

NLWJC - Kagan

DPC - Box 009 - Folder 014

**Crime - Brady Law Supreme Court
Decision**

Crime-Brady law - S Ct opinion



Jose Cerda III

06/25/97 06:36:25 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: Re: brady statement 

No, I feel pretty good about the block grant \$ for background checks. Everybody likes it so far and we should be able to add it to the Juvie bill (Feinstein wants to authorize the R's block grant as part of the bill). None of the cops are willing to support Schumer yet, but they're okay with this.

Jose'

Crime - Brady - S. Ct. decision

Dear Law Enforcement Colleague:

As you are no doubt aware, earlier today, the Supreme Court ruled that part of the Brady Handgun Control Act is unconstitutional. Although we are disappointed in the Court's decision, we must all abide by it.

We wanted to make certain that all of you understand that the Supreme Court's decision did not "strike down the Brady Act," "declare it unconstitutional" or any one of a number of broad based and inaccurate statements that you may hear. Rather the Court simply stated that the Federal government cannot require that state, county, and local officials conduct the checks provided for under the law until November 1998, at which time the permanent federal Brady check system (Instacheck) will become effective.

We know that the vast majority of concerned and effective law enforcement officers in this country support and conduct background checks under the Brady Act, not because they are required but because -- plain and simple -- it is good law enforcement. Therefore, this decision ought to have little impact on law enforcement. Those who wish to purchase a handgun from a licensed federal firearms dealer (FFL) must still complete a background check form under the Brady Act, and the FFL must forward that form to the chief law enforcement officer (CLEO). As before, if, after five days, the CLEO has not advised the FFL not to transfer the handgun, the FFL may sell the handgun to the purchaser.

The sole change occasioned by the Supreme Court decision is that the CLEO is no longer required by federal law to run the Brady background check. We expect and hope that the vast majority of law enforcement agencies in America will continue to run these checks voluntarily because they are saving lives, keeping guns out of the hands of criminals and generally in the best interest of law enforcement. We urge you to continue the background checks called for by the Brady Act within your jurisdiction.

Since the Brady Act went into effect, over 186,000 felons, fugitives, and other prohibited purchasers have been denied handguns. It would seriously undermine our efforts to reduce violent crime if these and other prohibited individuals were able to purchase handguns because law enforcement officers stopped doing Brady background checks.

We recognize that some CLEOs may still use the Court's decision as an excuse not to conduct Brady background checks. That would be unfortunate. It's just common sense that we all keep doing whatever we can to keep dangerous criminals -- such as murderers, rapists and stalkers -- from obtaining handguns. The safety of all Americans is better assured when Brady background checks are conducted.

Our request is simple: please join us in continuing to enforce the Brady Act.

Sincerely,

Janet Reno & Robert Rubin

Crime - Brady Law -
Sct decision

DRAFT STATEMENT BY THE PRESIDENT

I am disappointed in today's Supreme Court's decision which rules part of the Brady Law unconstitutional. The Brady Law has kept 250,000 felons, fugitives, and mentally unstable persons from purchasing handguns. And I will do everything in my power to make sure that we continue to keep handguns out of the hands of criminals.

Today's ruling ~~should~~^{will} not mean an end to Brady background checks. Twenty-seven states -- nine more than when the Brady Law first passed -- now conduct background checks as a matter of state law and will continue to do so.

We expect that the majority of law enforcement agencies in the remaining states will continue to conduct background checks-- not because they are required by federal law-- but because that is good law enforcement policy. I have directed Attorney General Reno and Treasury Secretary Rubin to contact police departments across the country today, to make sure they know that Brady background checks can continue to be done on a voluntary basis.

But we should not stop there. [I have also asked the Attorney General and Secretary Rubin to immediately convene a meeting with the nation's law enforcement leaders to review and develop recommendations to ensure that background checks will continue to be conducted.] Our goal is clear: no background check, no handgun.

We recently received encouraging news from the Justice Department that last year we saw the largest drop in violent crime in more than three and a half decades. Murders dropped a stunning 11 percent in 1996. Our strategy of more police, tougher punishments, and fewer guns in the hands of criminals is making a difference. But we cannot let up. The safety of our communities and of all Americans is better assured when Brady background checks are conducted.

leg?

