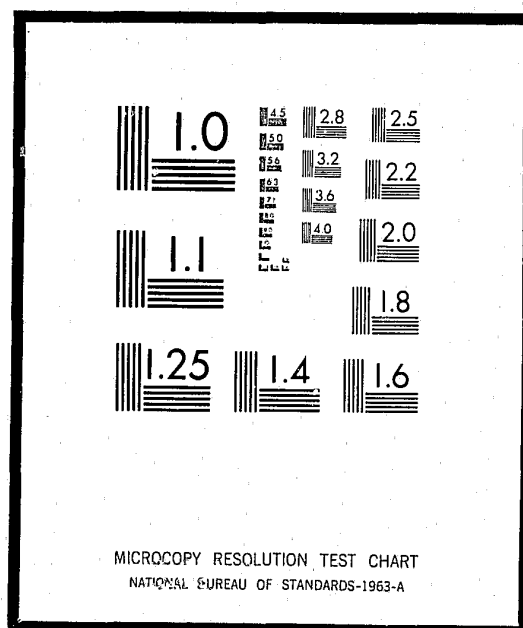


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HOWARD SHAPIRO  
CHAIRMAN  
EARL W. BRYDGES, JR.  
FERDINAND J. MONDELLO  
EDWARD S. SILVER

COMMISSIONERS



STATE OF NEW YORK  
COMMISSION OF INVESTIGATION

270 BROADWAY  
NEW YORK, N. Y. 10007  
732-4250

FOR RELEASE: MAY 1, 1974

STATEMENT OF CHAIRMAN HOWARD SHAPIRO ON BEHALF  
OF THE NEW YORK STATE COMMISSION OF INVESTIGATION  
AT THE CONCLUSION OF THE PUBLIC HEARING CONCERNING  
THE AVAILABILITY AND ILLEGAL USE OF HANDGUNS IN  
NEW YORK STATE

This Commission has just concluded a public hearing, the objectives of which were to (1) present, in a coordinated manner, and in a single forum, the salient facts regarding the handgun problem that threatens the safety and security of the people of this state; and (2) receive and develop constructive recommendations for corrective action.

The testimony received during this 4-day public hearing remains vivid, clear and, we believe, very disturbing. We had the opportunity to hear testimony from important governmental and law enforcement officials and from persons whose daily lives and responsibilities are affected by the problems described at the hearing.

It should be emphasized at the outset that there was complete unanimity among the witnesses that the ready availability, illegal possession and use of handguns in this state, and particularly in New York City, is a serious problem

that cannot be overstated. It was also stressed that the handgun is a weapon designed to kill; and, whether such weapon be used in a homicide or in the commission of a robbery or assault -- with the threat of death -- the pistol and revolver have increasingly become a scourge of our society.

For those who have had the good fortune not to be victims of such terrifying criminal acts, imagine, for the moment, entering an apartment house elevator and being suddenly faced with a gun held to your head, coupled with an uncompromising demand for your money; or, picture yourself in the position of a storekeeper, alone in your store, seeing a gun pointing menacingly from the other side of the counter and hearing an order to open the cash register; or consider the man who goes out after dinner to purchase a newspaper and is "ripped off" on his return home.

A manager of a shoe store testified that five robbery incidents occurred at his store within a period of nine months; he also stated that because of his fear of being waylaid by robbers, he does not dare walk home from work and must travel by taxi. He testified that the illegal possession of a gun was quite common in his area. Another shopkeeper testified that within the one month period of December 1973 and January 1974, three robberies were committed

in his small greeting card store. Because of these armed robberies, he was compelled to hire a security guard at a cost of \$125 per week to afford him protection. Understandably, this small shopkeeper cannot withstand such constant fright and economic loss and, as he told the Commission, is considering disposing of his business.

The fact is that far too many people of this city and state are living in an atmosphere of tension, apprehension and downright fear.

A recent joint crime study of 13 selected cities in the country, made by the Law Enforcement Assistance Administration of the Department of Justice in Washington and the United States Census Bureau, showed New York City to be lowest in the over-all crime rate. There is little consolation in those results, however, when statistics show, as we stated in our opening statement, that for the 4-year period of 1969 to and including 1972, there were 2,744,469 crimes of all types reported in this state; and of that figure, 1,959,823 crimes of all types were reported within New York City. Moreover, as was noted at the hearing, with respect to robberies, that report showed that New York City was tied for 6th place in personal robberies, and was 5th, not 13th, in commercial robberies.

