by Category



<sup>5</sup>The denial calculation basis now used by the NICS eliminates a software flaw that, in limited circumstances, previously counted an original denial and a subsequent entry in the same record as two separate denials.

As reflected by the preceding chart, the overwhelming majority of NICS denials by the FBI are for people with criminal convictions. These includes individuals who have been convicted of a felony, a misdemeanor crime of domestic violence, or drug crimes that establish illegal drug use or drug addiction. Detailed information on each denial transaction is referred to ATF for investigation.

#### Dispositions

In trying to prevent as many prohibited people with disqualifying information as possible from obtaining firearms, the FBI is continuing to work with the states on improving NICS' direct access to state final disposition information, and to assist states in improving the accuracy and completeness of the records that are available to the NICS system for background checks. In addition, FBI representatives have been attending state court clerk conferences to encourage states to expeditiously provide the needed disposition information.<sup>6</sup> Finally, because POC states have access to more records containing dispositions, the FBI is working to encourage more states to serve as POCs.

Additional time beyond the current three business days would improve the ability of NICS to obtain information on prohibited persons before a transfer of a firearm takes place.

#### Appeals

When an individual is denied a firearms transfer on the basis of a NICS check, that person may appeal the decision directly to the FBI. A critical measure of the accuracy of NICS background checks is the number of appeals that have been generated, and more importantly, the number of decisions that have been overturned on appeal. Regarding the 89,836 denials issued by the FBI from November 30, 1998 through December 31, 1999, the FBI has received 15,505 appeals, representing 17 percent of the denials. Denials have been sustained on 10,895 appeals while 2,913 appeals have resulted in the denial being overturned. Of those overturned upon appeal, approximately 46 percent were the result of information missing from the original record, such as an expungement or restoration of rights. As of December 31, 1999, 1,697 appeals were in various stages of the review process.

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<sup>6</sup>Some state court systems have expressed significant difficulties in responding to NICS requests for information. Some courts are seeking reimbursement from the NICS for the costs of locating disposition information. Unfortunately, this is not an expense for which the NICS can currently provide reimbursement.

## SUCCESS STORIES

As a result of the concerted efforts of NICS personnel and law enforcement officials at all levels of government, firearms transfers to non-prohibited purchasers have been accomplished with minimal inconvenience to both the FFL and purchaser. At the same time, numerous persons prohibited by law from possessing a firearm have been denied a firearm. The following are some examples of instances within different prohibited categories, where NICS has been successful in obtaining relevant information to deny a firearms transfer.

### The NICS Has Assisted in Capturing Wanted Persons

The NICS has prevented more than 2,400 fugitives from purchasing firearms. In addition, the FBI's NICS examiners have contacted local, state, and federal law enforcement agencies to provide information which often resulted in the fugitives' apprehension. The following recent examples illustrate the success of the NICS in helping capture fugitives:

- In December 1999, an individual in Texas who was attempting to redeem a firearm, was found to be under indictment and had an outstanding warrant for a felony charge of indecency with a child involving sexual contact. NICS notified the Wichita Fall Sheriff's Office which would extradite the individual to the Big Lake Sheriff's who had issued the warrant.
- On November 30, 1999, an individual tried to purchase a firearm in Corinth, Mississippi. NICS identified the individual was wanted for escaping from a prison in Georgia. In obtaining the individual's address from the FFL, the NICS notified the Georgia Department of Corrections which contacted Mississippi law enforcement and the individual was captured.
- On November 30, 1999, an individual with an active warrant for several offenses in Maryland attempted to purchase a firearm in Kentucky. The subject was apprehended and is awaiting extradition to Maryland.
- On November 30, 1999, through a NICS transaction it was found that an employee of an FFL in Missouri was attempting to purchase a firearm. The employee had an active warrant in Jefferson County, Missouri. Since the FFL was out of jurisdiction for the Jefferson County Sheriff's Office, the Joplin Police Department was notified and the subject was taken into custody.
- On November 26, 1999, an individual with two active warrants for a probation violation on charges of controlled substance, drug trafficking and unlawful use of a weapon attempted to purchase a firearm. Within ten minutes of NICS initiating the transaction, the Clarksburg, West Virginia, Police Department obtained the individual's address and apprehended the subject.

- On November 23, 1999, an individual with an active warrant for a probation violation attempted to purchase a firearm. The NICS obtained the subject's address from the FFL and notified the Umatilla County, Oregon, Sheriff's Office. The individual was apprehended in a sting operation at the FFL within an hour of the NICS processing the transaction.
- On November 20, 1999, Oklahoma law enforcement agency confirmed an active warrant on an individual attempting to purchase a firearm. Authorities immediately responded and the individual was apprehended within 20 minutes.
- On October 11, 1999, the NICS notified El Reno, Oklahoma, law enforcement of an individual with an active warrant. The individual was apprehended. The Oklahoma law enforcement agency who worked with the NICS in apprehending the individual informed the examiner that law enforcement officers have apprehended several individuals due to the NICS program.
- On August 21, 1999, an individual wanted for military desertion from the United States Navy was apprehended by the Minnesota State Police the same day.
- On August 21, 1999, an individual with an active warrant was attempting to purchase a firearm. Law enforcement confirmed the warrant. Within one hour NICS was advised that the subject was apprehended while trying to purchase a firearm at another FFL.
- On August 21, 1999, a fugitive from justice was apprehended within an hour of NICS contacting the Minnesota state police as a result of an attempted gun purchase. This individual had a valid warrant with the United States Navy and was later extradited to the United States Naval Authorities.
- An individual with an active warrant attempted to purchase a firearm. The originating agency of the warrant was notified. NICS notified the originating agency and later received a call from the arresting agency thanking the FBI for their efforts. The subject had been apprehended and was being extradited back to Florida.

**Mental Defectives Prevented from Purchasing a Firearm**

- As a result of a NICS transaction, an escapee from a mental health facility, involuntarily committed for suicidal attempts, was apprehended by local authorities.
- An individual who had been involuntarily committed to a state hospital on three occasions for threats against elected officials in the state of Washington was denied the purchase of a firearm.

**Individuals Who Had Controlled Substance Related Charges Prevented from Purchasing a Firearm**

- An individual wanted for felony marijuana and cocaine drug ring involvements in Texas was arrested.
- An individual from Louisiana with a drug conviction within the past year and on probation was denied from buying a firearm. Information on his attempt to purchase a firearm was turned over to his probation officer.

**Individuals With Criminal Domestic Violence History Prevented From Purchasing a Firearm**

- On December 31, 1999, an individual attempted to purchase a firearm in Mississippi and was discovered to be using a false name. In researching the case, the NICS discovered the individual was under a domestic violence indictment in California. NICS notified the District Attorney's Office.
- An individual in Florida with an outstanding warrant for domestic battery and controlled dangerous substance (cocaine) was arrested.

**Dishonorably Discharged Individuals Prevented From Purchasing a Firearm**

- An individual who was charged with rape/sodomy of a child and was dishonorably discharged from the military was denied a firearm.
- An individual in the military was convicted of stealing by force and violence and dishonorably discharged was prevented from purchasing a gun.

**Illegal Aliens Prevented From Purchasing a Firearm**

- An individual who had been arrested on three separate occasions by United States Immigration and Naturalization Service (USINS) in Laredo, Texas, was apprehended.

**USINS Deported Felons Prevented From Purchasing Firearms**

- An arrest was made of a deportable individual by the Portland, Oregon, USINS and returned to Mexico.

**Other Individuals Prevented from Purchasing a Firearm**

- On July 16, 1999, NICS received a call from a department store in Jacksonville, Texas, regarding some juveniles looking to purchase explosive devices. The local authorities were notified and the youths were questioned. NICS received thanks for helping to prevent a potentially dangerous situation.
- An individual in Alaska was using a deceased brother's identification to attempt to purchase a firearm. The individual was apprehended for various charges and questioned regarding the death of his brother.

VFTP Statistics

A. FIREARMS TRANSACTIONS TOTAL VOLUME

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Jan		4,097	4,949	12,156	16,051	18,418	14,377	12,750	13,347	13,328	13,569
Feb		4,722	5,063	13,364	15,835	16,011	15,756	13,608	13,162	13,112	15,932
Mar		5,961	5,252	12,931	16,372	18,424	14,834	16,904	14,897	14,064	16,788
Apr		4,856	5,009	11,273	13,319	15,539	14,105	12,473	12,148	11,443	13,651
May		4,400	4,600	11,361	11,922	16,882	11,580	11,198	11,767	10,898	12,970
June		4,451	4,735	10,640	11,820	13,999	11,480	10,622	10,346	9,705	11,881
July		4,382	10,004	10,968	11,844	14,577	12,242	11,692	10,201	10,857	13,015
Aug		6,443	12,040	13,193	13,726	18,118	14,444	14,033	13,747	12,480	14,602
Sept		5,157	15,071	17,518	18,402	21,876	17,556	14,527	15,521	13,907	17,331
Oct		4,934	17,019	22,297	22,477	21,243	18,647	17,827	18,816	18,006	20,272
Nov	4,435	4,814	21,815	25,789	28,514	24,778	22,775	21,778	21,583	20,486	22,650
Dec	6,093	5,281	23,311	30,070	32,598	28,880	26,873	24,963	24,962	23,443	28,934
	10,528	60,018	128,358	191,540	212,880	229,745	182,779	182,384	180,527	171,721	201,686

1998-1999 2000

Jan	123,651	13,007									
Feb	124,555	14,713									
Mar	136,438	16,095									
Apr	113,816	13,091									
May	107,568										
June	99,179										
July	109,787										
Aug	132,826										
Sept	156,866										
Oct	181,540										
Nov	219,397										
Dec	256,438										
	1,761,076	56,906									1,817,982

B. Gun Show Activity

	1996	1999	2000					
Jan		1,484	1,459					
Feb		1,680	1,074					
Mar		1,480	2,277					
Apr		652	897					
May		1,569						
June		802						
July		1,022						
Aug		1,362						
Sept		1,329	1,658					
Oct		1,445	1,564					
Nov		1,383	1,765					
Dec		931	1,326					
	5,088	15,664	5,707					

C. WANTED PERSONS IDENTIFIED/ APPREHENDED AND ARRESTS

	PRIOR	1994	1995	1996	1997	1998	1999	2000	TO DATE
Wanted Persons Identified	342	181	127	128	146	167	147	51	1,289
Wanted Persons Arrested	139	83	55	61	78	97	84	34	631
Confirmed Arrests Related to the Sale or Attempt to Purchase Firearms	764	608	528	482	560	608	579	248	4,375



**VFTP Statistics**

## D. FIREARMS BY CATEGORY

	1993/S	1994/S	1995/S	1996/S	1997/S	1998/S	1998*
<i>Pistols</i>	35,293	73,652	64,936	61,716	59,097	56,308	464
<i>Revolvers</i>	14,139	26,915	26,210	25,440	23,550	21,045	214
<i>Rifles</i>	52,262	91,757	69,975	64,264	66,731	61,614	510
<i>Shotguns</i>	29,906	44,345	39,469	38,560	40,434	40,273	396
<b>Total</b>	<b>131,600</b>	<b>236,669</b>	<b>200,590</b>	<b>189,980</b>	<b>189,812</b>	<b>179,240</b>	<b>3,582</b>

\* Includes redemption of pawned firearms December 1 - 31<sup>st</sup>.

	1993-1998	1999/S	1999/R	1999/P**	2000/S	2000/R	2000/P	
<i>Pistols</i>	351,466	62,098	5,081	4	19,964	1,607	7	440,227
<i>Revolvers</i>	137,513	22,565	2,571	2	7,629	783	4	171,067
<i>Rifles</i>	407,113	66,238	7,530	12	17,347	2,187	6	500,433
<i>Shotguns</i>	233,383	43,924	5,109	10	10,334	1,458	9	294,227
<b>Total</b>	<b>1,129,475</b>	<b>194,825</b>	<b>20,291</b>	<b>28</b>	<b>55,274</b>	<b>6,035</b>	<b>26</b>	<b>1,405,954</b>

S = Sale Beginning July 1, 1993

R = Redemption of Pawned Firearm Beginning December 1, 1998

P = Pre-pawn Transaction Beginning September 1, 1999

**VFTP Statistics**

**E. DENIED FIREARMS TRANSACTIONS**

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Jan		68	79	159	89	135	119	114	179	174	221
Feb		48	80	135	97	157	99	139	139	217	273
Mar		80	97	116	122	184	164	143	194	238	358
Apr		81	76	102	104	142	105	121	161	189	208
May		176	77	88	89	134	100	113	149	159	205
June		86	78	95	91	115	98	91	155	144	168
July		94	107	80	106	99	91	106	136	159	186
Aug		82	152	129	128	142	112	125	172	176	202
Sept		91	186	177	177	139	135	160	204	175	202
Oct		76	265	184	236	179	185	208	290	310	284
Nov	52	86	205	236	270	176	212	288	304	310	357
Dec	57	67	183	166	230	154	175	288	261	275	323
	109	1,035	1,585	1,667	1,739	1,756	1,595	1,896	2,364	2,526	2,987

	1989-1999	2000	2001	2002	2003	2004	2005	GRAND TOTAL
Jan	1,337	200						
Feb	1,384	250						
Mar	1,596	224						
Apr	1,289	176						
May	1,290							
June	1,121							
July	1,164							
Aug	1,420							
Sept	1,646							
Oct	2,217							
Nov	2,496							
Dec	2,199							
	19,259	850						20,109

## VFTP Statistics

## F. REASONS FOR DENIAL

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Pending Felony Charge/Indictment		302	370	309	270	246	271	274	254	278	345
Felony Conviction*	106	693	1,120	1,271	1,148	947	790	939	889	768	835
Felony Warrant of Arrest**	1	40	83	72	47	78	40	53	68	87	72
Illegal Alien**			4	7	4	4	8	8	2	8	9
Mental Health**			5	3	5	5	29	63	71	82	67
Military Dishonorable Discharge**			3	5	1	1	0	1	0	2	0
Attempt to Exceed Handgun Limit***					254	463	434	346	452	592	669
Protective/Restraining Order****						9	47	89	68	83	112
Attempt - Handgun to Non-Resident						1	0	0	0	0	0
Purchaser ID Requirements Not Met						1	2	4	5	39	41
Invalid Purchase Certificate****							1	1	0	1	1
VA Misc. Drug Prohibitor*****							3	17	11	8	15
Misc. Domestic Violence*****								121	544	530	594
Misc. Federal Prohibitor*****										19	40
Federal Drug User*****										29	187
	109	1,035	1,585	1,567	1,739	1,756	1,595	1,896	2,364	2,526	2,987

	1989-1999	2000	Total
Pending Felony Charge/Indictment	2,919	96	3,015
Felony Conviction	9,508	224	9,732
Felony Warrant of Arrest	641	20	661
Illegal Alien	54	3	57
Mental Health	331	22	353
Military Dishonorable Discharge	13	0	13
Attempt to Exceed Handgun Limit	3,190	223	3,413
Protective/Restraining Order	368	25	413
Attempt - Handgun to Non-Resident	1	0	1
Purchaser ID Requirements Not Met	92	3	95
Invalid Purchase Certificate	4	0	4
Virginia Misdemeanor Drug Conviction Prohibitor	54	7	61
Misdemeanor Crime of Domestic Violence	1,789	160	1,949
Misdemeanor Federal Prohibitor	59	11	70
Federal Drug User	216	56	272
	19,259	850	20,109

\* Includes felony convictions in Guam, France, England, Spain.

\*\* Information not maintained prior to 1991.

\*\*\* 1993 legislative amendment, effective July 1, 1993.

\*\*\*\* 1994 legislative amendment, effective July 1, 1994.

\*\*\*\*\* 1995 legislative amendment, effective July 1, 1995.

\*\*\*\*\* Separate statistics maintained as of April 1, 1998 (Crime punishable by a term exceeding 1 year.)

\*\*\*\*\* Revisions of Code of Federal Regulations, Meaning of Terms, statistics as of October 1, 1998.

*VFTP Statistics*

## G. INITIAL NON-APPROVED TRANSACTIONS

	1995	1996	1997	1998	1999	2000
Jan		1915	2238	2591	3684	3689
Feb		2154	2247	2639	4281	4449
Mar		2673	2554	2799	4385	4609
Apr		1933	2264	2258	3453	3675
May		1755	2234	2229	3280	
June		1620	1981	2169	2963	
July		1913	1843	2244	3604	
Aug		2142	2617	2448	3849	
Sept		2373	2886	2753	4938	
Oct	2742	2944	3734	3553	5723	
Nov	3534	3622	4046	4361	6559	
Dec	3684	3721	4309	6031	7879	
	9,960	28,765	32,953	36,075	54,578	16,402

Senator DOLE. I have been asked, if there is no objection, that I offer a statement for the record of Congressman Bill McCollum, who you worked with, I worked with, others worked with in finally getting this done.

The CHAIRMAN. Without objection, we will put that in the record. [The prepared statement of Mr. McCollum follows:]

PREPARED STATEMENT OF HON. BILL MCCOLLUM, A U.S. REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman and members of the Committee:

Thank you for the opportunity to testify this morning on the subject of the National Instant Check System. The NICS system is one of the clearest examples in recent years of the Federal Government working smarter—not just harder—to fight crime and make America's streets and schools safer. It is also a great example of how federal resources and know-how can be put to use to help states fight crime and improve public safety. An effective Federal-State partnership, which continues to recognize the primary role played by the States in crime-fighting, is essential to making good on our commitment to combat violent crime and drugs.

The bottom line is clear: America is a safer place as a result of the NICS system. But I must hasten to add: It can be made safer yet by upgrading the NICS system and by actually prosecuting those who are caught trying to buy a firearm illegally. A convict or other prohibited purchaser who has been caught by the NICS system seeking to purchase a firearm is a tragedy waiting to happen. And if we prosecuted these would-be purchasers for their illegal attempt to buy a gun, I am confident we would prevent countless crimes and untold heartache. Even as we can all agree that preventing criminals from obtaining firearms is the right thing to do, so we can all agree that prosecuting those who illegally attempt to purchase a firearm is the right thing to do.

I want to associate myself with the testimony of my good friend, Senator Dole, with whom I worked to establish the NICS system. And in particular, I want to enthusiastically endorse his proposals for improving the system. The NICS system should operate 24 hours a day; It must be backed up in case of a breakdown in the primary operating system; more resources must be spent directly on making state records immediately accessible to the NICS system; And we must ensure that all of the States that perform their own background checks are linked to each other and the NICS system. Finally, I believe we must make the investment of resources and know-how necessary to make the instant check system truly instant. This would advance both the cause of public safety and law-abiding citizens.

