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REVISED - NOTE ROOM CHANGE

NOTICE OF PUBLIC HEARING

The ASSEMBLY JUDICIARY COMMITTEE has recently formed a subcommittee to be known as the SUBCOMMITTEE ON ADMINISTRATION OF FIREARMS STATUTES. Assemblyman Gary Stuhltrager will chair this subcommittee. The subcommittee will hold a public hearing on Tuesday, September 15, 1987 at 10:00 a.m. in the NEW JERSEY STATE MUSEUM AUDITORIUM, 205 WEST STATE STREET, Trenton.

The purpose of this public hearing is to review existing statutory provisions related to firearms including, but not limited to, the exemptions of carrying a weapon without a permit and matters concerning lawful transportation of a firearm. No specific legislative proposals will be considered. Discussion is expected to take an overview of existing laws and regulations.

Anyone wishing to participate should contact Patricia K. Nagle, Aide to the Assembly Judiciary Committee at (609) 292-5526.

ONLY THE LOCATION OF THE MEETING HAS CHANGED. THE STATE LIBRARY IS ADJACENT TO THE STATE HOUSE ANNEX, THE AUDITORIUM IS ADJACENT TO THE LIBRARY.

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ASSEMBLYMAN GARY W. STUHLTRAGER (Chairman): I'd like to ask everyone, if they would, to take a seat so that we can begin these hearings here today. I'm Assemblyman Gary Stuhltrager. I've been appointed Chairman of this Subcommittee. Joining me today is Assemblyman Thomas Shusted, and Assemblyman Gene Thompson is also a member of the Subcommittee.

I just want to make a few brief remarks, and I mean brief because we have a number of people that are anxious to testify, and we want to make sure everybody has an opportunity to present to this Committee what they have to say.

Let me tell you that this Committee has several goals. We've been appointed to review the New Jersey firearms statutes. This is no different than any other committee that reviews statutes dealing with any other range of topics. From time to time, laws need to be changed. They may be okay in some cases, and no changes are needed. That's what we're here to find out. We're here to gather information.

In an effort to gather that information what we've done is we've invited a broad range of witnesses here today. We're also going to meet next Tuesday, and anybody that doesn't get taken today, will of course have an opportunity to testify then. But it's obvious that we have a number of sportsmen here that are anxious to testify. We've also invited people from the Attorney General's office, from the FOP and the PBA, so that we have a balanced perspective as Committee members, after these hearings are over to determine what if anything we can do to make the situation fairer for the honest, law abiding citizens of the State of New Jersey.

I would ask that as hearing protocol that we don't have clapping, or booing, if statements are made that you're in favor of or you don't agree with. It's not fair to the speaker, and it will certainly interfere with our ability to get to the gist of what's trying to be said.

I would lastly say that there are many people who have signed up to speak, and we want to hear from everybody. I think everybody has something important to say. And in that context I would hope that when you're here speaking -- and I know what you have is important, especially to you, but also to us -- that you make your point, feel free to expound on it as much as you wish, but also recognize that there are other people who are waiting to speak, and unfortunately, somebody will be last.

With that, let me introduce the first speaker that we have here today. It's Roger Iverson -- Roger, welcome -- Chairman of the New Jersey Sportsmen Coalition. Roger, we invite you to make some opening remarks.

R O G E R I V E R S O N: Thank you, Mr. Chairman, and members of this Special Committee. My name is Roger Iverson. I am Chairman of the Coalition of New Jersey Sportsmen. I reside in Rockaway, New Jersey.

As Chairman of the Coalition of New Jersey Sportsmen, representing approximately 500,000 sportsmen and women, who strongly believe in the right to keep and bear arms -- as granted to us by our forefathers in the Constitution of this great nation -- I would like to take this opportunity to thank the Honorable Governor Kean for this Committee of legislators who are here today to honor the requests of the citizens of this State to hear the grievances of the people. I would like to thank you for having the courage and foresight to take a long hard look at New Jersey's firearms statutes.

This day is a monumental one for the citizens of New Jersey, and our nation as a whole by the mere fact that this Committee has come together to give the time and patience for our grievances to be aired, in order to preserve trust and good faith in a government of the people, by the people. It is exceptionally appropriate that this hearing be held this very day; for on September 15, 1787, 200 years ago today, the

Constitutional convention convened, on this very day. Now we the people stand before this honorable legislative Committee as law abiding citizens, concerned with the direction of our State's laws -- the enforcement of them, as well as the what direction they may take in the future.

Today and next Tuesday, this Committee will hear testimony from several witnesses who have experiences with this State's gun laws and the enforcement of those laws, that many of you may find hard to believe -- stories that you might think only could come true in countries where democracy doesn't exist. But these experiences will be recounted, and they are true. They are happening in this State nearly every day, and they have happened to hundreds, if not thousands, of people.

The testimony of this day will speak harshly of some law enforcement officials, be they State Police, local police, State prosecutors, or local prosecutors, attorney generals -- past or present -- as well as the courts of this State. I would like to say, however, that each witness' testimony will point to a specific aspect of our system, and does not reflect on any group as a whole; as most of the law enforcement community are fine, upstanding citizens, concerned with the very issues being brought before this Committee today.

You are about to hear of civil rights abuses against an array of people, whose only common link is they believe in the Second Amendment: the right to keep and bear arms. And because they hold that belief, they have suffered in a fashion not conducive to people in a free society. They have suffered by the thousands. You are about to hear of doors kicked open in the middle of the night, physical abuse, mental anguish, and the abuse of persons and property. You will hear of how more than 35,000 citizens of this State have been denied the right to keep and bear arms; how more than 69,000 firearms have been taken from citizens of this State -- in some instances, only to be divided up amongst the law enforcement officers for their

own use or financial gain. You will hear how an honest citizen was slammed to the ground, a packed and loaded gun shoved in his face until he vomited in fear on a cold and lonely highway in the middle of the night. You will hear about searches and seizures without warrant or cause. You will hear of intimidation by the badges of authority that made citizens believe they had no rights and no hope, unless they gave up their property and copped a plea; when in fact, they committed no crime. The only thing they were guilty of was ignorance of the 20,000 versions of the firearms laws of this country. You will hear of fathers and mothers and sons and daughters, cuffed, booked, and thrown in cells; not allowed to call their attorneys, families, or friends, to tell of their plight. You will hear from woman denied access to firearms because a chief felt women have no need. You will hear from elderly men and women stripped of their property, without any cause, or charges, or court orders; as if old people had no rights.

You will hear how good people of this State, and his nation, could not afford the price of freedom simply because freedom isn't really free. Think about it. Freedom often is not based on guilt or innocence, but how much one can afford in dollars to fight to prove their innocence. You will hear of good citizens arrested and jailed who mortgaged their homes, spent their life savings to win and maintain their freedom, only to have law enforcement officials ignore them when they sought the return of their property, and ignore the court orders for the return of their property. You will hear of men and women who used their God given right to defend themselves, or their loved ones; only to find themselves arrested and in a cell next to their assailant.

You will hear of prosecutors who are relentless in their pursuit of citizens, just to put another notch in their political belts. And of prosecutors who send directives to the law enforcement community that affects citizens, rules and

regulations regarding firearms, that citizens are not allowed to see. Even Coalition officials have been kept in the dark about some of these directives. I ask you, how do we play by the rules if only the scorekeeper knows them?

Recently, I asked this very question of a State Police representative, and a representative from the Attorney General's office. Both responded, and I quote, "It is not in the best interest of law enforcement to follow the guidelines of the law, A, B, and C. However, your people had better." Is this what our forefather intended? And is this what our elected officials desired when we conceded to compromise on the gun issue, when we gave up our freedoms under the false impression that crime would be reduced?

I have spoken to chiefs of police and their officers, who have written their own rules on issuing firearms and identification cards, regardless of the fact that State law strictly forbids them to do so. Each township police department has their own better idea. Some require that you list everyplace that you have worked and lived since birth. Some require a list of every member of your household, and every resident of a building in which you reside -- even if you live in an apartment building. Some require that you demonstrate a need to possess. Some require mandatory training and certification by the State. Some only accept applications and fingerprints for the firearms and ID cards and purchase permits on the second Tuesday of every other month, between the hours of 9 and 10 a.m. Some have used their own fee schedule, or require a note from your mother, or your spouse. Some departments require a written or verbal test of 20 questions, before one may even obtain a blank application form. Some require an applicant's references to appear in person before the chief, to be cross-examined. Many references are intimidated into believing that as a reference they can be held liable for an applicant's actions. When I questioned this

tactic, one officer said, and I quote, "Most blacks and Hispanics can't find two people willing to come before the chief for an interview."

The, "I know best" attitude regarding firearms seems to permeate every aspect of New Jersey's criminal justice system. Our own Superintendent of State Police, Colonel Clinton Pagano, made a statement before a congressional committee in New York that seems indicative of the problems which are passed down the ranks of the New Jersey State Police. May I quote Mr. Pagano? "I am not for gun control. I am for people control." Well the idea of people control confuses me. To the Colonel it may be simple, but to me, I thought in a democracy we might guide people, or even lead people, but do we dare become so arrogant as to believe that we should control people? Is this the price that Americans should pay in order to stop the criminal actions of a few? Presumption of guilt before innocence?

As one great rights thinker said, "Today's concepts of gun control seem based on the premise that the people cannot be trusted, and must be controlled; that they must be restrained prior to an offense, even in the absence of evidence of evil intent." I submit that a majority of Americans believe that this is a premise which neither liberals, nor conservatives, can endure.

If we are to have a free society, the nightmares endured by the witnesses you will hear from today, are realities. They are not what might happen if we don't change the gun laws. They are what is happening right here and now because of the gun laws. That is why these hearings are being held. For too long, the law abiding citizens of this State, and even visitors to our State, have been subject to harassment, incarceration, confiscation of property, and bureaucratic red tape thicker than anything ever seen in Washington.

Years ago, men and women of vision related to the people of this nation that should even the simplest of concessions be made on our rights as enumerated in the Constitution, the liberties we possess as freeholders would be usurped. Some did not agree. Others cared not. Later, others decided to allow the slightest of infringements in an effort to make a more perfect union, as reasonable men might. After all, we are a people united and free. We need not fear abrogation of our freedoms from our own government. Only in a Third World country do people need fear the rule makers, or their standing armies of law enforcement. In this country, no one would really stand by and allow laws of the land to be so insidious and stringent that they would pervert common sense and dignity. After all, the concessions we gave, the bits of freedoms we adopted, were to combat the criminal element. The good people of this land will not be caught up in such laws. We as a people need not fear unwarranted searches and seizures of persons or property. Our doors would not be kicked in on some dark and lonely night without warning. Licenses, permits, and identification cards, are not really passports to prove what class of citizen we are, as we are protected from discrimination on the basis of race, creed, color, sex, and age.

Free people do not have to hide their property from government. Free people do not hide their ideals behind closed doors. Free people do not fear crossing borders from one state to another. We are the United States of America, one nation under God. The liberties for one are the liberties for all. But these very truths that we thought to be self-evident, have turned like a wild dog to bite us, for clearly the liberties lost for one, are truly lost for all.

The idea behind the concessions was to stop crime and criminals, not to create crimes and criminals out of basically good and law abiding citizens. The concessions were to protect the good citizens from harm's way. Yet the fact is the laws

have removed the means honest citizens have to protect themselves, at a time when crime has risen, and governments have admitted they cannot protect us. Is it no wonder that so many have picked up their businesses, their households, their families, and escaped from the lie of, "New Jersey and You, Perfect Together"? Many of New Jersey's criminal justice system would just as soon jail you here, as have you vacation here. It's no wonder people from across this nation make special attempts to avoid even passing through this State.

I would like for you to consider the thousands of people who could not come before this Committee, who have fallen victim to a patch quilt of laws so confusing and arbitrary that even the scholars of this nation are confused. How does one live by laws that make no sense? How does one live by laws that even the very law enforcement community that has sworn to uphold them, cannot comprehend them?

I have asked many questions about the enforcement and effectiveness of this State's gun laws. They are questions that may cause some embarrassment or pain to answer, but these are questions that will have to be answered; questions for which answers will be demanded by the people of this State; and questions the answers to which you yourselves will want to learn after hearing the testimony that will be presented today.

We the people stand before this Committee as a nation of citizens to say, "No more concessions on our firearms freedoms." The Second Amendment is short, however the meaning is long and strong and everlasting: the right of the people to keep and bear arms shall not be infringed. And by God, we're here today to say that the rights of the people will not be infringed. And I thank you, Mr. Chairman.

ASSEMBLYMAN STUHLTRAGER: Mr. Iverson, I want to thank you for your opening remarks. At this time I would like to turn the microphone over to Assemblyman Shusted for a few comments.

ASSEMBLYMAN SHUSTED: Thank you very much, Mr. Chairman. I just wanted to state to the members of the public who are here, and to Mr. Iverson-- Obviously he has promised us a lot of testimony which will be very helpful. I serve on the Judiciary Committee together with Chairman Stuhltrager, and I'm also the Chairman of the Assembly Law and Public Safety Committee, before which most gun legislation that is introduced in the General Assembly or in the Senate, eventually comes. So that I'm keenly interested in hearing the testimony of these witnesses because I think there is confusion in our statutes in New Jersey. We as legislators want to know about it, and it will be most helpful for us to hear the testimony of people who are concerned and who are involved in firearms. Thank you for the opportunity.

ASSEMBLYMAN STUHLTRAGER: Thank you, Assemblyman. I think we all concur with what you said.

Next, I'd like to introduce, Charles Irwin. Mr. Irwin is Counsel to the New Jersey Sportsmen Coalition. Mr. Irwin is also a former Assemblyman, and I want to welcome you here today, and look forward to hearing your remarks.

C H A R L E S J. I R W I N, E S Q.: Thank you. Is this working? (referring to microphone)

ASSEMBLYMAN STUHLTRAGER: No. you'd better use the other one.

MR. IRWIN: How's that?

ASSEMBLYMAN STUHLTRAGER: There you go.

MR. IRWIN: I have a few remarks that I'd like to make to the Committee, with respect to the general outline of the kinds of laws that are giving us problems.

Back in the 1960s when the firearms laws were completely revised, there were probably some people who had their private agendas. But by and large the intention of the statutes, as it was announced at that time, was to keep firearms from falling into the hands of criminals and other

undesirable persons. At that time there was a great debate. It went on for a period of years, as a matter of fact. And indeed the sportsmen and women of this State did make concessions in order to obtain the end that was suggested; and did give away matters that they felt were basic freedoms, in order to accomplish the end that was suggested.

Now it's 20 years later. And the question becomes, how many successes have we had with respect to the announced end, and how many failures have we had? The successes would be termed in the numbers of criminals that were indeed kept from obtaining firearms. The failures would be in terms of the citizens of this State who have lost basic freedoms, or have suffered abuses as a result. The question it seems to me for this Committee is, do we have some problems that we have to address? And I suggest strongly that, if this legislation has prompted the State Police to engage in illegal searches and seizures, then we have a problem that we must address. If there is property that is being seized in this State without due process of law -- and you will hear testimony that confirms that -- then we have some problems that have to be addressed. If in fact, as the Chairman just suggested -- Mr. Iverson -- women are being denied access to firearms, identification cards, and permits to purchase because they're women, then we have a problem. And if there are other kinds of discrimination going on, they need to be addressed and solved.

If local police departments are using procedures which are specifically prohibited by law, what a problem that is for us. What a problem that is for the Legislature, and the people that are sitting here, and the other sportsmen, because they have to comply with the law. And when they look at police departments that are not complying with the law, that's a real problem that needs to be dealt with.

If county prosecutors are establishing policies which result in an unconstitutional deprivation of property, then they're engaging in legislation that this Committee and the other legislators of this State, would never pass. But they're doing it in this State, and we need to address that problem.

Let me give you an example. I have a copy of a letter, dated July 31, 1985. I'll give it to the reporter later to be marked, if I may. It's directed to all police chiefs and police directors in Middlesex County, and in part it says the following, quote:

"Henceforth in Middlesex County, I direct that when a police officer arrives at a scene involving a domestic dispute, and he observes, or is in fact informed, of the presence of a firearm in the actual or constructive possession of either spouse, that firearm must be seized for the protection of both parties, and in the interest of public safety. When seized, that firearm is to be forwarded to this office with an appropriate notation that it was seized in a domestic violence event, and thereafter it shall not returned to either spouse until the prosecutor's office is ordered to do so by a court of competent jurisdiction."

Now, we all know there's no State statute passed by this Legislature which authorizes such a seizure, and a retention of property. I urge you on behalf of the sportsmen and women of this State that you must not allow appointed officials, elected by no one, to make the laws of this State, and that's what is happening.

The prosecutor's directive does not define what a domestic dispute is. The police officers are merely directed to seize the property, and they're given no guidance. They're not informed whether loud discussions between loving and non violent spouses is a basis for seizing firearms. Whether some form of unlawful violence is required. The prosecutor didn't even direct the police officer that he has to himself witness

the domestic dispute, and make a determination whether it qualifies or not. Under those circumstances, you can be assured a mere anonymous tip would be enough, and is enough.

This directive contemplates the search of a home without a warrant, in violation of the Fourth and Fourteenth Amendments of the United States, because constructive possession when you're speaking of a marital domicile, constructive possession means that the firearm can be anywhere in the home.

Not only is the seizure that's directed by the prosecutor, illegal, but let's look further as to what he is suggesting. He says, "It shall not be returned to either spouse, until the prosecutor's office is ordered to do so by a court of competent jurisdiction." That directive is outrageous. It means that if a citizen has an argument with his wife, and a neighbor summons the police, the police will search the home, seize the firearms, and he'll be required to hire an attorney to go to court, and petition the court for the return of his property. The laws of this State, N.J.S. 2C:58-11, and 2C:64-11 only provide for forfeiture of firearms which are unlawfully possessed, carried, acquired, or used. The burden to prove the validity of such forfeiture is on the State. It can never be the burden of the citizen to prove that he has not (sic) acted unlawfully, and indeed in this situation no unlawful act is even contemplated as a condition proceeding the search and seizure.

Now, the prosecutor responded to our inquiries about this abusive policy, in part by saying the July 31 letter -- that I referred to -- was superseded by a comprehensive statement issued on September 26, 1985. Of course, that statement, which vitally affects the rights of everyone in this room, and all of the citizens of this State, was not made public. It has not been approved by the Legislature. It's not been approved by the citizens of this State. And whatever it

says, it is one man's opinion of what the laws should be, but it is being applied by the police departments of that county.

We're constantly reminded, particularly right now, that ours is a government of laws, not of men. Our citizens cannot be subjected to internal directives as being the law of this State. Naturally the prosecutor, as any prosecutor, seeks to prevent injuries. That's his end. But he has to comply with the law with respect to the means that he utilizes to obtain that end.

Now, this same policy has been adopted in Union County. The policy has been adopted in -- can't recall--

ASSEMBLYMAN STUHLTRAGER: Burlington County.

MR. IRWIN: --Burlington County, yes. Thank you, Mr. Chairman. And it's not just a policy, it's occurring. Newspaper reports, and the reports that we have, indicate that hundreds and hundreds of firearms are being seized under this policy throughout the State. I don't know how many other counties are utilizing it.

Then we get to the question of whether or not, seized firearms are better off in the hands of the police than they are in the hands of the people they're being seized from. Let's talk about these firearms that we're taking away in domestic violence disputes. What happens to them? They go to the State Police, where they are stored until they can be destroyed. The Coalition of New Jersey Sportsmen has tried for a number of years to obtain legislation that would provide that those firearms would subsequently be sold to retail dealers of this State at auction, and that the proceeds from those sales would be utilized to compensate crime victims in the State -- a good piece of legislation.

But what's been happening to the firearms as a matter of fact-- A few years ago, two State Police officers went into business for themselves. They were the fellows who were directed to destroy the firearms that have been seized by the

State Police. Instead of destroying them, they were selling them; around this State and around other neighboring states. And they sold them for some period of time to unsuspecting citizens who knew they were State Policemen. Obviously there could be nothing wrong with the sale. When the State Police finally found out about it, they sent out their troopers to the homes of the people who have purchased these guns, and to the retail dealers, and those firearms were seized. Those people were never compensated. As a matter of fact, on behalf of the Coalition, at one point I wrote to the Superintendent of State Police about the fact that these people that have had their property seized. They paid for it. They were never compensated for it. In fact, in one instance I was told of, when the troopers went to the house there was only a child home. And the child was told, "Go get the gun." There were no parents even there. So I wrote and I said, "How about it? What are you going to do for these citizens of this State?" Let me just read, in part, the response that I received -- not from the Superintendent of State Police, but from one of the Deputy Attorney Generals. He said:

"Dear Mr. Irwin. I've been requested to respond to your letter to Colonel Clinton Pagano, Superintendent of State Police, inquiring about procedures for submitting claims against the State for the losses incurred by the victims of crimes committed by two men employed by the State Police as police officers. As you acknowledge in your letter, these officers sold a number of firearms, stolen from the State, by representing that these weapons were part of their personal collection. The officers represented, and the purchasers believed that the firearms were the private property of the officers. There was no indication that the State was a principal in this transaction, or that the officers were acting as agents of the State. Accordingly, the principle of respondent superior, is inapplicable." The respondent

superior of course means the responsibility is the superior persons or the employer, or, in this case the State Police. And what they said essentially is, "It's tough. Too bad, citizens. You were taken. We put the State Police in the position to do what they did. They did it. You lost the money. And that's too bad." That's the response of the State to this, and I don't think that's an appropriate response. I think the Legislature should act with respect to those kinds of inequities.

I'm getting ahead of my notes. (searches through papers)

ASSEMBLYMAN SHUSTED: Mr. Irwin, may I just ask you a question?

MR. IRWIN: Yes, sir?

ASSEMBLYMAN SHUSTED: Has legislation been drafted to remedy these situations?

MR. IRWIN: With respect to the seized firearms, yes sir. With respect to the claims of the citizens, not to my knowledge.

Now, one of the biggest problems that we have, Mr. Chairman, Mr. Shusted, is that a large group -- I would say, based upon what I have been hearing over the past few years, a substantial majority -- of the police departments of this State, either refuse to read, or if they have read, they refuse to obey and comply with the laws of this State which govern the issuance of firearms ID cards, and permits to purchase handguns. Our law states, as you know, that no citizen may purchase a rifle or shotgun in the State of New Jersey until he has first obtained a firearms ID card from his chief of police. He may not purchase a handgun if he has not similarly obtained a permit to purchase a handgun.

Now, it's interesting-- And I think in your review you should take this into account also. It's interesting that all the firearms identification card was put together for, was

to purchase. The courts now have expanded that to say, essentially it's a carrier permit. And if you have a rifle or shotgun in your car, you better have a firearms identification card. And they've gone further than that and said, not only had you better have one, but if your wife is sitting next to you in the car, she's in constructive possession of that shotgun as well, and she better have a firearms identification card. So this whole piece of legislation has moved far beyond what the legislators ever intended, or foresaw, at the time it was passed.

Now, you can't obtain a firearms identification card, or a permit to purchase: if you've been convicted of a crime, if you're an alcoholic or a drunkard, if you're drug dependent, if you've been confined to a mental institution, if you advocate the overthrow of the government, etc. And the criteria which disqualify an applicant are clearly stated in the law, and the authority to develop the application for, in compliance with the statute, is given specifically and exclusively to the Superintendent of State Police. N.J.S.A. 2C:58-3 says, "There shall be no conditions or requirements added to the form or content of the application or required by the licensing authority for the issuance of a permit or identification card, other than those that are specifically set forth in this chapter." Notwithstanding that fact, numerous police departments throughout the State have unilaterally, without statutory authority, promulgated their own forms and developed and enforced their own additional criteria. Thus over a half million citizens of this State, who are collectors, hunters, and shooters, are being illegally subjected to the individual prejudices, whims and fancies, of local officials.

We vigorously sought -- the Coalition of Sportsmen -- intervention through the Attorney General's office to direct uniform enforcement of the laws in accordance with the appropriate statutes. We've been graciously received, but

nothing has occurred to rectify the problem. Some departments, as Mr. Iverson had indicated, require identification of all people living in the building, even though you're in an apartment building. And they go on with these various requirements, all of which, when you question the requirements they say, "Well, we think we ought to have that information. We think we need that information in order to make a determination." But it's not for them to decide. This Legislature decided what the criteria would be, and what the applications would be, and that's not for them to legislate.

ASSEMBLYMAN SHUSTED: Has that ever been challenged?

MR. IRWIN: Not in the courts. What we have tried to do up to now is to obtain administrative intervention, without success.

I will have marked for the record, what is in fact the official application for a firearms identification card, and for a permit to purchase a handgun. I will also have marked for the record some applications used by Jersey City, Lake Hopatcong, and other towns, which diverge from the law and from the application of the State Police.

ASSEMBLYMAN STUHLTRAGER: Mr. Irwin, let me just ask you. Do you agree with the official form, or do you have problems with the official form also?

MR. IRWIN: I don't think that the sportsmen of this State essentially have a problem with the official form, because it conforms with the law. It asks those questions which are in fact set forth as criteria in the State, and to the best of my recollection goes no further. There are some of those criteria which I think we'd like to bring to your attention as this Committee goes forward, but generally that those forms conform.

Now, you and your predecessor legislators decreed by statute that firearms identification cards, and permits to purchase shall be acted on by the issuing authority within 30

days. That's the law, and they're supposed to do it. We follow the law when we're supposed to do what we're supposed to do. But I can tell you that in numerous municipalities in this State, there is not even an attempt by the issuing authorities to comply with this mandate. It's laughed at. And those who question it and attempt to assert their rights, are threatened with a summary denial of their applications. The only remedy that is presently available to the citizens of this State in order to get a police department to move on his application, is to again, hire a lawyer, let him go to court, obtain an order to show cause why the chief should not issue the permit. I've been involved in some of those. They always work. As soon as the order to show cause comes out, or as soon as the police chief is aware that an order to show cause is forthcoming, somehow miraculously the card is issued. But that's not the way the system is supposed to work. We're not supposed to have to go out and spend money for lawyers to obtain what you, the legislators, have already given us. It's not appropriate, and it needs to be corrected.

ASSEMBLYMAN SHUSTED: What would be your suggestion as far as solving that problem?

MR. IRWIN: There are a number of ways of coming at it. One of the ways to deal with it would be to say that in the event that the 30 days has lapsed, that the issuance of the card becomes automatic. Now, that would get them stirred up about getting their review finished within the time. At the present time, since there is no penalty to them if they are not completed -- it's only one of our rights -- they just don't bother. But if at the other end of the road they fail to do what they're supposed to do, the card was automatically issued, or we became eligible at that point to purchase a rifle or shotgun, that seems fair to me. But that's for the Legislature to address. We'll be happy to put a piece in like that if you'd like.

