

**The original documents are located in Box 18, folder “Gun Control (2)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.**

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*Gun Control*

July 11, 1975

MEMORANDUM FOR: PHIL BUCHEN  
FROM: KEN LAZARUS  
SUBJECT: Gun Control Legislation

During the course of the past week, we have met with the National Rifle Association, the five major manufacturers of handguns, Senator Hruska and other representatives of the conservative viewpoint with respect to the President's draft legislation to carry forward the gun control proposals contained in the Crime Message.

The current draft of this legislation meets, I believe, virtually all of the particularized concerns of these groups and individuals. However, as we recognize that these groups and individuals will not support any legislation on the subject of gun control, the effort has been to diminish the level of their opposition. I do not believe that further changes can be made to the bill without cutting it to its quick. -- the manufacturers recognize this and support us.

In my meeting with Senator Hruska this morning, I requested that he introduce the legislation, perhaps in tandem with bills covering the full spectrum of proposals in the area. I pointed out to him that with his support, however tentative, the President would not be <sup>the</sup> brunt of grossly overblown rhetoric on the part of the NRA and other pre-gun organizations. Nonetheless, it was clear that Senator Hruska is currently opposed to supporting us in any manner.

There might be some utility in having the President phone Senator Hruska -- not with any substantial hope for his support, but to attempt to explain the political dilemma facing the President and to extract some degree of concern and understanding from the Senator.

KAL:d1m



July 11, 1975

*Mr B  
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him*

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KAL:dln



THE WHITE HOUSE  
WASHINGTON

July 15, 1975

Phil Buchen -

The attached was  
returned in the President's Outbox.  
It is returned to you without any  
comment.

Jim Connor



THE PRESIDENT HAS SEEN....

THE WHITE HOUSE

WASHINGTON

July 11, 1975

MEMORANDUM FOR: PHIL BUCHEN  
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Friday 7/25/75

6:00 Lazarus called to say (re "Saturday Night Special Bill")  
he won't have anything for another day or two --  
before they finalize the bill.

He'll be getting back later tonight on the AG's second  
meeting with Hruska.



THE WHITE HOUSE

WASHINGTON

July 22, 1975

MEMORANDUM FOR:

PHILIP BUCHEN

FROM:

MAX FRIEDERSDORF

*M.F.*

SUBJECT:

Letter re "Saturday Night Special  
Bill."

I am in receipt of the attached letter from the Editor of the two publications noted on the attached letter. I would appreciate your assistance, either through a reply directed from your office, or language which I may use in response.

Many thanks.



July 11, 1975

Mr. Max L. Friedersdorf  
Assistant to the President  
for Legislative Affairs  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

RE: Political Effects of the  
Saturday Night Special Bill

Dear Mr. Friedersdorf:

The President is about to make a serious mistake, one that is certain to have detrimental effects upon his reelection campaign, as well as effects upon the 1976 congressional campaigns. I hope that it is not too late to prevent it.

If newspaper and other reports of the current draft handgun bill are correct, that bill will have only one effect: to lose massive numbers of votes for the President and Republican congressional candidates in the 1976 elections. The "compromise" draft bill will gain him no votes.

In late June of 1966, firearms legislation ceased to be "crime legislation," it became solely a political issue. At that time, President Lyndon Johnson introduced a firearms licensing and registration bill, knowing full well that there was no possibility of passage. His motive was obvious: the Republicans, reflecting public sentiment, intended to run on the "law and order" issue in the fall campaign. Johnson's strategy was to distract public attention from the Administration's lack of tough crime measures, and to provide a defense against Republican charges that the Democrats "weren't doing anything about crime." By proposing an unpassable bill, he gave Democratic candidates an obfuscating defense: "We tried to do something about crime, but you Republicans voted against our gun bill." In large measure, the strategy worked, and the Democrats retained control of the Congress.

President Ford is being sandbagged on the gun issue by the Democratic and press opposition, and his advisers aren't wise enough to see it. In proposing a compromise "Saturday Night Special" law, he is falling far short of any measure which will gain votes among the anti-gun press and public; at the same time, the draft measure is adequately severe to cause him to be given an "anti-gun" label among the firearms fraternity. The results will be a wholesale loss of votes to "conservative" GOP candidates in the primaries, and to George Wallace in the general.

-More-

WOLFE PUBLISHING COMPANY, INC.



Mr. Max L. Friedersdorf  
July 11, 1975  
Page Two

Despite the lack of astuteness on the part of many of his advisers, President Nixon finally realized that he was very close to being sand-bagged on this same "Saturday Night Special" opposition ploy, and, although Administration spokesmen had repeatedly promised Congress a "Saturday Night Special" bill, he never forwarded the bill, for its only effect would be to cost him support.

The "Saturday Night Special" is a manufactured term, and a manufactured issue. It originated with the Dodd mail order gun hearings more than a dozen years ago, and was kept alive by the press and a wily opposition as a trap for political candidates trying to walk both sides of the gun control fence. As a former police reporter, I am well aware of how frequently cheap handguns show up in crime reports. And as an alleged firearms expert, I know them to be unsafe, unreliable, and unsuitable for any sporting purpose; similarly, I consider them unsuitable for the legitimate purpose of self-defense, and I would not want to have to defend myself with one, but if such a necessity arose, I would prefer the cheapest Saturday Night Special to a butcher knife or a boiling pan of water, the defense weapons often kept by the extremely poor, who are the most frequent victims of crime.

But the Administration's draft bill, as it has been reported to me, doesn't limit itself to cheap handguns -- instead it would rely upon an arbitrary "point system" based upon physical dimensions and artificial features, such as "target" sights and grips, which can be made very cheaply, and upon long barrels, which are easily sawed off by the criminally-inclined. By prohibiting not only manufacture, but all sales, the Administration bill would make the short-barreled handguns that I own virtual contraband, which would have to be buried with me when I die. By placing an exorbitant tax upon dealers, the Administration bill would force many small gun shops out of business, in the name of eliminating the fly-by-night operators -- when those shady operators could be shut down under existing law if U. S. attorneys would prosecute firearms cases, instead of rejecting them on the grounds that federal courts shouldn't be police courts. Believe me, Mr. Friedersdorf, the gun fraternity -- which is as hard-headed a bunch of one-issue voters as you ever saw -- is going to fight the Administration bill tooth and toenail. By the standards of the prohibition/confiscation measures which have been proposed in Congress, it is a moderate bill; it will not be viewed as moderate by the one-fourth of American households which possess handguns.

-More-



Mr. Max L. Friedersdorf  
July 11, 1975  
Page Three

As for the merits of the bill, can you cite a single study which, on the basis of empirical evidence, shows that a Saturday Night Special bill will reduce crime? Such laws have been on the books in several localities for several years; all that is necessary would be for an appropriate agency or research group to make a study. But the Justice Department has no such study, it doesn't even have a study on whether or not any type of gun law has successfully reduced or controlled crime. Further, no such valid study exists; studies which have claimed to show a relationship of gun laws to crime have been proved invalid on the basis of rising crime rates, and gun crime rates, equal to areas without such laws. On the other hand, there have been several studies which show that gun laws do not reduce crime, but these are never mentioned in the press.

The Administration Saturday Night Special bill is without merit, for it cannot reduce crime when far more restrictive measures, as in New York City, have failed to reduce crime. The bill will not appease the opposition; it will alienate the gun fraternity. From the purely practical political standpoint, the Administration would be well advised to introduce a firearms registration and licensing bill, for such a law -- while it would not affect the crime rates -- might gain a few votes. And it would lose few more votes than the compromise bill. A wiser choice would be to introduce only the mandatory imprisonment bill, which would reduce crime, and would gain votes.

Although these lengthy comments have been sharp, I do not speak as a "member of the lunatic fringe of right-wing gun lovers." Instead, I speak on the basis of long experience as a political reporter for daily newspapers, editor of a weekly firearms newspaper, and a close observer of the politics of gun control on both the state and federal levels. I have written these comments because I fear George Wallace, and I know that the proposed Administration action will greatly strengthen his hand, and perhaps put Ted Kennedy in the Oval Office. Further, I admire and respect Gerald Ford, and I hate to see him make such a dreadful mistake.

Sincerely,

RIFLE/HANDLOADER



Neal Knox  
Editor and Publisher

NK:jk



THE WHITE HOUSE

WASHINGTON

July 25, 1975

*Hruska*  
*control*

MEMORANDUM FOR: PHIL BUCHEN  
FROM: KEN LAZARUS *KL*  
SUBJECT: Gun Control Legislation

As you may know, the Attorney General had breakfast with Senator Hruska this morning in order to discuss the referenced subject.

Senator Hruska requested five changes to the bill which, with minor adjustments, are acceptable. However, he did not expressly indicate that he would sponsor or co-sponsor the bill if these five changes are incorporated into the measure. It is the Attorney General's intention to incorporate these changes, with necessary adjustments, into the bill and to present the redraft to Senator Hruska later today in order to determine whether or not Senator Hruska would support the bill as amended.

I will report to you again on this later today.



THE WHITE HOUSE

WASHINGTON

July 28, 1975

*Handwritten:* 4/28/75  
10/2/75

MEMORANDUM FOR:

PHIL BUCHEN

FROM:

JIM CANNON

*Handwritten signature:* Jim Cannon

Here is Ed Levi's summary of Senator Hruska's objections to the President's Crime Bill.

Attachment

*Faint circular stamp:* RECORD



Office of the Attorney General  
Washington, D. C. 20530

To R. M. Parsons  
[Signature]

MEMORANDUM FOR:

James M. Cannon  
Assistant to the President  
for Domestic Affairs

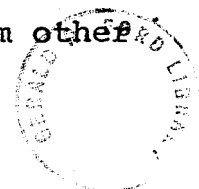
I spoke to Senator Hruska this morning about the gun control bill. On the basis of our discussion, he appears to have five reservations along the following lines:

1. Interstate Shipment of Firearms --

Subsection (o) of the bill adds a new subsection (k) -- page 11 -- which prohibits the shipment of firearms to or through a State or locality that prohibits shipment or transportation of firearms. The Senator objected to that portion of the provision prohibiting shipment "through" a State or locality since this constitutes a burden on the interstate transportation of firearms requiring shippers to route through States that do not have such a prohibition.