Thank you.

The CHAIRMAN. Thank you, Senator Dole, for an excellent statement.

Senator Durbin, we turn to you.

**STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR  
FROM THE STATE OF ILLINOIS**

Senator DURBIN. Thank you very much, Mr. Chairman and Senator Schumer. First, let me tell you what an honor it is to share the table with Senator Dole. Just a few weeks ago, we shared another table. We had lunch in the Senate dining room and our guest was a former Senator named George McGovern. We turned every head in the restaurant when we walked in. Senators Dole, McGovern and I had gathered to talk about an unrelated issue but one we consider of equal importance. I am glad that Senator Dole continues his interest in policy and I am happy to be working with him and joining you today.

Mr. Chairman, as you know, the 1994 Brady Handgun Violence Prevention Act established the NICS system and required Federal firearm licensees to conduct a background check on the purchaser of any firearm. NICS is designed to respond within 30 seconds in most background checks. Depending on the willingness of their

State governments to act as a liaison for NICS, Federal firearms licensees will contact either the FBI or a designated State point of contact, POC, to initiate background checks on individuals purchasing firearms. My home State of Illinois is a POC for NICS.

Just this past March, the FBI released a report of the NICS operation. GAO also released two NICS reports, one in February and one in April of this year. Senator Schumer and I requested the latter of these studies. My testimony will be based in large part on these documents.

As Senator Schumer said, approximately 72 percent of the 4.4 million background checks conducted by the FBI in the first year of operation issued an instant approval within 30 seconds—72 percent within 30 seconds. NICS issued a delayed response for the remaining 28 percent and the FBI resolved 80 percent of those, providing a definitive proceed or deny response back to the dealer within 2 hours. This means 95 percent of all gun owners have their checks resolved within 2 hours.

Mr. Chairman, the FBI also found that those prospective buyers whose check cannot be resolved in 24 hours are 20 times more likely to be prohibited persons than the average gun buyer. I think that is a point worth repeating. Once we have gone through the computer check, those who are checked very quickly have approval almost immediately but those who are not checked very quickly turn out to be 20 times more likely to be prohibited from a sale. So if the system slows down, there may be good reason.

With regard to system availability, GAO found the average availability for the first year of NICS was 96.6 percent. This means that NICS was unavailable only 3.4 percent of its scheduled hours. Moreover, 70 percent of the NICS unavailability in the first year was due to the failure of a connected system, such as the Interstate Identification Index, or IAFIS, not the failure of NICS.

In its first 13 months of operation, NICS has been a highly effective system for keeping guns out of the hands of criminals and kids. Having processed ten million inquiries during this time, NICS has ensured the timely transfer of firearms to law-abiding citizens while denying transfers to more than 179,000 felons, fugitives, and other prohibited persons. In addition, Mr. Chairman, it should be known that NICS is accurate. Only 3 percent of the FBI denials of firearm purchases were overturned on appeal during the first year.

Mr. Chairman, NICS is a very important system that provides valuable law enforcement information. However, more comprehensive criminal history records are currently available at State and local levels instead of the Federal level, and many States have elected to serve as POC's to access NICS. As I mentioned earlier, my home State of Illinois is one of the 15 States that have elected to serve as POC to access NICS. Many Federal firearms licensees contact Illinois rather than the FBI because Illinois' POC background checks review more records of people in prohibited categories, such as people who have been involuntarily committed to a mental institution or those under a domestic violence restraining order.

Illinois spends about \$600,000 a year as a State for its POC system to run an effective Brady background check. Illinois pays the full cost of the mandated Brady background checks while other

States pay nothing and rely on the FBI to conduct them. Congress needs to remedy this inequity.

Mr. Chairman, I will be introducing legislation, along with my colleague and your colleague on the Senate Judiciary Committee, Senator Pat Leahy, which will reimburse States for the cost of Brady handgun background checks. This proposed legislation is only fair, and I thank Senator Leahy for his leadership on this issue.

Mr. Chairman, I know that in light of the May 11 failure of the complex interconnected database that resulted in a NICS service outage there is a question as to the effectiveness and availability of background checks. However, it should be noted that although the service was down 66 hours, the system did not experience any problems before then. Nevertheless, the FBI Criminal Justice Information Services continue to work with software providers to identify potential database management problems and to develop procedures to prevent future occurrences. They are committed to fulfilling Congressional expectations for access to accurate and timely CJIS information at lower cost and greater convenience.

Let me close with two points, Mr. Chairman, that are related to this discussion. First, I happen to believe that a waiting period is a good idea. I think a 3-day waiting period is not unreasonable. Not only does it give local law enforcement officials the opportunity to look at mental health histories and records of domestic abuse and decide whether, in fact, the sale is in the best interest of peace and law and order in the community, it also provides a cooling off period for people who very emotionally go forward to buy a handgun to use it for the wrong reasons.

Second, I hope that when you consider the categories of people to be prohibited from purchase, that we will consider a very obvious category. Senator Boxer offered an amendment on the floor which said that if a person shows up to buy a gun and is intoxicated, he will be refused. That should be a category included. That should not even be debated. If a person is intoxicated and tries to buy a gun, a dealer should not sell it to him. The Senator's amendment was adopted by a voice vote and quickly scuttled as soon as it left the Senate. I think it is a sensible thing to do, to make sure that we do not put guns in the hands of people who will misuse them either because of their intentions or because of their mental state or because they are intoxicated.

Mr. Chairman, I thank you for the opportunity for submitting my testimony today.

The CHAIRMAN. Thank you, Senator Durbin. I might mention that Utah is also a point of contact for the NICS system. We will be hearing later from Captain Smith about Utah's efforts. Senator Leahy and I are exploring ways we can encourage more States to act as point of contact States, and that is one of the ways we might be able to help solve this. You both have given excellent statements here today.

Senator DOLE. Could I just make one additional comment?

The CHAIRMAN. Sure.

Senator DOLE. I wanted to indicate for the record that the staff member who helped me when I was on the Judiciary Committee, Pete Veldi, volunteered to help me some with this statement and

some of the follow-up material. Pete's father was a member of Congress, chairman of the House Un-American Activities Committee a long time ago and he probably knows more about gun legislation, was here and worked for Senator Hruska, who was a member of this committee, and was present when they passed the 1968 Act and has been very active ever since. I want the record to reflect that.

Also, another former staffer who I just happened to run into this morning, Randy Schuneman, is another gun expert and Randy is here, I guess, with another witness.

The CHAIRMAN. Pete and Randy, we are happy to have both of you here, as well. Those are great accolades by our former Majority Leader. We are just honored to have you here, Bob, and certainly you, too, as well, Senator Durbin. We miss you on this committee. I think both of you have busy schedules, and unless there are any questions—

Senator SCHUMER. I just have one, Mr. Chairman. I again want to thank both Senator Dole and Senator Durbin for being here and for their work on this issue. Senator Durbin and I have worked together, as we did on the GAO report, on many gun issues, and I will never forget those days, Senator Dole, when the Brady bill came up and the crime bill. We had different views then, but you were a totally on the facts, on the merits person, which I very much appreciate.

I just had one question that your testimony almost begged me to ask, so I will, and that is, what is your opinion on extending the Brady law, or now the InstaCheck to gun shows, closing the gun show loophole?

Senator DOLE. I think there is a compromise floating around here somewhere, and we tried to point out, if you get all but 2 percent, and that can be accomplished, and then you have the GAO report that said they are 20 times more likely to commit a crime, even of the larger percentage, I just believe there are enough people like Senator Hatch, yourself, and others who can resolve this issue this year.

I mean, there are a lot of politics involved, believe me. I did not receive the NRA endorsement in 1996 and a lot of it went back to what happened in 1993 and later on assault weapons, though I voted for their position. But they had a person at the NRA at the time who took a dim view of me. She is now gone.

Senator SCHUMER. She took an even dimmer view of me, Senator, I remember. Do not worry.

Senator DOLE. I am not here representing anybody's position. I am just here trying to suggest that we are off to a good start, improvements ought to be made, and there has got to be a way to figure out this gun show thing.

Senator SCHUMER. Thank you. Thank you, Senator.

The CHAIRMAN. I might just say, one of the reasons that we have such a difference over the gun show issue in both houses is due to the delays and indifferences with NICS. I, naturally, like you, Senator Dole, Senator Durbin, and Senator Schumer, I would prefer to work these problems out. It is much more difficult than I thought, but—



Senator DOLE. Of course, the bottom line is to get more money in the NICS program—

The CHAIRMAN. Right.

Senator DOLE [continuing]. Get these records and help the States, as Senator Durbin has pointed out. It is never going to be perfect. Somebody is going to slip through. But, boy, it is closing pretty fast.

The CHAIRMAN. That is a very good suggestion. We want to thank both of you for being here and it is great to see you again, Senator Dole, here again in the Judiciary Committee. We appreciate you, and we appreciate you, Senator Durbin. Thank you. Thank you both for being here.

I would like to call forward our second panel of witnesses and ask them to take their seats at the table. Our first witness is David Loesch, the Assistant Director in Charge of Criminal Justice Information in Clarksburg, WV.

We are also pleased to have with us Captain Stuart Smith, Director of the Utah Bureau of Criminal Identification and Utah's point of contact with NICS.

Our next witness after that is Max Schlueter, Director of the Vermont Criminal Information Center and Vermont's point of contact with NICS.

And we are finally pleased to have with us Robin Ball, the owner of an indoor shooting range and a retail facility in Spokane, WA.

Good morning to each of you and welcome to our hearing on improving the National Instant Criminal Background Check System. We are grateful to have you all here. We will start with you, Mr. Loesch, first.

**PANEL CONSISTING OF DAVID R. LOESCH, ASSISTANT DIRECTOR IN CHARGE, CRIMINAL JUSTICE INFORMATION SERVICES DIVISION, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE, CLARKSBURG, WV; STUART SMITH, BUREAU CHIEF, UTAH DEPARTMENT OF PUBLIC SAFETY, BUREAU OF CRIMINAL IDENTIFICATION, SALT LAKE CITY, UT; ROBIN BALL, OWNER, SHARP SHOOTING INDOOR RANGE AND GUN SHOP, SPOKANE, WA; AND MAX SCHLUETER, DIRECTOR, VERMONT CRIMINAL INFORMATION CENTER, VERMONT DEPARTMENT OF PUBLIC SAFETY, WATERBURY, VT**

#### **STATEMENT OF DAVID R. LOESCH**

Mr. LOESCH. Thank you, Mr. Chairman. Good morning to you and the members of the committee. I would like to thank you for the opportunity to speak here before this committee today.

The two Senators that spoke before me and Senator Schumer, I agree with a lot of what they had to say. I have got an opening statement which has been given to you already and I would just ask that that be accepted.

The CHAIRMAN. We will put all complete statements in the record, as though fully delivered.

Mr. LOESCH. I would like to mention, first of all, that this has been a cooperative effort of an awful lot of people, both within ATF, the States, the locals, our gun dealers, the various associations. I

think that, like Senator Schumer had mentioned, I was amazed that this came out the way it did and as successful as it is, and it is 30 seconds for 72 percent, or 71 percent today, of those, and 95 percent of those checks are done within 2 hours. We can do better. We have got some things underway that will assist us in getting down to probably in the neighborhood of 80 percent on these Instant Checks on the first pass and we are piling some things in the division right now that would help do that.

I would like to at least explain a little bit. I have brought some charts up here that would help people, I think, get a good picture of this. The NICS system itself is a very complex system which operates really off of three different databases, the three databases being the III, which Senator Dole had mentioned, and today we have about 41 States that are part of that III process right now. That has got 36 million criminal histories in it. That is the piece that we had some problem with here in May that went down, and it was corruption of the database and we are working through that. We have made some changes here recently, some short-term changes which we believe will assist us in keeping that problem from happening again. We are not positive that it will, but we are pretty sure it will as we work through the root cause of what that has to do with it.

All of these databases are backed up, they are redundant. I mean, they do have recovery. We do not lose any information. I want everybody to be clear on that, that we do have a way—we back all these up every evening with tapes, all of these systems, so we do have a way of recovering, although we would prefer that it not take us 66 hours like that first time in May on that Mother's Day weekend.

Our goal is obviously to have 100 percent availability. We are not going to rest until we get 100 percent availability. For the most part—

The CHAIRMAN. How many States are fully complying with NICS now?

Mr. LOESCH. Right now, we have 15 States act as full points of contact and we have 11 States that are partial points of contact. In other words, they may do the handguns but we would do the rifles or shotguns for them. We are doing 38 States or territories within the FBI, and as you heard from other people that testified earlier, we are doing about 50 percent of that 13 million checks that have been done so far and the States are doing about 50 percent.

The CHAIRMAN. What about the other 12 States? What is happening there?

Mr. LOESCH. They are all included in those numbers.

The CHAIRMAN. All 50 States are—

Mr. LOESCH. All 50 are included within there. You can see the availability of the system was 96 percent, and that is good, but really, I mean, in systems like this, you need to be 99.5 or 99.6 percent available, like the NCIC 2000 is.

The NICS, I had one other chart that was talking about the three systems, but I will just talk about them. The three systems are III. That is the biggest database. That is 95 percent of your entire NICS check is in that particular database.

Then we have what is called the NICS Index, and that has about a million records and that is one we built ourselves and primarily what is put into that system are Federal agencies, primarily—INS, the Department of Veterans Affairs, the military or the Defense Department.

And then we have the NCIC 2000, which are a bunch of hot files that are used by every single law enforcement officer throughout the country day in and day out. It is very important that those keep up, and those were kept up even when we had the III outage, and that is where you have your wanted people, over 500,000 wanted persons, over 300,000 protection orders, those types of things.

So they are all—each of these was developed at a different time for really a different purpose and what we tried to do is meld all these things together now, and we are learning. I mean, when we first brought NICS up, we were doing great because it was only just NICS, the NICS database. But when we brought IAFIS, the Integrated Automated Fingerprint System, which most of you are very well aware of, on the fingerprint system, that it does the checking, which was that \$640 million project, that has three segments, and III, or the system that went down recently, they are a part of that and we are learning as we go, basically, to make this better, and we are not going to rest.

We have got a lot of things set up here to make this better and more redundant and I think Senator Dole had mentioned the possibility of a hot back-up. We are not even sure a hot back-up of III, and he mentioned \$7 million for that, that that would have been the answer in this case. If it was a hot back-up, the same problem might have exhibited itself in that database in the hot back-up.

One of the things that has been causing some delays is a lot of the III transactions, which is the biggest database, they have to process through our ITN, which is the Identification Tasking and Network System, the traffic cop with 300 bundles of software in IAFIS. We are looking now, whenever IAFIS goes down or that ITN system goes down, the NICS goes down because you do not have that huge database that you need to check. So what we are trying to do now is have a pathway directly into that III, and I think that is going to really go a long way in giving us even quicker responses.

We have over 60 software fixes that we are working on this year to make these systems more reliable and more redundant and better, along with some very large ones, including giving the dealers themselves access, direct access. Instead of using a telephone call center, we would actually have the dealer would be putting the information in and getting his answer right back, and I think that that is going to go a long way in assisting timeliness of these checks.

I would be remiss if I did not say something about the people in the CJIS division and the division I am in out there that have helped make this the success that it is, the over 500 people that work really day and night and they take their job very seriously, let me assure you of that. Our job is law enforcement information services, and it is keeping the public safe and our police officers safe. So when these systems go down, our first priority is to bring the law enforcement services up that the cop on the beat needs to

do his job, and so it is very important that these things be up and running all the time and we will not rest until that is done.

The items that I believe that would go a long way in assisting us would be the same items that the GAO. We support all of those items, the continued funding for NCHIP funding for the States to work on their records disposition, definitely some type of financial assistance to our State partners there that are the points of contact that continue to do this business for us, and rest assured, they do have the more complete records. They have more complete records and they have more access to their own data. They understand their firearms rules and they are probably better capable, really, of getting the dispositions.

Then the other thing would be something to do with that last 5 percent. You know, we have that 5 percent that we are not sure because we cannot find a disposition within that three business days. I would mention that in 18 months, we have had 180,000 what we would call a default proceed, 180,000 cases where we do not know what happened to them. In other words, somebody came in, we got a hit that there was a disqualifying arrest, but we could not find the disposition. We look for 2 weeks actively even after we get these things.

We continue to work with the State and the gun dealers and tell them, but we have to tell the gun dealer after that three business days, you can proceed if you want to. The law allows you to proceed if you want to. Some gun dealers decide not to do that. In other cases, they may sell the weapon. We had to go out and collect 6,000 weapons back in 18 months. That is just the ones that the FBI knows about that we do those checks out of the six million checks we have done. That 180,000, I have no idea what happened to those. We do not know because a lot of cases, the information is already deleted out of the file. We do not know whether they got sold or not.

I would just thank you for the time to be here. I am certainly available for questions, and I would invite every member of this committee and your staffs and anybody in the audience here that would like to visit us. This is no secret, I mean, to come out and talk to our employees and see how this thing operates. It is a tremendous process. I think it is working. I think we can do better and we are going to continue. You have our promise that we will continue to do that for you. Thank you very much.

The CHAIRMAN. We appreciate your testimony and appreciate your efforts and your dedication to them because it is a good system if we can keep it up and running.

I think one of the biggest problems I have in trying to bring about a final resolution of this, because it is all caught up in politics and I am not about to let people get together and just rave on and on and make this even tougher to do. But one of the problems is, there is a lot of distrust, whatever administration, but certainly this one right now, that if we had, say, a 3-day delay in the juvenile justice bill, that ultimately—for only 5 percent of the people—that ultimately that would be 15, 20, 25, 30 percent of the people, that there would be politicians making those decisions to just make it tougher and tougher to buy a firearm, and that is one of the problems that we have. Do you see that as a problem?

Mr. LOESCH. I really do not, not within the FBI or anybody—  
The CHAIRMAN. Nobody there at the FBI would be so gun control oriented that they would skew the records and delay this or drag it out?

Mr. LOESCH. Absolutely not. I have been in the government 30-some-odd years with military time and everybody are devoted civil servants. I mean, we are there to serve. We are doing this because someone made a law and the Attorney General put that in our camp and we continue to strive to do—the FBI continues to be exceptional at everything they do.

