

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Tim Macht to Rebecca Hedlund [partial] (1 page)	01/11/1994	b(7)(C), b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Jose Cerda
OA/Box Number: 5317

FOLDER TITLE:

Firearms Miscellaneous [1]

2016-0931-S

rc2265

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

TALKING POINTS FOR MEETING ON FIREARMS MEMORANDA

A. MEMORANDUM ADDRESSING IMPORTED ASSAULT PISTOLS AND MODIFIED ASSAULT RIFLES.

1. Statutory Authority. The Gun Control Act prohibits the importation of firearms unless they are "generally recognized as particularly suitable for, or readily adaptable to sporting purposes". The legislative history reveals that the statute was aimed primarily at preventing the importation of cheap, poor quality, easily concealable handguns (so called "saturday night specials"). Shortly after enactment of this "sporting purposes" test in 1968, Treasury established a panel of experts who developed factoring criteria for evaluating imported handguns. Under the factoring criteria points are awarded based on such factors as size, weight, safety features, and quality of materials. A handgun must achieve a minimum score of 75 points to be importable. Although not enacted as regulations, the factoring criteria have been used as the standard for importation for almost 25 years. No factoring criteria were developed to evaluate the importability of imported rifles or shotguns which were probably assumed to have a legitimate sporting use.

2. Assault Rifle Background. In 1989 a temporary suspension in the importation of assault rifles was ordered based on growing evidence of criminal misuse, the fact that there appeared to be no legitimate sporting use for the rifles, and the fact that almost 3/4 of a million of these rifles were pending importation. The assault rifle problem arose after trade restrictions were lifted on Chinese goods. Chinese made AK-47 type semiautomatic rifles began flooding the market and were selling for as little as a few hundred dollars. The justification for the immediate suspension of previously issued permits rested heavily on public safety grounds. The importation ban was made permanent after it was determined that (1) these rifles constituted an identifiable and distinct class of rifle, (2) that "sporting purposes" in the context of rifles was limited to hunting and organized marksmanship competition, and (3) based on a review of hunting and marksmanship publications, and surveys of the traditional hunting and marksmanship groups we found no evidence that this class of rifle was generally used or recognized as suitable for these sports.

3. Assault Pistols. An attempt to apply the assault rifle model for dealing with so called assault pistols faces several difficulties.

a. It will be difficult to reduce these weapons to an identifiable and distinct class of handgun. Unlike assault rifles, these pistols do not necessarily share military features, machinegun parentage, or necessarily use larger than normal ammunition magazines. The handful of imported handguns commonly referred to as assault pistols are grouped together solely on the basis of their "Rambo-like" appearance. They are functionally no

different than standard 9mm pistols commonly used by police, or by private citizens for target shooting and self-protection.

b. Defining sporting purposes for handguns becomes much more problematic. Unlike rifles and shotguns, handguns generally are designed and intended for self protection and not for sport. Consequently, in the case of longguns we were able to define sport in such a way as to address the assault rifle while avoiding impact on mainstream rifles and shotguns. Using the same very limited definition of sport for handguns might sweep into the nonsporting category any number of mainstream handguns.

c. We will have difficulty demonstrating the unusual urgency we found to exist with assault rifles, because there are currently no outstanding permits to import these pistols, and there were only approximately 2000 of these pistols imported in 1992. Moreover, we cannot make out a strong statistical, or even anecdotal, case for criminal misuse of the imported pistols.

d. Finally, in addressing assault rifles we were dealing with a clean slate. We weren't so much reversing longstanding positions as we were simply addressing a new problem. In the case of handguns, we will have to overcome the fact that for almost 25 years our test has determined these pistols to be importable. Reversing 25 years of established policy presents a more difficult challenge.

4. Suspension of the import of modified assault rifles. This action would directly contradict the 1989 decision which recognized that sporterized versions were no different than other semiautomatic hunting rifles. Moreover, there is no case to be made that these sporterized versions are being misused, or refitted into an assault rifle configuration. By requiring that all of the military style features be removed, and that the rifles utilize configurations commonly found in traditional hunting and competition rifles, these rifles are no different than any other semiautomatic sporting rifle. Proof of the success of this action is that there is no big market for the reconfigured rifles and they are imported in very small numbers. In 1992 only about 20,000 of these rifles were imported. Current law prohibits the reassembly of these rifles into an assault rifle configuration.

B. MEMORANDUM ON LICENSING.

1. Statutory Background. The existing law requires the Secretary to approve an application upon payment of the \$10 a year fee, if

- the applicant is 21 years of age or older;
- the applicant is not a convicted felon or other prohibited person
- the applicant has not willfully violated the Gun

Control Act or regulations.

- the applicant has premises from which he intends to conduct business.

The statute further requires that the Secretary approve or deny an application within 45 days.

Treasury has long recognized that the current firearms licensing system is replete with problems. These problems are a function of first of all a statute that was clearly designed to make it easy to get a license, and intended to limit the Secretary's discretion in denying licenses. Even within the context of the existing law, much of what could have been done to better control the licensing system have in the past been exceptionally controversial. In fact the last major regulatory initiative in 1978 resulted in a rider on the Treasury appropriation that precluded implementation of the proposals. That rider was placed in every subsequent Treasury appropriation until this year. Finally, much of what could be done to more effectively screen, inspect and regulate firearms licensees involves the commitment of additional resources which have not been available. There are currently approximately 286,000 licensees and ATF is receiving new applications at the rate of 5,000 to 7,000 a month.

2. Improving background checks. This can be accomplished under existing law. It would require taking on political controversy by requiring more detailed personal information on applications. It could have serious resource implications if each application is to receive some minimal field investigation, and in some cases it could cause Treasury to run afoul of the statutory provision that requires action within 45 days. ATF has already begun initiatives in this area.

3. Requiring more reliable applications forms. This could also be accomplished under existing law. Requiring fingerprints to help identify the applicant is already under consideration by Treasury. Such a requirement should be expected to be controversial, and there are resource implications if we were to attempt to have the FBI check all fingerprints, and running fingerprints through the FBI would create time problems under the 45 day requirement.

4. Making "business premises" requirement more meaningful. Some of this could be done with increased resources, however, current law does not literally require "business" premises, it simply requires that the applicant have fixed "premises" from which to operate. As initially enacted in 1968, the licensing standards specifically required "business premises" from which to conduct business. Congress subsequently amended the statute and "business premises" was replaced with simply "premises". While, from a legal perspective, there are probably limits on how far we could go in requiring actual business premises, ATF is already experiencing some success in this area simply by virtue of it

increased efforts to contact applicants and verify business intent. Many applicants who are not seriously intent on conducting a business often withdraw their applications when contacted by ATF.

5. Dealers with convictions on appeal. This would reverse 25 years of consistent interpretation of the statute that allows a licensee who has been convicted to continue to operate until the conviction becomes "final". From a legal point of view, the new interpretation would be difficult to defend, and from a practical point of view this is a non-problem. Since 1968 Treasury has interpreted the statute to permit a licensee to continue business until all appeals are exhausted. While this interpretation might permit a convicted firearms law violator to remain in business longer, it also simplifies matters when a defense contractor or some other major corporation is convicted of violations completely unrelated to the firearms laws. However, our experience has been that judges are more than willing to get the truly bad dealer out of business by making it a condition of the defendant's release pending appeal, or as a condition at sentencing.

6. Multiple sales reports. Simply a question of resources.

7. Proof of residency. Current Treasury regulations could be amended to expand on the type of identification dealers should be expected to demand before making sales.

8. Dealers sending records to manufacturers and importers. Current law prohibits the centralization of records, and prohibits requiring any reports to the Secretary that are not already specified in the statute. While this proposal would not run afoul of these two restrictions, there is no statutory basis for requiring dealers to send reports or other information to other licensees. The Secretary's authority in this area is limited to requiring licensees to keep and maintain records of receipt and disposition of firearms. This proposal would require additional legislation.

9. Dealer security requirements. There is no authority in the statute for the Secretary to condition licenses on the utilization of sound security measures. This proposal would require additional legislation.

10. Suspension authority. Treasury is currently evaluating whether license suspension authority would be desirable.

THE WHITE HOUSE

Howard G. Paster

9/29

BRUCE—

PLEASE LET ME
ASAP IF YOU
THINK WE CAN
(SHOULD) DO ANY
OF THE IDEAS
LISTED BY RICHARD.
THE PRESIDENT'S
FOCUS ON VIOLENT
CRIME MAKES
ANTI-GUN DIRECTIVES
LOGICAL —
LET ME KNOW
YOUR VIEWS—

HOWARD

HANDGUN CONTROL

ONE MILLION STRONG . . . working to
keep handguns out of the wrong hands.

Richard M. Aborn
President

September 28, 1993

cc: Jose
CM-I NEED THIS BACK
BR

Mr. Howard G. Paster
Assistant to the President and
Director for Legislative Affairs
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

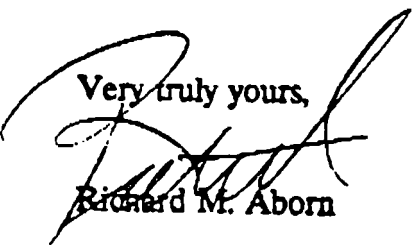
Dear Howard:

In preparation for the possibility of Sarah, Jim and I meeting with the President, we thought the White House might want to consider signing some additional Presidential directives which would help demonstrate the President's continuing commitment to fighting gun violence.

I'd be happy to discuss these with you and would like to discuss with you the actual meeting with the President.

Best regards.

Very truly yours,


Richard M. Aborn

CENTER TO PREVENT HANDGUN VIOLENCE

ADDITIONAL PROPOSALS FOR GUN CONTROL INITIATIVES NOT REQUIRING NEW LEGISLATION

INTRODUCTION

On August 11, 1993, President Clinton issued Directives calling for a reexamination of current federal regulatory policy concerning the importation of assault pistols and the licensing of gun dealers. These Directives recognized that the Bureau of Alcohol, Tobacco and Firearms ("ATF") has the authority, under existing statutes, to undertake significant new regulatory initiatives against gun violence. Although the specific proposals made in the Directives represent an important federal commitment to utilize ATF's statutory power to combat gun violence more effectively, even more can, and should, be done. This Memorandum sets out four additional important steps the Administration can take without seeking new legislative authority for ATF.

PROPOSAL #1: MANDATE MINIMUM DEALER SECURITY MEASURES TO PREVENT GUN THEFT

— Can't be done without legislation

Originally in 8/11 Directive, but pulled.

Because gun dealers are in the business of selling lethal weapons, they should be required to implement anti-theft security measures that exceed those required of retailers of less dangerous products. Gun theft represents more than simply a property loss to the dealer. Since stolen guns inevitably are destined for black market sale to the criminal element, gun thefts are a direct and immediate threat to public safety.

Many gun dealers, however, employ sensible security measures only after they are victimized. For example, a California dealer decided to remove his guns from their display cases after hours and lock them up only after 20 handguns had been stolen in the most recent of several burglaries of that dealer. (See "Gun theft sparks safety measures," Santa Cruz Sentinel, July 30, 1991.) Last year it was reported that a handgun used to kill four people in Montgomery County, Maryland had been stolen from an Appomattox, Virginia gun shop when a glass display case was broken into after hours. (See "Gun That Killed 4 Was Stolen in Va.," The Washington Post, Oct. 14, 1992, D1.) Some gun dealers apparently use security measures less stringent than the average jewelry store.

