



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
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WASHINGTON, D.C. 20036

STATEMENT
OF
J. WARREN CASSIDY
EXECUTIVE DIRECTOR
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BEFORE THE
THE UNITED STATES SENTENCING COMMISSION
APRIL 15, 1986

DRAFT TESTIMONY BEFORE THE U.S. SENTENCING COMMISSION

My name is J. Warren Cassidy and I am Executive Director of the National Rifle Association's Institute for Legislative Action.

On behalf of the more than 3 million members of the National Rifle Association, I thank you for giving me this opportunity to contribute to your valuable efforts. Our NRA Bylaws detail the purposes and objectives of our association; and second among those purposes is "to promote public safety, law and order, and the national defense."

Thus we share a keen interest in sentencing and sentencing standards as effective ways to reduce violent crime, particularly violent crime in which dangerous weapons are used.

I wish to address sentencing and sentencing procedures from three perspectives: first, the armed criminal and weapons of choice; second, the armed career criminal and drug traffickers; and finally, violators of regulatory firearms laws.

Since 1958, the NRA has advocated mandatory terms of imprisonment for persons who use firearms, and other weapons, to commit violent crimes. Such penalties were included in a potentially effective crime-control provision of the Gun Control Act of 1968, and its reform legislation, the Firearms Owners Protection Act, where the mandatory penalty provisions also apply to the use of firearms in drug-trafficking offenses.

During the first two decades, our stand on mandatory penalties emanated from common sense alone; now, however, hard evidence from states which support this public policy proves conclusively the merit of imposing fixed jail time on violent criminals. The NRA has supported mandatory penalty legislation in dozens of states, including Arizona, Florida, South Carolina, Idaho, California, Michigan, Virginia and others. In the District of Columbia, we campaigned for an initiative in 1983 that passed 73 percent to 27 percent, in an overwhelming display of public approval for a measure that at least held the promise of curbing violent crime. That law has worked. In Washington, D.C., the adoption of mandatory penalties saw the violent crime rate fall by 18 percent and the

homicide rate by 7 percent between 1982 and 1984. I should add that these crime decreases stand in sharp contrast to the 48 percent rise in violent crime and a 14 percent rise in the homicide rate (1976-1982) which D.C. experienced after its City Council imposed a city-wide handgun ban in February 1977.

Throughout the nation, mandatory penalties show particular effectiveness in reducing predatory crimes like murder and robbery — the crimes research shows are most feared by citizens. Delaware and Maryland have both shown substantial drops in homicide and measurable declines in robbery while the rest of the South Atlantic saw robbery increase between 1972 and 1984. Between 1974 and 1984, both Arizona and Arkansas led their regions in homicide declines and notched substantial reductions in robbery. The Georgia homicide rate fell 32 percent while falling but 13 percent in the rest of the South Atlantic between 1976 and 1984, and the state's robbery rate remained almost unchanged while rising 13 percent in the region. With mandatory penalties, between 1975 and 1984, South Carolina and Virginia recorded 37 percent and 33 percent drops in homicide rates respectively, and 7 percent and 26 percent drops in the state robbery rates.

While these strides in crime control are significant, I submit that they are limited by targeting firearms as the only crucial weapon carried by dangerous criminals. Victimization studies of the U.S. Department of Justice demonstrate that persons who use knives to commit violent crimes, such as assault and robbery, are more likely to injure their victims. It is the willingness to inflict bodily injury on the part of the criminal that is the crucial factor, and we must target those criminals who equip themselves with deadly weapons of any kind if we are to succeed in controlling violent, criminal attacks.

In this regard, the state of Georgia has a well-written statute. Georgia's criminal code includes both firearms and knives under the provision for mandatory sentencing for possession during the commission of a crime. The expansion of provisions like this is to include all "dangerous" or "deadly" weapons is the next logical step.

We would encourage this Commission to adopt a policy guideline for judges and parole boards to take into account the importance of minimizing the disparity in sentencing between violent criminals who use firearms and those who use other dangerous weapons. Violence is the common denominator; the tool used to commit that violence should not be treated selectively or focus solely on firearms as federal law currently mandates.

Second, the effectiveness of mandatory penalties on armed career criminals and drug traffickers must be weighed. Massive evidence indicates that if armed career criminals, who commit vastly more than their share of crimes, are subjected to mandatory penalties, dozens of crime per year will be prevented. Indeed, some of the research from John Ball, J.W. Shaffer, and David Nurco ("Day to Day Criminality of Heroin Addicts in Baltimore") suggests a prevention rate of up to 215 crimes per year per career criminal incarcerated. Such benefits to society are confirmed by a Rand Corporation study ("Varieties of Criminal Behavior," by Jan and Marcus Chaiken), the Wright-Rossi felon survey ("The Armed Criminal in America"), and other studies. Career criminals represent such a relatively small percentage of the criminals in this country that any fear of prison overcrowding is unwarranted. Prison space will always be adequate to house them. Other, less dangerous and unarmed criminals may serve shorter terms as a result, but these criminals pose far less of a threat to society than the repeat offenders.

