

Instant Registration Check Threatens Gun Owners' Rights

A convicted armed robber has just been released from prison. He hits the streets, and immediately begins looking for a way to get some cash. He has a decision to make: legitimate work or go back to plying his old trade. He decides to knock off a 7-11.

Of course, he needs a gun, so before heading out to the store he stops by a gun dealer to have his background check done before he purchases a firearm. What's wrong with this picture? Apparently nothing to some politicians in Washington.

The Brady Instant Registration Check operates under the assumption that criminals willingly submit to police background checks. In reality, the instant check only harasses law-abiding citizens because they are the only ones honest enough to obey the law. Criminals are unaffected; there is no background check on black-market gun purchases.

The "instant check" is proving to be the downfall of the pro-gun movement. "Pro-gun" politicians and organizations have been duped into supporting this dangerous concept, without investigating the inherent problems of a mandatory background check system.

Most gun owners agree that the biggest step toward a complete ban on the private ownership of firearms is the registering of gun owners. Using the so-called instant check system, passed as part of the Brady bill, the federal government has taken a giant leap in that direction.

For years, GOA has stood virtually alone in opposing the Brady instant check. Because many "pro-gun" politicians and other groups support it, it is helpful to revisit why GOA opposes this legislation, and why it is a threat to the very core of the Second Amendment. But first, a brief history.

When Congress was debating the Brady law in the 1980s and early 1990s, there were two distinct issues under consideration. One matter was a waiting period, or so-called cooling-off time. The pro and anti-gun forces in Congress were fairly polarized on this point. Led by Charles Schumer (D-NY), the anti-gun forces were preaching the virtues of having to wait seven (later reduced to five) days between the sale and the actual possession of a handgun.

The pro-gun side was opposed to the waiting period on constitutional grounds. Fine so far. But there was a second issue involved in Brady for which the "pro-gunners" had no satisfactory answer -- the background check.

Schumer et al, proposed that the background check be performed during the waiting period. The opposing side, both inside and outside of Congress, scrambled for another "solution." What some gun owners came up with was the instant check system.

"If you back off the waiting period," they said, "we'll give you your background check instantly through the use of computers and technology." As if to prove this, the instant check was passed in Virginia in 1989. The gun banners agreed to let the waiting period expire, and in 1993, the "instant check" passed as part of Brady.

This was considered to be a victory for gun owners. Few questioned the fact that the anti-gunners got half of what they wanted while gun owners were stuck with an empty bag. The "great compromise" was no compromise at all; gun owners got the shaft.

In November 1998, the Instant Registration Check went on line. Anyone wanting to buy a **hand gun or longgun** from a gun dealer would now have to first submit to an FBI registration background check.

The primary problem with the Instant Registration Check (and the waiting period) is that the Constitution does not delegate authority to Congress to legislate in these areas. Of course, this argument is largely ignored on Capitol Hill, which views the Constitution as an antiquated,

irrelevant document.

Thankfully, the U.S. Supreme Court dusted off its copy of the Constitution and issued a rebuke to Congress on a somewhat similar issue in 1995.¹ The case involved a teenager who was convicted in the lower courts for bringing an unloaded gun to school. The facts of the case were clear -- the student had broken the federal school zone gun ban. But the Supreme Court declared the law to be unconstitutional, and the student was ultimately exonerated.

The justices said that Congress has no authority to ban firearms around a school, since its powers are strictly limited by Article I, Section 8 of the Constitution.² Neither that section, nor any other provision in the Constitution for that matter, gives authority to propose restrictions upon firearms.

Shouldn't this reasoning also apply to background checks? Where does the Constitution give Congress the power to force decent citizens to submit to FBI registration checks before buying firearms? The authority just isn't there.

One must continually remind the Congress that it is severely limited by the Constitution. Congress ought to be concerned with the national defense, coining money, etc. (pursuant to Article 1, Section 8), and then just go home. The Constitution says nothing about mandating background checks on citizens who are trying to exercise their rights.

Crime was always intended to be an issue handled at the state and local level. It should not be a function of the federal government to conduct background checks on gun purchasers. And now, thanks to the Lautenberg gun ban of 1996, authorities have to research even certain misdemeanor convictions of prospective gun purchasers -- including offenses as slight as shoving a spouse, spanking a child or shouting too angrily at another family member. Thus, the time and cost for law enforcement to meet Congressional requirements is mushrooming.

