

# **BIDS: Blind Identification Database System**

**A system to prevent both gun owner  
registration and prohibited firearm sales**

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## **BIDS: Blind Identification Database System**

**A system to prevent both prohibited firearm sales and gun owner registration**

### **OVERVIEW OF THIS ARTICLE**

This article proposes to replace the existing firearm purchase *background check* system with an identity search/firearms disability check that eliminates the risk of gun registration inherent in the current system. The proposed Blind Identification Database System, or BIDS, is intended to replace the National Instant Check System (NICS). The purpose is not to endorse or extend background checks or any existing infringements on firearms ownership or transfer. Rather, it is to eliminate gun owner registration while continuing to provide for a system to prevent illegal gun sales by dealers.

In BIDS, the word “blind” refers to the fact that the government cannot detect who is attempting to buy or has bought a firearm and thus cannot add this person’s name to a registry of gun owners. Nor can gun dealers randomly view a list of persons who have been denied the right to buy, own, and use firearms.

The current background check system — NICS — is deeply flawed. NICS provides the means for the government to create and update, with relative ease, an illegal registry of firearm owners. Any such registry abuses the privacy and trust of the people and abuses the intent of the Constitution’s Second Amendment. Gun owner registries have already been created in certain states (Illinois and Pennsylvania, for example) and the federal government continues to compile a microfilmed list of gun purchasers via surrendered Form 4473’s. [For those unfamiliar with the history and danger of government gun owner registration, please see **Note 1: The Danger of Registration** at the end of this article.]

The proposed system — BIDS — uses computer and internet technology to allow firearm dealers to determine whether or not a potential buyer is prohibited from purchasing a firearm, but *without* the government ever knowing the potential purchaser's name, or whether or not he actually bought a firearm.

BIDS can (1) prevent those who may not legally possess firearms from buying them from licensed gun dealers, (2) can perform a faster and more thorough search for such people, and (3) can greatly impede government creation of a firearm owner registration, which many believe is occurring under the present system.

We say “can greatly impede” because actual *prevention* of such registration will depend upon abolishing two other *de facto* state registration programs: (1) state “dealer's record of sale” (DROS) programs or the equivalent, in which gun purchases are recorded and filed with individual states; (2) state firearm purchase background checks, similar to the federal check. The complete BIDS system *includes* legislation to end *de facto* registration via federal (BATF) individual firearm transaction records.

There is no sound reason why these *de facto* state registration programs cannot be eliminated. In fact, states that cooperate in the BIDS program will have no use for their own background check systems, which will be rendered redundant.

But even if these *state* programs are not abolished, BIDS will greatly hinder the continuation of a *federal* gun owner registry, as well as provide a more efficient method of preventing prohibited firearms sales.

Finally, this article addresses various arguments that might be raised against implementing BIDS, and responds to them.

Appended to the end of the article are notes on BIDS and related subjects.

## **BRIEF BACKGROUND**

Historical records, such as *The Federalist Papers*, clearly show that the Second Amendment is intended to stand as a bulwark against establishment of a tyrannical American government. It is elementary that the spirit of the Second Amendment opposes the establishment of federal or state registries of gun

owners, which would greatly simplify confiscating guns or rounding up gun owners by such a tyrannical government. (More on this subject in **Note 1** at the end.)

This is not merely the opinion of the authors. Recognition of this implied proscription against the federal government keeping a list of firearm owners has been codified into existing law, in the Gun Control Act of 1968::

**Section 926.** Rules and regulations...No such rule or regulation prescribed after the date of the enactment of the Firearm Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established..."

Further language in the so-called "Brady Law" regulations provides that states which become Points Of Contact (POCs) under NICS abide by certain rules regarding destruction of records:

**Section 25.9(d):** "The following records of state and local law enforcement units serving as POCs will be subject to the Brady Acts' requirements for destruction:

- (1) all inquiry and response messages (regardless of media) relating to the initiation and result of a check on the NICS that allows a transfer that are not part of a records system created and maintained pursuant to independent state law regarding firearms transaction; and
- (2) all other records relating to the person or the transfer created as a result of a NICS check that are not part of a records system created and maintained pursuant to independent state law regarding firearms transactions."

Clearly there is an obvious, historical agreement concerning the danger of allowing government to compile a list of gun owners. If there were not, the above provisions of law would never have been written.

## **DANGEROUS LOOPHOLES IN THE CURRENT SYSTEM**

The authors regard as a loophole any legal requirement, system, or program that enables the compilation of a gun owner registry, as it violates the intent of the Second Amendment and the “no-records” provisions of subsequent federal gun laws.

### **Loopholes in NICS**

As currently set up, the National Instant Check System (NICS) requires anyone trying to purchase a firearm from a licensed firearm dealer to submit his or her name to the government and then undergo a background check. A record of the check is submitted electronically by the gun dealer and is recorded by the FBI, which administers the NICS system. Thus, anyone who has submitted to a NICS check can be presumed to own a gun if he or she passes. If so desired, the actual sale can be verified via a gun dealer’s Form 4473 records.

Current NICS enabling law prohibits the federal government from permanently holding such records. But this law has *already* been violated by the federal government, which later declared it could keep the records for at least six months before presumably purging them.

In fact there is no way to prove that NICS records are *ever* being completely purged. Sworn testimony from government officials to this effect is meaningless because no official can personally monitor his purview 24 hours a day.

Furthermore, long and painful experience has led many citizens to conclude that government officials can and often do lie with impunity.

Finally, such records can be stored and copied with ease onto portable data storage devices (such as CD-R’s) and/or may be sent electronically to other government entities to hold, thus “technically” complying with the law while in fact flouting it.

Thus, as configured, NICS can produce a growing, up-to-date, permanent federal registry of firearm owners. Despite official protestations to the contrary, the authors (and many others) believe there is a substantial probability that this is occurring right now. But even if we are wrong, the lessons of history and basic prudence dictate that NICS be replaced with something more in line with the Second Amendment and existing statutory law.

### **Loopholes in GCA '68**

There is an obvious loophole to the “no records” rule built into the Gun Control Act of 1968: the federal government *is allowed* to take possession of the records of gun dealers who close their businesses. Thus the government has already compiled a massive list of gun owners dating back to 1968.

Others argue that there is a further loophole in the language of GCA '68 itself: “...no such rule or regulation...may require ...that records...be recorded at or transferred [to a facility of the] United States or any State...nor that any system of registration ... be established”. The loophole is in the words “may *require*...” Although the intent seems clear, GCA '68 does not directly *prohibit* such record keeping or registration. It simply says no rule or regulation can *require* it. Thus some person or agency might record or transfer records *voluntarily* and still technically be in compliance with the law. We believe that may have occurred.

Finally, as discussed below, prudent citizens should deem even the existence of *private*, dealer-held lists of gun owners as required by GCA '68, the locations of which are known to the government, to constitute the equivalent of a government registry.

### **Loopholes regarding state sales records**

Individual states are themselves running *de facto* firearm owner registration programs. Generally this takes the form of a “dealer’s record of sale” (DROS) form, or the equivalent, for each firearm purchase. Following a retail sale, the forms are immediately sent to the appropriate state agency in paper or electronic form. These forms comprise another growing, up-to-date list of gun owners.

### **Loopholes regarding Form 4473**

The U.S. Treasury Department’s Bureau of Alcohol, Tobacco, and Firearms (BATF, or ATF), requires licensed gun dealers to fill out, for every sale, a Form 4473 (“Firearms Transaction Record - Over the Counter”). This record contains the buyer’s name and other information. These records are kept by the dealer at his place of business *and may be examined at any time by the BATF*.

Furthermore, whenever a licensed gun dealer (often referred to as an “FFL” since he holds a federal firearms license) closes his business, *all of these records are turned over to the BATF*. This is not a minor concern; the BATF has about 400 million microfilm images of surrendered forms. They represent,

according to an estimate by the International Association of Chiefs of Police, *at least* 100 million individual transaction records, which clearly comprises a very large registration list of gun owners.

An enormous number of individual transaction records are held by existing gun dealers. But even if such records were *never* turned over to the government and were *never* examined at will by the government (which is not the case), their very existence is still contrary to the spirit of the Constitution and constitutes a grave danger to the nation. The government can use broad-based warrants signed by compliant judges to seize and copy such records. Or worse, a government in an advanced stage of tyranny would likely dispense with such niceties as search warrants and simply seize the records.

### **Summary of loopholes in the current system**

The bottom line is that, under the current system involving NICS plus GCA '68 plus BATF transaction records plus state transaction records/background checks (which we will refer to as NICS/GCA '68/Form 4473/DROS) we can *never* be certain that a growing record of gun owners is not being compiled.

To the contrary, common sense, experience, and prudence dictate the assumption that NICS/GCA '68/Form 4473/DROS has already produced large-scale gun owner registration. Additionally, any *other* lists of gun owners known to the government, even if they are currently in private hands, pose a grave potential danger to individual Americans and constitute *de facto* registration.

The only way to be sure the government is not keeping records, and is thus complying with the intent of the Second Amendment (underlined by the “no records” provision of GCA '68) is if *it can never find out who buys guns in the first place.*

## **A NEW SYSTEM: BIDS**

### **General description of BIDS**

The name of the new system we are proposing is the Blind Identification Database System, or BIDS for short.

The heart of BIDS is an encrypted database of all persons who are prohibited from owning, using, or purchasing firearms. Only *prohibited persons* are in the

database – no information on other citizens is in the database, ever. The BIDS database would be supplied to all licensed firearm dealers, who would store it in a dedicated BIDS computer or computers. Firearm dealers would verify the prospective gun buyer's driver's license or state-issued ID and enter name, date of birth, and state ID number into their BIDS computer. The computer would then search the encrypted database for a match.

If there were a match, the computer would display that name and associated information, and the prospective buyer would be prohibited from making the purchase. If there were no match, the computer would display a message stating that fact, and the sale could proceed. No computer report or record is made of the name being searched for, so BIDS never informs the government as to who is attempting to buy a gun or who actually buys a gun.

**[NOTE:** A legal revocation of a civil or constitutional right is referred to as a “disability”. From here on, we will refer to people who have any legal disabilities regarding firearm ownership as “firearm-disabled persons”. We will refer to the database listing such people as the “firearm-disabled database” or the “BIDS database”.]

To prevent misuse of information in the BIDS database, and to comply with existing privacy laws, the database would be accessible only to licensed dealers who were given the access key. Furthermore, records in the database would be individually encrypted so that a dealer could not peruse them at will. In other words, no records would be viewable unless it were the result of a particular name/ID match. (More on what constitutes a match below, in “**Detailed description of BIDS**”.)

To comply with existing state privacy laws and to prevent malicious use of information, the information displayed following a search match would *not* divulge the particular *reason* for the firearm disability, whether it be conviction for a crime, a history of drug abuse, or a mental disability.

BIDS would at most note the *nature* of the disability, such as lifetime prohibition for possession of any firearm. Even that information need not be displayed; the presence of a name on the list could mean, by itself, that the person was generally firearm-disabled. If that person's status changed, his name would be removed. But again, no one except the federal authorities and/or authorities in the individual states that submit information to BIDS would ever know *why* there was a firearm disability.

To complete the BIDS system, additional peripheral laws will be required in order to protect the government and its agents, firearm dealers, and gun buyers.

