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COUNCIL OF THE CITY OF PHILADELPHIA

3

PUBLIC HEARING

4

COMMITTEE ON PUBLIC SAFETY

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Room 401, City Hall
Philadelphia, Pennsylvania
Tuesday, June 4, 1999
10:15 a.m.

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BILL NO. 990289 - An Ordinance amending Chapter
10-800 of the Philadelphia Code, entitled "Safety,
by adding a new section providing that any person
(including, but not limited to, any registered or
licensed firearms manufacturer or dealer) who
transports, sells, exposes for sale, possesses for
sale, assigns or transfers any firearm shall be
liable in tort, without regard to fault or proof or
defect, for all direct and consequential damages
that arise from bodily injury or death if the bodily
injury or death results from the discharge, within
the City of Philadelphia, of the firearm, unless the
firearm incorporates within its design, and as part
of its original manufacture, technology which
automatically limits the firearm's operational use
so that it may only be fired by the particular
individual to whom it is sold; all under certain
terms and conditions.

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PRESENT:

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COUNCILMAN ANGEL ORTIZ, Chairman
COUNCILMAN DAVID COHEN
COUNCILMAN FRANK DI CICCIO
COUNCILMAN JAMES F. KENNEY
COUNCILMAN FRANK RIZZO

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2 CHAIRMAN ORTIZ: Good morning. Frank
3 Rizzo, Jim Kenney, David Cohen, Frank DiCicco being
4 here, a quorum being established, hearing on Bill
5 990289 will be begun.

6 Before we begin, I want to make a few
7 remarks as we move forward in these proceedings.
8 Today in America, especially in urban centers, we're
9 facing an epidemic of the kind no one would have
10 imagined. I feel obligated to outline some
11 depressing and staggering data that should
12 illustrate why we're here today. In 1995, 35,957
13 Americans were killed by firearms in this country.
14 This is more than those killed in the entire Korean
15 War, 33,651; and represent 62 percent of those
16 killed in the Vietnam War, 58,148.

17 In 1996 firearms were used in two out of
18 three murders in the United States, 54 of these
19 involved the use of a handgun. Of all the
20 gun-related homicides, only 176 were found to be
21 justifiable by private citizens.

22 Children are evermore becoming the
23 victims of gun violence. In 1996 2,866 children and
24 teenagers were murdered with guns. About 1300
25 committed suicide with guns, and a remaining 468

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2 died in unintentional shootings. 84 percent of
3 murder victims, age 13 to 19 years old, were killed
4 with firearms. In 1997, 56 of all murders among
5 those under 18 involved firearms. This is up 38
6 percent from 1986. African-Americans and other
7 minorities are disproportionately represented in
8 these morbid statistics. The National Center for
9 all Statistics, gun-related homicide is the leading
10 cause of death for black men aged 15 to 34.

11 I think we don't have to continue
12 outlining the adverse impact that handguns and other
13 firearms have in our communities and neighborhoods.
14 For the last few decades, addressing this concern
15 has stirred controversy of all kinds. There are
16 those who would ban guns altogether, while others
17 would prefer to arm the populist to the hilt arguing
18 the best defense is an armed offense.

19 The fact is that new laws have been
20 enacted having increasingly severe penalties.
21 Enforcement efforts have also been stepped up.
22 Those must continue, but we must go beyond.

23 I believe this bill we're considering
24 today represents a reasonable middle ground between
25 gun control advocates and gun owners. The so-called

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2 smart gun ordinance accomplishes two central goals.
3 It deals with the increasing illegal and often
4 unauthorized access to handguns; and two, it
5 increases the level of accountability by those who
6 are in some way or another the custodians of those
7 weapons.

8 The legislation before this body is not
9 necessarily a panacea, but is one of the many
10 preventative measures that collectively, I believe,
11 will go a long way in helping to eradicate this
12 epidemic.

13 I thank Mayor Rendell and this City
14 Council for having the political will to consider
15 the passage of this bill. I look forward to the
16 enactment.

17 Mr. Mayor, the floor is yours. Identify
18 yourself for the record.

19 MAYOR EDWARD RENDELL: Good morning, Mr.
20 Chairman and Members of the Committee. I'm Edward
21 G. Rendell, Mayor of the City of Philadelphia. To
22 my left is David Yarkin who serves as the
23 administration's press secretary. He has been
24 helpful in assembling the mass of information, some
25 of which we're going to present to you and ask to be

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2 made part of the record.

3 Today, if the Chair pleases, I'd like to
4 introduce our witness list. Of course all of you
5 are familiar with our great police commissioner,
6 John Timoney. No one understands the need for
7 eliminating the access and availability of guns more
8 than a career police officer who's dedicated his
9 entire life to fighting violence.

10 After Commissioner Timoney, Gerald
11 McHugh who is the president of the Philadelphia
12 Trial Lawyers Association will testify. He will
13 testify to the impact that this bill will have on
14 future litigation. Imposing strict liability, we
15 think, is a dramatic and extraordinarily impactful
16 step.

17 Following Gerald McHugh is Bryan Miller,
18 the executive director of Ceasefire New Jersey. As
19 you know, Mr. Chairman, New Jersey with Ceasefire
20 New Jersey's help, there's a bill in the New Jersey
21 legislature that would mandate that after a set
22 period of time no gun could be sold in New Jersey
23 that wasn't personalized, that wasn't a smart gun.
24 That bill has obvious advantages. One of its
25 disadvantages is that it would only apply to New

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2 Jersey. So Jerseyites could go to Pennsylvania, to
3 New York and buy whatever guns they like.

4 There is going to be an attempt in
5 Congress to do a piece of federal legislation that
6 would mandate that no guns sold in United States
7 after a certain date could be sold without being
8 personalized, without being smart guns. Again, as
9 we all know, that bill would probably face an uphill
10 battle in the Congress.

11 After Bryan Miller, we'll hear from Mark
12 Chilutti who many of you know already. Mark was the
13 victim of gun violence. But rather than rue what
14 happened to him, he has been a great and outspoken
15 advocate for restricting the availability of guns,
16 and Mark will have some very poignant testimony.

17 And the next piece of testimony we want
18 to offer is not in person, but by letter. I asked
19 the National Institute of Justice to testify today,
20 to send us a representative. They did not do that.
21 They do not want to get involved in these type of
22 legislation. They don't want to take a position on
23 legislation. But I wanted to introduce into the
24 record, and this may be as good a time as any, the
25 letter from Jeremy Travis, the Director of the

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2 National Institute of Justice which summarizes their
3 efforts up to now in terms of trying to develop
4 smart gun technology and their belief that smart gun
5 technology can be a tremendous asset to increasing
6 public safety. I will refer back to the letter in
7 my testimony, if I might.

8 One thing, I want to start my testimony
9 by piggybacking on what Councilman Ortiz has said.
10 You all know, I think, that I've been involved in
11 the forefront of the effort of the United States
12 Conference of Mayors to do something about gun
13 violence. You all know the level of gun violence in
14 this City. And although the good news is that adult
15 gun violence is decreasing, the bad news is that
16 juvenile gun violence has stayed at the same
17 extraordinarily high level here in the City of
18 Philadelphia. And when we say that adult gun
19 violence is decreasing, it is decreasing to a level
20 that is obviously unacceptable to all of us. There
21 is a decrease, but it is still at a level that is
22 God-awful and not acceptable to any member of the
23 administration or this City Council.

24 I won't belabor those points, but I do
25 want to say that Councilman Ortiz is absolutely

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2 right, that the solution to gun violence in America
3 and in Philadelphia, the solution rests on a
4 comprehensive approach. We are not here to take
5 sides on the political question of gun violence.
6 We're here to take another step in adding to the
7 weapons that we have against gun violence and we are
8 interested in trying to develop as many things that
9 work to curb gun violence as possible. So as you
10 know, the City has undertaken its own Operation
11 Cease Fire which will dramatically increase law
12 enforcement's response to people who illegally
13 possess firearms, convicted felons, juveniles.
14 Operation Cease Fire has already had tremendous
15 results in the two short months that it's been
16 underway. So clearly, we do need to step up our law
17 enforcement efforts. And when critics of gun
18 control legislation say that, we shouldn't stick our
19 heads in the sand; we should be absolutely clear
20 that they are correct and that we are doing that.
21 But it is also just as clear that the availability
22 and accessibility to guns to juveniles and to
23 convicted felons is one of our greatest problems.

24 Juvenile gun violence, the recent report
25 of the ATF, the recent ATF report released in this

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2 region indicated that close to one-half of all of
3 the guns used in juvenile gun violence came from
4 multiple purchases. Again, as all of you know, the
5 City has been very active in Harrisburg trying to
6 get enacted one-gun-a-month legislation which would
7 cripple the ability of straw purchasers to go in and
8 buy 10, 12, 14 guns at a time and resell them in the
9 streets of our City. So we are taking this type of
10 comprehensive approach that Councilman Ortiz
11 mentioned in his opening statement. However, each
12 one of those things individually solves a component
13 of the problem. But cumulatively, they don't solve
14 all of the problems. And this smart gun legislation
15 today goes, in my judgment, a giant stride in
16 dealing with some of the significant problems of
17 unauthorized gun use.