But the federalization of crime is not the only problem that comes with a background check. It is blatantly unconstitutional to require citizens to first have to receive the government's permission before being "allowed" to exercise their Second Amendment rights. The instant check turns our "right" into a "privilege."

The Second Amendment states, in part, that the "right of the people to keep and bear arms shall not be infringed." That means no waiting periods, no background checks (a prior restraint), and no taxes, fees or bans. Clearly, this amendment protects against any infringement on the rights of individual citizens -- a protection which is undoubtedly what the Founding Fathers had in mind when they referred to "the people."

On this very point, the Supreme Court stated in *U.S. v. Verdugo-Urquidez* (1990) that:

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"The people" seems to have been a term of art employed in select parts of the Constitution.... [and] it suggests that "the people" protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.

To be sure, honest gun owners should not have to request permission from, or prove their innocence to, the government before exercising a constitutionally guaranteed right -- any more than a preacher or journalist should have to prove his worthiness before exercising his First Amendment rights.

Any scheme that violates this principle is just plain wrong. The Brady Instant Check forces law-abiding gun owners to first get permission from government officials before exercising their rights. Defenders of the First Amendment would not tolerate this kind of infringement. Neither should it be tolerated by Second Amendment advocates.

Now to be fair, there are some who object to this line of reasoning. Some would argue that all rights have limits, and that federal officials should be allowed to place restrictions upon those who seek to own and carry firearms.

After all, they argue, just look at what the courts have said in regard to the First Amendment,

that one cannot use his freedom of speech to yell "fire" in a crowded theater.

But the question that these folks never answer is: how does the government deal with those who yell in a crowded theater? Do officials gag everyone who goes into the theater to make sure they keep their mouths shut?

Of course not. Such a restriction would be a "prior restraint" -- a restriction placed on honest citizens before they try to exercise their rights.

The courts have ruled that prior restraints are unconstitutional. In one case, the state of Minnesota had banned the publication of a magazine that would easily fit into the category of the National Enquirer. The newspaper challenged the law and took it all the way to the Supreme Court.

Upon reviewing the case, the Court ruled in favor of the newspaper. The justices stated that the First Amendment prevents officials from gagging speech -- even when they suspected it was going to be "malicious" and "scandalous" speech.³ The Court said the proper course of action for officials was to punish those who ABUSE the freedom of speech AFTER THE FACT. In other words, government officials should punish the abuse of a right, and not place prior restraints on the exercise of the right.

So why the different standard when dealing with the Second Amendment? Just as our government does not gag moviegoers or place prior restraints upon newspaper publishers, neither should citizens be "gagged" before exercising their Second Amendment rights.

There would be a national uproar if the types of Second Amendment restrictions that exist today were placed upon the First Amendment. Imagine the outcry:

* If the government instituted waiting periods for journalists and TV anchors, screening their reports to make sure they were accurate;

* If officials performed background checks on preachers and evangelists to make sure they were morally upstanding individuals -- unlike the Reverend Jim Jones who led his congregation to commit mass suicide by drinking poisoned Kool-Aid; or

* If the government registered computers, printing presses and typewriters -- as was done in Romania under former dictator Nicolae Ceausescu.

Most people would rightfully object to such prior restraints. But why are these kinds of restrictions tolerated when applied to the Second Amendment? Why are they tolerated when law-abiding citizens are forced to register their names, to license their guns, or submit to waiting periods?

Government officials should not be "gagging" people before they exercise their rights; rather, authorities should punish the abuse of a right. If a person abuses his Second Amendment rights -- uses a gun to commit a crime -- then the government has jurisdiction to apply sanctions. But until then, the government should not "infringe" upon the rights of the people. To do so, turns their rights into mere privileges.

There are serious repercussions for turning rights into privileges. Not surprisingly, the instant check has resulted in unacceptable delays for many law-abiding citizens.

A review of FBI computer records reveals that the firearms industry was shut down for more than eight full business days during the first six months that the National Instant Background Check (NICS) was online.

The four-page report, obtained by the National Association of Federally Licensed Firearms Dealers, indicated that legitimate businesses endured federal closures 84 times on account of

the NICS system during the six-month period.

"What other industry would tolerate such dramatic and constant damage to its business?" asked noted gun author Alan Korwin.

"The most amazing aspect is the absolute silence from the mainstream media," he says, "where a mere 5-hour outage at amazon.com makes national headlines."

Many of these shutdowns have resulted in the virtual blackout of gun sales at gun shows across the country.