If desired, BIDS could be phased in as NICS was being phased out.

### **Detailed description of BIDS**

***Creating the BIDS database.*** It is important to note that: (1) much of the most current information needed to create a BIDS database already exists in electronic form; (2) much of the infrastructure needed to keep BIDS updated already exists; (3) a “mini-version” of BIDS already exists.

Taking these points in order:

(1) **Existing databases:** NICS currently accesses at least four databases that would form the initial core of BIDS:

- the National Crime Information Center (NCIC) database;
- the Interstate Identification Index (III) database;
- the NICS Index;
- the Denied Persons database.

All of the above, including any and all state prohibited person electronic databases, could be integrated to form the original BIDS database.

(2) **Existing infrastructure.** States that participate in the NICS Point of Contact system already have the mechanism in place to search for criminal and other firearm-disabled persons and report this information to NICS. They could just as easily contribute to the BIDS database. States that for various reasons (such as state privacy laws) do not, or may not, fully participate in NICS will be free to fully participate in BIDS (more on that later).

After entering the most easily accessible firearm-disabled person information into the BIDS database, individual states would start with the most recent years and going back in time as they continued to search written and electronic records on firearm-disabled persons that would be added to the BIDS database.

(3) “**Mini-BIDS**”. The basic concept of BIDS is already being used by NICS. NICS maintains a *denied persons database*, which consists of every person who has undergone a NICS background check and has failed, i.e., who has been identified as a firearm-disabled person. Whenever the name and ID particulars of a person attempting to buy a firearm is submitted to NICS, the denied persons list is searched. “Denied” responses are virtually instantaneous.

Note that this denied persons database need contain *only the name and ID particulars* of each entry and *nothing else* in order to give a “yes” or “no”—just as would the BIDS database. Whether this is actually the case is not known to the authors, nor is it relevant. The difference between the denied persons database and BIDS is that with BIDS the government would never know the name of people who *were able* to buy a gun.

***BIDS hardware and software.*** The authors propose that firearm dealers utilize, in their place of business, an ordinary internet-compatible computer (or computers) equipped with a hard drive and a CD drive. The hard drive of the computer would be loaded, via either a government website or a set of CD’s, with a date-stamped, encrypted comprehensive database containing the name and associated ID information (driver’s license or state ID card number, date of birth, and perhaps other desired descriptors) of every U.S. resident with a firearms rights disability. Known aliases or name versions used by firearm-disabled persons could be included in the system as separate entries.

The BIDS database would be secured from the general public by means of secure authentication protocols, such as Secure Sockets Layer protocol or PGP and/or unique log-in ID’s.

Once the gun dealer’s hard drive was loaded with the date-stamped BIDS database, the dealer would use it to search for the names of prospective gun buyers.

More specifically: a dealer would load onto his computer, from disk or internet, an open source code program that performed a BIDS search when the required search fields were entered. The search fields would consist, at a minimum, of first name, middle name(s), last name, date of birth, and driver’s license number or state-issued ID number. For persons with no middle name, a simple code such as “nmn” could be entered for that search field. Note that these search fields are precisely those used by NICS to initiate a criminal background check prior to a firearm purchase.

The BIDS database would be encrypted so that it could not be perused at will by gun dealers or anyone else. Each record could be individually encrypted. The database could include other descriptors, such as height, weight, eye and hair color, and last state of residence.

Additionally there would be an encrypted code that indicated the source that originally provided a particular firearm-disabled person's name to the BIDS database; i.e., either the federal government or a particular state. In case of a dispute over firearm disability, this would allow backtracking to confirm that a particular person did indeed belong in the BIDS database, while not compromising privacy laws. For example, if a person contested his or her inclusion in the BIDS database, and the record that led to the inclusion were a privacy-protected state record, that state would be contacted. The state would then simply confirm or deny that the person belonged in the database. Any further dispute would be between the plaintiff and the state.

The BIDS search program would be separate from the BIDS database and written in open source code. The database format would be a simple, open design. Thus, outside contractors and gun rights organizations could examine the database format and search program to make certain no changes were made during updates that would allow the government to keep track of names for which a gun dealer had searched.

The BIDS database and update system could be operated by private contractors, and these could be rotated every few years to lessen the chance of government coercion or influence, though that would involve a trade-off in that it would lower the incentive and raise the cost of being one these contractors. In any case, the system could be periodically audited by other contractors and interested organizations to detect program tampering that would provide the government with a list of searched names.

***BIDS database updates.*** At predetermined intervals (the authors recommend no more often than one week, for practicality) gun dealers would be required to access a program that would *update* the BIDS database. This BIDS database update would occur in essentially the same manner as websites operated by suppliers of anti-virus programs. It would consist of *adding* new firearm-disabled persons to the database, and *deleting* the names of any persons whose firearm disability had expired, been legally removed, or determined to be incorrect.

In another parallel to anti-virus updates, the BIDS search program would keep track of when the last update was performed. If the last required update were not performed, the search functions of the BIDS program would be disabled.

In the cases of phone, internet, or BIDS website interruptions or outages preventing database updates, see the section below titled “System breakdowns”.

***Mechanics of a retail gun purchase under BIDS.*** In order to (1) discourage firearm-disabled persons from attempting to buy firearms from licensed gun dealers, and (2) to protect dealers from false charges supported by altered information, a prospective gun buyer would hand over his driver’s license or state-issued ID card to the firearm dealer at the time of purchase. Using information from the driver’s license as the source, the dealer would then enter the customer’s first, middle and last names, date of birth, and driver’s license or state ID number into the search fields of the BIDS computer.

Before initiating the BIDS search, the dealer would temporarily place the customer’s driver’s license or state-issued ID card inside a fixed lockbox in the store. (A lockbox, especially one operated by a keypad, would not be a great inconvenience for either dealer or customer, as currently gun dealers often walk away with a customer’s license or ID card while performing paperwork or NICS entries.) The dealer would then initiate the BIDS search for the customer’s ID parameters. If all the search fields were not filled in, the system would not perform the search. This would prevent dealers from simply typing in names of people they wished to “snoop” on as regards firearm disabilities, and would prevent other unauthorized database “mining” for information on individuals.

BIDS would display a match (or matches) whenever any of the following combinations of customer fields corresponded with those in the BIDS database:

- full name (f,m,l) + driver’s license/ID number
- first name + driver’s license/ID number
- middle name + driver’s license/ID number
- last name + driver’s license/ID number
- full name (f,m,l) + birthdate
- first and last name + birthdate

Note 1: a match of state ID number or driver's license number includes matching the state that issued it, in case different states have duplicate license numbers.

Note 2: the problem of identifying firearm-disabled persons who have legally changed their names cannot be addressed by either BIDS or NICS; it is a problem that must be solved by legislation and cooperation among the states.

If the BIDS search turned up a match, the sale would be prohibited. Indeed, the law might then require the dealer – who would still have the customer's driver's license or state ID card in his fixed lockbox – to report this prohibited purchase attempt to authorities. Of course, the details of such a requirement would have to take into consideration all practical and legal ramifications. For example, due to the complicated and unconstitutional nature of most current firearms laws, and because the potential for false match exists (that is, a non-prohibited person may have the same name and birthdate as a prohibited person in the database), any such requirement should allow potential buyers to have dealers run BIDS checks to make sure they are eligible or that there are no potential problems *before* they attempt to purchase a firearm. Were BIDS implemented, it would probably become common practice for anyone about to buy a gun to have a check run on himself prior to actually announcing a definite intention to buy a particular gun. In the end, the best solution will probably be that database matches are not reported.

Although it would be statistically very rare, some people might have precisely the same name and birthdate of a firearm-disabled person. Comparing driver's license numbers or state ID numbers wouldn't necessarily clear up the confusion, because currently there is no cross-reference or updating system for people who move from one state to another and get another driver's license or ID card.

What *could* clear up any confusion would be other descriptors in the database that could be easily verified with a quick but careful examination, such as height, eye color, or any distinctive body characteristics listed in the database for the firearm disabled person.

Alternatively, place of birth could be employed, which would require production of a birth certificate. The gun dealer would have the right, but not the obligation, to complete a sale based on such secondary information.

Beyond that, there seems to be no remedy other than referring to a centralized database such as the NCIC for final determination. However, to prevent this person from being forced to undergo an NCIC check in the future, a unique clearance number could be issued to him. Following a regular BIDS check, this number could be phoned in or submitted electronically by a gun dealer for confirmation by the government.

If the BIDS search produced no match, the sale would proceed.

***Mechanics of a retail gun purchase - states with waiting periods.*** The authors believe that firearm purchase waiting periods are an unconstitutional infringement on the right to keep and bear arms. Such waiting periods should be viewed with the same revulsion as waiting periods for purchasing religious scriptures; for publishing news, fiction, or non-fiction material; or for exercising free speech or assembly rights, etc. Furthermore, there are documented cases of people (often women) who were left defenseless by a waiting period and were assaulted and/or killed. This is confirmed by academic research. According to Yale Professor John Lott, "While research shows that even short waiting periods increase rape rates, waiting periods longer than 10 days increase all categories of violent crime." ("*Some Time To Kill: In Waiting Periods, Gun Buyers Are At Mercy Of Criminals*", by John R. Lott Jr., Investor's Business Daily, 3-2-2001)

Nevertheless, until such waiting periods are eliminated BIDS must take them into account. Consequently, where a waiting period is in effect, once the dealer completed the BIDS search and determined that a customer was not on the firearm-disabled list, he would give the customer a card or slip of paper containing a unique, dated transaction number, and the dealer would keep a copy of the number in a secure location. When the waiting period was over, customer would return and produce his transaction number, which would be matched with the dealer's number. Another BIDS check would be run, and if there were no match the transaction would take place.

***Mechanics of BIDS at gun shows.*** Gun shows might provide problems for our proposed system only if the BIDS database update were required on a daily basis. The authors believe that would be far more often than necessary, and that it might prove excessively costly.

But let us assume the update *were* required on a daily basis. For gun shows with easy access to phone lines (and electricity, of course), a dealer could take a BIDS-equipped computer to the show and proceed just as if he were in his regular retail outlet. Alternately, or additionally, the gun show producers could provide BIDS terminals for dealers. If necessary for whatever reason, dealers could use, for example, a Zip disk or the like to retrieve and install a required update from a gun show's centrally-accessible computer.

For gun shows without phone lines, and therefore without easy access to the internet, there are at least two possible solutions. One would be accessing the internet via a wireless setup, perhaps provided by the show producers. A second solution would be for firearm dealers, at the close of the show each day, to physically take their computer back to a location where the BIDS database update could be performed. A third possibility would be for updates to be legally suspended for two or three days on the particular computers that dealers took to the gun show. This would require some form of official "permission" be given to the BIDS search program, which would otherwise shut itself down.

The simplest and most practical solution would be making BIDS updates required at intervals of *at least* three days, which would cover the time span over which nearly all gun shows take place. With a three-day update interval, there would still be virtually zero probability of allowing any particular firearm-disabled person to pass a BIDS search and buy a gun, unless that person would have gotten through whether the system was updated or not.

***Dealing with BIDS system breakdowns.*** The firearm dealer would have the option of utilizing one or more separate hard drives as back-ups. This would prevent having to suspend sales in case of a main hard drive malfunction.