18 If I would tell you what the most
19 significant problems are, they are, number 1, guns
20 that are discharged accidentally. We all see that.
21 Three or four guys sitting around at home, someone
22 takes out the latest firearm, doesn't know it's
23 loaded; boom, best friend kills best friend.
24 Children playing with guns in the house;
25 four-year-old child killed by six-year-old brother.

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2 What happened in Philadelphia just a month ago with
3 seven-year-old Nefice Jefferson, a great tragedy. A
4 young boy riding his bike down the street shot in
5 the head and killed because another young boy, a
6 10-year-old, finds a gun in an abandoned vehicle and
7 accidentally discharges it. Obviously, the type of
8 personalized handguns that we are talking about
9 today, render, once and for all, accidental
10 discharge. Impossible.

11 Secondly, suicide. We have a number of
12 young people who use firearms to kill themselves,
13 despondent young people. Clearly, again,
14 personalized handguns would eliminate that
15 possibility as well.

16 It would also eliminate the possibility
17 of a despondent young person taking a handgun out of
18 their own home, go into a school and opening up with
19 that handgun on teachers or fellow students. They
20 simply wouldn't be able to do it. It would not
21 discharge.

22 Theft, as you know in Philadelphia now,
23 one of the prime motivations for house burglaries is
24 stealing a weapon, a firearm, because firearms are
25 easily disposable on the street. You can reap a

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2 significant profit on a firearm. It would mean that
3 anybody who tried to burglarize a house and steal a
4 gun would have a product that they could not sell on
5 the streets because it can only be discharged by the
6 original owner.

7 And most importantly of all, to our
8 crime rate, to the carnage that guns bring about in
9 the City of Philadelphia. Most importantly of all,
10 you could not resell guns. This doesn't change the
11 right of any individual to go in and buy 15 9
12 millimeter automatic pistols at one stop at a gun
13 shop. As long as that individual passes the Grady
14 requirements, he can under the current law do that.
15 But each one of those 15, 9 millimeter
16 semiautomatics would have to be fitted to the
17 personal characteristics of that individual, and
18 that individual only and could not be resold, could
19 not be resold on the streets.

20 You will hear today from me and other
21 witnesses about one of the developmental stages of
22 so-called smart guns. It is a project that Colt
23 Manufacturing Company is undertaking for the NIJ for
24 police departments where there is a microchip that
25 is inserted into the firearm. The police officer is

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2 equipped with a ring. And only when the ring is

3 within a certain distance of the microchip and lined

4 up in a certain way can that firearm be activated.

5 That is a help for police officers because, as you

6 know, a significant percentage of our police

7 officers who are shot, are shot by their own gun.

8 And if they're disarmed during a struggle, the

9 assailant could not turn the gun against them. But

10 it does not fit our definition of personalized

11 handguns for the very reason if we had ring

12 technology, the fellow who goes in and wants to make

13 a huge profit and buys 15 nine millimeter automatic

14 pistols would buy 15 rings, one ring for each gun,

15 and would be able to sell them on the street and

16 just give the buyer ring and gun; ring and gun. And

17 you'd have convicted felons just wearing another

18 ring and another ring which enables them to fire an

19 illegal weapon. So that will not fit the definition

20 that we have put into this bill. And it's very

21 important because although that is a step down the

22 road to developing this technology, it doesn't solve

23 all of the problems.

24 Now, where is the state of this

25 technology? I would not come before Council and ask

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2 you to enact this bill if it was unreasonable, if it
3 raised a level of expectations that could not be
4 met. But I want to tell you a little bit about the
5 state of technology. I want to introduce for the
6 record a recent New York Times editorial, and if I
7 may just read a brief part of it. It talks about
8 the New Jersey legislation and it says, "Opponents
9 question the commercial viability of smart guns, but
10 there are already about 30 patents ranging from
11 devices that read fingerprints and compare them with
12 those of authorized users to radio controlled or
13 magnetic systems that match a mechanism in the gun
14 with a remote unit carried by the authorized users."
15 Thirty patents already underway.

16 The head of Smith and Wesson, a man by
17 the name the of Ken Jorgensen was quoted in a recent
18 article in the Trenton Times. He was quoted as
19 saying, "Anyone who wants to stay in this industry I
20 think is working on a product like this," meaning a
21 smart gun, "But it's so competitive that no one
22 really wants anyone else to know how far along they
23 are or even what they're pursuing because I think
24 the first company that comes out with a viable
25 product is going to have a tremendous advantage.

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2 "Although he hesitated to answer the
3 question, Jorgensen said his company expects to have
4 a product that would meet the deadline in the New
5 Jersey bill. 'I would say that we hope we're going
6 to have a deliverable product in under five years.'"

7 In a recent Newsweek article, the head
8 of Colt, an investment banker by the name of Donald
9 Zilka who owns Colt said that his company is also
10 pursuing so-called smart gun technology that would
11 render a handgun useless to anyone but the owner by
12 scanning a fingerprint, a feature that may someday
13 be required on police weapons.

14 I wanted to make sure about the accuracy
15 in this Newsweek article, and on Wednesday I spoke
16 to have Steven Sliwa, S-l-i-w-a, who is the CEO of
17 Colt Manufacturing, and he confirmed to me that Colt
18 is working on a gun that will only be discharged by
19 a fingerprint scan. So Colt and Smith and Wesson,
20 two of the nation's largest manufacturers are
21 working on that technology.

22 And lastly, I want to, again, read from
23 an article in the Trenton Times. Steven Terret (ph)
24 who is the director of the Johns Hopkins University
25 Center for Gun Policy and Research was quoted as to

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2 the question of whether this was feasible. Terret
3 said that in 1992 he gave three undergraduate
4 engineering majors at Johns Hopkins a disabled
5 revolver and \$2,000 and told them to produce a
6 personalized handgun for a senior project. He said
7 that they bought off-the-shelf components and
8 produced a gun that had to be activated
9 electronically through contact with a ring worn by
10 the user. For \$2,000, three engineering students
11 took us a giant step towards our goal. Again, I'm
12 not satisfied with the ring technology because it
13 doesn't eliminate the straw purchaser aspect of
14 this, and that would not qualify under our bill.
15 But think about it. If three engineering students
16 in a senior project with \$2,000 to spend could go
17 that far, how can anybody say anywhere, anytime that
18 this technology isn't feasible, that it cannot be
19 developed?

20 Now, we are also, though, cognizant of
21 the fact that developing this technology, getting
22 from where we are now to what would qualify under
23 our bill is not going to be easy. That is why we
24 put the time delay into our bill. And I'll talk
25 about that in a moment.

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2 Let me tell you how, in my judgment,
3 pathetic our federal government's efforts have been
4 to foster smart gun technology. If you look at Mr.
5 Travis' letter, you will see he details that in 1994
6 NIJ awarded Sandia National Laboratory \$620,000 to
7 conduct a research initiative to assess the law
8 enforcement needs for a smart gun. In 1996, Colt
9 was awarded a \$500,000 grant to refine its existing
10 smart gun and deliver two working prototypes to the
11 NIJ. And as I said, Colt is working on perfecting
12 the ring technology.

13 He indicates in his letter that although
14 there's been no direct funding for smart gun
15 technology in the past, the administration's FY 2000
16 budget request includes \$4 million to support the
17 development of smart gun technology. If this
18 funding is provided, NIJ will issue a direct
19 solicitation for proposals of alternative smart gun
20 technology. That's a drop in the bucket to what I
21 think we need to ensure that we get there as quickly
22 as possible.

23 In the last session of Congress, there
24 was a bill introduced by Congresswoman Barbara
25 Kennelly from Connecticut that would have

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2 appropriated over a five-year period \$100 million,
3 \$20 million a year, to facilitate smart gun
4 research. The bill never got out of committee. It
5 wasn't voted down, it just never moved in the last
6 Congress. Congresswoman Kennelly ran for governor
7 of Connecticut and is not in the Congress today.
8 And towards that end, I've been in touch with
9 Congressman Anthony Weiner representing Brooklyn,
10 New York. And I'd like to submit to you as part of
11 the record a letter I sent to Congressman Weiner
12 asking him essentially to reintroduce the Kennelly
13 bill appropriating the hundred million dollars in
14 research over a period of time anywhere between
15 three to five years.

16 CHAIRMAN ORTIZ: One question, Mr.
17 Mayor.

18 MAYOR RENDELL: Sure.

19 CHAIRMAN ORTIZ: The profitability
20 factor, profits to the gun manufacturers, will this
21 smart gun cut down on that?