Theft of guns from licensed dealers is a serious problem. One report indicated that from August 1989 to March 1992, nearly 1500 guns had been taken from more than 60 gun stores and pawnbrokers in Virginia and Maryland. (See "Gun store burglary feared a sign of more to come," Washington Times, March 4, 1992, B3.) California's Attorney General has spoken of the "hundreds, perhaps thousands" of guns stolen during last year's Los Angeles riots, and ATF itself reported burglaries at 40 Los Angeles area gun and pawnshops — involving about 4,000 guns — in the four months preceding April of 1993. (See "Around L.A., the Laying In of Arms", Washington Post, April 4, 1993, A3.)

The authority of ATF to promulgate anti-theft regulations for its licensees was established in National Council to Control Handguns v. Blumenthal, No. 77-1574 (D.D.C. Oct. 24, 1978), in which the Court relied upon the traditional deference of courts to the exercise of regulatory discretion by agencies. See also National Rifle Association v. Brady, 914 F.2d 475 (4th Cir. 1990) (holding that Firearms Owners Protection Act of 1986 preserved broad ATF regulatory authority). Licensees should be required to implement sound security measures, including locking up their inventory in a secure vault after hours.

— Already being done during current EO (8/11)

PROPOSAL #2: AS A CONDITION FOR LICENSE RENEWAL REQUIRE GUN DEALERS TO DEMONSTRATE THAT THEY ARE SELLING FIREARMS "AS A REGULAR COURSE OF TRADE OR BUSINESS"

The Presidential Directive on Gun Dealer Licensing strongly denounced "the present system of gun dealer licensing, which encourages a flourishing criminal market in guns." Because "we have made it easier to get a license to sell guns than it is to get and keep a driver's license," the Directive estimates that there are in excess of 287,000 federal firearms licensees. The Administration found that the vast majority of these licensees are not "bona fide storefront gun dealers," but rather fall into one of two categories: (1) those who sell no firearms at all, using the license merely "to obtain the benefits of trading interstate and buying guns at wholesale," and (2) those who sell relatively small numbers of guns, usually from their homes and often without regard for state and local business-related laws. This latter category — the "kitchen table" dealers — operate without any real oversight by ATF. There is mounting evidence that many "kitchen table" dealers are heavily involved in diverting guns into the black market.

The Presidential Directive proposes a number of specific reforms to tighten the dealer licensing system. More, however, can be done.

To be licensed, a dealer must have "premises from which he conducts business subject to license under this chapter." 18 U.S.C. § 923(d)(1)(E)(emphasis added). The "business subject to license under this chapter" is described in the statutory definition of "dealer"; that is, a person "who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms...." 18 U.S.C. §§ 921(11) and (21)(D). In order to enforce fully the "business premise" requirement, renewal of licenses should be contingent upon demonstration by the licensee that he/she has conducted business as defined in the statute.

When dealers apply for license renewal, they should be required to submit tax returns for their business, as well as aggregate sales information for the period of the license. Applicants who cannot demonstrate "a regular course of trade or business" would be denied renewal.

- REALLY CAN'T DO,
MUST OVERTURN 25 YRS
OF CASELAW.

PROPOSAL #3: IMMEDIATELY SUSPEND THE LICENSE OF ANY DEALER CONVICTED OF A FELONY AND MAINTAIN THE SUSPENSION DURING THE APPEALS PROCESS

ORIGINALLY IN DIRECTIVE (8/11), BUT PULLED

Under 18 U.S.C. § 925(b), a licensee "who is indicted for a crime punishable by imprisonment for a term exceeding one year, may, notwithstanding any other provision of this chapter, continue operation pursuant to his existing license...during the term of such indictment and until any conviction pursuant to the indictment becomes final." ATF currently interprets this provision to mean that a licensee convicted of a felony can continue to sell guns under his/her license until all appeals of the conviction are exhausted. The appeals process, of course, may take several years. Permitting convicted felons to sell guns during protracted appeals is totally at odds with the Administration's goal, stated in the August 11 Directive, to "keep guns out of the hands of criminals."

ATF's interpretation of "final conviction" does not conform to the concept of finality in other parts of the criminal code enacted subsequent to the Gun Control Act. For example, the 1984 Sentencing Reform Act states that a judgment of conviction is final notwithstanding that it can later be modified, corrected or appealed. 18 U.S.C. §§ 3562(b), 3572(c), 3582(b). This is consistent with the general presumption that a conviction is valid until reversed on appeal, placing the burden on the defendant to demonstrate that it was contrary to law. Glasser v. United States, 315 U.S. 60, 80 (1942). Given this presumption, it makes no sense to allow licensees convicted of serious crimes to sell firearms during protracted appeals.

?

PROPOSAL #4: ALLOW ONLY MACHINEGUN LICENSEES TO PURCHASE MACHINEGUN REPLACEMENT PARTS

As part of the McClure/Volkmer Act in 1986, Congress banned the possession and sale of machineguns made after May 19 of that year. 18 U.S.C. § 922(o). Machineguns lawfully possessed before that date can continue to be bought and sold, but must be registered and are taxed pursuant to the provisions of the National Firearms Act (NFA). 26 U.S.C. § 5801 et seq. Thus, the 1986 statute was intended to effectively "freeze" the number of machineguns in the civilian population to the number lawfully registered as of May 19, 1986.

Current ATF regulations, however, make it easy to violate the machinegun freeze by converting semi-automatic assault weapons into machineguns using machinegun "replacement parts". Although it is illegal to sell or possess "any part designed and intended solely and exclusively...for use in converting a weapon into a machinegun," 18 U.S.C. § 922(o) and 26 U.S.C. § 5845(b), there are no limits on the sale or possession of replacement parts for a machinegun. This loophole made it possible for the Branch

ATF WORKING ON DEFINITIVE ANSWERS

Davidian cult in Waco, Texas to use machinegun replacement parts to convert at least 100 semiautomatic assault weapons into machineguns.

According to an ATF affidavit in the Waco case, upon investigating one of the companies which sold machinegun parts to Branch Davidian leader David Koresh, ATF found that "the company maintained their inventory of these parts as 'replacement parts' so they fell easily within a loophole in the Federal law which prohibited ATF from seizing the parts. Special Agent Mutz stated that the company had all the necessary parts to convert AR-15 rifles and semi-automatic AK-47 rifles into machineguns if their customers had the upper and lower receivers for those firearms...." Koresh bought dozens of these upper and lower receivers from other gun companies.

ATF clearly has regulatory authority to carry out the provisions of the Gun Control Act, including the 1986 machinegun freeze, and the National Firearms Act. See 18 U.S.C. § 926(a) and 26 U.S.C. § 7805(a). In furtherance of that authority, ATF could simply require that machinegun replacement parts may be sold only to buyers who have a NFA license to possess the machinegun for which the parts are intended. This regulation would ensure that replacement parts are not used to manufacture new machineguns in violation of the 1986 machinegun freeze.

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

750 First Street, N.E., Suite 935 • Washington, D.C. 20002-4241
(202) 842-4420 • (800) 322-NAPO • (202) 842-4396 FAX



Executive Director
ROBERT T. SCULLY

Legislative Counsel
JULES BERNSTEIN
LINDA LIPSETT

March 25, 1993

The Honorable William J. Clinton
The White House
Washington, DC 20500

Dear President Clinton:

On Thursday, March 18, 1993, the leadership of national law enforcement organizations were invited to the FBI Training Academy, to attend a conference on the FFV Swedish 9mm armor piercing cartridge "M39B".

The Department of the Army is seeking to adopt armor piercing FFV Swedish Ordnance 9mm handgun ammunition for general use by all military personnel issued semiautomatic pistols. This ammunition will defeat all levels of soft body armor worn by law enforcement in America. The current military M882 9MM ammunition will not defeat the above armor systems.

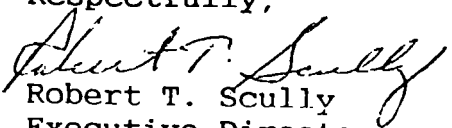
This ammunition, designated M39B, is currently undergoing the second stage of testing and the Department of Defense intends to make decisions as to the extent of fielding this ammunition by June of 1993.

Because of the serious consequences this ammunition would have on the law enforcement community, I am requesting that you inform the Secretary of Defense and the Joint Chiefs of Staff of the concern of the law enforcement community and urge them not to approve the M39B for general distribution to the armed forces.

Soft body armor worn by law enforcement officers is constructed of 16-18 plies of Kevlar or 50 sheets of Spectra Shield. Tests conducted at the FBI Academy prove that the M39B is capable of penetrating 48 plies of Kevlar or 70 sheets of Spectra Shield at a distance of 10 feet.

There has been a great deal of time, effort and money spent on equipping the law enforcement community in this country with soft body armor and the distribution of the M39B would certainly put every law enforcement officer in this country at risk.

Respectfully,


Robert T. Scully
Executive Director



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

The Honorable Les Aspin
Secretary of Defense
Room 3E880, Pentagon Building
Washington, D.C. 20301

Dear Les:

On behalf of law enforcement throughout the United States, I urge you to reconsider a Department of Defense (DOD) proposal to adopt 9mm armor piercing ammunition for standard use in all the military services. Former Attorney General William P. Barr wrote to former Secretary of Defense Cheney on this issue, but the Department of Defense response at that time was not encouraging. This ammunition is capable of penetrating the soft body armor commonly worn by Federal, state, and local law enforcement officers, and I concur that the potential for diversion for criminal purposes poses a serious threat to our law enforcement community.

The proposed 9mm bullet is FFV Swedish Ordnance Ammunition and is designated "M39B." It has a steel jacket, rather than the copper jacket found in most commonly available ammunition. In recent testing by the FBI, the M39B penetrated a thickness equivalent to three Kevlar soft body armor vests. The soft body armor worn by law enforcement officers would be rendered useless and obsolete if this ammunition becomes generally available. Although the technical features of the M39B do not make it illegal under existing statutes, we will aggressively seek to amend the law to include the M39B in the definition of "armor piercing" ammunition.

Ammunition with similar performance characteristics, generally foreign surplus military ammunition, is present in this country, but is not generally available.

Honorable Les Aspin

I understand the need for ammunition with the capabilities of the M39B for special operations or combat situations. However, if millions of rounds of this ammunition are distributed within the military services, the potential for diversion from legitimate needs is high. We should view as unacceptable any proposal that would provide easy access in the United States to bullets that would defeat equipment used to safeguard the lives of law enforcement officers.

Thank you for your personal attention to this issue which is of grave importance to the safety of members of our law enforcement community.

Sincerely,

Janet Reno

Memorandum



To : The Attorney General

Date 5/7/93

From : Director, FBI

DRAFT

Subject: DISTRIBUTION OF 9MM ARMOR-PIERCING
AMMUNITION TO U.S. MILITARY PERSONNEL

To contradict Department of Defense assertions that the military can maintain control over M39B inventories should full fielding occur, Gail Hoffman, Assistant to the Attorney General, recommended that the FBI conduct research to cite examples of the military's inability to control weapons and ammunition inventories.

On 5/5/93 the FBI conducted a literature review and National Crime Information Center (NCIC) inquiry regarding property stolen from military bases. This research indicated that there are 16,146 cases involving stolen military property currently under investigation and listed in NCIC.

Of these cases, 7,837 involve firearms, the largest number of which are stolen from the Washington, D.C. area, Texas, and California.

The following types and numbers of weapons were cited:

- * 1,447 revolvers
- * 2,916 pistols
- * 1,503 rifles (including M14s, M16s, and AK47s)
- * 389 shotguns
- * 1,176 machine guns
- * 406 miscellaneous weapons including 27 grenade launchers, Claymore mines, recoilless rifles and a 425 pound boat howitzer.

The Attorney General

Re: Distribution of 9mm Armor-Piercing
Ammunition to U.S. Military Personnel

On 5/6/93, Larry Duchnowski, Intelligence Division, Bureau of Alcohol, Tobacco and Firearms (BATF) stated that up until 1992 there was no national clearinghouse for reports of stolen military ammunition. The magnitude of the problem is largely unknown because (1) most thefts are not discovered until stolen ammunition is recovered and (2) the military only notifies BATF of major thefts. Since the implementation of its Tactical Intelligence Database, only one theft of 3,200 rounds of ammunition has been reported to BATF by the military.