The importance of adding armed drug-traffickers to those subject to mandatory terms of imprisonment in federal law is clear. Drug-trafficking is a crime which disproportionately involves the federal government. Most violent crimes are state offenses, and such criminals comprise the bulk of state prisoners. That is not the case with drug-traffickers, who represent a relatively small percentage of state felons, but a relatively large proportion of federal prisoners. And the increasing federal role in trying to curtail the problems of drug-trafficking and the crimes associated with the business justifies stringent penalties for armed drug-traffickers.

In any consideration of mandatory penalty legislation, it must be noted that these provisions can only be effective to the extent that they are requested by prosecutors and imposed by judges. It is incumbent on this Commission, in my estimation, that you encourage a sentencing policy and guidelines which call on judges to be faithful to law regarding mandatory penalties. The most recent thorough statistical study of judicial discretion in using mandatory penalties was conducted by Professors Alan Lizotte and Marjorie Zatz on California law ("The Use and Abuse of Sentence Enhancement for Firearms Offenses in California") where they found that judges only imposed the sentence on robbers after they had been convicted for their fourth robbery in a three-year period. Had California judges fully used the law, these robbers would not have been on the streets free to commit their second, third, and fourth crimes.

Finally, the NRA draws a sharp distinction between mandated jail terms for those violent criminals who pose a threat to society and those individuals who commit technical violations of regulatory firearms laws.

This distinction is particularly acute at a time when the nation must balance the need for citizen safety against the problem of prison overcrowding.

Judicial discretion and leniency may be called for when dealing with persons who have committed minor, victimless, technical, and paperwork violations of federal gun laws. In general, we oppose stringent or mandatory sentencing of persons who carry or transport firearms in violation of federal, state, or local law. It is a victimless crime which is committed rather frequently, and innocently. It is estimated that some five to twelve million Americans may carry firearms for protection, and millions more transport firearms at some time, quite often in technical violation of one or more of the 20,000 restrictive gun laws on the books. Weapons offenses such as these are not perceived as particularly important by the American public, as indicated by a U.S. Justice Department "National Survey on Crime Severity," and as revealed in the classic study of "The American Jury" by Harry Kalven and Hans Zeisel. In these cases, severe sentencing does not work to reduce crime, but only to work an injustice.

My home state of Massachusetts adopted a mandatory prison term for carrying a firearm without a license. The result? The Bay State has seen its violent crime rate skyrocket, its homicide rate mirror national trends, but its prisons incarcerate persons who had never before committed crimes and who were not arrested attempting to commit a violent crime. Indeed, the most recent egregious case involved a citizen who used an unlicensed firearm in self-defense and now faces a one year mandatory jail sentence. Authorities had previously refused to act against the man's antagonist despite threats the citizen had received from his assailant — a man with a police record. The state Supreme Court recently upheld that sentence for carrying under the Bartley-Fox mandatory sentencing law, although the use of the gun was found by the jury to be justifiable self-defense, saying that "Before the days of a mandatory one-year sentence, the special circumstances involving the accused could be reflected reasonably in the sentencing . . . That option is no longer available"

The mandatory penalty provision was imitated in New York. And now a subway employee — working in a system where courts have ruled the police have no obligation to protect citizens from violent crime — faces a potential mandatory penalty for carrying a handgun with which he saved his life from a violent assault inflicted by two robbers.

We deplore the mindset that would send an otherwise law-abiding citizen to jail for a firearms law violation discovered as a consequence of defending his own life from criminal attack. Certainly, a violation of these carry laws in the interest of self-defense is less serious than a judge's rejection of a law calling for a mandatory sentence for armed violent criminals in the interest of prison overcrowding.

Although carrying a firearm without a permit was not on the "Offense Seriousness Questionnaire" sent out by this Commission, when it appears in Justice Department surveys of perceived offense seriousness, the public at large tends to rank it as relatively inconsequential. Likewise, on your questionnaire, we would rank those offenses which actually involve firing a gun in an attempt to injure or kill as very serious. The "estranged husband" convicted of murdering his wife, incident "C", should be ranked most serious of the 16 situations presented. Incident "J" — where a hiker shoots at a forest

ranger — should also be ranked as a grave crime. Incident "O," however, is much more difficult to judge accurately, and it serves to point up a common problem with regulatory firearms laws. The phrase "individual with a prior felon record" could mean many different things, from a dangerous and violent criminal, to a college student convicted of destruction of property in a fraternity prank. Yet both individuals are treated alike under current law, and most who answered the questionnaire probably envisioned the former as the object of the question. Unfortunately, "true" criminals are not apprehended in that manner; the law succeeds only in capturing those who conduct themselves as, and believe themselves to be, law-abiding citizens.

We urge this Commission to establish a policy and guidelines with regard to technical violations of the federal gun laws. Under current law, all violations of the Gun Control Act of 1968 are felonies, subject to penalties of up to five or ten years imprisonment and fines of up to \$5,000 to \$10,000. Congress is currently considering the Firearms Owners Protection Act which, if passed, would make it necessary to prove that violations of the federal gun law were willful for many of the technical, paperwork violations of the law, and which would reduce some of the offenses to misdemeanor level.