22 MAYOR RENDELL: No. One of the
23 questions to be answered, it's pretty clear now that
24 the technology can get us there. In five years with
25 the right type of money, it can get us there. The

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2 question is, will the finished product be at a cost
3 that can be afforded by the ordinary consumer. And
4 of course, there are people who say no. But those
5 are the same people who told us that you couldn't
6 put air bags in cars because it would increase the
7 price of a car way beyond the reach of the ordinary
8 American. Now automobile companies are fighting
9 over themselves to put additional air bags in
10 because they've become so popular.

11 No, to the contrary. If it can be done
12 at an affordable price, and I believe eventually it
13 can be done, if it can be done, it will actually
14 increase, as Mr. Jorgenson of Smith and Wesson, part
15 of his statement that I read to you, it will
16 actually increase the scope of potential gun buyers.
17 They have done market research and have found that
18 if there were truly a personalized handgun that can
19 be discharged only by the owner, that it would
20 increase the number of buyers. It would open up a
21 new market. Housewives who are alone a lot who
22 don't want a gun now because they read all the
23 horror stories about accidental shootings, et
24 cetera, things like that, it would open up a new
25 market.

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2 So I believe -- in fact, I want to also
3 introduce into the record from the Colt
4 Manufacturing Company's web site, I want to
5 introduce part of their web site that we have
6 included for you, and it has some very interesting
7 comments. Number 1, it reiterates Colt's complaint
8 about not having enough money for the development of
9 this technology, but it says, "The concept of a
10 smart gun for general consumer use would be to
11 develop a handgun which could not be misused by
12 children or others in the household or taken by a
13 criminal and used against its owner. It could use
14 fingerprints, voice, skin conductivity or other
15 physical features . . . Surveys have shown 30
16 percent of those who don't currently own a firearm
17 would be in favor of gun ownership for personal
18 safety or for sport if an electronic personalized
19 technology existed. This would be good news to
20 those who are interested in seeing our rights to
21 bear arms protected. The more people who are gun
22 owners or are in favor of gun ownership, the less
23 likely that our second amendment rights will
24 legislatively be violated."

25 Leaving aside the political nature of

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2 that, I think it shows you that this is a marketable
3 idea, this is feasible, it can be done, and it is
4 something that I think could bring the
5 manufacturers, mayors, and city councils, gun
6 control advocates, all of them together, to support
7 certainly the research bill in Congress, to support
8 that bill.

9 Now, on the Colt web site, they say
10 they're against mandates, they're against mandating
11 this personal technology. And obviously, it won't
12 work unless we mandate it.

13 So I want everyone to be aware that,
14 one, we wouldn't be here if we didn't believe the
15 technology existed now and could be refined so to
16 make it practicable within a limited time.

17 And number 2, we wouldn't be here if we
18 weren't also pushing for the type of federal funding
19 that will be necessary to up-tempo these research
20 efforts.

21 Now, having said all of that, I want to
22 make two last comments. Even though this was a bill
23 that was drafted by the Administration, we want to
24 suggest three amendments, and we will submit them,
25 Mr. Chairman, to you in writing. But the three

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2 amendments are in the definition section A1 where it
3 says, "So that it may only be fired by the
4 particular individual to whom it is sold," I would
5 like to add "or to that individual's husband or wife
6 or member of immediate family," because there are
7 many families who buy a gun to protect the home and
8 they want that gun to be used by any of the adults
9 possibly in the home. That would be their choice.
10 When Bryan Miller testifies, he will show you a
11 fingerprint technology that has evolved. He will
12 show you a gun which can be fingerprint activated
13 now. It can be take up to 10 different sets of
14 fingerprints. Now, we want to limit this to adults
15 in the immediate family, choice of purchaser. But
16 we don't want to have the problem saying, "Well,
17 what, do I have to buy a second gun for my wife so
18 she can protect herself?" No. You can scan in the
19 fingerprint of almost every adult in the family. We
20 will work on specific language.

21 Secondly, in Section 2, the strict
22 liability section, it talks about beginning three
23 years after the date this section becomes law, any
24 person, including but not limited to any registered
25 or licensed firearms manufacturer or dealer, who

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2 transports, sells, exposes for sale, possesses for
3 sales, assigns or transfers any firearm shall be
4 liable in tort without regard to fault or proof
5 defect, et cetera, et cetera. That clearly needs
6 amending, and it should read "Transfers any firearm
7 manufactured after the operative date," because
8 otherwise we'd be holding gun manufactures,
9 distributors, strictly liable for a gun produced 15
10 years ago that wasn't adapted to smart gun
11 technology. And that would be unfair. We can't ask
12 them to go out and reclaim every gun on the street
13 and adapt it to smart gun technology. We can do
14 this going forward.

15 And for those of you who say, "Well, if
16 you're not going to do that, what good is this
17 bill?" Let me tell you. The recent ATF study found
18 that well over 60 percent of the guns used by
19 juveniles in violence were three years of age or
20 younger. So this business that there's so many guns
21 out there gun control won't work, more than half, 60
22 percent of the guns used by juveniles were three
23 years of age or younger. So this will have an
24 effect. So we need to amend that.

25 And lastly, I would like to change the

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2 three-year limitation. I would suggest to you to
3 change the three-year limitation to four years.
4 One, I want to make sure that we're not being
5 unreasonable and we do give the technology the time
6 to develop in a safe and effective and efficient
7 way. The New Jersey bill is three years, but it
8 gives the Attorney General of New Jersey the right
9 to increase the time limit twice by one year each.
10 So the Jersey bill, and Mr. Miller will talk more
11 definitively about the Jersey bill, the Jersey bill
12 will extend it to five years. I would like to
13 change our bill, and again this is something that
14 obviously members can discuss among themselves, but
15 I think that four is a much fairer limitation than
16 three.

17 I believe that this legislation can have
18 a significant effect on this debate. The New York
19 Times and other people have contacted us about this
20 legislation. I believe this legislation will send a
21 very clear message to gun manufacturers that it is
22 time to up-tempo their efforts. It will send a
23 clear message to the Congress that local government
24 is moving with or without them. So I believe this
25 is a very important piece of legislation.

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2 Lastly, let me address myself to a
3 question that Councilman Ortiz asked me to address.
4 And that is, can this bill withstand the state
5 preemption statute? My answer is yes, because the
6 state preemption statute forbids us -- or for that
7 matter any locality, but it was obviously directed
8 at us. Forbids us from doing anything that would
9 attempt to regulate the distribution, sale, transfer
10 of guns. We're not attempting to do that. If gun
11 manufacturers, gun distributors, and gun shops want
12 to continue to produce, distribute, sell non-smart
13 guns, they can. We are not changing the law. They
14 can do that. We're just saying, if you do that, you
15 do that at your peril because in Philadelphia strict
16 liability will apply unless it is a personalized
17 handgun. So we are not attempting to interfere.
18 They have the choice to continue to sell, possess,
19 distribute, transfer firearms in any way that they
20 so choose, in any way that they so choose. We're
21 just saying in this county, there will be a price to
22 pay if those guns aren't personalized. It is my
23 judgment that this is one area that the preemption
24 statute has not taken away from us.

25 CHAIRMAN ORTIZ: Will that also apply,

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2 as Councilman Kenney just leaned over to me and
3 said, to the tort liability that goes with the bill?

4 MAYOR RENDELL: Yes.

5 COUNCILMAN KENNEY: My question is, is
6 the issue of tort liability a state jurisdictional
7 issue? Can we in Philadelphia set up a different
8 tort liability than Lebanon County or Allegheny
9 County?

10 MAYOR RENDELL: There is nothing in the
11 law of the Commonwealth of Pennsylvania that says
12 that an individual subdivision cannot create
13 different tort liability, different contract
14 liability, et cetera. Unless there is a specific
15 statute that deals with the issue, there is no
16 reason that we can't legislate.

17 COUNCILMAN KENNEY: Do we have something
18 from the Law Department that would give us that
19 opinion prior to the passage of the bill that we can
20 at least be on sound footing from the liability
21 standpoint? I understand your argument on the state
22 preemption. That I understand. But on the
23 liability issue, I just have some concerns that --

24 MAYOR RENDELL: In the absence of a
25 statute that deals with the issue, any political

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2 subdivision I think can impose -- and maybe Mr.
3 McHugh can testify more to that in general. But any
4 political subdivision can impose their own limits
5 and limitations.

6 COUNCILMAN KENNEY: If we can get
7 something from the Law Department, I'd appreciate
8 it. Thank you, Mayor.

9 MAYOR RENDELL: Mr. McHugh will also
10 comment about that.

11 CHAIRMAN ORTIZ: Mr. Mayor, could you
12 tell us and do you have the information as to the
13 cost to the City right now of gun violence in terms
14 of money, in terms of what it is that we have to
15 take out of our budget.

16 MAYOR RENDELL: As you know, we have
17 prepared to file litigation if we believe that that
18 is an alternative that is necessary for us, and in
19 that preparation we did a study on our costs, and it
20 comes to roughly \$58 million a year. That is only
21 cost incurred by the government, by the taxpayers.
22 If you were to add the cost to Philadelphia
23 hospitals for the un-reimbursed care that they give
24 as a result of gun violence, that would add an
25 additional 20 to 30 million dollars on top of that.