For example, a recent theft of 7,714 rounds of military ammunition from the United States Marine Corps Base at Quantico, Virginia was only discovered when a military policeman and firearms instructor was being evicted from his home.

In 1991, a Special Forces Sergeant was convicted on weapons related charges. Authorities stated that enough explosives were stolen from Fort Bragg, North Carolina and Fort Campbell, Kentucky to "blow up the Gator Bowl." Among the items seized were 90 pounds of C-4, Claymore mines, hand grenades, antiaircraft and antitank machine guns.

The FBI in Little Rock, Arkansas, recently recovered 18 truck loads of military equipment stolen over a four year period by an enlisted supply clerk. Among the approximately one million dollars in items recovered were weapon components, ammunition, and other accountable property such as heavy machine tools used to repair tanks, tool sets and a generator capable of providing power to a small town. The supply clerk had also altered computer records to conceal his crime.

A past Associated Press (AP) newspaper article disclosed a Senate Task Force study of Pentagon mismanagement of its huge inventory of weapons and ammunition. The article noted:

- * A system so poorly organized that the Department of Defense is likely losing hundreds of millions annually.
- * A problem so large and diffuse that its scope cannot be accurately estimated.
- * A thriving black market for ammunition and explosives, particularly near military bases.
- * A problem so severe that the Army often doesn't know ammunition is stolen unless it is recovered.

The Attorney General

Re: Distribution of 9mm Armor-Piercing
Ammunition to U.S. Military Personnel

A review of pertinent newspaper and magazine articles about stolen military explosives and munitions disclosed:

- * 3,710 pounds of C-4 explosive stolen from military bases between 1979-1990.
- * Over 1,000 calls to military bomb squads between 1989-1990 which recovered:
 - 85 rockets
 - 400 grenades
 - 200 pounds of C-4
 - 45 pounds of TNT
 - 12 land mines.
- * GAO investigations which reveal that security and accountability is so loose that there is no way to determine the amount of ammunition or explosives actually used, pocketed, or sold on the black market.
- * Department of Defense admissions that more than one billion dollars worth of weapons and ammunition are stolen or misplaced every year.

From a review of these examples it is clear that the Department of Defense cannot adequately control their inventories of weapons and ammunition.

William S. Sessions

FAX COVER SHEET

OFFICE OF CHIEF
COUNSELBUREAU OF ALCOHOL, TOBACCO
AND FIREARMS

Washington, D.C. 20226

TO: Jose CerdaFax Number: 456-7028FROM: Brad BucklesPhone Number: (202) 927-7772Fax Number: (202) 927-8673

Number of Pages to Follow: _____

Comments: Per our conversation

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514-2424

TO:

(b)(7)c, (b)(6)

(F)

(ATF)

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Rebecca Hedlund (Treasury)

Holly Kulka (Treasury)

(FBI)

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FROM Tim Macht, Counsel to the Assistant A.G. for Policy Development

DATE January 11, 1994

In anticipation of today's 4:00 P.M. gun licensing meeting, to be held in Room 4260, Main Justice Building, I fax to you all a draft of a gun licensing proposal. This reflects the work of the Office of Policy Development, based on preliminary discussions with ATF and FBI. It is in early draft form, waiting for additional comments from Gail Hoffman and Eldie Acheson; however, it seemed wise to get the ball rolling for today's meeting by having all of you read through this draft in advance and begin to think about its strengths and weaknesses. Please do, if you have the time, give this at least a quick read.

At the meeting, we will go through this draft section-by-section, to see where it needs revision or elaboration. Unfortunately, Gail Hoffman -- who has been pulled onto a time-sensitive, high priority project for the Attorney General -- will not be able to attend the meeting (although she may be able to come to part of it).

I will see you all at 4.

CHIEF COUNSEL

JAN 11 P 10 20

OFFICE OF ALCOHOL,
Tobacco and Firearms

DRAFT

PROPOSED GUN LICENSING SCHEME

State-Issued Firearms Safety License Required to Purchase or Possess Any Firearm

How the Plan Would Work

OVERVIEW

Persons desiring to purchase or possess any firearm would need a valid firearms safety license. Federal law would set the minimum licensing requirements: under federal law, a firearms safety license could be issued only to a person who has attended a state-approved firearms safety training course, oriented to the type of weapon that he or she wanted to acquire or possess, containing four instruction and testing components: (1) instruction on safe, responsible and lawful use of firearms; (2) instruction on the fundamentals of marksmanship, (3) instruction on firing of the weapon (including live firing); and (4) a written test on the contents of the course, that the applicant would have to pass in order to receive a certificate of completion of the course. However, it would be left to the States both to decide which entities within the State (gun dealers, local sheriff offices, private gun associations and/or state agencies) would be authorized to do the training and to ensure the courses' compliance with the general federal guidelines and specific State implementing requirements. Any person in possession of a firearm -- including current firearm owners and persons receiving a firearm through a private sale or transfer -- would have to have a firearms safety license indicating that he or she was trained to safely and lawfully use that class of firearm; thus, current firearm owners and unlicensed persons receiving a firearm through secondary transfers would need to visit a state-approved safety training site, take the requisite course, and pass the written test. Additionally, all private, secondary transfers of handguns would have to be conducted through a licensed gun dealer or local law enforcement: at the dealer's premises or at the local law enforcement office, the buyer or transferee would fill out a form 4473 and be subjected to a Brady-type background check-- the same requirements that are imposed on persons purchasing a handgun directly from a retail dealer.

It would be a federal offense to sell or transfer a firearm to a person lacking a valid firearms safety license for that class of weapon; to purchase or possess a firearm without obtaining the appropriate firearms safety license; and to receive a handgun from a person other than a licensed dealer without filling out a form 4473 at the premises of a gun dealer or a local law enforcement office.

DETAILS OF THE PLAN

Persons Who Would Need to Get a Firearms Safety License

•New Purchasers of Firearms from Retail Dealers

Any person purchasing a firearm from a retail dealer would need a firearms safety license (FSL) for the class of weapon to be purchased. Such license could be obtained prior to the sale by going to any state-approved training site, taking the course required for the class of weapon to be purchased, receiving a certificate of completion, and obtaining the FSL. The FSL would then be presented to the retail dealer, who could sell a firearm only to a person with a valid FSL for the class of weapon to be purchased (and after any waiting period and background check required by state or federal law). The requisite training and FSL issuance could also be done on the dealer's premises at the point-of-sale (if the given State authorized gun dealers to do training and issue FSLs). Where waiting periods are mandated by federal or state law, the requisite training could be done during such waiting period.

•Current Firearm Owners

Because it would be unlawful to possess a firearm without a FSL (not simply to purchase a firearm without a FSL), all current firearms owners would be given a specified period of time from the effective date of the legislation to visit a state-approved training site, take the applicable course, and obtain a FSL. A current owner would only be excused from taking a safety training course if he or she could demonstrate equivalent knowledge of gun safety by establishing himself or herself as an exempted person (see "Exempted Persons").

Non-exempted current owners who did not endeavor to obtain a FSL within the specified time period, or who could not pass the safety exam within that period, would be required to make their weapons inoperable or transfer them to a person holding a FSL for that class of weapon. Otherwise, they would be in violation of the federal law against possession of a firearm without a FSL.

•Persons Receiving a Firearm Through a Private Sale or Transfer

After the end of a grace period, it would be unlawful to transfer a firearm to a person who did not have a valid FSL for the type of firearm in question. Therefore, any unlicensed person who was to receive a firearm from a private person -- just like any unlicensed person planning to purchase a firearm from a retail dealer -- would first need to take an approved safety training course and receive a FSL.

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As discussed more fully below (see "Secondary Transfers"), any person purchasing or otherwise receiving a handgun from a private person (i.e., from a person not holding a dealer's license) would, in addition to needing a FSL, have to complete the transaction itself through either a licensed dealer or through local law enforcement (as California now requires). The handgun would be retained by the dealer or local law enforcement during the pendency of a Brady-type background check, and would be delivered to the buyer only after he or she passed the check.

How The FSL Would be Obtained and Renewed

The license applicant would visit an official training site, present clear evidence of his or her identity and age, and fill out a standardized license application form which would include the applicant's name, address, date of birth, and social security number, the class(es) of firearm for which the applicant desired to be licensed, and a certification that the applicant was not a prohibited person under the Gun Control Act (i.e. was not a felon, mental defective, etc.). Upon successful completion of the training course and exam, a certificate of completion would be appended to the license application form, and the applicant would be issued a FSL (either at the training site or at a separate licensing site, as the State chose). FSLs would contain the licensee's name, address, date of birth, social security number and photograph, an expiration date, and the particular class of firearm covered.

FSLs would be valid for a period of five years, after which time the license holder would be required to take a refresher course and would receive a new FSL, valid for an additional five years. In the case of loss or destruction of a FSL, a duplicate FSL would be issued by the state licensing authority upon payment of a small reissue fee.

The Safety Training Program

There would be separate training programs for each of four classes of firearms: ordinary handguns; semi-automatic handguns; ordinary long guns; and semi-automatic long guns. The federal law would prescribe a minimum level of skill, knowledge and competency to be required of all firearms safety instructors.

Any firearms safety course, to qualify for State approval, would have to consist of not less than three hours of instruction including, but not limited to, one hour of instruction in each of the following areas: (1) safe, responsible and lawful use, handling and storage of firearms (including the laws applicable to the carrying and handling of that class of

firearm, and home safety and storage methods, such as childproofing of firearms); (2) the fundamentals of marksmanship (including demonstration of how to load, unload and handle the firearm), and (3) firing of the weapon (including lessons on range safety, and both dry firing and actual firing at a stationary target).

The course would be followed by a written test on the contents of the course, designed to ensure knowledge of basic firearms safety and of applicable federal, state and local firearms law. The applicant would have to pass the test in order to receive a certificate of completion of the course. Proficiency in the use of the firearm would not be a prerequisite to the issuance of a FSL.

Approved Training and Licensing Sites

Each State would be required to ensure that, by a given date, a training course and licensing site (training and licensing could be done at the same site, if the State chose) shall be available to persons at convenient times and locations in a person's county of residency, continually throughout the year. To that end, each State would be allowed to decide which entities within that State (gun dealers, existing private firearms safety programs, local sheriff offices, or state agencies) would be authorized to do the requisite safety training and to issue FSLs.

The States' Implementing and Monitoring Responsibilities

ETC?
In addition to selecting training and licensing sites, each State would be required, subject to the general training guidelines set out in the federal statute, to proscribe the course content and instructional materials for firearms safety courses, certify training programs to be offered at the approved sites, continuously monitor those programs to assure their conformance to federal and state specifications, and periodically update the curriculum of the course. Further, each State would be required to develop and provide the guidelines used to certify firearms safety instructors and designate as an instructor any person meeting the federal and state specifications. Finally, each State would be required to develop an objective test on the subject matter of the firearms safety course (to include testing of state and local firearm law) and develop the FSLs themselves.

Each State would be required to certify, as a condition of receipt of BJA assistance grants or police hiring grants, that it would fulfill these requirements.

Maintenance of Records of Licensed Persons

Each local licensing authority would be required to keep adequate records of all FSLs it had issued and forward copies of those records to a central licensing authority, chosen by the State, which would maintain a database containing all residents who had been issued FSLs.