2. Multiple Sales --

Senator Hruska objected to the last sentence of proposed section (1) (2) -- page 11 - which prohibits owners from purchasing or receiving two or more handguns in a period of 30 days from other




owners. He does not object to those portions of section (1) that (1) prohibit dealers from transferring two or more handguns to the same person, or (2) prohibit any person from purchasing two or more handguns from one or more dealers. His only reservation appears to be directed at the trade between owners, preferring that it be unfettered by such restraints.

3. Prohibition of Sale to Certain Groups --

Proposed section (j) prohibits a person from selling a handgun to one who is prohibited from possessing it under subsection (h) -- felons, fugitives, juveniles, etc. -- or subsection (i) -- employees of employers who are prohibited from possessing handguns. The Senator, as best I can ascertain, objects to placing such criminal liability on owners.

4. Prohibition of Sale of "Saturday Night Specials" --

Proposed section (d)(2) prohibits any person from selling a handgun knowing that the handgun has been classified as a Saturday Night Special. The Senator's objection here again is that owners should not be subject to such criminal liability, and that such sales (not by dealers) should be allowed in any event as an incident of ownership.



5. Definition of "Saturday Night Specials" --


Senator Hruska believes that the definition of "Saturday Night Specials" sweeps too broadly, and that in any event he would prefer legislation which allows the Secretary of the Treasury to promulgate criteria determining which handguns should be prohibited and which should not.

I suppose that of these objections, 3, 4, and 5 may raise the more serious policy questions.

The Senator thought a bill should go in before the Congress adjourns.

I have asked my staff to attempt redrafting to see what this different bill would look like and to see whether it would then meet the concerns of the Senator. Whether such a bill would still carry forward the President's initiative would have to be decided. The Senator also suggested that I -- not the President -- transmit the proposed legislation.

All of this is by way of information and is not a recommendation. Senator Hruska made no commitment in any direction.

  
Edward H. Levi  
Attorney General

July 29, 1975

**MEMO FOR:** MAX FRIEDERSDORF  
**THROUGH:** PHIL BUCHEN  
**FROM:** KEN LAZARUS  
**SUBJECT:** Letter re "Saturday Night Special Bill"

Attached is a letter for your signature. The incoming correspondence is also returned.

Attachment

KAL:djm





THE WHITE HOUSE

WASHINGTON

Dear Mr. Knox:

Enclosed for your review is a copy of S. 2186, the Administration's bill to ban the manufacture, sale or transfer of so-called "Saturday Night Specials" and a supporting section-by-section analysis. As you will note, the proposal would also refurbish certain administrative controls imposed by current law, restrict multiple sales of handguns, update Federal licensing fees and impose mandatory minimum sentences for crimes involving the use of a firearm.

The definition of "Saturday Night Special" which is set forth in the bill generally parallels the language contained in current law which bans the importation of such handguns, incorporating the elements of safety, concealability and quality of parts and workmanship.

Section 6(j) of S. 2186 would proscribe individual sales and transfers of "Saturday Night Specials". However, a careful reading of Section 7(e)(3) of the bill will reveal that existing handguns are not reached unless they have been tested and specifically disapproved by the Secretary of the Treasury. Moreover, by requiring a "knowing" level of culpability with respect to non-commercial sales or transfers, inadvertent private transactions will not be made criminal.

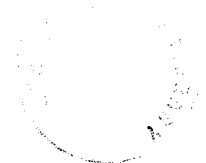
The fee schedule contained in S. 2186 does not constitute a system of taxation. Rather, it is designed only to recapture administrative costs in an equitable fashion. Thus, the license fee imposed upon dealers handling a full line of long arms is \$100 per year; ammunition dealers would pay only \$25 per year.

Your letter characterizes our bill as "moderate" but points to the political dangers inherent in even approaching the gun issue. The President is, of course, aware of these dangers but believes that it is necessary to remove from commerce these cheap, highly concealable handguns designed only to kill. At the same time, however, he opposes unreasonable restraints such as licensing or registration. Hopefully, our proposals will be considered in the context of a rational dialogue and generate more light than heat.

Your interest in writing is very much appreciated. Should you wish to discuss the matter in greater detail, kindly contact Mr. Kenneth Lazarus, Associate Counsel to the President, at 202-456-6297.

Sincerely,

Max L. Friedersdorf  
Assistant to the President  
for Legislative Affairs



THE WHITE HOUSE

WASHINGTON

July 22, 1975

MEMORANDUM FOR:

PHILIP BUCHEN

FROM:

MAX FRIEDERSDORF

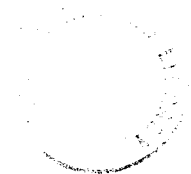
*M.F.*

SUBJECT:

Letter re "Saturday Night Special  
Bill."

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Many thanks.



July 11, 1975

Mr. Max L. Friedersdorf  
Assistant to the President  
for Legislative Affairs  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

RE: Political Effects of the  
Saturday Night Special Bill

Dear Mr. Friedersdorf:

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If newspaper and other reports of the current draft handgun bill are correct, that bill will have only one effect: to lose massive numbers of votes for the President and Republican congressional candidates in the 1976 elections. The "compromise" draft bill will gain him no votes.

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President Ford is being sandbagged on the gun issue by the Democratic and press opposition, and his advisers aren't wise enough to see it. In proposing a compromise "Saturday Night Special" law, he is falling far short of any measure which will gain votes among the anti-gun press and public; at the same time, the draft measure is adequately severe to cause him to be given an "anti-gun" label among the firearms fraternity. The results will be a wholesale loss of votes to "conservative" GOP candidates in the primaries, and to George Wallace in the general.

Mr. Max L. Friedersdorf  
July 11, 1975  
Page Two

Despite the lack of astuteness on the part of many of his advisers, President Nixon finally realized that he was very close to being sand-bagged on this same "Saturday Night Special" opposition ploy, and, although Administration spokesmen had repeatedly promised Congress a "Saturday Night Special" bill, he never forwarded the bill, for its only effect would be to cost him support.

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-More-



Mr. Max L. Friedersdorf  
July 11, 1975  
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Sincerely,

RIFLE/HANDLOADER



Neal Knox  
Editor and Publisher

NK:jk



THE WHITE HOUSE  
WASHINGTON

July 30, 1975

Dear Mr. Knox:

Counsellor Hartmann is abroad with the President and I, therefore, am acknowledging your letter of July 24 concerning the Administration's proposed legislation on firearms.

Noting that you have already written to Mr. Friedersdorf, I am referring your letter to Counsel to the President Philip Buchen for his information. Mr. Buchen may wish to share your letter with the Attorney General as well.

Sincerely,



John T. Calkins  
Deputy to Counsellor Hartmann

Mr. Neal Knox, Editor  
Handloader/Rifle  
Box 30-30  
Prescott, Arizona 86301

✓ bcc: Mr. Buchen



*Lagasse  
has  
copy.*

# Handloader

The Journal of Ammunition Reloading

# Rifle

The Magazine for Shooters

NEAL KNOX, Editor

July 24, 1975

Mr. Robert Hartmann  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

Dear Mr. Hartmann:

Earlier this week, Attorney General Levi announced the outline of the Ford Administration firearms bill which, although intended to be a moderate compromise program, will be sharply attacked by the firearms press and the firearms fraternity -- including me. I consider the bill outrageous, and I consider it doubly outrageous that the Attorney General should propose such a bill when the Justice Department has not made any study of the effectiveness of firearms controls in reducing or controlling crime, as stated to me in letters dated in April and in May.

As detailed in the enclosed letter, this bill, if introduced as outlined, will have a serious effect upon President Ford's reelection campaign. But it may not be too late to soften the blow, for the most pernicious sections of the bill could be drafted out prior to introduction, if the bill has not yet been introduced. There is ample precedent for an administration changing its mind about a bill even after announcement of its principal provisions; the difficulty in finding a sponsor for this bill should convince someone that the bill needs to be changed.

I hope you will consider the points in the enclosed letter, for I am seriously concerned about the effects of the Ford bill on gun owners, and the resultant effects upon Mr. Ford in 1976.

Sincerely,



Neal Knox

NK:jk  
Enclosures





July 11, 1975

Mr. Max L. Friedersdorf  
Assistant to the President  
for Legislative Affairs  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

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-More-

WOLFE PUBLISHING COMPANY

P.O. Box 30-30 • PRESCOTT, ARIZONA 86301 • TELEPHONE (602) 4

Mr. Max L. Friedersdorf  
July 11, 1975  
Page Two

Despite the lack of astuteness on the part of many of his advisers, President Nixon finally realized that he was very close to being sand-bagged on this same "Saturday Night Special" opposition ploy, and, although Administration spokesmen had repeatedly promised Congress a "Saturday Night Special" bill, he never forwarded the bill, for its only effect would be to cost him support.

The "Saturday Night Special" is a manufactured term, and a manufactured issue. It originated with the Dodd mail order gun hearings more than a dozen years ago, and was kept alive by the press and a wily opposition as a trap for political candidates trying to walk both sides of the gun control fence. As a former police reporter, I am well aware of how frequently cheap handguns show up in crime reports. And as an alleged firearms expert, I know them to be unsafe, unreliable, and unsuitable for any sporting purpose; similarly, I consider them unsuitable for the legitimate purpose of self-defense, and I would not want to have to defend myself with one, but if such a necessity arose, I would prefer the cheapest Saturday Night Special to a butcher knife or a boiling pan of water, the defense weapons often kept by the extremely poor, who are the most frequent victims of crime.

But the Administration's draft bill, as it has been reported to me, doesn't limit itself to cheap handguns -- instead it would rely upon an arbitrary "point system" based upon physical dimensions and artificial features, such as "target" sights and grips, which can be made very cheaply, and upon long barrels, which are easily sawed off by the criminally-inclined. By prohibiting not only manufacture, but all sales, the Administration bill would make the short-barreled handguns that I own virtual contraband, which would have to be buried with me when I die. By placing an exorbitant tax upon dealers, the Administration bill would force many small gun shops out of business, in the name of eliminating the fly-by-night operators -- when those shady operators could be shut down under existing law if U. S. attorneys would prosecute firearms cases, instead of rejecting them on the grounds that federal courts shouldn't be police courts. Believe me, Mr. Friedersdorf, the gun fraternity -- which is as hard-headed a bunch of one-issue voters as you ever saw -- is going to fight the Administration bill tooth and toenail. By the standards of the prohibition/confiscation measures which have been proposed in Congress, it is a moderate bill; it will not be viewed as moderate by the one-fourth of American households which possess handguns.