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2 The specific answer to your question, the government
3 of the City of Philadelphia, the taxpayers, we
4 believe we could prove to pay roughly \$58 million a
5 year as a cost of gun violence.

6 CHAIRMAN ORTIZ: And that's money taken
7 out of our budget yearly?

8 MAYOR RENDELL: There's no question.

9 CHAIRMAN ORTIZ: Frank DiCicco.

10 COUNCILMAN DI CICC0: Good morning, your
11 Honor. Excuse my attire. I have to be out selling
12 papers shortly. Does that 58 million include the
13 cost of the courts, what we incur in the court
14 system?

15 MAYOR RENDELL: Yes.

16 COUNCILMAN DI CICC0: Thank you.

17 CHAIRMAN ORTIZ: Frank.

18 COUNCILMAN RIZZO: Thank you. Mayor,
19 the guns that are already out there, if a person is
20 involved in an incident with a gun that doesn't have
21 this technology, what's the ramification?

22 MAYOR RENDELL: Well, for guns that are
23 already out there manufactured previously, then the
24 existing laws would apply. There would be no strict
25 liability. You'd have to proceed under a negligence

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2 theory, under a public nuisance theory, et cetera,
3 et cetera. And as you know, Councilman Rizzo, there
4 have been multiple, hundreds of lawsuits filed by
5 individual victims of gun violence. Only one has
6 reached a successful verdict, and even that
7 successful verdict was problematic because most of
8 the gun companies sued were found not liable because
9 the actual damages assessed were very little. So
10 it's very difficult, and it's a question that we
11 asked Mr. McHugh to address when he testifies before
12 you,, it is very difficult to win those suits for an
13 individual who's been shot. If Mr. Chilutti, for
14 example, wanted to sue or a mother of a deceased, if
15 Nefice Jefferson's mom wanted to sue, it's very
16 difficult to win those suits now.

17 COUNCILMAN RIZZO: Mayor, because of the
18 availability of guns -- I'll refer to them as the
19 bad guys. I know there's a lot of issues here,
20 we've got children being accidentally shot, but
21 we're talking about the bad guys. If the bad guys
22 want guns to commit crime, don't you think that with
23 legislation like this will generate a new
24 manufacturing, underground manufacturing of guns?
25 Have we done any type of research to know that are

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2 all the guns that are used in crime made by major
3 manufacturers or will some entrepreneur say, "Hey,
4 look, now that this it tightening up, if you've got
5 \$5,000 you'll be able to buy a gun that's
6 manufactured in some underground cave someplace."

7 MAYOR RENDELL: Basically, could
8 someone, like they do with drugs, produce speed in a
9 basement of a house and sell them? Mr. Miller might
10 want to take a crack at that, but my experience
11 tells me no. It is a very difficult proposition to
12 get the steel necessary, the technology necessary.
13 It's very difficult to do this. If you set up a
14 major operation in a mountainside somewhere, we
15 would -- every gun, for example, in Philadelphia,
16 and Commissioner Timoney can testify about this, we
17 now try to trace every gun in Philadelphia.
18 Defendants are interviewed, where did you get the
19 gun from, et cetera. We would find out about that
20 type of operation very readily. And frankly, from
21 my law enforcement experience, which you know dates
22 back 30 years now, the only sort of manufactured
23 guns that don't go through the regular process were
24 the zip guns of the fifties and sixties. Councilman
25 Ortiz remembers those. But basically to get a

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2 firearm that is capable of doing the things -- the
3 bad guys, as you know, they want state-of-the-art.
4 They don't want a six-shooter that fires six
5 bullets. They want the state-of-the-art automatic
6 weapons that discharge as quickly as possible.
7 Those can only come from a major manufacturer.

8 COUNCILMAN RIZZO: Just to follow-up on
9 my final question. Once this technology -- and I
10 like this idea of technology to prevent those
11 accidental shootings. But again, I think we need to
12 be the devil's advocate there for a few minutes to
13 think about if you were a bad guy and this law
14 became in effect in four years, what you would do to
15 get the guns that you need to commit your crime and
16 your violence. Would you go to foreign countries,
17 would you buy existing guns that are out there even
18 though current technology --

19 MAYOR RENDELL: Councilman, I think if
20 you're talking about sophisticated crime rings,
21 organized crime rings, they will find ways to get
22 guns. They will smuggle them in from foreign
23 countries, et cetera. But most of the people who
24 are the victims of gun violence here, 99 percent of
25 them, are not the victims of gun violence by

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2 sophisticated organized crime rings. They are the
3 victims of gun violence by hoodlums who have prior
4 records but are just robbers and bad guys. They're
5 the victims of juveniles who get guns from the gun
6 traffickers. And that would all grind to a halt.
7 The reason I gave you the statistic in the ATF study
8 that most of the guns used by juveniles are three
9 years and younger, because it belies the belief that
10 a number of people stated -- when I ran for governor
11 in 1986, I said gun control is a red herring because
12 there's so many guns out there now, it doesn't
13 matter; it would take 80 years before gun control
14 would have any effect in this country. That has
15 been proven to be wrong.

16 And, again, will there be an exception,
17 will there be sophisticated high-financed organized
18 crime rings that will get guns imported? Of course,
19 there will be; of course, there will be. But
20 remember, for them, they're a small, small slice. I
21 don't think -- Commissioner Timoney might add to
22 this. I don't know if we've had a killing, a
23 homicide from an organized crime ring in a
24 significant period of time here. Or if we have,
25 it's been very few in number.

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2 COUNCILMAN RIZZO: But this could drive
3 the price of existing guns on the street up. The
4 ones that don't have the smart technology,
5 legislation like this could drive the price up of
6 the current 9 millimeter, which is a very adequate
7 gun to be a criminal. The guns that are out there,
8 we could be bumping the price up of those existing
9 guns.

10 MAYOR RENDELL: Which wouldn't be so bad
11 because it would make it tougher for a juvenile to
12 buy one.

13 COUNCILMAN RIZZO: I agree, the
14 juvenile, the accidental. I'm talking about the
15 drug dealers that we're talking about that are out
16 there killing cops. In my opinion, it's not the
17 kid, the hoodlum in the block, that necessarily is
18 the one that I'm pointing to.

19 MAYOR RENDELL: Again, even in police
20 shootings, you will find that very few of those
21 police shootings occur from organized crime rings.
22 They're more just two or three guys robbing a store
23 with guns, the Burger King. I mean, you can go
24 through them. Those are not -- that's not our gun
25 violence problem; organized crime rings are not our

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2 gun violence problem. They are part of it, but they
3 are not a significant part of it.

4 Again, I go back to what Councilman
5 Ortiz said. This is not a panacea. That is not
6 going to eliminate 100 percent of our problem. But,
7 gosh, if it eliminated 50 percent of our problem,
8 that would be a godsend.

9 CHAIRMAN ORTIZ: Councilman Cohen.

10 COUNCILMAN COHEN: Thank you. Mr.
11 Mayor, I just wanted to say on this, if your answer
12 to Councilman Rizzo had been if this eliminates 1
13 percent of the problem, it would be a great forward
14 step. I think anything we can do is worth trying to
15 do. I think this legislation may well have
16 problems, but that's because of political reasons.
17 And I think there will be a lot of opposition to it
18 by the very people that promote the number of guns
19 that we have today. But I want to commend you for
20 taking this step. I think it focuses attention on
21 it, it helps in the educational process. And if
22 you're right, and we hope you are, technologically
23 it will produce an additional weapon on our side,
24 but a safe weapon to get these guns off the street.

25 MAYOR RENDELL: Councilman, may I note,

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2 the worst thing that happens here is that we're sued
3 and we lose in court; the worst thing that happens
4 here. Councilman Cohen, you and Councilman Ortiz
5 know that when you made your courageous fight on our
6 own ability to legislate gun controls initiatives
7 here in Philadelphia. There's no disgrace in
8 fighting and losing. The disgrace is if we sit back
9 and don't try to do anything. Can I guarantee that
10 we will win in court? Of course not. No one can
11 ever guarantee. When I was in the private practice
12 of law people would come up to me and tell me their
13 story and say, "Mayor, can I sue" -- they didn't say
14 "Mayor." They said, "Mr. Rendell, can I sue?" And
15 I said, "Of course, you can sue. It's the wrong
16 question. The right question is, can I win? And I
17 don't know the answer to that."

18 But if you tell me that we might lose in
19 court, it wouldn't dissuade me for two seconds.
20 Let's try. Let's try to do something about the
21 carnage that's going on. You will hear from Mr.
22 McHugh that if it does succeed, it will be a
23 powerful weapon, a powerful weapon, in forcing gun
24 manufacturers to do what I think they ought to do
25 anyway, and that's personalize all handguns going

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2 forward as soon as the technology becomes available.