Law enforcement officials who testified at the hearing estimate that in New York City alone, there are approximately 1,000,000 illegal handguns. That is the crux of the problem. Where do these handguns come from? How do they get here? What happens to persons who illegally possess and use these handguns? These were questions raised at the hearing and we believe, responsibly dealt with.

The testimony at the hearing was unequivocal as to the source of guns -- most of these handguns were brought illegally into this state from other states that have very loose, or no gun control laws. There are 42 such states in this country. A tracing study conducted by the United States Bureau of Alcohol, Tobacco and Firearms, in conjunction with the New York City Police Department, showed that of the illegal handguns seized in New York City, it was not possible to even determine the origin of approximately 40% of those guns. Of those that were traceable, the majority came from six states: South Carolina, Florida, Georgia, Virginia, Texas and North Carolina. The report of that survey, issued in December 1973, noted significantly:

"... as a result of 17 ATF investigations or cases made in South Carolina, the Bureau determined that 39,517 firearms were either actually involved in interstate violations or destined for disposition in New York or surrounding areas."

These are but few of the large quantities of handguns that are constantly being imported illegally into New York State.

Handguns, according to the testimony, are also illegally obtained by thefts from gun shipments, from persons' homes and businesses and by rental or loan. They are also fashioned by sawing off the barrels of shotguns and rifles.

These illegal handguns ultimately come into the possession of individuals, many of whom intend to use them for illegal purposes such as homicides, robberies and assaults -- and they do.

A revealing but alarming insight into the easy availability, illegal possession and use of handguns was given in the testimony of a former youthgang member of this city. He stated that not too long ago, he was "Supreme Spokesman" for a large youth gang in this city. According to his testimony, his gang was comprised of many divisions (block groups) and numbered over 2500 members. Some divisions had as many as 50 members; and each division had about 20 handguns in its arsenal, in addition to other dangerous weapons. The handguns were generally purchased from illicit gun dealers, or stolen and were used in gang fights and robberies, among other illegal activities.

Information obtained from the New York City Police Department indicates the existence of over 70 such youth gangs operating in this city. On the basis of these facts, it is quite evident that the large number of handguns in the possession of these gang members alone, can contribute materially to a high percentage of the crime rate in the city. However, the total number of handguns illegally possessed by these youth gangs probably account for a relatively small percentage of the total estimated figure of 1,000,000 illegal handguns in the city. It should be noted that from 1969 through 1973, there were approximately 371,759 robberies reported in New York City; and of these robberies, approximately 96,051 were committed with handguns.

These frightening figures dramatically speak for themselves.

Moving from the availability of handguns and the commission of crimes, to the law enforcement aspect of the handgun problem, the Commission examined the way the criminal justice system deals with persons who illegally possess and use handguns.

It should be repeated here, what was so often stressed at the public hearing -- that New York State and New York City have the strictest gun control laws in the country. Under the "Sullivan Law," the illegal possession of a loaded handgun is a Class D Felony (with two specified

exceptions) punishable by up to seven years imprisonment; and the commission of the crime of robbery with a handgun is a Class B Felony, punishable by up to 25 years imprisonment.

On paper, these statutes read and sound like real crime deterrent laws; how effective their application has been was also the subject of careful inquiry by the Commission. But let us see how effective these laws have been and how they have been applied.

In his testimony to this Commission, the District Attorney of Kings County stated at the hearing that it is his office's policy to screen all arrests charging illegal possession of handguns in order to determine which cases should be processed as misdemeanors in the Criminal Court and which should be presented as felonies to the Grand Jury. Furthermore, even when the initial decision has been made to present a case to the Grand Jury, if the facts later indicate that the case should be re-evaluated, further consideration is given as to whether the case should proceed to the Supreme Court or returned to the Criminal Court. He was quite explicit that in those cases in which indictments are returned, the circumstances are such, in his judgment, that felony treatment for the violation of the law is required. These cases do not include a so-called "innocent possessor" of a handgun -- a legitimate storekeeper, for example, who obtained a handgun albeit illegally solely for his protection.

The District Attorney also advised the Commission that, with respect to gun possession cases resulting in an indictment, it is the general policy of his office that no plea below a felony will be accepted. Moreover, since December 5, 1973, he has insisted that a recommendation of imprisonment be made where conviction occurs in those cases.

This District Attorney presented some enlightening statistics. His office made a random selection of 88 illegal handgun possession arrests recorded in this county during the first six months of 1973. The disposition of those arrests were as follows: 44 cases remained in the Criminal Court on misdemeanor charges; there were 22 convictions in that court and none of these defendants received any sentence of imprisonment.

