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July 10, 2001

The Honorable John Ashcroft
Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Ashcroft:

I read with great interest your statement regarding the release of the latest Justice Department evaluation of the Brady Act. I was particularly pleased to learn that the Department has initiated a plan to increase prosecutions of those who attempt to purchase firearms through false pretenses. This is indeed a welcome development.

As I have noted in previous letters to the Justice Department, stopping the sale of a firearm to a prohibited person is only one component of an effective strategy to prevent violent criminals from obtaining guns. Prosecuting those felons, fugitives and domestic abusers who attempt to purchase a firearm is the other half of the equation. Unfortunately, the Justice Department has failed to aggressively prosecute those individuals who are rejected by the instant check system after having falsified a purchase application.

As you are aware, 18 U.S.C. § 922(a)(6) makes the attempted purchase of a firearm by an individual who knowingly provides false information on a firearm transfer application (ATF Form 4473) a federal felony offense. In simple terms, it is a federal felony, punishable for up to ten years in prison, for felons, fugitives, domestic abusers or any other category of prohibited person to attempt to purchase a firearm if they knowingly falsify the purchase application.

Of the more than 153,000 individuals who were stopped from purchasing a firearm by the instant check system in 2000, 57 percent were denied because of a felony indictment or conviction, 12 percent because of a domestic violence conviction and 4 percent were fugitives from justice. Thus, 73 percent (approximately 109,500) of those rejected by the instant check committed another felony by attempting to purchase a firearm under false pretenses. Yet, for the years 1992-1999, an annual average of 6,700 defendants were charged in U.S. district courts with a firearm offense. That is an abysmally low number of prosecutions when one considers that the Department's own audit of the Brady Act shows that over 100,000 known felons, fugitives and domestic abusers attempted to obtain a firearm illegally.

Needless to say, the Justice Department's prosecutorial efforts in this area are woefully inadequate. And while I am encouraged with your statement that, "We want to send the message

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that 'gun crime means hard time,'" I am curious about the details of your plan. I seek your assurance that this is not merely window dressing but rather a serious effort to prosecute criminals who lie to get guns. After all, I'm sure you will agree that when a criminal is rejected by the instant check, the search for a firearm is not abandoned.

In an effort to better understand why the Department of Justice is not doing more to prosecute cases of this nature, and to assist you in the formulation of an aggressive prosecution strategy for those attempt to buy guns under false pretenses, I would appreciate your answers to the following questions:

1. Some of the reasons for the Justice Department's poor record of prosecution are indicated in the June 2000 BJS Federal Firearm Offenders, 1992-98 report. Citing table 1,"Firearm suspects declined for prosecution by U.S. attorneys, by reason for declination, 1998," some of the reasons listed for not prosecuting known gun criminals include: minimal federal interest and DOJ/U.S. Attorney policy. I find this very curious. Please tell me:

   A) What exactly is the policy for prosecuting violations of 18 U.S.C § 922 (a)(6)?

   B) Why there would be a DOJ/U.S. Attorney policy *not* to prosecute those who violate federal firearms laws?

   C) Why there would be "minimal federal interest" in prosecuting those who violate federal firearm laws?

2. Another reason that was cited in table 1 for declining to prosecute was "weak evidence." I would note the following: If an individual knowingly makes a false statement on ATF Form 4473, that is a felony. Form 4473 requires the prospective purchaser to state whether or not he/she is disqualified from purchasing a firearm. Furthermore, each disqualifying criterion is listed on Form 4473 and requires a yes or no answer. Form 4473 also requires a signature by the prospective purchaser and the seller. Form 4473 also requires many other identifiers to verify the identity of the transferee. Thus, if an individual is rejected because the instant check system reports that a prospective purchaser is a convicted felon and falsified a document in an attempt to obtain a firearm, that is a violation of U.S.C. § 922(a)(6). This should be a relatively open and shut case.

   However, of the 153,000 individuals denied the purchase of firearm in 2000, nearly three out of four were stopped from buying a gun because they were felons, under felony indictment, a fugitive or a domestic abuser. Therefore, it follows that they committed a federal felony by falsifying their purchase application, ATF Form 4473. Yet, a February, 2000 General Accounting Office report on the Implementation of the Brady Act showed that in FY 1999, U.S Attorneys filed only 278 cases involving alleged false statements of

18 U.S.C. § 922(a)(6) and 316 cases were pending at fiscal yearend. Please explain the lack of federal prosecutions for false statements on ATF Form 4473. Also explain to what degree "weak evidence" contributes to the unwillingness of U.S. Attorneys to prosecute 18 U.S.C. § 922(a)(6) violations.

3. Appendix III of the GAO audit describes federal enforcement policies regarding falsified firearm purchase applications. It states:

> In November 1998, EOUSA [Executive Office for U.S. Attorneys] provided Brady Act prosecutive guidance . . . The guidance stated that thousands of potential Brady false-form cases would likely reach ATF field offices annually, and that the system "would grind to a halt if ATF investigated all the denials."

The report goes on to say that the EOUSA guidance recommended that U.S. Attorneys should "make every effort to increase the number of Brady false-form prosecutions (from the current annual level of 50 cases)."

The GAO audit also states that in deciding which false form violations to forward to U.S. Attorneys, ATF's policy is to refer those cases where the "denied purchaser's criminal history has records of violent felonies, serious drug trafficking, or prior firearms convictions." Yet the GAO report indicates that over half of the referrals of violent criminals were closed without investigation or prosecution.

In light of these GAO findings, I would like answers to the following:

a) Why were half of the referrals of violent criminals closed without investigation or prosecution?

b) What efforts has the Department of Justice undertaken to increase the number of false form prosecutions? Has EOUSA issued any additional guidance regarding 18 U.S.C. § 922 (a)(6) violations? Does it plan to do so?

c) Since November 1998, how many 18 U.S.C. § (a)(6) violations have been referred to U.S. Attorneys by ATF field offices?

d) How many 18 U.S.C. § 922 (a)(6) false form prosecutions have U.S. Attorneys undertaken since the November 1998 EOUSA guidance?

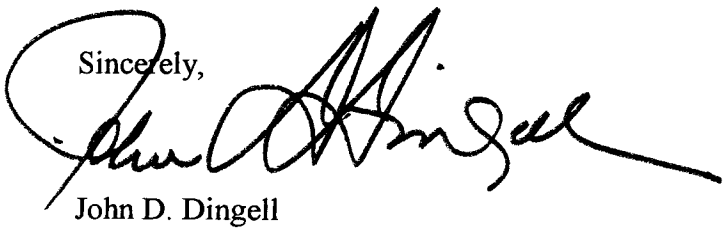
e) Please explain why U.S. Attorneys are unwilling to enforce 18 U.S.C. § 922 (a)(6) even for violent felons who attempt to purchase firearms?

4. At a June 21, 2000, hearing at the Senate Judiciary Committee regarding improvements to the Brady Act, Mr. David Loesch, Assistant Director in charge of the Criminal Justice Information Services Division of the FBI, testified that the law prohibiting felonious misrepresentation of firearm eligibility "is essentially unenforceable." Do you share this view? Please comment on the enforceability of U.S.C 18 § 922(a)(6) in all its specifics and in general.

Your attention to this matter is greatly appreciated. I would note that similar questions, asked of your predecessor, were never satisfactorily answered; I trust that the Department under your watch will be more forthcoming. I look forward to your response, and to working with you to reduce gun crime through the vigorous enforcement of our laws.

With every good wish,

Sincerely,



John D. Dingell
Member of Congress