3 COUNCILMAN COHEN: Thank you, Mr.
4 Chairman.

5 CHAIRMAN ORTIZ: Councilman Cohen, can
6 we pass legislation even if we're not sure that it's
7 legal?

8 (Laughter.)

9 CHAIRMAN ORTIZ: I think this is a step
10 forward. We will get that opinion from the City
11 Solicitor and the Court, but Jim and I were just
12 having a conversation. They were able to go to
13 Harrisburg and pass preemptive legislation on the
14 assault weapons. I don't think the Trial Lawyers
15 Association would pass legislation limiting the
16 ability of tort. I think it's a different
17 perspective here.

18 Thank you, Mr. Mayor.

19 MAYOR RENDELL: Thank you all very much.

20 CHAIRMAN ORTIZ: Commissioner Timoney.
21 Commissioner, you know the routine already.

22 COMMISSIONER TIMONEY: Good morning, Mr.
23 Chairman and fellow members of the committee. Thank
24 you for the invite to participate. I think in
25 giving evidence in this important piece of

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2 legislation --

3 CHAIRMAN ORTIZ: Identify yourself for
4 the record.

5 COMMISSIONER TIMONEY: I am Police
6 Commissioner John F. Timoney, the Police
7 Commissioner of Philadelphia. I'm here this morning
8 to testify in support of the Smart Gun Ordinance.
9 We've all heard the claim that guns don't kill
10 people, that people kill people. Either way, too
11 many people are dying. Smart guns will prevent
12 people from killing people by rendering the weapons
13 inoperable in all but the lawfully registered
14 owners' hands.

15 Less than two months ago, and the Mayor
16 referenced this earlier, we had an incident in
17 South Philadelphia where a young seven-year-old got
18 his hands on a drug dealer's gun from a car and
19 accidentally discharged it killing another
20 seven-year-old.

21 Just last weekend at a party up in the
22 Northeast, a retired police officer's residence, his
23 gun was picked up by an 18-year-old friend, and kids
24 being kids, being curious, mistakenly thought that
25 the gun was unloaded. There was still one in the

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2 chamber and kind of, I guess, goofing around
3 accidentally discharged it and killed a 17-year-old
4 young woman.

5 I've been a police officer for over 30
6 years and I've attended far too many funerals of
7 police officers who are killed by their own gun; and
8 in one situation, two police officers that were
9 killed by another police officer's gun. Smart gun
10 technology would have prevented these assailants
11 from firing the officer's gun should the officer
12 have been disarmed during the struggle.

13 Guns also kill indiscriminately. A gun
14 will fire for whoever pulls the trigger. Guns are
15 also easily transferred from a legitimate owner to
16 criminals and children. All illegal guns were at
17 one time legally owned. And criminals can lease
18 guns from another criminal entrepreneur. Rent-a-gun
19 shootings in this town are common. Ballistics
20 traces often reveal a single gun was used in many
21 different shootings committed by many different
22 assailants. The smart gun technology before you
23 would prevent such sharing of guns.

24 Strawman purchasers also buy guns
25 legally. A single licensed buyer often buys dozens

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2 of guns and then re-sells them to criminals and
3 children who could not lawfully purchase them.

4 Another problem exists with guns which
5 are stolen from legitimate owners and then used by
6 criminals. Again, if these guns were equipped with
7 smart gun technology, no one other than the legal
8 purchaser could fire them.

9 Therefore, this ordinance would increase
10 the exposure to civil liability for those
11 manufacturers who sell firearms in Philadelphia
12 without smart gun technology. I urge you, Mr.
13 Chairman, and the rest of the committee to please
14 pass this legislation.

15 Sir, if there are any questions.

16 CHAIRMAN ORTIZ: Yes.

17 COMMISSIONER TIMONEY: Again, I want to
18 thank you for inviting me here.

19 CHAIRMAN ORTIZ: Commissioner, do you
20 have any statistics on the numbers of handguns that
21 are sold within the border of Philadelphia, within
22 the County of Philadelphia yearly?

23 COMMISSIONER TIMONEY: What I do have
24 are the statistics with regards to the guns we
25 recover or confiscate. And clearly, for example, if

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2 you compared the guns recovered in New York versus
3 the guns that are recovered by the police in
4 Philadelphia, you'll find a startling difference.
5 The guns, about 90 or 95 percent of the guns that
6 are recovered by the New York Police Department come
7 from outside of New York State, mostly from five
8 southern states and now Pennsylvania has now become
9 a source state for New York, New Jersey, and
10 Connecticut. If you look at the guns that the
11 Philadelphia Police Department confiscates on a
12 yearly basis, about 85 percent of them come from the
13 State of Pennsylvania. And out of that 85 percent,
14 about 75 percent come from within the City. So for
15 us, it's kind of a home-grown problem.

16 CHAIRMAN ORTIZ: It is a home-grown
17 problem.

18 COMMISSIONER TIMONEY: Absolutely.

19 CHAIRMAN ORTIZ: And this type of
20 legislation would have a significant impact on this
21 problem.

22 COMMISSIONER TIMONEY: I think a
23 dramatic impact. I know the Mayor used the term 50
24 percent, and Mr. Cohen correctly said even if it was
25 1 percent. But my sense is it's actually higher. I

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2 think both of them are being very conservative. I
3 think it will be better than 50 percent.

4 CHAIRMAN ORTIZ: Any questions?

5 Thank you, Commissioner.

6 COMMISSIONER TIMONEY: Thank you, sir.

7 CHAIRMAN ORTIZ: Can we have Gerald
8 McHugh, please.

9 MR. MC HUGH: Good morning, Mr.
10 Chairman, Members of the Committee. For the record,
11 my name is Gerald McHugh and I am president of the
12 Philadelphia Trial Lawyers Association. I was asked
13 by Mayor Rendell if I would evaluate this ordinance
14 as an expert in the field of product liability and
15 advise him as to whether it would be a valuable tool
16 in terms of reducing gun violence in the City of
17 Philadelphia.

18 CHAIRMAN ORTIZ: Maybe you can answer
19 Councilman Kenney's question here also.

20 MR. MC HUGH: I can begin by doing that
21 if you want, Mr. Chairman, and that is to say that
22 while a state statute can define liability per se,
23 which is to say violation of the statute
24 automatically confers liability. Violation of an
25 ordinance is not quite so automatic; it does not

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2 create per se liability. It is, however, relevant
3 and admissable in a trial in order to establish the
4 standard of care.

5 Let me use an analogy, if I might.

6 People who own property across the Commonwealth by
7 state law have an obligation to maintain their
8 properties. In every municipality, there are
9 specific codes and ordinances that then define that.
10 For example, in the City of Philadelphia, ordinances
11 about sidewalk repair, ordinances about drainage.
12 In a case in any county, you may introduce the
13 ordinance as expressing the values of that county
14 and the will of the political body there. It is not
15 per se liability, but relevant and admissible; and
16 for that reason is a very valuable tool in defining
17 the standard of care. For that reason, I believe
18 that by passing this, we do not violate state law.
19 And although there's not per se liability, indeed a
20 fact-finder, be it judge or jury, then knows that
21 the City of Philadelphia has ordained there must be
22 smart technology in guns.

23 Strict liability means what its name
24 implies, which is to say you are strictly liable for
25 something that you do. The victim need not prove

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2 fault, need not prove culpability, need only prove
3 that there was a mandate from the Council and that
4 the manufacturer of the gun did not comply with the
5 mandate.

6 In practical terms, that is incredibly
7 significant, because as Mayor Rendell said, with the
8 gun litigation around the country, individual
9 victims have not been able to prevail and the
10 resources of the gun industry are so immense as
11 against the individual claimant that -- except for
12 the one case in Brooklyn that was a partial victory
13 and in large part due to Judge Weinstein's courage
14 in allowing the case to proceed -- no victim has
15 prevailed.

16 CHAIRMAN ORTIZ: That was my professor,
17 by the way.

18 MR. MC HUGH: And a great federal judge
19 and set an example in that case.

20 What this ordinance will do is level the
21 playing field and it will give an individual victim
22 the ability to prevail.

23 Under Pennsylvania law, a product may be
24 considered defective and strict liability may attach
25 if it lacks something necessary to make it safe for

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2 intended use. By passing this ordinance, you say
3 smart technology is necessary to make guns available
4 for their intended use.

5 I would like to point out that what
6 would happen here is consistent with what is
7 happening with many other significant social
8 problems. That is to say, the litigation system
9 becomes an adjunct for public policy. We have seen
10 that with asbestos; we have seen that with air bags,
11 as the Mayor pointed out; we have seen that with
12 tobacco. What it allows is individual victims and
13 consumers to step forward and assert their rights.