ASSEMBLYMAN STUHLTRAGER: Other than that as an alternative, what else would you suggest, if anything? Not to put you on the spot, but that one would probably be very difficult. You're not going to see that as legislation. So, what would you be interested in, in addition?

MR. IRWIN: Well, it seems to me that that is appropriate.

ASSEMBLYMAN STUHLTRAGER: But it won't happen though.

MR. IRWIN: And there's no reason why the authorities can't do it in 30 days. Now, if we had that as a termination, and the Legislature says, "But I think 30 days is a little short for that, maybe it ought to be 45 days before they get it automatically." I think there is room for concessions there, but I think that's the objective. I just don't think that we ought to put in anyone's hands the right to control a right that's already been given by the Legislature, with no real remedy available to the average citizen, except the expenditure for legal fees, which are very high. What you are saying is the only fellow that can get a timely response is someone who's rich, and the poor guy just has to take what he gets.

ASSEMBLYMAN STUHLTRAGER: There's no recovery for legal fees in a case like that. Is that correct?

MR. IRWIN: That's correct. Yes sir.

Included in the Coalition of Sportsmen are the retail firearms dealers. They have a problem too. Their employees have to be trained in the use of firearms, the utilization of firearms, and the understanding of firearms laws. They also must obtain from the State Police what's called a "pink card" which is an employee's license to sell. You can't just put a fellow out at the counter unless he has a pink card. So as a dealer, if I hire a new employee, and I want him to work in the store, I provide him this training, I put in the application for him to obtain his pink card, and then I can wait from six months to a year in this State in order to obtain a pink card.

What's the result of that? The result is that the stores can't properly man the counters. And why is it happening? Well I don't know for sure. I do know that I was told by a representative of the State Police that it's their policy to do away with all of the retail dealers of this State. Now, I don't know where that policy comes from, whether it came from the officer in the Firearms Division that spoke to me, or whether it comes from above, but when you take that statement in conjunction with what's happening, then there's no reason for six months to a year to issue a pink card. You have to begin to wonder whether indeed that's the objective? If that is, then they're legislating too, and that's not appropriate.

Let me turn now to this question of what's occurring on the highways and byways of New Jersey. It appears to the sportsmen of New Jersey that a policy of harassment has been adopted, and that it includes unlawful searches and seizures, threats, and intimidation. You're going to hear the statements from the witnesses with respect to it, so I won't go into them. But I do have to note, and I think that it's important to understand, that the Pretrial Intervention Program in this State is being subverted, it seems to me. Because what happens is this -- and you'll hear the direct testimony.

A citizen is, let us say, on his way to a range with a rifle in his trunk. He's stopped by a police officer for a traffic violation. The police officer happens to notice that he has an NRA sticker on his bumper, and he says to him, "Do you have any firearms in your car?" Now the citizen, knowing that he possesses a firearms identification card, knowing that he has the gun properly secured in his trunk, says "Yes. I have a rifle or a shotgun in my trunk." At that point the citizen is arrested, the firearm's confiscated, and he's charged with the illegal possession of a firearm. After some period of time, either the local prosecutor or the police department figure out that he hasn't committed a crime. Do

they drop the charges? They don't. It's rare. Instead they say, "We're going to do you a big favor. We'll let you take Pretrial Intervention. What that means is that we'll put you on a suspension period for six months. When the six months are up, if you have been a good boy for six months, the charges will be dropped and you'll have no criminal record. And the great advantage to you of that is otherwise we're going to charge, you're going to have to hire a lawyer, it's going to cost you \$10,000 to go to trial, etc." So the citizen says, "Okay, I'll take PTI. It costs me nothing." But it does cost them something, because always as a condition of PTI is the forfeiture of the gun. That's standard operating procedure.

So what have we done? We've taken a system that was set up to allow for people who for some reason -- perhaps some tragedy in their life -- commit a crime, to walk away from that crime. They call it, as you know, "one free bike." And we've taken that and subverted it to a way that the firearms of innocent people who have committed no crimes, are seized. And I suggest to you that is being done on a regular basis, because the cases run through my office constantly.

ASSEMBLYMAN STUHLTRAGER: Mr. Irwin, would that also preclude that person from getting an ID card to purchase another gun?

MR. IRWIN: It depends on the chief essentially, and it depends on the judge who will hear the appeal from the chief's decision. It really is not uniformly responded to, Mr. Chairman.

So I've really touched on some of the legal problems that to me as a lawyer just leap out and say, "these have to be addressed." It's been 20 years. I see no indication-- And others can testify to this that have the data. I see no indication that the firearms laws that were passed in the '60s have substantially reduced crime in this State. But I see indications every day in my practice that honest law abiding

citizens are being abused by this system, and that needs to be addressed. Thank you.

ASSEMBLYMAN STUHLTRAGER: Thank you, Mr. Irwin. I think you raise some good points, and I guess as we hear the rest of the witnesses we'll be enlightened further as to some of the administrative problems of the laws as they now stand. At this time I'd ask that you gentlemen relinquish the table, because I'm going to get a couple of other people on now. And Mr. Irwin, if you want to leave your things there you can.

MR. IRWIN: Thank you.

ASSEMBLYMAN STUHLTRAGER: I understand that you'd like to be present when some of the witnesses testify.

MR. IRWIN: Yes sir. Thank you.

ASSEMBLYMAN STUHLTRAGER: Okay. First I'd like to call Danny Schick. Dan? Dan is a representative of the Fraternal Order of Police, New Jersey State Lodge. He's here to testify today. Welcome.

DANIEL SCHICK: Thank you. As you know, my name is Danny Schick, and I'm the State Legislative Chairman for the Fraternal Order of Police.

I'd like to start out by saying first off the Fraternal Order of Police agrees with the review of the New Jersey firearms laws, and that we have no problem with making changes where the changes are demonstrated to be needed to be made. However, we are opposed to wholesale changing of the laws just for the sake of changing them.

From some of the points that I've already heard, or the points that have been spoken on already, it seems to be that the problems are not so much with the laws as they are presently written, as with the implementation of the laws. If these alleged violations have occurred, then the legislators might want to look into passing laws, or a law, which can deal with the punishment of the officials who violate laws already on the books. I have not heard anything that has stated that

the present firearms laws are bad, that they are keeping people from obtaining weapons; but more so it's from the implementation of the present laws. I think that's an area that has to be addressed more so than the changing of what's already on the books,

ASSEMBLYMAN STUHLTRAGER: I don't want to interrupt you but-- Say, specifically -- and if your experience isn't broad enough to answer it, that's okay -- the 30-day provision for the issuance of the ID card. You heard the testimony from Mr. Irwin a few minutes ago, stating that it customarily goes beyond the 30 days, people needing lawyers, and in our opinion is not fair. What's your experience with the application of that procedure?

MR. SCHICK: All right. My experience to date has been that normally it does take longer than 30 days. There have been several reasons given for the taking of that time, primarily the fingerprint identification check, either through the State Police or the Federal Bureau of Investigation. That is the normal answer for the backlog; that there are so many applications being submitted. The FBI a few years ago changed the priorities on fingerprint checks and firearms, along with employment type checks, were dropped out of the priorities. I agree that at sometimes -- and I've seen it where it's taken up to four or five months for a card to come back, or an application to come back -- that there needs to be a streamlining of that process. Whether or not 30 days, with all the applications and what's involved, is long enough, that remains to be seen.

ASSEMBLYMAN STUHLTRAGER: Do you have any thoughts on the testimony regarding the diverse number of application forms that are out there, when it seems to me reading the statute that was referred to, 2C:58-3f, seems pretty clear? Are you aware of local departments adding conditions, additional questions, and things like that?

MR. SCHICK: No sir, I'm not. Knowing the statute, having gone over it, that's why we're saying that there should be a looking into of officials that are handling this, because the statute is quite clear on what information is required. The forms are supposed to be standardized. I would have to agree with the other representatives that if that is not being followed, then you have a problem. But I don't think it's a problem with the existing law. It's with its implementation.

ASSEMBLYMAN SHUSTED: How would you suggest solving that problem?

MR. SCHICK: Well, number one, with some of the abuse that have been alleged the courts have already addressed those issues, and the improper searches and seizures have been answered rather pointedly by the Supreme Court -- both the New Jersey and the U.S. With regards to prosecutors, and with regards to chiefs allegedly coming out with their own procedures for it, basically you have a State law, and it says this is what has to be followed. If you find that an official is not following that procedure, then I would see no problem, or see where it would be appropriate, that the officials themselves could be charged with a malfeasance or non feasance of office. I agree that they do not have the right to make up their own laws as they go along. That's our contention. The laws are there. They're in place. They're adequate. They might need some refinement on a few of them, a few modifications. I've already spoken to Assemblyman Stuhltrager on one or two items. But for the most part it's addressing the actual implementation of what is there.

ASSEMBLYMAN STUHLTRAGER: Are there any other questions, Tom?

ASSEMBLYMAN SHUSTED: No.

ASSEMBLYMAN STUHLTRAGER: I want to thank you for coming. I know you probably can't stay personally, but I invite you or another representative to try to stay around as

long as possible. And perhaps coming back on the 22nd so that you have full input, because after these hearing, of course, we're going to be refining, analyzing, and moving in the direction of getting some of these problems corrected.

MR. SCHICK: Well, I do intend to stay around a little while and hear some of the--

ASSEMBLYMAN STUHLTRAGER: Case histories.

MR. SCHICK: Yes.

ASSEMBLYMAN STUHLTRAGER: Thank you. I'd like to call Bill Palatucci. Mr. Palatucci is a representative of the Policemens Benevolent Association, and we want to welcome you to our hearing today.

W I L L I A M J. P A L A T U C C I: Thank you, Assemblyman. I'm happy to be here, and want to thank you for calling the hearing to our attention.

I want to start by saying that Frank Tanisi (phonetic spelling), the President of the State PBA, had hoped to be here this morning. After you and I talked yesterday morning I called Frank, and Frank wanted to be here. Some State business has come up and Frank can't be here. Since that happened this morning, I'm not completely prepared to make a lot of remarks. I don't know when you plan to close public comment, but we'd like to submit to you in writing -- based on some of the hearings that you have today and the testimony you'll get next week -- some extensive response from the State PBA to some of the issues that have been raised and will be raised. I want to point out too that we will have some representative here next week to hear what testimony is presented. It happens to be the state convention of the police, which is out of the country, so myself and Frank and some of the other officials will be down at the convention, and won't be able to be here. But given that, we're happy to be here.

I want to start off by saying, we really appreciate this process. Lots of times legislation is drawn up and thrown

in the hopper and we wait for everybody to try and wrestle it out in Committee. We appreciate this opportunity to come to you now, before you've actually drawn something up, to get out input. We want to participate throughout that process. There are some incidents or problems that need to be addressed. We want to work with you in addressing them.

I have a very short statement from Frank that he jotted down this morning, but as I said I will submit something in writing on a lot of the issues that have been raised, and will be raised, today and next week.

But in general, it's the policy of the State PBA that any easing of restrictions to allow the general public to carry firearms without extensive training, should be carefully considered. Any relaxing or easing of restrictions in general, the State PBA is opposed to. That's our general policy.

We understand that there have been raised by some groups here, sportsmen -- and we discussed some of those yesterday, Assemblyman -- some incidents of either abuse by public officials, or problems in processing applications for cars and things. And those need to be addressed. However, we feel it's the policy of State of New Jersey and our laws to err on the side of safety. And that if a 30-day period sometimes goes to 40 or 45 days, as Danny pointed out, it may be a processing problem; it may be a backlog, it may be a problem caused not by the local municipality, but by the State Police or the FBI doing fingerprint checks; that those are errors on the side of safety.

We live in a society which is becoming increasingly more violent, where criminals are becoming much more difficult to deal with. If you look at the situation on the highway system in Los Angeles County -- in that people are just driving to and from work are getting shot at -- we don't need to make it any easier, or encourage, the John Hinkleys of the world to more easily and more quickly obtain the right to get firearms.

So those are some of the general principles that Frank wanted to come here and outline to you very broadly. That doesn't mean that we don't want to work with you, Assemblyman, and Assemblyman Shusted, and your Subcommittee in terms of dealing with some of the problems in some of these isolated incidents. But again, we approach this in terms of error on the side of safety.

So I think that's basically what I wanted to say. I'm sorry that Frank couldn't be here, but we intend to be here and take in the rest of the testimony that you'll hear today and next week, and respond to that.

I want to point out too that we understand that the sportsmen are very interested in this issue, and we're not saying that they are the people who are causing these problems in Los Angeles or anywhere in the country. But we think that there are good reasons for the policies and procedures and the rules and regulations that are in place, and we think those should be very carefully considered before we go about changing them.

ASSEMBLYMAN STUHLTRAGER: Mr. Palatucci, I want to thank you for coming. I'm glad that you're going to be able to stay. Certainly you're welcome to, next Tuesday, if you have any more comprehensive remarks we'll be happy to hear them at that time.

MR. PALATUCCI: Assemblyman, thank you.

ASSEMBLYMAN SHUSTED: May I just ask you, do you have any knowledge of this problem concerning the applications which Mr. Irwin alluded to?

MR. PALATUCCI: Well, myself no, Assemblyman. And Frank, had he been here, would not have been able to testify to that. I think one of the groups that we should make sure we include here -- I'm sure you're going to reach out to them -- is the Chiefs of Police, who may be dealing with these issues as much as the policeman. But I'm really not prepared to speak on that today.

ASSEMBLYMAN SHUSTED: Okay. Thank you.

ASSEMBLYMAN STUHLTRAGER: Thank you, Mr. Palatucci.
Mr. Irwin?

MR. IRWIN: (from audience) Sir?

ASSEMBLYMAN STUHLTRAGER: There you go. Why don't you come back up and join us? (member of audience indicates difficulty in hearing the speakers) Okay. Thank you very much. Could the speakers just be very conscious of-- Mr. Irwin, make sure they speak into that live mike there.

At this time we'd like to call Luke Shafer to the stand. Luke has a personal incident to relate, that I think we'd all like to hear. Mr. Shafer, I understand that you've come in from Texas. Is that correct?

LUKE SHAFER: Yes sir.

ASSEMBLYMAN STUHLTRAGER: I want to welcome you back here to New Jersey.

MR. SHAFER: Thank you.

ASSEMBLYMAN STUHLTRAGER: And the floor is yours.

MR. SHAFER: Well, I'd like to start out by saying my name is Luke Shafer. I'm married, and I've got five kids. I've been driving over the road for 17 years. My dad was a highway patrolman in Texas for 19 years. He's been a county sheriff now for 11 years. I was brought up to respect law and order.

On July 13-- Well, I started driving about 8 o'clock on July the 12 in Virginia. I drove up across the New Jersey line to the Union 76, which is about exit 7. To get the other driver up I drove through the Union 76, couldn't find a place to park so we traded at the rest area. Well, we made it to the junction of 78 and 287. I was in the sleeper asleep, and the truck turned over. The load shifted, the sleeper broke loose from the tractor, and I ended up down highway 287. The tractor was up on the on ramp coming off of 78. Well I got some cuts on my legs and messed up my back a lot. They carried us to the hospital over here in Somerset.

Well, they were doing x-rays and all, and this highway patrolman came in. He talked to a nurse first, and she told him to wait a minute. So they went in and took the x-rays, and the cuts on my legs were in such a way that they couldn't sew them up. They had to just take and cut the skin off. While she was doing this, he came in and he started asking questions. He asked me if I owned a gun, and I said, "Yes sir, I do." He said, "Do you own a 20 gage shotgun?" I said, "Yes sir, I do." And he said, "Did you have it in the truck?" And I said, "Yes sir, I did." He asked one more question, I'm not sure what that next question was, but then he said, "Oops. I better read you the Miranda Act." I just turned around. I asked the nurse, I said, "Did you hear that?" She said, "Yes I did." This nurse said she didn't advocate the use of guns. Well I said, "That's fine, you know. I don't advocate the use of guns myself, you know." But I've been driving the road for 17 years, and I've had a gun in my truck for 17 years. I used to carry a pistol. Then the State of New York passed a law that you could not carry a pistol, so I put a shotgun in the truck because a shotgun is a sporting weapon. I had never pulled a gun on anybody in my life. I've always been taught to never point a gun at anybody unless you're going to pull the trigger. So I've never pointed a gun at anybody.

But then, why this officer he came in and asked these questions. We started to leave, and I finally talked him into letting me call my boss to tell my boss that we had had a wreck, because I didn't know where the other driver was. He was in another room. They were x-raying him for a whiplash injury. I finally called my boss. I told him, I said, "Well they're going to carry me over to the State barracks, and we'll be back in a little while." Because this man had led me to believe that all he was going to do was straighten out the ownership of the gun, and I was going to be turned loose. Well, that's fine. I asked him on the way out, I said, "I

think I need a lawyer." He said, "You don't need a lawyer because you're not going to court." I said, "Okay, whatever." So I just went along with the man because he had led me to believe that once we got over there, all I had to do was sign a few papers and I was going to be turned loose.

I also got a prescription for some medicine, some painkillers. My feet were wrapped in gauze as started over there, and I asked him, I said, "Would you mind stopping and letting me get a pair of tennis shoes or something to go on my feet, you know." He said, "We'll have time to do that later on." I said, "Yes sir."

Well I went along with all of this, and we got over to the barracks, and I was sitting there on the wooden bench. This officer didn't make me louse myself up, because I wasn't going to go anywhere anyway. I was sitting there with my feet bandaged up in gauze. I couldn't hobble around, much less take off running. And the captain walked in about that time and he said, "Lock him up." I looked at the officer, you know, kind of funny, and I said, "You mean he wants to lock me up?" And he said, "Yeah." They snapped a handcuff on my left hand. That's the way I stayed there. He did this fingerprinting and all this kind of stuff, and I asked him, I said, "You know, I think it's about time for me to get a lawyer." He said, "You don't need a lawyer. You're not going to court yet. I said, "Well, I sure would like to call a lawyer, my lawyer at home, and let him know where I'm at." He said, "I don't have to let you have a phone call." He said, "You've been listening to too many TV programs, and we don't have to let you make a phone call. We don't have to let you do anything." And I said, "Yes sir."

See my wife was pregnant at the time. She was supposed to have a baby just any day. As a matter of fact, this happened on the 13th, my wife had the baby on the 16th when I got back to Texas.

Meanwhile, I sit there chained up to that wall all day long, and him telling me, you know, "We're going to get this worked out in a little while. The judge is still in session." Well evidently, the judge never took a lunch break. He never took a break, never made a phone call back or anything.

Well, I'm a diabetic. I've got a slight diabetic problem, you know, a slight sugar problem. I take a tablet. And they brought my little black bag in there. They didn't know what was in it. One of the highway patrolmen came in and popped off about my cocaine bag. I told him I didn't have to take drugs to do my job, you know, that that was my insulin. Well, one of the other highway patrolmen said, "Are you a diabetic?" I said, "Yes sir, I am." And I done asked this man about lunch, and he told me, "Well we'll have you processed and out of here in a little while." Well it's about 2:30 in the afternoon now. He told me I didn't need no lunch. I was going to be getting out of there just anytime. This is what he had been telling me since 8:30 that morning, "We're going to get all this done in a little while." I still didn't have any shoes. I finally went and got me a hamburger. I gave the man some money, and he went down to a hamburger place and got me a hamburger and brought it back. So I ate a hamburger and drank a Coke.

Well about 3:30 or 4:00 o'clock that afternoon they finally got hold of the prosecutor -- Nasendorf, or something like this -- and the officer told me they were going to ROR me. So he brings me a paper in there, and I signed this pink slip of paper. It was getting close to quitting time because all these officers were coming in and doing their paperwork and everything, and everybody just having a good laugh coming in there, laughing about me being a criminal, you know. Well I ain't no criminal. I just had a shotgun in the truck. I had two rods and reels in the truck. I fish a lot. I hunt a lot. And these officers, when I started to leave I asked them, I

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said, "Well you're not going to file on me for not having a valid New Jersey fishing license?" It was kind of aggravating. I'd sit there all day long like this.

I should go back and point this out. The officer did let me make a call to my wife, because I told him my wife was pregnant and I did not want her to hear about this wreck from anybody else. I wanted to call and tell her I was all right. And one time, while he was having me unchained, to take me to the bathroom, he did let me use the pay phone to call my wife and inform her that I was okay, I'd been in a wreck, but I was okay, and everything was all right. This is what I told her. I still didn't know if I was going to jail or what I was going to do. I just knew that they had me chained to a wall in there, and I never had been chained in my life. I've never been behind a cell door in my life, and I don't like it. I can understand how a dog feels chained up now. I really can. Especially when they're used to doing what they want to do.

When he turned me loose that afternoon, I've still got gauze on my feet, no shoes, I got up to this window and I had to sign this form. I said, "Are ya'll going to give me a ride back down to this truck?" And he said, "There's a pay phone. You can call you a cab, or you can walk. We're going home." And he shut the window.

Well there was three other drivers there at that time. We all crept back up the street to the, well, it was a shopping mall is what it was. The company sent another truck over there to pick us up. We were trying to hang onto our money. We didn't know what a cab cost, because where the place sits you have to go down the street and around all that, to get back to this shopping mall. And we wanted to save enough money to fly home on, which we did.

I just don't understand why I was treated like I was. I'd like the highway patrol to explain it, to tell you the truth. Why didn't I have any rights at all in the State of New

Jersey? I drive a truck cross country. I've tried to obey all the laws of the land. I've never been in any trouble with the law. But you can't respect law when they do you the way I was done.

The gun was in the sleeper, in the end of the sleeper, wrapped underneath some blankets. It was really wrapped. It was sort of laying underneath some blankets. The shells were in the glove box. Of course the glove box got torn off the truck when the wreck happened. The shells got scattered all over the side of the hill, but the gun was still in the sleeper. He told me where he found the gun. It was in the end of the sleeper. I don't understand it at all.

ASSEMBLYMAN SHUSTED: Was this the State Police you were dealing with, or local?

MR. SHAFER: Yes sir.

ASSEMBLYMAN SHUSTED: Do you know what barracks it was?

MR. SHAFER: It was the Somerville barracks.

ASSEMBLYMAN SHUSTED: You mentioned about they finally had you sign a pink slip?

MR. SHAFER: Yes sir. I signed a pink slip saying that-- And I told the man this-- He had me sign the slip. The slip said that I would appear the next morning at the bondsman's. I told the man, I said, "I can't make it." I said, "I'm going to Dallas tonight." He told me I had to be in town Friday for court, you know, to go get processed somewhere or another. I told him, I said, "Mister, when you turn me loose, I'm telling you right now, before I even walk out this door. If you turn me loose I'm going to Dallas, Texas. I ain't going to be in New Jersey in the morning to talk to nobody." And he said, "Well, you'll have to make a phone call." I said, "Well I'll make the phone call." And I did. I made a phone call from Dallas, Texas. I had an appointment with my doctor that morning, and I was put on crutches because I had two badly sprained ankles. I had cuts plum up to my knees on both legs, and I had a lower back injury strain.

ASSEMBLYMAN SHUSTED: Did he ever let you talk to your lawyer?

MR. SHAFER: No sir. They never let me talk to anybody except my wife. The other driver showed up at the barracks, and he kept in touch with the boss.

ASSEMBLYMAN SHUSTED: What happened to your gun?

MR. SHAFER: I guess they've still got it.

ASSEMBLYMAN STUHLTRAGER: Did you request your gun back? Did you make a formal complaint, pretty much what you're saying here today?

MR. SHAFER: Well, see they have never decided what they're going to do yet.

ASSEMBLYMAN STUHLTRAGER: When was it? I'm sorry. I stepped out.

MR. SHAFER: It was July 13. And they haven't decided yet whether they want to even prosecute me or not. See? It's in limbo. I don't know about the gun. I mean it was a 20 gage shotgun, bolt action, that I didn't have a clip for. It was bought just to put in the truck. The man told me when he was looking at it that day, he said, "Will this thing shoot?" I said, "I don't really know." I hadn't shot it in two years. It had been that long since I'd ever busted a cotter pin. I didn't even know if the shells were any good or not.

But I spent 301 days on the road last year. I spend an awful lot of time traveling, and I live in that truck. You know, Federal DOT rules and regulations say when ten hours is up I got to go to bed. It don't make any difference if I'm in the Bronx, New York, Boston, Massachusetts, at a rest area in Virginia -- which they'll write you a ticket for parking in a rest area -- but anyway, it doesn't make a difference where you're at. You've got to go to bed. Some of the places I have to go to bed, it's kind of dangerous to go to bed. People will throw a break bat through the window on that truck, and then crawl in there and beat you to death. You know? I'm a pretty

good sized fellow. They're going to fight pretty good to get in that window to start with. But anyway, if I go prepared I don't ever have to use anything. But the first time I ever go unprepared, then I'll need it. And I want to go home to my family. I don't want to go home to them in no damn pine box.

ASSEMBLYMAN STUHLTRAGER: Mr. Irwin, for you. Had Mr. Shafer broken any laws?

MR. IRWIN: The U.S. Congress passed the Gun Owners Protective Act towards the end of last year, which specifically provides for interstate transportation of long guns -- rifles and shotguns -- and the way that he had the gun stored, and the circumstances under which he was arrested, I'm satisfied that he was within the provisions of that act.

ASSEMBLYMAN STUHLTRAGER: Is that act preemptive of New Jersey statutes?

MR. IRWIN: Not according -- and this is hearsay, but it's my understanding that the Superintendent of State Police has said that the Act doesn't apply in New Jersey.

ASSEMBLYMAN STUHLTRAGER: Was he in violation of--

MR. IRWIN: From the standpoint of the law, I am clearly satisfied that it preempts, and that interstate commerce and interstate shipments are governed by the Federal legislatures, not by the State Legislature.

ASSEMBLYMAN STUHLTRAGER: The preemption issues aside, was he violating New Jersey laws, assuming no preemption?

MR. IRWIN: I'd have to answer that by saying it's a close question. You know, it all goes down to whether or not the firearm was appropriately stored. When you deal with that question you have to deal with the circumstances as you find them. If you're supposed to lock it in the trunk and the vehicle has no trunk, then you have to look to some other circumstance. In this particular instance, the sleeper is a separate compartment. It has a locking device on it. There's a very small aperture through which one must go to get into

it. And I'm satisfied that it would be consistent with New Jersey law as well, the way it was stored.

ASSEMBLYMAN SHUSTED: How about the permit aspect of that?

MR. SHAFER: That's what they ended up filing on me for, was not having a valid, New Jersey, firearms purchaser's permit; which I was not even aware that I had to have a permit to carry a shotgun inside of New Jersey. There is a sign, when you come into the State that said, "Crime doesn't pay. This will get you three to five," or something along that line, and it shows a pistol. So I quit carrying my pistol.

There was something here I wanted to add. Oh yeah. I asked that highway patrolman -- he told me what they were going to file on me -- and I said, "Well, how would I go about getting a New Jersey firearms purchaser's permit?" And he told me it's virtually impossible for anyone residing outside the State of New Jersey to get one. You know, I just cross the State. I very seldom stop in it. I make deliveries all up and down the coast. I make some in New Jersey too.