Two other system breakdowns could occur. One would be a breakdown of the BIDS database update website. The other would be a breakdown of telephone or data line that supplied a gun dealer with internet access. This could occur in the case of a natural disaster or civil unrest, which are the very times during which many people suddenly grasp the wisdom of being armed and attempt to buy guns (the LA riots being a perfect example). Yet these people might be prevented from making a life-saving gun purchase if a dealer could not complete a scheduled BIDS database update.

The solution is having a maximum waiting time per day – for example, 30 minutes – for access to the database update website. If a dealer's BIDS program

indicated that it was time to perform a database update, but the database update website was not available due to interrupted telephone service or to internet server(s) being down, the BIDS interface program would note that an attempt had been made to log onto the site. After the thirty minutes had elapsed, and after a second attempt to log on had been attempted and had failed – due to the telephone system being down *or* due to the internet server being down – the BIDS search program would become operational again, and would utilize the last saved copy of the BIDS database.

The BIDS search program – after becoming operational again due to a second failed attempt to log onto the update site – could automatically make periodic attempts to re-contact the update site. The search program would remain functional at least until the next scheduled update time, after which another manual attempt to update the BIDS database would be required.

Additionally, the BIDS program could be configured to keep an internal record, and/or to notify appropriate private and government agencies by email (when the telephone system became operational) that the system was down for this particular user. This would provide confirmation for reasons of legal liability.

This arrangement would provide an incentive for the government to make certain the BIDS update website(s) was operational at all times, and would prevent the government from halting gun sales by shutting down the system at its whim (which it is suspected of having done already – more than once – with NICS).

***Legislation associated with BIDS.*** Legislation will be required in order to fully implement BIDS. Some would relate to the two basic goals of BIDS and some would relate directly to implementing BIDS. We will deal with these in order.

(1) **Laws regarding the basic goals of BIDS.** The two basic goals of BIDS *are preventing gun owner registration and preventing prohibited firearm sales.* Specific concurrent legislation will be required to achieve these goals.

(a) ***Elimination of current records.*** One purpose of BIDS is to eliminate possible gun owner registration via NICS background searches and associated records. If that goal is valid, then it makes no sense to continue other methods of gun owner registration. Therefore any requirement that dealers enter the names of gun buyers on firearm transaction records (such as BATF Form 4473, or state Dealers Record of Sale forms) *should be halted.* There is no point in

keeping one branch of the government from compiling a list of gun owners if other branches are doing that exact thing.

In keeping with the overall goal of eliminating gun owner registries, ideally every gun owner's name would be deleted from every existing state and federal electronic registry, and from every paper record in federal, state, or private hands.

Taking, for example, the existing BATF Form 4473: any form whose contents have been electronically recorded would have gun owner data deleted. Microfilm records could be physically altered. Any forms whose contents have not yet been photographically or electronically recorded (such as those in dealers' hands), could be run through a machine that prints over the buyer's signature, rendering it illegible, and then through another machine that cuts off and shreds the upper part of the form, leaving the part (section D in the current version) that contains the firearm's serial number, transaction date, seller (transferor) business name and address, and the seller's signature. This purging program would be made easier by simply destroying any transaction records older than a certain age, whether held in government or private hands.

This may seem a radical proposal to those unconcerned about the growing government mania for collecting information about citizens (reminiscent to the authors of Nazi Germany or the Soviet Union) of which the latest U.S. census form is a prime example. It may also seem radical to average citizens – even gun owners – who have become inured to our current unconstitutional and dangerous systems of de facto registration.

But we point out that the United States somehow managed, before the first federal registration schemes for common firearms appeared a little over thirty years ago, to not only survive but to become the greatest and freest nation on earth. And we point out that the existence of gun owner registries, aside from violating the intent of the Second Amendment, provide an ongoing temptation to state and federal administrations intent upon undermining the Constitution's protection of individual rights. New York State's experience of gun registration followed by harassment provides an example.

This proposal to destroy all gun owner registries may also seem radical to those who believe such registries are vital to controlling, preventing, and solving crimes and to prosecuting criminals. But after examining the statistical and empirical evidence and applying common sense, the authors conclude that the

value of registries in accomplishing these goals is tremendously overrated. Both on an absolute basis and compared the constitutional erosion and practical dangers created by gun owner registration, the crime-fighting value of tracing guns back to their last recorded retail purchaser is inconsequential. There is more on this subject under the sub-heading “**Arguments against BIDS regarding solving crimes**” below and in **NOTE 6** at the end of this article.

Furthermore, we believe that focusing on *one particular tool used in some crimes* is misguided and wastes resources. Society’s funds would be far better spent on all aspects of dealing with the *perpetrators* of violent crimes. This would include heading off criminal development by moral and ethical training at a young age; increasing emphasis on police work and crime solution; educating convicts; enacting swift, certain processing in the court system; and imposing meaningful punishment for crimes. Compared to these things, the fastest, most efficient, and most computerized gun-tracing infrastructure in the world is insignificant as regards reducing crime.

Finally, eliminating *purchaser* names from government records does not mean that firearms could not be traced back to the licensed *dealer* who sold the firearm.

Keeping inventory records is common and necessary practice in any business. The thing that is *not* common and *not* necessary in other businesses, and which violates the intent of the Second Amendment and subsequent anti-registration provisions of GCA ’68, is the requirement to *record the name of the purchaser*.

**(b) Elimination of prerequisites for private sales.** The authors believe there should be no *mandatory* system for checking on the purchase of firearms sold by one non-dealer person and bought by another, whether it occurs in a home or at a gun show. Such a sale is nothing more than the transfer of chattel from one person to another. Such sales have been legal on this continent for hundreds of years, and are part and parcel of the right to own, use, and dispose of private property.

The authors realize that some legislators wish to make background searches mandatory for private sales at gun shows. There are at least four powerful reasons for *not* doing this, and one reason as to why it is superfluous.

First, as noted, such a law would be a gross infringement upon privacy and property rights and anathema to the Constitution. While occasionally an

unsuspecting person might make a private sale to a firearm-disabled person, it is hardly worth violating fundamental privacy and property rights for such a rare event.

Second, a law making background checks or name searches for private sales at gun shows mandatory would be worthless, since buyer and seller could simply walk off the gun show premises and complete the sale. Why pass a law that can be circumvented with ease?

Third, such a law leads enemies of the Second Amendment to insist on mandatory background checks or name searches for *all* private sales, gifts, or transfers – even for example, when a husband gives his wife or daughter a gun. This is not prediction or speculation, but fact: there are ongoing state and national campaigns to require background checks for private gun transfers.

Fourth, because any such laws will be routinely violated by millions of Americans who feel the government has no right to know about or interfere with the private, legal disposition of their property, they will hold such a law in contempt. Contempt for one law breeds contempt for laws in general, and contempt for and estrangement from those who enforce them, all to the detriment of society.

Fifth, private buyers and private sellers who were concerned about criminal prosecution *already have reason to avoid illegal sales* because *both parties would risk prosecution*; the buyer because he may not legally possess a firearm, and the seller if it could be proved that he had foreknowledge that the buyer was firearm-disabled. Private buyers and/or sellers who *are not* concerned about criminal prosecution – in other words, career criminals – are obviously not going to be deterred by a law prohibiting them from purchasing a firearm at a gun show without a background check – or anywhere else. In any case, criminals have little incentive to purchase firearms in retail establishments or gun shows because (1) firearms are readily available on the black market, (2) retail firearms are often much more expensive than on the black market, (3) firearms can often be *rented* on the black market for a charge far less than its legal or black market purchase price, (4) there is a greater chance in the retail market that faces may be recalled by witnesses.

But if a private seller *were* concerned about a potential buyer's firearm rights status, he could require, before completing the sale, that the potential buyer accompany him to a nearby firearm dealer. Here, the potential buyer would have

the dealer run a BIDS name search on himself and verify to the seller that the buyer was clear to purchase the gun. Dealers could perform such name searches for any person who provided proper ID, and could of course charge for their labor. Given the current fees dealers tend to charge for such services in the competitive retail market, private transfer BIDS fees should be nominal.

For the above reasons, the authors will never endorse either background checks or BIDS name searches for *private* sales, no matter where they take place. And despite this very proposed system of name checks, the authors do not endorse background checks or name searches for *any* firearm sales. For an explanation of this position please see *Constitutionality of background checks* and the subsequent **Response**).

(2) **Laws directly regarding BIDS implementation.** As noted above, for normal business reasons gun dealers would still record the serial number of the firearms bought and sold. But they would not be required to record the names of firearm buyers.

Dealers would not be legally *prevented* from recording buyers' names in every case. For example, if a buyer used a credit card to purchase a firearm, the dealer would of course keep at least a record of the credit card number (which is tied to his name) until he received full payment from the credit card issuer. The same would hold true with personal checks. Such means of payment are unavoidably less private than cash. For example, in the credit card case, presumably the dealer's bank, the buyer's bank, and the credit card company would all keep transaction records. With the constantly decreasing cost of information storage, such records could be kept indefinitely.

On the other hand, dealers would *not* be allowed to record the names of a buyer who paid in cash unless the buyer agreed to it. Buyers would decide whether or not to use a credit card, check, or any means that automatically leave a record of his name, instead of cash or some form of money order that leaves no paper trail.

If a dealer – for whatever reason – insisted on recording the names of his customers, he would be required to prominently post notice of this fact in his store. The public could decide whether or not to patronize this dealer.

It would be illegal and punishable for a dealer to claim *not* to be keeping a record of buyers' names when in fact he was.

It would be illegal for any law or government program, whether by design or unintended consequence, or via business or financial considerations, to coerce a firearm dealer into recording the names of firearm purchasers.

It would be illegal and punishable for a dealer to make audio or video recordings that might reveal buyers' names, unless such recordings were on a relatively short continuous loop that was used only for security purposes.

It would be illegal for the dealer to allow access to any person other than authorized employees to any such audio, video, or graphic recording of buyer identification information unless such access was authorized by a search warrant.

It would be illegal for a dealer or his employees, or for any bank or credit card company, to transmit information that might reveal the names of a gun dealer's customers to any person or government agency, unless under court order to do so.

It would be illegal for government agencies to examine dealer sales records that contained gun buyer names, or to examine the records of financial institutions for same, except under normal rules of probable cause and warranted search for particular items.

It would be illegal for any government agent to receive the names of firearms buyers, or audio or video records of gun sales, from a dealer, without a search warrant authorizing such reception.

No records would be required to be turned over to the government following the closure of a gun dealer's business, though sales records might be required to be stored by the dealer for a set number of years for tax purposes. For credit card or other non-cash transactions, gun dealers and financial institutions could legally purge gun buyer names and other identifying information from the records.

Any government employee, agent, or contractor proved to have knowledge of illegal possession of dealer records or knowledge of a list of firearm owners would be liable for criminal charges, and no such illegal records would be admissible into evidence in a court of law.

(3) **Laws regarding mutual “sting” protection.** It would be simple for the government to verify a dealer’s compliance with BIDS by temporarily inserting a false name and ID into the BIDS database, then trying to complete a sale.

With respect to such “stings” by government agents acting as “purchasers”, it would be mandatory that any arrest for an illegal sale be made *after* the firearm was physically handed over to the “purchaser” but *before* the dealer handed over the ID that he had locked away during the BIDS database search process. This would allow the dealer to maintain physical possession of the ID as exculpatory evidence. That in turn would help prevent a government “sting” purchaser from using a good ID card to clear the BIDS search, then switching it for a false ID card and claiming that the dealer made an illegal sale.