14 The ordinance is balanced in that it
15 preserves all of the defenses that would ordinarily
16 be available to a manufacturer. It follows
17 Pennsylvania common-law --

18 CHAIRMAN ORTIZ: Excuse me, Mr. McHugh.

19 For the class that is here, the
20 students, we're having a hearing today on a law that
21 would prohibit the sales of guns that do not have a
22 computer chip on them that will only allow the
23 individual who buys that gun, once they get their
24 fingerprint into that computer chip program, into
25 that computer chip, to fire the gun. We're trying

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2 to prevent the sale of wholesale guns in the City.
3 So I just want you to -- when you're hearing the
4 testimony here that we're trying to pass legislation
5 that would make our streets a little bit safer for
6 children like you and your parents and individuals
7 like us.

8 Go ahead, continue, Mr. McHugh.

9 MR. MC HUGH: As I was saying, Mr.
10 Chairman, the ordinance really is consistent with
11 general principles of common law in terms of the way
12 it defines a liability, in terms of the way it
13 allows manufacturers a defense, and in terms of
14 measure of damages. So in terms of consistency, I
15 do not see a problem and think that just simply
16 expresses within the City of Philadelphia this is
17 the standard to which we will adhere.

18 I'll be happy to answer any questions
19 you might have about the technical/legal aspects of
20 it.

21 CHAIRMAN ORTIZ: I think you answered
22 the question that we had in terms of our ability to
23 be able to pass legislation along this line and in
24 terms of whether we'd be preempted by state
25 ordinance. Unless anybody else has questions.

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2 COUNCILMAN COHEN: Mr. McHugh has been
3 very clear, and we thank you for it.

4 CHAIRMAN ORTIZ: Thank you very much.

5 MR. MC HUGH: Thank you.

6 CHAIRMAN ORTIZ: Bryan Miller, Executive
7 Director of Ceasefire New Jersey. They've been
8 firing towards Philadelphia during the last few
9 years and I thank you for coming here for Ceasefire
10 is very good.

11 MR. MILLER: It's my pleasure. As you
12 heard, I am Executive Director of Ceasefire New
13 Jersey.

14 CHAIRMAN ORTIZ: Identify yourself for
15 the record first.

16 MR. MILLER: I am Bryan Miller,
17 Executive Director of Ceasefire New Jersey.
18 Ceasefire is the state-wide coalition of groups and
19 individuals in New Jersey devoted to reducing gun
20 violence. I thank you very much for inviting me
21 here today. It is a honor and a privilege both to
22 address City Council and follow such remarkable men
23 as Commissioner Timoney and the Mayor.

24 It will be my pleasure today to inform
25 you as to our experience in New Jersey, where

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2 Ceasefire has led the effort to gain passage of what
3 we see as a ground-breaking childproof handgun bill.

4 First, let me tell you that Ceasefire
5 has existed for over a decade. And furthermore, we
6 began to promote our childproof handgun bill nearly
7 three years ago. Knowledge of the concept of smart
8 or personalized or, as we prefer, childproof
9 handguns was limited to very few gun manufacturers
10 and some folks in the field of injury prevention.

11 I personally became executive director
12 of Ceasefire in September 1996 when I gave up a
13 20-year career in international business to devote
14 myself to the reduction of gun violence. This
15 fairly drastic career change was a result of the
16 shooting death of my only brother, FBI Special Agent
17 Mike Miller, who was one of three law enforcement
18 officers killed in November 1994 at Washington, D.C.
19 Metropolitan Police Headquarters by a lone gunman
20 wielding a concealed assault handgun.

21 Imagine, one disturbed man was able to
22 acquire, conceal and operate sufficient firepower to
23 overwhelm a room full of trained and armed peace
24 officers. That says to me that if the gun-makers
25 can build such concealability and lethality into

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2 their products, they can certainly childproof them.

3 Our childproof handgun bill, which
4 enjoys bipartisan prime sponsorship in both houses,
5 defines a childproof handgun as one that is designed
6 and manufactured so that it can be fired only by an
7 adult authorized user or users.

8 The bill does not define any particular
9 technology as acceptable, but sets a standard that
10 is essentially identical to that included in the
11 ordinance before you today.

12 The relevant committee of the New Jersey
13 Senate, the Law and Public Safety Committee, has
14 twice taken testimony from interested parties on
15 both sides including many of the 32 civic,
16 educational, religious, health, and law enforcement
17 groups that have joined our PUSH, People United for
18 Safer Handguns Coalition. The committee, I'm happy
19 to report, voted unanimously two weeks ago to report
20 a version of our bill to the full Senate with a
21 recommendation for passage. And the Senate
22 President has been quoted in the press as promising
23 to post the childproof handgun bill for a full
24 Senate vote in about two weeks' time and has
25 expressed support for its passage.

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2 The childproof handgun bill in New
3 Jersey as passed by committee would require that
4 upon enactment any purchase of a new handgun in our
5 state must either be accompanied by a trigger lock
6 or be a childproof handgun. Three years after
7 enactment the New Jersey Attorney General must make
8 a determination as to whether childproof technology
9 is available. If so, the trigger lock mandate will
10 immediately expire, thereby requiring that all new
11 handguns sold in the state be childproofed. If,
12 however, the AG determines that the technology is
13 not available, he can postpone the sun-setting of
14 the trigger lock mandate for one year. The Attorney
15 General, if he or she follows that path, may revisit
16 the technology availability issue one year later at
17 the end of the fourth year from enactment, but not
18 for a third time. So the trigger lock mandate will
19 expire no later than the end of the fifth year from
20 enactment leaving only the childproof handgun
21 mandate intact.

22 We believe that the prospects in the
23 full Senate are excellent. We also have hopes that
24 Governor Whitman, who said in her January
25 State-of-the-State, address that she, "did not want

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2 one more gun sold in the state without built-in
3 protection for our children," will soon cease
4 promoting her own weak version of a childproof
5 handgun bill and adopt ours. The Governor's bill
6 differs from ours in that it defines no date certain
7 beyond which gun makers can supply only childproof
8 handguns. In our view, this provides cover for the
9 gun industry to continue to avoid making its
10 products safer.

11 We've always known that the Assembly in
12 Trenton would be a harder lift than the Senate.
13 However, our childproof handgun bill has enjoyed
14 enormous public support for quite some time, support
15 which has grown and become more vocal since the
16 Littleton massacre. Success in the Senate will
17 increase support and momentum. And happily, the
18 press in New Jersey understands this issue very well
19 and reflects public interest through its extensive
20 coverage.

21 We commissioned a survey of Republican
22 voters only in October 1998 to see where attitudes
23 were in the state about our childproof handgun bill,
24 and I'm happen to say -- this is long before
25 Littleton -- much to our surprise, 73 percent of

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2 Republican voters in the State of New Jersey support
3 our bill. And in fact, even 70 percent of
4 Republican gun-owners support our childproof handgun
5 bill, which actually makes some sense because most
6 gun-owners are very concerned about safety. And
7 that's what our bill is, it's a gun safety measure.

8 So why do we need this bill in New
9 Jersey and why do the citizens of Philadelphia need
10 today's ordinance? And it's simple: Too many
11 people are being killed or injured because handguns
12 as currently sold do not incorporate readily
13 available means to limit their use to authorized
14 adults; and too many children are finding guns and
15 unintentionally shooting friends, neighbors, or
16 siblings; and too many adolescence are picking up a
17 parent's handgun at a time of momentary depression
18 and ending lives full of promise; and too many teens
19 are taking operable handguns to school and
20 threatening classmates and teachers or harming them;
21 and finally, too many felons are stealing handguns
22 from homes and then using them as tools of crime.

23 Whatever the statistics, and you have
24 heard some frightening numbers today, can anyone
25 rightfully say that it is not true that too many

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2 have died and too many have been injured? I think
3 not.

4 We have at Ceasefire firmly believe that
5 passage of both the simple consumer product safety
6 regulation in our childproof handgun bill and the
7 liability provisions of today's ordinance will cause
8 the gun industry to do what the makers of virtually
9 every other American product do every single day:
10 Make their products as safe as they can be made.

11 To those who have any misgivings about
12 any availability of technology to childproof
13 handguns, let me make two brief points and tell you
14 a short true story. First, there are over 30
15 patents that have been granted for different
16 techniques to childproof handguns, some dating back
17 more than 20 years. Second, former Colt
18 Manufacturing CEO Ron Stewart wrote almost two years
19 ago to the effect that if we could send a vehicle to
20 Mars, gun-makers can certainly develop childproof
21 handguns.

22 And finally, a true story: I have an
23 acquaintance, he's a life-long NRA member and he's
24 always kept a handgun in his home for protection.
25 When his wife had a baby girl, my acquaintance sent

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2 his handgun away in reply to a magazine ad. A few
3 weeks later his handgun was returned to him along
4 with two special rings. His handgun looked the same
5 as it always had but would fire only if the user was
6 wearing one of the special rings. It had been
7 childproofed. The remarkable thing about this story
8 is not the childproofing of the handgun, but that
9 the daughter in question has now completed college
10 and moved away. Yes, my acquaintance had his
11 handgun childproofed over 20 years ago. And, yes,
12 the gun manufacturers have refused to adopt or
13 improve such readily available technology for over
14 two decades and they continue to so refuse
15 ingenuously saying that the technology does not
16 exist.