"With the NICS computer out of commission, the only place you could legally buy a firearm -- in the whole country -- was from a private individual, since all dealers were locked out of business by the FBI's computer problem," Korwin said.

Even when FBI computers are not experiencing problems, it is not uncommon for law-abiding citizens to experience delays when trying to purchase firearms. The General Accounting Office (GAO) sent undercover agents into five states to buy firearms at randomly selected gun shops. All the gun purchases in the study required the FBI to run background checks on fake names and false social security numbers.

Amazingly, three out of the five transactions in the study -- or 60 percent -- required that the purchaser return to the gun shop at a later time.⁴ Why is this amazing? Because by definition, none of the fraudulent social security numbers being used by the undercover agents should have generated any adverse information. Nevertheless, 60 percent of the gun purchases were delayed!

Americans should not be surprised the government trains aren't running on time. Such is our fate when we willingly allow officials to run background checks and impose other types of gun control on decent citizens. All of this downgrades God-given rights into mere privileges.

By their very nature, background checks are primarily going to impact decent citizens and not criminals.

Consider that of all people who own guns, criminals and law-abiding included, less than one percent will ever commit a crime with a gun. Yet, the instant check's sweeping net is cast over 100 percent of the decent people who buy a firearm from a gun dealer. This simply cannot be considered efficient crime fighting. But it gets even worse.

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Of the less than one percent of gun owners who are criminals, the overwhelming majority gets their guns through *illegitimate means*. For example, one Justice Department survey of incarcerated felons showed that 93 percent of handgun predators had obtained their guns "off the record."⁵ (The Department of Justice (DOJ) did not ask how many of the seven percent used false ID's or straw purchasers.)

Several years later, government agents conducted another study where they tried to determine what most thinking people would consider to be obvious: can people illegally buy firearms with fake ID's?

In 2001, the GAO found the answer to that question was (surprise!) people can easily use bogus identification to purchase firearms.⁶ In every state they tried, undercover agents were able to buy guns with fake ID's 100 percent of the time. The logical conclusion, of course, is that the Brady Law is NOT stopping criminals from using such bogus documentation to buy firearms.

No surprise there. Gun Owners of America, along with most of the gun community, *predicted* this would happen long before the Brady Law ever passed.

So here's the situation: while the Brady Law is harassing citizens and putting them through additional expense, the criminal on the street goes unscathed.

Time and time again the anti-gun lobby, along with its apologists in the media, has treated us to a steady use of "smoke and mirrors." Around the five-year anniversary of the Brady law, Americans were told that 400,000 people had been stopped from buying a gun by the Brady registration check.⁷

Americans were told that these people were dangerous criminals. Further, gun control advocates promised us that that the national law mandating background checks was dropping crime rates around the country.

But when you looked through the smoke and got behind the mirrors, you saw that their claims simply evaporated into thin air.

According to the GAO, the Brady Law resulted in seven prosecutions and only three persons being sent to jail after its first year and a half in operation.⁸ Three persons in 18 months!

The situation did not improve much in subsequent years either. The Washington Times noted in July of 1999 that:

Although federal officials say about 400,000 persons have been prevented from buying guns by the instant check system, only one has been prosecuted by the Department of Justice in the last three years.⁹

That made for a whopping total of just eight prosecutions and merely three persons sent to jail in five years. You certainly had to conclude that the Brady Law was not working to put criminals behind bars.¹⁰

Surprisingly, even promoters of the law have come out of the closet in recent years and admitted the law is failing to live up to its promises. One of the nation's leading anti-gun medical publications, the Journal of the American Medical Association (JAMA), reported in 2000 that the Brady registration law has failed to reduce murder rates.

JAMA concluded that states implementing waiting periods and background checks did "not [experience] reductions in homicide rates or overall suicide rates."¹¹

So even according to its ardent supporters, the law has not resulted in the declining murder rates that have characterized the 1990s. That should lead us to ask a very important question: why should we leave a law on the books that penalizes honest citizens, but rarely punishes criminals?

Even backers of the law have to admit it is not punishing criminals. Imagine for just a moment that the thousands upon thousands of people stopped at gun stores by the Brady check are bona fide felons. If these people are truly criminals, then why are almost all of them still out on the street? As we shall see, being stopped at a store does not keep criminals from getting guns elsewhere.

Despite the audacious claims made by Brady advocates, this law is not working to make society safer. A July 1999 shooting that made national headlines is indicative of this fact.