**Brady Supreme Court Decision
Questions and Answers
June 27, 1997**

Q. What did the Supreme Court rule today on the Brady Law?

A. The decision left the majority of the Brady Handgun Control Act intact--the Court simply ruled that part of the Brady Act is unconstitutional. The Supreme Court ruled that the Federal government cannot require local police officers to conduct background checks but left intact Brady's 5-day waiting period. Police can, and we expect will, continue to complete background checks on handgun buyers voluntarily because it is a common sense law enforcement practice.

Q. What did the Brady Law require?

A. The Brady Law has been the cornerstone of law enforcement's efforts to stop people who are legally barred from having access to handguns from being able to purchase them. The law provides for a 5-day waiting period on a federal firearms licensee's (FFL) transfer of a handgun to a prospective purchaser, during which time a criminal records check is completed.

Since the Brady Law was adopted, over 250,000 prohibited purchasers including convicted felons, fugitives from justice, the mentally unstable, and stalkers have been kept from purchasing handguns. The President's juvenile crime legislation would add violent juvenile offenders to the list of people who are barred from purchasing a gun.

The Brady Law permits states to use alternative criminal records checks systems, as long as they meet the minimum standard established by the Brady Act.

The Brady Law provides that a National Instant Criminal Background Check System ("insta-check") which will be administered by the FBI will be established by November 1998. Once this is complete, the 5-day waiting period under the current system will be eliminated.

Q. After today's decision, what is still required under the law?

The Brady Act requires all Federally-licensed firearms dealers (FFLs) to fill out a form for each prospective handgun purchaser. The FFL must then forward the form to the chief law enforcement officer in their jurisdiction. The Court left both of these provisions intact. If, after five days, the chief law enforcement officer has not advised the FFL not to transfer the gun to the purchaser, then the FFL may sell the handgun.

Under today's Supreme Court ruling, once the chief law enforcement officer receives the

form from the FFL, the officer may choose to complete the background check on the potential gun purchaser on a voluntary basis. Nothing in the Court's decision prohibits a chief law enforcement officer from completing these checks-- but they are not required by federal law to do so.

Q. Does this mean that police no longer have to do criminal background checks on handgun purchasers?

A. We expect the vast majority of law enforcement officers to continue to conduct background checks. Nothing in the law prohibits law enforcement from voluntarily enforcing the Brady Act checks. More importantly, it is a smart law enforcement practice to confirm that the person trying to buy a handgun down the street isn't a violent felon, a fugitive from the law, stalker, or some other prohibited gun purchaser.

In addition, we understand that most of the nation's law enforcement organizations are pledging their support for law enforcement to continue to do Brady checks voluntarily.

Q. Is the President going to do anything in response to the Supreme Court's decision?

A. While the President was disappointed by the Court's decision, he is firmly committed to the principle that those people who are prohibited by law from owning handguns should not be able to purchase them. The policy should remain: no background check, no handgun.

The President has directed his chief law enforcement officers-- Attorney General Reno and Secretary Rubin-- to immediately contact law enforcement across the country to clarify what the Supreme Court decision says, and to ask for the continued enforcement of the Brady Act through voluntary background checks.

In addition, the President has directed the Attorney General and Secretary Rubin to sit down with law enforcement and to get their recommendations to make sure that there are no safe havens for prohibited gun purchasers.

Q. How many handgun sales have been blocked by the Brady Law?

A. Since the Brady Act went into effect in February 1994, an estimated 250,000-- one quarter of a million-- handgun sales to felons, fugitives, and stalkers were blocked by background checks. An estimated 6,600 attempts are thwarted each month-- and more than 70 percent of these are rejected because the prospective purchaser was indicted or convicted as a felon.

Q. What does the letter from the Attorney General and Secretary Rubin say?

A. The letter-- from the President's own chief law enforcement officers-- will be sent to law enforcement around the nation asking them to join us and continue to enforce the Brady Act. The letter provides clarification to law enforcement about what is still required under the Brady Act and what they may do voluntarily. This should help to avoid confusion and ensure that law enforcement who want to voluntarily complete background checks will continue to do so without any gaps in coverage.

Q. Does the Supreme Court decision affect all 50 states? Weren't there some states that were not subject to the Brady waiting period for background checks?

A. The decision will affect the 23 "Brady" states that were subject to the 5-day waiting period under Brady. However, the law permits states to use alternate criminal records checks systems as long as they meet the minimum standard established by the Brady Act. These 27 states already have background checks under state law and are therefore, not subject to Brady. These states are unaffected by today's decision.