17 The moral of this little story is clear.
18 Absent the sort of date certain that is integral to
19 our childproof handgun bill and today's ordinance,
20 the gun-makers will continue to do nothing. And
21 while they dither, dozens or perhaps hundreds of
22 kids and teens in New Jersey and Philadelphia will
23 die needlessly. I, therefore, implore you to do the
24 righteous thing and adopt this simple life-saving
25 measure.

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2 I have here, if you'd like it, a model
3 of one of the technologies.

4 CHAIRMAN ORTIZ: Yes, I'd like to see
5 it.

6 MR. MILLER: Now, let me tell you,
7 they're actually many different technologies. This
8 is just one of more than 30. This is a solid block
9 plastic.

10 COUNCILMAN ORTIZ: Excuse me. To the
11 new class, we're trying to pass safe gun legislation
12 in the City so that guns are not readily available.
13 To all the students that are here, readily available
14 in the streets of Philadelphia. And this is one of
15 those -- not any gun can be safe for the children.
16 I want to be very clear: Guns are not safe. But
17 we're trying to make sure that we can childproof
18 guns, and this is one of those childproof guns that
19 have been childproofed.

20 MR. MILLER: This is a model of a Smith
21 and Wesson 9 millimeter semi-automatic handgun. And
22 it's got some cutouts on each side which is just to
23 show the fingerprint scanner, which in this case is
24 in the back. It could be here if you were a
25 left-handed user. But in this case, it's at the

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2 back. This a fingerprint scanner made by Thompson.
3 It's a French electronics company. The developer of
4 this, Oxford Micro Devices in Shelton, Connecticut,
5 has developed a chip that is inside the grip of the
6 gun. This chip can store up to 10 fingerprints. So
7 the gun just lying there is inoperable to anyone.
8 But if the right person picks it up and touches this
9 fingerprint scanner, in less than a tenth of a
10 second the scanner communicates with the chip and,
11 let's say, my fingerprint matches one in the gun in
12 the chip, the gun is immediately operable, a tenth
13 of a second, less than a heartbeat.

14 The front of the grip is pressure
15 sensitive so that if I have now made this gun
16 operable, it's my gun, I've made it operable, as
17 soon as I release the grip, it's inoperable so that
18 no one can take the gun from me and use it against
19 me or I can't lay the gun down and have a kid pick
20 it up.

21 As I said, this is one of more than 30
22 different techniques, but it's one -- this company
23 has come and testified in New Jersey about their
24 technology.

25 CHAIRMAN ORTIZ: I grab it, I scan it, I

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2 can shoot; but if I let go it immediately
3 deactivates?

4 MR. MILLER: That's correct. You have
5 to be one of those 10 fingerprints, otherwise, it
6 won't work for you at all.

7 CHAIRMAN ORTIZ: Frank says it's
8 pressure and fingerprints.

9 MR. MILLER: Right. This technology,
10 the company that developed this, Oxford Micro
11 Devices, have said that if a gun manufacturer, and
12 they talked to many of them, purchased a licensed
13 for this technology, that it could be in production
14 within 15 to 18 months.

15 CHAIRMAN ORTIZ: What would be the
16 cost?.

17 MR. MILLER: This would add 50 to \$100.

18 CHAIRMAN ORTIZ: Fifty to a hundred
19 dollars?

20 MR. MILLER: Fifty to a hundred dollars.

21 CHAIRMAN ORTIZ: Councilman Cohen.

22 COUNCILMAN COHEN: I think such a gun is
23 an advance over a gun that can be fired by anyone,
24 but why shouldn't we limit it to a single
25 fingerprint?

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2 MR. MILLER: Why shouldn't we?

3 COUNCILMAN COHEN: Yes, because I think
4 with respect to matters of domestic violence, I
5 don't think there ought to be a weapon that's
6 operable by both the husband and the wife because I
7 think a lot of use of guns in domestic violence
8 comes from the fact of the availability of the gun.
9 And if that gun were only able to be activated by
10 one of the two parties, I think it would eliminate a
11 great deal of the deaths that occur.

12 MR. MILLER: I think you might be right.
13 Politically, I would say, in our state at least,
14 that we would doom the bill to -- its passage would
15 be doomed because this is one of the arguments that
16 initially the NRA used against this was, gee, you're
17 limiting it to one person. We were then
18 subsequently able to say, no, you're not. But I
19 understand your point, certainly, sir.

20 COUNCILMAN COHEN: And I understand your
21 point, too. I just think the more we limit -- you
22 know, it's a strange irony, the United States with
23 respect to tobacco as a result of the many years of
24 educational work, the United States is the nation
25 that's most conscious of the dangers of tobacco, and

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2 the cigarette manufacturers are being forced to rely
3 on sales to other countries. In weapons and guns,
4 it's just the reverse. The statistics show that the
5 United States is the most backward country in the
6 whole world with respect to an understanding of the
7 threats of gun violence. The facts are so clear,
8 one wonders how we manage to live this way with the
9 multitude of guns available to us. It makes
10 absolutely no sense. Nobody can argue the position.
11 You've given us poll information that we didn't have
12 before that shows that even probably NRA members
13 would overwhelmingly favor this kind of legislation.
14 So what accounts for our inability to pass these
15 laws?

16 MR. MILLER: Well, we hope we do pass
17 our law. But I would say that the National Rifle
18 Association is a very, very powerful organization.
19 They don't work out in the open very often; they
20 tend to work behind the scenes. But they're very
21 effective in getting their people out and
22 communicating with legislators and making their
23 relatively small numbers of members, in our state at
24 least, seem very large because they're one-issue
25 people, so they all do something. But we believe

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2 that our public support is so broad on this that
3 even legislators who really don't want to even talk
4 about guns are going to support it.

5 COUNCILMAN COHEN: Thank you.

6 CHAIRMAN ORTIZ: Councilman Rizzo.

7 COUNCILMAN RIZZO: Since you come from
8 the State of New Jersey, probably one of the most
9 restrictive states in the nation when comes to the
10 ownership -- let me be very accurate. I'm not sure
11 about the ownership, but the ability to get a permit
12 to carry, New Jersey --

13 MR. MILLER: I'd say we're one of the
14 most careful states, yes.

15 COUNCILMAN RIZZO: Well, one of the most
16 restrictive according to many people. I think what
17 we have to do is, and I think you used the term gun
18 safety versus gun violence. In my opinion,
19 legislation can make guns safer, but I don't think
20 at this point that this immediately, and I know that
21 this can take a long time, to lessen the violence
22 with guns. Because, again, as I said earlier, the
23 bad guys are going to get guns. And if a bad guy
24 wants to commit -- if a drug pusher wants a gun,
25 he's not going to go buy, in my opinion, or even

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2 think about a smart gun. He's going to go to the
3 streets and find a gun that doesn't have that
4 technology, and there's a lot of guns out there
5 available. No question that we need to move forward
6 in making guns safer, but I'm not necessarily
7 convinced that there will be less violence because
8 of this legislation.

9 MR. MILLER: If I may, Councilman. In
10 fact, more than half of gun violence is not crime
11 related. If you look at the numbers of total
12 incidents of gun violence and you put together
13 unintentional shootings, accidental shootings,
14 suicide, these are gun violence, you come up more
15 than 50 percent of gun violence. So in my opinion,
16 you're right, there's a crime issue here, but it's
17 not just a crime issue.

18 COUNCILMAN RIZZO: Again, an accidental
19 shooting, you can call it violence, to me it's an
20 accident with a gun. If you want to call it
21 violence, that's fine. But I'm talking about one of
22 our police officers in the City that's trying to
23 make a car stop and has three people that are in the
24 business of selling drugs fire upon he or she. I'm
25 not convinced that that smart gun technology is

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2 going to stop that from happening. That accidental
3 discharge, that's different in my opinion.

4 Thank you. I appreciated your
5 testimony.

6 MR. MILLER: Thank you, sir.

7 CHAIRMAN ORTIZ: But it will prevent
8 those three individuals from getting the guns from
9 the police individual and shooting that police with
10 their own gun.

11 MR. MILLER: Certainly. And in fact,
12 the whole idea was originally developed for law
13 enforcement.

14 CHAIRMAN ORTIZ: And that's exactly part
15 of the problem that we have, as Commissioner Timoney
16 said.

17 This reminds me of the period of time in
18 the United States when Ralph Nader was advocating
19 for safer cars. And the auto manufacturers kept
20 saying, you know, the problem is not the cars but
21 the drivers. And he said safer cars will save
22 lives. And he finally convinced the American people
23 that that was the right way to go and the
24 manufacturers came around obviously because we had
25 trial lawyers out there like us and so on suing them

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2 and getting big judgements, and it became profitable
3 for them to be able to make safer cars. But this
4 reminds me of the same sort of arguments that we
5 had, and Ralph Nader at one point looked like
6 someone just whistling in the wind and finally
7 people began to believe he was right.