Benjamin Smith was rejected when he tried to buy a firearm from an Illinois gun dealer. His past raised a red flag, and authorities denied him the firearm.

But after this initial rejection, "he hit the streets and in just three days had two handguns" from an illegal source, reported the Associated Press.¹²

Three days after getting the guns, Smith went on a rampage that killed two people and wounded nine others.

The truth of the matter is that all the millions of dollars that have been poured into conducting background checks in this country cannot stop -- and have not stopped -- the Benjamin Smith's of the world from getting guns.

And yet the Clinton administration bragged that as of 1999, the Brady Law had stopped over 400,000 bad guys from getting guns.

Some have wondered why Benjamin Smith was not put in jail after his initial rejection. But what they don't realize is that background check laws were never intended to incarcerate felons who attempt to buy firearms.

Brady Law was *NEVER INTENDED* to put criminals behind bars

The Department of Justice (DOJ) admitted as much in letters to Senators Phil Gramm and Jon Kyl, stating that the Brady "statute was not primarily intended as a prosecutive mechanism."¹³ In other words, the law was never meant to prosecute real felons and put them behind bars.

Rather, says the DOJ, "The Brady Law fully serves its purpose when it succeeds in thwarting the acquisition of a firearm." But what if the "felon" simply walks out the door and buys a gun down the street?

Ohio's Attorney General, Betty Montgomery, testified to this very irony in the law in 1997:

In 1996, 60,037 people went to licensed gun dealers to purchase handguns. Of that figure, 327 -- less than one half of one percent -- were denied because of a disqualifying factor.... [W]hile we were able to keep 327 people from getting a handgun at point A -- each of them was able to purchase a rifle or handgun the very same day at point B. To our knowledge, under the Brady Act, not a single one of the 327 people who falsified the form and tried to purchase a handgun illegally have been prosecuted by the U.S. Justice Department.¹⁴

Taxpayers in Ohio spent almost *a million dollars* and what did they get? Not one person was even prosecuted. Not one criminal was taken off the streets despite the fact that it is a felony for a convicted felon to even attempt to purchase a firearm. The streets of Ohio are not one bit safer. In fact, the streets may actually be relatively more dangerous since the police can no longer focus their attention on real crime fighting, but must now spend countless man-hours scrutinizing honest citizens as if they were criminals.

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Consider what law enforcement has to say about this law. Chiefs of police and sheriffs have overwhelmingly indicated that the Brady Law is NOT making our neighborhoods any safer. A 1997 poll conducted by the National Association of Chiefs of Police (NACOP) shows that a full 89 percent of these top cops agree that the Brady Law has not prevented any criminal "from obtaining a firearm from illegal sources" in their areas.¹⁵

From its inception, the Brady registration check was NOT about taking criminals off the street, and most of the people denied firearms under the law have not been dangerous felons. The GAO discovered this when it reported on the "effectiveness" of the Brady law in 1996.

The GAO found that almost 50% of denials under the Brady Law were erroneous -- that is, they were for administrative snafus or traffic violations.¹⁶ How come gun grabbers, when trying to show us how many criminals were supposedly being stopped, never told us that almost 40% of the denials are for administrative errors, like sending paperwork to the wrong department?

Almost 10% of the people denied firearms were rejected for outstanding traffic tickets!

Do you feel safer now?

Thankfully, the GAO is not the only organization that figured out the Clintonesque game of smoke and mirrors. *The Indianapolis Star and News* reported in 1998 that the U.S. Department of Justice had overstated the number of people who were denied firearms in Indiana alone by more than 1,300%.

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Indiana was not an aberration, as the newspaper found that "paperwork errors and duplications inflated the [DOJ's] numbers" in many states.

The Brady registration check is NOT working the way its creators had envisioned. But in one area, the law is doing one thing rather well. It is registering law-abiding gun owners, despite prohibitions in the law.

In November 1998, the Brady Law "sunset" into a national instant check. To conduct the instant background check, the name of the firearm's purchaser must now be entered into a computer and checked against criminal, mental illness, and several other records.