Cost and Funding

Each firearms safety program would have the following costs: ammunition, targets and cleaning material, protective equipment (eye and ear), a fee for the instructor, and, in some cases, a firing range fee. FBI training experts estimate that to conduct each 4-hour course would cost \$XX, including Certified training programs would be authorized to assess a fee on those taking the course to offset their full costs.

The States would also accrue costs in implementing and monitoring the safety training programs within the State. The State would be authorized to impose a reasonable licensing application fee to offset the costs of administering the safety training. Upon documentation that the full costs of administering the program were not recouped by the application fee, the States would be eligible for federal government grant moneys to offset their remaining, reasonable administration costs.

Secondary Transfers

For the ensuing five years in which the Brady waiting period and background check are in effect, whenever a private handgun transfer was anticipated, the buyer (or transferee) and seller (or transferor) would have to bring the handgun to a local gun dealer or to local law enforcement. Once there, the buyer would have to obtain or show a FSI and fill out a form 4473 -- which is required of all persons purchasing firearms from a licensed dealer -- indicating the name, address, etc. of the buyer and seller, certifying that the buyer is not a prohibited person under the Gun Control Act, and containing all relevant information about the handgun (the manufacturer's name, model name and number, caliber, etc.). The dealer would then notify local law enforcement to perform a Brady-type background check of the buyer, or local law enforcement would perform such a check directly, and the dealer or local law enforcement would hold the handgun in the interim. Assuming the buyer passed the check, the handgun would be delivered to the buyer, and copies of the records of the transaction would be retained by the dealer or law enforcement office and by the buyer and seller. The dealer or local law enforcement office would be authorized to impose a small fee for overseeing the transaction.

To coincide with the establishment of the national instant criminal background check system, which will apply to all

firearms in five years time, this regulation of secondary transfers would expand to cover all firearms (not simply handguns) after 60 months.

Penalties

The Gun Control Act of 1968 would be amended to add to the class of prohibited persons (presently including felons, mental defectives, etc.) anyone, other than an exempted person, who "does not have a valid firearms safety license for the applicable class of firearm." Therefore, it would be a federal offense, subject to a maximum term of ten years imprisonment, to knowingly sell or transfer a firearm to a person without a valid FSL for that class of weapon, and to knowingly receive or possess a firearm without the appropriate FSL.

Additionally, it would be unlawful for a person to purchase or otherwise accept delivery of a handgun unless that person has first filled out a 4473 form in connection with the purchase or receipt of the handgun and waited the requisite five days for a Brady-type background check.

Exempted Persons and Persons Excused From Taking a Firearm Safety Training Course

The following persons would not be required to obtain a FSL: any person serving in the Armed Forces on active duty; any person in the active reserve component of the Armed Forces, while on active duty; and any full-time member of the state or local police or any officer of the United States Government authorized by law to carry a concealed weapon. *— ush*

Additionally, any person (not exempted above) possessing a state license to carry a concealed weapon issued only after successful completion of a state-approved firearms safety course; and any person (not exempted above) with a copy of a certificate of completion of a law enforcement firearms safety training course offered to or required of public or private law enforcement and conducted by a law enforcement agency would be excused from the requirement of taking a firearms safety training course for the class of firearm for which such license was issued or with respect to which such training was given, and would, upon verification, automatically be issued a FSL for that class of weapon.

Why this Plan?

GENERAL PURPOSE

Thanks to Brady, a person will now have his background checked before he or she can buy a handgun from a gun dealer, and, in many States, that person will also have to obtain a license to purchase or carry the handgun. However, generally speaking, people are not required to demonstrate a knowledge of firearms safety before they can acquire or carry a handgun or other firearm.¹ By contrast, in most States it is necessary to complete a firearms safety training course before a hunting license is issued or before a weapon may be carried in the course of one's employment, and it has been documented that such safety training saves lives. It is inconsistent for a person to have to get firearms safety training before being able to use a firearm to hunt or on the job, yet not be required to have any basic knowledge about the safe handling and operation of firearms before acquiring a firearm. The number of accidental firearms deaths in this Nation is staggering, especially among children, and a federal requirement that all firearm owners be educated about their responsibilities as gun owners could help eliminate the ignorance and neglect that lead to children playing with loaded weapons and shooting themselves inadvertently.

By requiring all firearms owners (both current and future owners) to take the requisite safety training or present evidence of equivalent firearms expertise, the proposed federal plan, unlike existing state firearms safety training schemes in California and Rhode Island (which require only new purchasers of handguns to get safety trained), is a comprehensive licensing scheme. This universal licensing scheme is designed to do more than help eliminate the potential for accidental deaths and injuries. Licensing all firearms owners (not just those who happen to buy firearms after the legislation), and making unlawful the unlicensed possession of a firearm, provides law enforcement with an important mechanism for confiscating firearms in the hands of unlicensed persons and prosecuting such unlicensed persons who carry guns and yet have not been properly trained to safely and lawfully use them.

bad word!

¹Many States require a permit to purchase certain firearms, issued only after completion of a background check; however, only two States -- California and Rhode Island -- make safety training an additional condition of firearm acquisition. Five states -- Florida, Maine, Montana, Oregon, and West Virginia -- require licenses to carry concealed weapons that are issued only to persons who have completed an approved firearms safety course or otherwise demonstrated their competence with a firearm.

This scheme would also require persons receiving handguns through private sales or transfers to go through the same procedures as persons purchasing handguns through retail dealers, including a Brady-type background check. At present, secondary transfers are entirely unregulated by federal law. As a result, there is no effective method of ensuring that handguns are not privately transferred to prohibited persons, and it is difficult to trace handguns used in crime. Federal regulation of secondary transfers would work in conjunction with Brady to ensure that all persons acquiring a handgun (not just those who have purchased handguns from a retail dealer) are subject to background checks before they obtain their handgun.

EXPLANATION OF EACH PROVISION

Persons Who Would Need to Get a Firearms Safety License

The federal scheme would require a firearms safety license for all persons who anticipate the purchase or transfer of a firearm. However, the scheme -- in what is likely to be a controversial feature -- also would require current firearm owners to get licensed. This universal licensing is important for three reasons: (1) to ensure that the estimated 70 million(?) existing firearm owners also receive the benefit of appropriate firearms safety training; (2) to require those persons already possessing firearms to certify on their license applications that they are not prohibited persons; and (3) to allow licensing to be used as a law enforcement tool, because firearm possession by any unlicensed person would become a criminal offense and any firearm in the hands of any unlicensed person could be confiscated and any such person could be prosecuted. It might be argued that at least this third objective could still be achieved if only persons acquiring new firearms were to be required to get FSLs, and possession of only newly-acquired firearms by unlicensed persons were outlawed. Senator Feinstein's Semiautomatic Assault Weapon Bill draws a similar distinction, outlawing possession of semiautomatic assault weapons but exempting weapons lawfully possessed before the effective date of the legislation. However, in Senator Feinstein's bill, the distinction between old and new weapons is maintained (in part) by criminalizing the manufacture of new semiautomatic assault weapons except for very limited, exempted use and requiring the serial number of any such new weapon manufactured to show the date on which it was manufactured. It would be more difficult to distinguish between old and new firearms when, as would be the case here, those firearms would continue to be produced in large numbers. Also, even if the distinction could be maintained, to allow owners currently in lawful possession of firearms to remain unlicensed (assuming that they did not acquire new weapons) would diminish the use of licensing as a potential means of reducing the number

of firearms in circulation (because no gun currently in circulation would be subject to confiscation) and decrease the effectiveness of licensing as a prosecutorial tool (because any person found to be in unlicensed possession of a firearm would always have available the difficult-to-defeat defense that he or she lawfully possessed it before the legislation became effective).

How The FSL Would be Obtained and Renewed

The proposed licensing scheme requires safety training for all firearm owners; however, it does not require FSL applicants to undergo a separate background check before the issuance of a FSL (nor does it remove the need for any background check required by federal or state law). FSLs are issued without a background check (although the applicant must certify that he or she is not a prohibited person) for several reasons. First, the Brady Act already mandates background checks of persons buying handguns from licensed dealers during the next five years, at which time a national instant check system is to come into operation and apply to the retail purchase of all firearms. Handguns account for the vast majority of criminal firearm use, and Congress has effectively determined that, until a national check system is in place, scarce local law enforcement resources should be reserved for checks on purchasers of those weapons most likely to be used in crime. Congress is likely to resist further straining the resources of local law enforcement officials already burdened by Brady implementation by requiring background checks on those acquiring firearms other than handguns. Background checks could be required to obtain handgun FSLs only; however, such a scheme appears unnecessary in light of Brady and could, in fact, undermine Brady. Brady allows gun dealers to sell a handgun immediately, without waiting the requisite five days, if the buyer presents a permit that allows the buyer to possess or acquire a handgun, was issued not more than five years earlier by the State, and "the law of the State requires that, before any . . . licensed dealer completes the transfer of a handgun to a [private] individual, an authorized government official verify that the . . . possession of a handgun by the transferee would [not] be in violation of law." Therefore, if FSLs for handguns were issued only after a background check, the possessor of a FSL could avoid having to undergo a separate background check each time a handgun is purchased (as Brady otherwise requires).² It is undesirable to enact a scheme that

²On a different reading of the quoted Brady language, persons holding handgun FSLs issued after background checks might not be exempted under Brady. Brady exempts a permit holder from the waiting period and background check requirement if "the law of the State" provides that such permit is to be issued only after a background check. Arguably, if FSLs were to be issued

would increase the number of persons who could avoid separate Brady background checks at each point-of-sale. Instead of undermining Brady by requiring a background check as a condition of licensure, the proposed scheme complements Brady (which applies only to handgun purchases from a licensed dealer) by requiring persons receiving a handgun through a private, secondary transfer to also undergo a background check.

The proposed scheme also does not involve licensing of a particular weapon, but rather licenses owners. An alternative scheme would require a firearms purchaser, each time he or she purchased a firearm, to get a separate license for that weapon containing the relevant information about the weapon (its model, serial #, etc.). It was determined that such a scheme, by requiring repeated license issuance and fine record-keeping on the particulars of all guns, would be administratively complex and burdensome, risk being criticized as a "registration" scheme, and, ultimately, not add much to the proposed scheme (except, perhaps, facilitating the regulation of secondary transfers).

FSLs must be renewed every five years, after completion of a refresher course. In Rhode Island's and California's safety training schemes, no person is required to take a safety training course more than once. Rather than follow these States, it was decided that the skills and information in question are easy to forget and should periodically be retaught and retested.

The Firearm Safety Training Program

The proposed plan requires the States to offer separate firearms safety courses for each of four classes of firearm. Differentiated training was considered important because a handgun owner should be familiarized with different laws and different handling and marksmanship techniques than, say, the owner of a semi-automatic rifle.

only after a background check, it would be federal law that would provide such background check. On the risk that such interpretation might not prevail, it would also be possible to make explicit in the new federal legislation that holders of handgun FSLs would not be exempted from Brady by virtue of such licensure. However, Congress might not be willing to, in effect, amend Brady after the fact. Furthermore, to exempt persons who were background checked in the course of acquiring a state permit to purchase or possess, but, on the other, not exempt persons who were background checked in the course of acquiring a FSL, would lead to great confusion-- especially because any federal scheme in which background checks were performed would have to make appropriate exemptions for state licensing schemes in which background checks were performed (lest firearm purchasers in certain states have to be background checked twice for each of two different licenses).

The four components that any qualifying training course must contain are designed to ensure instruction and testing in the rudiments of firearm safety, while leaving the States the freedom to decide the specifics of the curriculum (including any additional instruction considered especially relevant in that locality).

Approved Training and Licensing Sites

The federal scheme, rather than dictating which entities will be authorized to do the safety training and to issue the FSLs, leaves it to the States to decide which entities will have the authority to perform these functions. Each State varies in population density and distribution, number and concentration of resident gun owners, number of existing private firearms safety courses, number of gun dealers, and state and local government structure; therefore, it makes most sense to allow each State to decide how many, and which entities, within the State should conduct safety training classes and issue licenses.