However, the Court's decision does impact about half of the states. That is why we are seeking the continued commitment of all of the chief law enforcement in those states to conduct criminal background checks on handgun purchasers.


Crime -
Brady law dlt decision



Jose Cerda III

06/20/97 06:27:23 PM

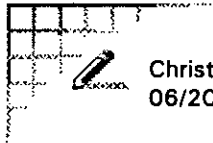
Record Type: Record

To: Christa Robinson/OPD/EOP
cc: Michelle Crisci/WHO/EOP, Leanne A. Shimabukuro/OPD/EOP, Elena Kagan/OPD/EOP, Bruce N. Reed/OPD/EOP
bcc:
Subject: Re: schumer bill 

Christa, et.al.:

Christa I agree. Also, I talked to a couple of the law enforcement folks and had an idea. How about we change the statement to say that the Pres. is going to direct Reno and Rubin *to sit down with law enforcement* and come back with recs ASAP, 7 days, whatever. This gives us a direct opportunity to buy the law enforcement back in (a la crime bill model), and it allows us to iron out solutions with them. Spurrier suggested to me that, if we can get ATF to get the state police on board in all of the Brady States, we may be able to temporarily fix Brady without legis. -- or until we pass legis.

Jose'
Christa Robinson



Christa Robinson
06/20/97 04:49:03 PM

Record Type: Record

To: Jose Cerda III/OPD/EOP, Michelle Crisci/WHO/EOP
cc: Leanne A. Shimabukuro/OPD/EOP, Elena Kagan/OPD/EOP
Subject: schumer bill

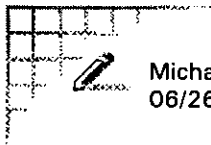
Just wanted to confirm that most of the cop groups don't like the Schumer bill. Cops are central to the coalition to support brady, and they will stand with us as we defend the core of the brady law, but they will not stand with us as we endorse Schumer. Why not take the first day to talk about the value of the Brady Law, the impact it will continue to have in spite of the Court's ruling, and **call on the Attorney General and Secretary Rubin to report back in x days on additional measures to ensure that background checks continue.** If we stop short of supporting the Schumer bill we will appease our law enforcement friends, and keep ourselves from getting hit with the tough questions about his legislation -- of which there are many. Clearly this also buys us some time while the court decision plays out. We could then gear up for a major event with POTUS if we wanted a few days later.

(I understand the need to do as much as possible in the first 24hrs, but unless the Schumer legislation can be improved, I don't see why we would endorse it wholeheartedly. As it stands there is a disincentive for CLEOs to do checks and punishes those that are doing the right thing by

overburdening them.)

Jose's talking to Schumer's folks, but just wanted you to be aware of the cop problem.

Crime - Brady -
S.C.T. Decision



Michael Waldman
06/26/97 09:22:18 AM

Record Type: Record

To: Michelle Crisci/WHO/EOP
cc: Elena Kagan/OPD/EOP, William P. Marshall/WHO/EOP
Subject: NEW DRAFT w/ RAHM'S EDITS ...

Draft 5/26/97 9:15am

**PRESIDENT WILLIAM J. CLINTON
STATEMENT ON BRADY LAW
HOPE, ARKANSAS
June 26, 1997**

The Brady Law has kept 250,000 felons, fugitives, and mentally unstable persons from purchasing handguns. And I will do everything in my power to make sure that we continue to keep handguns out of the hands of criminals.

Background checks continue to make good sense. They continue to save lives. And today's ruling need not -- and must not -- mean an end to criminal background checks. Twenty-seven states -- nine more than when the Brady Law first passed -- now conduct criminal background checks as a matter of state law and will continue to do so.

The Brady Law was drafted by America's law enforcement community. It was passed due to the efforts of thousands of local police and prosecutors across America. And I am confident that these state and local law enforcement officials will continue to conduct background checks. I have directed Attorney General Reno and Treasury Secretary Rubin to contact police departments across the country today, to make sure they know that Brady background checks can and should continue to be done by local police on a voluntary basis.

But we will not stop there. I have also asked the Attorney General and Secretary Rubin to immediately convene a meeting with the nation's law enforcement leaders to review and develop recommendations to ensure that background checks will continue to be conducted. Our goal is clear: no criminal background check, no handgun, anywhere in America. No state should become a safe haven for criminals that want to buy handguns.