-More-



Mr. Max L. Friedersdorf  
July 11, 1975  
Page Three

As for the merits of the bill, can you cite a single study which, on the basis of empirical evidence, shows that a Saturday Night Special bill will reduce crime? Such laws have been on the books in several localities for several years; all that is necessary would be for an appropriate agency or research group to make a study. But the Justice Department has no such study, it doesn't even have a study on whether or not any type of gun law has successfully reduced or controlled crime. Further, no such valid study exists; studies which have claimed to show a relationship of gun laws to crime have been proved invalid on the basis of rising crime rates, and gun crime rates, equal to areas without such laws. On the other hand, there have been several studies which show that gun laws do not reduce crime, but these are never mentioned in the press.

The Administration Saturday Night Special bill is without merit, for it cannot reduce crime when far more restrictive measures, as in New York City, have failed to reduce crime. The bill will not appease the opposition; it will alienate the gun fraternity. From the purely practical political standpoint, the Administration would be well advised to introduce a firearms registration and licensing bill, for such a law -- while it would not affect the crime rates -- might gain a few votes. And it would lose few more votes than the compromise bill. A wiser choice would be to introduce only the mandatory imprisonment bill, which would reduce crime, and would gain votes.

Although these lengthy comments have been sharp, I do not speak as a "member of the lunatic fringe of right-wing gun lovers." Instead, I speak on the basis of long experience as a political reporter for daily newspapers, editor of a weekly firearms newspaper, and a close observer of the politics of gun control on both the state and federal levels. I have written these comments because I fear George Wallace, and I know that the proposed Administration action will greatly strengthen his hand, and perhaps put Ted Kennedy in the Oval Office. Further, I admire and respect Gerald Ford, and I hate to see him make such a dreadful mistake.

Sincerely,

RIFLE/HANDLOADER

Neal Knox  
Editor and Publisher

NK:jk



THE WHITE HOUSE  
WASHINGTON

*For filing  
under  
"Gun Control"*

October 2, 1975

MEMORANDUM FOR: Phil Buchen  
FROM: Dick Parsons *D.*  
SUBJECT: Massachusetts Gun Laws

Under Massachusetts law, any person may obtain a Firearms Identification Card (F.I.D.) as a matter of right, for \$2.00, on application to the police. This card entitles the holder to have as many guns (handguns or long guns) as he or she wants.

However, in order to carry a handgun -- loaded or unloaded, concealed or not -- away from one's home or place of business, a Massachusetts resident must also acquire a "license to carry." In order to obtain a "license to carry," some justification must be shown. One's automobile is not considered to be the home or place of business. Convicted felons, known drug abusers or mental defectives may not obtain a "license to carry."

A person convicted of unauthorized possession of a handgun is liable to a mandatory jail sentence of not less than one year nor more than five years. No plea-bargaining is permitted, nor can a judge suspend the sentence or substitute probation. After conviction and sentencing, the offender is not eligible for parole or time off for good behavior.

N.B. The Massachusetts law does not require the registration of guns or confiscation (except from those who violate the law).



## Gun Control Legislation

By THE COMMITTEE ON FEDERAL LEGISLATION

### INTRODUCTION

Since the enactment of the Gun Control Act of 1968 there has been a substantial increase in the incidence of gun-related crimes and it has become evident that the existing system of law is inadequate. Efforts have been underway in both Houses of Congress to enact further gun control legislation and the Executive Branch has indicated support for stronger gun control. Both the Subcommittee on Crime of the House Committee on the Judiciary and the Subcommittee on Crime and Juvenile Delinquency of the Senate Committee on the Judiciary have accumulated a substantial factual record on which to base legislation.

We believe that the contribution of handguns to the current increase in homicide and other violent crimes requires immediate and comprehensive action. In our opinion, the continued existence of an unwarranted supply of handguns is an underlying factor in the decline of our major urban centers. This Committee does not find any substantial justification for the continued widespread public possession of handguns, and, accordingly, we strongly endorse the legislative proposals calling for a prohibition on the manufacture, importation, sale, and private possession of handguns.<sup>1</sup> Whether or not our recommendations are politically feasible at this moment in time, we are of the firmly held conviction that a complete ban on handguns should be the ultimate objective of any new federal gun control legislation.

This report is divided into four parts. Part I describes the current federal law and the congressional proposals for change. Part II examines the constitutional bases for Congress legislating a prohibition on the manufacture, importation, sale, and private possession of handguns. Part III discusses the need for adopting far-reaching gun control legislation. Our recommendations are contained in Part IV.

### I. PRESENT LAW AND PROPOSALS FOR CHANGE

#### A. Current Federal Law

The Gun Control Act of 1968<sup>2</sup> was enacted with the stated purpose of providing support to local law enforcement officials in their fight against crime. The statute expressly provides that it is not intended to place undue

*Federal Legislation Report* (March 22, 1976).

restrictions on law abiding citizens with respect to the acquisition, possession or use of firearms for recreational or other lawful purposes. It attempts to accomplish these ends by two principal means: the elimination of interstate transport of firearms and ammunition, except between licensed dealers; and the elimination of the importation of guns that are not suitable for sporting purposes.

Section 922 of the act makes it unlawful for any person to engage in the business of importing, manufacturing or dealing, without having a federal license, and then provides that no licensed dealer may ship firearms or ammunition in interstate commerce to any person other than another licensed person. The section further provides that no person other than a licensed dealer may transport or receive in the state where he resides any firearms purchased outside the state, or may sell any firearm to any person, other than a licensed dealer, who the seller knows or believes resides in a different state from that of the seller.

Section 922 also forbids licensed dealers from selling firearms or ammunition to someone who does not reside in the licensee's state, or in violation of local law, or where the purchaser would be violating local law, or to persons who have been indicted or convicted of crimes, are fugitives from justice, unlawful users of marijuana or narcotics, or are adjudicated mental defectives or incompetents. Section 922 additionally provides that it shall be unlawful for any person to sell, ship, or receive any stolen firearm or ammunition. Finally, section 925(d) of the act authorizes firearms or ammunition to be imported if they are used for scientific or research purposes, or are generally recognized as particularly suitable for or adaptable to sporting purposes.

The weaknesses in this act are many.<sup>3</sup> The most important are that the act does not reduce the overall size of the existing gun population, nor does it regulate hand-to-hand or street sales of privately owned guns. The provision banning the importation of non-sporting purpose guns does not bar the importation of foreign-manufactured parts and the subsequent domestic assembly in the United States. Most importantly, the act has failed in its stated purpose to support local officials in their fight against crime.

### B. *The Legislative Proposals*

At the present time the principal gun control legislation in Congress is embodied in the proposals representing the positions of the House and Senate subcommittees that have dealt with the subject.<sup>4</sup> The positions of these subcommittees are substantially in accord in basic approach, namely to strengthen the restrictions of the Gun Control Act of 1968. The common elements of the legislation are a restriction on multiple sales to individuals, additional requirements for purchasers of firearms, and mandatory sentences for commission of federal crimes while using firearms.

Section 301 of the House bill and section 207 of the Senate bill deal with requirements for purchases from licensed dealers. All purchases must be in person and the purchaser must supply an affidavit setting forth his name,

address, the place where the firearm will be kept, and evidence that the purchase will not violate any local law. Each bill requires that the application be submitted to the Federal Bureau of Investigation and to the chief law enforcement officer of the place where the purchaser intends to maintain the firearm. The law enforcement agencies are given a restricted period of time to respond to the application and if no response is made within that time, the sale may go through.

In addition, section 209 of the House bill and section 203 of the Senate bill restrict the number of sales by dealers to one individual. The House bill provides that one person may not purchase more than two handguns in each 30 day period, and the Senate bill provides for the purchase of no more than two handguns per year. Section 213 of the House bill and section 301 of the Senate bill require mandatory penalties for the use of a firearm during the commission of a federal crime.

There are two additional features of the House bill. Section 203 provides new restrictions upon persons making application to be licensed dealers. Law enforcement checks upon such persons are required and the fees for being a dealer are substantially increased. The other principal feature is the establishment of a National Handgun Tracing Center. Section 210 of the bill requires that serial numbers be placed on all firearms hereafter manufactured or imported and section 302 requires that quarterly reports of guns manufactured, imported and sold by every licensed person under the act be provided to the Treasury Department. The purpose of these provisions is to provide an understanding of the numbers and locations of gun sales in order to establish a picture of the firearms commerce in the United States.

The principal feature of the Senate bill is a prohibition on "Saturday night specials." \* Section 204 provides that no handgun may be sold unless it is approved by the Secretary of the Treasury, and section 207 requires certain minimum features on all handguns. These include minimum size requirements and safety features and that the gun must attain a minimum of points for size, weight and additional safety features. Section 301 of the Senate bill also contains reporting requirements, which only require annual reports of manufacture and sale by manufacturers.

Numerous other bills are pending in both Houses of Congress on the subject of gun control. They fall generally into these categories: Some would bar the manufacture, importation, sale, and private possession of handguns.<sup>5</sup> Some would prohibit the manufacture, importation, sale and transfer of handguns.<sup>6</sup> Others would prohibit the manufacture, importation or assembly of "Saturday night specials".<sup>7</sup> Some bills would establish a federal system of handgun owner registration, prohibit multiple handgun sales to individuals, and impose added requirements on purchasers of firearms.<sup>8</sup> Still others would require stiff mandatory prison sentences for persons committing felonies with firearms.<sup>9</sup>

\* Although it is generally agreed that "Saturday night special" refers to a gun that is cheap and easily concealable, congressional definitions have tended to run in the direction of guns not being intended for sporting purposes.