In simple terms, no dealer could be arrested or prosecuted for an illegal sale *after* returning the purchaser’s ID related to that sale. In fact, an arrest would be invalid if the customer’s ID were *anywhere outside* the dealer’s lockbox. The only valid arrest would be one made while the ID was *inside* the lockbox. Clearly, if only the dealer or his employees have access to the lockbox access code/combination, then it would be difficult for the arresting agent to plant false ID in the lockbox before, during, or after the arrest. The method of verifying the contents of a lockbox after an arrest in a way that protects the rights of all parties can be worked out in a number of ways.

It would be illegal for a dealer to hand over a customer’s ID at the same time he handed over a just-purchased firearm, thereby avoiding arrest for a prohibited sale. Compliance could be promoted by using a current enforcement tool: secretly recording (video and/or audio) of retail firearm sales. Such recording could only be made of actual “sting” attempts. Recording sales to non-firearm disabled customers would be prohibited.

Finally, insertion of false “prohibited persons” into the BIDS database for the purpose of testing compliance with the system should be limited in the number of false names inserted and limited in the length of time the names are allowed to remain in the system. This will prevent the government from seeding the database with numerous names that might produce false matches, which would cause unnecessary problems for buyers who have the same name as a prohibited person.

***Summary: Steps in a retail firearm purchase under BIDS: States WITHOUT waiting periods.*** (1) Customer selects the gun he wishes to buy. (2) Customer

provides ID (3) Dealer places buyer's ID in store lockbox and performs BIDS search. (4) Buyer passes BIDS search. (5) Dealer places the gun out of buyer's reach behind counter or elsewhere, so that there is no question of having transferred the gun to the buyer at this point. (6) Buyer pays for the gun. (7) Dealer gives the gun to the buyer, who verifies it is the correct gun. (8) Dealer unlocks store lockbox and gives buyer his ID.

***Summary: Steps in a retail firearm purchase under BIDS: States WITH waiting periods.*** (1) Customer selects the gun he wishes to buy. (2) Customer provides ID and dealer performs BIDS search. (3) Buyer passes BIDS search. (4) Dealer gives buyer a card or paper designating particular gun he wishes to purchase along with a unique transaction number. (5) Dealer places the gun in storage while waiting period passes. (6) Buyer returns after waiting period and presents ID and gun/transaction number card. (7) Dealer compares transaction number with his copy to verify it and performs a new BIDS search on the buyer. (8) Buyer passes second BIDS search and (if necessary) makes final payment on gun. (8) Dealer gives the gun to the buyer, who verifies that it is the correct gun.

## **ARGUMENTS AGAINST BIDS AND RESPONSES**

### **Arguments against BIDS by the federal government**

***Financial Cost.*** Some will say BIDS would cost too much to implement. But, as noted above under the section “**A more detailed description of BIDS/Creating the BIDS database**”, the core of the BIDS database, plus the system template and much of the state mechanism required to expand and update it, *already exists*, so much of the cost has already been paid out or earmarked for programs that can be folded into BIDS.

Additional funding for continued database mining of past records on a state level can be provided over a period of three to five years, thus minimizing any financial impact.

Additionally, the value of maximizing computer use and minimizing human interactions in data search transaction has been pointed out by the BATF itself, in its description (from the Youth Crime Gun Interdiction Initiative report for 1999) of a gun serial number tracing system it has developed called Access 2000. To quote from the report:

“Access 2000: Firearms Industry Cooperation. Access 2000 is an ATF produced system that allows a manufacturer, importer, or wholesaler to download a subset of their firearms data into a stand-alone personal computer. ATF tracers can then dial up and query on a specific serial number in order to obtain a disposition on the firearm. Access 2000 also allows 24-hour access to manufacturer, importer, or wholesaler records and is, therefore, particularly useful for urgent traces. The system speeds the trace process from 1 to 3 days by eliminating the step of calling or faxing the manufacturer, importer, or wholesaler and waiting for the results of the crime gun’s disposition, while also reducing firearms industry trace-related costs.”

In any case, eliminating the grave danger to constitutional liberty represented by current de facto registration systems is worthy of a far larger budget than what BIDS will require. Funding will be insignificant compared not only to the overall federal budget, but also compared to many federal programs that do nothing to protect individual rights. Moreover, *billions* of U.S. taxpayer dollars are literally given away to foreign nations every year. Again, by comparison, the funding necessary to implement BIDS is tiny, and the purpose to which it will be put is more proper, important, and defensible than giveaways to other countries. (Please – no charges of xenophobia, racism, or isolationism. We readily admit to wanting America’s needs met first. In any case the real issues are legality, fairness, and common sense.)

***Monitoring compliance.*** The federal government will likely claim that, under BIDS, illegal retail gun sales would be difficult to prevent, and monitoring of compliance by gun dealers would be difficult.

That argument does not withstand scrutiny. First, under NICS or BIDS, it is simple to make a sale that skirts *either* system. For example, BIDS would not prevent a dealer from buying guns from a distributor or manufacturer, then ignoring the BIDS name search and selling them to a criminal. But neither does NICS prevent a dealer from *legally* selling *those same firearms* to someone who is not firearm disabled and who can then give, sell, rent, or loan the guns to criminals or firearm-disabled persons. In fact, it happens frequently — usually without the dealer knowing it. In other words, the net result of such strawman sales (often incorrectly called “straw” sales by the BATF) is the same under NICS or BIDS.

Second, under either NICS or BIDS, it is easy for a dealer to buy a used gun from an individual, not enter it into his inventory, and then sell it to someone else without ever filling in any government papers.

Third, undercover monitoring of compliance with BIDS is no different than with NICS. Law enforcement techniques currently used to monitor compliance with NICS (e.g. purchase “stings”) are equally applicable under BIDS. (We will look more closely at various infraction scenarios below.)

Fourth, though the authors believe that many of the firearms disabilities in existence today are unjustly or unconstitutionally imposed, it is still important to remember that under either NICS or BIDS, the vast majority of dealers are happy to help prevent firearms-disabled persons from buying firearms, or to assist law enforcement in halting sales that wind up in criminal hands.

Fifth, stopping the vast majority of illegal sales does not require a foolproof system that will catch every last dealer who might otherwise be tempted to sell a gun to a firearm-disabled person. NICS is certainly not such a system, and we doubt one will ever exist. Under NICS and BIDS alike, what induces such dealers to comply is *the threat of punishment and lost livelihood*. In reality, what percentage of dealers is really willing to risk imprisonment and loss of livelihood just to make a modest profit by selling a firearm to a prohibited person? Only a very small fraction, of course.

This last analysis bears on more general theory. In any society that is even marginally free, citizens have countless opportunities every day to commit crimes. Almost none of these crimes ever happen, not because we have devised foolproof schemes to prevent each crime by denying a citizen's physical ability to commit it, but because most citizens are decent people. Moreover, in a free society, citizens should be *presumed* to be decent people.

Most of the rest of these potential crimes do not occur, again, not because of advance denial of ability to commit each crime, nor because of any *certainty* of capture and punishment, but rather because of the *risk* of capture and the *fear* of punishment. For most types of crimes it is too costly, or even impossible, to prevent *each* incident and catch *all* perpetrators. What society does instead is catch *enough* criminals and punish *them* harshly enough to deter others. Finally, other potential crimes do not occur because those who would otherwise commit them are already behind bars.

***Preventing dealers from making illegal sales.*** Several points must be noted, including – for the sake of completeness — those presented under other headings:

(1) There is little incentive for a rational dealer to ever sell a gun to a firearm-disabled person, as the risk of lost livelihood and/or other penalties is not worth the resulting modest profit. The small annual number of dealers convicted of this crime illustrates this fact. Both NICS and BIDS are equal in providing this disincentive.

(2) Neither NICS nor BIDS provides a way of determining after the fact that an illegal *unrecorded* firearm sale has been made by a dealer. A dealer can buy a used gun, never enter it into his records, and sell it to someone else without filling in paperwork or performing a background check. Thus NICS and BIDS are equal in this regard.

(3) Under the NICS/GCA '68/Form 4473/DROS system, unless there is a particular search for a particular gun's sales records, the only way to discover that a dealer has made an illegal *recorded* sale to a firearm-disabled person is to randomly examine his records of sale and run background checks on the purchaser's name. But this will catch illegal sales only if the correct information has been recorded on the sales records. For example, if a dealer has falsely entered the name of a *non*-disabled person on his forms, running a background check will turn up nothing amiss. As well, a firearm-disabled buyer can arrange for a friend to purchase a gun for him, which leaves a "clean" paper trail.

In sum, the paperwork element of the NICS/GCA '68/Form 4473/DROS system does provide a *potential* way to catch an illegal sale after the fact by using paperwork, whereas BIDS does not. But this after-the-fact enforcement tool is extremely inefficient regarding time and money resources and is rarely used to identify actual illegal sales.

(4) It would be simple for the government to test compliance with BIDS by inserting false names into the BIDS database, and then trying to complete sales under those names at retail outlets. As with NICS, the fear of being "stung" minimizes illegal dealer sales. Thus NICS and BIDS are equal in the regard.

(5) Under either NICS or BIDS, the only way to indisputably prove that a dealer has knowingly made an illegal sale to a firearm-disabled person is to arrest that person while in possession of the gun immediately after the sale, which sale has

been observed by reputable, disinterested witnesses or recorded on film. Jury convictions based on records alone are easier to evade due to numerous “reasonable doubt” arguments. Sworn testimony and facts provided by accurate investigative work are more powerful, but neither NICS *nor* BIDS can provide them.

(6) Considering all the above factors, BIDS is essentially equivalent to NICS with respect to discouraging illegal dealer sales.

***Preventing individuals from making illegal purchases.*** Several points must be noted, including – for completeness — those presented above under other headings:

(1) A *stolen real* ID (such as a driver’s license) *would* pass either a NICS check or BIDS search, providing (a) the person from whom the ID was stolen was not firearm-disabled, and (b) the ID photo sufficiently resembled the thief. Thus NICS and BIDS are essentially identical in this regard.

(2) A *forged fictitious person* ID would pass the BIDS check if it were of sufficiently high quality. But it would *also* pass a NICS check. The only exceptions under either system would occur in states that required name/ID number matches to be verified prior to gun sales. However, see point three below.

(3) With respect to 1 and 2 above: (a) there is a great disincentive for a firearm-disabled person to attempt purchasing a firearm from a dealer, no matter whether NICS or BIDS were in place, because it enormously increases the risk of arrest and punishment. Of course it does happen, but it is a small percentage of attempted sales. And (b) even for career criminals there is little incentive to use either forged *or* stolen identification to purchase a firearm from a dealer because, in terms of anonymity and cost, it is far more advantageous to purchase or rent a firearm on the black market.

Statistically speaking, the entire issue of using false identification, whether stolen or forged, is of relatively minor consequence under either NICS or BIDS.

(4) Should an illegal purchase be attempted under BIDS, whatever subsequent actions are required by law under NICS (such as immediately informing the authorities) could as easily be required and performed under BIDS.

Thus with respect to preventing and discouraging individuals from making illegal purchases, NICS and BIDS are essentially equal.