The States' Implementing and Monitoring Responsibilities

The plan is designed to decentralize the process of certifying and monitoring firearms safety training programs to allow for effective, flexible, locally-based regulation of safety education and training. An alternative would have been to appoint a federal agency, such as ATF, to solicit applications from existing firearms safety courses or programs (and from gun dealers), certify programs with proposed curricula meeting the federal standards, and continuously monitor those programs. However, ATF resources are too limited to make feasible such an implementation and monitoring scheme (as evidenced by ATF's current difficulties regulating licensed gun dealers), and, in any event, local officials would appear to be more conveniently placed to visit the training sites and perform the requisite hands-on monitoring.

There is one potential problem with assigning the lion's share of regulatory responsibility to the States: the Tenth Amendment, which, after New York v. United States, ___ U.S. ___, 112 S.Ct. 2408 (1992), precludes the federal government from enlisting state regulatory machinery to advance federal goals. In New York, the Court struck down a federal provision requiring the States to either regulate radioactive waste disposal according to Congressional mandate or assume the costs of cleaning up such waste. The Court held that such a scheme would "commandeer" state governments into the service of federal regulatory purposes, " 112 S.Ct. at 2428, and concluded the "Federal Government may not compel the States to enact or administer a federal regulatory program." Id. at 2435. The design of the proposed federal licensing scheme will have to be

extremely sensitive to this injunction, by either making sure that the States have considerable leeway in how they regulate safety training programs such that they are not forced to do so strictly according to Congressional mandate (as the current proposal endeavors to do), or, as a last resort, by resorting to a scheme of federal (ATF?) certification and monitoring.

Maintenance of Records of Licensed Persons

The state licensing authority would maintain a database containing all residents who had been issued FSLs and the date of such issuance. This database would serve two purposes: first, it would allow law enforcement to immediately determine whether any FSL was genuine and valid; second, it would allow persons whose FSLs had been lost or destroyed to quickly receive a duplicate from the state licensing authority.

Secondary Transfers

Under existing law, an individual purchasing a firearm from a licensed dealer must fill out a 4473 form certifying that he or she is not a prohibited purchaser. By contrast, if a person purchases a firearm from a private individual, he or she need not fill out this form. Therefore, private transfers are essentially unregulated by federal law. However, most States with waiting periods or background checks regulate dealer sales and secondary transfers (in some cases by requiring all transfers to occur at the premises of a licensed gun dealer, by requiring a transferor to notify local law enforcement of the proposed transfer, or by requiring the transferee to present the transferor with a valid permit to purchase). Brady does not similarly regulate secondary transfers; therefore, it is important to create a federal scheme through which the background of a private transferee could be checked.

Under the proposed scheme, the handgun transferor and transferee would be required to go to the premises of a licensed dealer or to local law enforcement and document the transfer in the dealer's or law enforcement's records. When the parties went to a dealer's premises, the dealer would go through the same procedure as for any person buying a handgun directly from the dealer (i.e., ask the buyer to produce a FSL, fill out a form 4473, and forward the information to the local police for a Brady-type background check of the buyer). When the parties went to local law enforcement, law enforcement would do the Brady check directly.

Exempted Persons and Persons Excused From Taking a Firearm Safety Training Course

The plan would exempt members of the armed forces, law enforcement personnel, and persons having recently taken safety

courses designed for and approved by law enforcement. Additionally, it would have been possible (as Rhode Island does), to excuse any person from the requirement of taking a firearms safety training course who, having reason to believe that he or she does not need the required course, requests an instruction manual and applies for, takes, and passes a test on the subject matter of the course. This option was rejected on the belief that it is important for persons who may already be familiar with the fundamentals of the course to, nonetheless, experience the live firing, and receive actual demonstration of recommended procedures for handling a firearm, loading and unloading the firearm, cleaning the firearm, gripping the firearm, sight alignment and various range safety habits, all of which could not properly be explained or tested in writing.

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FIREARM LICENSING LAW STANDARDS
4 HOUR COURSE

1st Hour: Safety and Responsibility

Firearm Safety - Presentation and demonstration of correct methods of safe handling of firearms, to include discussion of ammunition, transportation and storage of firearms, and range safety equipment (eye and ear protection).

Legal Responsibility of Ownership/Use - Presentation of applicable Federal, state, and local laws concerning legal ownership and transfer; Criminal/civil responsibilities when used in self-defense;

Home Safety/Storage - Presentation and demonstration of safe firearm storage to prevent unauthorized access; Display of commercially available home safety devices; Potential hazards of easy access to unauthorized persons or children.

2nd Hour: Fundamentals of Marksmanship

Handgun Nomenclature - Presentation concerning specific parts and operating controls of handguns; Discussion of differences between revolvers and semiautomatic pistols.

Handling of Firearm - Demonstration of recommended procedures for picking up, carrying, transporting and discharging a firearm at a target.

Loading/Unloading/Clearing - Demonstration of safe procedures of loading, unloading, and rendering a firearm safe.

Gripping the handgun (1-2 hands) - Demonstration of establishing grip of a handgun with one and/or two hands. Student practical application of grip.

Sight Alignment/Sight Picture - Demonstration of fundamentals to achieve correct sight alignment and sight picture with iron and optical sights (as applicable).

3rd Hour: Firing of Handgun

Range Safety - Lecture and demonstration of suggested range safety habits and procedures.

Dry firing - Directed functioning of the handgun by the student, without live ammunition, with guidance by instructional staff.

Live Firing - Directed firing at a stationary target by the student with guidance by instructional staff; No score or level of proficiency should be specified, but student must demonstrate safe handling of the handgun to successfully complete course.

Care and Cleaning - Demonstration of safe and recommended firearm cleaning methods followed by "hands on" application.

4th Hour: Question and Answer, Review, Test

Question and answer session - Opportunity for students to ask questions concerning issues not understood or presented during the course.

Pre-test review - Instructor will review course content.

Written Test - Administer written test.

Post-test review - Instructor will review with class any questions answered incorrectly to assure complete understanding of course content.

(Questions should emphasize students' understanding of weapon safety, operation, and responsibilities. Questions may vary depending on locale. Some basic legal questions may be area specific.)

Presentation of certificate of completion.

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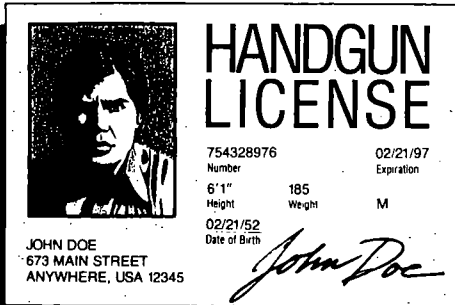
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Proposed Comprehensive Bill of Handgun Control, Inc.



Requires a license to buy a handgun; mandates fingerprint checks and safety training for license applicants; includes a permanent 7-day cooling-off period; and requires the registration of handgun transfers.



Prohibits gun possession by those convicted of violent misdemeanors, including spousal abuse and child abuse; and requires a special license for the possession of a gun arsenal (20 guns or 1000 rounds of ammunition).



Requires gun dealers to pay an annual license fee of \$1000; prohibits the sale of more than one handgun a month to any individual; mandates a federal license for ammunition dealers; requires background checks for gun store employees; bans firearms sales at gun shows; and creates a private cause of action for gun law violations.



Bans semiautomatic assault weapons, Saturday Night Special handguns, and non-sporting ammunition; regulates gun safety; and increases the surtax on handguns and handgun ammunition.

HANDGUN CONTROL

ONE MILLION STRONG . . . working to
keep handguns out of the wrong hands.

THE SCHUMER HANDGUN CONTROL AND VIOLENCE PREVENTION ACT

We do not have to live with this insanity, to just "put up" with it. The people of America want control over handguns. They wanted the Brady Law. They want more gun control. And this bill will give them that.

*U.S. Rep. Charles E. Schumer (D-NY)
December 8, 1993*

WHY THE SCHUMER BILL: THE FLOW OF LEGAL GUNS TO CRIME

Every handgun used in a crime starts out as a legal gun. The manufacture, import, wholesale distribution, and first retail sale of handguns are all regulated to some extent under existing federal law.

But thousands of handguns leave these lawful paths. They end up in the hands of violent criminals, or others who are barred by law from possessing firearms. These handguns pass into illegality and violence through four main holes in the system: gun runners, straw buyers, rogue gun dealers, and theft. These holes exist because of (1) loopholes in existing law, (2) inadequate law enforcement powers, and (3) the easy accessibility of phony identification documents.

BREAKING THE LINK TO VIOLENCE

The Schumer Handgun Control and Violence Prevention Act is a comprehensive package focused on blocking the flow of handguns through these holes in the present system. It will serve as an important and needed complement to the Brady Law enacted last year.

The Schumer Bill -- to be introduced as soon as Congress reconvenes -- will help reduce easy access to firearms by violent criminals and illegal gun runners. It will do this without infringing on the legitimate uses of firearms for sporting purposes or self-defense. (Separate bills already offered by Rep. Schumer banning semi-automatic assault rifles and cop-killer bullets will also see early action in Congress.)

Here are the key provisions of the Schumer Bill and how each attacks one or more holes in the present system:

● **LICENSING: NATIONAL HANDGUN CARD.** The Schumer Bill requires that all handgun buyers possess a national handgun card, a national license. This card will be issued after a thorough background check, including fingerprints. It will be regularly renewed. Applicants must demonstrate that the address used on the card is in fact their principal residence.

The national handgun cards will be designed to be secure against forgery. They will be issued by the federal Bureau of Alcohol, Tobacco, and Firearms (ATF). However, buyers will be permitted to use equivalent cards issued by states, provided that both the state card and the system under which it is issued are certified as meeting strict federal standards.

Why? Gun runners. These are people who go to states with lax gun control and buy hundreds of guns using fake identification documents. They then go to other states or cities and sell guns on street corners to anyone who comes along with the cash. The problem here is obvious. There is no standard, national, secure form of identification in handgun sales. Violent criminals and those who supply them take advantage of that. They use easily obtained phony documents.

The national handgun card directly attacks the fake identification that the gun runners need to ply their trade. It directly complements the Brady Law by making sure that the person applying to buy a handgun is indeed the person who will be the subject of the background check. This provision will also make it much tougher for violent persons to use temporary residences in other states to buy guns they could not buy in their home states.

● **ONE GUN A MONTH.** The Schumer Bill will make one handgun a month the national standard.

One gun a month will stop any gun runner who does get a national handgun card from flooding the underground market with guns.

● **REGISTRATION.** Current federal law only tracks the sale of handguns through licensed dealers. But thousands of handguns change hands in unrecorded private transactions. To track the movement of handguns after their first legal sale, the Schumer Bill requires that all handgun transfers be registered with ATF.

Why? Straw buyers. These are people with clean records who stand in to buy guns for criminals and gun runners. They often work with rogue dealers. By the time the police catch up with the straw buyer, the real gun runner is impossible to find. Registration records will make it possible to identify both straw buyers and gun runners, and will provide evidence of their illegal activities. Straw buyers who don't register their resales will be subject to federal prosecution.

● **DEALER LICENSING REFORMS.** The Schumer Bill imposes much tougher standards for issuing federal firearms dealers licenses. Anyone who wants to be a federally licensed firearms dealer will have to pass a strict background check and meet all state and local regulations. Those who wish to sell handguns in particular will be

required to meet a higher "public interest" standard than those who sell long guns only. The fee for a dealer's license will be at least \$600, but the Secretary of the Treasury is directed to set the fee at a level that ensures fee revenues meet overall costs. All licensees will be required to have a real place of business. Those places must meet high security standards. Restrictions imposed on ATF by NRA-sponsored legislation in the past will be eliminated -- ATF will be given real teeth to inspect gun dealers and their records. And gun dealers who negligently sell firearms to criminals or youths will be liable to pay civil damages to gun violence victims for the injuries those guns cause.