We know that tremendous progress is being made, all across the country, in the fight against crime. Last year saw the largest drop in violent crime in more than three and a half decades, with murders dropping a stunning 11% in 1996. Our strategy of more police, tougher punishment, and fewer guns in the hands of criminals is making a difference. We cannot let up.

For the continued safety of our communities and of all Americans, Brady background checks must continue.

Crime-Brady Law SCt Decision

Leanne A. Shimabukuro 06/03/97 06:23:15 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Michelle Crisci/WHO/EOP
cc: Jose Cerda III/OPD/EOP
Subject: draft Brady statement

This version contains Bruce's changes, a few minor tweaks proposed by Justice and a more significant change by Counsel's office. (See fourth paragraph of statement.)

Counsel had strong concerns about the President endorsing legislation or stating that legislation is needed on the day of the decision. This draft asks the AG and Rubin to review the decision and present the President with options in one week. From counsel's perspective, this would give the lawyers sufficient time to review the decision, and determine what next steps are most appropriate-- as was done with the Adarand case.

If this is a problem, it will need to be worked out with Counsel's office. Let me know. Thanks.



BRADY.ST

NO!

Crime - Brady law SC decision

DRAFT STATEMENT BY THE PRESIDENT

I am disappointed in today's Supreme Court's decision which rules part of the Brady Law unconstitutional. The Brady Law has kept 186,000 felons, fugitives, and mentally unstable persons from purchasing handguns. And I will do everything in my power to make sure that we continue to keep handguns out of the hands of criminals.

Today's ruling should not mean an end to Brady background checks. Twenty-seven states -- nine more than when the Brady Law first passed -- now conduct background checks as a matter of state law and will continue to do so.

We expect that the majority of law enforcement agencies in the remaining states will continue to conduct background checks-- not because they are required by federal law-- but because that is good law enforcement policy. I have directed Attorney General Reno and Treasury Secretary Rubin to contact police departments across the country today, to make sure they know that Brady background checks can continue to be done on a voluntary basis.

But we should not stop there. Our goal is clear: no background check, no handgun. Accordingly, I am also directing the Attorney General and Treasury Secretary to review today's decision and within one week, present me with options, including legislation, on how we can reach our goal.

We recently received encouraging news from the Justice Department that last year we saw the largest drop in violent crime in more than three and a half decades. Murders dropped a stunning 11 percent in 1996. Our strategy of more police, tougher punishments, and fewer guns in the hands of criminals is making a difference. But we cannot let up. The safety of our communities and of all Americans is better assured when Brady background checks are conducted.

THE WHITE HOUSE
WASHINGTON

Jennis Burk
67431

To: Elena
62878

Charles F. C. Ruff
Counsel to the President

Bill Marshall
Associate Counsel to the President

Karen A. Popp
Associate Counsel to the President

DATE: April 4, 1997

REGARDING: Brady Bill Options

The following presents an overview of the various legislative options available to the Administration should the Supreme Court strike down the local law enforcement background check requirements of the Brady Law. As you will note, we have identified both the policy issues and the legal issues that are present in each alternative. The legal analysis can only be preliminary, however, because the constitutionality of any particular legislative proposal will depend on how the Supreme Court crafts its Brady Law decision. For this reason, the Justice Department has strenuously requested that the Administration not make any decision regarding possible legislative responses until there has been time to analyze the Supreme Court's decision.

I. OBJECTIVES

In assessing any possible response to an adverse judicial decision we should consider three separate, and potentially conflicting, objectives.

A. Policy -- advance the substantive policies of the Brady Bill of providing background checks for the purchasers of all handguns.

B. Political -- provide a clear answer to those claiming that the advancement of the policies advanced by the Brady Bill have been derailed.

C. Legal -- propose a legislative solution that is constitutionally sound and minimizes the opportunity for opponents to advance new and potentially damaging legal theories.

II. LEGISLATIVE OPTIONS

A. Quid Pro Quo Funding

This option would condition the receipt of federal monies for crime programs upon state and local communities agreeing to abide by the background check requirements.