The CHAIRMAN. Thank you, Mr. Loesch.  
[The prepared statement of Mr. Loesch follows:]

#### PREPARED STATEMENT OF DAVID R. LOESCH

Good afternoon Mr. Chairman and distinguished members of the committee. I am David Loesch, Assistant Director in charge of the FBI's Criminal Justice Information Services Division, otherwise known as CJIS, located in Clarksburg, West Virginia. Thank you for the opportunity to speak to you today about the national instant criminal background check system, or NICS, which the FBI operates under the 1993 Brady Handgun Violence Protection Act.

The Brady Act requires background checks on firearm purchasers before a federally licensed gun dealer can transfer a gun. Brady Act background checks replaced what used to be an honor system under the Gun Control Act, where gun dealers generally accepted at face value buyers' representations that they were not prohibited from possessing a firearm. For the first five years after the enactment of the Brady Act, the background checks were limited to handgun transfers and were performed by the chief law enforcement officer where the gun dealer was located. Beginning on November 30, 1998, dealers were required to contact the NICS for Brady background checks.

#### WHAT IS THE NICS?

The NICS is a system established by the attorney general to provide information to gun dealers on whether a transfer to a non-licensee of any firearm, including handguns and long guns, would violate Federal or State law. At the attorney general's direction, the FBI developed the NICS through a cooperative effort with the ATF and State and local law enforcement agencies. The NICS is a computerized background check system designed to respond within 30 seconds on most background check inquiries.

The system was designed so that States can agree to serve as a point of contact, or POC, for the NICS. A POC State designates a State or local law enforcement agency to receive and process NICS checks for the dealers in that State. There are 15 States that serve as POCs for all firearm transactions. Some States serve as a POC for handguns only. We refer to these States as partial-POCs; currently, there are 11 States that serve as partial POCs. In States that decline to serve as a POC for the system, or for long gun transfers in States that are partial POCs, dealers request a NICS check by calling a toll-free number and providing information identifying the purchaser to a call center under contract with the FBI. The call center then forwards the information electronically to the FBI NICS operation center, operated by CJIS in Clarksburg, West Virginia, for the processing of the background check.

As of June 5, 2000, After 18 months of operation, a total of 13,364,378 background check requests have been processed through the NICS. Of these, 6,748,795 have been processed through the POC States, and 6,615,583 have been processed through the NICS operations center. We are extremely grateful to our State POC partners, not only because they carry approximately half of the nationwide workload in processing NICS checks, but also because they enhance the thoroughness of NICS checks by checking otherwise unavailable State databases and by bringing to the checks expertise in their own State laws regarding firearms eligibility.

#### HOW A NICS CHECK WORKS

A NICS check begins after a prospective purchaser provides photo identification to the gun dealer and fills out an ATF firearms transaction form, known as a form 4473. The dealer then calls the appropriate contact point, either the State POC or

the call center that processes the calls for the FBI's NICS operations center, and provides certain identifying information from the 4473 that is used to search the database for possible matching records. The identifying information includes name, date of birth, sex, race, and State of residence, and any other identifying information, such as social security number, that may have been voluntarily provided by the prospective purchaser. This identifying information is used by the NICS to search three FBI-managed information systems for matching records. *See chart, "databases searched by the NICS."* The three databases contain over 37 million records and include:

(1) The National Crime Information Center (NCIC) 2000 which contains over 500,000 records on wanted persons and nearly 250,000 subjects of protection/restraining orders;

(2) The interstate identification index, or III, which contains approximately 36 million active criminal history records; and

(3) The NICS index, which contains over 1 million records of other persons prohibited from possessing a firearm, including individuals involuntarily committed to a mental institution or adjudicated mentally defective, illegal aliens, and individual dishonorably discharged from the Armed Forces. In POC States, State databases, in addition to the FBI databases, are also checked for disqualifying information. These State databases include the State's own criminal history records and, in some cases, State records on persons who have been involuntarily committed to a mental institution or are under a domestic violence restraining order.

If the database check does not yield a record that potentially matches the identifying information provided to the system by the dealer, then the call center responds immediately advising the dealer that the transaction may "proceed," meaning that no information was discovered demonstrating that the person is prohibited from possessing a firearm. In addition to the proceed response, the NICS provides the dealer with a unique number associated with the check, known as a NICS transaction number (NTN), which the dealer is required to record on the 4473. It takes 30 seconds or less to provide an immediate proceed after information is entered into the NICS. About 71 percent of all prospective gun purchasers are authorized by the NICS to make their purchase immediately. *See Chart, "NICS Operation Transaction Breakdown."*

If the check hits on a record that could match the individual, then the call center advises the dealer that the transaction is "delayed." The call center provides the dealer with an NTN. The transaction goes into the NICS "delay queue," and is automatically referred to a NICS examiner. NICS examiners are specially-trained FBI personnel, who, unlike the call center personnel, are allowed to access criminal history and other sensitive information. The NICS examiner will take the transaction out of the delay queue, and review the record to determine whether it is complete, whether it matches the prospective buyer, and whether it demonstrates that the person is disqualified from possessing a gun. If the record demonstrates that the person is disqualified from possessing a gun, the NICS examiner will advise the dealer that the transaction is "denied." If the record is incomplete, or inconclusive, then the examiner attempts to acquire complete information to make the determination whether the prospective gun buyer is legally allowed to acquire a firearm.

NICS provides a definitive response of either "proceed" or "denied" to 95 percent of all requests within 2 hours of receipt of the information to search the NICS. Only 5 percent of prospective purchasers have to wait more than 2 hours for a NICS response, and these persons are given their response as soon as the NICS obtains the necessary information. A purchaser whose NICS check takes more than 24 hours to complete is almost 20 times more likely to be a prohibited person than the average gun buyer.

#### THE RECORD OF NICS OPERATIONS

In the first 18 months of operation of the NICS, the NIC has proven to be a highly effective system, processing over 13 million inquiries. Most importantly, the FBI denied approximately 116,182 felons, fugitives, domestic violence abusers, and other prohibited persons from buying guns from licensed dealers. This equates to a denial rate of approximately 2 percent. Based on the information received from individual States and the Bureau of Justice Statistics, the FBI estimates that a total of approximately 290,000 denials have been made by the FBI and POC States under the permanent provisions of the Brady Act. *See Chart, "Denials by Category."*

In addition to fulfilling its primary mission of stopping illegal gun purchase before they occur, NICS also assists law enforcement in apprehending fugitives. I would like to share with you two recent examples, from the 3,223 fugitives denied this far, of how NICS positively affects our nation's public safety in this area.

On April 5, 2000, A NICS examiner pull a transaction out of the Texas delay queue. The examiner denied the transaction due to a felony conviction, and also questioned why the subject, who had a felony conviction in New Jersey, was attempting to purchase a handgun in Texas. The examiner checked the record of the subject and found that the individual was still on probation in New Jersey for a 1999 Arrest. The examiner contacted the Superior Court in New Jersey to inform them about the subject's attempt to purchase a firearm in Texas. On the next day, the examiner received a call from the Superior Court stating that a warrant message had been sent to the authorities in Texas to have the subject apprehended for violating parole. The examiner received a call from the Texas authorities indicating that the subject had been apprehended. The subject informed the police that his intentions were to kill his father in Texas and then go back to New Jersey and kill his mother and stepmother. The officer thanked the examiner for calling to check on the probation violation.

On April 13, 2000, an examiner identified a warrant for a prospective firearm purchaser in North Carolina and contacted the issuing agency. The agency said that the individual trying to purchase the gun was the subject of a murder investigation for shooting a family member. The individual had previously assaulted a law enforcement officer, and was considered to be armed and dangerous. The examiner provided the address of the gun dealer, as well as the address of the subject, to the authorities. Officers were dispatched and arrested the felon. The captain thanked the examiner for her prompt attention to the matter.

I would also like to share with you an example of how the work of our examiners furthers the Brady Act's goal of preventing gun violence in the context of domestic violence.

On April 21, 2000, an examiner was investigating a disorderly conduct charge on a prospective guy buyer to see if it was related to domestic violence, and therefore meant that the person was prohibited from acquiring a gun. The Illinois authorities informed the examiner that the charge was based on the following facts: The individual had beaten his 21 year old wife, who was six months pregnant at the time, dragged her from room to room, pushed her to the floor and sat on her stomach. Based on this information, the individual's attempt to purchase a gun was denied.

#### SYSTEM ACCURACY, SECURITY AND PRIVACY

The FBI continues to work to build the volume and completeness of records in the NICS, appears to be quite high. The NICS has a very effective appeals system which allows individuals who wish to contest a denial to appeal the decision. Less than 1 percent of all checks conducted by the NICS operations center have resulted in denials that are subsequently reversed. These reversals effect only 3.3 percent of all denials by the NICS operations center and in about half of these reversals, the mistake was the result of information missing from the original record, not a NICS error.

The FBI has taken a number of steps to ensure that the information in the system is secure from any unauthorized access. One of the primary ways that we are able to assure that the sensitive information in the NICS is not misused (for example, by firearms dealers who might use the NICS to do unauthorized background checks on persons who are not attempting to buy a firearm) is by conducting audits. We use information about checks that have been conducted to make those audits. We also use audits to assure that unscrupulous firearms dealers do not submit inaccurate information to the NICS in order to avoid the effect of a background check on a disqualified buyer. Currently, according to the regulations governing the NICS, after 180 days, the NICS automatically purges all records relating to a background check which results in an allowed transfer of a firearm. The records are retained for this brief period of time to give us some ability to audit the use and performance of the NICS.

#### WAYS TO IMPROVE THE NICS

As the distinguished members of this committee are aware, the NICS program has received much publicity, interest, and oversight during its development and since it became operational. At the FBI, we continuously working to improve and perfect the NICS, so that it will be as efficient, thorough, convenient and reliable as possible. Today I would like to address a few key areas for improving the NICS: The issue of default proceeds, and the issue of system availability.

#### THE ISSUE OF DEFAULT PROCEEDS

As currently written, the Brady law says that if the NICS does not provide a definitive response to the dealer within 3 business days of the time that the dealer

provides the system with the information needed for a background check, the dealer is not prohibited from transferring the firearm. We refer to cases where the background check cannot be completed within the statutorily-allowed three business days as "default proceeds." Default proceeds occur primarily due to lack of arrest dispositions in automated State criminal history records.

A typical example of a NICS transactions leading to a default proceed involves a record showing a felony-related arrest, which is not a Brady disqualifier in and of itself, with no information to indicate whether the case was prosecuted and whether it resulted in a conviction. (Information demonstrating that the person was either under indictment, or had been convicted would create a Brady disqualifier.) In these instances, additional research is needed before the transaction can be approved or denied. The ability to obtain the required disposition information in a timely manner is directly affected by several factors, such as whether the court is open, the willingness of the court's staff to assist the FBI, and the accessibility of the disposition information. The FBI must rely on the cooperation of state and local agencies to obtain information needed to determine a purchaser's eligibility, making the resolution of delayed transactions within 3 business days often beyond the FBI's control.

Over the past 18 months, there were over 180,000 default proceed transactions in which the FBI did not get information allowing an affirmative "deny" or "proceed" response within the 3 business days allowed by the Brady law. Of those 180,000 cases, the FBI is aware of 6,084 individuals who were sold firearms after the 3 days expired and were later determined to be prohibited persons. (We refer to these as "delayed denials.") We have no way of knowing how many more of the 180,000 cases of default proceeds resulted in the transfer of a gun to a prohibited person, since in most of the cases there is never a definitive resolution of whether or not the subject of the arrest record was in fact a prohibited person before the record of the default proceed is destroyed.

Delayed denials are a very significant cause for concern because they present public safety risks and place resource demands on law enforcement agencies, who must then go and retrieve the firearms. Fortunately, we do not believe that all default proceeds results in prohibited people getting guns, because some responsible gun dealers have adopted corporate policies to never sell a firearm without a "proceed" response from the NICS, even if that response takes longer than 3 days.

The problem of delayed denials and default proceeds has been documented fairly thoroughly by the General Accounting Office (GAO) in one of their reviews of the NICS. In their report, *Gun Control: Options for Improving the Financial Instant Criminal Background Check System*, (GAO/GGD/00-56) dated April, 2000, GAO outlined three initiatives to help address the problem of default proceeds. First, they discuss Federal grant funding to improve State criminal history records. Second, they discuss encouraging State participation in NICS. Third, they discuss amending the Brady Act's 3-business-day default proceed requirement. I would like to address each of these—all of which would help resolve the problem of default proceeds—very briefly, inasmuch as options to improve NICS and reduce the number of default proceed transactions and firearm retrievals may need to focus on legislative, rather than administrative reports.

Continued funding to provide Federal grants to States for improving the quality and completeness of automated criminal history records is quite important. The funding provided to States under the National Criminal History Improvement Program (or "NCHIP"), which is now funded as part of the Crime Identification Technology Act, totaled \$273 million during fiscal years 1995 through 1999. According to a recent analysis by the Department of Justice's Bureau of Justice Statistics, these funds have had a substantial impact: The number of records that include dispositions and are accessible to the NICS through III increased by almost 80 percent between 1993 and 1999. Because there is a very long way to go in assuring full and complete automation and accessibility, However, this option, while critical, will not resolve the problem of default proceeds.

The FBI has always been a strong proponent of encouraging State participation in NICS, and the GAO report identifies financial factors discouraging State participation. The GAO report suggests that some form of Federal financial assistance would encourage State participation. Because States can have advantages over the FBI in conducting NICS background checks—such as access to additional data in their own State and the ability to better interpret their own criminal history records and firearm laws—increasing State participation in NICS could help improve NICS' effectiveness and reduce default proceed transactions. However, State participation would likely not eliminate the problem of default proceeds, because the lack of available disposition information would confront the States as well as the FBI.



Amending the 3 business-day default proceed requirement of the Brady Act to treat differently those potential purchasers with disqualifying offense arrests having no disposition information would provide immediate relief for law enforcement from the problem of default proceeds. For example, the State of Colorado provides by State law that a firearm transfer can be denied on the basis of a disqualifying offense arrest alone, and the prospective purchaser is given the opportunity to challenge the denial by showing that the arrest did not lead to a conviction. The State of Washington deals with the problem by having a State law that allows up to 5 days to perform a background check. This law also says that if available records indicate that the prospective purchaser has an arrest for a potentially disqualifying offense, a hold for up to 30 days can be placed on the transaction's approval, pending the receipt of disposition information to verify the purchaser's eligibility to possess a firearm. The law also provides that an extension of the hold can be obtained if after 30 days the disposition of the arrest still cannot be verified.

#### SYSTEM AVAILABILITY AND EFFORTS TO MINIMIZE DOWNTIME

In regards to the system outages experienced during the month of May, 2000, let me begin by saying that the FBI's goal is to minimize system downtime. The FBI recognizes the disruptive effect downtime can have on the business operations of gun dealers and the resulting inconvenience to prospective gun buyers. The FBI is working toward maximizing system availability during the normal operating hours of the NICS. However, the reality is that hardware and software problems will occur during the normal operation and maintenance of complex information systems.

The overall record of the system's availability during its operating hours through May 2000 is just over 96 percent. *See charts, "availability of databases comprising NICS" and "NICS availability."* Historically, since the NICS began operation on November 30, 1998, system availability generally showed steady improvement over the first 7 months. By June 1999, the NICS was available over 99 percent of scheduled operating hours. However, beginning July 11, 1999, the FBI replaced two major computer systems, both of which interface with the NICS. One of the new systems, the NCIC 2000, was implemented July 11, 1999. The integrated automated fingerprint identification system (IAFIS) was interfaced with NCIC 2000 and NICS on July 28, 1999. Outages for NICS occurred during July and August due to the implementation of these two systems. By December 1999, however, system availability was 95.32 percent of scheduled operating hours.

The recent interstate identification index (III) outage occurring on May 11-14, 17, and 22, 2000, resulted in the loss of service to not only the NICS system, but to IAFIS and Federal, State, and local law enforcement agencies as well. Collectively, IAFIS, III, and NICS are referred to as a system of systems (SOS) and provide fingerprint identification capabilities, criminal history services, stolen property and wanted person checks, and background checks as required by the Brady Act. The SOS serves the public by facilitating police work and fostering police officer safety. It also ensures that retail firearms dealers do not sell guns to prohibited persons. Last month, the outages of the III databases, which contains 95 percent of the records checked by the NICS, ultimately caused the loss of service to NICS. This resulted in the inability to respond to inquiries from firearms dealers. The outages also precluded CJIS from meeting its IAFIS fingerprint customer service goals.

Until May 11, the CJIS SOS experienced an outstanding record of reliability, with only those problems typical of new and complex information systems. Unscheduled downtime was very low, and from September, 1999 to April, 2000, the III segment of IAFIS had a service availability rate of 99.03 percent, processing an average of 263,432 transactions daily.

Preliminary root cause analysis of the May outages has ruled out operator-induced error, hacker-induced error, virus-induced error or a hardware-induced error. While the cause of the outages is still under review, all indications point to the root cause as a defect in the proprietary database management software which caused an incorrect and corrupting calculation of table spaces within III. Short-term risk reductions steps have been taken. Research and analysis to date has resulted in a short-term repair that is expected to reduce the likelihood of this problem recurring. These steps are expected to reduce the risk of future database corruption while a long-term repair is evaluated and implemented. Standard operating protocols exist to ensure service is restored as soon as possible, if an when an incident occurs. These protocols were followed during each of the outages.

All these systems and segments function with a high degree of interdependence, relying upon complex interconnected indices and tables to operate properly and to ensure high confidence in information to users. An outage may occur as a result of a system failure within the NICS or when NICS 2000 or IAFIS cannot supply the

services needed to perform a complete NICS check. The NICS is designed to check all three databases: The NCIC 2000, III, and the NICS index. If one of these databases is off-line or down, the NICS still searches the remaining active databases for 100 percent accuracy. Once the previously off-line database becomes available, the search is completed and the response is sent to the requester. However, the NICS is placed in an "out of service" period when any of these systems is unable to support a complete check. This policy, supported by the CJIS advisory policy board, significantly reduces the number of delay responses returned to gun dealers.