## II. GUN CONTROL AND THE CONSTITUTION

To determine whether a federal statute restricting handguns would be constitutional, two questions must be answered: (A) Is there a constitutional right to possession of handguns which cannot be infringed by legislation, and (B) does regulation of handguns fall within the scope of any of the subjects on which Congress is empowered by the Constitution to legislate? A review of the relevant decisions demonstrates that Congress may constitutionally enact legislation restricting and prohibiting the possession of handguns by private citizens.<sup>10</sup>

### A. Is There a Constitutional Right to Possess Handguns?

Debates on the merits of gun control legislation are regularly punctuated by claims of a constitutional right to possess firearms. The source of these claims is the Second Amendment to the Constitution, which provides:

“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

Although spirited controversy as to the meaning of the Second Amendment continues unabated among commentators,<sup>11</sup> courts over a long period of time have consistently given the amendment a very narrow construction. The Second Amendment as so interpreted places no restrictions on Congress' ability to regulate handguns.

A constitutional provision concerning the right to “bear Arms” is directed at checking power. The question is what the framers of the Constitution intended. There are basically three relationships which could have been intended to be affected: (1) the individual against the world; (2) the populace against the government, whether state or federal; and (3) the state government against the federal government. The first possibility, that the framers were concerned with the right of individuals to protect their homes and their persons from whatever depredations might confront them, appears to be without historical support.<sup>12</sup> The amendment itself speaks of the “security of a free State.” The disputes have centered around the second and third possibilities.

The initial question is the proper interpretation of the term “Militia.” The practice in Europe of maintaining large standing armies while prohibiting the general populace from having guns led to a preference in colonial America for the militia as the primary military force. This force would be drawn from the people and would be active only in time of military need.<sup>13</sup>

Some have argued that the militia was regarded as the populace at large—or at least those members of the populace capable of bearing arms.<sup>14</sup> To these commentators, militia meant the “unorganized militia,” so that the Second Amendment must be read as permitting the populace to maintain arms as a check against excesses of any or all government. This position is sometimes characterized as more extreme than it really is. The framers of the

Constitution need not have created a “right to revolution” or a license to band together in paramilitary organizations to have established a check on the government by permitting the populace to keep and bear arms.<sup>15</sup> Whatever the merits of the “unorganized militia” analysis may be, however, it has never found judicial favor.

The federal courts have long regarded the Second Amendment as concerned only with the “organized militia” maintained by the states. In 1875, the Supreme Court ruled in *United States v. Cruickshank*<sup>16</sup> that the Second Amendment restricted Congress alone and not state governments. More recently, in *United States v. Miller*,<sup>17</sup> the Supreme Court held that Congress could regulate firearms so long as there was no evidence of a relationship between the regulation and the preservation or efficiency of the state militia. The Court said that Miller could not attack his indictment for interstate shipment of a sawed-off shotgun under the Second Amendment:

“In the absence of any evidence tending to show that possession or use of a ‘shotgun having a barrel of less than eighteen inches in length’ at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.”<sup>18</sup>

Some have argued that the *Miller* case should be read narrowly, since evidence of a military use can be shown as a matter of fact for most kinds of weapons.<sup>19</sup> However, federal courts after *Miller* have read the decision as requiring a showing that the challenged legislation actually interfered with the state militia. Under this standard, Second Amendment challenges to federal gun control legislation uniformly have been rejected.<sup>20</sup>

Further, even if the Second Amendment were to be interpreted to refer to an “unorganized militia,” it would not follow that Congress would be barred from regulating the ownership of handguns. Such regulation would still be constitutional unless handguns were regarded as “Arms” within the meaning of the Second Amendment. It appears instead that the “Arms” of the militia were understood to consist of rifles and muskets.

In addition to the constitutional provisions and old state statutes quoted in *United States v. Miller*<sup>21</sup> and other secondary sources,<sup>22</sup> there are a number of early cases considering whether handguns are “Arms” within the meaning of the Second Amendment. While the decisions are not uniform, the weight of authority is that handguns do not constitute such “Arms.”<sup>23</sup>

This position is most effectively expressed in *State v. Workman*,<sup>24</sup> where the Supreme Court of Appeals of West Virginia wrote:

“. . . in regard to the kind of arms referred to in the amendment, it must be held to refer to the weapons of warfare to be used by the militia, such as swords, guns, rifles, and muskets,—arms to be used in defending the state and civil liberty,—and not to pistols, bowie-knives,

brass knuckles, billies, and such other weapons as are usually employed in brawls, street fights, duels, and affrays, and are only habitually carried by bullies, blackguards, and desperadoes, to the terror of the community and the injury of the state.”<sup>25</sup>

Thus, in our view, the Second Amendment poses no barrier to congressional efforts to reduce “the terror of the community and the injury of the state” by prohibiting the private possession of handguns.

B. *Does Congress Have Power to Regulate the Manufacture, Possession and Sale of All Handguns?*

While several congressional powers could be invoked in support of gun control legislation,<sup>26</sup> justification is ordinarily found under Congress’ power to regulate interstate and foreign commerce.<sup>27</sup> There can be no serious dispute that certain kinds of gun-related activities—for example, interstate sales of firearms—can be regulated under the commerce clause. The disagreements arise over how far Congress may go in regulating local gun activity under its power to regulate matters “affecting” commerce.

In *United States v. Bass*,<sup>28</sup> the Supreme Court recently avoided a constitutional issue concerning 18 U.S.C. § 1202, which prohibits the transportation, receipt or possession of guns by felons, by holding that proof that the prohibited conduct in each case was in commerce or affected commerce was required by the statute. Prior courts of appeals decisions had differed as to whether that statute was a constitutional exercise of the commerce power without such proof.<sup>29</sup>

However, in *Perez v. United States*,<sup>30</sup> a case decided shortly before the *Bass* case, the Supreme Court had laid the groundwork for the power to create a federal criminal law under the commerce clause. The *Perez* case concerned the constitutionality of a provision in Title II of the Consumer Credit Protection Act, 18 U.S.C. §§ 891 *et seq.*, making loansharking a federal crime. In holding that *Perez* had been lawfully convicted despite the absence of proof of the effect of his conduct on commerce, the Court cited a variety of reports and statistical studies providing evidentiary support for the congressional finding that, in the aggregate, loansharking had an effect on commerce. It concluded, therefore, that Congress could prohibit the practice regardless of the extent to which the activities of each particular loan-shark may have affected commerce.

An examination of *Perez* and its progeny, and of other federal criminal legislation regulating local activity, points out what may have led the Supreme Court to take a very narrow position in the *Bass* case, namely the lack of any substantial legislative findings. In *Perez*, the Court put great emphasis on the findings made by Congress of the impact of loan sharking on interstate commerce, even as a local activity, and on the very substantial evidence which was available to Congress to support those findings. In *Bass*, in contrast, there was virtually no legislative history to guide the Court in its interpretation of congressional intentions.

The implication of the limitation on Congress’ attempted exercise of

power in the *Bass* case is that if gun control legislation is supported by substantial documentation and carefully drawn congressional findings concerning the effects of the proscribed activity on interstate commerce generally, the Supreme Court would sustain the exercise of power under the commerce clause even if the activity of specific individuals were purely local in nature.

In a number of cases involving federal gun control legislation arising after *Bass*, courts have followed *Perez* to uphold the power of Congress to regulate firearms felonies without a showing in each case of a nexus with interstate commerce.<sup>31</sup> In *United States v. Nelson*,<sup>32</sup> the Fifth Circuit affirmed a conviction under 18 U.S.C. § 922(a)(6), which prohibits the making of false statements in connection with the acquisition of a firearm, in spite of a failure to show a nexus between the defendant’s false statements to the gun dealer and interstate commerce. Although the individual activity was clearly local, the court found that under *Perez* the Congress does have the power to regulate an intrastate activity, an isolated instance of which may have no direct connection with interstate commerce, because that intrastate activity in the aggregate does impose a burden on interstate commerce.<sup>33</sup>

The decision in *Nelson* leaves open the question whether Congress has the power under the *Perez* theory to regulate possession of a firearm. It could be argued that the manufacture and sale of firearms presents a stronger case for federal regulation since a potential impact on interstate commerce is discernible, while possession of a firearm could be an entirely and perpetually local activity in a given instance. Such an argument ignores the aggregate effect on commerce of a substantial number of people possessing firearms. In an analogous situation, regulation of the possession of narcotics and other controlled substances under 21 U.S.C. §§ 841 and 844, and predecessor statutes, courts have upheld the regulation without a showing in each case of a nexus with interstate commerce.

In *Deyo v. United States*,<sup>34</sup> for example, the Ninth Circuit affirmed a conviction for possession and sale of a drug against the contention of the defendant that the conviction was invalid because there had been no proof of a connection between the defendant’s activities and interstate commerce. The court described at length the congressional findings supporting federal control of the possession of these drugs. The court concluded that effective interstate regulation was not possible if intrastate transactions were not also regulated.<sup>35</sup>

The conclusion to be drawn from the narcotics possession cases is that if it can be shown through proper congressional findings that possession of handguns as a class of activity has an effect on interstate commerce, then individual possession could be legitimately proscribed without any showing in each case of a nexus with interstate commerce, notwithstanding that a particular weapon had never been in interstate commerce. Indeed it is the possession of handguns that can be viewed as being responsible for their manufacture, importation and sale. Thus, if undertaken after congressional findings of effect on interstate commerce based on substantial investigation, federal legislation banning the manufacture, sale and possession of handguns would in our view be authorized by the commerce clause.



### III. THE EVIDENCE IN SUPPORT OF STRICTER GUN CONTROL

#### A. *The Use and Misuse of Guns*

A proper perspective of the role of firearms in our society requires consideration of the physical nature of guns, the extent of their ownership, the nature of their legitimate uses, and the extent of their accidental or criminal misuse.

The single most significant fact concerning firearms is that they are designed to kill.<sup>36</sup> A firearm is a weapon, and whether viewed from a historical or from a functional point of view, the purpose, design and operation of a firearm is to shoot a projectile of such size and velocity so as to create substantial damage to the target.

Some uses of firearms are undoubtedly justifiable and necessary, such as military uses or police uses. In some rural areas it is possible that firearms may be necessary to obtain food or to use in self-defense.<sup>37</sup> The assertion that in a modern, urban society firearms have a legitimate use in "self-defense" is discussed later in this report. In our view, however, the principal legitimate private use of firearms in today's society is hunting for sport and target shooting.<sup>38</sup> Both of these uses are recreational.