The nature of computerized background checks makes registration of gun owners not only possible, but likely. Mike Slavonic, NRA Director and Chairman of the Legislative Committee for the Allegheny County Sportmen's League, correctly stated that the instant background check could be "our downfall." He notes that:

What most Americans don't know is that... the purpose of [the] Brady [Instant Check] could be used to set the stage for national confiscation. Instant check could eventually keep guns out of the hands of everyone by registering everyone who purchases a handgun, rifle and shotgun and who obtained concealed weapons permits in a computerized database.¹⁸

Gun Owners of America has documented several instances where state or federal officials have violated the privacy of gun owners under the Brady Law. For example:

* In 1994, the Justice Department gave a grant to the city of Pittsburgh and Carnegie Mellon University to create a sophisticated national gun registry using data compiled from states' background check programs. While this attempt at registration was subsequently defeated in the courts, it clearly shows the intent of federal officials to evade prohibitions in the law. ¹⁹

* In 1996, a computer software distributed by the Justice Department allowed police officials to easily (and unlawfully) register the names and addresses of gun buyers. This software -- known as FIST -- also kept information such as the type of gun purchased, the make, model and caliber, the date of purchase, etc.²⁰ The default in the "FIST" computer software allowed police officials to indefinitely retain the information on gun owners -- despite the fact that Part I of the Brady law only allowed officials to retain this data for 20 days.

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* In 1996, police officials in Texas were found keeping the records of firearms purchases, in defiance of the Brady Law.²¹ These records (taken from the Brady-mandated background checks) went back many months and were used for purposes other than that for which they were intended, such as collecting fines or fees. These records included the name, address and driver's license number of the gun owner.

* In Ohio, the Attorney General's office admitted in 1997 that Brady background checks were being used to register gun owners. Even though the (Ohio) administration would destroy all paper records after 20 days, they did "maintain a computer log of Brady-related inquiries for a period of one year" -- in defiance of the Brady law.²²

* Despite prohibitions in federal law, the FBI announced in 1998 that it would begin keeping gun buyer's names for six months. Although this registration period was later dropped to 90 days, the FBI had originally wanted to keep the names for 18 months. They reduced the time period after groups like Gun Owners of America strongly challenged the legality of their actions. GOA submitted a formal protest to the FBI, calling their attempt at registration both "unlawful" and "unconstitutional."²³

Among some of the reforms instituted by President George Bush in 2001 was a change in this 90-day record-keeping requirement. His Attorney General, John Ashcroft, announced in June of that year that the FBI would not keep records of innocent gun owners for longer than 24 hours.²

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So the official word from the FBI is that all good guys' names are being destroyed within 24 hours. That's what FBI officials tell us they are doing.

But they also said they gave Timothy McVeigh's defense all the files they had²⁵... and that they never fired any pyrotechnics into the Branch Davidian home in Waco

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... and that they knew Michael Salvati of Massachusetts was guilty of murdering a man in 1965 -- when in reality FBI officials

suppressed

evidence that would have cleared Salvati, thus sparing him the 30 years he later spent in jail.

²⁷

The FBI has since been forced to "come clean" on these and other issues.

For these reasons, gun owners have to wonder if they are truly getting the truth when it comes to the instant registration check. Once a name is punched into an FBI computer, can anyone be positively sure that name will ever be deleted? Can anyone be sure that no back up will exist -- anywhere?

In this day and age of computer technology, how can anyone truly promise that absolutely no registration records will be kept after a background check is made? No matter what the law, the temptation is too great to maintain some back-up disk somewhere. Even the Democratic Office of Technology Assessment admitted this in 1991 when commenting on the instant check system. "The potential [for registration] exists," it declared, "regardless of legal prohibitions."²⁸

It must be kept in mind that the FBI has a history of mishandling the records of innocent civilians. In 1996, the national press corps revealed that the FBI had illegally provided files on prominent Republicans to President Bill Clinton.²⁹ Make no mistake, the agency's past track record argues against trusting them with the names of innocent gun owners.

But why all the fuss about gun owner registration? Quite simply, gun registration has been used -- even in this country -- to later confiscate firearms. One such instance occurred in New York City just a few years ago.

It all began with promises made by New York City officials in the mid-1960s. They wanted to register long guns, over the vocal opposition of the city's gun owners. The city fathers promised they would never use such lists to take away firearms from honest citizens. But in 1991, the city banned (and soon began confiscating) many of those very guns.

Gun owners were ordered to get rid of their newly banned firearms. Those who didn't comply were subject to having their firearms taken away.

For example, the *New York Daily News* reported in 1992 "police raided the home of a Staten Island man who refused to comply with the city's tough ban on assault weapons, and seized an arsenal of firearms.... Spot checks are planned [for other homes.]"

New York City officials do not hold a monopoly when it comes to showing bad faith.