Most of the drivers out here do carry some kind of gun. They have too, because they run 24 hours a day, seven days a week. And you all know yourselves, there's a lot of kooks out there on the highway, and there's a lot of bad truck drivers now, as well as bad other people. If the honest working people cannot protect themselves-- See, the State highway patrol can't be everywhere all the time. You know, a police officer can't be somewhere all the time. Normally when a police officer shows up it's all over with then anyway. And the average citizen like me or you, is the one that gets hurt in the whole damn deal. I know my dad, he has a lot of trouble in Texas. They build a good case. They prosecute a man, and then they haven't got anywhere to put him, so they give probation. And the next time he's out there it's harder to convict him the next time, because he's even gotten a little bit smarter.

And I can't afford a lawyer. I had pre-paid legal, is the reason I was able to get a lawyer. But what would happen if somebody out here that's just struggling trying to make a living, and they got caught in the same situation I did? I can't afford to fly back and forth to New Jersey all the time. I got a lawyer in Texas to try to handle this up here, and they told me he wasn't licensed to practice in the State of New Jersey, that he'd have to contact a New Jersey lawyer to take care of all of it. You know, this comes in to a bunch of money, and I'm just a working man. I cannot afford a whole lot of money. And besides that, my company is not going to put up with whole lot of me having to take off to do this, and to do that, and to do the other.

So, they kind of offered this PTI, and my dad got to checking into that. They told me that's more or less what they would do with me, so my dad got to checking into that. Well that's going to keep me from owning a gun in Texas because I'm a felon for six months, and I'm going to have a felony record after the whole deal is over. That's the reason I'm having to try to fight this, is because I want to keep my guns. I live in Texas. I hunt. I fish. I'm a sportsman in Texas. I don't use my guns to go out here and rob a bank, or knock off somebody with. I use my guns to hunt with.

That gun was just in the truck. Like I said, I've never used it. I shot it-- I did have to cut the barrel off at 19-1/2 inches, okay. The law on that is 18. I cut it off at 19-1/2 so it would fit in the end of the sleeper where I would have somewhere to store it. I didn't want to have to throw it underneath the mattress and all this. You know, some of them drivers raise Cain if they got a little lump in the bed. They can't sleep. So I cut it off where it would fit me in the sleeper. That's where I kept the gun, and that's where it stayed. I guess everybody on the highways knew it was there, because I never took it out.

ASSEMBLYMAN STUHLTRAGER: Mr. Shafer, I want to thank you for coming back here. I hope your trip to New Jersey this time has been a little more pleasant.

MR. IRWIN: It was.

ASSEMBLYMAN STUHLTRAGER: Certainly we've enjoyed having you. And you know, you're famous in New Jersey now. We have your picture everywhere. But it's a pleasure having you, and thank you for your testimony.

MR. SHAFER: Yes sir. Thank you.

ASSEMBLYMAN STUHLTRAGER: Thank you. Next I'd like to call William Soller. Am I saying your name correct, sir?

W I L L I A M G. S O L L E R: Yes sir.

ASSEMBLYMAN STUHLTRAGER: Please join us. Welcome.

MR. SOLLER: Thank you.

ASSEMBLYMAN STUHLTRAGER: If you'd give your name, and place of residence for the court reporter, we'd appreciate that.

MR. SOLLER: Okay. My name is William G. Soller. I am 36 years old. I'm married. I have five children. I am temporarily residing in the State of Florida. I work. I'm a Regional Security Supervisor for the Caldor Corporation. I direct and maintain security personnel and operations for the stores in southern and central New Jersey, and the stores in the State of Pennsylvania. I'm currently out on disability with a back injury, and like I said, temporarily down in Florida right now.

ASSEMBLYMAN STUHLTRAGER: What do you have to relate to this Committee here today?

MR. SOLLER: Well, it was back in April of last year a kind of bizarre incident happened to me. I work very closely with police personnel, because I've been in security all my life. Just before the Caldor Corporation, I was with J.C. Penney's, and Jamesway Corporation. I've been a military policy officer for approximately 13 years, including reserve time. I also was awarded the Outstanding Soldier of the Year

Award, while in the military. So I'm a little familiar with the way things should be done, if it's done on the uppity up level.

Back in April of '86, I was coming to the State of New Jersey -- coming to the State of New York through Jersey, that's the way we were going to be traveling with my friend Brian Goergen. Our family lives in Wurtsboro, New York. That's where we were heading. He was going up to see his family, and I was going up to see my father and relatives. I had in my personal belongings a handgun, which was unloaded. I had a loaded clip along with the handgun, but it was packed away in my suitcase.

ASSEMBLYMAN STUHLTRAGER: Where was your suitcase?

MR. SOLLER: My suitcase was in-- I only had one suitcase, and that was in back of the car on the floor just below the back seat.

Prior to making this trip, I had previously resided in the State of New Jersey. When I came to live in the State of Jersey, I went to the Bricktown issuing office for firearms to inquire about bringing my handgun into the State. I have a license to possess and carry a handgun for the State of New York, which I, for 13 years, have had this. I told them when I came into the State of New Jersey that I owned handguns, and what do I need to do to bring them into the State? They told me in the State of New Jersey you don't need to have a license to possess them in your home. They said, "But you can get them registered with us for your protection, if they get stolen or whatnot." I said, "Well, I'm licensed in the State of New York. My guns are registered in New York. I've been fingerprinted, the whole works. I have a license to carry, so I really didn't need that." I said, "But how do I get them to my home as I'm coming through the State of Jersey?" They said, "Well, as long as you keep them in your suitcase, coming through you're not going to have problems." That's what I

thought the law was. I really didn't proceed to dig into it any further. So, I thought I was all legal. When I was going to pass through the State of New Jersey I felt I was all legal.

As we were coming across the Delaware Memorial Bridge-- We had been driving since 8:30 in the morning. It was as we were crossing over the bridge going to be coming into the State of New Jersey. It was approximately 3:00 a.m. We had been driving all day, all night, taking turns driving. I was driving at the time. As we were coming over the bridge, we saw a trooper car parked between the north and southbound lane. I was doing approximately 45 m.p.h., and slowing because we were coming up to the toll booth, because we were going to be getting on the New Jersey Turnpike. At that point, as we passed the trooper car, the spotlight went on us, from the trooper car onto the car. By the way, the car did have Florida plates on it, as it was registered to my friend Brian. It was his car, and that's where he resides. As the spotlight went on us, I was aware because I'd seen the car. I know for a fact, when you're aware of a trooper you're making sure you're doing everything perfect, and that includes looking at your speed limits see how fast you're going. I knew I was doing approximately 45 m.p.h. When that spotlight went on us-- No sooner did the spotlight go on the car, it pulled out behind us. It put on its lights. I pulled over.

The trooper walked up to me and said, "License and registration." I immediately started giving it to him -- my license, the registration Brian started getting because he was on the passenger side. I said, "I know I wasn't speeding. What did I do?" He says, "No, you weren't speeding." He says, "You were weaving." I says, "Weaving?" I said, "I wasn't weaving." I said, "I know for a fact I wasn't weaving." I said, "I would know if I'm weaving or not, and I know I wasn't weaving." He says, "Well, just get out of the car." He goes, "Looks like your eyes are a little red." I said, "Well I just

came from Florida. It's been a long trip. We've been driving since 8:30 in the morning." He says, "Well, get out of the car." I had my shoes off. I started putting on my shoes to get out.

When I got outside the car I assumed he was going to test me to see if I'd been drinking or anything. When I got out of the car, instead of testing me to do anything, he told me to get against the car and started frisking me. He gave me a quick pat down, then told me to go sit in his trooper car. I said, "What's going on? I don't understand. What's happening here?" He said, "Well just go sit in my car. Shut up, and go sit in my car." I said, "What did I do? I didn't do nothing." You know, I'm tired. It's been a long trip. I didn't do nothing wrong. And all of a sudden-- If he's pulling me over for a violation, my God, just give me a ticket and let me be on my way. But that wasn't the case. I knew, like I said, I'm familiar with the laws. I've been a military police officer. You just don't do this to somebody. So I knew right off the bat, the guys were up to no good. He said, "Go sit in the car." I complied. It's 3 o'clock in the morning. We're on a highway. It's late at night. I'm not going to argue with him no matter how wrong I thought it was they were doing. I kind of just kept questioning him, "What are you doing to me?"

With that, I went and sat in the car -- this trooper car -- I sat in the front seat.

ASSEMBLYMAN STUHLTRAGER: Where was Brian?

MR. SOLLER: And I'm sitting there, nobody is with me. I'm just sitting in the front seat of the trooper car.

ASSEMBLYMAN STUHLTRAGER: Where was your friend?

MR. SOLLER: My friend was on the passenger side. There was another trooper on his side, and he's showing the registration to the other trooper. Now, they both walked around that side, and they're shining a flashlight into the

car. I'm just sitting in the front seat watching this happen. I can see registration being changed, and so forth, and I can see him shining the spotlight -- the flashlight -- into the car.

All of a sudden he takes out of the car a bag that I had behind the seat on the passenger side, which contained my two cartons of cigarettes that I had bought in-- As we were coming down I had purchased them at Hardee's in North Carolina, two cartons of Tarryton cigarettes. I smoke, and that's how I buy my cigarettes, in cartons. I still buy them in cartons, no matter what state I'm in. One carton was open, because I had already broke it open to get a pack out of it. The receipt was still in the bag from it. He comes out of the car with my bag, and puts it in the trooper car, and he says, "Whose cigarettes are these?" I said, "They're mine." He goes, "Do you know it's illegal to bring them into this State?" I says, "Illegal? I purchased them. They're my cigarettes. They're not different brands. I'm not selling them. I'm not buying them for anybody. They're my cigarettes, my personal cigarettes." He says, "Well, it's illegal. I could arrest you for this." He says, "You're coming across the State line, there's a taxation law." I said, "What do I do, throw out my cigarettes every time I come into another state, and buy a new pack?" I said, "I don't understand. What are you doing to me here?" He says, "Just shut your mouth." With that, he goes back to the car, and now they get my friend Brian. And now he tells me to get out of the front seat and get in the back. Now Brian is in the front also.

Now they want Brian -- they start asking him -- to sign a consent to search the car. I said to Brian, "Something is wrong here. It's not right what they're doing. Don't sign anything." I said, "I want a lawyer." The cop said, "You ain't getting no lawyer. You ain't getting nothing, because I told you to just shut your mouth." I said, "Brian, don't sign anything. Don't do anything." They said, "Well, if you don't

sign anything you are going to jail. You're going to jail tonight." We said, "We didn't do nothing." They didn't like me telling me my friend don't sign. With that, he says to the other trooper, "Get him out of here." The other trooper grabs me, and flings me out of the back of the car -- pulls me out of the back of the car.

Now I'm standing alongside the car, outside, freezing to death. It was cold. I mean, it was so cold out there-- I had no coat on. It was so cold my hands were shaking, my jaws chattering, it was just extremely cold at three in the morning. I said to him, "Can I get my jacket? It's in the car?" "No, you can't get it." I says, "I'm freezing to death." "No, just shut up. You can't get nothing."

Now, I can see the other trooper talking to Brian in the car. Meanwhile, I kind of started in on this trooper that I'm standing out there with. I said, "How can you do this?" I says, "How do you feel good about yourself?" That's when I more or less started telling him what kind of work I do. I says, "I've been in the military police. I still am with the reserve unit." I says, "I couldn't do this to somebody." I says, "How do you sleep at night? How do you enjoy-- How do you take pride in your job by harassing us like this, when we haven't done nothing?" He says, "Just shut your mouth, will you?"

With that, I see a clipboard. I'm looking at the car, and I see a clipboard being passed over to my friend Brian to sign. With that, I tap on the door, and told Brian. "Open the window. Open the window." I don't know if he could hear me. At this point, he kind of opened this car door a little bit -- just a crack, because he apparently couldn't open the window, but he opened it a crack. I said, "Brian, don't sign anything. Just don't do anything at this point. Let them do what they got to do. Don't sign nothing." He says, "They're going to put us in jail if I don't." I said, "Let them do what

they got to do. Just don't do nothing no more." With that the trooper is yelling at him, "Close that door." The other trooper grabs me, and says, "Get away from the car or I'll shoot you." Okay, so I stood there. With that Brian signed the piece of paper. I guess he did anyway, at that point.

The trooper came out of the car, and immediately started searching the car. At this point, we all kind of walked up to the car. Brian had gotten out of the car, and walked up to the car and was standing next to it. I walked up, And I was with the other trooper. We all walked up to that car at the time. We're watching this trooper search us. Now I see him -- and I had asked Brian, "Did you sign a consent to search?" He says, "Yes. They're going to put us in jail if I didn't sign." So, with that I see him going into my personal bag now, in my suitcase. So I said to the trooper, "That is my personal belongings. That's my suitcase." He's digging into my suitcase. I knew he was going to find my gun, because that's where my gun was.

Before I had a chance to even tell him it was in there, here it comes. Now he's got it in his hand, gun in one hand, and the clip in the other hand. Now the clip was loaded. All of a sudden he slams that clip into the gun -- which was a .45 -- slams it up there, comes bolting out of this car. I mean, all hyper like a crazy man. Points this gun right in our face. "Get up against the car. Get up against the car. You're both under arrest. Get them." And he's yelling at his trooper friend also, the other trooper, "Cuff 'em. Cuff 'em." The other trooper is kinda-- He really doesn't know what to do because he doesn't know what's happening, but he's just kind of responding to the other trooper yelling like this. So he's kind of gotten a hold of us, and with that we're pushed up against the car and handcuffed.

Like I said, he's got now my gun. Now it's fully loaded, because he ran that clip up there, and he's pointing it right in our faces. With that, we're thrown up against the car, we're handcuffed behind our back. We get pushed and pulled into the back of the trooper car. When I say pushed and pulled, it's one of these jobs, (demonstrates with his hands) back and forth, and roughed up, into the back of the trooper car. Now, we're sitting in back of the trooper car, and handcuffed behind our back.

One thing I didn't mention to you is, when he walked up to search that car, he did at that point -- because I asked again for my jacket, and at that point he did throw it to me -- my jacket. I zippered it up right to the neck. I put my coat on, right to the neck at that point. Okay? Now is when he finds the gun, like I said, this happened, and now we're put in the back of the trooper car. Apparently they had the heat on. Now from freezing, I got my coat on, now I'm put into-- It's just like going from a freezer into an oven. That's how hot it was. Now my skin feels like it's going to burst. It's so hot. I can't even take off my coat because the handcuffs are behind my back. My back is killing me.

I said to the trooper that was-- The other trooper was now searching the car, going through it, searching the whole thing, every piece of it. The other trooper is sitting back there with us -- the mellowed out trooper; the one that really wasn't that hyper; he's sitting in the trooper car with us -- I says to him, "Can you open the window?" I says, "I'm going to pass out, it's so hot." He says, "No." I says, "Please. I need air. I feel like I can't breath." I says, "My back is killing me." I says, "I have a back injury. I need air. My back is paining me. I can't hardly breathe. Just open the window. Give me some air." He kept telling me no, but after I kept on him about it he finally did. Instead of opening the window, he threw on the fan on the car which gave it some air.

My friend Brian is sitting next to me, getting sicker by the minute. I look over at him, and he's getting ready to heave. He's handcuffed, and he's sick as a dog. I mean, he looked like he was ready to die. He says, "I'm going to throw up." He says, "Can you open the door so I can throw up?" The trooper says, "No." He goes, "Please, I'm going to throw up." The trooper says, "No. You'd better not throw up." With that, my friend starts heaving. You could see the throw-up start coming up in his cheeks. His cheeks are getting full. He can't even hold his mouth because he's handcuffed. Now the throw-up is coming out of his mouth and dripping onto his lap, and he's swallowing it again, so afraid to throw up in the car. Finally the trooper, when he sees the throw-up dripping out of his mouth, says, "Okay, you throw up in my car, then you're going to clean it." And then, he opens up the back door, and with that he barfed. Everything came up. Then he closed the door. My friend is there, he's got his head laying on the side of the door, and I tell you truthfully, it looked like he was ready to die. That's how bad he was. I says, "Hey, take it easy, Brian." He says, "Look, they're going to kill us." I said, "Look, just don't even think about it."

At this point I couldn't wait for them to take us to the police barracks, because these guys are-- I don't know what they're going to do next. I mean, when you're out on the highway like that at three in the morning, and they're doing everything-- All this came about because they said we were weaving. I mean, you don't know what these guys are going to do. So, all I wanted to do-- I always had a lot of respect for the police, and all I knew was we had a couple of bad apples here. I couldn't wait for them to take us someplace, just so there's more people around.

With that the two troopers said-- I tried explaining to them in the car. When he got back in the car I'm telling him, "I'm licensed for that handgun. This is my handgun. I'm

registered to possess and carry in the State of New York. I'm fingerprinted. I have my license on me. Let me show it to you." "I don't want to see nothing." I started to tell him, "You want somebody to vouch for my character? Let me give you the name--" I tried to give him the name of a chief of police in the State of New Jersey. I tried to give him the name of other State troopers in the State of New Jersey. He didn't want to hear nothing. I told him about going to Bricktown, and about how I was told I could legally keep it in my suitcase traveling through the State. All he told me was I'm a liar. "I don't want to call nothing." When I asked for a lawyer, "No way." I could not have a lawyer.

Now they're ready to take us to the police station. They didn't find nothing else. Now Brian's car is there. They start talking among themselves. They say, "Well I don't suppose they got any money, so what do we do with the car?" Then he says to me, "You got money to tow this?" I says, "Yeah. I belong to AAA Motor Club. They tow." He says, "Nah, forget it." He tells the other trooper, "You drive it," and away he goes in the car. The other trooper driving my friend Brian's car, which was a Cadillac. We're in the trooper car, we started following them. I think my friend -- like I said, he was totally sick -- and I think he thought they were taking us to the woods to do away with us. But we followed the other trooper in my friend's car.

We went to the police station -- to the troopers' barracks. At least I'm feeling good. At least we're going to get where there's more people. We get there, there's one person on the switchboard that really didn't seem to care what was happening anyplace else. We go in that police barracks, there ain't nobody in there. It's just these two guys again, and they got us. As we're walking in the police station, I says, "I want to make a phone call." He looks at me and says, "Contrary to what people believe, it is not their

constitutional right to make a phone call." He says, "You don't got no rights."

Okay, we get into the police station, now we're unhandcuffed, and rehandcuffed with one arm to a bench. He says, "You're going to talk to me." I says, "I want a lawyer." He goes, "You're going to talk to me. You ain't getting no lawyer. You ain't making no phone call." He goes, "And if you don't talk to me we're booking you in the jail on a John Doe." So, at this point, what are you going to do? You know you have rights, but these guys ain't going to give them to you, and there ain't nobody there to turn to. So you just do what they tell you. I said, "Can I at least call my father? He's expecting me. At least let me call him so he knows why I'm being delayed." He says, "No. I told you.. You ain't calling nobody."

With that, we started getting fingerprinted, photographed -- the whole works -- a police report. They asked us questions. I answered questions for the police report. When they started doing it to my friend Brian -- then they took him in the washroom, I guess to wash the stuff off his hands -- the trooper looks at me and he says, "You want us to get a search warrant, huh? You were going to make us get a search warrant. We're going to fix you." I didn't say nothing. I didn't really know what was going to happen next, but it totally shocked me what did happen next; because all I could think of was either they're going to work us over, they're going to beat us, they're going to put us in jail. You know, that's what was really in line for the way these guys were acting.

After it was all over, they said they were releasing us on our own recognizance. "You don't have to worry about anything any more. It's over." I says, "What do you mean, it's over?" "Well you can go." I said, "Well when is the court date?" "Well there ain't no court date. You call this

number." They gave us both a summons, and said, "Call this number on the summons tomorrow, and they'll explain to you the procedure." So he says, "You're free to go." He goes, "But now make sure you call that number, because if you don't call we can get a warrant and bring you back from Florida," and so forth. I says, "Oh, I'll call." He goes, "You'll be given a PTI, six months thing. No court, no trial, no nothing. Everything will be dismissed. You don't got to worry about a thing no more." I said, "Well, can I get my handgun?" He says, "Oh no. You'll never see that again." With that, he hands me back my cigarettes that was in the bag -- gave them all back to me -- and he gave me back the empty holster. Kept the gun, gave me back the holster.

As we're walking out, he gives me a warning ticket for weaving. I said, "What's this?" He goes, "That's a warning ticket. No court appearance, no fine, just a warning." I says, "You know I wasn't weaving." He just smiled at me and said, "You better get out of here while you can." Away we went. We got in that car. The car was outside right there by the door when we walked out, and away we went.

As soon as I got further up into the State of New Jersey, we pulled over. We stopped at a little place where they have a concession just to kind of calm down a little bit and relax, because we were both kind of shook up -- couldn't believe what happened to us. We had some coffee. My friend couldn't even drink, eat, nothing, that's how upset he was. He couldn't even do anything. His stomach couldn't even hold anything.

With that, we drove on further, and when it got to be 9 o'clock I called that number. The number that was on there said they did not handle it. They gave me another number to call, which was PTI. They said they are the ones who handle it. I called that number, told them who I was and everything what had happened. They says, "Well, don't worry about it." I

says, "What do you mean don't worry about it?" I says, "When is my court date?" "You don't have a court date." I said, "Well when do I plead to this?" "You don't plead," she says. She goes, "Just don't worry about it no more, and you'll receive some papers in the mail, and you'll fill out the papers and mail them back to us. At the end of six months it's dismissed." I said, "There's no court date? I don't see a judge? I don't see nobody any more?" She says, "No, nothing. Don't worry about nothing no more."

I says, "I'd like to get my gun back. How do I go about doing that?" She says, "Oh, you won't get your gun back." I says, "Why won't I get my gun back? It's my gun." I says, "We're not talking a cheap gun here. We're talking a \$500 handgun that is mine, purchased by me, registered to me, and licensed to me." She says, "That's part of PTI. We keep your handgun. We keep your gun. You won't ever get that back." I says, "Well if that's the condition, I don't want PTI." I says, "I didn't do nothing wrong. I've been just put through two hours of hell this morning." I says, "And now you're telling me it's all over, and you're keeping my gun?" I says, "I don't agree to PTI terms like that." She goes, "You're going to have to talk to the prosecutor if you want to get your handgun back." I says, "Well I'll talk to an attorney." That's it. I hung up and that was the end of it.

ASSEMBLYMAN STUHLTRAGER: So what happened? Did you get your gun back? You didn't get it back?

MR. SOLLER: No, I didn't. I have not received my gun back yet.

ASSEMBLYMAN STUHLTRAGER: Did you take PTI?

MR. SOLLER: No, I didn't. I never received any papers in the mail.

ASSEMBLYMAN STUHLTRAGER: Did you every contact-- I think it was Salem County, wasn't it?

MR. SOLLER: I have not contact them. They told me I would receive papers in the mail. I have never received any papers in the mail.

ASSEMBLYMAN STUHLTRAGER: And it's been, what, a year and a half you're saying?

MR. SOLLER: No it's been-- This happened in April. Oh, I'm sorry. It was April of '87. So it would be--

ASSEMBLYMAN STUHLTRAGER: '87.

MR. SOLLER: '87. So we're talking almost six months.

ASSEMBLYMAN STUHLTRAGER: Well sir, I appreciate you coming today, Mr. Soller, and telling us that somewhat scary story. I guess it's everybody's nightmare that something like that could happen to them, although we certainly don't ever expect it to happen here in America. Is your friend Brian with you?

MR. SOLLER: Yes, he is.

ASSEMBLYMAN STUHLTRAGER: Brian, where are you? Brian? (Mr. Goergen comes forward) I appreciate you joining us. You can come up to the mike there. Certainly, I didn't want to interrupt Bill when he was telling the story, but-- Needless to say, we don't need to hear the whole story again. It's had its impact on us here at the Committee. Do you have anything that you would like to add?

B R I A N G O E R G E N: Just that my rights were violated. They took my car, and--

ASSEMBLYMAN STUHLTRAGER: You got your car back, I assume. Didn't you?

MR. GOERGEN: Yeah. I got my car back.

ASSEMBLYMAN STUHLTRAGER: Good. Okay.

MR. SOLLER: By the way, he was charged with the same crime.

MR. GOERGEN: And I was charged for something I didn't do.

MR. SOLLER: We were both issued a summons for possession of a loaded handgun. Him also. We both received the same summons.

ASSEMBLYMAN STUHLTRAGER: Even though it was in your suitcase?

MR. SOLLER: It was in my suitcase.

MR. GOERGEN: Right. They charged me with the same charge.

MR. SOLLER: I told him it was my handgun. They still issued him a summons also for the same thing -- even though he didn't have to appear either.

ASSEMBLYMAN SHUSTED: Do you have the names of the arresting officers?

MR. SOLLER: I don't have it right here, but I do have it out in-- I could get it, probably in about five minutes.

ASSEMBLYMAN SHUSTED: Well I think we ought to have that. I think it would be important

MR. SOLLER: Because I have the summons with me. It's out in my suitcase -- a copy of the summons -- which does list both their names.

ASSEMBLYMAN STUHLTRAGER: Have you ever followed it up from that avenue, in terms of the misconduct of the authorities?

MR. SOLLER: I have made quite a few phone calls. Of course I had spoken to my father about it. We together have made different phone calls, and spoken to different attorneys, and the NRA, and the New Jersey Coalition, and the Rifle and Pistol Association. When I first spoke to an attorney about it, he says well he'll take case but it would be a \$1500 retainer, and \$500 per day for any further things. That's a lot of my money when you don't have a lot of money, to try to recover a handgun.

ASSEMBLYMAN SHUSTED: Have you, or has anyone on your behalf, filed a formal complaint with the Division of State Police?

MR. SOLLER: Not that I'm aware of, at this point. It's hard to do things when you're so far away. I've been talking to Mr. Iverson about it, and just different people with the associations, and they've been fantastic in trying to help.

ASSEMBLYMAN STUHLTRAGER: Well certainly I would hope you would follow it up in that way, because as you yourself said-- I think we all generally believe that the law enforcement community-- They are good people. They're doing a job that we all know has to be done. You apparently had a couple of bad apples there, and as somebody that lives down that way and drives that same road that you were on, I certainly hope that would follow it up. I hope that they would respond to your complaint.

MR. SOLLER: Thank you very much.

ASSEMBLYMAN STUHLTRAGER: Brian, I suggest that.

MR. GOERGEN: Thank you.

ASSEMBLYMAN STUHLTRAGER: Thank you both for coming.

MR. IRWIN: Mr. Chairman, may I ask Brian just a couple of questions? I think there are a couple of things that might be helpful.

ASSEMBLYMAN STUHLTRAGER: Yes. Not too long, if you would, because we'll break for--

MR. IRWIN: No. Brian, I just wanted to check with you. You did sign a permit to search your car?