Whenever an unscheduled outage occurs, the NICS program office works diligently to provide ample notification to POCs and licensed gun dealers. Per existing NICS policy, gun dealers are notified of an unscheduled outage by placing a message on the call centers' phone system. When an unscheduled outage occurs, the voice recognition unit informs the gun dealer that the system is temporarily out of service. POC States are notified of an unscheduled outage by a message sent via NCIC 2000. However, due to the extent of last month's outage, additional planning and pro-active measures were taken to help alleviate any effects felt. Some of the additional steps taken include:

1. A notice was released to the public and faxed to 76 different POC State contacts including control terminal officers and various other NICS contacts to advise of the outage and the anticipated time of resumed service;

2. Phone calls were placed to all POC and partial-POC States to advise of the same;

3. Phone calls were placed to 1,364 gun dealers that were statistically shown to process large numbers of transactions to advise of the outage and anticipated time of resumed service. The normal outage message heard by other licensed gun dealers on the call center telephone system was modified to reflect pertinent information previously faxed to POC and other NICS contacts.

4. Licensed gun dealers participating in the call center pilot project in the States of Rhode Island and Delaware were called and advised of the outage, anticipated resumed service, and information that it was a system-wide issue and not project-specific.

The NICS program office also prepared measures for the quick completion of backlogged transactions. Additionally, NICS employees were on standby and used as needed for the increased delay queue transactions once the system became operational. This measure proved effective because the work in progress remained at a normal or below normal level throughout the first operational day. The call centers also provided extra staffing and overtime to their personnel to assist in the management of high volume incoming calls. The NICS program office recognized the fact that the call centers may have difficulty to reach at times, therefore transactions were handled immediately for any gun dealers calling into the NICS customer service. Whenever NICS examiners were calling gun dealers to advise of a final status for delayed transactions, they also inquired of the dealer if there were any other transactions that they could handle immediately for them. Following the outage, POC States were provided additional processing time beyond the normal operating hours to facilitate the processing of batches of transactions that had been held by the States. This action provided the added benefit of reducing the processing load on the NICS system when the call centers and FBI operations were resumed.

Measures are being looked into to minimize the risk of recurrence. The best route for immediate corrective action during a system outage is the definitive identification of the root cause and subsequent correction. This greatly reduces the risk of a similar event, but is no guarantee that another event with a different catalyst will never occur. Small-scale database failures are managed and corrected within the current system design with little or no impact to users. These events were within the design limits for the backup and recovery of the III database.

If these efforts do not ensure the desired availability, it may be necessary to consider the more expensive, long-term solution of developing and installing a fully-redundant, identical III database. This option would require the acquisition of additional data storage hardware, commercial software, and development of data management software to maintain a full-time mirrored version of the III segment, and would entail a substantial initial budget outlay and recurring annual management costs. Further measures enhancing availability and recovery that would require such additional funding include redundancy of other CJIS databases and systems, such as NCIC 2000 and NICS, with the physical location of these redundant systems at alternative sites.

## OTHER PLANNED UPGRADES AND IMPROVEMENTS

A total of \$9 million was allocated to upgrade the NICS in fiscal year 2000. Of this amount, \$6.5 million of fiscal year 2000 funding was dedicated for upgrades while \$2.5 million of prior year carry forward funding is being dedicated to the development of a NICS improvement: Electronic access to NICS for firearms dealers. Some of the planned system upgrades include:

- The purchase and installation of commercial off-the-shelf software upgrades. These are known in the industry as “COTS” software upgrades and are routine with any operating system. This is an ongoing enhancement for fiscal year 2000 and 2001.
- Because NCIC 2000 accesses III via the IAFIS when conducting a search, a bypass is under development which will allow the NICS to continue running when the identification tasking and networking (ITN) segment of the IAFIS is down or experiencing difficulties. Expected completion date for this project is fall of 2000.
- Two additional production servers will be installed to handle the expected 20 percent increase in volume during seasonal peak time—September through December. Installation is expected in fiscal year 2000.
- The development and testing of an interface for the NICS direct electronic access by firearms dealers to initiate a NICS search. Development for this interface will continue throughout fiscal year 2000.
- The implementation of new filtering rules which will allow NICS to eliminate many of the false positives returned, consequently providing more immediate proceeds, before providing the search response to the FBI and State users. Testing and implementation are expected to be completed in fiscal year 2000.

Currently, there are approximately 60 other enhancement or software changes that have been identified and prioritized by the NICS program office and are expected to be implemented in fiscal year 2000 and 2001. The FBI's deputy assistant director for operations in the CJIS division and the appropriate system managers have the final decision as to when to apply system upgrades or modifications. Keeping gun dealers and our partners in law enforcement in mind, routine maintenance is always scheduled during non-operational hours—1 a.m. until 8 a.m. eastern time.

As I previously stated, NICS interfaces with both NCIC 2000 and the IAFIS. Upgrades and enhancements for these system are always scheduled during periods which provide the least impact to law enforcement agencies nationwide. Most of the upgrades and enhancements are scheduled during the least used period, primarily early Sunday mornings, and have no impact upon NICS' operations. However, there have been cases when additional time is required and the NICS can be affected. Naturally, during such non-scheduled interruptions in service to NCIC 2000 and IAFIS, the FBI's priority is to restore law enforcement functions first, prior to the restoration of NICS services.

Electronic access is alluded to in both the Brady Act and Federal Register, which say that “The NICS shall allow federally licensed gun dealers to contact the system by telephone, or other electronic means in addition to the telephone, in order to contact the system.” Gun dealers with electronic dial-up access will be able to contact the NICS, excluding scheduled and unscheduled downtime. A survey was used to determine which method of electronic access would accommodate most licensed gun dealers in the most cost-effective manner. Cost comparisons were performed on the development and logistics to operate and maintain a PC-based software solution using secure dedicated communications or a secure internet solution via COTS software.

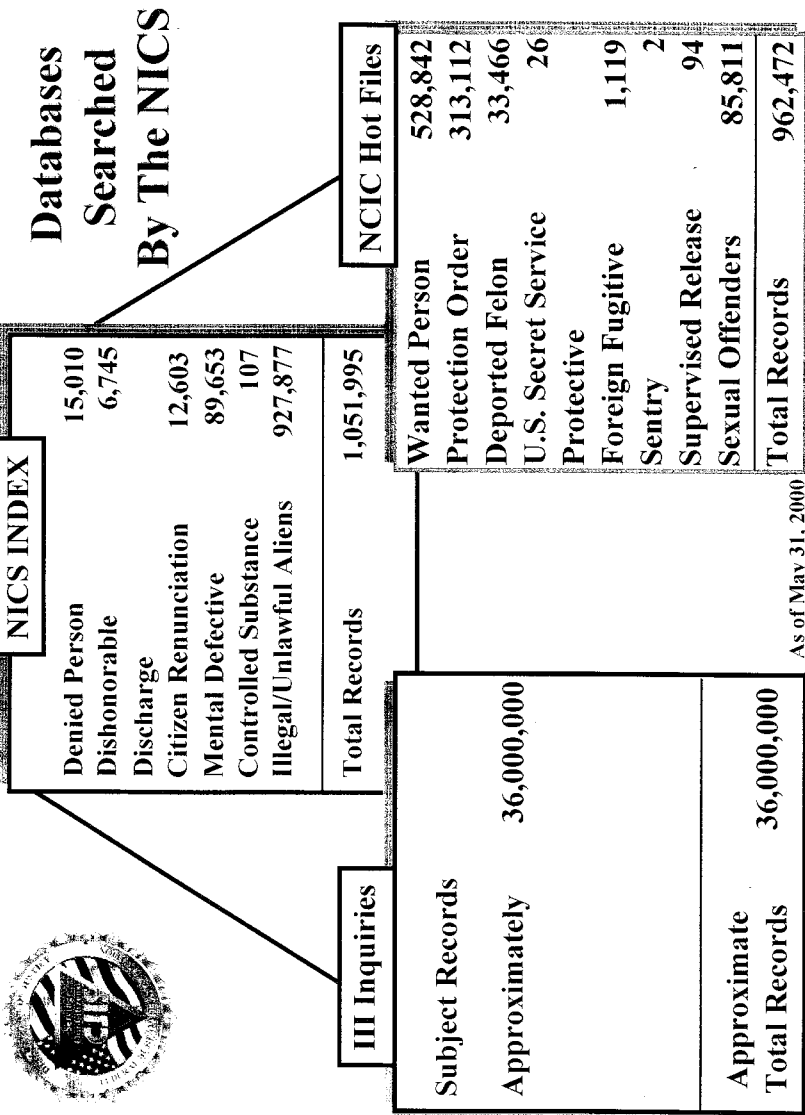
A secure Internet solution seemed to be the most technically feasible and effective solution for developmental, operation, and maintenance costs and for providing gun dealers with the necessary form of electronic access. The FBI, therefore, plans to establish a NICS background check secure web-site on the Internet. Access to the web-site will be limited to federally licensed gun dealers. The development process regarding electronic access started in February 2000, with an implementation date for the initial capability scheduled for January 2001.

The FBI has continued to seek and act upon the advice of local and State law enforcement in its operation of NICS. Proven mechanisms are in place for the continued improvement of NICS operations. For example, regional and national meetings are held semi-annually in which the FBI provides status reports on the NICS to local, State, and Federal advisory groups and receives recommendations for NICS system and operational enhancements. In addition, the FBI's NICS Program Office has hosted several NICS State participant conferences, with the most recent held on May 31–June 1, 2000 in Pittsburgh, Pennsylvania. Another conference will be held this summer for all licensed gun dealers. The NICS Program Office has also

invited to the summer conference members of the congressional staffs and representatives from the gun industry. The FBI will present informative briefings and hopefully receive constructive feedback on the NICS operation to date. Finally, the FBI incorporated NICS information into its law enforcement online, or LEO Program, and, in conjunction with the Department of Justice, established the NICS web site to ensure the Rapid, continued dissemination of important new information about the NICS.

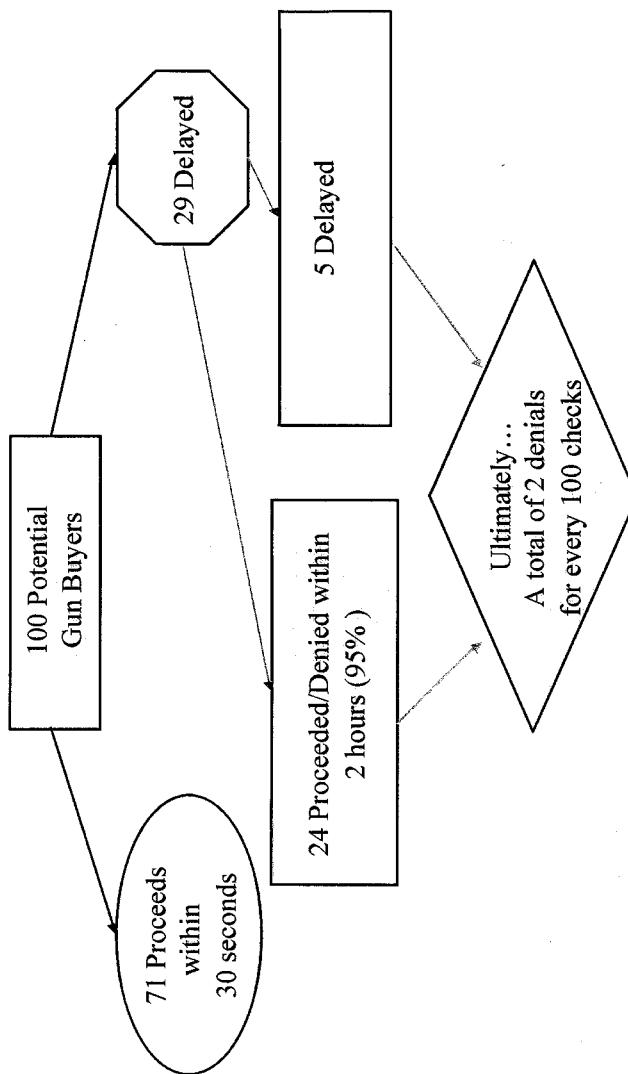
#### CONCLUSION

As I conclude my opening statement, I again thank the Chairman and the members of the Senate Judiciary Committee for providing me with the opportunity to speak to you today about the NICS Program. At this time, I am available to answer any questions the committee may have.

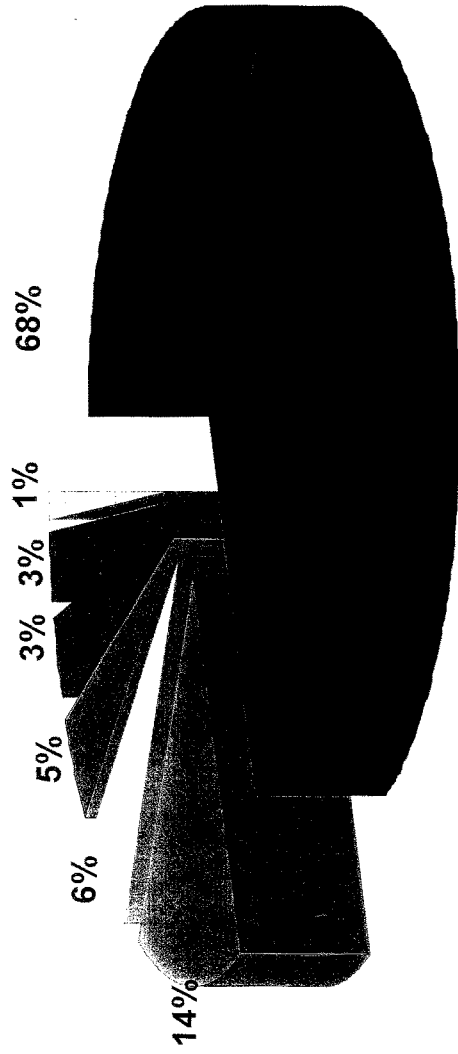




# NICS Operations Transaction Breakdown



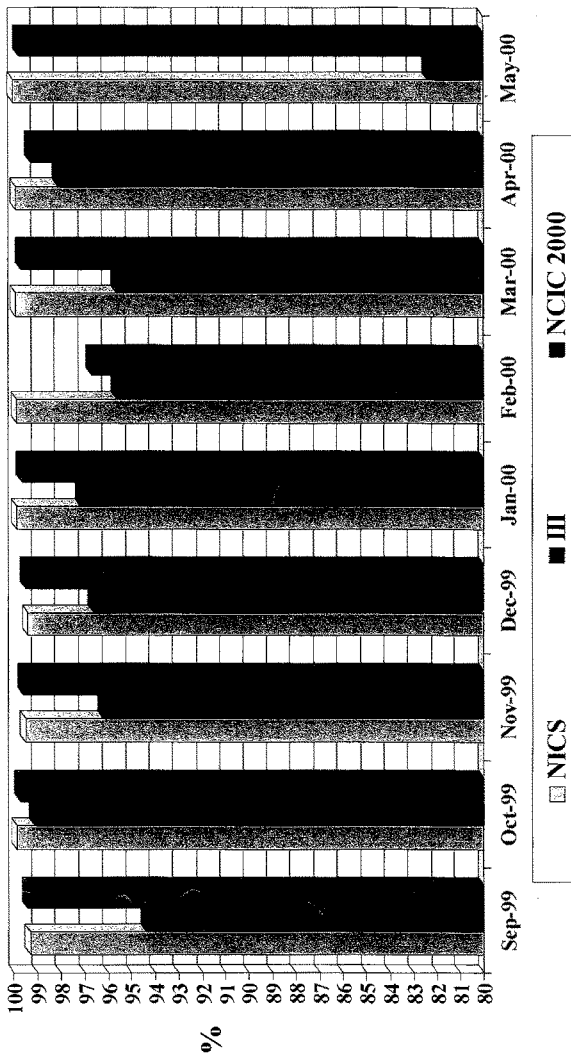
# Denials by Category



- Criminal History for Felon (68%)
- Criminal History for Domestic Violence (14%)
- Criminal History for Other (Multiple DUIs, Non-NCIC Warrants, Flash Notices, etc.) (6%)
- Criminal History for Drug Abuse (5%)
- Domestic Violence Restraining Order (3%)
- Fugitive from Justice (3%)
- Illegal/Unlawful Aliens, Dishonorable Discharges, Denied Persons File, Mental Defectives (1%)



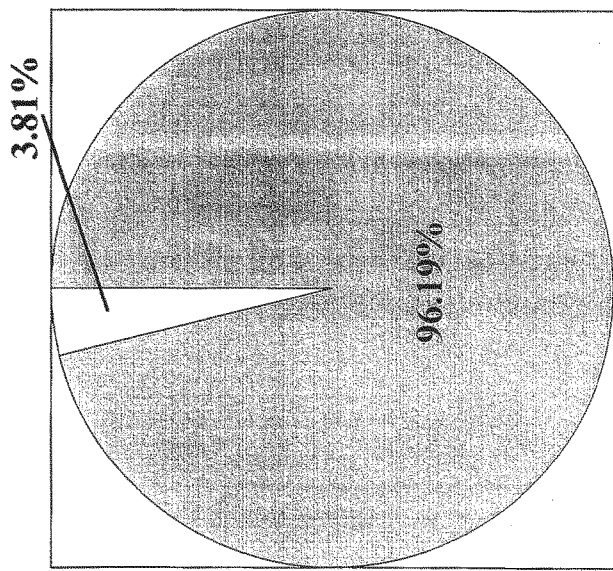
# AVAILABILITY OF DATABASES COMPRISING NICS







# NICS AVAILABILITY



The CHAIRMAN. Captain Smith, we are happy to welcome you from my home State of Utah and we are just anxious to hear what you have to say, especially since Utah is a point of check State.

#### STATEMENT OF STUART SMITH

Captain SMITH. It is. It is a point of contact State, Mr. Chairman, and greetings from home. It is a great day in Salt Lake, by the way.

The CHAIRMAN. It was great last weekend while it rained here the whole time.

Captain SMITH. That is true. A few comments on Utah, and maybe that helps with background, Senator. Utah is a full point-of-contact State, like you pointed out. Utah clears all firearms sales through the Brady background check center at the State before they go from dealer to buyer. This is done 7 days a week and it is done without a waiting period. Utah transferred a little over 90,000 firearms last year.

The CHAIRMAN. Let me interrupt you. When you say, without a waiting period, when you find these problems that come up, do you resolve them within, what, a couple of hours?