California passed a ban on certain semi-automatic firearms in 1989. Banned guns could be legally possessed if they were registered prior to the ban. In the spring of 1995, one man who wished to move to California asked the Attorney General whether his SKS Sporter rifle would be legal in the state. The citizen was assured the rifle was legal, and based on that information, he subsequently moved into the state. But in 1998, California officials reversed course and confiscated the firearm.³¹

Since then, documents leaked from the office of the California Attorney General have showed that state officials were planning a mass-confiscation of privately owned firearms from citizens who had previously registered their guns.³²

The semi-automatic firearms in question were registered with the state pursuant to former Attorney General Dan Lungren's instructions. Lungren had granted an amnesty to thousands of gun owners and allowed them to register their guns after the initial deadline for doing so had lapsed.³³

Despite the good faith shown by gun owners, the California government later ordered these gun owners to dispose of their weapons.

How did the authorities know whom to contact to notify them to turn in their weapons?

The registration lists, of course.

This proves the point that the ultimate goal of registration is to facilitate confiscation.

Not surprisingly, gun registration has also led to confiscation in several places outside of the United States, including Greece, Ireland, Jamaica and Bermuda.³⁴

More recently, full-fledged confiscation of firearms has taken place in England and Australia. Gun bans that were passed in 1997 resulted in massive turn-ins of firearms.³⁵

Wherever they existed, registration lists greatly facilitated the confiscation. For example, one Australian news service reported that:

Victoria's high compliance is due to its long-established registration scheme, which will tell police where to look for illegal firearms after 1 October. The absence of a registration scheme and lower compliance elsewhere has led to speculation that up to two million illegal guns may still be out there.³⁶

For this reason, many gun owners in the United States are wary of the Brady instant check, as it certainly gives government officials the means of compiling a registration list. And to what end? Will gun owner registration help police solve murder mysteries?

Well, if the experience from Hawaii is any indicator, the answer is a resounding "NO!" Police have spent tens of thousands of man-hours administering licensing and registration laws, but there has not even been a single case where police claim these laws have served to identify a criminal.³⁷

Again, here we have gun control laws that do nothing to help catch criminals, but only focus their evil fangs on decent citizens who have committed no crimes.

As bad as the five-day waiting period was, the danger it posed was far less than that of the Instant Registration Check. The Brady Instant Registration Check is the foundation for a national, centralized, computerized registration list of gun owners. And the lessons to be learned from countries abroad show that registration is a disease that must be avoided like the plague.

In an exhaustive study on the subject of foreign gun control, Jews for the Preservation of Firearms Ownership has researched and translated several gun control laws from other countries. Their publication, *Lethal Laws: "Gun Control" is the Key to Genocide*, documents how gun control (and confiscation) has preceded the slaughter and genocide of millions of people in Turkey, the Soviet Union, Germany, China, Cambodia and other countries.³⁸

Once the identification of gun owners is in place (registration), the thugs in power (a.k.a. the government) confiscated firearms. In Rwanda, they also confiscated machetes. Then the slaughter of the target population began -- Jews in Nazi Germany, Ukrainians and others in Soviet Russia, Christians in Uganda, Indians in Guatemala, the educated in Cambodia and so forth.

This is not to say that genocide must follow the confiscation of firearms -- just like the removing of a fire extinguisher from a home does not mean the house must catch on fire.

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History teaches, however, that guns (like fire extinguishers) are effective insurance policies. Many problems could have been prevented if decent people had the freedom to choose the best "insurance" available to them. And many people could have retained their "insurance" if they had never been registered in the first place.

The figures are in. During the past century alone, governments have slaughtered their tens of millions, the Al Capones their scores and hundreds.³⁹ Yet Sarah Brady, Sen. Charles Schumer (D-NY) and the other advocates of civilian disarmament breeze right on past the killing fields of our recent past. They also overlook the massive threat to personal security posed by center-city street gangs.

Instead, their desire is to convince us all that it is the guns of the victims that are at fault -- decent people wishing to protect themselves from the criminals set loose on our streets by our government. We are watching a monumental shifting of the blame from those who have brought us a failed system of criminal justice. They want us to look not at murderers put out on the street. Rather than blame murderers, "blame guns" we are told.

Our answer to the civilian disarmament crowd has to be that crime is their fault, not the fault of gun owners. Gun control laws kill. When stating our position, we must not fall into the trap of agreeing to policies, such as the Instant Registration Check, that make disarmament possible. We should press on for what we want -- the free exercise of a constitutionally protected right to keep and bear arms. After all, we will never get more than we ask for.