MR. GOERGEN: Yes.

MR. IRWIN: Why did you do that?

MR. GOERGEN: He threatened me to sign it, after I closed the door; because Bill told me not to sign it, and I handed him back the clipboard and told him I didn't want to sign it because there wasn't any reason for it. Then he threatened me to sign it. And then he said afterward when he had us at the police barracks, he told me he didn't need to have that. He said, "I have the right to search your car, anyway."

MR. IRWIN: And the other question that I have is, has this incident had any long lasting effects on your health and well-being?

MR. GOERGEN: For the last five months-- I've lost about 15 or 20 pounds. My back is still hurting from it. I had the handcuffs in the pit of my back, and it was causing me pain and aggravation -- on top of the bullshit I went through.

MR. IRWIN: Thank you, Mr. Chairman.

ASSEMBLYMAN STUHLTRAGER: Gentlemen, thank you for coming. At this time, it's almost 12:30. I'm going to recess the hearing until 1:15. We're going to start promptly at 1:15, and I'll continue down the list of witnesses.

(RECESS)

AFTER RECESS:

ASSEMBLYMAN STUHLTRAGER: I'd like to call this session to order here. I hope everybody enjoyed lunch. Let me just say that we have an extensive list of witnesses. This morning's testimony was very informative, enlightening, and I didn't want to cut off anyone this morning because it was just an interesting group of witnesses -- not that this afternoon's won't be interesting also. I just ask that in deference to those of your fellows that are going to be testifying, and might not be able to come back next Tuesday, that we just kind of move it along as expeditiously as possible.

Mr. Irwin, do you want to join us at the table? The first afternoon witness will be Debra O'Hara. Debra?

D E B R A O ' H A R A: Hello.

ASSEMBLYMAN STUHLTRAGER: Good afternoon.

MS. O'HARA: My name is Debbie O'Hara. I come from Colorado Springs. I'm currently just a housewife.

ASSEMBLYMAN STUHLTRAGER: You're not just a housewife.

MS. O'HARA: Well, up until two years ago, I lived most of my life in New Jersey. For the reasons that I'm going to recount here, I feel that living in New Jersey for me is just not really something I care to do any more.

Basically, how all this started-- I've been shooting -- that's been my recreation -- since I've been about 12 years old. I've had experience with BB guns, handguns, rifles, shotguns, etc. About five years ago, my father joined the Hopatcong Rifle and Pistol Club, and of course I wanted to go along with him and join, because I enjoyed the club, its members, etc. I had submitted an application to the Denville Police Department for a firearms ID card. That first application I submitted, I never received a rejection letter for it. I had been contacted by Detective Rey of the Denville Police Department, and was interviewed by him. On the application, question 20 reads, "Have you ever been attended, treated, or observed, by any doctor or psychiatrist, or any hospital or mental institution, on an inpatient or outpatient basis, for any mental or psychiatric condition?" I had answered yes to that question. I didn't want to lie.

ASSEMBLYMAN STUHLTRAGER: Let me just ask one question. Is that part of the official form?

MR. IRWIN: Yes, sir.

ASSEMBLYMAN STUHLTRAGER: That's an approved question. All right.

MS. O'HARA: Right. I didn't want to lie on that form. I had answered yes to that question. The reason why was, in 1978 I had made a call to our local, like, hot line number, looking to talk to somebody about some various family problems at the time. I was told to go to St. Claire's Hospital, and I would be entitled to talk to somebody at that time. I had gone to St. Claire's Hospital. They processed me through the emergency room, and then at that time I had talked to a psychologist for about an hour. That's the extent of the

visit. I've never talked to any other person like that after. I had never gone back. There was no need to, really. So, like I said, I didn't want to lie on the application.

For that reason -- answering that question, "yes" -- I was basically not processed any further. Detective Rey basically made me believe that I couldn't go any further, and I wasn't going to get my ID card, and that was it.

In 1984, I reapplied for the second time, second set of fingerprints, another application, etc. I was told by Detective Rey that I would have to have a letter from the doctor who has seen me at St. Claire's, stating my condition and like that, as far as the gun permit was concerned. I did some research to find out where I could track down the doctor. That doctor no longer worked at St. Claire's, and she was in the child's division. I was over 18, so there was nothing that she would have to do with it. I was considered an adult. She just wouldn't have anything to do with it, and it was just like, how do I get this letter? So, Detective Rey finally told me that he didn't need a letter from that specific doctor, just anybody there that could give me a reference letter type thing.

ASSEMBLYMAN STUHLTRAGER: Let me ask you this question. Did you consider that request unusual, or oppressive? Did you object to having to get some sort of a letter indicating that you were sufficiently stable -- I guess would be the word -- to have a gun?

MS. O'HARA: No, not at all.

ASSEMBLYMAN STUHLTRAGER: Okay.

MS. O'HARA: I really didn't think nothing of it at first. It was like, fine, okay. If they wanted some kind of reference letter from a certified physician or anything like that, I was willing to cooperate. I didn't think nothing of it.

ASSEMBLYMAN STUHLTRAGER: All right. Because I think at first blush people would generally agree. If somebody has had a history of psychiatric problems, and they answer, "yes," I

would like to know if they've overcome those problems before they had a gun.

MS. O'HARA: Well sure. It was only that hot line visit that day. I figure, okay, fine.

ASSEMBLYMAN STUHLTRAGER: Okay, fine.

MS. O'HARA: So anyway, I had gone through the work of tracking down that doctor. She didn't even work at the hospital any more, and etc. like that.

ASSEMBLYMAN STUHLTRAGER: Did it have to be the same doctor?

MS. O'HARA: Well, he changed his mind after I submitted the second application.

ASSEMBLYMAN STUHLTRAGER: Okay.

MS. O'HARA: He said, "Okay, it doesn't have to be that doctor, just somebody else." I had gone to the Director of the Mental Health Division in Denville and talked with him, and he said, "Oh, okay, no problem. Just bring me a copy of that record from that visit. I'll do an interview and have somebody help you out." So I figured, great. I dropped off the records, and tried to call him a day or two later and couldn't get through to him. Finally he returned one of my calls, and it was like, "I want to find out who is going to do the interview? Who is going to help me out?" He says, that nobody could help me. I don't have a mental health problem. That one hot line visit or call was not sufficient enough to qualify me as having a mental health problem, and they only dealt with people who had mental health problems. So it was like, "But wait. I need this letter." So he switched me to his secretary. His secretary told me to look in the phone book for a psychiatrist or somebody else, because they just would have nothing to do with it. But she did tell me if Detective Rey of the Denville Police would call her, she'd explain the situation.

I had called Detective Rey, explained to him, "Would you please call this lady? She'll explain the situation to you." And he got real nasty. He started calling me a radical. I was in tears. I just couldn't believe-- You know, "Just call this lady. She'll get the letter, or she'll explain to you why I can't get the letter you're requiring." It just was a disaster. He just had me in tears. I just thought at that point, "Give up."

Roger Iverson of the gun club helped me out with the situation. He made me realize that there are things that I can do to rectify the situation. I had after that found a doctor to give me a letter, stating my condition and all like that, was I capable of handling a gun without hurting anybody and like that. I had submitted another application, more fingerprints, and the letter from the doctor; and this time I was turned down again. I had sought an attorney's help, and he contacted Chief Shaw and Detective Rey, to find out exactly what the reason was that I being denied. Why? They never found out.

So, after that, I figured the only way to handle this was to go through the court system. So I had appealed to the Morristown Court, and had a hearing with Judge Egan in Morristown. That was on June 10. Okay. I had taken special courses in safety ad handling. I mean, these weren't requirements for me to get my ID card. I mean, they were just something extra to prove how I was safe in handling a gun, and like that.

Also, one ironic thing is, I have taken a safety and handling course given by a State volunteer, Greg Hopf. He's actually a sergeant on the Denville Police. I mean, here he passed me through this course, and yet he's on the Denville police force. It's like one hand is saying, "Oh yeah, you can operate and handle a gun safely, but yet you can't have an ID card."

Now the reason I really wanted the ID card was to compete with the club. I couldn't even be a member of this club. My goal was to compete. That was my recreation, and I was being prevented from doing so.

From there we had our court hearing, and all this came out. After the court hearing, the judge approved my permit. "You get the permit." I didn't receive my permit until about -- let's see the court hearing was June 10, I received my ID card July 15 of '85. After the court hearing, I had called the chief and said, "Well, you know, how do I get my ID card? When do I get it?" They told me I would have to submit a fourth application, more fingerprints, more checks. So I went down, filled out another application, more fingerprints, etc., and it was just like, "What are you doing? What are you doing?" "Well, your background has to be checked." I said, "What do you mean checked? You've had three applications."

ASSEMBLYMAN STUHLTRAGER: Didn't the court order them to issue you an ID card?

MS. O'HARA: Yeah.

ASSEMBLYMAN STUHLTRAGER: And they still required you to go through another application?

MS. O'HARA: Yeah.

ASSEMBLYMAN STUHLTRAGER: And another check?

MS. O'HARA: Yeah. They also required me to fill out an additional form that apparently the Police Chief of Denville just made up. There was no regulation for me to fill this out, but it was a requirement that they wanted this filled out before they'd issue me the ID card. I didn't fill that out, but I did fill out their fourth application, and I had checked with my references and all like that, and they were never contacted at all.

ASSEMBLYMAN STUHLTRAGER: They were not contacted?

MS. O'HARA: They were not contacted.

ASSEMBLYMAN STUHLTRAGER: And ultimately, you did receive your card July 15, you said?

MS. O'HARA: I think it was July 17, something like that. And then after I got the card, it was like -- all the harassment and like that, it was like-- I didn't feel even safe being in Denville, because it was like if I had to rely on these police for any reason whatsoever, I didn't feel like I could after that. It just was the way it came off. It was like I harassed them, instead of the other way around.

ASSEMBLYMAN STUHLTRAGER: Well, it occurs to me -- in your case, and I know of another case we'll hear later on -- that there's an almost chronic passing of the buck. Nobody wants to make the decision. The doctor at the mental health center, he didn't want to give you an opinion I suppose, because then if something did happen somebody is going to come to him and say, "Well why did you do it?"

MS. O'HARA: Right.

ASSEMBLYMAN STUHLTRAGER: The Police Chief doesn't want to do it, because somebody is going to turn around and say, "Well why did you issue the ID card?" So ultimately they force people to spend money, go to court, and it's not the way the system should work. I think it highlights again, Mr. Irwin, what you were speaking about earlier; it's the administration of the statutes. We're not really looking here at a particular statutory defect as much as a procedural defect in administering them.

MS. O'HARA: Also, one thing that had held me up for all that time-- I went to the rifle range as a guest with my father. It got to a point where I was so paranoid-- See, in New Jersey, if you don't have a firearms ID card, and you're in a car that has guns in it, you can be subject to arrest. I had to take separate cars to the range from my dad, because I couldn't be in a car that had guns in it, even if he was in the car and he had his card. I couldn't be in there, because if we were stopped I would have been subject to being arrested.

ASSEMBLYMAN STUHLTRAGER: Mr. Irwin, let me ask you, is that based on just the constructive possession interpretation?

MR. IRWIN: Correct. Yes sir. There is at least one case that holds that way.

ASSEMBLYMAN STUHLTRAGER: But I can't imagine-- Not every policeman enforces it that way, I'm sure. But you don't want to take the chance that they're going to in your particular case.

MS. O'HARA: Well with all the harassment I had been through previously--

ASSEMBLYMAN STUHLTRAGER: You weren't going to take a chance. I can understand that,

MS. O'HARA: I was not going to take any chances.

ASSEMBLYMAN STUHLTRAGER: All right.

MS. O'HARA: And like I said, after proving how well I could handle a gun through the extra courses I had taken, and then the doctor's letter saying it was only a family problem at that time, it wasn't anything adverse to her. So, it just was like, why are you doing this to me?

ASSEMBLYMAN STUHLTRAGER: Mr. Irwin, is there something that can be done to balance the legitimate interest of the State and the police in not issuing an ID card to somebody who is mentally unstable, and a situation like the witnesses where a doctor's exam would certify her as being perfectly capable of safely handling a firearm. What do we do, and what direction do we give, for our law enforcement community, too?

MR. IRWIN: I wish I had a good solid answer for that. I think one of the problems that the sportsmen and women of the State are dealing with, is one of perception. That is, there seems to be a feeling that all steps should be taken -- among some law enforcement agencies -- all steps should be taken to be assured that in whatever cases possible no one

should have a firearm. That's kind of an educational problem that we all face. I really don't have an answer for this one that's handy.

I can tell you though, I recently was involved in another case where the police department would not issue a firearms identification to a man, and would give no reason. It became apparent that it was their opinion that he was not, "sufficiently bright." So they were imposing another whole test, essentially an intelligence or IQ test. That case went to court, and the judge did in fact issue the firearms identification card. But as you suggested earlier, Mr. Chairman, it was obvious that everyone felt that they had some kind of a very delicate crate of eggs, and that if they made the wrong decision that they were somehow going to be liable. In that case it's interesting also to note that the suggestion was made to one of the people that was put forth as a reference, that if he gave a good reference to this fellow, and if something happened, that he could be civilly and criminally liable. That's the kind of thing that's going on. Hopefully, when your Committee is finished, we'll have some answers, but at the moment we've got more questions than answers, I think.

ASSEMBLYMAN STUHLTRAGER: Would a requirement for a written denial-- Would that be of any benefit? When I'm looking here at the statute, when one of the bases for denial is as broad as, "To any person where it would not be in the interest of public health, safety, and welfare," that's about as broad a category as you can have. And if you require a written denial to simply say-- Well, it would not be in the best interest of the public safety health and welfare, is kind of conclusionary. But would that be of any benefit?

MR. IRWIN: We are oh so glad that you brought that up, because that is a big thorn in the side of the citizens who own firearms in the State. It is used constantly as a kind of a catchall to deny permits and cards to people that perhaps a

chief just doesn't care for essentially, or has some feeling that is never disclosed. That's very unfortunate, and that certainly is an area where legislative attention would be very very helpful.

ASSEMBLYMAN STUHLTRAGER: Thank you. I want to thank you. Do you have anything that you want to add in conclusion?

MS. O'HARA: No, not really.

ASSEMBLYMAN STUHLTRAGER: All right, thank you for coming in.

MS. O'HARA: Thank you.

ASSEMBLYMAN STUHLTRAGER: Sorry you moved out of New Jersey.

MS. O'HARA: Well, if they can get the laws fixed--

ASSEMBLYMAN STUHLTRAGER: You might come back, huh?

MS. O'HARA: Right.

ASSEMBLYMAN STUHLTRAGER: Okay. Thank you. Our next witness is William Tuff. Mr. Tuff, welcome. I don't think we've ever met, but you have the same telephone exchange. You can't live too far from me, in Deptford or Wenonah?

W I L L I A M T U F F: Wenonah.

ASSEMBLYMAN STUHLTRAGER: Wenonah proper?

MR. TUFF: Yes.

ASSEMBLYMAN STUHLTRAGER: Okay. Well, we're neighbors. Nice to meet you. What do you have to say to us today?

MR. TUFF: My name is Bill Tuff, from Wenonah, New Jersey. I am an engineer for IBM.

A couple of years ago I had a problem with a handgun. I've always been one to try to go by the law, because I never had enough money to work out of a situation, so I tried to stay out of jail.

ASSEMBLYMAN STUHLTRAGER: Pretty good course of action.

MR. TUFF: I've taken all of the prescribed hunters' safety courses, rifle courses, belong to a gun club, handle firearms safely. I purchased a handgun -- Dan Wesson 357 Magnum -- some years back. I was aware of the laws at the time. Before I got it, I found out about the laws of carrying it. The seller at that time told me that you can carry it in one compartment of your car, as long as the ammo was in another compartment. Basically, I stayed with those rules to and from a gun range.

One day, me and my brother-in-law we were going hunting. We had our legal orange on, license, the shotguns all registered. I might add that I had the receipts in my wallet, for the shotguns, as well as the handgun. I had taken the handgun because we were going to go to his farm and practice -- a prescribed practicing range. On the way to hunting, we stopped over in the woods. First we said we'll go hunting, and then we'll go over to your farm do the shooting. I had everything locked up in the trunk at the time. We got the shotguns out, put on our orange, licenses, and we went hunting.

I took the handgun out of the trunk at that time, because I figured if anybody saw me getting out of the trunk -- out of the car -- they would see us taking all these shotguns out. They would break into the trunk to see if I left any other guns in there -- strictly a safety matter. I wrapped the gun up in a piece of cloth -- my daughter's jacket -- as I took it out of the trunk, and sort of hid it on my side in case anybody was looking. Then I slid it up underneath the front seat of the car, locked the car up, we went on into the woods, and came back maybe an hour or two later.

We saw the State troopers out there. My brother-in-law said, "The cops are over there." I said, "Well we haven't done anything." I went to get in my car. The trooper's car pulled up real quick, and asked me if this was my vehicle. I said, "Yes." He instructed me at that time that I

was under arrest. I said-- And he'd seen me with all of the shotguns and the hunters orange and everything. I figures he was arresting me for these shotguns.

ASSEMBLYMAN STUHLTRAGER: Where were the guns at that time? Did you put them in the trunk or--

MR. TUFF: We were putting them in the trunk--

ASSEMBLYMAN STUHLTRAGER: When he came up?

MR. TUFF: --as he pulled up.

ASSEMBLYMAN STUHLTRAGER: Okay.

MR. TUFF: And he said, "Well, you're under arrest." He said, "Is this your car?" I said, "Yes." He says, "You're under arrest." I said, "Under arrest for what?" He never did tell me that he had taken the handgun out of my car. I was under the assumption that it was still in there because the doors were still locked when we came back. Subsequently, they had break and entered into my vehicle, took the gun from underneath the front seat, had called down to their barracks, who in turn must have called Washington somewhere, and found out that the guns were legally mine; because I said, "Well, what are you arresting me for?" They said, "Well we found a handgun in your car." I said, "Well, the handgun belongs to me." I said, "Here's the receipts." I had the receipts, a copy of my purchaser's permit, right there. I said, "Well, here's the stuff. This is my gun. It belongs to me. What are you taking it for?" He said, "Because you're not allowed to have this outside." I said, "We're heading to the range." He said, "Well you're under arrest. Get into the car." He took my knife. I had a hunting knife. He took that, confiscated that, handcuffed us, and locked us up.

By the way, my brother-in-law, who had nothing to do with this, other than being a passenger in my car-- They arrested him, locked him up for the same thing, I would imagine.

ASSEMBLYMAN STUHLTRAGER: What were you charged with?

MR. TUFF: Possession of a weapon. I explained to the officer that was in charge of the barracks that this was my gun. He said, "Yeah, we know it's your gun. I'm very sorry that you got caught with it in the car." He said, "Why didn't you just leave it in the trunk and all of this never would have happened?" He wanted to return the gun to me, but the officer had already arrested me, so I guess it would be like going against one of their fellow officers or something. So he said, "Well you just caught a bad break this time."

ASSEMBLYMAN STUHLTRAGER: Well how do you know it wouldn't have happened if it was in the trunk? Do you know if they looked in the trunk? You're saying they broke into the car?

MR. TUFF: They broke into the car. They have these little bars--

ASSEMBLYMAN STUHLTRAGER: Right, I know what you mean.

MR. TUFF: --that they can hook, and they opened it.

ASSEMBLYMAN STUHLTRAGER: Did they ever tell you under what authority they--

MR. TUFF: Yes. That's really strange.

ASSEMBLYMAN STUHLTRAGER: What did they say?

MR. TUFF: They didn't tell me at that time, but when I finally went to court they told me-- They said, "Well we looked in your car--" First of all, Fairfield Township was the ones that broke in, the Township police. When they found the gun they didn't want to handle it, because they knew they had broken into the car. So they turned it over to the State Police. The Fairfield Township cop told me, he said-- I said, "Well why did you--" This is in the courtroom. I said, "Well why did you break into my car in the first place?" He said, "Well, we looked in the back seat and we seen a rock back there." It was a white rock that I was going to put in my aquarium. My daughter had taken and put fingernail polish on the rock. They said, "We looked at the rock, and it looked

like blood, like somebody has been hit in the head and been dragged off down this rabbit trail." And they said, "We saw this trail on the side of the road, so we thought maybe somebody had been dragged down there. So we broke into your car."

At first I told the lawyer, "Can I beat this charge?" And the lawyer told me, "Yeah you can beat it, no problem at all. First of all, they had no business going into your car, illegal search and seizure, no probable cause. We can beat this a hundred ways. But it's going to cost you \$1000 up-front." I said, "Well the gun only cost me \$200." "Well you know, it's a criminal offense. It's going to cost you \$1000 up-front." That's before we even get to court. I said, "Well, I really don't have \$1000 dollars. I think I'll just go to court and see what happens, because I don't have nothing to lie about. I have all the requirements. I didn't do anything wrong."

So I went to the court. The thing that really made me mad was, they never sent me a letter stating that the grand jury was going to meet about this case. Next thing I got in the mail was saying that the grand jury had found you guilty. I just got off a grand jury, so I know that if I had been able to go there that I would have been able to convince them--

ASSEMBLYMAN STUHLTRAGER: Not to indict you.

MR. TUFF: Right. But they knew that also. The prosecuting attorney, he knew that. He made it his point not to send me a letter stating when it was going to be and where. So we got arrested. They took us down into the police station. My brother-in-law-- They told him to sit down. He stood up. He said, "What did I do wrong?" The commenced to physically beat him up. That's when I really got scared. I said, "Why don't you sit down and shut up, because there's no telling what they can do to us down here. Nobody else is around. We're liable to get shot out here." I said, "Whatever

they do, just sit down and be quiet. Don't say nothing else to them."

So the one cop that arrested us-- The one police officer said, "Well what are we going to do with him? This gun belongs to him. Why are we going through this hassle?" The cop that arrested us he said, "Oh we're going to really screw them now." He used a nice word. I said, "Wow, if this is the mentality, I've just got to be cool because there's no telling what could happen here." So we got out of that. They released us on our own recognizance after about two hours of being down there handcuffed to the chairs.

When I went to court, they said, "Well, I'll tell you what we're going to do, Mr. Tuff. We're going to give you a big break. We're going to let you go to PTI, okay? I said, "Well what is PTI?" They said, "It's pretrial intervention, where we feel the person has not really committed a crime. We're going to give you a chance, that you don't have to get lawyers." And that was great, because at that time I had just started a new job. I couldn't afford to be taking off from work, and I said, "Okay. I'll do that." His name was Mr. Casissi (phonetic spelling), he was in charge of that. So, they said "Okay, we're going to put you on PTI." I said, "Okay, what does that entail?" First of all, you never get your gun back, and they forced me to sign a document stating that I would never sue the State for my firearm back again. So I had to do it, because it was either that, or the prosecutor threatened me that he was going to pursue legal channels against me.

ASSEMBLYMAN STUHLTRAGER: They didn't take your shotguns when they--

MR. TUFF: Never said a word about the shotguns.

ASSEMBLYMAN STUHLTRAGER: So when you were released from the police station, they had your handgun, but you got back in the car where you had a couple of shotguns, right?

MR. TUFF: I had two shotguns, loads of ammunition. They stole my buck knife too. (laughter) It was about a \$30 knife that I had got for Christmas from my wife. They liked that. So they stole that, and they took my pistol, but they didn't care about the shotguns.

The whole mentality of the thing was, you know, like "I'm a new cop on the beat. I'm going to stick it to you this time." I can't say that it was anything racially involved or anything like that, because the arresting officer was black. So it wasn't like it was a racial incident against me personally. It was just the idea that, "Hey, we found this guy with a gun, and we're going to stick it to him this time."

The irony of the whole situation was, I went to the police station to talk to the guy in charge of PTI. I was down there on, let's say June 10. I don't know what the date was. I was down there talking to him at the same time there was court going on for-- I was supposed to be in court at this same time. My lawyer had not advised me that I had to be in court at this day. It just so happens, by the grace of God, I was downstairs with Casissi at that time. They issued a warrant for my arrest, came out to my job, arrested me, took me to court. I spent the night in jail. I tried to ask him, you know, "Call my lawyer." "You're not calling nobody. We don't care that you're in jail. You're just going to stay here until tomorrow morning." Nobody cared. It was like they just locked me away in the cell, you know.

Like I said, this whole experience-- For my whole life I never tried-- I've never been arrested. I had a spotless record before that -- nothing, except parking tickets. Now I have a permanent record from this PTI thing. Every time I go to fill out another-- I asked the guy, I said, "Well now what about my other firearms? I have other firearms at home." Because I didn't want to get arrested for them too, you know. So he said, "Oh don't worry about them. We're only

taking this one. We're not concerned about that what you have." And I said, "Well, will I be able to get another permit?" They said, "Yeah. This won't stop you from getting another permit."

ASSEMBLYMAN STUHLTRAGER: Have you done that since then?

MR. TUFF: Yes.

ASSEMBLYMAN STUHLTRAGER: And you were able to get it?

MR. TUFF: Yes. But everytime I go to get one, I have to put on there, "Have you ever been convicted of a crime?" "No." Then in parenthesis you have to put down PTI, 1982, or whatever the date was. Because the first time I put on there, no, because the PTI director consistently told me, he said, "After this PTI thing, you're clear. Eighty hours community time and you're wiped out clean. They'll never know that you've done this." So I went to fill out my form, I said, "Will I have to put that on my purchaser permit?" "Don't worry about it. Just fill it out, no, because that's what PTI means -- pre-trial intervention." I said, "Okay, fine." And I fill it out, no, and the chief of police called me into the office and said-- I said, "Well what's the holdup with my permit?" He said, "You answered this, "no." I got a report back that you were arrested," and such and so. I said, "Okay," and I told him what happened. He said, "all right, fine." Now I can get a permit anytime I go there.

One question you has asked earlier today I'd like to try to address. You asked how could we avoid this 30 day delay after that. Some of the townships that I know, if a person is in good reputation with the police department, they go, they've been there, they've got two or three permits, everything clears up, they've got fingerprints, the police departments don't hold you there for 30 days. You go in. You tell them you want a permit. They look at who you are. They know who you are. You know them. They know you. They just give you the permit.

There's no holdover. You don't have to wait. And that goes to show you how flexible the law is. Some departments you can go and get a permit in 15 minutes. Other departments you can go and wait for eight months before you get one.

ASSEMBLYMAN STUHLTRAGER: It would seem to me to make sense that if you've gotten a permit within some reasonable period of time in the past, that the full blown investigation seems to be duplicative and unnecessary.

MR. TUFF: That's exactly what my--

ASSEMBLYMAN STUHLTRAGER: I mean if you haven't had one in 10 years, I'd say maybe you'd better go through the steps again, but if you just had one a year, 18 months-- Those things don't change overnight.