The physical characteristics of firearms in large measure determine the uses. Thus, rifles and shotguns are more suitable for use as sporting weapons or hunting weapons because of their size, accuracy and adaptability. Since most of these weapons are approximately three feet in length, they are difficult to conceal. While handguns may be used for target shooting, or even for hunting,<sup>39</sup> the principal use of a handgun is at close range and its most obvious characteristic is that it is easily concealable.

It is estimated that there are in excess of 100 million guns presently in the hands of private owners in the United States.<sup>40</sup> At least two-thirds of these weapons are estimated to be rifles and shotguns, and the remainder are handguns.<sup>41</sup> The estimated number of handguns ranges from 25 million to over 40 million, with most current estimates adopting the larger number.<sup>42</sup> During each of the last 5 years, over 1.5 million handguns have been manufactured in the United States and over 400,000 have been imported.<sup>43</sup> The estimated number of handguns made by the assembly of imported parts is well over 700,000 per year.<sup>44</sup>

In 1973, there were 19,510 homicides in the United States. Handguns were involved in the deaths of 10,323 of these victims, or 53% of the total.<sup>45</sup> The total number of homicides involving firearms was 13,081, or 67% of all homicides.<sup>46</sup> In that year, approximately 159,000 of the approximately 252,000 armed robberies, or 63%, were committed with firearms, and approximately 108,000 out of approximately 416,000 aggravated assaults, or 26%, were committed with the use of a firearm.<sup>47</sup>

From 1966 through 1973, handgun homicide as a percent of total urban homicide increased from 37% to 53%, and firearm assaults as a percentage of total urban assaults increased from 19% to 29%.<sup>48</sup> Since 1966, the rate of handgun homicide has increased more than three times as much as the in-

crease in rate for homicide by all other means.<sup>49</sup> In 1973, nearly four times as many homicides were committed with handguns as with long guns.<sup>50</sup> In one city, about 70% of all criminal misuse of firearms involved handguns,<sup>51</sup> and in New York City, handguns may be involved in over 90% of all firearm crimes.<sup>52</sup> Handguns are involved in a substantial, and increasing, percentage of all violent crime.<sup>53</sup> In particular, robbery homicide, usually involving handguns, has increased far out of proportion to all robberies and all homicides.<sup>54</sup>

The unlawful use of firearms can be analyzed in terms of two separate areas: street crime, or crime committed by an assailant on a victim who was not previously acquainted with him; and interpersonal crime, where the assailant and the victim were previously known to each other. Most firearm homicides involve people who were previously acquainted. Heat-of-passion attacks involving spouses or acquaintances, and revenge-oriented assaults, together with accidental shootings, constitute a substantial majority of the handgun homicides.<sup>55</sup> Gun misuse in general, including accidental shootings and interpersonal crime, appear to be highest in areas where the total number of guns are highest.<sup>56</sup>

The most disruptive problem facing urban areas concerning the use of handguns is the threat of street crime, particularly armed robbery, assault and rape. There is undoubtedly not a small shop owner in the City of New York who does not live in fear of handgun robbery.<sup>57</sup> In many instances, business operations require a constant vigil against invasion. In some areas of New York City, businesses simply close at sundown, and whole areas of commerce turn into silent streets of steel fences at night. These businesses are prevented from operating by the fear of crime.<sup>58</sup> There can be little doubt that such a situation is a burden on interstate commerce.

In many areas of this city and others, many people live in constant fear of being robbed in a subway, in a park, on the sidewalk, in a building lobby, or in an elevator.<sup>59</sup> Instead of going out, people stay locked in at home, particularly at night. This, too, evidently burdens and restricts the commerce of the city. People fear to travel to the city for business or for entertainment. People move out of the city because they perceive the city as crime-ridden. Business and jobs move with them.

The statistics demonstrate that a handgun is five times as likely to result in death as a knife in connection with aggravated assaults,<sup>60</sup> and certainly it is the fear of handgun-related crimes that is a substantial contributor to our present urban decline.<sup>61</sup>

#### B. *The Failure of State and Local Legislation*

State and local laws on gun control are a patchwork<sup>62</sup> of divergent regulations, unevenly enforced. While some states, such as New York, have a strict control system, many other states have little or no control. One survey of the field reports that:

"Twenty-five States require a license to sell handguns at retail, 8 require a permit (or the equivalent) to purchase a handgun, 11 require

a waiting period between purchase and delivery of a handgun, 1 requires a license to possess a handgun, 29 require a license to carry a handgun, 19 prohibit the carrying of a concealed handgun, 18 require a license to carry a handgun in a vehicle, 22 prohibit the carrying of a loaded firearm in a vehicle, and 4 States require the registration of firearms." 63

However, neither the stringency of local law, nor the vigor of its enforcement, can insure a low incidence of gun violence. New York City's police commissioner has testified that, in spite of strict state and city laws:

"[I]n New York City between 1965 and 1970, while the number of homicides doubled, the number committed with firearms nearly quadrupled. Last year [1970] over half of the murders in New York involved the use of firearms, compared with barely one quarter of those in 1965. It is clear to me from figures like these that the increased availability of guns, notwithstanding our local controls, has had a tremendous impact on the number of murders in our city." 64

At the same time, it was estimated that there may be 500,000 illegal guns in New York City, as against 20,000 that are legally registered here. 65

A recent study shows the sources of guns used in crimes committed in a number of major cities. 66 The figures emphasize the apparent ease with which criminals can acquire guns from out of state sources. The statistics for some of these cities are:

New York	4% from New York (South Carolina—20%; Florida—11%; Georgia—8%; Virginia—6%)
Detroit	8% from Michigan (Ohio—19%; Kentucky—9%; Georgia—9%; Mississippi—6%)
Boston	35% from Massachusetts (Florida—11%; South Carolina—7%)
Philadelphia	54% from Pennsylvania
Los Angeles	82% from California
Miami	82% from Florida
Seattle	76% from Washington
New Orleans	63% from Louisiana
Dallas	87% from Texas
Louisville	82% from Kentucky
Denver	78% from Colorado
Minneapolis	61% from Minnesota

New York 67, Michigan 68, Massachusetts 69, and the city of Philadelphia 70, require a license or permit in order to purchase a handgun. Only a few states require such a license. 71

California 72 and Washington 73, and the cities of Miami 74 and New Orleans 75 require an application for purchase of a handgun to be filed, and a waiting period before delivery.

Pennsylvania 76 and the city of Minneapolis 77 require the filing of a report of the sale of a handgun. The remaining states and cities on the above list do not have the above requirements, although most prohibit sales of handguns to minors. 78

There is a striking correlation between the degree of local regulation and the amount of interstate traffic. The statistics demonstrate that where there is little or no effective regulation, firearms are mainly obtained locally, but that where there is stringent local regulation, efficient channels of commerce soon appear to make out-of-state guns available. 79

In addition to the sources of guns, studies have reviewed the age of guns used in various crimes. A study done in New York City on handguns confiscated during December, 1973, showed that 58% of the guns had been manufactured or imported after the Gun Control Act of 1968, and more substantial numbers of guns were manufactured or imported in the more recent years, 80 as follows:

<i>Year of First Sale</i>	<i>Per Cent of Guns Confiscated</i>
1973	19%
1972	14%
1971	11%
1970	8%
1969	6%

A more general survey of 16 cities conducted in 1974 shows that 66% of the guns used in criminal activities during the surveyed period were manufactured or imported after 1968. 81 The same study shows that only 6% of handguns used in crimes are reported as having been stolen, which demonstrates that almost all guns used in criminal activities were purchased. Undoubtedly, many of these purchases were in violation of existing federal, state, or local laws, 82 which demonstrates the substantial inability of the existing scheme of regulation to control the situation.

### *C. Experience in Other Countries*

Other modern industrialized nations have renounced the private ownership of handguns or strictly required licensing or registration of handgun ownership, with beneficial effects on crime rates. While cultural differences may distort some comparisons, useful parallels can be drawn. For example, Japan has prohibited all possession of firearms since 1964 and in every year since has enjoyed a drop in the number of crimes committed with firearms. 83

Similarly, stringent police investigation of all applicants for gun licenses in England appears to have tempered the nature of crime within that relatively (by contrast to the United States) low crime country. Thus, English statistics indicate that when intentional killings do occur, an Englishman is

one-third less likely than his American counterpart to resort to a gun of any sort as the murder weapon.<sup>84</sup>

Indeed, unlike the United States, each of 29 European countries recently surveyed required either a license to carry a firearm or registration of the ownership or sale of each privately owned firearm or both.<sup>85</sup> With strict national regulation of gun ownership so common elsewhere, one must question what has encouraged us to cherish that which other Western countries have almost universally renounced.

#### IV. RECOMMENDATIONS

Notwithstanding stringent local regulations and the Gun Control Act of 1968, it is an inescapable fact that violent crimes involving the use of handguns are increasing in the major urban centers at a rate at least comparable with the national increase in such crimes.<sup>86</sup> There is a substantial commerce in purchasing guns in states that do not have stringent local laws, transporting them in violation of federal law into major urban centers and selling them in violation of local law.<sup>87</sup>

It is unrealistic to look to the individual states, cities and towns for effective firearms control.<sup>88</sup> Strict controls by one state or city have been nullified by the emergence of a substantial traffic in handguns coming from jurisdictions having lax controls or none at all. Good sense and orderly government counsel that the federal government no longer abdicate handgun regulation to the states and that we take strong national action against further unnecessary crime.

As noted earlier, we strongly favor legislation prohibiting the manufacture, importation, sale and private possession of handguns, with certain limited exemptions.<sup>89</sup> Since the legislation we support would require the federal government to gather handguns now privately owned, or to develop a system for rendering such handguns inoperative, we endorse the concept of paying prior owners a bounty for all handguns and ammunition surrendered. Such payment would be desirable and also would avoid a challenge based on a taking without compensation.