1. Policy concerns. This option would provoke resistance in the law enforcement community. There are also some real world questions as to whether there are any programs to which compliance with the Brady Law could be realistically tied. Finally, there may also be a practical problem in that, for a variety of reasons including the normal timings of grant allocation, there may not be any grant monies to use as leverage for the relatively short period between the date of a Supreme Court opinion and late 1998 when the federal government will assume background check responsibilities.

2. Legal issues. Congress is generally free, under the Spending Clause, to use conditions on federal grants to states as a means of encouraging state action in the service of federally defined goals. Recent decisions, however, have identified two potential limitations on conditional spending power legislation. First, the purposes of the grant condition must be related to the purposes of the grant program. The more attenuated the connection between the purposes of Brady Law background checks and the conditional federal grants, the greater the risk of invalidation. Second, some judges have indicated a willingness to hold that legislation which withdraws funding, can under some circumstances, cross the line from encouragement to coercion and thereby violate constitutional principles of federalism. Although under current law a properly drafted spending program should survive constitutional scrutiny, such a law might also be used as a vehicle for opponents to test this 'coercion' principle.

B. Federal Preemptive Regulation in Noncomplying Jurisdictions

This option would impose on non-complying localities regulations which could work as alternatives to background checks in furthering Brady Law policies. Alternatively, imposition of these requirements might encourage non-complying localities to reconsider their options and voluntarily comply with the Brady Law itself.

Examples in this category include mandating a relatively long waiting period for gun purchasers which can only be shortened by completion of a background check. A second possibility is a requirement that guns may not be purchased at all in localities that do not voluntarily adopt background check requirements. A third option is to send all background checks for non-complying localities to federal agencies for whatever reasonable period it might take those federal agencies to complete those checks.

1. Policy concerns. The imposition of restrictions on the purchase of guns in non-complying communities could promote voluntary compliance with Brady; and if a locality

refused to comply, the new strictures could be an effective tool in checking the sale of handguns to persons with problematic backgrounds. On the other hand, the imposition of harsh strictures would impose penalties on those who would be otherwise eligible to purchase guns under Brady. In addition, providing disincentives for persons to buy guns in non-complying localities places the brunt of enforcement on arguably innocent third parties -- gun dealers. Affecting third parties in this manner could provoke an unfavorable backlash.

2. Legal concerns. In areas where Congress has authority under the Commerce Clause to regulate private activity directly, it also has the authority to offer States a choice between regulating in conformity with federal standards or ceding the field to preemptive federal regulation. However, as with the spending power, noted above, the courts may rule that conditional Commerce Clause legislation might also be so coercive as to violate federalism concerns. Distinguishing permissible encouragement from unlawful coercion in this context is not clear. Although the federal government may impose genuine federal regulation in jurisdictions that fail to perform background checks, regulations designed to force States into assuming the responsibilities that Congress has assigned to them may be invalidated. Thus, mandating longer waiting periods in jurisdictions where local officers refuse to conduct background checks, would be susceptible to coercion claims if the delay were not justified.

C. Federal Operation of the System

This option would turn over the background check operation to the FBI or ATF immediately, or, if that is not feasible, would seek to move up the date that the FBI would assume operations.

1. Policy concerns. DOJ is unable to definitively determine when the FBI would be in a position to take over the background check operation. The time when such an appraisal can be made is also indeterminate. In addition, the cost of placing the responsibility for all background checks in the hands of the FBI at this time may be significant. DOJ is attempting to determine whether ATF may be currently in a position to assume the background check responsibilities.

2. Legal issues. This approach would rely on Congress' well established power to regulate gun sales in or affecting interstate commerce. It would not raise any significant constitutional issues.

D. Requiring Background Checks as a Precondition to Handgun Sales

This option would prohibit federally licensed firearms dealers from selling handguns unless the chief law enforcement official has certified that he/she will conduct a background check.

1. Policy concerns. This option places the brunt of enforcement on arguably innocent third parties -- gun dealers and persons otherwise eligible to purchase guns under Brady.

2. Legal issues. Congressional power to ban handgun sales altogether under the Commerce Clause presumptively includes the power to impose a ban selectively, where States and localities refrain from performing background checks. Absent coercion, as discussed above, a properly crafted provision should pass constitutional muster. In other words, as long as the federal controls are to ensure that prohibited persons are prevented from purchasing handguns, and not to coerce local authorities into conducting the background checks, the legislation would be constitutional.