***Preventing illegal private sales.*** The authors believe no person should ever be punished for selling a firearm to someone he did not *know* to be firearm-disabled, any more than a person should be punished, for example, for marrying a person who claimed not to be married but in fact was.

But it *is* reasonable, in general, to punish a person for selling a firearm to someone he *knew* to be firearm-disabled. We say “in general” because many firearms disabilities are unjustly or unconstitutionally imposed. For example, it is unconstitutional for a person to be declared firearm-disabled simply on the basis of a restraining order, or on the basis of the *ex post facto* Lautenberg Act, which imposes new punishment for past crimes. Moreover, it is unconstitutional to impose firearms disability to punish a person for refusing to observe an unconstitutional restriction on their right to keep and bear arms. Examples include states where it is a felony to carry a concealed gun without a permit or to possess a so-called “assault weapon” (which in most cases are nothing more than semi-automatic rifles with features that have been commercially available on rifles for about a century).

In that regard, the authors believe that, to prevent circumvention of the Constitution, *any* loss of constitutional rights for *any* reason should involve a presumption of innocence and a trial by jury.

Again, our purpose is not to endorse or extend existing infringements on firearms ownership or transfer. Rather, it is to eliminate gun owner registration.

If a person were concerned about the firearm-disability status of a potential buyer, it would be easy enough to settle the matter. This is because the BIDS system allows any person to *run a name search on himself* upon providing acceptable ID. In the case described above, all the seller would have to do is make the sale contingent upon a BIDS search. Buyer and seller would visit the nearest gun dealer, the buyer would request a BIDS search for his own name, and the dealer would tell the seller “yes” or “no” on the firearm disability.

Currently in some places, people may sell firearms through a gun dealer intermediary, though dealers may charge a substantial amount for this service (understandably, since they make no profit and open themselves to technical paperwork violations). Under BIDS, gun dealers would not be subject to

paperwork violations and could charge for the minor labor required to make the search.

***Possible non-compliance by states.*** Clearly, creating a complete BIDS database requires the cooperation of the states. But state cooperation is also necessary to fully utilize NICS — and at this point the FBI, which operates NICS, is not always getting such cooperation.

The authors have not been able to verify the most recent figures, but according to the US General Accounting Office, as of Oct. 1, 1999 (about one year ago) “15 states had agreed to be full participants in NICS – that is, to designate a state agency to conduct background checks on all firearms purchases. Another 11 states agreed to be partial participants by conducting checks for handguns, while the FBI conducts checks for long guns. In the remaining 24 non-participant states, the FBI conducts all NICS firearms background checks.”

In order to obtain greater compliance with NICS, the GAO suggests “[continuing] a program established under interim Brady that provides criminal justice grants to states to improve the quality and completeness of automated criminal history records” and “...to provide financial incentives to states in order to increase the number of states that participate in NICS.”

The bottom line: First, NICS is an incomplete system at this time, and may remain so for reasons that the states consider important. Second, whatever methods the federal government uses to induce states to participate in NICS may be equally used to induce them to participate in BIDS. In fact, the authors believe that states might actually be much more inclined to participate in BIDS than in NICS, because:

(1) BIDS better guarantees the freedom, privacy, and safety of the states’ inhabitants. Many states do not share records with outside agencies because of state laws regarding privacy. The typical example is medical records regarding mental health or drug abuse, which can of course result in firearm disability.

(2) BIDS is an open system, as accessible to the state as to the federal government, whereas the final results of a NICS check are totally controlled by the federal government.

(3) BIDS would eliminate the cost to states of maintaining a NICS Point Of Contact office, staff, and resources, replacing it with at most, an office that

simply forwarded new entries to the BIDS database. We say “at most” because states could set up a system whereby local jurisdictions within the state could forward BIDS entries directly to the central database.

(4) BIDS would eliminate the cost to states of operating their own background check systems, since BIDS would contain the latest and most complete list of firearm-disabled persons from their own state.

Thus BIDS is equal to or better than NICS in this respect.

### **Arguments against BIDS by state governments**

The basic arguments that may be made by state governments against BIDS are exactly the same as those made against NICS. They are:

(1) States may not wish to spend funds necessary to contribute to the BIDS database, and no state can be compelled by the federal government to spend funds on a federal program.

Our response: this is no more an impediment to BIDS than it is, or has been, to NICS, with which most states currently comply. For states that resist cooperation for reasons of cost, the federal government can use financial or other incentives to increase cooperation, as noted in a recent GAO report. Thus BIDS and NICS are equal in this respect.

States that currently run their own background check system, once they are integrated into BIDS, can essentially close down their own background check system. All that needs to be maintained is the infrastructure that feeds updated information on firearm-disabled persons to the BIDS database.

(2) State laws may prevent certain databases or records from being shared with other government entities, or may require them to be used only by certain state agencies. For example, Virginia’s mental health database may not be shared with the federal government or other states, and within the state it is only available to the Virginia State Police for firearm background checks.

Our response: Because the BIDS database is simply *a list of disabled persons* and *not* background check, a state does not have to share any public or private records with any outside person or entity. All it has to do is report the fact that a

particular person is prohibited from purchasing firearms – *it does not have to give the reason*. This is a tremendous improvement over NICS.

For example, under NICS a person in Virginia who is firearm-disabled for mental health reasons could move to another state, acquire a new driver's license or ID from that state, and purchase a firearm without showing up in a NICS check since his mental health records remain in Virginia. But if Virginia participated in BIDS, it would have submitted this individual's name (along with identifying particulars) to the BIDS database of firearm-disabled persons, which would be available in every state. Thus there would be no violation of that person's right to privacy regarding his mental health records; there would simply be a *yes* or *no* (or the equivalent) in the BIDS database.

Finally, nothing in BIDS prevents a state from implementing its own internal firearm purchase background check in addition to BIDS, though we hope the Supreme Court abolishes all unconstitutional prerequisites to exercising a right. Perhaps, however, BIDS legislation could to an extent circumscribe such state systems to prevent registration. Finally, nothing prevents a state from modeling its own verification system on BIDS, though of course that would be redundant.

### **Arguments against BIDS regarding solving crimes**

**(1) *Tracing firearms to licensed gun dealers.*** The authors believe that in the overall crime control picture, firearms tracing of any kind is of extremely limited value. A look at the first year "Operations Report" for NICS regarding the tracing of "crime guns" provides insight into our opinion. This article can be found on the internet at <http://www.fbi.gov/programs/nics/nic1year.pdf> .

When reading government-generated articles about the value of gun tracing, it is crucial to understand that a "crime gun" is not necessarily a gun used in a murder or robbery or such. The BATF defines a "crime gun" as "*any firearm that is illegally possessed, used in a crime, or suspected to have been used in a crime. An abandoned firearm may also be categorized as a crime gun if it is suspected it was used in a crime or illegally possessed*". This definition clearly includes a substantial percentage of firearms that may *never* have been used in a crime, except possibly the crime of illegal possession.

Setting aside the above facts, BATF reports indicate that tracing guns back to licensed dealers, and from there to the individual who bought the gun, is of

some value in the area of solving and prosecuting those illegal gun traffickers who buy guns from retail dealers and then resell them on the black market.

But the value of such tracing and prosecution in halting *overall* illegal trafficking in firearms is extremely dubious. The simple reason: the more such serial number tracing is used, the more black market gun traffickers will protect themselves by various methods, such as developing alternative black market firearm supply lines completely divorced from retail sales records (for example international smuggling – greatly aided by NAFTA – or by trading in stolen guns, or even manufacturing guns themselves). Finally, there is the simple expedient of immediately obliterating the serial numbers of the guns they buy.

Obliteration of gun serial numbers is already an important tool in the criminal's bag of tricks. In one 1998 case cited in the BATF's YCGII '99 report, out of 24 firearms bought by an undercover law enforcement agent, all but two had their serial numbers obliterated. (Note: The authors are aware that current technology can sometimes enable a crime lab to determine the obliterated serial number if it was not punched or drilled out.)

In any event, BIDS *does* allow a gun to be traced back to the dealer that sold it, but not to the individual who bought it. Currently special records are made of multiple gun purchasers on the grounds that this will help curtail the black market practice of buying guns from licensed dealers and then reselling them illegally. These multiple purchaser records may be examined at will be the BATF. Of course we believe this practice is unconstitutional on many grounds and that the long term effect on such black marketeering is nil. However, some have suggested that even BIDS include a provision that anyone who buys more than (for example) 10 guns per month should have his identity recorded, but that gun dealers be prohibited from revealing that person's identity except upon production of a search warrant based upon probable cause.

The problem with such a provision – aside from its unconstitutionality — is that it opens the door to abuse. Immediately there will be a call to make the limit 5 guns a month, then 2 guns, because (as some senators and congressmen have already asked) “Who needs to buy more than one gun a month?”

Another danger regarding such multiple-purchase registrations surfaced during the writing of this article. It involves turning over the list of such purchasers to private individuals. See **NOTE 7** at the end.

Again, for whatever crime control value it may have, BIDS *will allow* using serial numbers to trace a firearm back to the *last licensed dealer* who stocked it and sold it.

**(2) *Tracing firearms to individuals.*** BIDS *will prevent* tracing firearms back to the *last recorded individual retail purchaser*.

When analyzing the potential effect of this fact on crime control, it should first be noted that in 1999 (the most recent year for which the authors can find information) the BATF was able to trace only 52% of submitted crime gun serial numbers back to a retail purchaser. The reasons for this include: a problem with the gun's serial number; records on gun unavailable; problem with importer name; problem with manufacturer name; expiration of 20-year record retention requirement.

A recent report (Youth Crime Gun Interdiction Initiative, 1999) gives several ostensible examples of the value of the current extensive firearm record keeping system. But these are isolated anecdotal cases that prove nothing in the overall.

And even the cases cited are dubious. For example, the report tells of a case in which guns seized from a vehicle stop were identified as stolen by running them "through NCIC records". But the NCIC information had *nothing to do* with gun transaction records or with a gun owner database, so why was this case even mentioned? The NCIC check simply revealed that these guns had been reported by a dealer as having been stolen. This does not point out the value of a gun owner registry; it points out the value of a national stolen firearms registry that any police agency can instantly check, and to which any dealer or individual can quickly and easily report a gun theft. (For additional items related to the 1999 [BATF] Youth Crime Gun Interdiction Initiative [YCGII] report, read **NOTE 6** at the end of this article.

Furthermore no gun trace can prove that the last registered purchaser of a gun was the perpetrator of a crime or committed a crime using that gun. This person may have lost, sold, or given away the firearm, or had it stolen or secretly borrowed from him. Even if the owner were actually guilty, he could quite plausibly claim that any of these things had occurred.

The evidence clearly supports what common sense would predict: "According to gun licensing theory, if a gun is left at the scene of the crime, licensing and registration would allow a gun to be traced back to its owner. But police have

spent tens of thousands of man-hours administering these laws in Hawaii (the one state with both rules), and there has not been even a single case where police claim licensing and registration have been instrumental in identifying the criminal. The reasons for this are simple. First, criminals very rarely leave their guns at the scene of the crime. Second, would-be criminals virtually never get licenses or register their weapons." (Lott, *op. cit.*)

In sum, tracing firearms back to their last recorded purchasers is of no significant or enduring value as regards crime control, nor has such value ever been proven. Therefore, we do not believe gun purchaser/owner registration for the purpose of gun tracing has any significant value as regards crime control."