We believe that further handgun legislation is so necessary that if a complete prohibition on private ownership is not possible of attainment, then we would support legislation barring all further importation, manufacture and sale of handguns, or their parts, and registration of all existing handguns limited to the life of the present owner. Under this alternative, we would propose a ban on any transfers of handguns and an escheat of handguns to the government on the death of each present owner.

In endorsing an outright prohibition on the private ownership of handguns, we believe that any partial measure merely invites a further intolerable proliferation of handguns. Thus, in our view, the focus on the so-called "Saturday night special" is counter-productive. Recent studies indicate that Saturday night specials constitute 35%-45% of the handguns used in urban crime. All revolvers with a three-inch barrel or less constitute over 70% of such guns.<sup>90</sup> The studies also demonstrate that in many areas higher priced handguns are used as extensively or more extensively than the less expensive

ones.<sup>91</sup> Consequently, to ban only Saturday night specials would simply result in other handguns, slightly more expensive and of better manufacture,<sup>92</sup> being used in place of the cheaper ones. We do not think that it would be a material advance to enlarge the calibre or improve the quality of the weapons in the hands of criminals.<sup>93</sup>

As for the proposals calling for the registration of handguns, we believe that they would create extremely cumbersome problems of enforcement, particularly with regard to private resales of guns. Moreover, registration is clearly inadequate to halt much of that class of violence which occurs between assailants and victims previously known to one another, including shootings among family members, whether intended or accidental.

With respect to the proposals placing additional requirements on prospective purchasers, an analysis of the effect of local regulation indicates to us that such proposals will not have any impact unless a mandatory duty is placed on the law enforcement agencies to act on applications and unless a purchase is not allowed to be completed until the law enforcement officials approve. Moreover, the requirement of affidavits and law enforcement checks places a substantial additional burden on local police departments and upon the FBI and will require substantial increased enforcement capabilities in the Department of the Treasury. Thus these bills likely would result in increased expenditures, additional bureaucracy, and further burdens on already over-burdened law enforcement agencies, without any effect at all on the crime rate.

As between the House bill and the Senate bill, however, our Committee prefers the approach taken by the former\*. We do not believe that "Saturday night special" legislation is desirable or helpful, while the establishment of the National Handgun Tracing Center will be a very valuable, if small, step forward. Documenting the flow of handguns in commerce is an essential step to effective regulation.

We realize that banning handguns, as we propose, will not prevent all crime. However, much of the recent substantial increase in crime rates is related to the use of handguns. In our view, banning handguns should reverse this trend and cause a reduction in overall crime rates with a specific reduction in the more serious crimes of homicide, felonious assault and robbery.

The suggestion that there is no connection between the ownership of guns and crime is, in the opinion of this Committee, contrary to the established facts. It is evident that the more guns that there are in circulation, the more opportunities there are for the criminal misuse of a gun,<sup>94</sup> and the statistics bear this out.<sup>95</sup> The data from urban centers shows that the substantial increase in private gun ownership during the 1960's bears a direct relation to the substantial increase in gun-related crimes.<sup>96</sup>

Another argument against a prohibition on the ownership of handguns is that gun control deals with the symptom of crime rather than the disease.<sup>97</sup> To an extent this is true, since gun control will not eliminate all crime. However, it is the symptom itself that is particularly in need of treatment in this instance. Opposition to gun control is often joined with a claim that the proper response is longer or mandatory prison sentences for persons convicted of firearm crimes.<sup>98</sup> Not only does this approach deal with the symptom of

\* See pages 2-3, *supra*.

crime rather than the cause, but the possibility of longer or mandatory criminal sentences affecting the gun crime rate is certainly less likely to be effective than banning the private possession of handguns.

Another argument against the prohibition involves the asserted need for firearms in self-defense. This is perhaps the most emotional of the issues raised.<sup>99</sup> We do not see that the proper response to crime in our society is to have each citizen arm himself, and in effect to encourage vigilantism. We do not believe that either a "High Noon" or a "Death Wish" philosophy is a proper social response to the threat of crime.<sup>100</sup>

The potential presence of firearms has not been effective in deterring crime. A gun kept in the home is far more likely to be used on a family member, and constitutes little or no deterrence to burglary or robbery. The ordinary citizen is likely to wind up seriously injured by provoking a shoot-out with an armed criminal.<sup>101</sup> In a shoot-out in a place of business, a store owner has a 50% chance of being killed.<sup>102</sup> Moreover, even if "self-defense" of this kind were deemed proper, there is no reason why handguns are necessary. Many police departments have settled on the shotgun as the most effective defense against a potentially lethal assault.<sup>103</sup>

The assertion that a prohibition on handguns is but a first step in the elimination of all firearms is in our opinion simply an emotional argument. There are ample bases for drawing distinctions between handguns and long guns, including the constitutional arguments, the physical characteristics of each and the actual statistics concerning criminal misuse.

In making our recommendations, we do not expect that all handguns will be eliminated overnight or that all gun-related crime will instantly cease. What we do expect is that, over a period of time, the continued depletion of the supply of handguns will cause a reduction in the amount of gun-related crime, so that we should see substantial reduction in the crime rates.

### CONCLUSION

For the reasons stated in this report, we think the time has come for Congress to legislate a ban on the private ownership of handguns.<sup>104</sup>

#### COMMITTEE ON FEDERAL LEGISLATION

JOHN D. FEERICK, *Chairman*

HARVEY E. BENJAMIN	GERALD T. McLAUGHLIN
BARRY A. BERGER	GARY P. NAFTALIS
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JOHN G. KOELTL	ROBERT C. SHEEHAN
MARC J. LUXEMBURG	LEONARD W. WAGMAN
HAROLD P. WEINBERGER	

### FOOTNOTES

<sup>1</sup> E.g., H.R. 40, 94th Cong., 1st Sess. (1975) (Representative Jonathan B. Bingham); H.R. 9780 (Representative John Conyers, Jr.); S. 750, 94th Cong., 1st Sess. (1975) (Senator Philip A. Hart).

<sup>2</sup> P.L. 90-618 (Oct. 22, 1968), 18 U.S.C. §§ 921 et seq. (1970).

<sup>3</sup> See generally Comment, *Shooting to Kill the Handgun: Time to Martyr Another American "Hero,"* 51 J. of Urban L. 491, 510 (1974); Zimring, *Firearms and Federal Law: The Gun Control Act of 1968*, IV J. of Legal Studies 133, 191 (1975) [Hereinafter "Zimring, Firearms & Federal Law"].

<sup>4</sup> The House bill is H.R. 11193, 94th Cong., 1st Sess. (1975). The Senate bill was reported to the Judiciary Committee on December 1, 1975, but has not as yet been formally introduced or numbered. The House bill was substantially amended by the full Judiciary Committee to provide for a ban on the manufacture of handguns of less than certain specific sizes, and the revised bill has been referred back to the Subcommittee on Crime.

<sup>5</sup> See note 1 *supra*.

<sup>6</sup> E.g., H.R. 3675, 94th Cong., 1st Sess. (1975).

<sup>7</sup> E.g., H.R. 3773, H.R. 9022, H.R. 9763, 94th Cong., 1st Sess. (1975); S. 1880, S. 2153, S. 2186, 94th Cong., 1st Sess. (1975).

<sup>8</sup> See, S. 1447, S. 2153, 94th Cong., 1st Sess. (1975).

<sup>9</sup> E.g., H.R. 4310, 94th Cong., 1st Sess. (1975).

<sup>10</sup> Of course, a particular piece of legislation nevertheless may be unconstitutional. Any gun control law involving registration provisions must be drafted with care to avoid Fifth Amendment problems. For example, in *Haynes v. United States*, 390 U. S. 85 (1968), the Supreme Court held that a provision of the National Firearms Act was unconstitutional as applied to Haynes because it required him to incriminate himself. See generally "Firearms Control and the Fifth Amendment," Appendix K to Newton & Zimring, *Firearms and Violence in American Life* (National Commission on the Causes and Prevention of Violence, Staff Report, 1969). [The Newton & Zimring report is hereinafter referred to as "National Violence Commission Staff Report"].

<sup>11</sup> See, e.g., ABA Section of Criminal Justice Report Accompanying Resolution 101A, pp. 22-29 (August, 1975) [Hereinafter "ABA Section Report"]; Levin, *The Right to Bear Arms: The Development of the American Experience*, 48 Chicago-Kent L. Rev. 148 (1971) [Hereinafter "Levin"]; Hardy & Stompoly, *Of Arms and the Law*, 51 Chicago-Kent L. Rev. 62 (1974) [Hereinafter "Hardy & Stompoly"]; "The Second Amendment and the Right to Bear Arms," Appendix J to National Violence Commission Staff Report; Sprecher, *The Lost Amendment*, 51 A.B.A.J. 665 (1965); Hays, *The Right To Bear Arms, A Study In Judicial Misinterpretation*, 2 Wm. & Mary L. Rev. 381 (1960) [Hereinafter "Hays"]; Levine & Saxe, *The Second Amendment: The Right To Bear Arms*, 7 Houston L. Rev. 1 (1969).

<sup>12</sup> See, e.g., Levin at 159, 162; National Violence Commission Staff Report, Appendix J at 253-58.

<sup>13</sup> See, e.g., Levin at 151-54; National Violence Commission Staff Report, Appendix J at 253-58.

<sup>14</sup> See, e.g., 3 Story, *Commentaries on the Constitution* 746-67 (1833); Black, *The Bill of Rights*, 35 N.Y.U. L. Rev. 865, 873 (1960); Hardy & Stompoly at 70-71; Hays at 405-06.

<sup>15</sup> Cf. National Violence Commission Staff Report, Appendix J at 255.

<sup>16</sup> 92 U.S. 542 (1875). See also *Presser v. Illinois*, 116 U.S. 252 (1886); *Miller v. Texas*, 153 U.S. 535 (1894); *United States v. Karnes*, 437 F.2d 284, 287 (9th Cir.), cert. denied, 402 U.S. 1008 (1971).

<sup>17</sup> 307 U.S. 174 (1939).

<sup>18</sup> *Id.* at 178.

<sup>19</sup> Such arguments are criticized by the ABA Section of Criminal Justice. See ABA Section Report at 24-25.