E. No Legislative Response

1. Policy concerns. While there will undoubtedly be pressure to pursue a legislative response if there is an adverse Supreme Court decision, there are also policy reasons that militate against legislative action. These concerns deserve significant considerations.

a. First, an adverse decision raises essentially only timing concerns. The FBI is scheduled to take over the background check operation in late 1998.

b. Second, the Court's decision would apply only to 24 states (alternative systems that meet federal standards are already in place in the other jurisdictions) and even in those 24 states, many law enforcement officers have announced or are expected to announce that they will continue to voluntarily comply with Brady law requirements.

c. Third, a new legislative proposal is unlikely to pass.

d. Fourth, if a bill does pass it may play into the litigation strategy of the anti-gun control forces who would be free to pick and choose among federal court judges in an effort to obtain a favorable decision and a favorable precedent.

2. Legal issues. Not applicable.

III. TIMING OF A LEGISLATIVE RESPONSE

There has been some suggestion that the Administration propose a legislative response to an adverse Supreme Court decision on the day of that decision. As overriding concern, however, is that a cohesive and meaningful response must necessarily require serious study of the judicial opinion. Moreover, even if the response was well-thought out and adequately anticipated the Court's argument, an immediate cry for legislative intervention would likely be perceived as unduly reflexive and politically driven.

IV. ALTERNATIVES TO A LEGISLATIVE RESPONSE

In lieu of, or in addition to, the Administration could respond to an adverse Supreme Court decision by a communications event bringing together law enforcement officials who would agree to voluntarily enforce the Brady Law's provisions. The President could also issue a statement after the decision was rendered.

Dennis K. Burke

03/28/97

09:55:44 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Leanne A. Shimabukuro/OPD/EOP

Subject: Brady Law Memo

In Wednesday's crime meeting, Rahm said he wanted to send a memo to the President on Brady. I have attached a rough draft. Would you take a look at it, when and if you have a chance? I am giving Rahm a copy, now, because he wants to look at it over the weekend. I think he wants to submit it to the President on Monday. Some of this stuff was covered in Bruce's weekly already.

The SG's office were very strange to Kent about this whole issue, today. They had a meeting about legislative fixes today and Kent said that they were going off on tangents about whether we even want to send legislation to the Hill. They are worried that if this legislative fix ever passed -- which is a very high bar to meet --- it could cause us bigger problems because 10th amendment advocates would go forum shopping, have the fix overruled in an opinion that would even further restrict the federal government's authority (.... this is very nutty). They were also bringing up "equal footing" doctrine concerns (which is bunk) and are worried that this legislation would be an "in your face" to the Court that they would not favorably react to (so then what was the Lopez fix that Walter testified before Congress on?)

I told Kent that, first of all, the Justice Department Building has a serious asbestos problem on the east side of the fifth floor and they need to fix it because it is seriously affecting the minds of some folks in the SG's office.

The truth is Walter was out of town, today, and some of these folks should not be let out of their study w/o his supervision.



BRADYMEM.3

Crime - Brady Law Act
Decision

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR THE PRESIDENT

FROM: RAHM EMANUEL
BRUCE REED

SUBJECT: STRATEGY IN RESPONSE TO BRADY
LAW SUPREME COURT DECISION

The Supreme Court will decide the Brady Law case within the next few months. Most experts believe that the Court will find the law unconstitutional and hold that the Federal Government cannot "require" state and local law enforcement officials to conduct criminal background checks.

The Counsel's Office is providing you a memo with their views on legislative fix options. Here are recommended actions that we think we should take in response to such a ruling.

If Court Rules Brady Law Unconstitutional

Three elements of the law would most likely still be in effect --- 1) Brady's 5-day waiting period; 2) Requirement that gun dealers obtain a statement from purchasers concerning the proposed handgun sale; and 3) Transfer by gun dealers of the statement to state or local law enforcement officers. In addition, the decision would apply only to 24 Brady states, and not to the Brady "alternative" states (where state legislatures have established an alternative system that meets federal standards).

Law enforcement officials would be able to continue to conduct criminal record checks of handgun purchasers -- but only on a voluntary basis. And most law enforcement officials believe that the vast majority of local chief law enforcement officers would continue to perform background checks.

Actions To Take In Response

We have been working with the Justice and Treasury Departments to develop a multi-pronged strategy to respond to such a decision. It is critical that we move quickly to respond to an adverse ruling by the Court. These options will permit us to stand with the Bradys and law enforcement in a united front and challenge Congress and the gun lobby to support reinstating the Brady Law.