Why? Rogue gun dealers. These are federally licensed firearms dealers who break the law and sell thousands of firearms to drug gangs and violent criminals. A recent ATF study showed that almost three-quarters of federally licensed dealers run their businesses from their homes. Many of these "kitchen" dealers -- without a fixed place of business -- sell guns haphazardly to whoever comes along with the cash. They also have virtually no security against theft.

Lax firearm dealer regulation is one of the biggest holes in the system. Incredibly, it is easier to get a federal firearms license than to get a drivers license. There are over 280,000 federally licensed dealers -- 31 times the number of McDonald's restaurants. Kitchen dealers sell guns from car trunks, at gun shows, and across kitchen tables.

The licensing reforms in the Schumer Bill will make federal firearms dealer licenses true public trusts. Dealers will become partners of law enforcement -- not adversaries -- in keeping guns away from violent criminals. Those who can't, or won't, treat the business of selling guns as a public trust will have to find a new line of work.

● **STIFF PENALTIES FOR THEFT, TOUGHER SECURITY.** The Schumer Bill imposes stiff penalties on gun thieves. It beefs up ATF enforcement and requires gun dealers to take thorough precautions against theft, just as federal law mandates safeguards against theft of pharmaceuticals in legal commerce.

Why? Theft. Thousands of guns enter the underground market through theft. They are often stolen from dealers with weak or nonexistent security precautions. Stiffer penalties and more security will cut these thefts back significantly.

January 5, 1994

For more information: U.S. Rep. Charles E. Schumer, Chairman
House Subcommittee on Crime and Criminal Justice
(202) 225-6616 or (202) 226-2406

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

26 Pages
to call
TESTIMONY

TESTIMONY

December 2, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-957

TO: Legislative Liaison Officer -

JUSTICE - Sheila F. Anthony - (202) 514-2141 - 217
TREASURY - Richard S. Carro - (202) 622-1146 - 228
EDUCATION - John Kristy - (202) 401-2670 - 207
LABOR - Robert A. Shapiro - (202) 219-8201 - 330
ONDCP - Babette Hankey - (202) 467-9870 - 257
NEC - Sonyia Matthews - (202) 456-6722 - 429

FROM: JAMES J. JUKES (for) *JJ*
Assistant Director for Legislative Reference

OMB CONTACT: Douglas STEIGER (395-3366)
Secretary's line (for simple responses): 395-3454

SUBJECT: HHS Proposed Testimony on Gun Violence - *2 pieces of testimony*

DEADLINE: 1 PM FRIDAY December 3, 1993

COMMENTS: This referral contains testimony from the Surgeon General and the CDC on gun and workplace violence.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

C. Walden/J. Cerda
Bill Galston
Nancy-Ann Min
David Kleinberg
William Dorotinsky
Jeff Bland
Jim Duke
Harry Meyers
Mark Schwartz
Cynthia Brown

Larry Matlack
Bob Pellicci
Barry White
Howard Paster
Barbara Selfridge
Keith Fontenot
Darlene Steil
Richard Turman
Maureen Walsh

]- see
page 9

- see page 10

LRM #M-957

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: Douglas STEIGER (395-3386)
Office of Management and Budget
Fax Number: (202) 395-3109
Analyst/Attorney's Direct Number: (202) 395-3386
Branch-Wide Line (to reach secretary): (202) 395-3454

FROM: JOSE CERDA 12/3 (Date)
DOMESTIC POLICY (Name)

x2564 (Telephone)

SUBJECT: HHS Proposed Testimony on Gun Violence

The following is the response of our agency to your request for views on the above-captioned subject:

____ Concur
____ No objection
____ No comment
X See proposed edits on pages _____
____ Other: _____
____ FAX RETURN OF _____ pages, attached to this response sheet

SORRY MISSED THIS PAGE.

Jose

12/02/93

15:50

OMD LRD/ECGG

003

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"schumer4.les"

STATEMENT
BY

JOYCELYN ELDERS, M.D.
SURGEON GENERAL OF THE UNITED STATES

PUBLIC HEALTH SERVICE
DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEFORE THE

SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE
COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

NYU Medical Center, Parkat Auditorium
550-1st Avenue
New York City, NY

Monday, December 6, 1993
9:30AM

FOR RELEASE ONLY UPON DELIVERY

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Good morning, Chairman Schumer and members of the Subcommittee. I am Surgeon General Joycelyn Elders. I am honored to be here today as a teacher, a pediatrician and a mother to discuss the topic of gun violence. And I want to congratulate you, Mr. Chairman, for your recent success on the Brady bill and to thank you for your continued leadership on this critical issue. I've read your recent comments about controlling semi-automatic assault weapons, and I, along with the Administration, fully support your efforts.

As I have contemplated the tremendous toll this epidemic takes on our nation's communities, I am convinced that firearm-related violence has become the leading threat to the health and future of our people.

Today I offer a dual message of both warning and hope. There is not a single cause for violence; therefore, there will be no easy or simple solution. But if we work hard, we can find effective solutions to this problem, and the payoff will be enormous.

Violence is an issue that demands and will get our best thinking, our most creative solutions, and our pulling-together as a society that can solve this problem.

As we enter the Holiday season, I'd like to offer my Holiday wish for parents and friends of children. Please think twice before buying that toy gun for a child. These toy guns are not child's play. A national study found that over 30,000 toy guns were seized in connection with

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crimes between 1985 and 1990, and some of these confrontations have been fatal. Also, too often, children tragically think real guns are toys.

Guns are not toys. ~~If we are going to get over our love of guns in this country, we must start by keeping toy guns away from our children.~~ The

Gun play of cops and robbers has become a fatal reality for too many of our children.

The Problem

Violence has reached epidemic proportions in our nation's cities, suburbs, and rural communities. On an average day in America, 65 people die and over 6,000 people are physically injured by interpersonal violence -- this is nearly 4 injuries each minute and one death every 22 minutes!

Violence is a community issue, with socio-economic roots and societal solutions. The financial costs of medical and mental health treatment, emergency response, productivity losses, and administration of health insurance and disability payments for assaultive injuries occurring in 1987 were estimated at \$19.9 billion, with lost quality of life costing another \$59.8 billion.

Violence is increasingly a problem of children killing children. Homicide is the second leading cause of death among 15- to 34-year olds in the United States and the leading cause of death for young African-American males and females. Look at this chart comparing homicides among our young people with those in other industrialized countries! Homicide rates for young men in America are vastly greater than those in other

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Western civilized nations. In addition, 12- to 24-year olds face the highest risk of non-fatal assault of any age group in our society. The average age of both violent offenders and victims has been growing younger and younger in recent years.

Children are growing up without hope for their future, without the belief that they will have a future. If we do not find powerful ways of correcting this situation -- not just incremental ways, not just more of the same -- we will not be able to pull our children back from the brink. The quality of life we all value so highly will be irretrievably lost.

It is sobering to realize that guns have been responsible for almost all of the recent increases in youth homicide and suicide. For young people 10 to 34 years of age, firearms are the second leading cause of death, and one out of five deaths to U.S. teens is due to guns. In fact, in 1990 more U.S. teenagers died from firearm-related injuries than from all natural diseases combined. Let me add, however, that fighting among children is nothing new, and that the total amount of fighting has probably not escalated. What has changed is that, now, when children fight, it can be fatal.

We have also learned about guns in the home. If you have a gun at home:

- o you are 8 times more likely to be killed by or to kill a family member or intimate acquaintance.
- o You are 3 times more likely to be killed or to kill someone in your

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home.

- o You or a family member are 5 times more likely to commit suicide.

When you add alcohol and a history of domestic violence to the mix, the risk of homicide is twenty times greater!

What causes violence and what can we do to prevent it? Although many factors contribute to this epidemic, at its root is poverty. Related to poverty are changing family structures, the plight of our inner-cities, and the difficulties in our schools. Research into the cycle of violence within the family has shown that children who are physically abused or neglected are more likely than others to grow up to abuse their own children. Other key factors are the availability of alcohol, drugs, and firearms to our children.

The Public Health Approach

Why do I feel we need a public health approach to solve this violence problem? First, public health focuses on prevention -- on programs and policies that are designed to prevent violent behaviors, injuries, and deaths before they happen. Until recently, most of our nation's response to violence has been to apprehend, arrest, adjudicate, and incarcerate violent offenders through the criminal justice system. This response is important, ~~but it is too little, too late in the chain of violence and~~

~~by itself, will not stop the problem. There is no conclusive evidence that incarceration is a deterrent to crime.~~

CRIMINAL
THAT ARE
THE
GREATEST
THREAT
TO SOCIETY.

BUT PRISONS
ALONE
CAN

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Although we must learn much more about how to prevent violence, what we do know clearly shows that violent behaviors, and the injuries and deaths that result, can be prevented. What's more, the police and judges and others in the criminal justice system are saying the same thing. We should not wait until violence happens to look for solutions. We must stop the violence before it starts. This means paying more attention to our children, to what they learn and to what kind of people they will become.

Second, public health provides a scientific basis for defining the problem and finding solutions. The topic of gun-related violence in our nation is a very emotional one. What we need is good factual information so that we can make good decisions about public policy, and individuals can make good choices about their behavior. Public health can do that by gathering the data and appropriate information on all aspects of the problem, including who is affected and what puts people at risk; designing interventions that address the multiple facets of the problem; and putting these interventions into communities to evaluate their effectiveness.

For example, in addressing the problem of firearm injuries to children and youth by using scientific methods we have been able to quantify the actual risks and benefits to children and families of having a gun in the home, as I outlined above. We can evaluate a wide array of preventive interventions to see which ones work and which do not.

We must shift the debate from a political-philosophical one over "gun control" to a scientific discussion of the health risks of gun ownership

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and how these risks can be reduced. Thus, public health brings a scientific method to the problem.

Further, public health can bring a broad array of existing resources in medicine, mental health, social services, education, and substance abuse prevention to bear on preventing injuries and death from youth violence. Another resource that is absolutely critical in preventing violence is the community. Public health works in partnership with communities to design programs that fit their unique problems and culture. The success of any program is likely to reflect the community environment and the connection of the program to the community as much as the nature of the program itself.

Intervention strategies

Because violence is a learned behavior and not a fact of life, we must focus on primary prevention. We actually need to begin at birth or before, and then provide education and training -- and opportunity -- throughout a young person's life.

Primary prevention strategies are nothing new for public health. Twenty-some years ago, when the toll of traffic crashes captured public attention, the public health community went to work. The first thing we did was require and strengthen driving training in our schools to ensure that our young drivers were educated about safe driving and avoiding accidents. Then we worked with the automobile manufacturers to make cars safer, adding seat belts and child safety seats; we worked with the highway designers to make highways safer. And then we cracked down on

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unsafe, usually drunken, driving. In other words, we educated our youth, we made sure that the cars they drove and the highways they used were safe -- and then, for those few who became threats behind the wheel, we took corrective action. *WE CAN ENGAGE IN A SIMILAR PROCESS (EFFORT?) TO ADDRESS ~~GUN~~ VIOLENCE,*

~~Just as we limit and license the number of people who can drive, we can limit and license the number of people who have guns. Just as cars have seat belts, airbags and other safety devices, we can make firearms and ammunition less deadly. Just as we suspend drivers' licenses when someone drives drunk, we can take guns away from those who use them recklessly.~~

The first step in primary prevention, the one I care most passionately about, is education.