<sup>20</sup> See, e.g., *Cases v. United States*, 131 F.2d 916 (1st Cir. 1942), *cert. denied sub nom. Velasquez v. United States*, 319 U.S. 770 (1943); *United States v. Tot*, 131 F.2d 261 (3d Cir. 1942), *rev'd on other grounds*, 319 U.S. 463 (1943); *United States v. Adams*, 11 F. Supp. 216 (S.D. Fla. 1935). See generally ABA Section Report at 22, and the recent cases of *United States v. Powell*, 423 U.S. . . (1975); *Barrett v. United States*, 44 U.S.L.W. 4050 (1976).

<sup>21</sup> 307 U.S. 174 (1939).

<sup>22</sup> E.g., ABA Section Report at 24, 28.

<sup>23</sup> Those cases which hold that handguns do not come within the Second Amendment's concept of "Arms" do so on the ground that handguns are not the ordinary weapons used by the militia. See, e.g., *Moore v. Gallup*, 267 App. Div. 64, 45 N.Y.S.2d 63 (3d Dep't 1943), *aff'd mem.*, 293 N.Y. 846, 59 N.E.2d 439 (1944); *Pierce v. State*, 42 Okla. 272, 275 P. 393 (1929). But some courts have considered army or navy pistols to be weapons protected by the Second Amendment. See *Glasscock v. City of Chattanooga*, 157 Tenn. 518, 11 S.W.2d 678 (1928); *Holland v. State*, 33 Ark. 560 (1878). The minority position is that the possession of pistols of any kind may not be prohibited. See *People v. Zerillo*, 219 Mich. 635, 189 N.W. 927 (1922); *In re Brickey*, 8 Idaho 597, 70 P. 609 (1902).

<sup>24</sup> 14 S.E. 9 (1891).

<sup>25</sup> *Id.* at 11.

<sup>26</sup> The National Firearms Act, 26 U.S.C. §§ 5801 *et seq.*, which imposes taxes upon transfers of such weapons as machine guns and sawed-off shotguns and upon dealers in those weapons, has been upheld as a valid exercise of Congress' power to lay taxes under Article I, Section 8, clause 1. See *Sonzinsky v. United States*, 300 U.S. 506 (1937).

Title VII of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. App. §§ 1201-02, bars "in commerce or affecting commerce" the receipt, possession, or transportation of firearms by felons and certain others. This refers to Congress' power under Article I, Section 8, clause 3. The Act contains a set of four "findings" as to the effect of the activities sought to be prohibited. In addition to burden on commerce, these findings, which apparently were not based on hearings or other evidence, are that the prohibited activities are:

- a threat to the safety of the President and the Vice President;
- an impediment or a threat to the exercise of free speech and the free exercise of a religion; and
- a threat to the "continued and effective operation" of the federal and state governments.

These bases for gun control legislation have been regarded as dubious. See *United States v. Bass*, 434 F.2d 1296 (2d Cir. 1970), *aff'd on other grounds*, 404 U.S. 336 (1971). But see 61 A.B.A.J. 1081 (1975).

In addition, some kinds of gun control legislation—for example, legislation requiring a course of training in order to qualify for a license to possess a gun—might be justified under Congress' power to "provide for organizing, arming, and disciplining, the Militia." Article I, Section 8, clause 16. Although this power is qualified by the state's "Authority of training the Militia according to the discipline prescribed by Congress," it appears open to Congress to prescribe standards of training in the use of guns.

<sup>27</sup> Article I, Section 8, clause 3.

<sup>28</sup> 404 U.S. 336 (1971).

<sup>29</sup> Compare *United States v. Synnes*, 438 F.2d 764 (8th Cir. 1971), *vacated on other grounds*, 404 U.S. 1009 (1972), holding the statute constitutional, with the Second Circuit's opinion in *Bass*, reported at 434 F.2d 1296, expressing substantial doubt as to constitutionality if proof of effect on commerce were not required.

<sup>30</sup> 402 U.S. 146 (1971).

<sup>31</sup> See, e.g., *United States v. Andrino*, 497 F.2d 1103 (9th Cir.), *cert. denied*, 419 U.S. 1048 (1974); *United States v. Garner*, 465 F.2d 265 (7th Cir. 1972); *United States v. Lebman*, 464 F.2d 68 (5th Cir.), *cert. denied*, 409 U.S. 950 (1972); *United States v. Ruisi*, 460 F.2d 153 (2d Cir.), *cert. denied*, 409 U.S. 914 (1972).

<sup>32</sup> 458 F.2d 556 (5th Cir. 1972).

<sup>33</sup> In *Huddleston v. United States*, 415 U.S. 814, 833 (1974), the Supreme Court stated without discussion that Congress did not intend to require a showing of a nexus with interstate commerce in prosecutions under 18 U.S.C. § 922(a)(6).

<sup>34</sup> 396 F.2d 595 (9th Cir. 1968).

<sup>35</sup> See also *United States v. Lopez*, 459 F.2d 949 (5th Cir.), *cert. denied sub nom. Llerena v. United States*, 409 U.S. 878 (1972); *United States v. Cerrito*, 413 F.2d 1270 (7th Cir. 1969), *cert. denied*, 396 U.S. 1004 (1970); *United States v. Fields*, 410 F.2d 373 (9th Cir.), *cert. denied*, 396 U.S. 965 (1969); *White v. United States*, 399 F.2d 813 (8th Cir. 1968).

<sup>36</sup> See, e.g., Statement of Mr. Carey, Hearings before the Subcommittee on Crime, Committee on the Judiciary, House of Representatives, 94th Cong., 1st Sess., Vol. 2, at 488 [Hereinafter "House Firearms Hearings"]; United States Conference of Mayors, Handgun Control Project Newsletter, Vol. I, No. 3, July, 1975, at 3. See also, statement of Mr. Chalapis, House Firearms Hearings, Vol. 3, at 1136 ("Since the invention of firearms, wars have been won or lost depending upon the ability to devise, manufacture, and strategically use these weapons.")

<sup>37</sup> See, Statement of Rep. Symms, House Firearms Hearings, Vol. 1, at 99.

<sup>38</sup> See, e.g., statement of Ms. Beebe, House Firearms Hearings, Vol. 3, at 901; Comment, *Shooting to Kill the Handgun: Time to Martyr Another American "Hero,"* 51 J. of Urban L. 491, 496-99 (1974).

<sup>39</sup> See, e.g., Statement of the Wisconsin Rifle & Pistol Association, House Firearms Hearings, Vol. 2, at 608-09; Statement of Mr. Glasson, House Firearms Hearings, Vol. 3, at 1114.

<sup>40</sup> See, *Statistical Estimate on United States Gun Density*, Bureau of Alcohol Tobacco and Firearms, Department of the Treasury, printed as Appendix A to *Gun Abuse in Ohio*, Administration of Justice Committee, in House Firearms Hearings, Vol. 4, at 1641-42. [The Bureau of Alcohol, Tobacco and Firearms is hereinafter referred to as "ATF"]. See also Comment, 51 J. of Urban L. 491, 494 (1974).

<sup>41</sup> See, *Gun Abuse in Ohio*, in House Firearms Hearings, Vol. 4, at 1530.

<sup>42</sup> See, e.g., Massachusetts Council on Crime and Correction, *A Shooting Gallery Called America*, at 1 (1974) [Hereinafter "Massachusetts Council Report"]; National Advisory Commission on Criminal Justice Standards and Goals, *A National Strategy to Reduce Crime*, at 213 (1973); 1975 Congressional Quarterly 798.

<sup>43</sup> See, ATF Statistical Estimate on United States Gun Density, in House Firearms Hearings, Vol. 4, at 1641.

<sup>44</sup> See, ABA Section Report at 10-11 (Chart 1): United States Conference of Mayors, handgun control . . . issues and alternatives, at 27 (1975) [Hereinafter "Conference of Mayors Project Report"]. See generally, Statement of Mr. Davis, House Firearms Hearings, Vol. 1, at 264-68.

<sup>45</sup> Uniform Crime Reports for the United States, Federal Bureau of Investigation, Department of Justice (1974), cited in Bayh, *Fact Sheet on Firearms and Hand-*

guns, submitted to Subcommittee to Investigate Juvenile Delinquency, Committee on the Judiciary, United States Senate (May, 1975). [Hereinafter "Bayh Fact Sheet"]. There are about 25,000 gun deaths per year in the United States (12,000 homicide, 10,000 suicide, 3,000 accident), and about 200,000 firearms injuries. Statement of Rep. Fauntroy, House Firearms Hearings, Vol. 1, at 21.

46 Bayh Fact Sheet; ABA Section Report at 8.

47 Bayh Fact Sheet; ABA Section Report at 8. See also *Gun Abuse in Ohio*, in House Firearms Hearings, Vol. 4, at 1520, 1557-62.

48 Zimring, *Firearms & Federal Law* (*supra* note 3) at 172 (Figure 2).

49 Zimring, *Firearms & Federal Law* at 195; see *Gun Abuse in Ohio*, in House Firearms Hearings, Vol. 4, at 1547. From 1968 to 1973 total homicide increased 42%, robbery increased 46%, and aggravated assault increased 47%. See 121 Cong. Rec. S. 9685 (June 5, 1975) (Statement of Sen. Bayh).

50 Zimring, *Firearms & Federal Law* at 170; Massachusetts Council Report at 2. See also Statement of Mr. Russell, House Firearms Hearings, Vol. 2, at 768.

51 ATF Project Identification for Washington, D.C. Study, at 7-8 (1975) [Hereinafter "ATF Project I Wash. D.C."]; See also Comment, 51 J. of Urban L. 491, 495 (1974).

52 See Statement of Commissioner Murphy, Hearings before the Subcommittee to Investigate Juvenile Delinquency, Committee on the Judiciary, United States Senate, 92nd Cong., 1st Sess., at 199 (1971) [Hereinafter "Senate Handgun Hearings"].

53 Zimring, *Firearms & Federal Law* at 170, 194-95. See also, Statement of the North American Handgun Association, House Firearms Hearings, Vol. 2, at 809; Edwards, *Commentary: Murder & Gun Control*, 18 Wayne L.R. 1335, 1338 (1972) [Hereinafter "Edwards Commentary"].