Captain SMITH. Well, again, to answer that question, we have an immediate proceed rate that is a little bit higher than the Federal average. It waivers around about 76 percent. That is due to a few factors that Mr. Loesch talked about. Our operators that take those calls and deal with those records have all the information in front of them immediately. The FBI is working on a system to do that same thing nationally, but we are able to make a few more determinations immediately because of that.

The other ones, what is left, has to go out to be researched, and you have alluded to that with other testimony from the two Senators previously, and that is that there are incomplete records out there. Some of those may be State records in our State. Some of them may be State records in another State.

So we are saddled with the same situation the FBI is, that if you have a record out of another State and it is out of a local court, you are going to have to call them, search that record out, and there are some interesting anecdotal stories that go with what some of those courts have to say when we call them up. Occasionally it is, send us a \$20 check and we will mail that back to you. So an immediate proceed, obviously, is a little bit tough when they will not even tell you over the phone what the disposition of a particular arrest is.

The CHAIRMAN. Well, thank you. Sorry to interrupt you.

Captain SMITH. It is disappointing, but that is a fact of life and I think automation is probably the answer to most of those issues.

Utah has a denial rate of about 2.78 percent. As I understand, it has risen to about 2.9 percent. That, I think, compares to a NICS rate, I believe that is 1.76 percent. So we deny a little bit more, and that is understandable, being now that we are looking at a more complete record, and there is also a layer of State laws that lay over the top of the Brady laws nationally that we deny on in Utah.

Utah charges a \$7.50 fee for a Brady background check. Of course, the NICS does that without cost to a dealer and that is cer-

tainly a bone of contention in Utah with the dealers there and the persons that purchase firearms. But that runs our State center. I will talk a minute later about wanting to see a little bit more money come back possibly from Congress to us about that.

Utah's population is about 2.1 million. We have a little over 30,000 concealed carry weapons permits there. That is a significant number those folks are pre-authorized under State law and in compliance with Brady to go ahead and waive a background check in Utah, which is an absolute immediate proceed.

Utah, with a valid CCW, like I say, you do waive that and that speeds up that process and I think probably raises our percentage of immediate proceeds, at least as it relates to most gun transactions there. Those CCW permits also allow people to do a few other things in Utah because it is looked at as such a high level of background.

Utah's view of the NICS is the NICS can improve. The NICS's reliance on other CJIS systems has been problematic, that one system being offline causes the whole process to stop. Again, Assistant Director Loesch talked about that and what they are trying to do to improve that and we support that effort of improvement. Redundancy and higher reliability of programming might be an answer to that issue.

The question, I think, is where we go from here. Most agree that the States have better records, probably have better access to those records and are able to deal with the local entities, both courts and law enforcement that possess those records and able to get immediate proceeds and actually research done. The FBI's immediate proceed rate, I think, was about 71, 72 percent. Again, I said Utah's is about 76 percent, which bears out, I think, a more complete record at the State level.

Federal funding assistance to point-of-contact States is obviously an issue that Utah, as well as the other 15 point-of-contact States, are more than a little interested in. You mentioned the NCHIP program before. Utah does utilize the National Criminal History Improvement Program, does use those funds in a number of areas. I think one of our biggest challenges with NCHIP funds is where to spend a small amount of money and get the biggest bang for it. Certainly you have heard testimony today, and I would support that, that automation of court records has got to be a priority.

We have seen NCHIP funds spent in a lot of areas. I will tell you right now in Utah, Senator, that we spend some of that money right in our NICS call center, State call center to NICS, to make sure that if there is a Utah record that comes back that is incomplete, that we research it immediately, close that record, and use that funding to pay for that to make sure that that is upgraded and that information is available to all law enforcement and criminal justice.

Utah and other point-of-contact States need support of Federal dollars to continue functioning in the area of Brady firearms checks. The FBI has said the cost of the NICS check is about \$14, I believe, and you can see Utah charges \$7.50. We are quite a bargain out West, I think, and stretching that dollar. But we would sure like to see some Federal dollars come back to us.

It was not long ago, I think last year, correct me, Mr. Loesch, we had about 23 point-of-contact States, full point-of-contact States. We are down to 15 as of this morning, my last check, and I guess that is a little bit disappointing. I think certainly at the Federal level and certain here that States are getting out of the business. There are a lot of reasons for that. Funding has got to be at the top of the list.

Congress has funded the NICS. It has ignored the POC States that have stepped up to the challenge and accepted the responsibility of State records and the willingness to fully utilize those records in a Brady process. Utah would like to see some equity come to this process and have a fair portion of funding come back to support our State and run the program that is mandated under Federal law and Brady.

Utah's plan to improve in the future includes a number of things. We look at certainly automation as part of it. You look at that 76 percent immediate proceed rate. It is very high, and we think it can go higher. We would like to see that go higher. There is a lot of technology out there shared between States, both in this program and other backgrounding programs, that tend to indicate that point-of-sale devices, similar to Visa machines that have been discussed before and credit card type of applications, could have a point-of-sale device for a dealer to access that database and go right straight forward.

We are also experimenting on some things on the Internet, that that could be filled out and handled immediately through a system. And there is no reason not to do that, Senator. I think with the immediate proceed, it should come back, be able to enter it and come right back to that dealer immediately.

I think cost certainly is a factor. We think that will level out cost and maybe those savings can be reinvested into improvement of the program over time. Certainly, we do some things at gun shows that are pretty attractive. We have asked our gun show dealers not to allow private sales at the gun shows and that is, of course, up to them, but they have pretty much complied with that. In return, we have set up fax processing for them at a gun show that has been very effective and we have gotten tremendous support from those gun dealers to see that the business is done that way and it has cut turnaround times dramatically.

Senator Hatch, I have prepared a statement for the committee. That is on record, and I would ask that you accept that as my statement and I would be glad to answer any questions that you have or the committee has.

The CHAIRMAN. Thank you, Captain Smith. Without objection, we will put your full statement in the record and all full statements in the record. We are real happy to have you here and we are very proud of what you are doing out there in Utah, working with the FBI and others. We are, frankly, happy to have this testimony.

Captain SMITH. Thank you.

[The prepared statement of Captain Smith follows:]

## PREPARED STATEMENT OF CAPTAIN STU SMITH

Senator Hatch and members of the Senate Judiciary Committee, thank you for inviting me to comment and give testimony on the National Instant Check (NICS) firearms transfer system.

My comment will cover:

- The State of Utah's view of the NICS.
- Federal funding assistance for POC states.
- Utah's plans to provide better service to firearms dealers and customers.

## UTAH FACTS

- Utah is a full point of contact state (POC) for firearm transfers under Brady.
- In Utah all firearm sales are cleared through the state backgrounding center prior to any transfer from dealer to buyer. This is done seven days a week, without a waiting period.
- Utah transferred a little over 90,000 firearms last year. That number will be higher this year. Utah has a denial rate of 2.78 percent compared to a NICS rate of 1.76 percent.
- Utah charges a fee \$7.50 fee for a "Brady Background Check." The background check and the fee are a function of state law.
- Utah has a population of approximately 2.1 million and has over 30,000 Concealed Carry Weapon (CCW) permit holders.
- In Utah a valid Utah CCW waives the need for a Brady background check prior to a firearms transfer.

## THE STATE OF UTAH'S VIEW OF THE NICS

- The NICS can improve. The NICS reliance on other CJIS systems has been problematic in that one system being offline causes the whole process to stop.
- Redundancy and higher reliability of the programming would help this issue.
- The question is where do we go from here? Most agree that the state have more complete information and records. The states have the ability to do a better job of backgrounding persons prior to firearms transfers, but the states lack the funding and now the incentive to take on this type of tasking.
- The FBI has an immediate proceed rate of 71 percent. Transactions that go through without any problems can be automated. Transactions that hit on a possible record need to be reviewed by a training operator that can look at all the information available. When operators look at a all available information the immediate proceed rate goes up. More difficult research issues still require phone contact with court clerks and police agencies at the state and local level. Court record are often still non automated, and are subject to local rules of access.

## FEDERAL FUNDING ASSISTANCE FOR POC STATES

- Utah utilizes National Criminal History Improvement Program (NCHIP) grant funds to research and close any open or incorrect Utah criminal history records.
- Utah and other POC states need the support of federal dollars to continue functioning in the area of Brady firearms background checks.
- The FBI has said the cost of an NICS check is about \$14. In Utah we charge \$7.50 for that same service. That local cost does not include the infrastructure costs of the NICS, which is still a required step in the backgrounding process and must have funding to continue. It was not too long ago that there were 23 POC states, as of this morning there were 15 POC states. That has occurred in the face of knowing the state could do a better job of local record checks.
- Congress has funded the NICS, but has ignore the POC states that have stepped up to the challenge and accepted the responsibility of state records and the willingness to fully utilize those records in the Brady process. Utah would like to see some equity come to this process and have a fair portion of funding come back to support our state run program under the federal mandate of Brady.

## UTAH'S PLAN TO PROVIDE BETTER SERVICE TO FIREARMS DEALERS AND CUSTOMERS

- State law in Utah are somewhat more restrictive than the national model. That additional level of records and law result in a higher rate of denials. Utah's ability to access more records at the local level and do it more quickly and more comprehensively keep approval times down, but quality of the product high.
- The future of the backgrounding of firearms transfer in Utah is directed toward faster service, higher quality and no increases in cost. We intent to accomplish

this through point of sale device. For those dealers that have Internet access we are creating a web enabled background checks process that will provide instant approval on searches that do not hit against criminal records.

- Utah now provides a FAX service to those dealers that are not in a hurry and want to operate on extended hours. These requests are received around the clock. Overnight requests are cleared in the morning. Requests received during Brady business hours are processed when they are received.
- Utah has an immediate proceed rate of 76 percent. With this percentage rate we feel that technology and automation of the process, starting at the point of sale, is the long range answer to faster customer service, low cost, and a positive impact on local businesses operators. Some states are doing this in the area of firearm transfer and other types of background checks. The technology exists and is viable for this type of application.

Thank you for your interest in the view of the states. I will be happy to answer any questions you may have.

The CHAIRMAN. I am going to skip over you, Mr. Schlueter, because I think Senator Leahy would like to be here, as well, and he should be here in another 10 minutes, so we will go to Ms. Ball first and then we will finish with you. We are happy to welcome you to the committee.

#### **STATEMENT OF ROBIN BALL**

Ms. BALL. Thank you. It is nice to be here this morning. My name is Robin Ball. I own Sharp Shooting Indoor Range and Gun Shop in Spokane, WA. My business opened 5 years ago and we have been doing background checks since that time at the State level and at the NICS level when NICS went into service. In addition to the shooting range, we provide training for several shooting disciplines, including law enforcement, hunter education, personal defense, armed security, and junior pistol safety. We have a large retail facility where we are federally licensed dealers in handguns, rifles, shotguns, and accessories.

I also want to mention that Washington State is a partial point-of-contact State. We process handguns through the State system and long guns and shotguns through the Federal system. All of our firearm sales are subject to background checks.

One comment that was made earlier was regarding Internet transfer and sales. The transfers that take place across the Internet have to go through the State system. A firearm cannot be shipped unless it is shipped to a licensed dealer. I have not seen any problems with Internet sales at all, other than we see an increase in paperwork, yet we are not the ones selling the product. Most dealers, you will find, charge a handling fee to run the background paperwork. Guns are not going through the Postal Service without going to a dealer.

I am a certified instructor for home safety, personal protection, and Refuse to Be a Victim, and the Refuse to Be a Victim Program is an NRA safety class that is not firearms related. In addition to the classes that I teach at my business, I also teach the Refuse to Be a Victim Program at a couple of our local community colleges, as well as high schools in our area. I am a member of the National Rifle Association and an executive committee member for National Shooting Sports Foundation's range development program. In addition to NRA and National Shooting Sports, I am a spokesperson for Second Amendment Sisters.

Today, I am not here on behalf of any of those organizations. I am here to talk about how the NICS system, the National Instant Criminal Background Check System, affects those of us who are licensed to deal in firearms and how it affects our customers. Through my business and volunteer contacts, I keep in touch with dealers not just in my area but across the country, and again, as I mentioned, some of the transfer that I handle come in from other States and they are from licensed dealers who we keep files of their licenses.

From my personal experience in running my business, I have contacts in a lot of locations and I can truthfully say I understand the serious frustration that dealers face and law-abiding citizens who get delayed are feeling about the NICS program. Delays, outages, numerous recorded messages have a very negative impact on the process of doing business. Customers know the system is supposed to be instant. We have coined the phrase "the not-so-instant background check system." Customers do not understand why they get delayed.

I do not include information regarding denied transactions because we have seen only one denied transaction in the course of doing business since NICS went into operation. If we are a typical dealer, then the numbers on attempted transfers to felons are being terribly inflated.

Outages shut down the legal commerce of my business. Customer service is very important to us, and we look incompetent when the Federal system does not work the way it was intended. It is not uncommon for a customer to cancel a sale and leave the building because we cannot get a transfer to take place. Though we are not responsible, the blame rests with us in the eyes of the customer. We send an angry customer away who cannot complete a transfer, not because of being ineligible to own a gun but because the government system is incomplete or unreliable. My best advertising is word of mouth. This does not leave a good impression for my business.

We have been told by NICS customer service staff that the delays are often a result that the computer does not have the needed information. In private enterprise, this is not tolerated. If the system is broken, you fix it or your business fails.

The failure of NICS to do the job it is supposed to do appears to be getting worse instead of better. Dealers expected problems in the beginning. You are going to have problems any time you have a new system, and I believe that most dealers were pretty patient. In the beginning, we had fewer delays and fewer total shutdowns of the system. Certainly nothing in the early months of the NICS operation compares to the terrible delays and shutdowns we have seen recently.

The cost to my business is difficult to measure. We experience lost sales because purchasers are frustrated. They do not want to wait for NICS to function again, we cannot tell them when NICS will be up again, or they live out of the city in a rural area and they have come to Spokane for a day expecting that they can take transfer of a firearm and many of them will leave and not do that. Many feel it is better to wait until the system is back up and running than to start that process and have to make another trip back

to Spokane to pick up their purchase when it has cleared. Outages make us look bad and they frustrate customers, and that frustration gets shared with their friends.

One of the biggest frustrations that we experience is when a customer already has a carry permit for the State of Washington. With that permit process, they have been through the Federal background check system. Yet we have a duplication of processing where we have to still, even with a carry permit, call the information in to the NICS system. If NICS is not up to date and competent with the Washington State system, we get a delay. Certain carry permits, depending on their expiration date, do not require us to call NICS, but it is a very narrow window. People who have been through the background check system and have a license to carry and are probably already gun owners do not understand why they get caught in the fray when NICS breaks down.

I do not have a logical explanation to give customers. I do have a customer who served this country in the military. He was honorably discharged and is a responsible parent who has taught his son gun safety and has a carry permit. He has purchased several guns from us since the NICS system was implemented and he gets delayed every time, telling us that the system is not up to date.

Another really important area that we need to look at in this process is the area of self defense. I work with domestic violence issues all the time. I have women with restraining orders against violent ex-husbands or ex-boyfriends who have reached the breaking point. They do not want to die and they have only one choice, to defend their lives or the lives of their children. When NICS is out of service, we are left with no option but to tell this person whose life has been threatened, sorry, we do not know when NICS will be working again, or come back in 3 days in the case of delays. The common response is, "I might be dead by then."

You read the papers and see the news and you know these issues exist in every part of our country. The only way to level the playing field for a woman who is threatened by a man is to learn to defend themselves. If a woman chooses to do so with a firearm, she should not be put in danger by computer failure or bureaucratic mixup.

Last Saturday, and this has happened numerous times, last Saturday, I taught a class, and normally, I do not allow young kids to sit in on my classes, but a woman came in with a daughter who is 8 years old and I let her stay. At the end of this class, I was talking to her mom and the little girl was right there listening to this whole conversation. Her mom told me she wanted to learn what her options were for self defense because her ex-husband is being released from jail at the end of the month and he has made threats to kill her and her daughter. These threats have been reported, but nothing can be done until such time as he harms her.

She told me that she thought about moving, but her daughter is so happy in her school that she has put that decision off. Her daughter spoke up and said, "I do not mind moving, Mommy. I do not want you to get hurt." The mom asked me how long it would take to buy a gun and I told her she had better plan in advance because there is no guarantee that we can get the background check processed in less than a week. She was hoping to wait until



payday. Here is a classic case of a parent trying to do the right thing under difficult circumstances.

Most dealers do not have a problem with background checks. No one wants to keep guns out of the wrong hands more than gun owners do. After all, the press and many politicians go after us, the law-abiding and the hard-working gun owners and firearms businesses, whenever a crime occurs. It seems illogical to me to chastise businesses like mine instead of the criminals.

Clean up the system and the government stands to gain a lot—confidence among businesses and dealers like myself that the system works, confidence among gun owners that the FBI is not retaining records on customers. I do not buy into conspiracy theories, but if a government program like NICS works as designed, there should be less distrust of the government and its programs in general.

It seems to me that it is in the best interest of any elected official at the Federal level to make sure the government operations that you mandate work properly. Customers may blame the dealer because we are the closest people to yell at, but the responsibility lies with the government. The lack of determination that we have seen to fix these problems only increases that distrust.

Thank you very much for your interest in this subject today. Thank you for letting me be here.

The CHAIRMAN. Thank you, Ms. Ball.

[The prepared statement of Ms. Ball follows:]

PREPARED STATEMENT OF ROBIN BALL

Mr. Chairman and Members of the Committee:

My name is Robin Ball. I own a large indoor shooting range in Spokane, Washington. My business opened five years ago next month. In addition to the shooting range, we provide training for several shooting disciplines including hunter education, personal defense, armed security, law enforcement, and junior pistol safety. We have a large retail facility where we are federally licensed dealers in handguns, rifles, shotguns and accessories. All of our firearms sales are subject to background checks; checks on rifles and shotguns are conducted through the FBI, while checks on handguns are conducted through both the FBI and the Spokane Police Department.

I am a certified instructor for home safety, personal protection, and Refuse to be a Victim, an NRA safety class that is not firearms related. In addition to the classes at my business, I teach Refuse to be a Victim, at our local community college and several area high schools. I am a member of the National Rifle Association and an executive committee member for the National Shooting Sports Foundation's range development program. In addition to the NRA and National Shooting Sports Foundation, I am a spokesperson for Second Amendment Sisters.

Today, I am not speaking for any of those organizations; I am here to describe how the problems in the National Instant Criminal Background Check System (NICS) affect those of us licensed to deal in firearms, and our customers. Through my business and volunteer contacts, I do keep in touch with dealers not only in my area but in all part of the country.