MR. TUFF: That's how my police chief feels. As long as you have not committed a crime or anything, and he knows that you're coming there, like I've got three permits since then. As long as he knows you've not committed a crime, and you're a respectable person and all this other good stuff, he'll issue that permit the same day. You know, it's no big hassle with them.

But I'd just like to say that it's real bewildering to try to abide by the laws, only to have the law not abide by the laws. I mean, the police department, police chiefs, they can't make up the rules as they go along. This is the thing that really makes me mad. They can't make up the rules to suit the situation. If there's not probable cause, then I don't believe -- because they tell us this all the time. It's that attitude, "Do as I say, not as I do." I try to tell my children that, they don't listen to that. They do what I see them do. So if I see the police -- and it left with me a bad mental thing, because when I see the police breaking the law, and bending the law to suit their needs--

Oh, and the other thing was, I went back to Bridgeton. I asked them, I said, "Where's my gun?" -- no -- "Where's my

knife?" The guy said, "Oh we sent all of that down to Hammonton, along with the gun for a ballistics check. If you want it, you'd better hurry up and get it, because it's been a year now. You'd better file for--" I said, "Well, they told me I couldn't get the gun back under this PTI thing." He said, "Well you know, I'm just letting you know. If you want it, you've got to file for it because it's been a year. Other than that they destroy it." He said, "But your gun went to Hammonton." I rode down to Hammonton, asked them where was my gun? -- just recently. They said, "Oh you're jumping the chain of command. You have to go back to Bridgeton where the offense happened. Then they'll give us a call, and then you can come back here, and then we'll tell you whether we have it or not." So I mean, it's just like they decided, "Well this our gun. We're going to keep it. You're just out of it."

ASSEMBLYMAN STUHLTRAGER: Yes, I also think it's the case of the left hand not knowing what the right hand is doing. I don't know that they fully understand the procedure and how it should be followed. I don't know that it's always an intentional ring around the rosy game with you, but in the end, the effect is the same one. I want to thank you for coming today.

MR. TUFF: Just--

ASSEMBLYMAN STUHLTRAGER: Go ahead.

MR. TUFF: The other thing is too-- A lot of times when you're in the barracks police do a lot of talking.

ASSEMBLYMAN STUHLTRAGER: As if you're not there you mean?

MR. TUFF: Yes. As if you're not there, and you're sitting right there handcuffed to the seat. But the one cop, he told the one -- the Reed (phonetic) -- that took the gun, he said, "Oh man, this is a nice gun." As if to say, "Yeah this is a nice one. I'd like to have this one." And I haven't seen it yet.

ASSEMBLYMAN STUHLTRAGER: Okay.

MR. TUFF: And nobody knows where it's at.
(laughter) Thank you for your time.

ASSEMBLYMAN STUHLTRAGER: Mr. Tuff, thank you for coming today.

MR. TUFF: Thank you.

ASSEMBLYMAN STUHLTRAGER: We have next, Nelson Abbott. Mr. Abbott?

N E L S O N L. A B B O T T: Good afternoon.

ASSEMBLYMAN STUHLTRAGER: Good afternoon.

MR. ABBOTT: My name is Nelson Abbott. I live in Howell Township, Monmouth County, New Jersey. I'd like to read a statement by myself, and a statement by my neighbor, as this is a case of confiscation and failure of return on account of my Monmouth County Prosecutor.

ASSEMBLYMAN STUHLTRAGER: What I'd like you to do then, Mr. Abbott, is this--

MR. ABBOTT: It's very short.

ASSEMBLYMAN STUHLTRAGER: Why don't you read your statement, and you can submit both statements for the record, and if you want to summarize your neighbor's statement in terms of any differences?

MR. ABBOTT: Well, if I had a preference sir, I would rather read the neighbor's.

ASSEMBLYMAN STUHLTRAGER: Read your neighbor's then. I'm easy. Read your neighbor's.

MR. ABBOTT: Basically let me--

ASSEMBLYMAN STUHLTRAGER: Move up to the mike, Mr. Abbott.

MR. ABBOTT: I live alone, except for joint custody of a 14-year-old daughter that I have that's with me three-and-a half days a week.

ASSEMBLYMAN STUHLTRAGER: Okay.

MR. ABBOTT: And as a result of a neighbor's concern, for what reason I am unaware of other than a suspicion, of suicide on my part-- My weapons, my three inherited shotguns from my father, were passed down to me in the gun cabinet unloaded. I will read my neighbor's statement, which will maybe indicate to some of you what the remaining circumstances were. This is from the neighbor woman.

"I am writing this statement because I feel that I was deceived by the police department in the circumstances surrounding the confiscation of the inherited shotgun of Nelson L. Abbott, my neighbor. I was also present when the police made representation to Mr. Abbott about the return of his guns once they were in the department's possession.

"I originally called the police department to Mr. Abbott's home because I was concerned for Mr. Abbott's welfare, and nothing more. When the police arrived at Mr. Abbott's home, I gave a verbal statement to them which was not reflected by their subsequent report. There were statements added which I did not say, such as, "Mr. Abbott being a harm to himself and others, violence and the questions of alcoholism. Again, I wish to note that I did not bring up any of these matters to the police officer who responded to the call," -- who by the way, was the captain of the local department -- "I also wish to note that the police captain promised and assured me that Mr. Abbott could get his guns returned with the receipt which they gave him when the guns were confiscated," voluntarily.

"I made it very clear to the police officers when they came that my only concern was Mr. Abbott's welfare. I made it more clear to the police that Mr. Abbott would hurt no one, and the people who knew him, knew him to be nothing but a kind and gentle person. I told them that I had never seen him to act violently, nor had he threatened to become so. My only concern was that Mr. Abbott seemed depressed, and was drinking by himself in his home. This alarmed me because I had never seen

him act this way. Because I mentioned drinking, the police officer immediately interpreted it as alcoholism. Mr. Abbott also had trouble with his 14-year-old daughter, his ex-wife and problems of a personal relationship. This, combined with the drinking alone, concerned me.

"Thirdly, I never said that Mr. Abbott has harassed me in any manner. The police, however, did add that to their written investigation report. Mr. Abbott and I often talked by phone, and it was known by the police officer that I had seen Mr. Abbott while I was separated from my husband. After my husband and I reunited, Mr. Abbott remained close friends with my husband and I.

"The police report seems to be slanted so that they justifiably confiscate and keep the guns which are rightfully Mr. Abbott's. Once again I would like to note that I was deceived by the police, as was Mr. Abbott. The police report was nowhere near an accurate accounting of the circumstances of the day. The shotguns taken from Mr. Abbott were handed down from his father, specifically the Parker and Sterling double barrel shotguns," which the police officer said upon confiscation that he would pay me \$150, that I ever need some money, to buy those shotguns from myself. "Mr. Abbott is quite distressed about this and he hoped to give them to his own children, and quite frankly I do not see any reason why he should not be able to. I did not sign any charges against Mr. Abbott, nor did I allege any violence. How the police can simply confiscate these weapons and turn them over to the prosecutor's office, who now refuses to return them without something resembling due process, strikes me as incredible." And it's signed my neighbor, one number address away from my address.

What I would like to say sir, upon conclusion of that, is my statement reflects the same feeling, the same opinion; that I was deceived by the police and told that they would give

me a receipt, and in a couple of days when I was feeling better, that I could simply come down and show them the receipt and receive the inherited shotguns -- again, that were unloaded, in the gun rack, never used by myself. I'm not a hunter. I'm not a skeet shooter. They were simply something by dad had left me when he passed away, which was all that he left me when he passed away and they have great sentimental value.

My question to you sir is, at this point in time I do not have the resources to hire an attorney to receive my permission to get the return of my guns, and I'd like to know from you, if possible, what you would suggest now in this chain of command -- what you would suggest I do as a citizen, a homeowner, a Vietnam era veteran, a college graduate-- What would I do now, being that I don't have the financial recourse to approach the prosecutor who has seemingly in this situation assumed a godly position with my predicament?

ASSEMBLYMAN STUHLTRAGER: Well, I think you know that I don't have a magical answer to that. The prosecutor I think is probably going to take the position that I'm -- if you were in the room earlier, I forget whether it was before or after lunch -- where he's going to be reluctant to give it back, and he's going to pass the buck to the judge, then everybody can say, "Well it's a court order. They ordered the guns to go back." I'm assuming that's the position he's going to take, But for you to--

MR. ABBOTT: Yes. Excuse me for interrupting. His position is that I must go the Superior Court of the State of New Jersey.

ASSEMBLYMAN STUHLTRAGER: That's what I'm saying. Right. And to tell you how to do it other than that, I don't have that answer. I'm sure you've talked to Mr. Irwin, or some of the other representatives of the sportsmen. If there was an answer to that question we probably wouldn't be having these

hearings. It's a short answer, but hopefully we can get something resolved, and I hope your case can come out the way it should, and certainly it doesn't happen to other people.

MR. ABBOTT: All right then, I'd like to make the moral of the story, or the irony of the story is, I still have the New Jersey purchaser's permit card in my wallet, and I don't understand why I can go today and buy another shotgun-- And that's the irony of the story so to speak.

ASSEMBLYMAN STUHLTRAGER: Well, it's the irony in a lot of these stories. Mr. Tuff -- I don't know if he's still here -- he testified they let him drive off with shotguns in his car, while they kept the handgun. So there's a lot of irony floating around the room today, and you're among them.

MR. ABBOTT: Well I thank you very much for hearing me.

ASSEMBLYMAN STUHLTRAGER: Well thanks for coming down. Frank Beninato?

F R A N K B E N I N A T O: Good afternoon, gentlemen.

ASSEMBLYMAN STUHLTRAGER: Mr. Beninato, am I saying your name right?

MR. BENINATO: That's correct.

ASSEMBLYMAN STUHLTRAGER: Okay. When you have a name like Stuhltrager you're a little bit more sensitive to those things.

MR. BENINATO: You're one of the few persons that's gotten it right. I'm basically here today as a licensed gun dealer in the State. However, my prime source of income is I'm a licensed attorney in this State and the State of New York. I originally got my dealer's license back in 1983. It was issued by Judge McKenzie in Union County. I conducted a part-time gun business for three years, and my renewal was up.

What happened was, I got a letter from the State Police -- as I guess all dealers do -- saying, "Hey, your license is expiring. You want to put in a new application for renewal?" I did that. I want you to realize, I go through

this part-time, so I don't rely on it for an income. But my license was expiring August 11. They sent me a letter to renew in June, which is timely. I sent it back in June. They didn't even conduct an inspection of my premises until November, so technically I was out of license for three months. I couldn't sell anything.

ASSEMBLYMAN STUHLTRAGER: Just as a question, does the license continue on?

MR. BENINATO: No.

ASSEMBLYMAN STUHLTRAGER: Okay. You could have been cited during that period of time?

MR. BENINATO: Well, the story gets a little more complicated.

ASSEMBLYMAN STUHLTRAGER: Okay. I figured it did.

MR. BENINATO: In addition to the dealer's license, I also have a Federal dealer's license to sell machine guns. Part of the prerequisite to this is -- to having machine guns in your inventory, automatic weapons -- is that you have to be a New Jersey dealer to legally have them in this State. I have both licenses. I qualify for these license. Now my State license goes, so I really don't have the right to have the machine guns any more in New Jersey, only because the State Police didn't fulfill their job in processing the application in time..

In any event, the license was ultimately denied to me, because when the State Police officer came to investigate my premises he saw in my log book that the machine guns had listed next to them, "Not for sale. For demonstration only." Anyone who knows anything about Federal Class III licensing knows that you can not sell a Class III weapon. The reason the weapon is allowed to be in your inventory is to demonstrate it to law enforcement, and anyone else who is qualified to buy that gun -- such as another class three dealer. You do not sell that gun that's in your inventory. As a matter of fact, you get

licensed for each particular gun, and I have copies of the licenses here and on the Federal license itself it says, "Not for resale."

So he went and wrote a report up saying that I told him they were my private guns and that I stored them all in my house, and therefore Judge Davidson denied my license because he was now the licensing judge in Union County.

ASSEMBLYMAN STUHLTRAGER: Are you suggesting that the State Police officer just misunderstood what the interaction between the Federal requirements and the State were?

MR. BENINATO: Absolutely, and he also lied because I never told him they were stored in my house. I told him two of the machine guns were stored in my house, because they didn't fit in my safe and I didn't want these guns in an office building where we have people cleaning, if they couldn't be locked.

After that, I appealed this decision to the Superior Court. What I'm getting at is that the State Police have to be trained in this area, because they don't know the law. If you read the definition in 2C of a firearm that a dealer can sell, it includes machine guns, pistols, rifles, and a few other things. But a machine gun is definitely part of what's in there. There is also an exemption as to the permit to have a machine gun for a dealer in a separate section, which-- Well, the citation is here. I don't want to waste time with that because there's a lot of people here. Judge Davidson wasn't even able to comprehend these laws the way that they were written. He did not understand the relationship between the dealer having the right to have this in his inventory, and the fact that you don't need a special permit as a dealer. You just need your dealer's license.

To make a long story short, I can afford the lawyer. I hired the lawyer, and he's in the Appellate Division today arguing this case. Incidentally, the Prosecutor of Union

County who is responsible for handling this, actually consented and agreed in open court that a New Jersey dealer does not have to have a separate permit for a machine gun. So I'm fighting against no enemy actually in the Appellate Division; but in the meantime, my point is the law is so complicated the way it's written, the State Police either do not understand it or don't want to understand it. I don't know which. But I will say that the detective -- Sergeant Glenn, who examined my books -- told me he was going to make a test case out of me. I don't know why. I didn't offend this man in any way whatsoever. His inspection of my inventory-- He states that I said they were all in my home, but he never even inspected my inventory when he came to the store. All he did was look at the log book. So I don't know how he could make those statements.

As far as storing the guns in my house, that is also specifically allowed under Federal law. I have the citations here. They're underlined. It says that I can store those guns in any location in the State of New Jersey, as long as I enter a pencil notebook notation in my log book as to where they are. I did that, and I'm here today with this tale of woe.

ASSEMBLYMAN STUHLTRAGER: Well certainly what we would like you to do is -- since this process isn't going to be completed overnight -- when you get a decision from the Appellate Division, I would hope that you would forward it to the Committee, so that we can see what the court has to say on this particular topic. We're into a new area here. We've heard a lot of individuals' stories. Now we're into a dealer area, and maybe like the State trooper, I don't profess to have a clear understanding of what's required, what's allowed, and so forth. I'd be interested in seeing what the court has to say in your case.

MR. BENINATO: Two minor things to add. I think part of the problem is that it's procedural. The State Police have got to get out and do these inspections, timely. You can't

have somebody who's really relying on this 100% without a license for three months, and inventory sitting in his rack. And the other part is: The Federal law and the State law have got to be made to match up to some extent.

ASSEMBLYMAN STUHLTRAGER: You got it in June -- the application for renewal -- and it was due August 11, I believe you said. Was that unusual? This was your first renewal?

MR. BENINATO: Right.

ASSEMBLYMAN STUHLTRAGER: Talking to other dealers, is there procedure typically to send it three months in advance, five months in advance, do you know what it is?

MR. BENINATO: The only other dealer I spoke to about any problem like this was a man named Frazette (phonetic spelling) from Navy Arms. He told me that the same thing had happened to him, and he had to rush around the State here getting his papers filed in time, because he has a much larger business than mine, and somehow he got it through in time.

ASSEMBLYMAN STUHLTRAGER: It's kind of like the stories we hear with the drivers' licenses, where they send them back at the last minute, and you really don't have time to send them in. You have to go to the local place. Do you have anything else?

MR. BENINATO: No, that's it. (confers with Mr. Irwin) Oh yeah. There is one other problem that I have now. The prosecutor's office said, "Since you're not a licensed dealer any more, you're not entitled to have any machine guns in your possession whatsoever. You bring them in." I said, "No, I'm not bringing them in, because I had the Federal license and I'm just waiting for the paperwork." He said, "You bring them in or we'll have you arrested tomorrow morning at 9 o'clock." So, under that threat I brought them in.

The other thing I'd like to add is that I have the only dealer's license in the State of New Jersey that restricts it from dealing in machine guns now, because after the case was

heard initially by Judge Davidson we reapplied with the limit that no machine guns would be transacted until this thing was finished. But I have the only dealer's license in the State of New Jersey with that kind of restriction on it.

ASSEMBLYMAN STUHLTRAGER: At least until the Appellate Division decides.

MR. BENINATO: The law is clear, even the prosecutor conceded that a dealer has the right to sell machine guns, under the present law.

ASSEMBLYMAN STUHLTRAGER: All right. Thank you for showing us another angle to this overall situation.

MR. BENINATO: Thank you.

MR. IRWIN: And Mr. Chairman, I might indicate that -- as you know I've worked in this area for a long time, and the experience with the delay is renewal of a dealer's license is not the exception. It's the rule. Dealers throughout the State constantly face the problem that their license is expired, and the State Police are taking no visible steps to assist them that we know of.

ASSEMBLYMAN STUHLTRAGER: Thank you.

MR. IRWIN: Thank you.

ASSEMBLYMAN STUHLTRAGER: Mr. William Martin? Excuse me, Walter Martin. I'm sorry. Good afternoon.

W A L T E R M A R T I N: My name is Walter Martin. I'm married with three children. I've had the same job for ten years.

ASSEMBLYMAN STUHLTRAGER: Where are you from, Mr. Martin?

MR. MARTIN: From Roebling, New Jersey.

ASSEMBLYMAN STUHLTRAGER: Roebling?

MR. MARTIN: Yes. In 1985 of October, I turned in some firearms to the Florence Township Police Department. I had the assurance from the Chief of Police that I could get them back with three days notice. I went back and was told I

couldn't get the weapons back without a court order. So I went before a judge. The judge told me I couldn't get them back without an order from the prosecutor's office. So I went to the prosecutor's office, and the prosecutor's office told me I couldn't get them back without an order from the court. So, finally I got an attorney, and it cost me \$850 dollars to get my weapons back, of which I still owe \$150. But he kept bouncing the ball back and forth.

ASSEMBLYMAN STUHLTRAGER: I don't mean to interrupt you. It's just another case where they are passing the buck. Obviously the court superseded the prosecutor, and normally the prosecutor is the one that-- He'll say, "no," and go to court.

MR. MARTIN: That's all. That's it. It's just an example.

ASSEMBLYMAN STUHLTRAGER: All right. I appreciate you taking the time to come down today.

MR. MARTIN: Thanks a lot.

ASSEMBLYMAN STUHLTRAGER: Thank you.

MR. IRWIN: Mr. Chairman, can we go a little out of the order that you have there and go to Mr. Stanley Gurski.

ASSEMBLYMAN STUHLTRAGER: Stanley Gurski?

MR. IRWIN: His testimony will take a little longer.

ASSEMBLYMAN STUHLTRAGER: Okay. Stanley Gurski? Good afternoon, Mr. Gurski.

S T A N L E Y G U R S K I: Hi. My name is Stanley Gurski. I'm from Roselle, New Jersey, married, three children. I'm a school teacher, and a captain in the army reserve.

ASSEMBLYMAN STUHLTRAGER: All right.

MR. GURSKI: Okay. In April of 1985, while returning home from annual training at Fort Indiantown Gap, I stopped to call my family to let them know I was coming home, to get ready because we were supposed to go somewhere that afternoon. The phone was answered by somebody who identified himself as a member of the State Police, and said for me to hurry home but there was no emergency.

When I arrived at my house there were fire trucks, police cars, TV camera crews, reporters, everybody lined up. I left my car wearing my fatigue uniform from military training. I was approached by Detective Robert Glenn of the State Police, and told I was under arrest for dealing without a license, illegal acquisition of firearms, and possession of a machine gun. I said, "You want to go into the house? I'll give you the permits. We'll square this away right away." He said, "No, it's too late for that."

Now, I'm a commissioned officer in the military police corps. I've been a military policeman as an enlisted man, and NCO, and as an officer. I also served as a policeman in Winfield Township in Union County for approximately two and one half years. So I have some knowledge of law enforcement.

I asked to see the search warrant. He said, "We're not showing it to you, now. We'll show it to you later." I said, "Can I go into the house and change?" "You're not going anywhere." At that time, they were pulling out firearms, and throwing them into the back into of a van. They were cleaning out my gun collection, just throwing it in the back of the van.

I found out later they had arrived at my house at 8 o'clock in the morning, when my wife was about to take the kids to school. They came in and they said they had reason to believe that I was an unlicensed dealer, and where were my weapons, and where are the records? My wife said, "The gun collection is in the basement. I have no idea where he has his records. He'll be home in about four hours. You can ask him." She was told, "We can't wait." And they immediately started going through the house, tearing the house apart. It looked like a motorcycle gang had come in, not professional law enforcement officers. I teach military police, and I teach my people accountability for their actions. I don't know who supervises these people, or who trains them.

My wife said they used vulgar language around her. They helped themselves to my refrigerator and my coffeepot. Nowhere on a search warrant have I ever seen that the person who is being searched is required to provide refreshments for the search team. (laughter) We later on found cigarette butts on our new carpeting. We found spilled coffee cups. They just helped themselves. When my wife was trying to get them to calm down, one of the detectives told her, "Listen honey, why don't you do some housework? That's what I tell my wife when she's upset."

They started pulling firearms out, and claimed that they had to vacate the neighborhood because I had explosives. They said they had found bombs. I teach materials like that in the military, and I had what are known as training bombs or fake bombs, dummy bombs. As a matter of fact, if you go into the building at Sea Girt that is shared by the State Police and the New Jersey National Guard, there is a plaque on the second floor for Outstanding Instructor 1974. My name is on it. I gave the class on bombs.

As they went through the house making a mess, my wife said on numerous occasions people came up to the detective and said, "He's got a permit for this. He's got a license for this." And the answer each time was, "Take everything. Let him prove to me it's legal."

As I was arrested, they called the bomb squad. The county bomb squad came, looked at the materials and said outright, "They're training aids. We can tell they're training aids. There's no live explosives. They are materials that an instructor would use." It made no difference. As far as they were concerned, I had all these explosives.

So the policemen that arrived were policemen from my town who knew me. They even asked the State troopers, could they handle the collection a little better, because they knew I was a collector. I was well-known in the town as a collector

of firearms. They were told, "He'll never see these again." One of the firemen asked the same thing. "Don't worry. He'll never see these again," as they were throwing them in the back of their truck.

They then decided that I had too much camping gear, that it might be stolen because it was green. Some of it was camouflage, obviously stolen from the army. So they started hauling all that stuff out.

I was taken to the police station, still in cuffs. While I was there, the local police -- who felt I was getting a raw deal -- got my lawyer for me. Not too many suspects have the police finding your lawyer. So while I was being interrogated, one of them came by with a sign giving me the name of my lawyer behind the State trooper's back, so I would know who he was, and he was coming. He arrived. They wanted to question me about what groups I belong to. I said, "The Democratic Club of Roselle, The Boy Scouts--"

ASSEMBLYMAN STUHLTRAGER: Well, that's not going to get you anywhere with me. (laughter)

MR. GURSKI: I voted for Kean. How's that?

All right. They came through. In all this, "You must be a terrorist or something." I said, "I'm a Captain in the Reserves. These are training aids." "We don't want to hear it." They said, "We've seen machine guns there." I said, "They're semi-automatic." "Oh no. We have experts. We have experts." Later on I'll tell you about the quality of their experts.

Bail was set at \$75,000. I'm a school teacher. I'm not going to see \$75,000 in a long time. Bail was reduced to \$25,000, \$2500 cash. So I tell my wife, "\$2500 cash. Here it is, 7 o'clock at night. Banks are closed. I wouldn't have had it anyway." My neighbors went out, and it was just like "It's a Wonderful Life." They came back and threw cash on the table. My wife was able to collect \$2500. She goes down to

the police station. They tell her, "Well, there's a filing fee, but don't worry. We'll pass the hat around here and get it for you."

So I'm released. I go back to my house -- total mess. They just tore everything apart, threw things all over the place. My wife said, at the end of the day when she asked who was going to clean it up, they said, "Well that's your problem." And off they went. In my mind -- I've been in law enforcement myself -- I said these are not professionals that came here. They're going to realize they made a mistake, and they're going to be apologizing.

Months went by, nothing. Next thing I know, it's right before Thanksgiving, I'm informed that I've been indicted. Never had a chance to go to the grand jury to let them know what those things really are. Later on when I read the grand jury transcripts-- That grand jury could have doubled for the Muppet Show. They told them exactly what they wanted them to hear, and when a grand juror did question, they were shut up. They were told, "Don't worry. We have experts. Just give us this indictment."

You're innocent until proven guilty, but in the State of New Jersey that doesn't apply to school teachers. I was automatically suspended without pay from my job, because my board of education says, "That's the law. A teacher under indictment -- any school employee under indictment must be suspended without pay." Now, my wife was pregnant at the time, so there goes hospitalization. Fortunately for me, somebody didn't punch the right buttons, and the hospitalization stayed in effect. Plus they passed the hat around in my school. They were going to pay my hospitalization, if that's what it took.

We wait for the grand jury transcripts, and we're reading these things, and they're just totally unbelievable -- so-called expert evidence they're presenting. So I want a trial.

Everybody told me about PTI. PTI is a great program. I recommend it to anybody who's guilty. Jump on it. It's the best bargain around. But if you're innocent, why should you take it? Well one way is, you can't afford not to. There's a lot of innocent people here, who can't be here today because they are still afraid of the police. What happened to their firearms? I ran into people who knew about my case, who told me how they took PTI, because if they hadn't they might have been in divorce court. Their wife didn't want to hear anything else about firearms or police or anything else. What's the easiest way out? Pay your lawyer a lot of money, get PTI, forget about your firearms, let the police keep them, get out of this mess. That's one of the disadvantages of PTI. It permits a lot of innocent people to basically plead guilty -- which is how I see PTI -- even though the law says you're not really guilty. You've in effect thrown in the towel. You've quit. "Keep my property. Treat me as if I'm guilty. Just leave me along."

We wanted to go to trial as soon as possible. We didn't want to wait. I wanted a trial. I wanted my day in court. All of a sudden we found out the State is not ready to go to court. I had read the grand jury testimony. They had done all these tests on my firearms, claiming that the dummy grenades were real grenades, and my semi-automatics were machine guns.

So we had a discovery motion. We come down to the State Police barracks. They order for us to see all the evidence. They couldn't find it. They couldn't produce it. An expert is not here. I had my weapons expert. He said, "Let's see the gun you claim is a machine gun." They brought out one of my rifles. He looks it over, he goes, "It's not a machine gun." "Oh yes it is," they say. He says, "Fine. Can I test fire it?" "Oh no, insurance." He says, "Okay. You fire it while I'm next to you. Let me see you fire it." "I

can't do that either." So it was back home, the trip was a waste.

We get another court order for them to bring us materials to my expert's place of business. He gets to examine them. It's not what they claim they are.