The remaining 44 cases were referred to the Grand Jury. There, two cases were reduced to misdemeanors, one was dismissed, and the Grand Jury found indictments in the other 41 cases. Of these cases, 26 went to trial with 100% convictions by either trial or plea; the other 15 indictments were still pending.

In only three of these 26 felony possession cases in which there were convictions were sentences of imprisonment imposed. Stated differently, in about 85% of those cases that were disposed of at the time of the study, no jail time was

imposed.

In a further study made by that District Attorney's office of the sentence calendars during the first three months in 1974, relating to felony indictments for illegal possession of handguns, the findings were practically the same. Over 85% of those convicted by either trial or plea received no sentence of imprisonment.

In this connection, it should be mentioned here that this Commission conducted an independent examination of court files and records in Kings County to ascertain the dispositions in illegal handgun possession cases. This was a study of sentences filed during the month of March 1973 on indictments for the felony charge of illegal possession of handguns. This Commission found that approximately 85% of all those convicted received no jail time. The facts in the following two cases will illustrate that the violators in those cases, as was the situation in others examined, were not "innocent possessors" of handguns.

In one case, the defendant, a 39-year old male, had a record of six arrests dating back to 1955, including one charge for possession of a handgun on which he was convicted and received a suspended sentence. In one of the other cases, he was arrested for rape but pleaded guilty to the charge of assault 3rd degree. A witness in the current case claimed that the defendant brandished a gun and threatened to shoot the witness. After a plea of guilty, the defendant was sentenced to five years probation.

In another case, the defendant, a 33-year old male, had a record of five previous arrests including a charge for the criminal possession of dangerous drugs. In 1971, he received a one year sentence for attempted possession of a weapon. He had no occupation. It was claimed in the current case that the defendant shot a gun into the air. The defendant was sentenced to three years probation.

The District Attorney of Bronx County also testified at the public hearing. Among the many interesting facts that he presented, two items are specially relevant and should be stated here. He said, "In 1964, when I left as Assistant District Attorney, (Bronx County) we had 86 homicides per year. In 1972, we had 430 homicides, of which over half involved handguns -- an increase of 5 times over 1964."

The second important point that he made was in regard to the disposition of illegal handgun possession cases. He testified that in his county, most persons arrested and convicted for the illegal possession of a handgun receive no jail time. He indicated that the results of a study made by the New York City Police Department of the court disposition of such cases, which we will soon mention, reflected the situation existing in his county. This District Attorney also made reference, with dismay, to a recent Bronx County Criminal Court case in which the defendant was charged with the illegal possession of a handgun. A 2-week trial in that case resulted in a conviction. The defendant received but a \$50 fine.

The Commission's survey of sentences that were imposed in the Borough of Manhattan for two separate months, in which the plea was to the felony possession of an illegal gun, showed a somewhat larger number of defendants who received jail time. However, the New York City Police Department recently conducted a study of court dispositions where the arrests were solely for the possession of illegal handguns. That Department sampled, on a city-wide basis, arrests made during the first six months of 1973. Of 342 defendants who were arrested for the illegal possession of a concealed weapon, 182 were convicted after trial or plea. Only 29 of the 182 who were convicted received jail sentences. Of these 182 who were convicted, 62 were convicted in the Supreme Court on indictments; 13 of the 62 received jail time. Almost 85% of the defendants received no sentence of imprisonment.

In this study, the only crime involved was a violation of the "Sullivan Law" which, as we previously stated, is a Class D Felony, punishable by a term of imprisonment of up to 7 years. We are aware that some of the cases involved circumstances which under the Penal Law constitute a misdemeanor. As we have demonstrated, very few violators of that law receive any sentence of imprisonment.

Those who might be inclined to consider this violation of the law lightly may argue that in the mere possession of a handgun, and often a loaded one, no one has been hurt,

so why should a prison term be imposed. According to a number of witnesses, however, it is this attitude that frustrates law enforcement officers making such arrests -- where effective action is taken before a more serious crime can be committed.

The Commission is not unaware of the complex problems which confront all participants in the criminal justice process. In describing to the Commission the problems presented to the courts in handgun possession cases, stress was placed by a spokesman of the judiciary, on the quality of the evidence against the particular defendant, the circumstances in which the alleged crime was committed, and also the background of the defendant. These problems must be carefully evaluated together with the other factors which comprise the total handgun problem.