54 See Block & Zimring, *Homicide in Chicago 1965-70*, in Senate Handgun Hearings, at 64-65; Raab, "Deliberate Slayings on Increase Here," *N.Y. Times*, Feb. 27, 1976 at 1.

55 See, e.g., Conference of Mayors Project Report at 4 (Illustration 6); Edwards Commentary at 1336; Massachusetts Council Report at 3.

56 Conference of Mayors Project Report at 1-2; Massachusetts Council Report at 2.

57 See, Statement of Mayor Lindsay, Senate Handgun Hearings, at 169, 171.

58 See, Statement of Mr. Barnes, House Firearms Hearings, Vol. 4, at 1294; Statement of Mr. Stonebraker, Senate Handgun Hearings, at 219.

59 See, Statement of Mr. Lowery, House Firearms Hearings, Vol. 3, at 1148; Statement of Mr. Compton, *Id.*, Vol. 2, at 764; Remarks of Rep. Collins, *Id.*, Vol. 2, at 486. See also Edwards Commentary at 1335.

60 Zimring, *Is Gun Control Likely to Reduce Violent Killings*, 35 U. Chi. L. Rev. 721, 722 (1968); Comment, 51 J. of Urban L. 491, 505 (1974); See, Statement of Mr. Borden, House Firearms Hearings, Vol. 3, at 969-70.

61 See, Statement of Representative Mikva, House Firearms Hearings, Vol. 1, at 8; Zimring, *Firearms & Federal Law* at 148.

62 Statement of Mr. Rockford, House Firearms Hearings, Vol. 1, at 131.

63 Report of the Commission on Law Enforcement and Administration of Justice, at 240 (1967), cited in National Violence Commission Staff Report, at 151-152. A more recent summary was made by the U.S. Conference of Mayors. See, Conference of Mayors Project Report at 29.

64 Statement of Commissioner Murphy, Senate Handgun Hearings, at 175.

65 Statement of Chief of Detectives Seedman, Senate Handgun Hearings, at 181. The statement was made in 1971. There may well be closer to 1,000,000 illegal guns

in New York City today. See, Remarks of Sen. Hruska, Senate Handgun Hearings, at 246.

66 ATF, Briefing Paper on Project "I," 16 City Consolidated Report, at 4 (1975) [Hereinafter "ATF Project I"]. See also Comment, 51 J. of Urban L. 491, 513 (1974).

67 New York Penal Law § 400.00.

68 Michigan Comp. Laws Title 28.

69 Massachusetts Gen. Laws Ch. 140.

70 Philadelphia Code § 10-814.

71 See, Conference of Mayors Project Report at 29; Massachusetts Council Report at 7.

72 California Penal Code § 12076.

73 Washington Rev. Code Title 9, § 9.41.090.

74 Miami Code § 61-2.

75 New Orleans Code § 67-11.

76 Pennsylvania Stats. Title 18, § 6111.

77 Minneapolis Code § 877.070.

78 See generally, Conference of Mayors Project Report at 29; ATF, Published Ordinances Firearms, 39 Fed. Reg. No. 91 (May 9, 1974).

79 See, Zimring, *Firearms & Federal Law* at 175, 184, 191.

80 See, *Id.* at 174 (Figure 3). Zimring suggests that the rate at which new guns enter the market has a special impact on the rate of handgun violence. *Id.* at 173, 196.

81 ATF Project I, at 7.

82 See, Statement of Mr. Davis, House Firearms Hearings, Vol. 1, at 387-89. Zimring estimates 500,000 violations of the Gun Control Act of 1968 each year. Zimring, *Firearms & Federal Law* at 161. The ease with which that law can be violated was set forth in the Senate hearings. See, Statement of Chief of Detectives Seedman, Senate Handgun Hearings, at 179-80. In one recent year 85% of all handgun homicides in Detroit were committed with unregistered guns. See, Statement of Mr. Walker, House Firearms Hearings, Vol. 3, at 973.

83 See, e.g., National Advisory Commission of Criminal Justice Standards and Goals, A National Strategy to Reduce Crime, at 141 (1973). In 1968, the U.S. gun homicide rate was 221 times as high as Japan's. Since then our rate has nearly doubled. See, Massachusetts Council Report at 5.

84 See, National Violence Commission Staff Report at 125; Edwards Commentary at 1337; Statement of Messrs. Burden & Dill, House Firearms Hearings, Vol. 3, at 975.

85 See, National Violence Commission Staff Report at 119; Conference of Mayors Project Report at 21-22. The firearms homicide rates in other countries are generally 5% to 10% of the rate in the U.S., and the number of gun deaths per year in the U.S. exceeds the total for all other free nations. See, Massachusetts Council Report at 6.

86 See, Zimring, *Firearms & Federal Law* at 176-81, and Figures 4-9. The increase in handgun homicide as a percentage of all homicide in urban areas is substantially larger than the increase nationally. See, *Id.* at 179-181, and Figure 8.

87 Statement of Mr. Davis, House Firearms Hearings, Vol. 1, at 301.

88 For example, firearm homicide rates continue to increase in jurisdictions that enact controls. See Hardy & Stompoly, *supra* note 11, at 82-87.

89 We support, of course, exemptions for the possession of handguns by police, the military, and private licensed guards. A further exception to permit bona fide collectors to own non-functioning guns would also be consistent with the spirit of our recommendations.

90 ATF Project I, at 7; ATF Project I Wash. D.C., at 7. Saturday night specials are defined as costing under \$50.00, having less than a 3" barrel, and being .32 calibre or less.

91 ATF Project I, at 6-7. *See also*, Conference of Mayors Project Report at 13.

92 *See*, Statement of Mr. Walker, House Firearms Hearings, Vol. 3, at 966.

93 A .38 calibre revolver may be twice as deadly as a .22. *See*, *Gun Abuse in Ohio*, in House Firearms Hearings, Vol. 4, at 1525, 1621.

94 *See*, Edwards Commentary at 1341.

95 For example, the Southern states have the highest rate of gun ownership, the highest percentage of homicide by gun, and the highest accident rate by gun causing death. *See*, Conference of Mayors Project Report at 1, II, 2; Massachusetts Council Report at 8. The presence of a gun in the home leads to more accidental or intra-family shootings. *See, e.g.*, 1975 Cong. Quarterly 798.

96 *See*, Statement of Dr. Pasternack, House Firearms Hearings, Vol. 1, at 213; Edwards Commentary at 1341.

97 *See*, Statement of Mr. Washington, House Firearms Hearings, Vol. 3, at 931.

98 *E.g.*, Statement of Sen. McClure, House Firearms Hearings, Vol. 1, at 92-93; Statement of Mr. Schrank, *Id.*, Vol. 2, at 775; 1975 Cong. Quarterly 799.

99 *See, e.g.*, Statement of Mr. Glassen, House Firearms Hearings, Vol. 3, at 1113 ("Taking firearms from responsible people gives further license to the criminal element to maim, rob, and rape the American Public.")

100 *See*, Cawelti, *Myths of Violence in American Popular Culture*, in House Firearms Hearings, Vol. 2, at 838-842.

101 *See*, Massachusetts Council Report at 10; Edwards Commentary at 1336-37; Comment 51 J. of Urban L. 491, 497-98 (1974). *See generally*, Conference of Mayors Project Report at 6-8.

102 *See*, Statement of Dr. Wilt, House Firearms Hearings, Vol. 3, at 1023; *Gun Abuse in Ohio*, in House Firearms Hearings, Vol. 4, at 1521, 1568-69.

103 *See*, *Attica*, The Official Report of the New York State Special Commission on Attica, at 354, 365 (1972).

104 One member of the Committee, while strongly supporting in principle the total ban on possession of handguns, believes that such legislation is not likely to be enacted, and would create great problems in enforcement. *See generally*, the discussion between Mr. Lowey and Representative Conyers, House Firearms Hearings, Vol. 3, at 1151-53. This member supports a ban on manufacture or importation, with a bounty for voluntary surrender, but without an attempt to confiscate all existing handguns. This is essentially the position taken by Representative Mikva in H.R. 3675.

7.22

THE WHITE HOUSE

WASHINGTON

April 14, 1976

MEMORANDUM FOR: PHIL BUCHEN

FROM: KEN LAZARUS *Ken*

SUBJECT: Gun Control Legislation

As you know, the House Judiciary Committee yesterday voted 20-12 to report out a gun control bill. Although copies of the actual text of the bill are not yet available, reports would indicate that the measure tracks quite closely the Administration's proposal. In this regard, note:

• "Saturday Night Special" ban. The Administration bill prohibited the manufacture, sale or transfer of these weapons. The House bill only proscribes manufacture, thus allowing commerce in existing weapons. The definitions of "Saturday Night Special" are both derived from the language of the 1968 Act prohibiting the importation of certain handguns.

• License Fees. The House bill would also raise dealers' fees but the rates are not as high as those proposed by the Administration.

• Miscellaneous Provision. Provisions of the House bill duplicate the President's bill in several respects including: (a) mandatory incarceration upon conviction of an offense involving a handgun; (b) a 14-day waiting period in handgun purchases to allow authorities to check for a criminal record; and (c) a prohibition on bulk sales.



On balance, the House bill would appear to be less restrictive than the Administration bill. However, I assume it will nonetheless be strongly opposed by the NRA and its supporters.

Politically, the action of the House Judiciary Committee was, of course, unfortunate in coming at this time. Earlier, the President had the best of both worlds on the issue of gun control. His legislative initiative appeared to satisfy the anti-gun forces while the lack of any congressional action tempered the reaction of the pro-gun lobby.

It would, indeed, be unfortunate if the President were to bear the wrath of the NRA during the upcoming primaries in Texas and the southern states. On the other hand, it would also be unwise to overreact to the problem. Thus, for as long as possible we should attempt to avoid heating up this issue. Our position should note that the President's position on gun legislation is a matter of public record and that other legislative proposals will be considered in due course.

The best we can hope for politically is the bill will not be cleared by the Rules Committee and final House action will not occur until next month, thus allowing the President to get through the key primaries without suffering any strongly adverse consequences on this issue. Obviously, however, Reagan will attempt to use the threat of legislation to highlight his own opposition to any meaningful gun control legislation and this could have real utility in Texas and the deep south.

This problem should be considered in depth during the Easter recess.