From personal experience in running my business and in the contacts I have in other locations, I can truthfully say, I understand the serious frustrations licensed dealers and law-abiding citizens are feeling about the NICS program. Delays, outages, and recorded messages have a very negative impact on the process of doing business. Customers know the system is supposed to be instant and can't understand why they get delayed. I don't want to include any information regarding denied transactions because we have only seen one denied transaction since NICS has been in operation. If we are a typical dealer then numbers on attempted transfers to felons are being terribly inflated.

Outages shut down the legal commerce my business is licensed to do. Customer service is very important to us and we look incompetent when the federal system does not work the way it was intended. It is not uncommon for a customer to cancel

the purchase and leave. Though we are not responsible, the blame rests with the dealer. We send an angry customer away who can't complete a transfer, not because of being ineligible to own a gun but because the government's system is incomplete or unreliable. My best advertising is word of mouth and this does not leave a good impression.

We have been told by NICS customer service staff that delays are often a result of the computer not having the information needed. In private enterprise, this is not tolerated. If the system is broken, you fix it or your business fails.

The failure of NICS to do the job it is supposed to do appears to be getting worse instead of better. Dealers expected problems in the beginning, because of the start up of the new system. I believe most dealers were pretty patient. In the beginning, we had fewer delays, and fewer total shut downs of the system. Certainly nothing in the early months of operation of NICS compares to the terrible delays we have experienced recently.

The cost to my business is difficult to measure. We have experienced lost sales because purchasers are frustrated and don't want to wait for NICS to function again, or they live out of the city in a rural area and have come to Spokane for a day of shopping. Many feel it is better to wait when the system malfunctions than to continue the process and come back to Spokane to pick their purchase up after we have cleared it. Outages make us look bad and frustrated customers will share that with their friends.

One of the biggest frustrations that we experience is when a customer already has a concealed carry permit for the state of Washington, and still gets delayed because the information in NICS is not up to date. Washington is a point of contact state. Certain carry permits, depending on their expiration dates, do not require us to call NICS. But people who have a permit have all been through a background check and don't understand why they get caught in the fray when NICS breaks down. I don't have a logical explanation to give the customers. I have a customer who has served this country in the military, was honorably discharged, is a responsible parent who has taught his son gun safety, and has a carry permit. He has purchased several guns from us since the NICS system was implemented and gets delayed every time because the FBI has yet to update information in the NICS database.

One area that cannot be overlooked is the self-defense issue. I work with domestic violence issues all the time. I have women with restraining orders against violent ex-husbands or ex-boyfriends who have reached their breaking point. They don't want to die and have only one choice—to defend their lives and the lives of their children. When NICS is out of service, we are left with no option but to tell this person whose life has been threatened, "Sorry, we don't know when NICS will be working again," or "Come back in three days." The common response is "I might be dead by then." You read the papers and see the news, you know these issues exist in every part of our country. The only way to level the playing field, for a woman, who is threatened by a man, is to learn to defend themselves, and if a woman chooses to do so with a firearm, she shouldn't be put in danger by a computer failure or a bureaucratic mixup.

Saturday, I taught a class. Normally I don't allow young children to sit in my handgun classes but a woman came in with an eight year old girl. My instinct told me to let her be. This little girl sat quietly and colored through the entire class. At the end of the class, I was talking with her mom, the little girl was right there, and her mom told me that she wanted to learn what her options were because her ex-husband is getting released from jail at the end of the month and he has threatened to kill her and her daughter. The threats have been reported but there is nothing that can be done until such time as he harms her. She told me she has thought about moving but her daughter loves her school so much she has put that decision off. Her daughter spoke up and said, "I don't mind moving Mommy, I don't want you to get hurt." The mom asked me how long it would take to buy a gun. I had to tell her, she better plan ahead, because there are no guarantees we can get a background check processed in less than a week. She was hoping to wait until payday. Here is a classic case of a parent trying to do the right thing under very difficult circumstances.

Most dealers do not have a problem with background checks. No one wants to keep guns out of the wrong hands more than gun owners. After all, the press and many politicians go after us, the law-abiding, hard working gun owners and firearms businesses, whenever a crime occurs. Somehow, it seems illogical to me to chastise businesses like mine instead of the criminal. Clean up the system and the government stands to gain a lot: confidence among dealers that the system works, and confidence among gun owners that the FBI isn't retaining records on customers.

I don't buy into conspiracy theories, but if a government program like NICS works as designed, there should be less distrust of the government and its programs in

general. It seems to me that it is in the best interest of any elected official at the federal level to make sure the government operations that you mandate work properly. Customers may blame the dealer because we are the closest people to yell at, but the responsibility lies with the government and the lack of determination to fix these problems only increases that distrust.

Thank you very much for your interest in improving this system, and thank you for inviting me to testify today.

The CHAIRMAN. I think we will just give a little more time before we take your testimony, Mr. Schlueter, for the Senator to get here. Let me just ask a question of my fellow Utahan.

Studies show that States like Utah and Vermont that act as points of contact for NICS do a better job of conducting background checks than the FBI. Naturally, States have better access to State court record and often are better at understanding some of the local firearms laws. In addition, some of them have access to certain sensitive records like mental health records and drug records that by law cannot be shared with the Federal Government or other States.

But all of this, as you have pointed out, costs our respective States money. I would like to find a way, really, to encourage more States to become full participants in the NICS system, perhaps through grants or other incentives. Do you have any ideas on how to structure such a program? Senator Leahy and I are cosponsoring legislation that will help compensate point-of-contact States, but what do you think of that idea?

Captain SMITH. Senator, there are a few things out there that probably fall down a line or a progression that need to be done. Certainly, some of those things have been mentioned today.

Definitions are a big thing, believe it or not. When you say a mentally incompetent person, that has been one thing that the FBI and the States have really struggled about what was meant. What was the legislative intent behind that? And as you define that, things fall into or outside those parameters. Mental health records in Utah fall into a number of different governmental agencies, where they even fall into governmental agencies at all. Getting those records into a system, automating it so it actually is accessible is the challenge. Right now, Utah law changed this last legislative session and had juvenile records added to that.

Again, automation becomes the issue. Can the State or even the Federal Government supply enough money or incentive to have those records electronically automated and then transferred under appropriate rule to law enforcement, in this case, to make them available for screening for background checks? Certainly incentives for those things are your answer.

The CHAIRMAN. Let me see what we can do about that.

Mr. Loesch, let me ask you a series of questions because the purpose of this is to just get a handle on what is best here. On outages, the FBI instructed its computer system contractors that the NICS system should be available at least 98 percent of the time during operating hours. The NICS system, however, has failed to meet this performance specification in two-thirds of the months since it began running in November 1998, and in spite of what many would think is a pretty sterling record anyway. According to the GAO, the NICS system was unavailable for a total of 215.5

hours during its first year, and every minute of that time was, of course, costly and extremely frustrating.

These outages are not the inevitable result of reliance upon computers. Everybody that uses a credit card can tell you that computers are capable of instant credit approvals by the millions without long outages. Why is it that the NICS computers have such an abnormal number and duration of outages?

Mr. LOESCH. Part of it is this system of systems that we have got, Senator. There are so many different bundles of software involved. Actually, in the system of systems, over 400 different bundles of software that are all integrated, and every time you get an upgrade from any of these companies, you have got to do a lot of reengineering to make sure that they fit.

We have had a tremendous 32 years of reliability in NCIC, but it is a lot simpler type of system, basically, in what it does. It is almost like the credit card type of system. You query it and you get an answer back and it is a large database, but this III database, which is working through the ITN, and, I mean, we have got some corruption, and by that in the table spaces that the contractor is basically—

The Chairman. By corruption, you mean inability to get things—

Mr. LOESCH. Actually, what happens is—they call it corruption. There is no kind of outside intervention or anything like that, that we have been hacked into or anything like that.

The CHAIRMAN. You might want to use a different word when talking about the FBI systems. [Laughter.]

Mr. LOESCH. It is some kind of bug or something inside their database that just took—you know, it was running all these months perfectly and all of a sudden the right number of situations just hit this table and created that problem. We found that and we are trying to correct that now, but the system is very complicated and very, very sophisticated and very complicated. I am not an expert in computers, but, I mean, we have got literally dozens and dozens of the biggest companies in the world, basically, working on these problems, that built this system to specifications that have been laid out. We are going to get there. We are definitely going to get there. It is a matter of tweaking and continuing to do what we are doing.

The CHAIRMAN. It is critical that we do.

Let us turn to Mr. Schlueter now. We welcome you, we are happy to have you here, and we will be interested in your experiences there in Vermont.

Senator LEAHY. Mr. Chairman, I might emphasize, in Vermont, we feel very fortunate that Max is there. In a little State like ours, it is extremely important that we have the abilities that he brings there and the fact that, as you know from Utah and Vermont and everywhere else, there is no State today that does not face a number of these problems and he is very helpful. I thank you for putting him on the list of witnesses today.

The CHAIRMAN. We are happy and honored to have you here, Mr. Schlueter. We will turn to you at this time.

**STATEMENT OF MAX SCHLUETER**

Mr. SCHLUETER. Thank you, Mr. Chairman. The State of Vermont has been a participant in the NICS program as a point-of-contact State since November of 1998, and as a point-of-contact State, as we have heard here today, the Federal firearms licensee contacts the State of Vermont rather than NICS in order to conduct the pre-sale record check. As the Director of the Vermont Crime Information Center, I supervise the Vermont NICS and my testimony today will focus on the perspective of NICS from a POC State perspective.

In 1998, when the State of Vermont was planning for the implementation of the permanent provisions of the Brady law, Governor Dean had two alternatives from which to choose. FFL's could contact the NICS directly for their pre-sale record check, or the FFL's could process their request through a Vermont point of contact. Governor Dean ordered that Vermont would take the latter approach and participate in NICS as a POC State.

This option was selected because if the FFL contacted the NICS directly, NICS would only query Federal repository records. In Vermont, 80 percent of our felony convictions are not forwarded to the FBI's criminal repository because they are not fingerprint-supported. In addition, due to resource limitations, Vermont does not contribute relief from abuse orders to the National Crime Information Center and the vast majority of Vermont's wanted persons are not entered in NCIC. It is common among many States.

As such, if FFL's were allowed to contact NICS directly, NICS would have no knowledge of these State records, and as a result, some individuals who should have been denied would actually be cleared for purchase. If FFL's contacted a Vermont POC, however, checks of the Vermont criminal history system, the Vermont relief from abuse order database, and the Vermont wanted persons database would be conducted in addition to the NICS check.

Our analysis of NICS transactions indicates that the option ordered by Governor Dean was the right one. From November 1998 through June 1, 2000, the Vermont POC has conducted nearly 30,000 checks, in a State of 500,000 people. Approximately 700 firearm purchases were denied because the buyer was a disqualified person under the provision of the Brady Act, and that is about 2 percent.

Of those 700 denials, however, it is estimated that 28 percent were denials on State charges which would not have been available to NICS if the FFL had contacted NICS directly. These purchases were denied because relief from abuse orders had been issued against them, they had been convicted of a misdemeanor crime of domestic violence, they were wanted in the State of Vermont, or they had been convicted of a felony and they had not been fingerprinted and, thus, their records were not at NCIC. These results, 28 percent, demonstrate the value of having the States act as a NICS point of contact.

Despite the success of the Vermont POC program, we do have two concerns regarding the implementation of the Brady Act, and that is the lack of financial support for POC States and the number of final dispositions which are missing from criminal records.

When Vermont became a POC State, it was the understanding that the NICS program would be a user fee-supported program, and we had planned to fund our program in Vermont by charging FFL's the same fee that NICS would have charged them if they had contacted NICS directly. In the final version of the Brady Act, as I am sure you are well aware, the fee provision was deleted, and as a result, the State of Vermont and other POC States had to scramble to identify alternative sources of funding.

In Vermont, the POC program is currently funded totally by general revenue funds. During this past legislative session, however, there was considerable pressure to redirect funds from the POC program to other State priorities. Fortunately, advocates of the POC program were able to prevail, at least for another year. In order to ensure the continued participation of the State of Vermont and other States, such as Utah, we strongly recommend that a NICS user fee or an appropriation directly to the State to operate the NICS be considered.

A second issue which hampers our ability to conduct a Brady check in an effective manner is the amount of missing data on criminal records. Final case dispositions are missing on approximately 75 percent of the criminal records that are reviewed by the Vermont POC. When a felony arrest is found on a record, a staff person must determine if that arrest was prosecuted, and if it was prosecuted, whether the case is still pending or resulted in a conviction. If this case disposition information is missing, the check cannot be completed and a delay response must be returned to the FFL. If the matter cannot be resolved within 3 days, as is frequently the case, the sale proceeds by default. On average, one case a week results in a default proceed transaction in Vermont. If the case is later resolved to indicate the purchaser was a disqualified person, then ATF must be contacted in order to effect a retrieval of the firearm.

The State of Vermont strongly supports full funding of the Crime Identification Technology Act, known as CITA, and the National Criminal History Information Program, NCHIP, as major tools to assist the States to resolve the problems of missing dispositions. Both of these programs endorse a model which would facilitate the ability of the State's criminal history repository to improve the quality and completeness of criminal records and to advance criminal justice integration and data sharing projects, in particular, data sharing projects with the courts. These types of efforts should result in better quality records, create a single point of contact in the State for the timely resolution of missing data cases to avoid default proceed transactions.

I appreciate the invitation to appear before the committee, Mr. Chairman, and thank you for consideration of our concerns.

The CHAIRMAN. Thank you so much. We are glad to have your testimony.

[The prepared statement of Mr. Schlueter follows:]

PREPARED STATEMENT OF MAX SCHLUETER

The State of Vermont has been a participant in the NICS program as a Point of Contact State since November of 1998. As a Point of Contact (POC) State the federal firearms license (FFL) contacts the State of Vermont rather than NICS to conduct the pre-sale criminal record check. As the Director of the Vermont Crime Infor-

mation Center I supervise the Vermont NICS program. My testimony will focus on the NICS system from the perspective of a POC State.

In 1998, when the State of Vermont was planning for the implementation of the permanent provisions of the Brady Law, Governor Dean had two program alternatives from which to choose. FFLs could contact NICS directly for the pre-sale record check or FFLs could process their request through a Vermont Point of Contact. Governor Dean ordered that Vermont would take the latter approach and participate in NICS as a POC State. This option was selected because if the FFL contacted NICS directly for a record check, NICS would only query records in federal repositories. In Vermont 80 percent of our felony convictions are not forwarded to the FBI's criminal record repository because they are not fingerprint supported. In addition, due to resource limitations, Vermont does not contribute Relief From Abuse Orders to the National Crime Information Center (NCIC) and the vast majority of Vermont wanted persons are also not entered into NCIC. As such, if FFLs were allowed to contact NICS directly, NICS would have no knowledge of these state records and as a result, some individuals who should have been disqualified from purchasing a firearm would be cleared for purchase. If FFLs contacted a Vermont POC, however, checks of the Vermont Criminal History System, the Vermont Relief From Abuse Database, and the Vermont Wanted Person Database would be conducted in addition to the NICS check.

Our analysis of NICS transactions indicates that the option ordered by Governor Dean was the right one. From November, 1998, through June 1, 2000, the Vermont POC conducted nearly 30,000 checks. Approximately 700 firearm purchases were denied because the buyer was a disqualified person under the provisions of the Brady Law. Of those 700 denials, it is estimated that 28 percent were denials based on state charges which would not have been available to NICS had the FFLs contacted NICS directly. These purchasers were denied because a relief from abuse order had been issued against them, they had been convicted of a misdemeanor crime of family violence, they were wanted in the State of Vermont, or they had been convicted of a felony in Vermont and not fingerprinted. These results demonstrate the value of having the states act as a NICS point of contact.

#### PROGRAM ISSUES

Despite the success of the Vermont POC program, we do have two concerns regarding the implementation of the Brady Law—the lack of financial support for POC States and the number of final dispositions which are missing from criminal records.

When Vermont became a POC State it was with the understanding that the NICS program would be a user-fee supported program. We had planned to fund our state program by charging FFLs the same fee that NICS would have charged them if they had contact NICS directly. In the final version of the Brady Act, however, the fee provision was deleted. As a result, the State of Vermont and other POC States had to scramble to identify alternative sources of funding. In Vermont the POC program is currently supported by general revenue funds. During this past legislative session, however, there was considerable pressure to redirect funds from the POC program to other priorities. Fortunately, advocates of the POC program were able to prevail—at least for another year. In order to ensure the continued participation of the State of Vermont and other states as POCs would strongly recommend a NICS user fee or an appropriation directly to the state to operate the NICS center.

A second issue which hampers our ability to conduct the Brady checks in an effective manner is the amount of missing data on criminal records. Final case dispositions are missing on approximately 75 percent of the criminal records reviewed by the Vermont POC. When a felony arrest is found on a record a staff person must determine if that arrest was prosecuted, and if prosecuted whether the case is still pending or whether the case ended in conviction. If this case disposition information is missing the check cannot be completed and a delay response must be returned to the FFL. If the matter cannot be resolved within three days, as if frequently the case, the sale proceeds by default. On average, one case a week results in a default proceed transaction in Vermont. If the case is later resolved to indicate that the purchaser was a disqualified person then ATF must be contacted to effect retrieval of the firearm.

The State of Vermont strongly supports full funding of the Crime Identification Technology Act (CITA) and National Criminal History Improvement Program (NCHIP) as major tools to assist the states to resolve the problem of missing dispositions. Both of these programs endorse a model which would facilitate the ability of a state's criminal history repository to improve the quality and completeness of criminal records and to advance criminal justice data integration and data sharing

projects. These types of efforts should result in better quality records and create a single point of contact in each state for the timely resolution of missing data cases so as to avoid default proceed transactions.

I appreciate the invitation to appear before the Committee. Thank you for your consideration of our concerns.

The CHAIRMAN. Let me go back to Mr. Loesch again. Although the idea behind NICS was to make background checks instant, only 72 percent of the FBI checks are completed within 30 seconds. That is remarkable, but it is still not good enough. The others take hours, days, or even weeks to complete, and we are not even talking about the times that the system was unavailable due to computer outages.

