

LEGISLATIVE TESTIMONY, IN ABSENTIA, OF
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IN OPPOSITION TO RAISED BILL 5818, AAC LOST OR STOLEN
FIREARMS,
24 MARCH 2006

Honorable Chairpersons and Members of the Committee:

The first part of my testimony is in the form of an open letter to all would-be firearms traffickers, the persons against whom this bill is, ostensibly, directed, as follows:

Dear would-be firearms trafficker:

The Connecticut Legislature's Judiciary Committee is considering a bill that would criminalize the failure timely to report lost or stolen firearms. It is directed against you and your filling the black and gray markets with illegal firearms. But DON'T WORRY! This bill creates such a big loophole that you could drive an 18-wheeler through on your way to avoiding its criminal penalties.

All you have to do is to accumulate, over time, the firearms you want to dump into North Hartford, New Haven, Bridgeport and elsewhere at enormous profits. Once you have enough for this time, call the local or state police and report them as having been stolen yesterday. Give them all the required (but mostly phony) information about the theft (you still have all the pieces stashed away, of course.) After you've done that wait a couple of weeks then take your rides to the big cities and come home with no firearms and lots of cash.

At some point later on one or more of these firearms will be seized by law enforcement folks because it was used in the commission of a crime. Since they already have the make, model and serial number of the piece(s), it or they will be traced back to you.

After the customary accusations and attempts at intimidation you will show them your copy of the police report of the (alleged) theft proving that you complied with the statute and reported the theft within required seventy-two hours:

HOME FREE! Why worry about filing a false police report, who's going to prove that they WEREN'T stolen?

I hope that this information is helpful to you in the pursuit of your profitable activities!

Honorable Chairs and Members, this is bill is a perfect example of mere "feel good" legislation. No would-be trafficker with ANY brains at all will be caught by it. It will affect, as usually happens with this type of legislation (and, in fact, HAS happened in this state in several recent cases), only the honest, law-abiding citizen who might not know of its provisions and might not comply due solely from inadvertence or lack of knowledge; a person no more a trafficker than any of you are! The publicity (and most assuredly there WOULD be publicity) surrounding the arrest of this person (an easy target) certainly would be designed to make law enforcement look good, but in the end, the REAL would-be trafficker will be on the outside with a smile on his face!

AS TO SECTION 1. (NEW): Criminal statutes are to be strictly construed. They are also required to state, with specificity, the conduct that is proscribed. There are NO specific standards set forth in Section 1 of this bill that the ordinary

person can understand as being unlawful. How definite are the terms "in such a manner" and "substantial and unjustifiable risk". These are terms of art; they involve questions of fact to be determined by a trier of fact; they are NOT specific standards by which an ordinary person can conduct his or her activities to avoid criminal liability. How is anyone able to predict the conduct or activities of that clever and resourceful would-be robber or burglar and protect him or herself from the bad guy's criminal conduct or activities? Why is this Committee making the ordinary citizen, your constituent, potentially responsible, vicariously, for the criminal conduct of others over whom and over which that citizen has no control whatever. This is an expression of the "fortress mentality" under which no American citizen should be required to live. Again, it would punish the good guy and not the criminal. The provisions of this section are too vague and would, therefore, be declared void by a court. They should not be enacted into law!

AS TO SUBSECTIONS 3(i)(1) and (2): The provisions of Subsection 3(i)(1) are a prosecutor's dream: the words "prima facie" shift the burden of proof (that the defendant is guilty) from the state to the defendant (that the defendant

is innocent) a concept in the criminal law that is contrary to every principle upon which our criminal justice system is founded. Have we abandoned the ancient principle of one's being innocent until proven guilty? It requires that the good guy (AGAIN) rebut the presumption against him/her created by the "prima facie" evidence that he or she did NOT do the bad things of which he or she is being accused (difficult if not

impossible to do!) That's not the way we do things in the USA and Connecticut! This is another example of making a good guy criminally responsible for the acts and conduct of someone, the bad guy, over which he or she has no control whatsoever.

Too, the effect of this subsection is to require de facto registration of all pistols and revolvers, anathema to gun owners of this state. What about the pistol that Uncle Bill brought back from WWII and gave to the poor defendant 30 +/- years ago and which, since then, has been in the bedroom closet. It was never "registered" because it didn't have to be. It was stolen last week in a burglary. How, Honorable Members, is this defendant going to be able to prove his or her innocence in the pending criminal case. At the very least, how is his or her long-term ownership going to be established? The "paper trail" in this example probably stopped at the Battle of the Bulge!

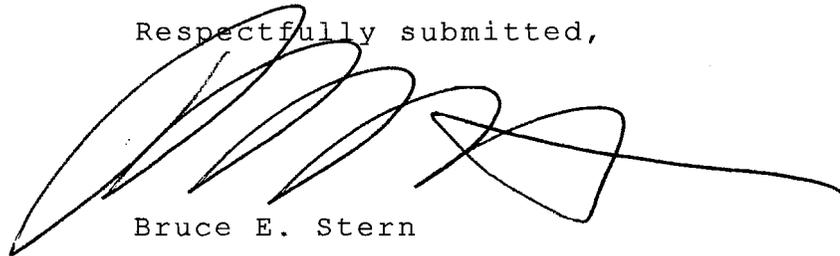
Finally, subsection 3(i)(2) receives the same objections. The clause of 3(i)(2)(A) requires the defendant to prove a nega-

tive, i.e. that the defendant did NOT do something. How is that to be done? Again, the burden of proof is shifted to the defendant from the state. An affirmative defense must be alleged and proven by the party asserting it. It is different from an alibi in a criminal case that exists without having to be alleged and proven. An alibi just means that the state can't prove, beyond a reasonable doubt, that the defendant is guilty. The burden of proof has not shifted.

The objections set forth in the opening paragraphs of this testimony are equally applicable to the provisions of Subsection 3(i)(2)(B) for obvious reasons.

This bill should NOT be enacted into law!

Respectfully submitted,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Bruce E. Stern