The communications message from this strategy would be straightforward - - the majority of the Brady Law is still intact, but criminals should have no safe haven. The law should be clear: no background check, no gun sale.

Day of Supreme Court Ruling

- Presidential Statement. You would make a statement at the White House with the Bradys condemning the decision and directing the Attorney General and the Secretary of Treasury to review the decision and within a week present you with legislative options.

Law Enforcement/Bradys Event

At an event, within a short period of the ruling, you would stand with the Attorney General, Secretary Rubin, numerous law enforcement chiefs and sheriffs, Members of Congress, and the Bradys to announce the following:

- Legislation. Announce legislation addressing the Court decision and challenge Congress to pass it quickly (in addition, Treasury is currently reviewing whether any actions could be taken by Executive Order in conjunction with or instead of legislation);

A more definitive recommendation will depend upon an analysis of the Court's opinion. However, here are at least some preliminary options being considered by the Justice and Treasury Departments:

1. Condition federal crime program funding upon states and localities agreeing to abide by background check requirements. This option would provoke some resistance in the law enforcement community.
2. Federal Operation --- turn over background check operations to the FBI and ATF.
3. Regulate Firearms Dealers -- prohibit federally licensed firearms dealers from selling handguns unless a law enforcement official certifies that a background check will be conducted.
4. No Legislative Response -- Brady is currently scheduled to sunset in 1998 and be replaced with a instant background check system. Any legislation will probably not pass this Congress.

We recommend option #3. We think it is important that you respond to the decision with legislation and challenge Congress to move. It will then have to explain any inaction to

law enforcement and the American public. Under option #3, most chief law enforcement officers will conduct background checks; any who refuse will have to take responsibility for halting all handgun sales in their area. This approach sticks to a simple overall message -- no background check, no gun sale. Handgun Control supports this approach.

- Law Enforcement Pledge. Release a pledge signed by chiefs and sheriffs from across the nation vowing to continue to enforce the Brady Law.
- Reno/Rubin Letter. Release letter from Reno and Rubin to every police chief and sheriff in the country urging them to continue their public safety duty to conduct background checks on handgun purchasers. The letter would be sent electronically by Treasury to all state and local law enforcement organizations, and also sent to state attorneys general.
- ATF Letter. Release ATF Director Magaw letter to all Federal Firearms Licensees notifying them of the Court decision and informing them that their obligations under Brady remain unaffected.

Crime-Brady Law -
SC Decision

MEMORANDUM FOR THE PRESIDENT

FROM: RAHM EMANUEL
BRUCE REED

SUBJECT: STRATEGY IN RESPONSE TO BRADY
LAW SUPREME COURT DECISION

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Law enforcement officials would be able to continue to conduct criminal record checks of handgun purchasers -- but only on a voluntary basis. And most law enforcement officials believe that the vast majority of local chief law enforcement officers would continue to perform background checks.

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Law Enforcement/Bradys Event

At an event, within a short period of the ruling, you would stand with the Attorney General, Secretary Rubin, numerous law enforcement chiefs and sheriffs, Members of Congress, and the Bradys to announce the following:

- Legislation. Announce legislation addressing the Court decision and challenge Congress to pass it quickly (in addition, Treasury is currently reviewing ^{any} ~~any~~ ^{whether} actions could be taken by Executive Order in conjunction or instead of legislation); _{with}

A more definitive recommendation will depend upon an analysis of the Court's opinion. However, here are at least some preliminary options being considering ^{ed} by the Justice and Treasury Departments:

1. Condition federal crime program funding ^{upon} states and localities agreeing to abide by background check requirements. This option would provoke some resistance in the law enforcement community.

2. Federal Operation --- turn over background check operations to the FBI and ATF.

that

3. Regulate Firearms Dealers -- prohibit federally licensed firearms dealers from selling handguns unless ^{law} enforcement official certifies a background check will be conducted.