We go to court, full blown trial now. On the stand the State Police weapons expert: What qualifies you as a weapons expert? "I was in the Marine Corps. I have gone to the Heckler and Koch arms course." It means he can fix the pistols the State Police carry. That's their expert. On the stand they started contradicting each other. We have sequestered witnesses, that means one guy can't hear the other guys lies, one at a time, can't get the story straight that way. Five days of trial I had to go through. It took the jury 35 minutes to find me not guilty of all the charges.

That's not the end of it. We go and get a court order, return of property. The judge who heard the case issued return of property. They come to bring back the property, "Oh we're not returning a lot of your things." It is as if we never went to trial. Everything that they claimed was illegal, they kept, and added some more. They said, "We're not returning these because they're illegal." We went to trial. "We're not returning them." They didn't appeal the judge's order. They didn't go to a higher court. They just decided they were not going to return that property to me.

We go for another court order. The next court order says they have 10 days to reply to the first court order. The days go by and they don't do it. Then they give their explanation. They're not going to return this, they're not going to return that. They're fantastic weapons experts. One of the firearms they refused to return to me is a Colt 1917 army revolver. It is a six shot revolver used in the First World War. Their reason for not returning it? It's a machine gun. (laughter) They have found some way to make that thing

fire full automatic. I don't know how they did it. I wish I knew. I'm sure I could make a fortune selling the plans to a lot of Third World countries.

I used to be a police officer, and I used to handle gun permits, and I found out what a system that was. What the law said was irrelevant. What the chief wanted, "Don't give that guy a permit." "Well his paperwork came through." "Don't tell him it came back. Just tell him the prints are still out." I found people that had gotten permits five years before hadn't even received them yet. "Oh, if they don't ask for it, they're not going to get it. There are some people that shouldn't have guns, and we're just not going to give it to them." They can pay their fees, they can be fingerprinted, they can come back clean. "If they want them, let them go to court."

You know, when it comes to the firearms laws, justice in New Jersey is a commodity. How much can you purchase? How much can you afford to go? Are you going to spend \$2000 to get back a \$300 gun? And you let them keep it.

When you get arrested and they promise you, "Go pretrial intervention." Now, if I'm a criminal, the only thing I'm worried about is going to jail, because then I can't do my business. A criminal record is irrelevant. You can add to my wrap sheet all you want. I could not afford a felony conviction. I'm a school teacher, I would have lost my job. I'm a military police officer, with military intelligence as an additional specialty, two fields where I have to stay squeaky clean, which is what I had until the State Police came.

Their reason for coming to my house? They said they thought I was a dealer because I had a Federal firearms license. There are degrees of Federal firearms licenses: collector, dealer, importer. I had collector. But they didn't tell the judge that when they went for the search warrant. They say, "He's got a Federal firearms license, therefore he

must be a dealer. We have checked the list of dealers. His name is not on it, therefore he is an illegal dealer." So, if I see you coming out of a drug store, I think you're a druggist. I check the list of licensed pharmacists. You're not on it. Oh, then you're an illegal druggist. Now I can go search your house.

ASSEMBLYMAN STUHLTRAGER: They had nobody to testify that said they bought a gun from you or anything like that?

MR. GURSKI: No. That charge was never pursued at the grand jury hearing. The two charges that they used as their excuse for searching my house, suddenly disappeared at the grand jury. I was not charged with illegally obtaining firearms, or with being a dealer without a license.

Some of their explanations in court were getting to be laughable. I had a dummy silencer for a certain pistol. Their argument was, "It looks like the one in the book." No test firing. "It looks like the one in the book." I hope to find that guy. I've got some gold jewelry I can sell him too. (laughter)

ASSEMBLYMAN STUHLTRAGER: You're a dealer in that, huh? (laughter)

MR. GURSKI: Not yet.

ASSEMBLYMAN STUHLTRAGER: Your testimony is actually riveting and I hate to move on in some ways, but you know we have to.

MR. GURSKI: Right.

ASSEMBLYMAN STUHLTRAGER: We have other people here with equally important stories. By the way, were you reinstated -- with back pay -- to your teaching job?

MR. GURSKI: Yes I was. Within two days I was reinstated, and right now I'm still pursuing return of property. We're now at the Appellate Division waiting for the State Police to admit that they even have my firearms still in their possession. With the previous record of the State Police

evidence room being a shopping center, we want to make sure it's still there.

ASSEMBLYMAN STUHLTRAGER: I want to thank you for your testimony. If you have anything new transpire in your case, feel free to -- through Mr. Irwin or directly to our Committee -- let us know what happens.

MR. GURSKI: Okay. Thank you.

ASSEMBLYMAN STUHLTRAGER: Thank you. Kay Ohye? See if I'm saying that right.

MR. IRWIN: Ohye.

ASSEMBLYMAN STUHLTRAGER: Oh yeah, I'm saying it right, or Ohye that's how you say it?

MR. IRWIN: Ohye is--

ASSEMBLYMAN STUHLTRAGER: Ohye?

MR. IRWIN: Yes sir.

ASSEMBLYMAN STUHLTRAGER: Kay Ohye? Good afternoon.

K A Y O H Y E: Kay Ohye.

ASSEMBLYMAN STUHLTRAGER: Ohye? Thanks for coming.

MR. OHYE: First I'd like to thank you for allowing me to come here. My case, I guess is like most of the other cases. I feel that one thing we have in common -- that the police departments are not accountable to anyone, so they could do whatever they want.

First of all I'll give you a little background of myself. I was born in California, basically raised in New Jersey here. I've been a gun collector and a sportsman all my life. I've been a trap shooter -- which is a shotgun sport -- since 1965. I've been on the All American Trap Team for 18 years, since 1970. I've won 30 or 40 state championships, and in the same zone I've won numerous national championships. I think my reputation as a shooter and a gun collector is well-known. I'm an outdoor writer. I write about guns and sports. I now produce videos on the same.

In 1978 or thereabouts, I applied for Federal firearms license.

ASSEMBLYMAN STUHLTRAGER: What kind of license? See, I'm picking things up.

MR. OHYE: I'm sorry?

ASSEMBLYMAN STUHLTRAGER: What kind of a license, for a dealer, a collector--

MR. OHYE: A collector's license.

ASSEMBLYMAN STUHLTRAGER: What was that?

MR. OHYE: A collector's license.

ASSEMBLYMAN STUHLTRAGER: Collector's, okay. You're educating the Committee. We're starting to learn.

MR. OHYE: I apologize. I'm a little hard of hearing.

ASSEMBLYMAN STUHLTRAGER: I'm sorry. I didn't mean to--

MR. OHYE: As far as the permits go, I applied for a collector's license because I was a gun collector, and a standard Federal firearms dealer's license. When the Federal inspector came -- which we do not have in New Jersey-- When the Federal inspector came and explained the laws to me so I wouldn't break any laws, they issued me the license because I was a writer; and I could receive guns in a State, review them, inspect them, write about them, send them back; and that I understand I could not sell any gun personally to anyone; that I could only transfer. I understood that.

About 1979 or '80, the State of New Jersey passed a law that any FFL licensed person had to have a State license. The State trooper, whoever, called me. They never sent me a letter. They called me. All of my correspondence was by telephone. They told me that I needed to have a State license. I told them at that time I did not sell any guns. I used them for what they call "paper transfers," to take a gun in to inspect it, and send it back out, or to send it to another dealer if as an expert somebody wanted me to look at a trap gun or collector's gun, and so forth.

If I may backtrack a little bit-- As a collector, you're allowed by Federal law, like a stamp collector or coin collector, to buy and sell guns as long as you're enhancing your collection, and not selling to make profit -- all points that were brought up to me by the agent.

At that time in 1980, I was involved with a company which I was the Vice President of at that time, and going to be President of a German company called Krieghoff International, which has another subsidiary. It's called Shotguns at Home, I designed their shotguns for the American trap market at that time, which is on the market now. It's called the K-80 -- Krieghoff, K, and K for myself, and 1980. At that time we decided to import and sell the gun.

The State Police said all I had to do was to apply for the license, and of course there would be no problem because I had no criminal record, and my background, and so forth. I complied with every facet or part of what the State trooper -- whoever it was at the time, or whoever called me -- told me to do. I applied for my license for my license at my home, which I didn't know I needed a variance for, which they did. I applied and I was denied, and I had to go for a variance in my township.

I went to my township meeting, and the township asked me why I needed I wanted the license? I told them that my office was in my house. I was a writer, and we wanted to start this business, etc. They suggested to me that I would go to another shop and apply for my license there instead of using my home, which they would have given me; because if I did, that variance would be like a grandfather's variance. It would stay with my house if I sold it. They asked me if I would not do that, because it would start a lot of problems in the township as far as zoning goes. So I said, "Yeah. That's not a problem with me."

Consequently, through this amount of time I did everything-- We were in contact with the State troopers' office all the time. I did everything they said, and they said everything was all right, to go over to at this time Lennon's (phonetic spelling) Sports Shop and bring my Federal firearms license in, and everything would be approved at that time. Now I think, that the police know, and you know, that the Federal FFL Dealer's Log Book is the only book used. The State does not have any book. They use the Federal ledger. A Federal licensee is at that time is the only person who can ship or can receive any gun in a state. A state license has no bearing on it, only the Federal. I brought my ledger in. They said everything is okay.

I remember that they just passed this law. I came back-- Excuse me. I went on a shooting tournament in Reno, Nevada. My secretary called me and told me that the State Police were at the house and confiscating all my guns for unlawful sale of firearms. As the gentleman said before, that because I had an FFL license, and there were transfers in the book, they believed that that's -- in their opinion -- sales. I said "All the guns are legal. They are all registered in the FFL logbook, who they're purchased from and where they went, etc. I've broken no laws. How can you confiscate my guns?" He said, "We can do whatever we want to do." I came back, and again like the person in front of me said, the North Brunswick Police Department didn't allow the State troopers to do certain things like arrest me. They booked me, and allowed me to come in in an orderly fashion and so forth.

I wanted to clear my name, which is very important, and which you can never do once you've been indicted. Consequently, I spent an awful lot of money doing so -- \$20,000 or \$30,000. I didn't have any help from any organizations. I didn't want any help. I didn't want any advertisement about it. I wanted my name cleared, so I asked for a grand jury

hearing -- which the other defendants didn't ask for, so they were bypassed. I asked for that so I could get it done immediately. We went for-- My lawyer happens to be sitting alongside of me, my last one. We went for the hearing and we won.

Unheard of, I was brought up again. Never before have-- The people, I mean the grand jury, said that I was not guilty, but the law enforcement agencies decided I was still guilty. So they brought me before a second grand jury hearing, claiming whatever they want to claim, and of course I have to prove it again. We went for -- at my own expense -- two lie detector tests. One finally with, I don't know the gentleman's name, but he is supposed to be the dean of the lie detectors. He teaches the New Jersey State Police. Again, all the accusations -- if that's the word -- according to the lie detector tests were false. I went before the grand jury the second time. Again I was cleared of all charges. I asked for my guns back. They would not do that.

We went again to a hearing, and I had to go before the deciding judge. The judge would not let my lawyer receive the release of the property. He made me come to court to bawl me out, to tell me his opinion. In the court -- if I may just read this, which really disturbed me because through my years of life I have been discriminated against many times. But when the judge says, "I'm going to have to approve the retail license for Mr. Ohye. I'm not going to approve it if I'm right," meaning that if I was guilty, "So he is never going to get a retail license in Middlesex County as long as I sit as the gun control judge." He has made his opinion above the law, and I felt that -- and that's why I'm here -- that my civil rights have been violated all my life, and also many people here.

Born in California, raised in Santa Anita Race Track, as a prisoner or whatever you want to call it, worked in the

union and denied membership because I was not black. They took 20 people in. They were Trinidads, and Jamaicans; they weren't even American citizens.... And now this. I'm not complaining about this country. I love the country. The system of justice-- Why I'm here is because you are my only hope, that other people will not be discriminated against, their civil rights violated.

I'm not complaining about the money and the time. My reputation will never be the same because I was prosecuted. But in my heart I know that I didn't do it, and went through all the legal machinery to try to clear my name. They are still trying to get me. The dealers call me and tell me that they are still asking about me. They said that I am guilty, and they'll get me. And I don't appreciate that, that the State Police and judges can judge people, and not the law.

I'm very thankful that I have the opportunity to come before you, who are the people. Thank you.

ASSEMBLYMAN STUHLTRAGER: Well, I thank you for coming here today. I think in the minds of those of us who have heard what you've had to say, that your reputation is clear. So thank you for coming.

MR. OHYE: Thank you.

ASSEMBLYMAN STUHLTRAGER: Mrs. Marian Kendig?

MR. IRWIN: Mr. Chairman, I might note for the record that the excerpt from the decision of the judge that Mr. Ohye just read, that judge is now the prosecutor who sent out the marital dispute policy that I read into the record earlier.

ASSEMBLYMAN STUHLTRAGER: All right. Thank you. Mrs. Kendig, welcome. I see you're from Clayton.

M A R I A N K E N D I G: Thank you. Yes I am.

ASSEMBLYMAN STUHLTRAGER: It's nice to have you here today.

MS. KENDIG: I've lived in Clayton for 43 years.

ASSEMBLYMAN STUHLTRAGER: Okay.

MS. KENDIG: I'm 70 years old. I'm a widow for 12 years. And in 1982-- Well before that, I got robbed twice. Somebody broke into my home and stole a lot of things. In '82 I got a revolver. I bought a revolver. I had a permit for it. I had it all year. And in '86, July 2, my son took my gun from under my pillow on my bed, and took it down to the police station. So I called my son and I said, "Did you see my gun?" He said, "No." So I called the police station and reported it missing. They said "Your gun is down here." I said, "Well what the hell is it doing down there?" And they said, "Your son brought it down." I said, "For what?" They said, "Well, I don't know." So I said, "I'll be right down to pick it up." They said, "You can't have it." I said, "Why not? It's my gun. I paid for it. I own it. I have a permit for it." So I went down anyhow.

The detective came out and he talked to me and he said, "You can't have your gun." I said, "Why not?" I said, "Did my son sign a complaint against me?" He said, "No. He's afraid you'll hurt yourself." I said, "I've had that gun long before he came back here to live, and didn't hurt myself with it." I said, "I have that gun for protection. I paid for it. I have a permit. He had no right to do that, and I want my gun back." "You can't have your gun back, except for the prosecutor--"

I wrote to the prosecutor, I called him on the phone, and I went up to the office. He showed me a bunch of papers like that (gestures) and he said, "See this?" He says, "All people, that we have their guns and they want their guns back." And he says, "You have to go get a lawyer, go before a judge to get your gun back." I said, "I'm on a fixed income. I don't have money for a lawyer. He had no right to take my gun. It was in my house, in my bedroom. The police gave him a receipt for the gun and it's not his gun it's my gun. Why did they give him a receipt for the gun? They won't give me any

and I own the gun." And I told him that I want the gun back. If somebody gets shot with it I don't want to get blamed for it.

So that's my story. ... I can't get my own property back that I paid for, and I can't save myself.

ASSEMBLYMAN STUHLTRAGER: And you still haven't gotten it back?

MS. KENDIG: No. It's been a year -- July 2, 1986.

ASSEMBLYMAN STUHLTRAGER: Now you have a purchaser's ID card--

MS. KENDIG: They're all here.

ASSEMBLYMAN STUHLTRAGER: So if you want to go buy another one, you could get another one. Right?

MS. KENDIG: I could go get ten of them.

ASSEMBLYMAN STUHLTRAGER: Okay. (laughter) But they won't give you that one back?

MS. KENDIG: They won't give me that one back, no. If anybody gets hurt with it, who gets blamed for it? Me? That's what I asked him. I have a letter in here from the prosecutor that it gave a receipt to my son.

ASSEMBLYMAN STUHLTRAGER: So they're just holding it. All right.

MS. KENDIG: Okay?

ASSEMBLYMAN STUHLTRAGER: Thank you Mrs. Kendig.

MS. KENDIG: You're welcome.

ASSEMBLYMAN STUHLTRAGER: Mrs. Kalabus? Mrs. Kalabus, it's nice to see you again.

V O L I A K A L A B U S: Good afternoon.

ASSEMBLYMAN STUHLTRAGER: How is Frank doing?

MS. KALABUS: Doing better.

ASSEMBLYMAN STUHLTRAGER: Doing better? Well you tell him I said hi. Okay.

MS. KALABUS: I'm here on behalf of my husband, who had surgery and couldn't come.

November 1, about ten minutes after four in the morning, our dog awoke us, and there was a jogger going by the side of our home. When he went on the front sidewalk, our dog was barking more and more. So we knew at that time he must be close to our locked gate. My husband went onto the front porch, and the young man was at the gate, and my husband hollered at him. Excuse me. He had gone into the bedroom to get the revolver because he didn't know what was happening, because he knew that the man was close to the gate at that time the way the dog was barking. His .22 revolver was loaded with bird shot. He hollered at the young man, and he just went right over the gate. He runs to the house. He tells me to call the police. He opens the back door. He doesn't step out of the door. He opens the back door, and the young man is five or six feet from the back door at that time. He tells him, "Stay there. Don't move." And he fires his gun off again in the air.

By this time the police have come. I am still running around in my nightgown. I go out on the front porch and I motion to him that they're in the back door. The policeman goes over the locked gate, and by that time the other policeman comes and he takes the fellow away, and the first policeman came in our home. As soon as he sees the gun in my husband's hand he starts saying, "You have problems. You're in trouble. You shot off your gun." And he says, "Come in here and see what I have this gun loaded with." Then he sits down and starts to make out the report and all. Out of the blue, he starts telling my husband how he's been on duty when we have called up and harassed him for calling for illegally parked cars on our street. We were having problems next door. There was all kind of things going on evidently. The traffic was coming and going day and night. There was noise. There was all kinds of activity. I ask you, who are you supposed to call? And to bring that up when he's working on this case, it

seemed so unimportant with my husband having all these problems shooting off these guns in the Boro of Glassboro. And yet, the young man was trespassing on our property.

He starts to take my husband's gun, and he says "What are you doing?" He says, "I'm taking your gun." And he says, "Well I want a receipt." He said, "Well you come with me and you'll get one." And he says, "You'll get your gun back in about 30 days." He says, "We have to do an investigation." That was on a Saturday morning. They said we could get the police report on Monday. We called and-- A number of times we called, and we went down there. They wouldn't even give us a police report. We don't know what's going on.

So, November 13 we go to court, and the young man was there first. They did fine him for being drunk, drinking under age, and trespassing. When my husband went up there, they told him how serious it was to shoot off your gun, and he didn't want to tell it but he -- not in that court room with all these, most of them college students, that were in there for drinking and drugs -- that it was loaded for bird shot. And the whole courtroom roared, and the judge said, "No fine. Ten dollars court costs."

So in the meantime, my husband takes his firearms ID card down to get the address changed, and we don't get it back. So he calls and-- We just can't get it back.

We can't get the gun back. They said that we had to get a lawyer and a court order.

ASSEMBLYMAN STUHLTRAGER: You got a good lawyer there too. Didn't you?

MRS. KALABUS: I hope so. We're still working. Right? So we're still working on that. No hope to get the gun back. The ID card, our lawyer finally got that back. He takes it down there again to get the address changed, which had nothing to do with the case whatsoever. He waits over a month, and he can't get the ID card back. He gets a letter. He has a

criminal letter because he shot off the gun in the Boro of Glassboro. The ordinance, 69-1, we didn't know. All we knew that 69-1 was shooting off the gun in the Boro of Glassboro. We never heard the rest of it. So we really didn't know what it was, and nobody ever told us. We couldn't even get a copy of the police report, much less a copy of this ordinance -- which I'd like to read to you, 69-1. This is Glassboro's code: "No person or persons shall fire or discharge a revolver, pistol, firearms, or guns, air gun, or slingshot, or other device, or article upon any public property or private property not his own, which might injure persons or property within the said Boro of Glassboro."

My husband did nothing wrong. He was on his own property, and that bird shot wouldn't even kill a gun (sic) or a snake unless it's close enough. That's what he used that gun for, when he went hunting with his nephew who's the border policeman. That's why they took it in Pennsylvania. It never went out of the house. When he bought it years and years ago in Nebraska you did not need a permit to buy that gun. You used it for target practice. Here we are with no gun, no permit, and my husband has a criminal record because he shot off the gun in the Boro of Glassboro -- which they didn't even interpret their own ordinance. They only told us part of it.

ASSEMBLYMAN STUHLTRAGER: Mrs. Kalabus' case really has facets of a few other cases we've heard here today. When Mr. Kalabus pled guilty in municipal court to violating the local ordinance that she cited there, 69-1, for discharging a firearm within the Boro limits, without knowing -- on a close reading you wouldn't have been guilty of it to begin with -- but just like we heard some witnesses talk about PTI and how they get encouraged, "Well, if you take PTI you're not going to have the risk of being found guilty, and you don't have the expense of a trial." Well Mr. Kalabus, without knowing the ramifications that were ultimately going to happen here,

entered that guilty plea. And while he was only fined \$10 costs and the fine suspended, the other defendant was fined severely and he was in the wrong the whole time. So we have the PTI variation, and the second aspect of it is--

You know I honestly believe-- I know the police chief in the town. I know the prosecutor in the county. Neither one of these individuals are people that are just looking to arbitrarily pick on Mr. Kalabus. I don't think either of them -- having spoken to them -- believes that Mr. Kalabus is a bad person. But at the same time, neither of them really want to make that decision to give his gun back, despite the fact that he has other guns in the house. So the option, as we've heard in so many cases is, "Well you're going to need a court order." And I feel confident that we're going to have that gun returned. But it's a shame and an injustice that it has to come to that, and that's what we're here about today.

MS. KALABUS: Well the aggravation we've gone through is just unbelievable. My husband did have a problem, but I'm sure that this didn't help it. I wish he could hear you.

ASSEMBLYMAN STUHLTRAGER: Well, you tell him I wish him a speedy recovery. Thank you.

MS. KALABUS: Thank you.

ASSEMBLYMAN STUHLTRAGER: Mr. Irwin, who was that witness you wanted to see if they were here?

MR. IRWIN: Nelson Moral. Is Nelson Moral in the hall? (affirmative response from audience) Oh, okay fine.

ASSEMBLYMAN STUHLTRAGER: Okay, we're going to take ten minutes, a strict ten minutes -- a quick break -- then we'll be right back.

(RECESS)

AFTER RECESS:

ASSEMBLYMAN STUHLTRAGER: All right, let's get everybody together here. We'd like to welcome to the Committee at this time, Nelson Moral and Nicholas Stroumtsos. As a point of reference, we're at 3:30. We'll go for another 45 minutes or an hour. There are other people to testify, and so as you're here if you'll just keep that in mind. Mr. Stroumtsos?

NICHOLAS STROUMTSOS, ESQ.: I'll briefly introduce Mr. Moral. The reason for that is, Mr. Moral is Spanish speaking and there are times that he may have some difficulty with the language.

As a point of introduction, I noticed in the advertisement for this hearing there was a Lukey Shafer, I think his name was-- There was a full page ad indicating that Lukey Shafer because of the Graves Act, because of what's going on here in our State relative to guns, spent one evening in jail. Well, you are looking at a person who will spend 1095 evenings in jail, as a result of a conviction under the Graves Act for illegal possession of a weapon with intent to use. Although acquitted of other charges, the jury in that case -- and I'll address this later -- felt they probably were doing him a favor by convicting him of something rather than the assault. As I indicated, because of the present posture of the law, there was nothing that could be done relative to sentencing other than convict this man for three years without any hope of parole. So those are days that Mr. Moral, under the laws that exist today, must spend incarcerated.

He's here with you not because he's somehow gotten out of jail to come here, but we have petitioned the Supreme Court to review his case. We went to the Appellate Division, they denied us. And we are presently before the Supreme Court petitioning for them to hear his side of the issue.

I'd like to have you hear Mr. Moral indicate the factual background of what happened. Later, I'd like to address perhaps why it happened, and make my suggestions as a trial attorney -- a criminal trial attorney --- as to what might be done in terms of fine tuning the law. Not a disclaimer, but I was not the trial attorney. I represented the co-defendent in the case.

Mr. Moral lives in Mercer County. He's employed by Quality Eggs. He has a wife and two children. Nelson Moral. Nelson would you briefly tell the Committee what happened that day with Camelio Traveras (phonetic spelling).

N E L S O N M O R A L: That day--

ASSEMBLYMAN STUHLTRAGER: Make sure you move up to the microphone.

MR. MORAL: (witness was not near microphone, and much of his testimony is inaudible) --my house. Camelio came over. He told me he bought a gun. (inaudible) That day was Saturday. The watchman is a friend of mine. I go with him. He have a big (inaudible) that is maybe four times bigger than this room, you know, open (inaudible). He shoot his gun. I stayed with him. When he finished, he took it back to the little house-- (inaudible) Okay let's go to the house. On the way back, he told me to go to his house. I said okay. When he gets to the parking-- I asked him, "You want to go to my house? It's okay. It's just around block." He came to my house.

On the way back, in the front of the swimming pool, a bunch of guys have party. When we come this way, another car goes this way. You can't go through, and we're stuck. We stopped to talk to one of those guys. We wait. We waited at least five minutes, the guy don't move. Camelio was the driver, he blew the horn. Those guys got mad because he blew the horn. Well they start to curse at one another, Camelio and the guy staying inside the car. Well the guy came over with a

bottle of beer, and threw it to Camelio. All of a sudden the other people start to cursing, and they come over. I saw one guy coming with a big stick -- whatever, a piece of wood -- and cursing and cursing. I hit him. It's about five or six people. I know Camelio has the gun under his seat. I grab the gun, then I show it to the people, only I do it -- just putting it in my belt so the people saw, because we know there's going to be a big fight and I don't want a fight. As soon as this happened, the people saw the gun they said, "Those people have guns, let's leave them alone." Okay. They stopped it. So Camelio left to go home.

Well we left, maybe two minutes later the police come and arrest us. They took the gun, and took us to the police department for a couple of hours and took our names, and this and this. They sent us home. All the time I go to the courts and say I'm not guilty, because myself I think I don't do anything bad. We come to the grand jury, myself, and-- (inaudible)

MR. STROUMTSOS: If I may just outline some of what he said. Basically, the proof would show that it was a legally purchased gun. There was no question. It was a legal gun. They had the right, because it was a legal gun, to use it for target practice, and that's what they were doing. They were going that day. They were on their way home, when assaulted, from our position, by a group of people.

In the indictment it's interesting to note that the so-called victim Gregory Barrardi (phonetic spelling) -- I don't mind using his name in public because he was three times convicted. I have his prior criminal record here, and three judgments of conviction. This so-called, "victim" was convicted in '85 for possession of drugs, in '82 because he was a thief, and again in '84 for possession of drugs and possession of drugs with intent to use. This was the victim. This was Gregory Barrardi, who came in and said that Mr. Moral had used this gun against him.