8 I thank you for showing us this model.
9 I think it shows what can be done and what is
10 available right now that can be put together.
11 Thank you very much.

12 MR. MILLER: Thank you very much.

13 CHAIRMAN ORTIZ: Mark.

14 MR. CHUILUTTI: Good morning. I'll
15 state for the record my name is Mark Chilutti. I'd
16 like to tell you that I'm happy to provide this
17 testimony this morning, but that would not be the
18 entire truth. I'd much rather be standing behind a
19 counter at my jewelry store waiting on customers,
20 but because of the gun violence I can't stand and I
21 know longer have a jewelry store. Instead, I'm here
22 today for you to put a face to a problem that is
23 growing day by day.

24 While I'll spare you from hearing the
25 entire story, since many of you are already familiar

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2 with it, I will stress one major part of it. I was
3 shot at point blank range and left paralyzed with no
4 feeling or control from the chest down by a felon
5 with 17 previous convictions who obviously could not
6 own a gun legally.

7 Smart guns; what an oxymoron that seems
8 to be when you think about it. This technology,
9 however, can save lives, injuries, and millions of
10 dollars. As I said before when speaking about gun
11 issues and we've alluded somewhat to that today, I
12 wish someone could explain to me why Ford can't sell
13 you a car without a safety belt, yet Smith and
14 Wesson can sell you a gun, a deadly weapon, without
15 a lock. Doesn't seem to make a lot of sense to any
16 of us.

17 This bill being addressed today,
18 however, is very timely and of major importance.
19 Gun violence in our streets is a daily problem and
20 seems to be getting worse as time marches on. The
21 need for responsibility and accountability, both
22 legally and financially is long overdue. You've
23 already heard that the cost of gun violence is
24 millions of dollars every year. Just to put a real
25 face, again, to those numbers, my first year after

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2 injury alone reached about \$300,000 for medical
3 care; and I'm one small instance. Passing this
4 bill, allowing the victims to seek financial
5 compensation from owners of weapons involved in
6 crime, injury, and accident is long overdue.

7 In keeping with my earlier comparisons
8 to the auto industry, I'll elaborate a little
9 further. If you or someone gets into an accident
10 with your car, you are financially responsible. Why
11 should it be any different for an accident or injury
12 from your gun? And to those in the gun lobby who
13 will say it's unfair or unconstitutional to make
14 people conform to this legislation and pay an extra
15 50 to a hundred dollars as it would cost for that
16 gun for the smart gun technology, I invite you to
17 come and explain it to the patients I work with at
18 Magee Rehabilitation Hospital, people like me whose
19 goals instantly in the course of an eight and a half
20 minute experience went from making a hundred
21 thousand dollars a year by my 30th birthday as a
22 successful businessman to being able to tie my shoes
23 again all because of gun violence and a gun that was
24 in the hands of somebody who should not have owned
25 it. Or go with me to any school in the City and

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2 show me one kid whose life is not worth that 50 or a
3 hundred dollars extra. Better yet, let me have your
4 name and phone number so when another seven-year-old
5 child is killed by a gun found in the streets that
6 we could have made the difference with, you can
7 explain it to his parents why this technology is not
8 worth it.

9 Gun violence in our streets and
10 communities knows no color nor is it limited to
11 certain areas of the city. It's not a Democratic
12 problem, it's not a Republican problem; it's an
13 everyday Philadelphia problem. Whether by accident
14 or intent, people of all ages and walks of life are
15 getting shot. Some live to tell about it, many
16 don't.

17 With smart gun technology and laws for
18 financial responsibility enacted immediately,
19 perhaps the day will come when our news can be
20 filled with the great accomplishments of our
21 children instead of their lost dreams. I myself can
22 only dream that I will live long enough to see that
23 day. Taking these bills and every gun control issue
24 very seriously can perhaps help this new dream of
25 mine make up for the ones that were stolen from me

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2 by a bullet.

3 I thank you for your time.

4 CHAIRMAN ORTIZ: Thank you, Mark. I
5 think you are a prime example of what we are talking
6 about. Not that it would have prevented it, but I
7 think what the Mayor said when he was here, and that
8 hit me, that the age or the time that a gun has been
9 out in the public, accessible to the public and so
10 on is only three years and less. Putting an age to
11 a gun, the age of guns used in committing some of
12 the violence and some of the murders that we have
13 had in the City of Philadelphia is three years or
14 less, really it puts a certain perspective that if
15 we can pass legislation that will go into effect,
16 let's say, four years from now, that four years
17 after that, the level of guns accessible out in the
18 streets of Philadelphia that are not with this
19 technology would be minuscule. I would hope that
20 they would be in very small proportion to the
21 overall numbers that are there now. That, to me is
22 a very big step forward and I agree.

23 Councilman Cohen.

24 COUNCILMAN COHEN: Mr. Chilutti, I find
25 your statement interesting and the question you ask

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2 in your written statement appears in paragraph 3
3 when you say, "I wish someone could explain why Ford
4 can't sell you a car without a safety belt, yet
5 Smith and Wesson can sell you a gun, a deadly
6 weapon, without a safety lock."

7 Well, maybe we can do something in
8 Philadelphia to help you get a list of people to
9 whom you can call and ask that question. We're
10 going to find out in City Council. And we're going
11 to give you an opportunity to talk to any Council
12 Members who may vote against this bill because I
13 think we have to start somewhere. I think
14 Philadelphia is a good place. I think this bill
15 has, as every bill, always has questions as to how
16 effective it will be, but I think it begins to
17 educate people more and more. And as we educate, I
18 think we achieve success. So I'm just telling you,
19 we may be able to give you a list of telephone
20 numbers, though I hope, I feel very confident that
21 I'm going to call you and tell you, Mr. Chilutti,
22 there's nobody on City Council that you can ask that
23 question of because everybody voted for this bill
24 and it passed unanimously. I think that would be a
25 wonderful message. But if that's not the message I

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2 can give you, it's going to include the names of
3 those who I'd like you to call up and ask your
4 question.

5 MR. CHILUTTI: And as anybody who knows
6 me knows I'll be happy to talk to anybody that will
7 listen.

8 COUNCILMAN COHEN: We're going to do
9 that. Thank you.

10 CHAIRMAN ORTIZ: Councilman Rizzo.

11 COUNCILMAN RIZZO: Thanks for coming
12 today. You might not be the right guy to ask this
13 question of, but with all you've done, you might
14 know the answer.

15 You indicated 50 to a hundred dollars
16 additional. I think you said that, in the cost of a
17 gun. Now, if I wanted to give my gun or leave my
18 gun to a family member at my death, how does that
19 gun able to be zeroed out and given to an heir or if
20 you trade it into a gun shop and get a different
21 gun, has anyone thought of how that is dealt with?

22 MR. CHILUTTI: I don't know a definite
23 answer, and somebody else may be better answering
24 that question, but I would think the same way that a
25 gun shop is able to -- because it is going to be the

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2 gun shop that when they sell you the gun that is
3 going to help program that. I would think that the
4 same way you need to transfer paperwork at a gun
5 shop, you would be able to do it that way.

6 COUNCILMAN RIZZO: I think also, for the
7 record, we have to realize that a smart gun is as
8 deadly a weapon one that's not smart. And in a
9 family environment where a family member has only
10 the ability to discharge a weapon, if there's an
11 argument, a smart gun could be as deadly as one
12 that's not. So I think we have to remember that a
13 gun in a family environment that has four different
14 fingerprints associated with it can be just as
15 deadly as any gun that's in that home right now.

16 MR. CHILUTTI: I totally agree with you,
17 but as I'll tell you just as I tell the kids that I
18 talk to in schools every day, we're never going to
19 solve the problem or reach everyone sitting in the
20 room, but as Councilman Cohen, alluded to earlier,
21 if I can make a difference on one or two of them, my
22 time is well spent. I think if we can do that
23 through this technology -- you know, we're never
24 going to solve the problem completely, but any dent
25 that we can make into it is worth its time.

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2 COUNCILMAN RIZZ0: Thank you very much.

3 CHAIRMAN ORTIZ: Thank you, Mark.

4 Because the Mayor's amendments are not
5 yet ready, we will recess the hearing to Thursday, 9
6 o'clock, June 10 at 9 o'clock. And if the Mayor can
7 send me the amendments, I can distribute them to the
8 members. And on Thursday at 9 o'clock there will be
9 a meeting of the committee on Bill No. 990289 in
10 order to vote it out of committee at 9 o'clock just
11 before Council so it can be read in that session of
12 City Council.

13 Thank you very much all for coming.

14 (Council adjourned at 11:45 a.m.)

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C E R T I F I C A T I O N

I HEREBY CERTIFY that the foregoing
proceedings of the Council of the City of
Philadelphia of June 4, 1999, were reported fully
and accurately by me, and that this is a correct
transcript of the same.

RE: COMMITTEE ON PUBLIC SAFETY

Lisa C. Bradley, RPR
and Notary Public