Furthermore, when such firearms tracing – or rather the firearm owner registration that is necessary for it to occur — is balanced against its effect in undermining the Constitution, on loss of privacy, and in laying the groundwork for gun confiscation, there is no contest: gun owner registration loses.

In this country our wise, historical course has been to carefully guard the individual's freedom, privacy, and constitutionally protected rights when evaluating government actions, even when those rights inflict costs upon society. Few would suggest abolishing the 4<sup>th</sup> Amendment, despite the dramatic lowering of crime rates that would undoubtedly result. Nor would many argue for abolishing the presumption of innocence or the right to jury trial in criminal cases, despite the large effect that would surely have on crime as well. Yet, as regards guns, those whose political agenda is at odds with the American system have succeeded in steering us off this wise and historical course, despite the fact that gun control not only does little or nothing to stop violent crime, but in fact generally increases it. It is time to rectify that situation.

### **Arguments against BIDS regarding constitutionality**

***Constitutionality of firearm disabilities.*** The authors believe that many aspects of the current licensing laws, disability laws, and gun purchase prerequisite laws (e.g. background checks) are unconstitutional.

For example, we believe that any punishment for a crime – and a civil rights disability is certainly punishment – must be applied only via actual criminal sentencing procedures, and not via some blanket law that actively or retroactively affects whole classes of persons. The Gun Control Act of 1968 (GCA '68) imposes gun rights disabilities on all felons and all persons

dishonorably discharged from the military. As well, the recent Lautenberg Act imposes new punishment for past misdemeanors which have already been adjudicated. Both are unconstitutional *ex post facto* laws, both are arguably bills of attainder, and both are violations of the Fifth Amendment's prohibition on "deprived of life, liberty, or property without due process of law". In a broad sense, both also violate the Fifth Amendment's prohibition on being "subject for the same offense to be twice put in jeopardy of life or limb".

***Constitutionality of background checks.*** Although the authors are advocating the adoption of BIDS as a replacement for the NICS/GCA '68/Form 4473/DROS system, they believe that any mandatory background check or name search prior to purchasing a firearm is *unconstitutional*. It is unconstitutional in the same way that a mandatory background check or name search prior to one's entering a church, synagogue, or mosque; or prior to hiring an attorney; or prior to engaging in public speech would be unconstitutional.

The authors do not accept the position that firearms are special items that require background checks prior to purchase. A few relevant points on this subject:

First, in 1999 for example, 34% of murder victims were killed by knives, blunt objects, hands, feet, poison, fire, drowning, and other items that are not firearms. Yet we do not require background checks or name searches prior to buying or owning or using such items. Second, the American Medical Association estimates that at least 100,000 Americans per year are killed by negligent *physicians*, yet we do not require patients to undergo waiting periods or background checks before seeing physicians. Nor do we ban low-billing "Saturday night special" physicians, nor "high-capacity" physicians who see "too many" patients, nor "assault physicians" who look sinister or dress in black garb.

Third, because it is a federal felony for school personnel to carry firearms to defend themselves and their students, it would not be difficult in most locales for a man to enter an elementary school classroom and kill most of the students with a baseball bat. Yet no background check or name search is required for baseball bats.

Fourth, as we have repeatedly noted, felons with a modicum of common sense have little incentive to purchase firearms in retail establishments, where (1) their purchases may be recalled by witnesses, and (2) firearms are often more

expensive than on the black market. Such facts have not escaped the academic community: "[M]ight licensing at least have allowed even more comprehensive background checks and thus kept criminals from getting guns in the first place? Unfortunately for...gun control advocates, *there is not a single academic study that finds that background checks reduce violent crime.*" (Lott, *op. cit.*, emphasis added)

The authors believe that anyone who criticizes either NICS or BIDS as being an unconstitutional prerequisite for exercising a right, or because the federal government has no authority in this area, *is absolutely correct*. And anyone who criticizes either NICS or BIDS because they accustom persons to such unconstitutional "permission" protocols *is also correct*.

However, after much reflection the authors have come to believe that for the short term, BIDS is by any standard a tremendous improvement over NICS. The current background check system, NICS, should be viewed by gun owners as a dual system: an unconstitutional *background check* system and a dangerously unconstitutional *registration* system. We believe that the federal government and its agencies, several state governments, and the larger organizations in the mass communications media are working diligently to destroy the right of Americans to keep and bear arms. Background checks are unconstitutional, but *by far* the greater threat to Americans' right to keep and bear arms is the compilation of a registry of gun owners.

With that in mind, it will be *much, much* harder to convince voters and legislators (and perhaps the Supreme Court, if it comes to that) to eliminate background check and name search systems than it will be to convince them to eliminate the *de facto* and *de juris* gun owner registration taking place right now within those systems. Because the NICS/GCA '68/Form 4473/DROS system combines *both* background checks *and* easily implemented registration, we will probably be saddled with *both* evils for the foreseeable future if we continue with the present system.

As the NICS/GCA '68/Form 4473/DROS system continues for another five, ten, or twenty years, the chances are that this *much worse* system will become grudgingly accepted by most Americans. Meanwhile, the registry of living gun owners will become more and more complete, enabling any attempt at confiscation – whether implemented wholesale, or implemented piecemeal by type of gun, or implemented piecemeal geographically – to be that much more effective.

Additionally, we wish to point out that BIDS is not a compromise. In a compromise, both parties give up something. BIDS is purely a gain for Americans when compared to NICS. Not only are old protections regained while nothing is given up in terms of the right to private arms, but new protections are gained as well. For example, provisions *prohibiting* licensed dealers from keeping names or providing identifying information about gun owners without court orders are protections Americans have never had.

In sum, as long as no other rights are traded off, it is far better to have a system in place that gets rid of the worst part of the problem – unconstitutional and dangerous *registration* — than to continue with a system that inextricably combines both (the NICS/GCA ‘68/Form 4473/DROS system). The fight to *completely eliminate* background checks or name searches can continue regardless of which system is in place.

### **Arguments against BIDS regarding privacy**

Anyone listed in the BIDS database could be assumed to have a prior conviction of some sort, or to have some medical record or adjudged mental condition that prevents legal purchase or possession of firearms, or to have been dishonorably discharged from the military, etc. Easy access to such information, from which a mental disability or a felony conviction, etc. might be inferred, could – if made public — arguably damage an otherwise productive life and interpersonal relationships and/or inhibit firearm-disabled people from finding employment or improving their lives. With that in mind, it is important to note these things:

First, if the *government* wants criminal or medical information about someone, for whatever reason, it can probably get it one way or another, and probably with very little difficulty – regardless of whether NICS or BIDS is in place.

Second, if any individual wants such information about another individual, then given the time and money he can get probably get it, since criminal records for adults are public. Information regarding the medical mental history of other individuals may or may not be available, depending upon the situation and the state, but such a potentially damaging history cannot be inferred from simply viewing the BIDS database, since *all BIDS reveals is whether or not a person is firearm-disabled*.

Third, misuse of even the minimal information supplied by BIDS will be extremely rare since it would be legally available only to gun dealers and law enforcement personnel. As noted above, easy access to the BIDS database is greatly minimized by the encryption and other security measures built into BIDS. Plus, unauthorized distribution of any data from the BIDS database would be punishable by law. Finally, the information available for misuse – that a person is firearm-disabled, and nothing more – minimizes both the incentive to misuse it in any way, as well as any effect it might have.

### **Arguments against BIDS by gun dealers**

Some gun dealers might be tempted to think that the paperwork involved in NICS protects them from false charges (being “set up” or “framed”) by the government.

Our response is this:

First, the extensive paperwork involved in NICS currently acts *against* the dealer, because it introduces errors that either delay or derail legitimate sales, or serve as reasons for the government to harass dealers and/or charge them with technical violations.

Second, this hard fact must be faced: if the government really wants to “frame” a gun dealer, it can do it. It does not matter whether NICS or BIDS or any other system is in place, it can do it. Government resources necessary to frame a gun dealer (or to bankrupt him through litigation) are, for all practical purposes, technologically, financially, and legally unlimited.

All any government-controlled background check system can hope to do is make it difficult for repeated or overt violations of the law to occur. We believe that BIDS, as contrasted with NICS, is much more effective at accomplishing this in ways that benefit individuals, the Constitution, and the country at large.

### **ARGUMENTS FOR BIDS**

Regarding the elimination of the growing registry of American firearms owners, the advantages of BIDS have been discussed at length above.

Regarding halting sales to firearm-disabled persons, BIDS would actually be more effective than NICS. The FBI, which administers NICS, has admitted that states are far better situated to perform background checks, and that many state records are unavailable to the FBI because of state privacy laws (for example, people adjudicated mentally incompetent or who have a medical history of drug abuse). Because of this, (1) the NICS database does not contain a list of all firearm-disabled persons; and (2) background checks are sometimes delayed beyond the required time limit or are never thoroughly completed.

But under BIDS, no personal records need be shared by states with the FBI. States need only submit the *full name, date of birth, and any available ID number* of those who, for whatever reason, are firearm-disabled. Thus the BIDS database could theoretically legally contain every firearm-disabled person in the United States.

Some might argue that having states provide just the name, dates of birth, and ID number of firearm-disabled persons would *still* be an invasion of privacy. That may be true, but there is nothing stopping states from doing far more than that *right now*, so it is not a valid argument against replacing NICS with BIDS. Criminal records are generally public information, and specifically whether or not a person has a firearm disability is public under NICS, in the sense that it is reported back to firearm dealers who submit names for background checks. Thus, the appearance of a name and date of birth on a list of firearm-disabled persons tells a dealer no more than the result of a positive NICS check: that, yes, this person is firearm-disabled. The reason for the disability would never be known to the dealer. Nevertheless, it would be a crime to purchase or sell firearms disability information for any purpose other than BIDS checks or law enforcement.

## **CLOSING COMMENTS**

Again, this article proposes to replace the current background check system for firearms purchases with an identity search in a list of firearm-disabled persons. This eliminates the gun registration system inherent in the NICS background check system and other BATF/GCA '68 provisions.

This new Blind Identification Database System (BIDS) would replace the National Instant Check System (NICS). If fully implemented, BIDS would be *more effective* than NICS in halting firearm sales to firearm-disabled persons,

but BIDS would not have the terrible ingrained flaw of NICS, which is that it facilitates the creation of a national registry of firearm owners.

We would like to remind anyone comparing NICS with BIDS of these basic, crucial points: Both NICS and BIDS utilize ID cards alone to initiate background searches. Both NICS and BIDS depend upon the presumption that ID cards presented to gun dealers are valid and correct. Both NICS and BIDS can be evaded by buyers using stolen or forged IDs or by dealers circumventing the system entirely.

BIDS does not provide a truly Constitutional arrangement, i.e., no background check prior to exercising a constitutionally protected right. We remind readers that no background checks are required for purchasing cars, knives, flashlights, tools, rope, or other items commonly used in committing crimes, none of which items, unlike firearms, have constitutional protection regarding their ownership and use.

Nor does the BIDS database system alone eliminate related *legislative* conflicts with the Constitution, such as GCA '68 and its later amendments, such as the *ex post facto* Lautenberg Act. Nor does the BIDS database system alone eliminate the *de facto* registration scheme that occurs when gun dealers are forced by the federal government or state governments to record the name of firearm buyers. Thus, the supporting legislation that we have outlined is essential to the BIDS concept.