Mr. Traveras, who he refers to as the owner of the gun and the occupant of the car unfortunately did die prior to trial, November 9, 1985. He was killed in a fiery motor vehicle accident. So there was no other witness that Mr. Moral could have used to support what happened there. As I said, Mr. Traveras had been killed.

Other things that did happen in that trial which our law prevents, is that the trial attorney was never allowed to make reference to the fact that were the jury to convict him for unlawful possession of the weapon with the intent to use -- the provision of the Graves Act 2C:39-4 -- he would be sentenced to jail with no parole. In other words, what needs to be done I would submit, is that juries, when you have these sentences which will be meted out with no discretion by the judge, they must be told that that's what will happen. Obviously they acquitted him of the assault, because that was part of the indictment, and he was found not guilty of that.

One other note in terms of the background of this man. The pre-sentence report -- and I'd like to quote from it because it says something about the quality of this man. After they go through his family history, his background and what have you, the closing paragraph reads, and I'll quote: "In light of the above information, it is apparent that had the defendant, Mr. Moral been convicted of an offense other than mandating a mandatory sentence, nothing in his background would justify incarceration." There was nothing from the probation report that would justify the incarceration. What would justify three years in jail for a man taking a gun that was a legal gun, and showing it to a Gregory Barrardi with a bunch of hoods? Why should we have it?

Another suggestion that I might make is that the law has been changed. You see, back around '82 the Graves Act applied to possession of the gun with the unlawful purpose to use it against the person and the property. Well we had that

poor fellow out in Somerville, I believe, who shot at a car and wound up going to jail. You did pass legislation, and now the mandatory sentence applies only to when you have the gun for use against a person. In fact, there is another provision that says anybody who is in jail as a result of that can ask to have their sentences commuted in a sense. Well I submit that there's really no reason whatsoever-- If you're going to keep the Graves Act, there's really no reason why it should apply to 39-4 anyway. 39-4 deals with firearms, explosives and other weapons. The way the Graves Act applies is if you have an explosive with the attempt to use it against the person -- you could have an atom bomb with the attempt to use it against the person, you won't, under the Graves Act, be required to spend three years in jail. It's only if you have a firearm with the intent to use it against a person. It's a simple charge. The jury is instructed, all you need is possession of the gun with the intent to use it, and that's the end of it. So something must be done with the Graves Act as it applies to this particular section of the law, or you're going to have many many more Nelson Morals up here.

Some squeak through the cracks. Some you've heard have gotten PTI. Some have had the case disposed of in municipal court. Mr. Moral, for whatever reason, was not fortunate enough to have that happen. His co-defendant got PTI, but Mr. Moral didn't, and Mr. Moral will-- Perhaps in a few days we're going to get notice from the Supreme Court that they denied our certification for appeal. At that time Mr. Moral has no avenue other than to submit himself for three years in jail. I asked to come down here so he could speak to you for a few more minutes, while he has a few more hours of freedom.

ASSEMBLYMAN STUHLTRAGER: Counsel, I want to thank you and Mr. Moral for coming here today. I know from talking to the Governor's Counsel that the mandatory provisions of the

Graves Act are the overwhelming petition for clemency that's before the Governor. It's a very strict statute, and in an overwhelming majority of the cases most of us agree with. However, there are cases, and that's why I'm sure Mr. Moral will take that route too-- I don't know how successful that will be, but of course that's another avenue that I'm sure will be explored on his behalf. Mr. Moral, thank you for coming.

MR. STROUMTSOS: Thank you.

ASSEMBLYMAN STUHLTRAGER: And thank you for your testimony. Bruce Patterson? Is Bruce Paterson still with us? (no response) Okay. Eric Neisser?

MR. IRWIN: Mr. Chairman, Eric Neisser is the Legal Director of the American Civil Liberties Union. He said that he has a hearing in town as well, but if he couldn't get here to testify he'd drop off a statement.

ASSEMBLYMAN STUHLTRAGER: All right, fine.

MR. IRWIN: But we don't have that today. We'll have it for the 22nd.

ASSEMBLYMAN STUHLTRAGER: Okay. I'm going to go through the list of people. How about Steve Primack?

MR. IRWIN: Yes sir. He's here.

ASSEMBLYMAN STUHLTRAGER: Okay. Good afternoon.

S T E V E N P R I M A C K: Good afternoon. My name is Steven Primack. I'm a resident of Irvington, and I'm also a police officer in the City of Newark.

My complaints probably fade by comparison to some of the stuff I've heard today. To get to the point, I guess-- What I've encountered in Irvington, myself, is a delay in certain policies that really make it restrictive, or tend to -- the word I'm searching for -- to make it harder for people, anyway, who wish to come in and make applications for a pistol purchasing permit. I have had several of these permits approved since 1980, and in each instance the delay has been slightly over a month to up to two months. My initial one took

over six months. And on my last application, February of '86, I was told they reverted back to six months again to get processed.

Also, in 1983, the City of Irvington decided that references that you were putting on your application had to now respond in person to the police department in Irvington, between the hours of 8 a.m. and 4 p.m. Monday through Friday.

ASSEMBLYMAN STUHLTRAGER: Now that's a requirement that, would you consider in addition to the application procedure?

MR. PRIMACK: Yes, and that's usually the hours most people work, unless you are going to have another police officer come in to--

ASSEMBLYMAN STUHLTRAGER: Has anybody challenged that, or do you ever know that that's the basis for your denial?

MR. PRIMACK: Well, I know in the past I went through that procedure and I had my friends come down there. In the last instance, however, they waived that procedure. They didn't subject me to it, but I did before, and as far as I know probably most of the citizens -- or residents -- in the City of Irvington still go through that process.

ASSEMBLYMAN STUHLTRAGER: And the waiver is solely at the discretion of the chief, I suppose?

MR. PRIMACK: Yes. The chief also-- My previous application was I think in May/June of '84, where I was subjected to re-fingerprinting and the fee and everything for a background check, which was in addition to what was done in 1980. I was also advised that this would be good for two years. I went along with that program. I was told that was the law.

My next application, again, was February of 1986 -- which wasn't even two years -- and I thought that my last application and all the procedures I went through were still valid up until then. At the chief's discretion, I was

subjected again to the fingerprinting process, the \$26 fee, and all this stuff, frankly needlessly as far as I could see; because one phone call would verify that I'm still active as a police officer and have been so for 17 years, and countless other identification and anything else they wanted was available. That didn't seem to matter, though.

ASSEMBLYMAN STUHLTRAGER: All right. We're hearing a somewhat familiar story, with a few new twists there; the story of inefficient and delayed application process, and in this case a new requirement that we haven't heard, with respect to references actually appearing.

MR. PRIMACK: Well they're certainly trying to discourage anybody from applying, in all the ways that I've mentioned — whether it's through your references, or delays, or additional fees that they wish to charge.

ASSEMBLYMAN STUHLTRAGER: I think I recall in maybe your opening statement, Mr. Irwin, that the fees are set by the municipalities. Is that the way it works? Why don't you do that for my benefit again. I just don't remember I guess.

MR. IRWIN: No. The fees for firearms identification cards and permits to purchase are set by the Legislature, and they're in the Act. However, there are a number of municipalities who are charging additional fees, and we're right back to that same situation where there aren't to be any additional requirements, but they're doing it nevertheless.

ASSEMBLYMAN STUHLTRAGER: Okay, that's what I recall, then. Okay. Do you have anything further, Mr. Primack?

MR. PRIMACK: That's basically all the points that I had to cover, and I'm just a little bit, I guess, appalled, and feel like it's a totally unnecessary process that I'm subjected to.

ASSEMBLYMAN STUHLTRAGER: All right. Thank you for coming today, and giving us your testimony.

MR. PRIMACK: Thank you for hearing me.

MR. IRWIN: Mr. Chairman, I'd just like to note that in your comments you had indicated that we were pointing out the inefficiencies of the issuing process. I think Mr. Primack's testimony really puts the lid on the fact that, what we really have here is a very efficient operation to delay and deny the issuance of these permits and firearms identification cards.

ASSEMBLYMAN STUHLTRAGER: That's well put. From the original list I have, I've gone through everyone that's on the original list. I'm going to go through the names of people that have submitted requests to testify.

MR. IRWIN: Mr. Chairman, I still have one on that list, I think, James Roualt. Don't you have him on there? R-O-U-A-L-T?

ASSEMBLYMAN STUHLTRAGER: Oh. There was a Roualt. James Roualt, is he here?

MR. IRWIN: Yes, sir.

ASSEMBLYMAN STUHLTRAGER: All right. Let's do Mr. Roualt. (no response)

MR. IRWIN: He was?

ASSEMBLYMAN STUHLTRAGER: Okay. Let me move on. He can be next. Joseph Alessi? Joseph Alessi? (no answer) Thomas Gillespie? Thomas Gillespie? (no answer) Jay Cam Sinclair? (no response) Can we track down any witnesses out there? Okay. Looks like a Mr. Watson from Watson Security?

G E O R G E W A T S O N: Yes, Senator, I'm here.

ASSEMBLYMAN STUHLTRAGER: Come forward, Mr. Watson. Are any of the other people whose names I called here? (no response) Is there anybody else here that's requesting to testify here today? (member of audience responds) Just you sir? Let me just walk up here while we're taking this, and give us your name. We'll get you next and wrap everything up.

Mr. Watson? Welcome. Mr. Watson is here, and I take you're probably President of Watson Security Agency?

MR. WATSON: Yes, sir. Watson Security Agent Academy.

ASSEMBLYMAN STUHLTRAGER: --Agent Academy, okay.

MR. WATSON: I'm going to make this very brief--as quickly as I can -- and span the period of roughly 18 years of my experiences in New Jersey. I thank the opportunity to express to one of the Legislature's members what things have happened that I've gone through.

Watson Academy was the second security school licensed by the State Department of Education in 1979. In 1977, I wrote to Attorney General William Hyland, and said to him that I wanted to establish myself as a security consultant in the State of New Jersey. I asked him would I be violating any laws in doing so? Attorney General William Hyland sent the letter to a member of the State Police, who wrote me back -- a Major Baum. In that letter he said to me that, "You are not breaking any laws engaging as a security consultant, but if you want to be a private detective, here's the statutes that promulgate an application." I never said anything in my letter to Attorney General Hyland about being a private detective. That private detective thing has surfaced every single year, just about, since I've been in New Jersey.

I also would like to add that I went up to the New Hampshire State Police and got myself licensed as a private detective with a gun permit to carry, from the State of New Hampshire. It's good until 1988. I've had it renewed three times.

At the same time when I first had the school licensed I got an attorney, and I also under the-- What I want to say to you is that if you're going to revise these statutes-- Several troopers have contacted me many times and tried to get me to come in and help them rewrite the law because they wanted to use my expertise, and I refused to come in and do that. Once on the phone somebody called me up and said, "Come in and help us." I turn around and in 1979 I hired an attorney, and

the Board of Trustees of the school, and also my own security school, asked to have me appointed a policeman from my school and for the academy -- which at that time was Juanita Day School (phonetic spelling). We changed the name to make it Watson Security Academy, Inc. because it was anyway.

At the same time, the chief that did the licensing-- I was a special police officer for that chief. The chief turned around and ran a seven month investigation on me and said that he wasn't going to issue me a gun permit to carry because I could stand out on the street on my church post on Sunday, and put a gun in my pocket, and State law would supersede his regulation, and he couldn't do anything about it and he wasn't going to. So he tried to set me up with a gun permit to carry. God willing, he didn't. I ended up-- He called me in his office. I got the gun permit to carry. That same attorney said, "If that chief, if you're a special officer for him, and you've been a special officer for four years, I am signing your commission for the policeman for Watson Security Agent Academy. You file it with that chief, and you file it with the State Police." I walked in and gave them the commission of me appointed under Title 18 Act, as a policeman for Watson Security Agent Academy, and to be so commissioned and appointed under the powers and duties of policemen and constables in criminal cases against the law.

When I took that document to the Chief of Police in Lawrence, I gave it to him, he filed it. I took it to the State Police in West Trenton, they filed it. And when I gave it to them I handed it to three detectives from the private detective unit, and two Deputy Attorney Generals who were lawyers. The first thing the Deputy -- and one of them I knew -- and he turn around and said to me, "You can carry a gun with this." I don't know why they were so concerned with me carrying a gun with that. They said, "But this means you're a policeman for that agency."

That led me on a bizarre chase all the way through out New Jersey. Every time I went into a town with this academy, I've been run out.... Okay? In one case I opened up a place in Wrightstown, the thing was burned. The fire started, the trooper wrote a report that it was an electrical fire. I notified the arson squad. They said the trooper didn't have the right to file that kind of report, and why did he do it? Then I was terminated all across the State in different positions I went in. I'm also a certified school teacher in the State of New Jersey. I've been run out of teaching jobs as a result of that. I've been harassed for over 18 years with this thing. And this is just going on and on.

I then went into Bricktown, and I applied for a gun permit to carry in Bricktown. After I applied for that gun permit to carry in Bricktown, they issued me a gun permit to carry for Watson Security Agent Academy, and also for my business as a detective in New Hampshire. Then the judge said-- He put some kind of restriction on the permit. I didn't even think of it at the time that I was going to challenge it. I said, "Well, at least I can conduct business." I did conduct business for two years.

I then ran for county sheriff of Ocean County. When I ran for county sheriff, the next thing you know the State Police-- I must add, Woodrow Wilson, in my research, said that he felt that New Jersey needed strong 21 sheriff's departments; and that he felt that the State Police were going to suppress the sheriffs -- and they have done that throughout this State -- and valid citizens trying to help themselves. I no more than filed the paperwork to run for sheriff, and the next thing you know my insurance company that handles the insurance for my school--

I must add one thing. I was suing the town, and the town all of a sudden had got a deposition. I was suing the town of Lakewood. They got a deposition to have me brought

into Red Bank to the attorneys there, to question me about the injury that I sustained by this policeman who stopped me for no reason--and brought me in and said, "You're under arrest." I went in, the next thing you know I said, "What am I being arrested for?" He said, "Nothing." I said, "Well you brought me in here, and what are you charging me with?" He says, "I'm not--" He says, "Is that your agency?" I said, "Yeah. I'm the owner, the director, the founder." He turned around and said, "Well, I'm not charging you with anything." And the next thing you know he signed a seven page report. I questioned him in court, a court of law, because my attorney didn't show up. The next thing you know, I appealed it to Judge Huber in the county Superior Court in Ocean County; and Judge Huber after two years found me not guilty. The law firm in Red Bank said, "Well, we're going to get you for reversing that," and I handled it myself. I couldn't get an attorney that would touch it. Judge Huber said, "The cop was caught lying under oath, and therefore you're not guilty." In essence, it was a credibility case.

I then went into this Red Bank office, and they questioned me in the deposition -- with my son present. They said, "Why--." It was the law firm of-- (inaudible) --or whatever-- They said, "Has anybody ever questioned your police commissioner and why it was issued?" I said, "No." I said, "If anybody should have questioned it, it should have been the State Police of New Jersey and the Township of Lawrence. That's where it was filed, and that's where it was done, and an attorney of law signed it and told me to file it. The attorney was Jay Trachtenberg. He signed it, and I filed it." Meanwhile--

ASSEMBLYMAN STUHLTRAGER: Mr. Watson?

MR. WATSON: Yes?

ASSEMBLYMAN STUHLTRAGER: I don't want to--

MR. WATSON: I know. I'm trying to bring it all up to a head to you.

ASSEMBLYMAN STUHLTRAGER: All right. Okay.

MR. WATSON: So at the same time that this was filed, next thing you know I was in this town of Ocean Township-- The judge all of a sudden-- The insurance company I went to, set up this bizarre case of me supposedly impersonating a police officer. Next thing you know, I was brought into a court of law with Judge Kreizman in Ocean Township. I then couldn't understand, and I said to him that, "If you are related to the law firm that took the deposition, there's a conspiracy here, and you have to disqualify yourself from anything that I'm involved in." He said, "I'm not disqualifying myself, and it is my brother's law firm, and I'm going to hear the case anyway." Many attorneys told me that's definitely a conspiracy.

On the day of the indictment-- They tried to indict me for-- I went before Federal Judge Anne Thompson. Federal Judge Anne Thompson told me that if they're trying to indict you and don't have any evidence, then you can come here and file a complaint and throw it out. Next thing you know, the prosecutor in Monmouth County got smart. He threw out the indictment because he knew I was running for sheriff. Next thing you know the town sent the-- He sent the lower charge back for the town to still deal with. Next thing you know, right after they sent the charge out, in Ocean County all of a sudden I got a letter from Judge Giovi, who said, "We are going to remove your gun permit to carry because we feel you have no need for it." This thing was snowballing, just going on. He felt I had no need for it.

I filed a discrimination complaint, and filed a complaint against the Legislature for failure in this State to establish a private security office, and also to take the licensing and the issuing of these permits out of the present agencies that they have them in, and put them into a separate agency. Also, in this State when Governor Byrne was the Chairman of the "Task Force of the Federal Government," they

established guidelines. If you're going to write the law, you better really start doing your homework, because that report came out in 1976, and Byrne was on the Task Force. The State Police have settled on that law for years, because they don't want to rewrite the law to the way it should be written. If you're going to rewrite it--

I went into court with Judge Giovi, and I said-- I asked the police officer, when he was questioning me about the gun permit to carry, I said, "What is the--" The first thing that came up in court is, "You're not a private detective, and therefore we want to remove the permit." I said, "I hate to tell you this, but I am a private detective for Watson Security Agent Academy, and I have been ever since it was established. If you look at the private security report, it says there are two police departments within the United States that was recognized by the Federal government. They are the public agencies, and the private agencies for area private security. If I am the private detective in-house for that academy, I have the same duties as a regular detective does that's licensed by the State." Judge Giovi, and the Bricktown Police Department at that hearing, did not know what I was talking about. Yet, he revoked the permit and said, "Well, you didn't need it at the time." I'm also an NRA instructor, okay, besides.

ASSEMBLYMAN STUHLTRAGER: Excuse me for interrupting, but what's the status of your case now?

MR. WATSON: Okay. The status of the case now is that I have also filed a conspiracy complaint against the 45 defendants in U.S. District Court. The judge up there -- because I feel he was friends with those people -- has dismissed the complaints, part of them, and now I'm on appeal to the 3rd Circuit. In the Federal Court, in the State Court, I have filed my cases. All of a sudden I got a notice about a week ago from the judge in the appellate court and said that, "Because you have failed to file the deposit of \$300, and

because you have failed to issue your brief, we are dismissing the appeal." So now I have to file a notice of reinstatement, and issue \$300, and the only reason that I -- one of the reasons was that I was sick, and that's why I wasn't able to file the letter brief.

And also I'm notifying the Attorney General's office to step into this State, because I have been harassed by these agencies, and notified public officials, and they have done nothing. I have even written to the Governor, and the only thing that the Governor said to me -- and that law firm knew two things, that I was running for sheriff, and that I also wanted to run for Governor of this State--

ASSEMBLYMAN STUHLTRAGER: Mr. Watson?

MR. WATSON: --and it seems like that's the only way that you can get something done in this State, is to run for Governor, and then be the Governor--

ASSEMBLYMAN STUHLTRAGER: Unless you want--

MR. WATSON: --and represent all the people fairly and honestly. We don't need these shaft games. It's a shame the way the people are being treated in this State. It's a shame--

ASSEMBLYMAN STUHLTRAGER: Mr. Watson, if you take a breath, you'd let me say a word.

MR. WATSON: I didn't finish. I was trying to finish it as quickly as I could.

ASSEMBLYMAN STUHLTRAGER: Well, I don't see any light at the end of the tunnel, but I'm more than happy to listen to you. If you want to wrap up in about 30 seconds, go ahead. I just want to get us to a point of conclusion, that's all.

MR. WATSON: Well anyway, getting back to the issues at hand. The Governor wrote me back a letter, and I allege that under the Constitution of the State of New Jersey, the Governor could exercise an investigation into State employees. He said, "Well since your case is in court--" I think the letter reflects that at this point, "I won't get involved."

That's to circumvent the Governor from running an investigation on these employees. He still is under obligation to run an investigation of these people who have been in violation of the law. And that letter does not remove the responsibility, nor if I sign a complaint and go to court--

I have been brought into these courts of law for no reason, as a citizen of this State, running for sheriff, and everything else. The reason that I was brought into these courts of law -- for whatever reason these people did it -- is because as Woodrow Wilson put it, these are only legalized tools of oppression. That's the only reason that they've been done. I felt disgusted with what I heard some of these people subjected to.

I'm also a graduate of Bergen County Police Academy. I was the first graduate to graduate from that academy as a campus police officer. I served in Stockton State College, and graduated from Newark Police Academy besides. And the harassment that I have been subjected to is ridiculous. And not one State official has stepped in yet. That's why I've notified the Attorney General's office, and the Federal level -- and also the Federal people; because the State people have become people that just sit around. I wrote letters to every single legislator about this matter, and not one answered me back in this State, and that's disgusting as State officials.

ASSEMBLYMAN STUHLTRAGER: Mr. Watson, I'm glad you took the opportunity to come here and testify before us, because I think some of the things you mention obviously go back over a number of years.

MR. WATSON: It is.

ASSEMBLYMAN STUHLTRAGER: I would hope that you have some things that are continuing on. I would hope that you would keep this Committee informed. Like I said to some other witnesses, and you were here I know, that decisions aren't going to be made tomorrow. We have another hearing, and it's

going to be a process that we're in. So you keep us informed through written correspondence if you wish, of the progress of your matters. And I thank you for coming.

MR. WATSON: Thank you. If I'm ever elected Governor, I'd represent the people fairly, and honestly. And they won't be subjected to any more of this nonsense.

ASSEMBLYMAN STUHLTRAGER: Well you've probably got a few votes here. Charlie, are you indicating your vote, or-- (laughter)

MR. IRWIN: I think there's just one more.

ASSEMBLYMAN STUHLTRAGER: We only have one more witness?

MR. IRWIN: I think so.

ASSEMBLYMAN STUHLTRAGER: Okay. I think we have two. You're John?

J O H N H I N E S: John Hines.

ASSEMBLYMAN STUHLTRAGER: John Hines. We have one more after that. Mr. Hines, thank you for coming.

MR. HINES: It's a pleasure to be here. My name is John Hines. I'm resident of Linden. I'm not running for Governor, but I would like you to be aware of the situation that I am faced with at present.

I am employed by Supreme Security Systems, which is a burglar alarm company. Previously I was employed by Wells Fargo, and Holmes Protection. Under the employment of both of these companies, I was issued a carry permit. The carry permit that I was last issued was good until March of next year, but I left Holmes employment the beginning of April, and was unemployed until the end of July, when I went to Supreme. At that time, my current employer issued a letter to the chief of police in Linden and asked him to reinstate my carry permit. There was no objection by the Linden Police Department, there was no objection by the Union County Prosecutor, but when it went before the judge to have it reissued, he denied it. That is my case right now.

ASSEMBLYMAN STUHLTRAGER: Okay.

MR. HINES: I have to go through an expensive appeal in order to have that permit reissued, where I'm doing the same job, nothing has changed other than my employer.

ASSEMBLYMAN STUHLTRAGER: It seems to me that -- and Mr. Watson was touching on it last time, I think -- that the area of carrying is another area of exploration for us here. I'm trying to keep it separate in my mind.

MR. HINES: In my position as an agent for my company, I am responsible for responding to active burglar alarms. In many cases in high crime areas where police response is not so timely, we are required by the Underwriters Laboratory to make certain responses within a specified amount of time. In many instances the police are not available in that incident. It becomes my responsibility to check these places out without police being there. In some instances when they do show up, they expect me to check them out anyway without them.

ASSEMBLYMAN STUHLTRAGER: Okay. Do you have anything else that--

MR. HINES: That's the basis of it.

ASSEMBLYMAN STUHLTRAGER: Okay. I appreciate--

MR. HINES: I have had no problems getting permits, or having permits in the past. It's just this one instance.

ASSEMBLYMAN STUHLTRAGER: All right. Thank you very much for coming.

MR. HINES: I thank you for your attention.

ASSEMBLYMAN STUHLTRAGER: Sorry you waited you waited until very near the end. We have Bob Bajor. Bob Bajor?

B O B B A J O R: Yes.

ASSEMBLYMAN STUHLTRAGER: Oh, I'm sorry Bob. There you are. Mr. Bajor, thank you.

MR. BAJOR: Thank you. My name is Bob Bajor. I'm a certified firearms instructor -- rifles, shotguns, pistols -- President of Easton Fish and Game Association, and Phillipsburg Pistol Club. These two clubs are about three miles apart.

What you've been hearing today -- all these, shall we call them, horror stories -- may be new to the government officials and the media, but the sportsmen and the shooters have known about it for years. I know dozens of New Jersey residents who have moved out of the State for exactly these reasons, mostly to Pennsylvania. Our two clubs try to run cooperative matches. They're only a couple of miles apart. Pennsylvania shooters will not enter New Jersey, for perfectly legal activities. I show them the statutes, section G. It's legal to come here for a pistol match. They say, "I don't care what the law says. I heard what happens." And they will not come into New Jersey with a firearm for legal activities. So this is not news to the sportsmen of New Jersey and Pennsylvania.

ASSEMBLYMAN STUHLTRAGER: I appreciate those comments. And I think some of the other testimony, though we could characterize it as horror stories, I think that it was pretty much common knowledge to those that are active in this area.

MR. BAJOR: And fearful.

ASSEMBLYMAN STUHLTRAGER: And fearful. Do you have anything else?

MR. BAJOR: Thank you.

ASSEMBLYMAN STUHLTRAGER: Thank you. Was there anyone else? I don't want to cut anybody off. (no response)

I want to thank everybody for coming today. I can speak for myself, and I know speaking to Assemblyman Shusted before he had to leave. It's been an enlightening day. A lot of things have been said here today that are going to be beneficial to not only myself, but the transcripts of this hearing are going to be made available to all members of the Legislature. And I can tell you that I will personally encourage them to review it. It's going to be rather lengthy, but I think worthwhile. This is the beginning of the process,

and I've said to a couple of the witnesses that have been here, it's not something that's going to be resolved overnight, but we're going to keep working at it. And I encourage your input. We'll be back, not in this room. We're going to be in Room 424 next Tuesday at 10 o'clock.

I do want to make one final announcement. We did receive a statement from Gerry Thornton, from Cape May County. He's Freeholder Director down there. He's at another meeting today, but he did want to go on record as supportive of any reforms that we can make that would ease the plight similar to those that we've heard here today.

So thank you for coming. Charlie, thank you. Thank you to the witnesses. And see you next week, maybe.