The FBI has claimed that most delays result from incomplete criminal background information in the databases. I would like to know, and I think all of us on the committee would like to know, whether the FBI is taking proactive steps to improve the data, such as researching case dispositions where the database reflects only an arrest, or whether the FBI is simply responding passively by waiting until someone attempts to purchase a gun.

Mr. LOESCH. Well, we are doing a number of things to assist in getting those upgraded. Of course, we deal with that through the Advisory Policy Board and our five different working groups, regional working groups, as well as the five subcommittees that are involved with the APB. We have had our individuals in the NICS program actually going out to the various clerk of courts in meetings throughout the country, basically talking about the importance of the courts really recording these dispositions on all of these files that are out there. We are publishing some various articles about the importance of that in our CJIS Link, which is our newsletter that goes out to over 80,000-some different criminal justice entities and then gets recopied out there.

But as far as going into the records themselves, I mean, barely, we can keep up with the work we have today without being able to do that. Those are some of the kinds of things we would like to do, but that would, we feel--we have looked at that. That has been one of the things that we have kind of had on our agenda to be able to put some things together, but you would have to go out to basically every State. We have even thought of how do we do this. I mean, they are all over the place.

This information, basically, the States right now cannot even keep up giving us the information just on the NICS inquiries we get in, which is for us only about 6.5 million or so out of the 13 million in 18 months. We are not even able to get that kind of cooperation right now because the States do not have the people on board that can find these records because they cannot pay them.

The CHAIRMAN. Right. Well, we are going to try and solve that. It appears that many of the problems with both reliability and the completeness of NICS are due to it being a combination of several different databases, the III, NCIC, and NICS Index, just to mention the three of them, and that a failure of any one of those systems will bring the Instant Check to a halt. You have already talked about the complexity of the system.

Has the FBI given any thought to creating a fully separate NICS system containing only information relevant to firearm purchase denials to increase redundancy and reduce the problem of inte-



grating these databases? Have you thought about that? And let me just ask you this. Would such a step reduce the problem of false hits on the system based on records with unrecorded dispositions?

Mr. LOESCH. That is a big question, Senator.

The CHAIRMAN. That is a big question.

Mr. LOESCH. You know, we have talked about, obviously, how nice it would be to have just a separate system, but in order to do that, you would have to basically replicate the entire III system, and the way that whole system is kept up is through fingerprint submissions and new arrest data and things of that nature. You would need to take all of those databases and really build a totally other system that would be used just for NICS type of checks. I am still not sure it would make any difference unless you get the disposition information you need in there. We would still have the same kind of problems, is what I would see. I mean, I look at my colleagues. They are shaking their head yes. It really would not solve anything.

The CHAIRMAN. All right. The NICS system has prevented thousands of prohibited persons from obtaining firearms. Now, the record on enforcement is quite a different story. Even though a significant number of these people violated Section 18 U.S.C. 922(a)(6) by misrepresenting their background on the required forms, the Justice Department prosecuted only one case for every 880 denials. Regardless of how well the NICS system operates, do you not agree that without enforcing the existing laws, we will not reduce the misuse of firearms in our country?

Mr. LOESCH. I agree with you. I believe we should enforce those laws. That is not the FBI's job, of course, but I do have some understanding on—we do, in fact, contact the ATF any time we get someone that has come in here that has been denied that is trying to get a gun that should not get one. My understanding is from them, of course, is that they try to go through that record and really look at who is the most violent and who would be considered to be the most—I mean, there are only so many U.S. attorneys and prosecutors around there that do that. But that is not the FBI's job.

The CHAIRMAN. Do you believe that the convicted felons who were prevented from buying guns by the NICS check simply stopped trying to obtain a gun?

Mr. LOESCH. No, sir.

The CHAIRMAN. They have gone out and obtained them from private sources, if they are stopped there. So that is one thing I am concerned about.

Let me just ask you a question, Ms. Ball. It has been wonderful having you here.

Mr. LOESCH. Thank you, Senator.

The CHAIRMAN. But you testified, Ms. Ball, in the 18 months since the NICS system began, you have seen only one instance in which a transaction was denied due to a background check.

Ms. BALL. Correct.

The CHAIRMAN. Yet you implied that many of your customers experienced delay in getting their transactions approved. Could you please elaborate on this and explain what typically happens in your store when you undertake a NICS search for a customer.

Ms. BALL. When we run the information through the NICS system, about 40 percent of those customers get a denied status or they give us the hold number and we have to retain the firearm. Most of those are cleared within the 3-day period that NICS requires for that. But I do have about 40 percent delayed. We get called back with a “proceed,” but it slows down the process.

The CHAIRMAN. I see. So it is not as fast as the 72 percent.

Ms. BALL. No. My numbers do not—

The CHAIRMAN. In your case.

Ms. BALL. Yes. My numbers are definitely higher on delays.

The CHAIRMAN. Let me ask one other question. Since the NICS system became operational, hundreds of firearms have been transferred into the hands of prohibited persons due to the so-called default proceed rule. That rule says that a transaction may proceed if the agency in charge of the background check takes longer than 3 days to complete the check. Now, there are those who want to amend the NICS law either by extending the default time to as much as 30 days or by allowing the existence of a bare arrest rather than a conviction to be a basis for prohibiting a transaction. How would you and your customers react to adding extra time on to the default rule?

Ms. BALL. I think you are going to find customers are going to object to that, and just by virtue of adding additional time onto that default process, reduces the push that we all would like to see to get that system up and running the way it is supposed to. We are at 3 days now. If we give them 5 to complete those background checks, they are going to take 5. It is not uncommon for me to call back into NICS on the third day and say, what is the status of this, and they have been sitting on it for a couple of days and have not called me back with a “proceed.”

So extending that default time, I do not agree with. Personally, as a dealer, we do not make the transfer, but that has been a decision that we made in-house. Rarely do I get—well, obviously, if I have only had one since NICS went into operation. They always call back with a “proceed,” but I still am not going to make a transfer until we have either a positive or a negative statement from the NICS system. But I do not think extending that default period is an answer to solving the things that we are talking about here today.

The CHAIRMAN. You make a pretty good case.

My time is up. Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

Ms. Ball, the other part of what Senator Hatch has raised, how would you feel if it added a simple arrest as being something to stop?

Ms. BALL. A simple arrest?

Senator LEAHY. Yes.

Ms. BALL. Well, I am all for enforcement of the laws that are out there. We have never had one that I am aware of turned over from the—

Senator LEAHY. No, no, no, I mean for denial, the fact that somebody had an arrest record but not necessarily results that show a conviction.

Ms. BALL. I guess that would be—I cannot answer that without knowing what you are referring to as far as an arrest for what. An arrest for jaywalking? Probably I would disagree.

Senator LEAHY. No, but say there is an arrest for a felony on the record. Do you think it would be fair to say to somebody, well, we are going to stop any sale there, or do you feel that it must show conclusively first a conviction?

Ms. BALL. Well, I would think that you would have to show conclusively a conviction. If we are innocent until proven guilty, I think that is really—

Senator LEAHY. I tend to agree with you. I am just asking—

Ms. BALL. That is a really important issue, I think.

Senator LEAHY. Then let me go to Mr. Loesch on this. On enforcement, obviously, if somebody comes—well, I say obviously, you may disagree with me—you have a 45-year-old person who comes in now to buy a weapon and they, when they were 18 years old in college passed a bad check and got a record on it, I mean, actually got convicted and made restitution, probably got a \$100 fine, but it is a felony. So now, 25 years later, they put down, have you ever been convicted of anything, and maybe they remember, maybe they do not. They say no and they get denied. Now, if you were the U.S. attorney, would you say, stop what we are doing, let us go after that person, or would you feel that that is probably something we take a bye on?

Mr. LOESCH. If I were the U.S. attorney, of course, I would probably take a bye on it.

Senator LEAHY. But now, on the other hand, if that person had been convicted of bank robbery 4 years before, how would you feel then?

Mr. LOESCH. It would be a different story.

Senator LEAHY. If ATF, as they say, do not have enough agents to go back and do that, because, of course, they would have to have not only the fact that they were denied it, but then they have got to go back and prove the conviction, they have got to establish, one, this was the person, second, that they were convicted, and then third, prove and make sure that you have people in the gun shop that can positively identify that this was John Jones who came in here, and then having done all that, and that they saw him sign it and, indeed, they can prove that this is the person who signed it, then you have got to go back and connect that person to the crime. The ATF agents say, we do not have enough to do that with all the other responsibilities. Well, then should we tell the FBI to start helping them out?

Mr. LOESCH. I think the FBI has enough to do, Senator, right now, with the resources we have currently available to us.

Senator LEAHY. If they do not have resources and you do not have resources, who is going to do it?

Mr. LOESCH. I do not know. I do not have the answer to that.

Senator LEAHY. But you say it is a resource problem?

Mr. LOESCH. I would say it would be a resource problem the way you have explained the process to me or the problem to me.

Senator LEAHY. I am just asking. I was a prosecutor. I know how difficult it is sometimes to have resources for everything you want to do. But somewhere, we have to make priorities here. If this

should be a priority, going after people who have-and I am one who feels there should be more prosecutions. I do not feel there are enough prosecutions of people who lie on these Brady applications, but how do we do it, because the States are not going to do it, am I correct?

Mr. LOESCH. Correct.

Senator LEAHY. And the FBI is not going to do it, and the ATF does not have the people to do it, so where do we put more people?

Mr. LOESCH. I do not know.

Senator LEAHY. So that is the question. I think we should be doing a lot more to support the States that want to conduct their own background checks. We have Utah and Vermont here represented. The NICS is mandated by Federal law, but a lot of States are picking up the tab for conducting effective background checks. My State happens to be a State that has virtually no gun laws. There are exceptions to that. We limit the number of rounds you can carry in a semi-automatic during deer season. We do want to make sure the deer have some kind of an opportunity here. [Laughter.]

But we do not really limit them in the number of rounds you carry as a concealed weapon. I mean, anybody can carry a loaded concealed weapon in Vermont without a permit. You can carry guns. There is a certain limit. Most of our limitations, I think Mr. Schlueter, you would agree, are based on fish and game laws, whether you can have the hunting rifle loaded in the car or whatever. But that works for Vermont. We have also the lowest crime rate in the country.

But we are told to make these checks when people go in to purchase a weapon, and we are a law-abiding State and we will say if that is the Federal law, we will do it. But I think that any other State that is doing this should be given help by the Federal Government. If the Federal Government is going to tell us to make these checks, whether we would normally make them or not, we ought to get some compensation for it, and the more comprehensive criminal history records are currently available at the State and local level in the States rather than at the Federal level. That is, I guess, why about half of the States have determined to be the points of contact.

Now, Mr. Schlueter has already said that about 28 percent of the denials of prohibited people making firearm, or trying to make firearm purchases in Vermont are based on State charges which would not have been in the FBI list, and I say this because this is why Senator Hatch and I and others are introducing the Partnership Act of 2000, the NICS Partnership Act of 2000, which I think will help this a great deal. In fact, Senators Kohl and Schumer are original cosponsors of the bill. This legislation would authorize \$150 million for the next 3 years for the Department of Justice to reimburse States for this.

I think the effective Brady background checks are the responsibility of the Federal Government under Federal law, because the State laws change and vary so differently among our 50 States on firearm purchases and firearm ownership. But if it is a Federal law and a Federal responsibility but the States are doing the work,

well, then the States ought to be reimbursed their costs in doing this.

I think if that happens, I think that the problems that Ms. Ball has raised and problems, incidentally, I hear from gun dealers in my own State, may well go away. My suggestion, Mr. Chairman, is that we do find a better way to bring in both the State and local convictions with the Federal convictions so that you know whether they are going under Captain Smith's jurisdiction or anybody else's, you know you have an accurate report.

I do not have a problem with U.S. attorneys saying that on basically de minimis matters, the 30-year-old bad check case or something like that, in not prosecuting. I do acknowledge very much that there is a major advantage to the country that people with felony records are being denied licenses, or being denied sales, although there is a major gun show loophole that they can still use to get around that. That is something that we should close.

But, frankly, I do feel that there should be more aggressive prosecution of people who have lied on applications when they have serious offenses on their record. I think if we had more effective prosecution of that and, at the same time, close the gun show loophole, because I can guarantee you right now, if you start having more effective prosecution on this from the legitimate gun stores, those that pay the taxes on Main Street and everything else, that fill out all the forms, if you start effectively prosecuting some of the people who make false claims there, they are all going to go to gun shows because they know that there, they can get away with it scot-free. So you have got to close the loophole and have more effective enforcement.

Mr. Chairman, I think that the legislation you and I have here and others, I think this could be very, very helpful. In fact, if we have Senator Schumer and Senator Kohl, the two who have probably taken a somewhat different view on gun control than you and I and some others from States that have different histories, the fact that we are all joined together may help. I see Captain Smith smiling. I think you want to know when a question is asked that you get the right answer. Am I putting words in your mouth, Captain?

Captain SMITH. No, sir, that is it.

Senator LEAHY. Again, I want to say what Max has done and the State police and others in Vermont has been very, very impressive for our State and I am very proud to be here.

Again, I apologize that a doctor's appointment went a lot longer than I thought it was going to this morning and that I was late, but Mr. Chairman, I do appreciate you holding this hearing. I think it is an extremely important one.

The CHAIRMAN. I just hope that psychiatrist got a lot done there today. [Laughter.]

Senator LEAHY. It was not a psychiatrist. It was an eye doctor.

The CHAIRMAN. All right. [Laughter.]

Senator LEAHY. I just wanted to be able to see you better, Mr. Chairman, you know, you handsome devil, I really did.

The CHAIRMAN. I can imagine. I can imagine. [Laughter.]

Senator LEAHY. He does not know what to say at that point.

The CHAIRMAN. Let me just ask the two of you—

Senator LEAHY. He is just praying that nobody back in Utah is watching right now.

The CHAIRMAN. That is right. [Laughter.]

Let me just ask the two of you, the State administrators, you have both done terrific jobs as far as I can see and you both are experts in this area, but how do your States use the NICS denials to prosecute attempted illegal purchases? Do you prosecute at a higher or lower rate than the Federal Government, Captain Smith and then Mr. Schlueter?

Captain SMITH. I would again have to almost echo Assistant Director Loesch's comments, that we are so woefully understaffed to do that. Our response to denials is to take that list and broadcast that list to all law enforcement Statewide, both Federal, local, and State, so they are aware of those people that have come in.

I will go back to Senator Leahy's comment. One of the big, big problems here is if you are going to prosecute them, you have got to show that it was them, and that is such a stumbling block for prosecution that it almost bars it. If we went to maybe a thumbprint or something on that form, you would have something to go with, in the way of suggestion. But when you have to start an investigation with, was this really the guy, and then go hunt down all the people that can establish that, you have effectively killed any prosecution of that, in my mind anyway.

The CHAIRMAN. I see. Mr. Schlueter.

Mr. SCHLUETER. I would concur with Captain Smith. Of course, in the State of Vermont, we have no grounds to prosecute a case like this because this would be a violation of the Federal law, and so we refer those cases to ATF.

The CHAIRMAN. I see.

Mr. SCHLUETER. Our experience is similar in Vermont as in other States in terms of the frequency of prosecution.

The CHAIRMAN. It does appear from the GAO report requested by Senator Thomas that the rate of prosecutions for these violations is quite low due to two factors, the lack of referral of these cases by ATF and the lack of charges filed by U.S. attorneys. From your perspectives as law enforcement and criminal justice officials, what could be done to address the low levels of action on the part of both agencies? Let us start with you, Mr. Schlueter, first, and then with you, Captain Smith.

Mr. SCHLUETER. Again, I think the problem, as has been pointed out, is that it is almost an unenforceable statute given the burdens of proof for the investigating agency. I am not sure that additional resources to ATF or FBI or even at the State level would make a significant dent in those prosecutions in terms of increasing them.

The CHAIRMAN. I see. Captain Smith.

Captain SMITH. Mr. Chairman, again, like Vermont, we do not have a State law that allows us to go ahead and proceed there. I suppose we could do some things under false representation or something else, but it is a Federal form. We refer those to the Bureau of Alcohol, Tobacco, and Firearms. As Mr. Loesch has stated and others, they are just woefully understaffed to do that.

At the State level, I think if we wanted to take that on, there would probably have to be an inducement, and although I spend a lot of time at the State legislature every year, having them pass

a law to say we are going to take on another kind of a very difficult and almost unenforceable task, we would have to see that form change, I think, and have the type of identification at the front end established so clearly that basically what you would have, like Senator Leahy says, is a slam-dunk case. As a prosecutor, you would say, this is absolutely the guy. He came in there and he put his thumb print on that and, by golly, we are going to go after him because of it.

The CHAIRMAN. That is good to know.

One last question for you, Mr. Loesch, and then, unless Senator Leahy has some questions, we will finish. Early last year, representatives from all the major industry and firearms user groups petitioned the FBI to form a users advisory group for the NICS system as provided for under the Federal Advisory Committee Act. After expressing initial interest in the idea, the FBI stalled for over a year. Now the FBI has decided to host only a single meeting for some 500 dealers instead.

Why did the FBI reject the idea of a users advisory group, particularly when given the increasing scope of problems with the system, and what does the FBI expect to accomplish by hosting hundreds of dealers instead of a reasonably-sized working group?

Mr. LOESCH. Well, I do recall that communication coming in. I think it was five different groups that were asking for that, and we discussed that, of course, with our Advisory Policy Board executive committee, and at that time the feeling was, and within the FBI also, was that we already had a number of various advisory policy type of boards with a compact council, now that we are running along with the APB, and the real feeling was that we would, in fact—we went back out to them with a letter and basically said we would, in fact, host some type of meeting, and it is this summer, as a matter of fact, and we have invited in for input, of course, to get input from the dealers as well as those organizations, and I do not remember all the organizations. I think the NRA was one of them, but there was a Shooters Association, there were like five different organizations there. They have been invited to participate, also, to meet with us, as well as members of Congress, I believe, on that.

So the idea was to get as much input as we can, I mean, from—we would really like to be in contact, of course, with the dealers, the people that are actually out there at the point of the sale as to running this system and finding out how we are doing or what do we need to do better, and the more of those we can get in and listen to, the better off we feel we would be able to run the system.

I mean, if we were going to have, and I do not believe they would be covered under the Federal Advisory Committee Act as a group anyway. I think we could probably have some kind of subgroup within our advisory process for them if it was decided that was the way to go. But what we were looking at, we looked at that one group, then we said what we really need to do is to have representatives from the dealers, the people that are actually the K-Marts and the Wal-Marts, the large people that are processing this and the large gun stores throughout the country, that they would be the ones we really need in there talking to us on this business. Now, whether those groups would be representing them, we per-

sonally would like to have those kind of people in there, and we are having that this year, this summer.