The testimony adduced at the hearing showed that when a person, illegally, gets possession of a handgun, he intends to use it. Let us repeat again, that we are not talking about the legitimate business man who, though he obtains a handgun illegally, does not intend to do anything but keep the gun at his home or place of business for self-protection. We do not justify this action but we merely wish to indicate a clear distinction between such persons and those with criminal intentions. Experience has shown that those who illegally obtain and possess a handgun very often use that weapon in the commission of such serious crimes as homicides, robberies, rapes and assaults.

Must our citizens wait until someone has been robbed at gunpoint, or shot, or killed or assaulted, before action will or may be taken against the felon? Should not firm and meaningful action be taken against the "non-innocent" possessor of a handgun before he has the opportunity to actually use the handgun to the injury of some law abiding citizen? Why should we not take essential measures to prevent the commission of a serious crime rather than wait until it has been committed?

In this connection, this Commission conducted a study in the Boroughs of Manhattan, Bronx, Kings and Queens to ascertain the sentences meted out to persons who had committed robberies with the use of handguns. Members of the Commission's staff studied the records in all indictments filed during the first three months of 1973 where the charge was Robbery-First Degree.

The testimony at this hearing of the Commission's Assistant Counsel who was in charge of this investigation and of the study showed: in all, 848 cases were examined; of these, handguns were used in 305 cases (35%). With respect to the dispositions, in 39% of the cases, the jail sentences imposed were for less than five years; in 44% of the cases, the jail sentences were for varying periods of over five years. It should be known that generally, a first felony offender receiving a prison sentence is eligible for parole after serving no more than one-third of the maximum of the term imposed. In 17% of the cases,



no prison sentence was given.

The facts in the following two cases which were among those examined by the Commission are examples of cases in which no prison sentences were imposed.

In one case, three males, two 19 and one 17 years of age, entered a taxicab; they "stuck up" the driver and took \$55 from him; they drove the cab around with the driver in the back seat and threatened to kill him; the youths finally left the cab, the driver reported the incident to the police and fortunately the police were able to arrest the three youths after a chase. Although there was no criminal record sheets in the file, the papers indicated that similar charges had previously been made against all three youths. Disposition: the three youths were placed on probation for five years.

In the second case, a 15-year old male youth and a 21-year old female, at 1:15 A.M. attempted to rob a waiter who was on his way home. The waiter was shot during the robbery and he was taken and treated at a nearby hospital. Both robbers were arrested. The 15-year old youth had no previous criminal record, and because of his age, his case was dismissed in the Criminal Court and apparently referred to the Family Court. The record indicated that the 21-year old female had a previous criminal record without stating the details. She pleaded guilty to the charge of illegal possession of a handgun, a Class D Felony. Disposition: she was sentenced to

up to four years in the State Prison.

The testimony given at the public hearing by an Administrative Judge of the Family Court of New York City showed that a noticeably greater number of youths are presently coming into the Family Court on the charge of illegal possession and use of handguns and that this situation is of great concern to him. He candidly admitted, however, that rarely is any custodial supervision imposed in handgun cases. In fact, it appeared from his testimony that the Family Court was overburdened and overwhelmed with cases, and suffering from a great shortage of personnel and necessary resources and facilities. He stated that without them, little constructive action can possibly be expected or taken.

It was startling to hear from the Family Court judge that a practice was developing in robbery cases committed by several persons, of letting a youth under 16 years of age hold, and if necessary, use the gun, so that if there is an arrest, the onus of possession and use of the gun will be on the youth who will be processed as a juvenile delinquent in the Family Court.

For quite some time now, the firearms problem and particularly the handgun menace have been discussed, debated and reviewed by public officials, law enforcement officers and concerned citizens, as well as in newspapers, magazines and on



radio and television. In all these discussions and in the testimony presented to this Commission at the hearings there was unanimous agreement that the handgun is a deadly weapon which, in its continued and increasing flow into this state illegally was causing an untold loss of life and property and that an atmosphere of fear exists in many of our communities. For example, the District Attorney of New York County testified at the public hearing:

"In the first 14 weeks of 1974 out of the 414 homicides committed in this city, 194 were by handguns. In the year 1973, pistols and revolvers were responsible for 795 of the 1,669 homicides in this city. The carnage is appalling."

As noted previously, many more of our citizens were robbed at gunpoint and seriously injured.

In addition to a consensus among the experts and interested government officials on the nature of the problem, agreement also exists with respect to the source of illegal handguns, the fact that New York State, and particularly New York City, have the toughest gun laws in the country, and that there is an urgent need for effective Federal measures.