I hope that reform legislation passes. It would not, however, entirely solve the problems faced by gun owners. Aside from the mandatory penalties for committing violent or drug-trafficking crimes with guns, most of the offenses possible under the Gun Control Act, whether felony or misdemeanor, would remain malum prohibitum rather than malum in se offenses.

We should recommend that in most instances — either under current law or under the revised law, if Congress passes and the President signs the Firearms Owners' Protection Act — the federal sentencing guidelines should mirror those in the FOPA.

We believe a sentencing guideline could well be patterned after U.S. v. Ruisi (460 F. 2d 153), where the judge, recognizing the technical guilt but absence of malice in the defendants, established a sentence of one day's probation. We find that to be a model sentencing guideline or policy for such cases. Persons who commit these often unknowing, but assuredly petty, offenses, should not really be punished. For such

generally law-abiding persons, the mere embarrassment of arrest, the expense of hiring an attorney and possibly losing one or more firearms to forfeiture, and the ignominy of a criminal conviction record, are adequate — indeed, excessive — punishment. Additional fines or jail time would be a superfluous injustice.

We believe that sentencing guidelines should be aimed at swift and certain punishment for serious, violent, and dangerous armed criminals, but at a policy of leniency for technical, paperwork and malum prohibitum violations of laws regarding firearms acquisition, transfer, transportation, and disposition among the generally honest gun owners of this country.

Thank you.



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OFFICE OF THE
EXECUTIVE DIRECTOR

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May 9, 1986

Commissioner Michael K. Block
The United States Sentencing Commission
1331 Pennsylvania Avenue N.W.
Suite 1400
Washington, D.C. 20004

Dear Commissioner Block:

Per your request, please consider this letter an addendum to our written testimony delivered on April 15, 1986.

With regard to specific lengths of sentence for the use of weapons in the commission of violent crime, we support the provisions of the recently-passed Firearms Owners' Protection Act. That legislation provides for an additional mandatory five-year sentence for carrying or using a firearm during and in relation to a crime of violence. For the second offense, the penalty is increased to ten years. The certainty of punishment is ensured by the fact that these penalties may not run concurrently with the sentence for the primary crime, nor may they be shortened with probation or parole.

The National Rifle Association also recommends similar penalties for the carrying of any deadly weapon during and in relation to a crime of violence. Again, five years for the first offense and ten years for the second are acceptable. We have supported slightly shorter sentence enhancements from time to time, for this reason: The length of sentence for misusing weapons in the commission of violent crimes is less crucial than the certainty that those punishments will be meted out.

That swift and certain punishment is a deterrent to criminal weapons-carrying was recently confirmed by the study, "The Armed Criminal in America" (July, 1985). That weapons use as a whole is a problem meriting our concern was likewise confirmed by the Bureau of Justice Statistics study, "The Use of Weapons in Committing Crime" (January, 1986).

The Wright-Rossi felon survey, commissioned by the U.S. Justice Department under a grant from the National Institute of Justice, indicated that mandatory penalties or sentence enhancements may be significant deterrents to weapons carrying by criminals. Almost 70% of the respondents who did not carry firearms but did carry other weapons said the prospect of getting "a stiffer sentence" for their crime if they carried a firearm was a "very important" or "somewhat important" factor in their decision not to carry a firearm. Even more impressively, fully 79% of those who carried no weapon indicated that the fear of stiffer sentences was "somewhat" or "very important" to them.

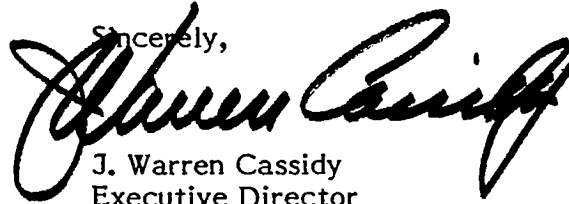
Yet a focus on criminal misuse of firearms without attention to other weapons is misguided, as the Bureau of Justice Statistics demonstrated. Between 1973 and 1982, there were twice as many victimizations by criminals using weapons other than firearms as those carried out with firearms. In addition, victims were almost twice as likely to be injured by a knife-wielding criminal as by a gun-toting one.

The National Rifle Association also recommends that the federal government prosecute "two-time losers" for mere possession of a firearm under the Gun Control Act of 1968. This prosecution should be in addition to prosecution for their federal crime of violence and the imposition of the mandatory penalty. Furthermore, we urge the Commission to recommend that recidivist state offenders with previous convictions for violent offenses also be prosecuted for violations of the Gun Control Act of 1968 when it is applicable. In this way, the purpose of GCA '68 -- "to provide support to federal, State, and local law enforcement officials in their fight against crime and violence" -- will be fulfilled. As the Wright-Rossi survey, as well as the earlier Rand study of California inmates (1980), demonstrated, keeping active, violent, career criminals off the street will greatly reduce the rate of violent crime.

Thank you for your interest in our views. We look forward to continuing a dialogue with this Commission.

Best wishes.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Warren Cassidy". The signature is fluid and cursive, with the first name "J." being particularly stylized.

J. Warren Cassidy
Executive Director