Gun controllers are the friends of criminals and the enemies of freedom. They arrogantly assume that only they (and their buddies in the government) are responsible enough to be trusted with guns. The watchword should be that guns save lives, gun control kills. And the Instant Registration Check is gun control -- a threat to every citizen.

1 *U.S. v. Lopez*, 514 US 549 (1995).

2 The Court in *U.S. v. Lopez* agreed with the long-standing principle that "Congress' authority is limited to those powers enumerated in the Constitution." The Clinton administration argued the school zone gun ban was justified under the Commerce Clause in Article I, Section 8. But the Court disagreed and held that such a law "exceeds Congress' Commerce Clause authority."

3 *Near v. Minnesota*, 283 US 697 (1931).

4 See General Accounting Office, "Firearms Purchased From Federal Firearm Licensees Using Bogus Identification" (March 2001)
at http://www.house.gov/reform/min/inves_guns/guns_loop.htm on the internet.

5 U.S., Department of Justice, National Institute of Justice, "The Armed Criminal in America: A Survey of Incarcerated Felons," Research Report (July 1985): 36.

6 See *Supra* note 4.

7 Sean Scully, "Supremacist's shooting spree could spur gun control moves," *The Washington Times*, July 8, 1999.

8 General Accounting Office, "Gun Control: Implementation of the Brady Handgun Violence Prevention Act" (January 1996), p. 8.

9 Scully, "Supremacist's shooting spree could spur gun control moves," *The Washington Times* (July 8, 1999).

10 There are no reliable, government statistics that regularly update the public on how many Brady violators are being incarcerated. However, everyone agrees the number is very low. For example, a training manual produced by Handgun Control, Inc., guides its activists in how to answer a question regarding the low number of convictions under the Brady Law. The manual basically says, when you are asked why so few people are being sent to jail under Brady, just ignore the question. The question posed in the manual reads: "Q: You claim that the Brady Law works, why have only 7 people been convicted for violating the law?" To answer this question, the manual encourages activists to go on the offensive and say the following: "A quarter-million high-risk people have been stopped from buying firearms since 1994, and that was always the point of the Brady law. Ninety percent of Americans agree that background checks and waiting periods are sensible regulations that protect public safety. With the success of the Brady law, the only people who continue to oppose regulating guns like other products are the gun lobby and the politicians who receive their enormous campaign contributions." [Naomi Paiss, "Sense and Sanity: A Guide to Talking about Gun Control," Handgun Control, Center to Prevent Handgun Violence (November 1997). In other words, since there is no good answer to this question, from their perspective, activists are to remember three words: Attack, Attack, Attack.

11 Jens Ludwig and Philip J. Cook, "Homicide and Suicide Rates Associated With Implementation of the Brady Handgun Violence Prevention Act," *Journal of the American Medical Association*, vol. 284, no. 5 (August 2, 2000).

12 Don Babwin, "Illegal Dealer Sold Killer His Gun," *Associated Press* (July 7, 1999).

13 GAO, "Gun Control: Implementation of the Brady Handgun Violence Prevention Act," p. 42.

14 Ohio Attorney General Betty D. Montgomery, "The U.S. Supreme Court's Action in Striking Portions of the Brady Act," News Statement (June 30, 1997).

15 National Association of Chiefs of Police, 10th Annual National Police Survey Results, 1997 Survey of All Local Law Enforcement Agencies in the United States (1997).

16 Of persons denied the right to purchase a firearm under the Brady Law, 7.6 percent of the denials involved routine traffic stops. Another 38.9 percent were the result of administrative snafus. Only 44.7 percent of denials were as a result of felony convictions, and many of these resulted from white-collar crimes and ancient peccadilloes which would not suggest that the person would pose a danger. GAO, "Gun Control: Implementation of the Brady Handgun Violence Prevention Act," p. 39-40, 64-65. .

17 Meghan Hoyer, "Brady Act results overstated in Indiana," *Indianapolis Star and News*, June 23, 1998.

18 Mike Slavonic, "Another Gun Database Discovered," *Pennsylvania Sportsmen's News*, at 7.

19 Bureau of Justice Assistance, Grant Manager's Memorandum, Pt. 1: Project Summary, September 30, 1994, Project Number: 94-DD-CX-0166.

20 Copy of "FIST" (Firearms Inquiry Statistical Tracking) software at GOA headquarters, Springfield, VA. See also *Pennsylvania Sportsmen's News* (Oct./Nov. 1996).