1. We must educate our parents, beginning with prenatal classes. Having nurses visit homes of expectant parents to talk about child rearing, the risks of child abuse and how to prevent it is a proven way to prevent violence in the home. Improving parenting skills can improve how the parent and child interact, and may reduce the risk of childhood behavior problems and subsequent antisocial behavior that can lead to violence in later life. Programs targeted toward parents must address the psychological needs of the parents, especially their sense of being competent parents, the parental behaviors that influence the physical and social development of their children, and the stresses and social supports that can either help or hinder parents' ability to adapt to their children's needs.

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2. We must offer and support early childhood education classes like Head Start. Obviously, we need to begin with very young children. The importance of early intervention to interrupt the cycle of violence is clear and the potential effectiveness of these interventions has been demonstrated for prototype Head Start programs. This Administration is on record supporting full funding for Head Start. I believe this alone may have the greatest impact of all and save an entire generation of children.
3. We must provide comprehensive health education in all our schools, from kindergarten through high school, and that health education must include violence prevention. I am convinced that school offers us the best and easiest way to reach as many children as possible.

Programs that use students to teach their peers about violence prevention are a powerful force among adolescents and can be used effectively to help shape norms and behaviors in this group. Research on peer education for other health issues such as alcohol, tobacco, and drug use, has had positive results and shows promise for violence prevention.

We need more classes in conflict resolution designed to provide students the opportunity to develop empathy with others, learn ways to control impulses, develop problem-solving skills, and manage their anger. The methods used to teach conflict resolution usually include role-playing situations and analyzing the responses to, and consequences of, violence. Teaching young people social skills provides them with the ability to interact with others in positive and friendly ways. Training in social skills includes many things

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that help students successfully interact with others, such as: maintaining self-control, building communication skills, forming friendships, resisting peer pressure, being appropriately assertive, and forming good relationships with adults. Acquiring these skills provides students with appropriate standards of behavior, a sense of control over their behavior, and improved self-esteem. They may be less likely to resort to violence or become victims of violence.

Behavioral change requires time and continued efforts and is only likely to occur if the physical and social environment support and encourage it. That is why mentors are crucial to the process of changing children's behavior. They reinforce positive attitudes or behaviors that children are trying to express. Adult role models may be teachers, counselors, friends and confidants, or simply members of the community. Mentoring programs are cropping up in various settings, such as schools, churches, businesses, or other community locations. I applaud those who have agreed to commit their time, talent, and treasures to mentor a young person. Mentoring is an important intervention strategy.

4. Because the root of violence is poverty and hopelessness, the final shot of long-term prevention, is HOPE. I am concerned that children today are not learning the skills they need to be employable and productive in today's work force. I am worried that 1/4 of all young African American males ages 20-29 are incarcerated, on probation or on parole, while only 1/5 are enrolled in higher education. Hope means developing programs to train young people and make jobs available for them.

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Although these are the long-term solutions to violence, there are things we can do now:

1. We must keep the tools of violence out of the hands of our children. Thanksgiving came to this Nation this year with the passage of the Brady bill. We can celebrate again when semi-automatic assault weapons are banned. Clearly, Congress has realized that guns in the hands of children is a real problem. I am thankful that both houses have passed a prohibition on the transfer and possession of handguns by minors -- and I know the President looks forward to signing this into law. All these steps are a good start, but we ^{NEED NOT} ~~must not~~ stop there.
2. Just as we worked on traffic crashes, as public health takes on violence, we can identify and evaluate a wide array of strategies and interventions to prevent firearm injuries, focusing both on changing the ways we resolve conflict, on changing the ways we use guns, ~~and on changing the design of these weapons.~~ ^{FOR EXAMPLE,} ASSURING THAT GUNS ARE USED OR STORED SAFELY. ~~Examples of strategies to prevent firearm injuries include 1) assuring guns are used or stored safely; 2) limiting who has guns; 3) reducing the danger of guns themselves by changing their design to make it harder, for example, for a child to pull the trigger; and 4) reducing the number of guns in our society.~~ In the final panel, Dr. Mark Rosenberg, Acting Associate Director for Public Health Practice of CDC's National Center for Injury Prevention and Control, will talk further about interventions focused on firearms.

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CONCLUSION

The problem of violence does not lend itself to a single solution. Just as with traffic crashes, violence prevention requires a wide array of interventions. We can teach, we can enact laws and enforce regulations, we can change the environment. Youth can be taught skills to help them deal with violence. They can be helped to develop strategies needed to solve differences without violence. Young people can be taught about the situations or actions that are likely to result in violence or violent injuries, such as associating with violent peers, using alcohol or drugs, and possessing a firearm or other weapon. Young people can be provided with mentors, who can serve as role models. Laws and regulations can be developed specifically to reduce injuries and deaths, such as stronger laws governing the use, ownership, and sale of guns. Teenage parents, abused children, or wayward teenagers can be provided with training, support, and recreation. Our young people must find hope in the future. We must make this happen because they are our future.

Because there is not a simple solution to violence, the prevention of violence will require a local solution in every community, a solution developed by a broad spectrum of community leaders and organizations, including governmental, business, and grass-roots organizations.

In the halls of Congress, in the state legislatures, in every city hall, in each school, in each family, we must act now to prevent violence. This is a formidable challenge, but one the American people can, will, and must meet. We can turn this country around -- we can make our streets safe again. The time for talking about the problem is over. Now

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is the time to take action.

As the President said in Memphis on November 13, "there is something for all of us to do.... [w]e need both investment in these kids and our future and we need rules by which people live. We need both. It's not an either/or thing." I look to you for the rules. I ask your help in investing in programs for our children's future.

The problem of violence in America did not appear overnight; nor will it disappear suddenly. We must mount a sustained and coordinated effort to prevent violence at all levels of society to address this complex and deeply-rooted problem. I am committed to doing this with every fiber of my being, and I strongly support your efforts to move us toward these common goals. Thank you.

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DRAFT**STATEMENT****BY**

**MARK ROSENBERG, M.D., M.P.P.
NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL
CENTERS FOR DISEASE CONTROL AND PREVENTION**

BEFORE THE

**SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES**

DECEMBER 6, 1993**FOR RELEASE ONLY UPON DELIVERY**

J. Klepper
690-6786

Thank you, Mr. Chairman and members of the Subcommittee, for this opportunity to testify on effective strategies for controlling gun violence. I am Mark Rosenberg, Acting Associate Director for Public Health Practice from the National Center for Injury Prevention and Control, Centers for Disease Control and Prevention in Atlanta. I am here today to convince you that violence is a problem to be solved, not a necessary fact of life.

Since the early 1980s, the Centers for Disease Control and Prevention (CDC) has led Public Health Service (PHS) violence prevention activities. In addition to this leadership role, CDC sponsors and funds violence prevention programs. The CDC conducts and funds epidemiologic studies of violence, collects trend data, researches the risk factors associated with violence, supports community demonstrations of interventions (such as conflict resolution, school-based education curricula, mentoring), and funds evaluations of interventions and training.

A Sea Change in Firearm Injury Research

As Dr. Elders mentioned, the Public Health Service has been credited with bringing about a "sea change" in firearm injury research. The public health approach to violence places prevention in the forefront of our efforts, making science integral to identifying and developing effective policies and programs, and integrating the efforts of diverse scientific disciplines, organizations, and communities. Each of these contributions speaks to an existing deficit in our society's response to violence.

The public health approach to violence prevention is characterized by a focus on primary prevention, using science to develop and identify effective interventions, and drawing on the resources of a variety of sectors including criminal justice, education, media and others. While violence prevention efforts are a relatively new science, existing evidence suggests that many of these approaches may be promising for reducing injury and death due to violence; for example: providing training in communication, negotiation, and problem solving to middle school youth with behavioral problems has reduced the number of suspensions attributed to violence.

Using a Science-based Approach

To define the problem of violence, scientists have used existing surveillance data to assess the magnitude, characteristics, and impact of the problem on a national, state, and local basis. Public health scientists are exploring ways to improve the national surveillance of fatal and non-fatal injuries and the monitoring of risk behaviors associated with firearm injuries, such as weapon carrying among youth. State and local public health agencies are also developing city- and state-wide systems for collecting data on firearm injuries.

CDC has funded projects in Massachusetts and Harlem, through the Massachusetts Department of Public Health and New York City Health Department, to develop a surveillance system to identify and track injuries from gunshot and sharp instruments. Based on reports from

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emergency departments in Massachusetts, the program evaluated existing public health and criminal justice data sources and analyzed data generated by the system. The results were shared with health care providers, violence and suicide prevention programs, criminal justice agencies, and the general community.

Public health researchers have helped to quantify the risks of gun ownership, looking not only at the risks of guns in the hands of criminals, but at the risks to gun-owners and their families. This research has shown, for example, that in household where guns are kept, for every one used to kill someone in self-defense, 43 others are used to kill someone in a criminal homicide, or used in a suicide or unintentional shooting. If a gun is used in an incident of domestic violence, then the likelihood of one of the two disputants being murdered is 12 times greater than if another type of weapon were used. In a well-designed study that controlled for other known risk factors, the presence of a gun in a household was found to increase the risk of suicide almost five-fold and the risk of homicide almost three-fold.

Public health scientists are also involved in testing the effectiveness of the broad array of interventions in firearm violence prevention. Four examples of strategies that need to be evaluated include:

PUBLIC HEALTH SCIENTISTS
N 2

- 1) Changing how guns are used/stored:

- Restrict gun carrying in public
- Mandatory sentences for gun use in crimes
- Owner liability for damage by guns
- Metal detectors in vulnerable places
- Safety education

2) Controlling who has guns:

- Permissive licensing (e.g., all but felons, minors, etc.)
- Waiting periods
- Forbid sales to high-risk purchasers
- Disrupt illegal gun markets
- Combination locks on all guns

3) Reducing the lethality of guns:

- Protective clothing
- Reduce barrel length/bore
- Reduce magazine size
- Ban dangerous ammunition

4) Reducing the number of guns:

- Restrictive licensing (e.g. only police, security guards)
- Buy back programs
- Increase taxes on guns
- Restrict imports
- Prohibit ownership

There is a critical need to assess the value of these strategies. In addition, we need to improve surveillance data, improve our understanding of risks and benefits, and to accelerate our evaluation of such interventions. Many prominent interventions have not yet been evaluated, such as:

- Owner liability for damage by guns
- Metal detectors in schools
- Safety education
- Waiting periods
- Buy-back programs

Although our understanding of the role of firearms in violence has advanced substantially, many questions remain: How frequently are guns used to successfully ward off potentially violent attacks? Do the risks and benefits of firearm possession vary, depending on whether you live in a rich or poor neighborhood or whether you have children? How do adolescents get guns and why do they want them?

Work-related homicide

According to data from CDC's National Institute for Occupational Safety and Health for the years 1980 through 1989, homicide was the third leading cause of death from injury in the workplace taking the lives of 7,600 workers. Homicide is the leading cause of injury death in the workplace for females.

Analysis of the 7,600 work-related homicides identified through NIOSH surveillance found that work-related homicides are clustered in specific workplaces and occupations such as taxicab service, law enforcement personnel, and employees in retail trades such as grocery stores, gas stations, restaurants and bars.

In October, NIOSH issued an Alert entitled, "Request for Assistance in Preventing Homicide in the Workplace." This Alert was issued to inform high risk employees and employers of their increased risk for homicide, to recommend potential strategies to prevent worker deaths, to urge employers to take action to prevent homicide in their workplace, and to encourage researchers to tackle the many unanswered questions regarding homicide in the workplace.

While a variety of industries and occupations are at increased risk for work-related homicide, the use of firearms is a common thread. According to NIOSH data, seventy-five percent of work-related homicides are committed with firearms. Evaluation of methods to reduce the use of firearms against workers, ~~such as gun control regulations~~ is needed.