4. No Legislative Response -- Brady is currently scheduled to sunset in 1998 and be replaced with a instant background check system ^{and} any legislation will ~~unlikely~~ ^{probably not} pass with this Congress. ^{It then}

We recommend option #3. We think it is important that you respond to the decision with legislation and challenge Congress to move. They will have to explain any inaction to law enforcement and the American public. Most chief law enforcement officers ~~are~~ ^{will} going to conduct background checks; those who refuse will ~~have to explain why they don't to their gun owners~~ ^{because there will be no handgun sales in their area.} If sticks to a simple overall message -- no background check, no gun sale. Handgun Control supports this approach.

have to take responsibility for halting all

Under option 3,

This approach

- Law Enforcement Pledge. Release a pledge signed by chiefs and sheriffs from across the nation vowing to continue to enforce the Brady Law.
- Reno/Rubin Letter. Release letter from Reno and Rubin to every police chief and sheriff in the country urging them to continue their public safety duty to conduct background checks on handgun purchasers. The letter would be sent electronically by Treasury to all state and local law enforcement organizations, and also sent to state attorneys general.
- ATF Letter. Release ATF Director Magaw letter to all Federal Firearms Licensees notifying them of the Court decision and informing them that their obligations under Brady remain unaffected.

Dennis K. Burke 03/17/97 11:02:31 AM

Record Type: Record

To: Michelle Crisci/WHO/EOP, Bruce N. Reed/OPD/EOP
cc: Elena Kagan/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP
Subject: Brady Case

Here is where we are on Brady:

If the Supreme Court finds Brady unconstitutional, it would be because of one element of the law: The Brady law "requires" a state or local law enforcement official to conduct a reasonable background on a potential handgun purchaser. The Court would rule that the Federal Government can not "require" a state or local official to enforce a Federal law because it violates the 10th Amendment to the U.S. Constitution.

The rest of Brady would still be intact. Handgun purchasers would still be required to fill out a 4473 form (the form we just modified w/ our Empire State Bldg announcement) and the Federal Firearms License Dealer (FFL) must still forward that form to the chief law enforcement officer (CLEO) for the jurisdiction. If after five days, the CLEO has not advised the FFL that s/he may not transfer the handgun, the FFL may transfer the handgun to the purchaser. CLEOs could conduct background checks (and most will) but they will not be required to (also, Brady only applies in 22 states now -- the others are exempt because they have instant background checks, licensing requirements, etc.)

So our message could be that the majority of the Brady Law is still intact, but criminals should have no safe haven. This landmark public safety measure is too important to have judicially-created exceptions. The law should be clear -- no background check, no gun sale. We will be sending legislation to Congress this week to fix this Rehnquist Court decision and POTUS urges Congress to move on it quickly.

The 3 steps we are taking:

- 1) Sending legislation to the Hill that will respond to this Supreme Court decision:
- 2) Release a Pledge signed by Chiefs and Sheriffs throughout the nation that they will continue to enforce the Brady Law.
- 3) Release Letter from Reno and Rubin to every police chief and Sheriff in the country urging them to continue their public safety duty to conduct background checks on handgun purchasers.

Legislation:

We had been discussing the approach of conditioning law enforcement funding to states and localities on them passing legislation requiring background checks. The law enforcement groups were adamantly opposed to that approach. So now we are looking at how we can fix Brady by regulating FFLs. Here is the most current form of the idea:

For an FFL to be able to sell a handgun, s/he must now receive a certification from the CLEO that the CLEO will conduct a background check on prospective purchasers. Without this certification, the FFL would be prohibited from selling handguns -- at all.

At first blush, this appears rather heavy-handed but it does put the pressure on the CLEO and not the Federal government. Most CLEOs are going to conduct background checks, those who refuse will have to explain why they don't to their gun owners -- because there will be no handgun sales in their area. It sticks to a simple overall message -- no background check, no gun sale.

Obviously, this approach needs some additional thought but at least the idea of regulating FFLs and not conditioning funding appears to be the right avenue. Handgun Control likes this particular approach but I think they are also trying to think it through.

One of the questions we have to ask ourselves is whether this would ever pass, we come across looking heavy-handed with a DOA bill, and whether that, in itself, harms the Brady legacy?

Based on Elena's suggestion, I have also asked both Treasury and Justice to give us options on what POTUS could do by executive action -- for example, could he, by executive order, prohibit a FFL from selling a handgun w/o a CLEO certification? We will continue to pursue.

FILE:
BRADY

Jan Leibowitz

Brady bill

Orig. version - mand waiting period + optional background
~~bill~~ check

Lots of policy options -

- a) shall → may
- b) tie it to \$

NFA: 1st proposed The
mand background check!
(also by the FBI)