As was demonstrated by the various representatives from different components of the criminal justice system, a consensus does not exist with respect to the manner in which New York gun laws have been implemented and the way in which such laws should be applied.

Moreover, alarming testimony was given to the effect that honest law abiding citizens are beginning to take matters into their own hands. More than one witness testified that apparently there is a growing tendency for people to arm themselves with handguns for self-protection. This is due, in large measure, to the failure of government to curb the availability, possession and use of the handgun by criminals.

Unless this State is willing to allow our society to backslide into an uncivilized armed-camp state, immediate and effective remedial action must be taken. Even if all desirable steps cannot be taken at once, some concerted and coordinated efforts must be initiated without further delay.

The Commission makes the following preliminary Recommendations.

#### RECOMMENDATIONS

The testimony given at this public hearing shows that there are basically two aspects to the illegal handgun problem: (1) the illegal importation of handguns into this state; (2) the enforcement of the laws governing the illegal possession of handguns, and their use, in the commission of crimes. Both aspects are interrelated.

## Federal Action

In testimony presented at the public hearing on behalf of Senator Jacob K. Javits, the Senator stated, in part:

"It has been established in fact, that these guns are coming to us by the thousands through black market 'gun running' networks. These operations thrive on the absence of strict Federal standards which makes it possible for a gun runner to walk into a store in certain states, give a false name and address on that Federal form and exchange cash for several hundred handguns. In one case, for example, one man in South Carolina purchased 600 handguns in one day so that he could resell them in Northern cities.

\* \* \*

One action we must now undertake is to control the deadly interstate traffic in firearms."

The District Attorney of New York County said:

"Without effective Federal legislation - the impact of State and local efforts is bound to be circumscribed."

It is quite clear from the testimony at the hearing that the easy availability of illegal handguns in this city and state could be sharply reduced if there were Federal legislation directed at controlling effectively the interstate flow of such concealable weapons. In other words, if Federal laws would strictly control the manufacture and sale of handguns in all states of this country, and thus stop the flow of these weapons

into the hands of persons with criminal intentions, the problem would be immeasurably alleviated.

It is important for all public officials in this state -- federal, state and local -- to recognize that there is a serious handgun problem which affects all New Yorkers. The Commission deems it essential that the State of New York -- reputed to have the toughest gun laws in the country -- speak with one loud clear voice to the appropriate officials in Washington that effective action must be taken to protect our citizens.

Towards that end, the Commission recommends the enactment of appropriate Federal legislation that would require:

(1) An outright ban on the manufacture and sale of handguns that are not suitable for legitimate sporting, military or law enforcement purposes, otherwise generally referred to as "Saturday Night Specials."

(2) The licensing, pursuant to appropriate standards, of all persons who own or seek to purchase handguns so as to prevent the easy sale of handguns to persons having criminal intentions.

(3) The registration of every handgun in the United States so as to provide an improved system for law enforcement agencies to trace and apprehend those who commit crimes with handguns.

Pending the enactment of such legislation, it is urged that there be established in the Bureau of Alcohol, Tobacco and Firearms, in the Northeastern Region, a separate firearms unit. This unit should have adequate personnel to concentrate its efforts, in cooperation with local law enforcement agencies, in tracing handguns that have been transported interstate, illegally, and used in the commission of crimes, and in developing and exchanging intelligence information regarding such illegal operations and in apprehending and prosecuting violators of the law.

#### State and City Action

It should be recognized, as a practical matter, that the requisite Federal legislation may not be forthcoming as quickly as the present need requires. As Senator Javits stated "Again and again, I have introduced major legislation in the Congress to bring this deadly handgun flow under control but to date such legislation has not been enacted."

While seeking and awaiting necessary Federal action, the people of this City and State should not be left helpless to cope with the increasingly critical handgun peril.

In light of the extraordinarily large number of illegal handguns that experts have testified to be in New York City and in view of the high percentage of such serious crimes as homicides, assaults and robberies committed with handguns, it is glaringly plain that something must be done -- now.

Accordingly, the Commission recommends:

(1) That a well-planned, State-wide, educational program should be developed and carried out effectively by responsible governmental officials and law enforcement officers, informing the public of the havoc created in our communities by the illegal possession and use of handguns. It should be made clear that the illegal possession of a handgun is a crime that is punishable by imprisonment.