BIDS *does* take a huge stride toward halting the ongoing rapid formation of a national registry of firearm owners, which the authors perceive as the greatest and most pressing danger to exercising the right to keep and bear arms, and ultimately the most pressing danger to all the freedoms that Americans enjoy. It also sets the stage for eliminating the other *de facto* registration schemes that are currently functioning, such as state registries and "shall issue" concealed carry permits (as opposed to Vermont's excellent and constitutional presumptive issue firearm carry law). Furthermore, BIDS can provide a model or an actual replacement for any state-run background check systems.

It would be best if we could completely eliminate any background check system or other prerequisite for firearm purchases. Background checks do little to stop crime and much to increase it. They enable the government to deny gun rights to ever-increasing numbers of decent citizens by steadily increasing the number of unconstitutional prohibited classes. But the American public is not yet

sufficiently educated on this subject to accept that, and we believe accomplishing such education will realistically take at least several years – if indeed it can ever be accomplished. This is not defeatism – because we do not intend to stop pushing for that situation — but realism.

Our proposal is a call to put the dangers facing us into perspective – to prioritize our battles. Still, BIDS is not equivalent to accepting the lesser of two evils, as we already have both background checks *and* registration, while BIDS restores critical protections Americans have lost and wins new protections we never had. Nor should BIDS be dismissed as an incremental change, or one that makes bad laws tolerable and durable, as might be alleged were there a plausible chance of eliminating prior restraint *and* registration in one fell swoop.

Far from being incremental, BIDS would be a sea change, arguably reducing political incentives to block further advance. If, indeed, one of the *real, primary* goals of background checks is facilitating back-door and eventually front-door gun owner registration, it follows that by eliminating registration BIDS diminishes the incentive for anti-self-defense forces to fight for continued prior restraint. And by forcing them to reveal their true goals, fighting and winning the BIDS / registration battle may be a large part of winning other battles as well.

In sum, we are proposing a system that wipes out most, but not all, of an ongoing evil in order that we may survive as free Americans to finally eliminate the remaining portion of evil.

We point out that for every argument that can be raised against BIDS – such as the statistically negligible effect of firearm tracing in solving crimes – one must balance against it the great benefits BIDS provides with respect to speed, thoroughness, privacy concerns, constitutionality, and freedom.

We remind the reader that BIDS is not a compromise, in which both parties give up something. With BIDS, Americans give up nothing. Instead, they take a giant step forward toward safety and freedom.

While the details of BIDS can surely be modified and/or improved, we believe there is no credible legal, financial, practical, or technical reason that this basic system cannot be implemented.

In any event, in order to overcome any *political* hurdles to ridding the country of NICS (or as some disparagingly call it, “the national instant registration system”) it is our hope that the pro-self defense, pro-Second Amendment, pro-Constitution community consider putting its support behind BIDS or any other such “no records, no registration” system, until such time as the public understands that *any* type of mandated permission prior to the exercise of a right is damaging to our system of government and to our freedom as human beings.

*The authors would appreciate input on any aspects of this name search system that we have not considered and that would hinder its implementation, or anything which would improve the system’s operation. Please read the following NOTES before sending any commentary.*

*The authors wish to thank various individuals who have supplied information or have critiqued this article or BIDS, including Larry Pratt of Gun Owners of America, Harry Schneider of Pennsylvania Sportsman’s Association, Alan Korwin of Bloomfield Press, Angel Shamaya of KeepAndBearArms.com, Robert Buchholz of Androcles, Inc., Jon Roland of The Constitution Society, David Knight of Applied Computer Sciences, Erich Kroy, and John Kretz.*

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## NOTES

### **NOTE 1: The Danger of Registration.**

*A. [Section A is adapted from Russ Howard's January, 2001 letter to the Glasgow Sunday Herald.]*

The wisdom of strictly enforcing the 2nd Amendment and preventing registration is well demonstrated.

Throughout history, criminal governments have been mankind's greatest mass murderers. In the last century alone, registration and other gun controls are estimated to have facilitated the murders of as many as 169 million people or more by leaving them defenseless against criminal governments.

*169 million. More victims by orders of magnitude than were murdered by conventional criminals.* Countries where gun control facilitated mass murder of civilians include Turkey/Armenia, Germany, the Soviet Union, China, Cambodia, Uganda, Guatemala, Bosnia, and Rwanda. Consider this paraphrased passage from David Kopel's review of "Lethal Laws: Gun Control is the Key to Genocide", by Jay Simkin, Aaron Zelman, & Alan M. Rice. (Jews for the Preservation of Firearms Ownership, 1994):

"The authors may significantly underestimate the death count from genocide. Their 8-nation study uses conservative estimates to arrive at 56 million. University of Hawaii professor R.J. Rummel, who researched the demographic evidence in much more detail, puts total 20th-century victims of mass murders by governments at 169,198,000. If deaths of military combatants are included, it rises to 203,000,000. Rummel's book, *Statistics of Democide: Estimates, Sources, and Calculations on 20th Century Genocide and Mass Murder*, includes regimes not discussed in *Lethal Laws...*: Nationalist China (10,076,000; 1928-49); Japan (5,964,000); Vietnam

(1,678,000); N. Korea (1,663,000); Poland (1,585,000; 1945-48); Pakistan (1,503,000); Mexico (1,417,000; 1900-20); Yugoslavia (1,072,000; 1944-87); and Czarist Russia (1,066,000; 1900-17). There is no evidence any of these deviated from the pattern described in *Lethal Laws*: the preference to murder unarmed victims who were subject to gun controls."

Most of these victims were murdered by their own government – usually the same one that passed the controls that left them defenseless; less frequently a subsequent or invading government that took advantage of existing registration and controls. Conventional criminals don't even register on the same scale.

To take one example, Hitler was a leader in gun control, as were Lenin, Stalin, Mao, and others. The 1938 Nazi Weapons Act – on which GCA '68 was modeled – was specifically designed to leave Jews defenseless. In conjunction with earlier German gun control laws, it worked.

It did not have to be. In the Warsaw Ghetto Uprising, Jews armed with a handful of small arms inflicted stunning damage on German forces. To the benefit of the Allies, German forces were diverted from the war to quell it. The lesson is the true meaning of the oath "Never Again," and no Jew who truly honors it supports gun control.

Had European Jews and other minorities been armed and willing to resist, the Holocaust either might never have happened, or it would at least have been greatly minimized and the overall carnage of World War II greatly reduced as well. Moreover, had other countries employed the Swiss model of a heavily armed citizenry, the war would have been a relatively brief affair, had it occurred at all, and would likely not have merited "World War" status.

## **B.**

The primary purpose of the Second Amendment, as explained in the Federalist Papers and in other writings of the Founders, is to make certain that the general populace always has the means to resist and overthrow a tyrannical U.S. government, as well as to resist foreign depredations. If the U.S. government has, or knows the location of, registries of even a substantial fraction of American gun owners, then it possesses the means to nullify the intended effect of the 2nd Amendment.

As has been done in other countries in other times, a tyrannical U.S. government can use such records to confiscate firearms and to arrest, imprison, or murder actual or suspected firearms owners. While a constitutional U.S. government (that is, the people working in it) might obey laws against keeping gun owner registries, a tyrannical government undoubtedly would not.

Even firearm owner records kept by the U.S. government for ostensibly benign purposes, such as “crime control”, could be appropriated by a succeeding tyrannical government and used for malevolent purposes. Similarly, records kept secretly and illegally by individuals or agencies within a generally benign government could, upon the ascension of a tyrannical government, be brought to light and utilized malevolently.

Keeping that in mind, and keeping in mind that governments with authoritarian, socialist, or collectivist agendas will generally do whatever they can to increase the registration of gun owners, it is worth noting that under the Clinton administration over 175,000 gun dealers quit doing business, and the individual transaction records of these dealers are now in the hands of the government. The total number of these records is now reported to exceed one hundred million (100,000,000).

Given the right to arms as insurance against destruction of our other rights and the horrors that would entail, it is reckless to assume that laws will stop government from keeping gun owner registries. It is as foolish to assume that governments never break laws as it is to assume that tyranny is impossible and all rights will be respected at all times.

To expect a sudden and obvious onset of tyranny in the United States is unrealistic. It would likely be gradual, evidenced by passage of unconstitutional laws, rising contempt for rights, and unconstitutional acts. This growing tyranny might be concealed, or it might be flaunted to inure citizens to a growing police state.

The rise of tyranny would eventually move beyond Constitutional violations to encompass statutory violations. While some would believe their tyrannical acts lawful, or would rationalize them away, a systematic, elitist culture of contempt for the law would grow among those charged with enforcing it.

From a policy view, it is irrelevant whether or not the government is currently keeping names (though it *is*). The responsible citizen should presume the worst

case. To the extent government possesses a registry of gun owners, or knows where such lists are kept (i.e., gun dealers) it is a danger to liberty.

Such concerns not only led to the inclusion of the Second Amendment to the Constitution, they undoubtedly led to the anti-record keeping provisions in the Gun Control Act of 1968 – flawed as those provisions may be:

**NOTE 2: Private sector operation of BIDS.** There is no reason why the BIDS database and associated websites, etc. must be operated directly by government. BIDS could be operated by subcontractors. Given the non-competitive nature of government operations, as compared to the legal and competitive pressure on a private entity to operate the site fairly, honestly, and legally, and the authors feel that a private subcontractor-operated BIDS system is the preferred option.

**NOTE 3: Alternative systems to BIDS.** One alternative system that has been proposed is for states to put a firearms disability mark on each driver's license and state ID card. The mark could consist of a visible symbol or a code entered into a magnetic strip on the driver's license. This could mitigate or eliminate the creation of a gun owner registry that was compiled from new gun purchases, and could remove the federal government from the daily business of verifying legal gun purchasers. However, this alternative has its own problems.

One problem with such a system is that driver's licenses and ID cards are physically durable over a period of years. A person might still retain possession of a “clean”, or unmarked, license or ID even after his gun rights status had changed. Even if individuals were required to turn in their old license upon conviction of a firearm-disabling crime, such individuals could falsely claim to have lost their old license, while in fact keeping it to use for purchasing firearms. Thus there would still be a demand for gun dealers to make certain a potential buyer's license or ID was current, and that would require instant access to an up-to-date list of firearm-disabled persons, which would bring us right back to a system such as the one we are proposing.

A second problem is that such a system would require changing not only federal law, but the laws of every state that wanted to utilize it.

A third problem with this alternative system is that the firearm status mark could be removed or forged onto a card, or that the information on the magnetic strip could be erased, re-written, or added to with an electronic encoder.

A fourth problem with a visible mark, because driver's licenses are commonly used as identification at banks, motels, retail stores, etc., is that it would constitute an invasion of privacy and/or a source of discrimination to the holder of the license.

A fifth problem is that a driver's license/ID system might lead to increased demands for a federal ID card. This is little different from identity requirements under totalitarian regimes past and present, which the authors reject. True, some sort of official ID is required in our proposed system, but it would *not* be one issued by the federal government, which has two advantages. One, it avoids the creation of a new federal bureau and its accompanying database of personal information, and two, should some less onerous and less intrusive system of personal identification be developed, it allows the prompt enactment of such a system on the state level, which is much easier to accomplish than making systemic changes on the federal level.