The CHAIRMAN. Thank you. We will keep the record open until the close of business for any further statements by members of the committee or any further questions that they would like to submit in writing.

Senator Leahy.

Senator LEAHY. I just want to kind of emphasize what Mr. Schlueter said earlier about the fact that since we do not have Vermont laws or State laws on these, there really is not any way that Vermont is going to go out and prosecute on these matters. It is also going to limit somewhat what the U.S. attorney or anybody else could do.

But also, as Captain Smith pointed out, it is very easy to say we do not prosecute a lot of these things, but that is like saying, right now on the interstate in Utah or in Vermont, there are speeders who are not being prosecuted because there is nobody there, number one, but secondly, it is more than that.

Again, the hypothetical I would use, John Jones comes into Provo or into Waterbury Center and comes in and there are two or three people working there and picks out the .44 Smith and Wesson and says, gee, I really like this, 8<sup>3</sup>/<sub>8</sub> inch barrel, it is magnaported, it is a nice weapon, stainless steel—actually describing a weapon I picked up a couple years ago—so they have got three or four people going back and forth. Suddenly, someone hands him a form to fill out. Somebody else sort of picks it up and they go through the thing and guy says, I am going down to get some coffee. I will be back.

They check, and during that time they find it comes back and this guy has got three armed robberies and so on and so forth, but he may have looked in the window and seen them all talking and he decides not to come back in. Now the U.S. attorney has got that. Do you remember that man that came in? The first clerk, yes, a tall, thin guy. The second clerk, no, he is kind of short and stocky. The next one says, well, he had a moustache. No, he did not have a moustache but I do remember the sandy hair. What do you mean, sandy? It was dark.

Now, anybody who has ever had a case, and Captain, I am sure you have had cases like that when you have gone, not necessarily on guns but on some other matter, and now, if you can figure that out, you have got to go back and figure out those convictions and tie the two together. So it is not an easy thing to say, gee, somebody put a wrong statement on there. That would be a slam-dunk case. It is a long way from that.

Now, if they are doing it, they are being videotaped doing it, the thumbprint and everything else, it gets better and it gets easier, but it is still not the slam-dunk case that some people think, and I just point that out, that one would start trying to keep that felon from buying the weapon in the first place, and that does have a very good goal and I agree with that. But as far as some of this enforcement of the lying on it, it is not the easiest thing in the world to do. So I appreciate from both of you the immediate, real kind of testimony you have given.



Ms. Ball, I appreciate the concerns you say, especially the one where you call up and say, hey, where is the answer? Oh, yes, we have got to get to that. That, I hear a little bit too often from people. The bad news is that it happens. The good news for you is you are not alone in this. I know a lot of other gun dealers who have had similar things.

But, Orrin, thank you very much for holding this hearing. I do have a statement that I would like to have included in the record.

The CHAIRMAN. Thank you, Senator.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

I thank the Chairman for holding this hearing today on ways to improve the National Instant Criminal Check System (NICS). I look forward to hearing from all of our witnesses. In particular, I would like to thank Max Schleuter, Director of the Vermont Crime Information Center, for coming to Washington to testify about the way Vermont handles its NICS checks and his suggestions for improvements to the NICS.

I also want to acknowledge my old friend, Senator Bob Dole, the former Majority Leader. It is good to see you again.

The Brady Handgun Violence Prevention Act of 1994 established the NICS and required federal firearm licensees to conduct a background check on the purchaser of any firearm sale after November 30, 1998. In its first 18 months of operation, the NICS has been a highly effective system for keeping guns out of the hands of criminals and children. Having processed more than 10 million inquiries during this time, the NICS has ensured the timely transfer of firearms to law abiding citizens, while denying transfers to more than 179,000 felons, fugitives, and other prohibited persons.

That is a remarkable record in preventing crime and protecting public safety. I fully support the NICS as a way to prevent criminals and juveniles from purchasing firearms without forcing a waiting period on law-abiding citizens who want to purchase firearms. I believe, however, that the NICS system can and should be improved.

The first way to improve the NICS is to make sure it is up and running. For 66 hours—from the afternoon of May 11 to the morning of May 14, 2000—the NICS system lost all service. For nearly three days, law-abiding citizens could not purchase firearms because the FBI could not conduct any background checks. That is unacceptable. I look forward to hearing the testimony of David Loesch, Assistant Director in Charge at the Criminal Justice Information Services Division of the FBI to explain to us why this NICS system failure happened and how to prevent any future service failures.

I also believe Congress should do more to support states who want to conduct their own background checks. The NICS is mandated by federal law, but many states are picking up the tab for conducting effective background checks. Since more comprehensive criminal history records are currently available at the state and local levels in many states than at the federal level, about half of the states have elected to serve as points of contact (POCs) to access the NICS.

A state POC is a state agency that agrees to conduct Brady background checks, including NICS checks, on prospective gun buyers. In states that have agreed to serve as POCs, federal firearm licensees contact the state POC for a Brady background check rather than contacting the Federal Bureau of Investigation. These POC background checks review more records of people in prohibited categories, such as people who have been involuntarily committed to mental institutions or are under domestic violence restraining orders.

Indeed, in my home state of Vermont, for example, which serves as a POC, approximately 28 percent of all denials of prohibited persons seeking firearm purchases are based on state charges which would not have been available for review at the FBI's criminal record repository.

Currently, these 15 states serve as full POCs for NICS: Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Nevada, New Jersey, Pennsylvania, Tennessee, Utah, Vermont and Virginia. Another 11 states serve as partial POCs for NICS by performing checks for handgun purchases while the FBI processes checks for long gun purchases: Iowa, Michigan, Nebraska, New York, North Carolina, Indiana, Maryland, New Hampshire, Oregon, Washington, and Wisconsin.

In fact, of the 8,621,000 background checks conducted last year, 4,538,000 were handled by the FBI and 4,083,000—almost half—were handled by state POCs. So while some states relied on the FBI to conduct Brady background checks and paid nothing, the states that elected to conduct more effective background checks paid the full cost of them. That is unfair to states that are doing the right thing.

Today, I am introducing the NICS Partnership Act of 2000 to remedy this inequity. I am pleased that the Chairman of the Judiciary Committee, and Senators Kohl and Schumer on the committee, are original cosponsors of the bill. Our bipartisan legislation would authorize \$150 million for the next three years for the Department of Justice to reimburse states for their reasonable and necessary costs for serving as a POCs.

Effective Brady background checks are the responsibility of the federal government under federal law. As a result it is only fair for Congress to reimburse states their reasonable costs needed to conduct effective Brady background checks. I look forward to the prompt consideration of our bipartisan legislation.

Another way to improve the NICS is to close the gun show loophole. On May 20, 1999, by a vote of 73–25, the Senate passed a juvenile justice bill that contained a modest measure to crack down on illegal gun sales at gun shows by requiring NICS checks of prospective buyers. Under current law, gun show dealers do not have to abide by the same background checks as federally licensed firearms dealers. Since the Lautenberg amendment was included in the juvenile justice bill, the Republican leadership has simply refused to convene a conference committee meeting on the broader juvenile justice legislation. We should be moving on it now, not waiting for the next tragic shooting to occur.

I look forward to working with the Chairman and other members of the committee to improve the NICS on a bipartisan basis, and I thank our witnesses for appearing today.

The CHAIRMAN. We really want to thank all of you for being here. It has been very helpful to us as we try to resolve some of these problems. I just want to express my gratitude to each of you, and with that, we will recess until further notice.

[Whereupon, at 12:10 p.m., the committee was adjourned.]

# APPENDIX

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## ADDITIONAL SUBMISSIONS FOR THE RECORD

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PREPARED STATEMENT OF HON. RICK SANTORUM, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

DEAR CHAIRMAN HATCH AND MEMBERS OF THE COMMITTEE: I am pleased to have the opportunity to submit Check System (NICS) for firearm purchases. Specifically, I am concerned about the reliability of the system and the failure of the NICS to meet its operating accountability standards. I want to thank the Chairman for his leadership on this important issue and the members of the Committee for your attention to these system failures. I have encouraged the Committee to have a such a hearing because this issue is important to the citizens of Pennsylvania.

I was disturbed to learn that the results of a General Accounting Office (GAO) investigation, requested by Senator Craig Thomas, indicated that a variety of significant failures have prevented the system from operating as Congress had intended. Among the most outrageous findings of the GAO investigation, was the revelation that 3,353 prohibited individuals had been permitted to purchase firearms as result of repeated NICS failures. In the 56,554 cases where individuals had been denied the ability to purchase a weapon due to felony convictions, less than 200 individuals had actually been prosecuted for falsifying their applications. This evidence is in strong contradiction to my support and the support of many on this committee to expand the efforts of Project Exile throughout the country.

Additionally, I was troubled to learn that the system had failed to provide instant checks over 28 percent of the time and that there were 360 occasions of unscheduled outages of the NICS. In fact, during first two weeks of last month, The NICS system was off-line for nearly five days. It has been estimated that small business owners lose approximately \$2.5 million in sales for each day that the system is off-line.

I am deeply concerned that this system, which had been created by Congress in order to screen potential firearms purchases for criminal background, has actually allowed the sale of thousands of weapons to dangerous felons, while it has also prevented law-abiding citizens from enjoying their constitutionally protected right to keep and bear arms. For these reasons, I have contacted FBI Director Louis Freeh for an explanation of these failures and await his response.

I would again like to thank the Judiciary Committee for this important hearing to address this situation. I look forward to working with you to improve the effectiveness of the NICS in the interests of American consumers and public safety. Thank you again for this opportunity.

PREPARED STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Mr. Chairman, the consistent and effective operation of the National Criminal Instant Criminal Background Check System (NICS) is an essential tool in keeping firearms out of the hands of criminals. The NICS system is a crucial first step in preventing criminals from obtaining a firearm. If combined with timely prosecutions of those disqualified persons (*e.g.*, convicted felons, fugitives, and spouse abusers) who illegally attempt to obtain a firearm, NICS can actually prevent a criminal from obtaining a firearm and using it to commit a crime of violence.

### *NICS: The Critical Importance of Prosecution*

When a person attempts to purchase a firearm from a federal firearms licensee, he must undergo a NICS check either directly through the federal system, or indi-

rectly through a Point of Contact (POC) state.<sup>1</sup> If the NICS check reveals that the person is a convicted felon, fugitive from justice, spouse abuser, or other disqualified person, it will deny that sale.<sup>2</sup> Further, when a convicted felon or other disqualified person completes the form necessary to perform the NICS check and fails to reveal that he is a disqualified person, he has committed a felony punishable by up to 10 years in prison.<sup>3</sup>

If a disqualified person commits a felony in attempting to purchase a firearm, is denied by the NICS check, but is not arrested, he can still purchase a firearm from an illegal source. For example, approximately 89% of firearms used in crimes are purchased from illegal sources that do not use NICS checks, such as straw purchasers, firearms, thieves, gangs, and firearms traffickers.<sup>4</sup> Thus, unless a criminal who is denied the purchase of a firearm by a NICS check is quickly arrested, he can simply go to an illegal source and obtain the firearm.

In fact, Benjamin Nathaniel Smith did just that. After failing a NICS check and not being arrested, Smith went and illegally purchased several firearms from an illegal seller. He then went on to shoot eleven people in Illinois and Indiana with those firearms.<sup>5</sup> Had he been arrested and prosecuted after failing the NICS check, this horrible incident would never have occurred.

#### *NICS Operation*

In any event, the consistent and efficient operation of the NICS system is crucial to enabling law enforcement to identify and prosecute convicted felons and other disqualified persons who are actively seeking to purchase firearms. When the NICS system is not working, federal firearms licensees are unable to conduct background checks and cannot transfer firearms to anyone, including qualified purchasers.<sup>6</sup> Thus, minimizing downtime is essential to allowing law-abiding, federally-licensed dealers to conduct lawful business from stores and gun shows.

Unfortunately, the NICS system experience unscheduled outages or downtimes on May 11–14, May 17, and May 22, 2000. These outages effectively shut down legitimate businesses across the nation, resulting in lost business, and perhaps lost opportunities to identify convicted felons who were illegally attempting to purchase firearms.

I understand that the Federal Bureau of Investigation (FBI) is addressing the causes for these outages. On June 8, 2000, Mr. Loesch of the FBI sent me a letter stating, “while still under study, all indications point to the root cause [of the outages] as a defect in the proprietary database management software which causes an incorrect and corrupting calculation of table spaces within the [Criminal Justice Information Services Division’s Interstate Identification Index].”<sup>7</sup> While the FBI’s attempt to address this problem is admirable, I am considering whether legislation providing operational standards for NICS, additional funding for NICS, and funding for POC States is appropriate.

#### *NICS Denials*

During 1999, the total number of NICS denials was 204,000.<sup>8</sup> Approximately 75% of those denials were because the attempted purchaser was a convicted felon or fugitive from justice.<sup>9</sup> Thus, law enforcement authorities last year were placed on notice that 204,000 disqualified persons, including a large proportion of convicted felon and fugitives from justice, were actively attempting to acquire firearms. Furthermore, the NICS check process gave to law enforcement the names, addresses, and even photos of these felons (since many gun stores have security cameras). Since the NICS system went online, law enforcement has had instant notification of the felony-in-progress. While the NICS check stopped the purchase from the legal source, the federal firearms licensee, only arrest and prosecution could stop the convicted felons and fugitives from acquiring firearms from illegal sources.

<sup>1</sup> 18 U.S.C. § 922(t).

<sup>2</sup> 18 U.S.C. § 922(t), (g), and (n).

<sup>3</sup> 18 U.S.C. §§ 922(a)(6), 924(a)(2).

<sup>4</sup> *ATF Performance Report: The Youth Gun Crime Interdiction Initiative 13* (Feb. 1999).

<sup>5</sup> David Ollinger, “Seller Gets 10 Months in July 4 Gun Rampage,” *The Denver Post*, p. A-11 (Mar. 4, 2000).

<sup>6</sup> 18 U.S.C. § 922(t).

<sup>7</sup> Letter from David R. Loesch, Assistant Director In Charge, Criminal Justice Information Services Division, Federal Bureau of Investigation, to Sen. Jeff Sessions, 2 (Jun. 8, 2000) (on file with the Committee on the Judiciary).

<sup>8</sup> *Background Checks for Firearm Transfers, 1999*, 1 Bureau of Justice Statistics Bulletin (June, 2000).

<sup>9</sup> *Id.* at 3.

*Prosecution of NICS Denials*

Shockingly, the Administration has failed to arrest and prosecute these felons in search of firearms. According to the Administration's own Bureau of Justice Statistics, during 1999, the administration prosecuted only 405 defendants under § 922(a), which includes NICS denials offenses.<sup>10</sup> This constitutes a prosecution rate of only 0.198%. Thus, 99.802% of the 204,000 convicted felons, fugitives, and spouse abusers and other disqualified persons who illegally attempted to purchase a firearm last year were not prosecuted!

Thus, these criminals were completely free to purchase firearms from illegal sources and commit crimes of violence. This situation is intolerable, and must be remedied.

Specifically, I believe that the FBI, BATF, and the Department of Justice should develop a program for the apprehension, investigation, and prosecution of felons who violate 18 U.S.C. § 922(a)(6) by illegally attempting to purchase firearms. If we cannot substantially increase the prosecutions of criminals who illegally attempt to purchase firearms, NICS checks will prove an ineffective barrier to crime. In short, a federal background check is only as good as the federal prosecutor who stands behind it.

Thank you, Mr. Chairman. I appreciate the opportunity to work with you on this important issue.

PREPARED STATEMENT OF HON BOB BARR, A U.S. REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF GEORGIA

Mr. Chairman, Committee Members, thank you for allowing me to make a statement on this urgent issue. The state of the National Instant Check System (NICS) is of immense concern to me, my constituents, and millions of Americans denied the ability to exercise their constitutionally guaranteed right to keep and bear arms. I hope this hearing accomplishes what I have not been able to do—obtain answers as to why this system is so unreliable.

In just the past couple of months, the NICS system has been “down” twice. Not only has the system been down twice, but the timing always seems to be such that it is down for entire weekends, the time during which most gun shows take place.

When I inquire as to why other check systems remain operable and reliable, as opposed to the NICS, which shuts down often, the reply is that NICS relies on “other systems” to operate, so if one system is down, the entire NICS is down. Another reason given is the lack of a backup system for the NICS. In a letter I received from the FBI dated June 16, 2000, David Loesch, the Assistant Director in Charge of the Criminal Justice Information Services Division, states in response to the lack of backup problem, “while one option under consideration (to solve this problem) is the development of backup systems, all options will undergo a risk/cost benefit analysis.” This is completely unacceptable.

The firearms industry and United States citizens rely upon this system to ensure that criminals are not able to obtain firearms illegally, and law abiding citizens are able to purchase firearms. These establishments are required to provide NICS background checks by law before completing a firearm sale. When the system shuts down, these sales are brought to a halt. No purchase or sale of firearms are allowed. In some cases, persons travel hundreds of miles to attend gun shows for the sole purpose of purchasing a firearm. How do we explain to them over and over again that, although they are law abiding citizens who have the constitutional right to purchase firearms, they cannot do so because the system is “down again?” The same holds for the dealers who rely on these shows to make an honest living.

In lieu of the major, and increased, funding in the past couple of years to the FBI for the NICS (some \$28 million from FY99 to FY00), I cannot understand how the system can be such a failure. It seems to be just another case of money being allocated, yet not used for the intended purpose.

Finally, there is one additional issue which needs to be addressed. In light of all of the rejections by the NICS, why isn't the federal government prosecuting these persons who attempt to illegally purchase weapons? The present Administration continues to implement more control while not enforcing the existing laws.

<sup>10</sup> John Scalia, “Federal Firearm Offenders, 1992–98,” Bureau of Justice Statistics Special Report, June 2000, NCJ 180795, Appendix Table 3, <http://www.ojp.usdoj.gov/bjs/pub/pdf/ffo98.pdf>, (although this report lists preliminary figures for 1999 of 391 § 922(a) prosecutions, BJS subsequently provided final data for 1999).

Mr. Chairman, again, I thank you for holding this hearing, and look forward to receiving straight, honest answers.