The public must be educated to the fact that possession of a handgun for "self-protection" is a myth. According to the Acting Chief Medical Examiner of the City of New York, and others, a person possessing a handgun in his home or place of business is six times as likely to injure an innocent person, that is, a member of his own family, than to thwart a crime.

As part of that program, a well publicized appeal should be made by the appropriate officials throughout the State requesting all persons in possession of handguns without a permit, to turn in those weapons to law enforcement officials in return for amnesty and immunity from prosecution for the illegal possession of those handguns.

(2) The Commission adopts and subscribes to the recommendation made by Judge David Ross, the Administrative Judge of the City of New York, Criminal Branch of the Supreme Court, that law enforcement officials on all levels be thoroughly informed and trained with respect to the legal and constitutional issues inherent in all criminal cases and particularly in relation to firearms violations.

(3) That the penal law should be amended to make the illegal possession of a handgun with intent to use that gun -- now a class "D" felony -- a class "C" felony and subject to the mandatory sentence of the imprisonment provisions

enacted into law last year.

The Commission is advised that a measure -- part of Governor Malcolm Wilson's 1974 legislative program (Senate Bill 10431-A) -- is now pending before the Legislature.

The Commission urges enactment of that measure.

(4) The illicit gun traffic in New York City has now reached such dimension that it is regarded by law enforcement officials as second only to narcotics in its gravity. Various representatives of agencies within the criminal justice system testified at the hearing of their need for additional resources to attack the gun problem. The court system is presently overburdened by the sheer volume of cases, and consequently gun cases cannot and do not receive the attention they require.

It is therefore recommended that an evaluation be conducted with respect to the possible amendment of Article 5 B of the Judiciary Law, creating the Special Narcotics Parts of the Supreme Court in New York City, for the purpose of expanding the jurisdiction of such Special Narcotics Parts to include felony handgun cases. Such action would hopefully result in swift trials and certainty of sentence. The Commission also believes that such action would serve notice upon the illicit gun-runners and criminal gun-toters that society means business and that the police, prosecutors and courts

are rolling up their sleeves and that all officials of the criminal justice system are working together to put these criminals out of business.

(5) That the small firearms group that presently exists in the New York City Police Department be substantially expanded, with adequate personnel, to deal with the illicit gun traffic in the City of New York.

(6) We come now to the problem of the licensing of handguns in all areas of this State outside of the City of New York and the Counties of Nassau and Suffolk. In those areas, a license for a handgun, once issued, is, in effect, a lifetime license. This procedure affords very little, if any, control or supervision over the licensee or his pistols after issuance of a license. As this Commission previously recommended, following its investigation in 1964 of pistol licensing laws and procedures in New York State, Penal Law Section 400.00 (10) [previously Section 1903 (10) of the Penal Law] should be amended to provide that licenses to carry or possess a pistol, elsewhere than in the City of New York and the Counties of Nassau and Suffolk, issued subsequent to the date of this amendment shall expire on the third anniversary of such license. Further, that all prior outstanding pistol licenses within such jurisdictions shall terminate within three years of the date of enactment of such amendment, at a

time and in a manner to be determined by the Board of Supervisors of each county.

\* \* \* \*

As we previously stated, these are preliminary recommendations. Following a review and consideration of all other proposals that were suggested during the public hearing, the Commission will submit a more comprehensive list of recommendations in its report of this investigation which it hopes to have ready in the near future.

All that we have heard at the public hearing and all that we have said in this statement lead to the worrisome conclusion that although New York State and New York City have strict gun control laws, the extensive illegal possession of handguns and the exceedingly high rate of serious crimes caused by this weapon have produced a troublesome state of affairs. With illegal guns continuing to pour into this state, and as more and more crimes are being committed with them, the people, unfortunately, might well get to accept this condition as routine difficulties. This must not be permitted to happen. Illegal guns and high crime rates are not, and must never be considered or accepted as routine affairs. All of us, the people, the police, the prosecutors and the courts and related agencies must see this terrifying situation for

what it is and, individually and jointly, must take the most effective measures to counteract it.

One witness at the public hearing said, in substance, that perhaps what would be very helpful to cut down on the illegal possession of guns, is not so much the authority to impose sentences upon violators of the law, but the knowledge by those individuals that if arrested and convicted, a swiftly imposed jail sentence is a certainty.

A new and meaningful atmosphere must be created to deter persons from the illegal possession and use of handguns.

It is hoped that the facts revealed at this public hearing, and the recommendations made, will be productive of constructive action which will assure the people of this city and state greater personal safety and security.

**END**