21 Stephen B. Savoy, City Marshal, Groves Police Department, letter dated July 25, 1996. Police authorities were retaining gun buyers' names under Part I of the Brady Law (which

required a background check by state authorities).

22 Letter from Jennifer Worner, Legislative Liaison, Attorney General's Office to Senator Robert Latta, June 12, 1997.

23 FBI's Final Rule printed in the Federal Register, October 30, 1998 at 58311. After the FBI submitted its proposed regulations on June 4, 1998, Gun Owners of America submitted written comments (in September of 1988) to challenge the FBI's regulations. GOA stated, "These proposed regulations are unlawful and unconstitutional. They are so fundamentally corrupt that there are no incremental changes which will even marginally improve them. Rest assured that they will be challenged in every possible judicial and legislative forum.... The efforts to retain information on gun owners for eighteen months -- and indefinitely in your computer backup system -- constitute an illegal system of firearms registration, in violation of 18 U.S.C. 926. The same is, in fact, true even for efforts to retain information about persons prohibited from purchasing firearms."

24 Russ Rizzo, "Gun records' life shortened: Ashcroft tells FBI to destroy background papers after 1 day," *The Dallas Morning News* (June 29, 2001).

25 P. Solomon Banda, "Justice Department turns over thousands of mistakenly withheld documents on McVeigh defense team," *Associated Press* (May 10, 2001).

26 Lee Hancock, "FBI to acknowledge use of pyrotechnic devices," *The Dallas Morning News* (August 25, 1999).

27 David Shuster and Sharon Kehnemui, "Man Imprisoned 30 Years for Crime FBI Knew He Didn't Commit," *Fox News* (May 04, 2001).

28 U.S. Congress, Office of Technology Assessment, Automated Record Checks of Firearm Purchasers: Issues and Options, OTA-TCT-497 (July 1991), p. 40.

29 George Archibald, "FBI broke own rules in handing over files," *The Washington Times* (June 12, 1996).

30 John Marzulli, "Weapons ban defied: S.I. man, arsenal seized," *New York Daily News*, 5 September 1992.

31 NRA Press release, Gun Confiscation Begins: Gun Law Victim Holds Press Conference and Turns in Gun to Local Officials, (January 28, 1998).

32 Three documents in particular which were leaked to the public include: 1. A June 11, 1999, Department of Justice Information Bulletin addressed to "All Law Enforcement Agencies" and which was entitled "Relinquishment of Assault Weapons," signed by Doug Smith, Chief of the Bureau of Criminal Information and Analysis for the Attorney General; 2. A June 8, 1999 letter on the Attorney General's stationery entitled "Notice to All Persons who Attempted to Register an Assault Weapon in California After March 30, 1992;" and 3. A form entitled "List of Assault Weapons Subject to Relinquishment" which was to be sent to all gun owners listing the "illegal assault weapons" and instructions for relinquishment and a request for a refund of the registration fee only. See <http://www.gunowners.org/fs9906.htm> for more information. After the documents were inadvertently leaked, the Department of Justice denied that it ever planned to confiscate anything and argued that these documents were merely "drafts" and "for discussion only" and that it had no plans to implement them at that time.

33 Criminologist Gary Kleck reports that "even after extraordinary efforts to achieve voluntary compliance with [the registration] measure, about 78 to 89 percent of the guns remained unregistered, in defiance of [California] law." Gary Kleck and Don B. Kates, *Armed: New Perspectives on Gun Control* (2001).

34 David Kopel, "Trust the People: The Case Against Gun Control," [Cato Institute] Policy Analysis 109 (July 11, 1988):25.

35 "Large-caliber handguns banned in Britain," *Associated Press*, October 1, 1997; "Australians turn in 600,000 weapons," *Associated Press*, October 1, 1997.

36 "Farewell to arms, gun by gun," *The Age Online*, September 20, 1997.

37 John Lott, "When gun Control Cost Lives: Licensing legislation diverts attention from getting criminals off the street," *National Review* (June 12, 2001).

38 Jay Simkin, Aaron Zelman and Alan M. Rice, *Lethal Laws: "Gun Control" is the Key to Genocide* (Milwaukee: Jews for the Preservation of Firearms Ownership, 1994).

39 According to R.J. Rummel, governments across the globe were guilty of killing 169 million innocent civilians during the 20th Century. R.J. Rummel, *Death by Government* (1994), pp. 1-27.

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