(HEARING CONCLUDED)

APPENDIX



American Civil Liberties Union of New Jersey

38 Walnut Street
Newark, New Jersey 07102
(201) 642-2084

Edward Martone
Executive Director

Annamay Sheppard
President

Eric Neisser
Legal Director

September 15, 1987

Gary W. Stuhltrager
Chair
Subcommittee on Administration of Firearms Statutes
Assembly Judiciary Committee
State House Annex CN-068
Trenton, NJ 08625

Dear Assemblyman Stuhltrager:

Please accept these written comments on behalf of the American Civil Liberties Union of New Jersey in lieu of testimony at your public hearing today concerning the administration of the firearms statutes. The ACLU does not take a position on gun control and the appropriate forms of regulation concerning firearms. Rather, we focus on possible constitutional violations in the course of administration of the existing or any proposed firearm regulations. We submit these comments at this time because of our concern over certain county prosecutors' policies directing confiscation of guns when police have contact with family disputes.

There are actually two separate problems. First, the development of policies in a few counties contrasted with the lack of policies in others, as well as the variation among articulated policies leave the administration of our gun laws needlessly, and in some cases unfairly, uneven. Citizens have a right to know how the gun laws are being enforced and that enforcement will be the same regardless of the location of the gun. To insure uniformity of treatment, some action on a state level, by the Legislature or the Attorney General, may be appropriate.

Second, and of more immediate significance, are the policies themselves. The attached July 31, 1985 policy from Middlesex County Prosecutor, apparently patterned after one adopted in Union County, is typical of a recent trend toward more aggressive confiscation policies. We have had experience recently with a similar policy in Burlington County. The nub of the Middlesex policy is as follows:

When a police officer arrives at a scene involving a domestic dispute and he observes or is informed of the presence of a firearm in the actual or constructive possession of either spouse, that firearm must be seized for the protection of both parties and in the interest of public safety.

Gary W. Stuhltrager

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September 15, 1987

When seized that firearm is to be forwarded to this office with an appropriate notation that it was seized in a domestic violence event and thereafter it will not be returned to either spouse until the Prosecutor's Office is ordered to do so by a court of competent jurisdiction.

Such a policy appears to be overbroad and potentially violative of rights protected by the Fourth and Fourteenth Amendments as well as the more expansive Article I of our State Constitution.

Specifically, this policy authorizes seizure of property which is lawfully possessed without probable cause to believe that it is evidence or the instrumentality of a crime. The policy permits, for example, the police to seize a firearm for which the owner has a license or purchase permit even though no crime is observed, but only "a scene involving a domestic dispute," presumably including a shouting match that led neighbors to call the police. Moreover, even in those situations where an assault or other crime apparently has been committed, the policy allows seizure even though there is no evidence that the gun was used, or threatened to be used, in the course of the offense.

Indeed, the policy permits the police to seize a gun that they are "informed" is in the "constructive possession" of one of the participants (presumably even the apparent victim of the assault.) In order to seize the gun, however, the police must first find it. That could mean searching throughout an entire home or apartment, even though the two disputants are both standing in the front hall or the kitchen. There is no question that a court would not issue a warrant for a random search of an entire home for lawful property not linked to a crime based on information that the property is somewhere in the area and might be used in the future to do harm. Moreover, this policy places extraordinary powers in private hands; disputants, knowing of the prosecutor's policy, could make up a claim of a gun in the bedroom in order to provoke a police search for what they may know to be drugs or other contraband, or simply to harass the other disputant. Search policy should be at the direction of a judge, not the whim of an angry citizen.

The policy cannot be explained by simple reference to public safety concerns. The policy does not require seizure of kitchen knives, fireplace stokers, sewing needles or matches at scenes of family disputes, although the police have had ample experience with murder or serious injury inflicted by such means in family settings.

Gary W. Stuhltrager

-3-

September 15, 1987

Finally, the policy goes well beyond standard police seizures by directing retention of the property until a contrary court order, even if no arrest is made or charges are dropped. Under normal procedure, seized lawful property (that is, items that are not contraband) are automatically returned upon termination of the criminal action to which they are related. Decisions of the English courts before our Revolutionary War confirmed that rule of law. These county policies, however, not only extend the confiscation well past lawful limits, but put the burden and cost of initiating a court action to recover lawful property on the citizen who is not charged, not to mention convicted, of a crime. Moreover, there are no standards to guide judges in such court proceedings, as there are in normal criminal suppression motions.

In short, these policies do not deal with all the potential physical hazards yet permit widespread searches and long-term confiscations of lawful property in disregard of established constitutional limitations on searches, seizures, and takings of private property.

We suggest the Subcommittee review this problem with a view towards recommending legislative or administrative action on the state level to assure a uniform gun seizure policy in conformity with our Constitutions.

I enclose sufficient copies for the members and staff of the Subcommittee. I would, of course, be happy to answer any questions that the Subcommittee might have.

Sincerely yours,



Eric Neisser
Legal Director

EN/th
Encls.



COUNTY ADMINISTRATION BUILDING

P.O. BOX 71

NEW BRUNSWICK, NEW JERSEY 08903 - 0071

Telephone: (201) 745-3300

July 31, 1985

ION. ALAN A. ROCKOFF
PROSECUTOR

WILLIAM F. LAMB, 1st ASST. PROSECUTOR
THOMAS J. KAPSAK, 2nd ASST. PROSECUTOR
LAWRENCE R. WEST, 3rd ASST. PROSECUTOR

TO: ALL POLICE CHIEFS AND POLICE DIRECTORS

FROM: PROSECUTOR ALAN A. ROCKOFF

RE: GUN-USE POLICY

GENTLEMEN:

A policy has been established in Union County as a reaction to a tragic incident that occurred in Linden and Roselle wherein a weapon returned to a spouse after a domestic dispute had apparently subsided was used by that spouse to kill his wife and himself.

Henceforth, in Middlesex County, I direct that when a police officer arrives at a scene involving a domestic dispute and he observes or is informed of the presence of a firearm in the actual or constructive possession of either spouse, that firearm must be seized for the protection of both parties and in the interest of public safety.

When seized that firearm is to be forwarded to this office with an appropriate notation that it was seized in a domestic violence event and thereafter it shall not be returned to either spouse until the Prosecutor's Office is ordered to do so by a court of competent jurisdiction. I am attaching a copy of a newspaper article from the Daily Journal outlining Prosecutor Stamler's position which I adopt and endorse wholeheartedly.

On another issue involving domestic violence cases where the victim files a D/V complaint and a Temporary Restraining Order is issued, if that temporary order or a permanent order is in effect and a police officer happens upon a scene of apparent domestic tranquility between the parties who are the subject of the order, in the past there has been discretion permitted for the police officer's response. However, commencing immediately the police officer is obliged to perform his basic duty; arrest the offending spouse who is in violation of the restraining order that prohibits his/her presence on the premises of the other spouse, regardless of the protestation of the other spouse.

CC: D.C.
K.M.
TS

4X

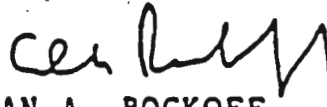
-2-

On a collateral but similar subject, I am pleased to inform you that the cooperation that existed between the Police Department in Sayreville and the Middlesex County Hostage Task Force this past week was as remarkable as the incident I witnessed last year involving a Woodbridge Township hostage situation. Both events exhibited similar excellent results highlighting the professionalism and cooperation of the police departments involved and the Hostage Tactical and Negotiating Teams, and were greatly impressive.

I urge all of you to call upon the Hostage Team through the Prosecutor's Office in similar incidents. I am attaching a copy of a newspaper article in which a member of the clergy was critical of the use of the Hostage Team. However, when one reads in the same newspaper an article concerning the killing of the Linden woman by her estranged husband and in another incident in Franklin Township in which a death occurred in a hostage situation, it is apparent how fortunate we are in Middlesex County to have a Hostage Negotiating Team and Tactical Squad.

I agree that religious persuasion is extremely helpful in these situations and that God does work his miracles, but I further believe he needs some local help from law enforcement to assist in the "follow-up on the details." I therefore urge all of you to react accordingly.

Sincerely,



ALAN A. ROCKOFF
Middlesex County Prosecutor.

AAR/sp
att.

cc: Asst. Prosecutor Lani Ciccone
Lt. Joseph Zimmerman
Inv. Rocco Mazza



MIDDLESEX COUNTY PROSECUTOR'S OFFICE

COUNTY ADMINISTRATION BUILDING

P.O. BOX 71

NEW BRUNSWICK, NEW JERSEY 08903 - 0071

Telephone: (201) 745-3300

N. ALAN A. ROCKOFF
PROSECUTOR

WILLIAM F. LAMB, 1st ASST. PROSECUTOR
THOMAS J. KAPSAK, 2nd ASST. PROSECUTOR
LAWRENCE R. WEST, 3rd ASST. PROSECUTOR

TO: ALL MIDDLESEX COUNTY POLICE CHIEFS AND POLICE DIRECTORS

FROM: MIDDLESEX COUNTY PROSECUTOR ALAN A. ROCKOFF

RE: SEIZURE OF FIREARMS BY POLICE OFFICERS RESPONDING
TO DOMESTIC VIOLENCE CALLS

DATE: OCTOBER 1, 1985

It has recently come to my attention that there may be some confusion or misunderstanding among rank and file police officers on the subject of seizing firearms during domestic violence calls. This is perhaps attributable to the differences in the content of the policy as initially formulated and the policy as adopted after discussion at the police chiefs/police directors meeting. Or it may be the product of inaccurate newspaper reportage or expansive interpretation during word of mouth dissemination of the policy in the ranks. In any event, it now appears appropriate, with approximately two months implementation behind us, to restate both the philosophy and mechanics of the policy.

As all of you will recall, the tragic murder/suicide of a Linden couple prompted much thought on the subject of defusing potentially violent domestic situations. One obvious method of reducing the level of danger present in such incidents was to require the seizure of any firearm which might be available to the disputants. In so deescalating the level of potential violence, the police effectively exercise their "community caretaking function."

Over the past several weeks, questions have arisen regarding just how far police officers may go and under what circumstances police officers may seize firearms under our policy. In formulating our response, we have, of course, remained sensitive to the constitutional constraints placed on the seizure of private property. Accordingly, our object is to preserve peace in the community without injury to constitutional values.

At the outset, it is, of course, imperative that all police officers fully understand just when the policy applies. Over the past month, it has become apparent that some officers have interpreted the policy as requiring the seizure of firearms whenever they are dispatched to the scene of a domestic

dispute. This is not necessarily correct. The policy does not mandate firearms seizures in all domestic disputes; the policy applies only to incidents involving domestic violence.

Domestic violence is a precise concept with a clear cut definition. N.J.S.A. 2C:25-3 describes domestic violence as the occurrence of one or more of the following acts between cohabitants: (1) assault - 2C:12-1; (2) kidnapping - 2C:13-1; (3) criminal restraint - 2C:13-2; (4) false imprisonment - 2C:13-3; (5) sexual assault - 2C:14-2; (6) criminal sexual contact - 2C:14-3; (7) lewdness - 2C:14-4; (8) criminal mischief - 2C:17-3; (9) burglary - 2C:18-2, and (10) harassment - 2C:33-4.

As is self-evident, not every domestic dispute call will involve an act of domestic violence. A married couple engaged in a heated but non-violent argument which disturbs the neighbors is a commonplace example of a domestic dispute which does not involve domestic violence. In such a situation, the domestic violence firearms seizure policy would not be applicable. It is only when such situations include one of the enumerated acts (e.g., assault, criminal restraint, etc.) that they rise to the level of an act of domestic violence. Then, and only then, does the firearms seizure policy come into force.

Secondly, it is important that police officers understand and respect the scope of their authority under the domestic violence firearms policy. In domestic violence situations, it is imperative that the responding officers seize any firearm which comes into their plain view during their time at the scene. It is also vital that the officers inquire about the existence of firearms on the premises which are not in plain view. Upon being informed of non-plain view firearms, the officers should request consent to confiscate such firearms for safekeeping. This request for consent need not be preceded by Johnson - type warnings and may be addressed to anyone having at least apparent authority over the firearms (e.g., wife, husband, third party owner). If the officers become aware of the existence of non-plain view firearms on the premises but consent to confiscate is refused, the firearms should not be searched for and seized absent some compelling circumstance. Rather, the scene should be secured while the officers contact police headquarters and the on duty assistant prosecutor about a search warrant to authorize the seizure of the firearms.

As before, any firearm seized under the domestic violence firearms seizure policy is to be forwarded to this office with the notation that it was seized during a domestic violence incident. All inquiries regarding disposition of such firearms should be directed to Assistant Prosecutor John N. Shaughnessy (745-4384). In any case which involved the threat or actual use of a firearm, or a potentially explicit or implicit threat of use, it remains the policy of this office not to return firearms seized under the policy unless compelled by court order to do so. In those situations where upon careful review of the circumstances a seized firearm may be returned to its owner, arrangements will be made to transfer the firearm to the department which seized the firearm. The owner will then be notified regarding from where the firearm may be retrieved. As per the Cunningham decision, all those seeking return of a seized firearm must have or obtain a valid permit for the firearm. No firearm transferred back to a police department is to be returned unless and until the owner presents that permit.

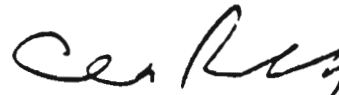
Police Chiefs/Directors -

- 3 -

In my view, the policy outlined above carefully balances our responsibility to preserve community wellbeing with the rights of individual citizens. As always, I welcome your comments on the subject and look forward to discussing the practical effects of the policy at our upcoming police chiefs/directors meeting.

With best wishes, I remain,

Very truly yours,



ALAN A. ROCKOFF
Middlesex County Prosecutor

AAR:sr

cc: Sheriff Joseph C. Spicuzzo

During the past decade, increased public and legislative attention has been directed toward the problem of what is oft-times called "domestic violence." In 1981, "domestic violence" was given a specific statutory definition and conduct falling within that definition was made a criminal offense. See N.J.S. 2C:25-1 et seq.

As with most criminal offenses, the responsibility for investigating alleged incidents of domestic violence rests largely with local police agencies. Not infrequently, police officers responding to domestic violence calls encounter or observe firearms. In certain jurisdictions, guidelines have been issued regarding the handling or seizure of such firearms.

The purpose of this memorandum is to set forth a uniform law enforcement policy regarding the seizure of firearms during domestic violence incidents. At the outset, it is to be emphasized that this policy is limited to incidents of domestic violence as that offense is statutorily defined, i.e., any one of the following acts among cohabitants: assault, kidnapping, criminal restraint, false imprisonment, sexual assault, criminal sexual contact, lewdness, criminal mischief, burglary or harrassment. It does not come into play whenever the police respond to a domestic dispute or other situation not rising to the level of or falling within the statutory definition of domestic violence.

Secondly, the aim of this policy is distinct from that of the investigation of crime. Indisputably, firearms used, brandished or involved in threats are subject to seizure as criminal evidence. There is no need for any policy on the confiscation of such firearms; longstanding search and seizure law controls the subject. What the instant policy addresses is the seizure of firearms unconnected to the underlying domestic violence or criminal incident. It does not seek to assist in the gathering of criminal evidence. Rather, the object of the policy is preservation of public peace and safety. The justification for the policy lies in the discharge of what is sometimes described as the "community caretaking" function of law enforcement agencies.

In order to effectuate the policy, police officers responding to a domestic violence call are to ascertain whether there are any firearms within the premises by simply keeping their eyes open while performing standard operating procedures. If a firearm is observed by police officer during the normal course of his investigation of the domestic violence incident, that firearm is to be seized by the officer.

In addition, police officers responding to domestic violence calls are to inquire whether there are any firearms within the premises. If informed that firearms are present in some non-observable location, the police officer is to inquire about the specific location of said firearms. The police officer is then to seek permission or consent to proceed to that area of the premises and seize the firearm(s).

Such permission or consent need not be preceded by recital of any Johnson-type warnings. The permission or consent to seize the firearm(s) may be obtained from the owner of the firearm(s) or any other person present who has at least apparent authority over the firearm(s). If permission or consent to seize the firearm(s) is granted, the officer is to proceed to the location of the firearm(s) and seize same.

In situations where permission or consent to seize is not granted, only those firearm(s) which have been physically observed by the police officer during the normal course of his investigation are to be seized. Non-observable firearm(s) unconnected to the underlying domestic violence incident are not to be searched for or seized whenever permission or consent for same has not been obtained. If the police officer believes that a non-observable firearm constitutes a future threat or danger, he should maintain control of the situation and seek the immediate advice of the on-call assistant prosecutor for his county.

In sum, therefore, a police officer responding to a domestic violence incident is to seize firearm(s) in those instances where: (1) the firearm is evidence in the domestic violence case; (2) the firearm, although unconnected to the underlying domestic violence incident, is physically observed by the officer during the normal course of his investigation, or (3) where permission or consent to seize the firearm(s) is obtained from a person having at least apparent authority over the firearm. Unless one of these carefully delineated set of circumstances applies, the police officer is not to conduct a search for non-observable firearms unconnected to the domestic violence incident.

Procedures for the handling and disposition of firearms seized during domestic violence incidents are to be adopted by each county prosecutor according to the needs of his/her jurisdiction. Generally speaking, however, steps must be taken to properly identify each seized firearm. Where and under what condition such seized firearms are to be stored shall be decided by the county prosecutor.

Regarding the return of seized firearms, no firearm seized during a domestic violence incident is to be returned unless a court order has been entered directing the return of the firearm. In cases where an application for such a court order is made, the level of opposition to said application is a matter entrusted to the discretion of the affected prosecutor. In all such matters, however, no firearm should be returned or relinquished to anyone not having the required firearms permit. In addition, an inquiry regarding suitability and/or eligibility to retain a firearms permit should be conducted whenever a permit holder involved in a domestic violence incident seeks return of a seized firearm. And in appropriate cases, firearm permit revocation proceedings should be instituted.

Lastly, the ultimate disposition of seized firearms shall be controlled by statute, if applicable (e.g., forfeiture cases) or by prosecutorial guideline. If it is decided that a particular seized firearm is to be disposed of or destroyed, notice of this intention must be sent to the firearm owner at his/her last known address via registered mail. If no objection or response is received, the firearm shall be destroyed or otherwise disposed of as intended.

McKenna, Liska & Leone

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A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

EDWARD J. MCKENNA, JR. *

PETER J. LISKA *

PHIL H. LEONE

ELIZABETH A. HOPKINS

PAUL F. JANNUZZO

MICHAEL R. DUPONT

* Members of N.J., N.Y. & Wash. D.C. Bar

241 Maple Avenue

P. O. Box 778

Red Bank, New Jersey 07701

(201) 741-6681

September 3, 1987

National Rifle Association
1600 Rhode Island Avenue, Northwest
Washington, D.C. 20036

To Whom It May Concern:

I was depressed and down about personal matters and began drinking in my own home. I was told by police that Mrs. Tanay (my neighbor) had called out of concern for my welfare. I felt she had over reacted. The police had explained that it was best for me to release my shotguns to their custody voluntarily and that I could gain their return in a couple of days with a receipt, which they would provide me. I was intimidated, did not know my rights and agreed to do so.

I have no criminal record, no charges were pressed against me by anyone in this matter or any matter in the past. I inherited the guns from my father and they were in the gun cabinet, unloaded.

I feel that my constitutional rights were violated.

I am a college graduate, a homeowner in Howell Township, New Jersey and a Vietnam era veteran. I live alone except for joint custody of my 14 year old daughter for 3 1/2 days a week. I am currently starting my own stable business on my farm and I consider myself to be a respectable citizen.

I look forward to being at the meeting in Trenton, New Jersey between the National Rifle Association and the New Jersey Legislature.

Sincerely,

Nelson L. Abbott
NELSON L. ABBOTT

*State of New Jersey
Hillsborough County
September 5, 1987
NOTARY Public
Lynn Cooper-Young*

*ALSO MEMBER OF WALL
UNITED METHODIST CHURCH*

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

WARD J. MCKENNA, JR. *

TER J. LISKA *

IL H. LEONE

IZABETH A. HOPKINS

UL F. JANNUZZO

CHAE L. DUPONT

Members of N.J., N.Y. & Wash. D.C. Bar

241 Maple Avenue

P. O. Box 778

Red Bank, New Jersey 07701

(201) 741-6681

September 3, 1987

National Rifle Association
1600 Rhode Island Avenue, Northwest
Washington D.C. 20036

To Whom It May Concern:

I am writing this statement because I feel that I was deceived by the Police Department in the circumstances surrounding the confiscation of the inherited shot guns of Nelson L. Abbott, my neighbor. I was also present when the police made representation to Mr. Abbott about the return of his guns once they were in the Department's possession.

I originally called the Police Department to Mr. Abbott's home because I was concerned for Mr. Abbott's welfare and nothing more. When the police arrived at Mr. Abbott's home, I gave a verbal statement to them which was not reflected by their subsequent report. There were statements added which I did not say, such as "Mr. Abbott being a harm to himself and others", violence and the questions of alcoholism. Again, I wish to note that I did not bring up any of these matters to the police officer who responded to the call. I also wish to note that the police captain promised and assured me that Mr. Abbott could get his guns returned with a receipt which they gave to him when the guns were confiscated. I made it very clear to the police officers when they came that that my only concern was Mr. Abbott's welfare. I made it more than clear to the police that Mr. Abbott would hurt no one and the people who known him, know him to be nothing but a kind and gentle person. I told them that I have never seen him to act violently, nor had he threatened to become so. My only concern was that Mr. Abbott seemed depressed and was drinking by himself in his home. This alarmed me because I had never seen him act this way. Because I mentioned drinking, the police

officer immediately interpreted it as alcoholism. Mr. Abbott also had trouble with his 14 year old daughter, his ex-wife and problems in a personal relationship. This combined with drinking alone, concerned me.

Thirdly, I never said that Mr. Abbott had harassed me in any manner. The police, however, did add that to their written investigation report. Mr. Abbott and I often talk by phone and it was known by the police officer that I had seen Mr. Abbott while I was separated from my husband. After my husband and I reunited, Mr. Abbott remained close friends with my husband and I.

The police report seems to be slanted so that they can justifiably confiscate and keep the guns which are rightfully Mr. Abbott's. Once again, I would like to note that I was deceived by the police, as was Mr. Abbott. The police report was nowhere near an accurate accounting of the circumstances of the day. The shotguns taken from Mr. Abbott were handed down from his father, specifically, the Parker and Sterling double barrel shotguns. Mr. Abbott is quite distressed about this and he hoped to give them to his own children, and quite frankly, I do not see any reason why he should not be able to. I did not sign any charges against Mr. Abbott, nor did I allege any violence. How the police can simply confiscate these weapons and turn them over to the prosecutor's office, who now refuses to return them without something resembling due process strikes me as incredible.

Sincerely,

Carrie Tanay
CARRIE TANAY
100 Colts Neck Road
Farmingdale, New Jersey 07727

State of New Jersey
Monmouth County
September 5, 1987
NOTARY PUBLIC
Commission Expires 4/19/89

STATEMENT BY

GERRY THORNTON

- FREEHOLDER DIRECTOR OF CAPE MAY COUNTY

CANDIDATE FOR ASSEMBLY IN DISTRICT 1

THIS THURSDAY WE CELEBRATE THE BICENTENNIAL OF OUR CONSTITUTION. IN HONOR OF THIS, I THINK EACH OF US SHOULD TAKE A MOMENT TO REFLECT ON THE ROLE THIS DOCUMENT HAS PLAYED IN OUR LIVES. FOR MANY OF US, THIS MAY NOT BE EASY BECAUSE, UNLIKE OUR FOREFATHERS, WE HAVE ALWAYS ENJOYED CERTAIN NATURAL AND UNALIENABLE RIGHTS, AMONG THEM IS ONE WHICH WE ARE ENJOYING TODAY — THE RIGHT TO ASSEMBLE.

BUT WE MUST UNDERSTAND WHY THIS DOCUMENT ENDURES. IT ENDURES BECAUSE OUR FOREFATHERS WERE ABLE TO DISCERN CERTAIN UNALIENABLE RIGHTS, AND UNDERSTOOD THAT THESE RIGHTS MUST BE VIGOROUSLY PROTECTED BY A DEMOCRATIC FORM OF GOVERNMENT. AT THE SAME TIME, THEY REALIZED THAT AN ENDURING SOCIAL CONTRACT MUST BE RESILIENT AND ADAPT TO CHANGE. IT IS FOR THIS REASON THAT WE SEE REASONABLE MEN DISAGREE AS TO HOW THE CONSTITUTION SHOULD BE INTERPRETED. THE FINAL RESULT, HOWEVER, IS A BALANCING OF RIGHTS WHICH REFLECTS UNEQUALLED ENLIGHTENMENT. THE FORESIGHT OF THE FRAMERS WITH REGARD TO THE CONSTRUCTION OF THE CONSTITUTION IS UNMATCHED IN THE HISTORY OF MAN'S SEARCH FOR THE PERFECT FORM OF GOVERNMENT.

JUST AS THE CONSTITUTION MUST BE RESILIENT, IT MUST NEVER BREAK. I AM AFRAID, HOWEVER, THAT MANY OF YOU ARE HERE TODAY BECAUSE YOU ARE AFRAID OF JUST THAT. YOU ARE FEARFUL THAT ONE OF YOUR RIGHTS—THE RIGHT TO BEAR ARMS—IS UNDER ATTACK AND THE CONSTITUTION WHICH GIVES YOU THIS RIGHT WILL BE UNABLE TO WITHSTAND THE STRAIN. I NEED ONLY TO INVOKE THE WISDOM OF OUR FOREFATHERS TO ARGUE THAT THIS RIGHT SHOULD NOT BE ARBITRARILY ABRIDGED. THEY UNDERSTOOD THAT A GOVERNMENT WHICH PROHIBITS THE CITIZENRY FROM POSSESSING ARMS IS A GOVERNMENT WHICH HAS TAKEN A STEP TOWARD TOTALITARIANISM. THIS CANNOT BE ALLOWED TO TAKE PLACE IN OUR DEMOCRATIC SOCIETY.

THE FINAL POINT I WOULD LIKE TO MAKE IS ONE NOT BASED IN CONSTITUTIONAL THEORY, BUT BASED IN SIMPLE COMMON SENSE. THE PEOPLE WE HURT WITH OVERLY RESTRICTIVE REGULATION OF FIREARMS ARE LAW-ABIDING CITIZENS. IN MY AREA, THE OWNERS OF GUNS ARE RESPONSIBLE SPORTSMEN, PROPERLY TRAINED IN THE USE OF THEIR WEAPONS. THESE PEOPLE ARE SHOPKEEPERS, FACTORY WORKERS, HOUSEWIVES AND FARMERS. IN SHORT, THEY ARE THE CITIZENRY. YET THESE PEOPLE OFTEN FIND THEMSELVES IN CONFLICT WITH CURRENT GUN CONTROL LAWS. THIS IS WRONG. IN SHORT, I SAY: WHEN LAWS TURN THESE PEOPLE INTO CRIMINALS, THEN THERE IS SOMETHING WRONG WITH THE LAW. LET'S CHANGE THE LAW.