**NOTE 4: State Overrides of BIDS.** Given the current contempt for the Constitution, certain states might attempt to override this proposed system. In waiting-period states, for example, gun dealers might be required to keep a list of buyer names during the waiting period – even though there are ways to avoid this, such as giving buyers unique transaction numbers and performing a new BIDS search after the wait. Other states might require dealers to keep names indefinitely.

But such state systems would, as noted, violate the spirit of the Second Amendment and -- if the incorporation doctrine as applied to other amendments is valid -- should be ruled unconstitutional by the U.S. Supreme Court. To repeat: this proposed system is meant to replace other blatantly unconstitutional systems and/or BIDS overrides, whether imposed by state or federal government.

**NOTE 5: Underlying social/legal paradigms of Punishment.** For a fuller understanding of the gun rights disability issue, there are two distinct and opposing underlying paradigms that should be examined.

***Paradigm One: Punishment should terminate.*** This paradigm holds that anyone released from prison is considered to have paid his debt to society and should be restored full Constitutional rights, including the right to buy, sell,

own, and use firearms. People who are arrested, charged, and out on bond also have full rights, as they have not yet been convicted of any crime.

States could get around this general rule by enacting a provision of bond agreements specifying that the bondee will not touch firearms pending trial, but the Constitutionality of such a provision is debatable.

A better case for denial of firearm rights exists regarding persons released on parole, as they have not been completely “released” from the penal/correctional system. But that raises the question of why people who cannot be trusted with a gun have been released from prison under any circumstances, since black market firearms are readily available even in countries that have outlawed civilian gun ownership. It also raises the question of why people who cannot be trusted with a gun are allowed access to other weapons such as fists, feet, knees, elbows, foreheads, teeth, knives, hammers, axes, cars, poisons, household chemicals that can be made into explosives, etc.

Purely from a public safety viewpoint, the same argument can be made regarding those people whom society deems imprudent to trust around firearms due to mental disability.. To put it bluntly, shouldn't mentally disabled people be locked up, too, in order to keep them away from weapons?

In any event, if this “debt to society is paid” paradigm were to prevail in its purest form, a verification system for gun purchases would be extremely minimal. Every adult (adulthood being verified by an official ID of some sort, such as a driver's license) who has not been medically and legally determined – via full constitutional due process — to be mentally incompetent would be able to buy, sell, or possess firearms. Ideally, even those who are denied firearm rights due to mental incompetence would not be charged with any crime if they attempted to buy a gun, nor charged with a crime for mere possession of one, because their mental condition would obviate criminal intent. Nevertheless, the attempt to make such a purchase would in some cases argue for preventive measures.

***Paradigm Two: Punishment may continue.*** This paradigm holds that certain crimes are so despicable and heinous that the perpetrator, even though released from prison, should have certain Constitutional rights denied (disabled) for a period of time or permanently. The rationales for imposing these disabilities are in general that (1) the ex-convict cannot be trusted, (2) continued punishment for the crime is correct and desirable, (3) the disabilities serve as a deterrent to

others, or (4) all three. Again, the question of why such criminals should ever be released into society is raised.

Public sentiment appears to strongly support paradigm two, and it is in fact the one under which we live. It is not likely to change in the foreseeable future. Thus, it is the paradigm within which we propose our system.

If the view is that certain felons' rights may be denied after their release from jail or prison, and that among those rights is the right to keep and bear arms, then logically there should be a system to verify whether or not a potential firearm purchaser has been forbidden to buy or possess firearms.

**NOTE 6: Tracing Firearms.** Here is a description of gun tracing from the 1999 (BATF) Youth Crime Gun Interdiction Initiative (YCGII) report:

OTHER LIMITATIONS. With sufficient information about the crime gun, the NTC can identify the first retail purchaser of crime guns. In most cases, it cannot identify retail purchasers of crime guns resold by FFLs as used guns, or of crime guns acquired as used guns from unlicensed sellers. As a result of the structure of the firearms laws, an NTC trace usually stops at the first retail purchase of the firearm recovered by law enforcement.

This statement seems to blame the limited value of firearms tracing on “the structure of the firearms laws”. But the fact is, tracing a gun to its last recorded owner cannot on its own prove guilt in a criminal case, because the original owner may have lost, sold, or given away this firearm, or had it stolen or secretly borrowed from him. Even if that were not the case, and the owner were in fact guilty, he may plausibly claim that any of these things had occurred.

Yet we find this statement in the same report:

Because of the important role of firearms trafficking investigations in the reduction of violent crime, the International Association of Chiefs of Police, in a program funded by the Department of Justice’s Bureau of Justice Assistance, in 1999 continued to provide training at the NTC for police departments.

There is absolutely no data that backs up the claims of firearms trafficking investigations in reducing violent crime. It is a broad claim written in specious “bureaucratese” that is unsupported by credible evidence or scholarship.

Here is another excerpt from this report YCGII ’99 Report:

[YCGII] traced more than 64,000 crime guns recovered in 38 cities, advanced investigations leading to the arrests of firearms violators and traffickers, and provided law enforcement officials the best picture to date of the crime gun problem.

- Approximately 43 percent of crime guns traced were recovered from individuals under 25 years old. Of those traced guns, approximately 9 percent were recovered from juveniles (ages 17 and under), and 34 percent from youth (ages 18-24).
- Approximately 11 percent of traced guns were recovered from possessors who had purchased those firearms from Federal firearms licensees. About 89 percent of traced crime guns changed hands at least once before recovery by law enforcement. Such transactions may be lawful or unlawful.
- Handguns sold by licensed gun dealers during transactions involving the transfer of more than one firearm accounted for 22 percent of guns traced in 1999.
- Newer guns, those manufactured in the U.S. from 1993-1999, account for more than half of all crime guns traced in YCGII.
- Semiautomatic pistols are used more frequently in crime than other types of firearms, and account for 50 percent of all traced guns.
- Law enforcement recovered approximately 62 percent of all traced guns in the state where the firearms were originally purchased from a licensed firearms dealer.
- Nationally, there are two major "south to north" trafficking patterns. The first is on the East Coast, and flows from the South to Washington (DC), Baltimore, Philadelphia and New York. The second pattern flows from South to Memphis, St. Louis, and Chicago.
- Ten firearms, by manufacturer, caliber, and type, accounted for 24 percent of all trace requests, while over 1,500 firearms and 87 calibers accounted for the remaining crime guns.

Regarding each item above, the authors ask: *So what?* Such information might be interesting to a statistician with a lot of extra time to waste, but of what significant value is this information in controlling, preventing, and solving crimes and in prosecuting criminals? Even if this information were of significant value, how it was gotten must be balanced against its financial, privacy rights, and constitutional costs, and we firmly believe it fails this test.

For an overall look at the issue of registering firearms, which is directly connected to the issue of tracing them, we offer the section below, taken from

the article “Rights, Registration, Licensing, and Firearms” by Brian Puckett. Wording not related directly to BIDS has been edited out:

*Owner Identification.* As noted above, there are two sub-purposes of owner identification registration: *ownership disputes* and *crime linkage*. Crime linkage can be further subdivided into two sub-categories, *identifying stolen items* to return them to rightful owners and *identifying items used to commit crimes*.

(1) *Firearm Ownership Disputes.* As regards ownership disputes, guns do not have [great monetary value], so there is no compelling government interest in being a third party in ownership disputes, any more than there would be for cameras, laptop computers, and other portable and even more valuable items.

(2) *Firearm Crime Linkage.* As regards crime linkage, we will examine the two sub-categories: *stolen guns* and *guns used in the commission of a crime*.

First consider stolen guns. Police almost never make an active attempt to locate a stolen firearm. This is because of the universally held belief that an item so small, so common, so relatively inexpensive, so easily hidden, so hard to identify one from another at a distance, is not worth the effort and expense of public funds to track down when stolen. In any case, a gun’s registration number can be removed or altered. Therefore registration – that is, registering either a firearm’s serial number or registering the fact that someone owns a particular type of firearm – serves no purpose either in *preventing* guns from being stolen or in the *active recovery* of stolen guns. By the latter, I mean to distinguish it from *passive* recovery, which occurs when police come across guns during arrests, property searches and the like.

As for firearms used in the commission of crimes, it is impossible to read a gun’s serial number unless the gun is examined at very close range. The only time such examination is possible for a gun used in a crime is when the gun is left at the crime scene (statistically rare) or is found in a suspect’s possession (also comparatively rare, but it does occur). But guns found at crime scenes may belong to the victim, so tracing its owner does nothing to solve the crime. Even if the gun is found to be registered to a possible suspect, it is not proof that this person committed the crime, or was even at the crime scene. Guns are portable and operable by anyone, so the registree could plausibly claim his firearm had been stolen and used by someone else.

As for firearms found on or near a suspect, the only ways to directly associate the firearm with the suspect and the crime are combinations of (1) witnessed possession (2) fingerprints (3) rifling mark comparison of fired rounds. NOTE: *In none of these associations, which are the most useful in convicting suspects for crimes, does registration play any part.*

Even programs to register rifling marks will ultimately prove useless as: (1) the factory rifling tool is used on multiple firearms, and attorneys will exploit this fact in trial (2) rifling marks may be easily altered by running any mildly abrasive product down a gun's barrel – or even part of the way down the barrel (3) tracing rifling marks back to a particular original owner still does not prove that this person – even if he still possesses the gun — personally committed any crime.

In sum, the value of the government knowing to whom that gun is registered must be weighed against other rational and compelling reasons *not* to know.

**NOTE 7: Danger of multiple purchase records.** (Adapted from a March 9, '01 news release from the Illinois State Rifle Assn.) On March 8, 2001, U.S. District Court Judge George Lindberg ordered the Bureau of Alcohol Tobacco and Firearms (BATF) to release federal gun purchase records to lawyers for the City of Chicago. The records in question consist of "multiple purchase" forms filled out when one person legally purchases more than one handgun during a five-day period from a single federally licensed dealer. Lawyers for the City of Chicago demanded the release of the records to support a lawsuit against gun manufacturers. In that lawsuit, Chicago contends that firearm manufacturers encourage Chicago residents to commit crime by "flooding" the city with handguns. Gun purchase records from all 50 states may now be handed over to Chicago's attorneys. There is no guarantee that the records will remain confidential and certainly no guarantee that politicians will not harass persons whose names appear on the released records.

**NOTE 8: About the authors.** Brian Puckett has written for numerous firearm-related publications and magazines. He is a co-founder and current president of the pro-gun rights media action organization Citizens Of America (<http://www.citizensofamerica.org> ). An online archive of his writings can be found at: [www.KeepAndBearArms.com/Puckett](http://www.KeepAndBearArms.com/Puckett) and at: [www.GunTruths.com](http://www.GunTruths.com). He can be contacted at [brian@citizensofamerica.org](mailto:brian@citizensofamerica.org).

BIDS: A system to prevent both gun owner registration and prohibited firearm sales - B. Puckett, R. Howard

Russ Howard, a past director of the National Rifle Association and co-founder of Citizens Against Corruption, writes frequently on gun rights issues. An archive of some of his writings can be seen at: [www.KeepAndBearArms.com/Howard](http://www.KeepAndBearArms.com/Howard). He can be reached at [russhoward@bigfoot.com](mailto:russhoward@bigfoot.com).

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