As long as guns are readily available and used against workers, secondary measures, such as bullet-proof barriers, will be needed in high risk work settings. Data suggest that this and other environmental modifications, such as making high-risk areas visible to more people, good external lighting, and cash handling

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procedures which minimize cash on hand, are effective in reducing robberies in convenience stores. We assume that reducing robberies will also reduce the incidence of homicides and assault-related injury, since the majority of homicides in convenience stores involve robberies. NIOSH will begin a study next year which will seek to identify the specific components of these crime prevention measures that are most effective in preventing robberies. A much larger study will follow, examining the actual impact of these measures on assaults. These crime prevention strategies are especially promising since they may be transferable to other retail trade and service industries where the majority of homicides occur.

Working with criminal justice organizations, the BLS, and others, NIOSH is pursuing means of collecting more detailed data on workplace homicides than is available from death certificates. These data, which will enable NIOSH to better evaluate the factors involved in workplace homicides, will support improved prevention efforts. NIOSH is also exploring means of collecting data on nonfatal assaults in the workplace.

Reframing The Issue of Preventing Firearm Injuries

As a society, we must reframe the debate from "gun-control" to "preventing firearm injuries." We must ^{stop} ~~move away from binary~~ ^{ING} ~~all-or-none notion to multiple strategies~~ ^{TOWARDS}. We must realize that the problem is broader than criminals with guns. Guns have spread to our kids, ^{TO THE WORKPLACE} our homes, and our communities. ~~Guns have moved from~~

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~~the fringe to encompass a vast middle ground. We must rush to put together a package with long-term solutions by reaffirming~~

~~THE importance of criminal justice efforts, strengthening enforcement, and reframing firearm injuries as a public health problem. We must support efforts to keep guns out of the hands of unsupervised children. We must explore the need for legislation to establish a minimum standard prohibiting handgun possession by youth and tightening regulations of firearms dealers. We must create a national firearm injury reporting system and evaluate interventions scientifically and efficiently.~~

These problems are solvable, but we need to combine our diverse perspectives and resources to be successful. First, by unifying the broad array of scientific disciplines pertinent to violence prevention, public health can provide policy makers with comprehensive knowledge that will be more helpful to them than the separate, discipline-specific parcels of information they now receive. Second, public health is establishing links with each of the sectors that figures in violence prevention: education, labor, public housing, media, business, medicine, and criminal justice. They are being encouraged to organize and coordinate their involvement in federal, state, and local prevention programs. Finally, public health is working hard to fully involve communities in policy and program development as well as to stimulate a greater sense of community ownership for this problem.

A further concern is that our response to violence has been fragmented along racial and ethnic lines, a problem that is demonstrated by the widely held belief that violence is just a minority problem. This notion is wrong and impedes an effective response to violence in several ways. First, it stigmatizes minority groups by lending support to the false stereotype that minorities are inherently violent. In fact, there is no scientific evidence of a ~~genetic~~ link between race or ethnicity and violence. The preponderance of existing research indicates that race or ethnic status per se has little to do with an individual's propensity for violence. Rather, racial or ethnic status is associated with many factors, such as poverty, that do influence violent behavior. Second, this belief allows the majority of our population to deny their own problems of violence and dissociate themselves from the process of solving the problem. Violence should be characterized as an American problem, and to maximize our effectiveness, we must convince the public that all Americans must work together for a solution.

Let me tell you a story that was recently told by the President: "The other day, I was in California at a town meeting, and a handsome young man stood up and said, "Mr. President, my brother and I, we don't belong to gangs. We don't have guns. We don't do drugs. We want to go to school. We want to be professionals. We want to work hard. We want to do well. We want to have families. And we changed our school, because the school we were in was so

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dangerous. So, when we showed up to the new school to register, my brother and I were standing in line, and somebody ran in the school and started shooting a gun, and my brother was shot down standing right in front of me at the safer school."

This opportunity must be seized: We know what to do--punishment alone is not enough, we must add prevention. This requires a paradigm shift in the way we view this problem: we must stop looking only at what we do after violence happens--whether we look at what we do for the victims or what we do to the perpetrators--and start to look at what we can do for prevention. This "crisis" of gun violence is both a danger and an opportunity. We know what to do and we must act now to protect our children's future.

Thank you. I will be glad to respond to any questions you may have.

John
2074366

2/17

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

Jose Cerda

Treasury gun letters. Some of these date back to last summer and may have been somewhat overtaken by events. I'm told there are more sitting over at Treasury GC that haven't made it to me yet.

Doug Steiger



DEPARTMENT OF THE TREASURY
WASHINGTON

GENERAL COUNSEL

The Honorable Daniel P. Moynihan
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for the views of the Department of the Treasury on S. 32, the "Violent Crime Control Act of 1993." The bill would provide for the collection and dissemination of information on injuries, death, and family dissolution due to bullet-related violence, impose a 1,000 percent excise tax on selected calibers of ammunition, require recordkeeping with respect to dispositions of ammunition, and require that persons comply with State and local firearms licensing laws before receiving a Federal license to deal in firearms.

The Department supports the goals of S. 32 and would welcome the opportunity to work with your Committee in achieving them.

On the premise that 9 millimeter, .25 caliber, and .32 caliber are the criminal's ammunition of choice, title II of the bill would amend section 4181 of the Internal Revenue Code of 1986 (IRC) to increase the excise tax imposed on the sale of this ammunition by manufacturers and importers from 11 to 1,000 percent. This tax would be passed on to wholesalers and retailers, who in turn would pass it on to the purchasers of the ammunition.

The Department is concerned with the availability and relatively low price of handgun ammunition. As a matter of tax policy, however, the Department opposes the regulation of such ammunition through the imposition of a prohibitive tax. In addition, the proposed excise tax would extend to a number of cartridges used for sporting rifles, e.g., .25/06, .25/20, .257 Roberts, .32 Winchester Special, .32/20, and various European 9mm rifle cartridges. We question whether it is appropriate to impose a prohibitive tax on legitimate rifle ammunition. We note that although the excise tax provision could be redrafted

to cover only traditional handgun cartridges (.25 ACP (6.35mm) caliber, .32 ACP (7.65mm) caliber, 9mm Kurz (.380ACP), 9x18mm (9mm Makarov), and 9x19mm (9mm Parabellum), the excise tax would still apply to handgun ammunition used for legitimate sporting and self-protection purposes.

Title III of the bill would amend 18 U.S.C. 923(g)(1) to require ammunition importers and manufacturers to maintain records of importation, production, shipment, sale, or other disposition as prescribed by regulation. Ammunition record-keeping was originally required by the Gun Control Act of 1968 (GCA), and these records were kept by licensees until 1986 when the GCA was amended to eliminate most ammunition recordkeeping requirements. While there were undoubtedly some situations during these years where ammunition records proved to be valuable, Treasury was unable to make any compelling arguments for retaining the requirements. Unlike uniquely serialized firearms, ammunition is not marked in such a way as to make tracing possible. Consequently, ammunition records have been of very limited use. Although we are concerned with the availability of ammunition and its potential use in crime, it will be difficult to establish that again imposing broad recordkeeping requirements for ammunition would significantly advance law enforcement interests, or that the burden on licensees would be justified. A more narrow proposal, however, affecting only certain types of ammunition and certain licensees may have merit.

Title IV of the bill would amend 18 U.S.C. 923(d)(1), which sets forth the criteria for approving applications for Federal firearms licenses. The amendment would require applicants for a dealer's license to comply with State and local requirements concerning the applicant's business, and to submit a written statement, signed by a local law enforcement official, certifying that the applicant is eligible to obtain a license under the law of that State or locality. The Department supports the proposed amendment because current law does not authorize the Department to deny a dealer's license on the basis of ineligibility for such a license under State or local law. In addition, the amendment would deter the licensing of persons who do not intend to actually conduct a firearms business. We also note that the proposed amendment would further one of the Congressional objectives of the GCA: the development of an effective system of firearms regulation through the coordination

of Federal, State and local laws, and enhanced support to State and local law enforcement officials (see S. Rep. No. 1051, 90th Cong., 2nd Sess. 27, 28 (1968)).

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely,

Jean E. Hanson
General Counsel



DEPARTMENT OF THE TREASURY
WASHINGTON

GENERAL COUNSEL

The Honorable Joseph R. Biden
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter expresses the views of the Department of the Treasury on S. 639, "To make unlawful the possession of certain assault weapons, to establish a Federal penalty for drive-by shooting, and for other purposes." The Department supports title III of the bill. The Department also supports, with the technical modifications discussed below, titles I and II of the bill. We look forward to working with the Committee to address these concerns and to secure enactment of the bill.

TITLE I

Section 103 of the bill would make it unlawful to transfer, import, transport, ship, receive, or possess any assault weapon. Weapons for Federal and State agencies and weapons lawfully possessed prior to the effective date of the bill would be excepted. Section 102(a) would define "assault weapon" to mean nine specified models of firearms. Section 102(b) authorizes the Secretary of the Treasury, in consultation with the Attorney General, to recommend to the Congress the addition or deletion of firearms designated as assault weapons under section 102(a).

Because the section 102(a) definition of "assault weapon" is expressed in terms of the specific weapon names, the bill's prohibitions could easily be circumvented by a change in a weapon's name. This could be avoided by using a general description of the covered weapons (e.g., amending "Colt AR-15" to read "Colt AR-15 type." Furthermore, assuming the intent of the bill is to apply to all AK-47 type assault rifles, the description of these weapons as "Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs" is incomplete; other variations of the AK-47 assault rifle exist, and more may be developed. We also note that the definition of assault weapons would not include sporterized versions of the listed firearms.

If the intent of Title I is to restrict all semiautomatic assault rifles, the list of weapons is incomplete. The Administration's 1989 ban on the importation of nonsporting semiautomatic assault rifles identified over 40 models that fell within this category. All of the models are listed in the Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles, July 6, 1989. A copy of a list of these weapons is enclosed for your reference.

To ensure more effective implementation of the intended ban on assault weapons, the Department recommends that section 102(b) be revised to authorize the Secretary of the Treasury to issue regulations that ban additional models of firearms found by the Secretary to constitute weapons similar to those described in section 102(a).

With respect to assault weapons lawfully possessed prior to the effective date of the bill, the bill would require owners of such weapons to obtain and complete a Form 4473 within 90 days after publication of regulations implementing the bill. Subsequent transfers of the weapons also would be recorded on Form 4473. The apparent purpose in requiring the use of Form 4473 is to create a paper trail to facilitate tracing. The Department recommends that these requirements be deleted from the bill because they have no law enforcement value and would not enhance the ability of the Bureau of Alcohol, Tobacco and Firearms to trace such weapons. We also note that even if use of the form would facilitate tracing, the bill neither provides for Government access to the forms nor requires persons to produce the forms upon request. We also note that even if the bill provided for Government access to the forms by means of warrantless inspections, such a provision would not likely be enforceable against nonlicensees as the Federal Courts generally do not uphold warrantless inspections of nonregulated individuals.

TITLE II

Section 202 would make it a Federal offense to cause grave risk to human life or to kill a person by firing a weapon into a group of two or more persons in furtherance of, or to escape detection of, a major drug offense with intent to intimidate, harass, injure, or maim. The offense of causing grave risk to human life would be punishable by imprisonment for a term not exceeding 25 years; if death resulted, the offense would be punishable by death or by imprisonment up to life.

The proposed new offenses are unnecessary because they are duplicative of current law (see 18 U.S.C. 844(h) and 924(c)). Not only are the existing offenses more easily proved than the proposed offenses, but they also provide mandatory minimum terms of imprisonment upon conviction. We note that the death penalty provision does not provide any procedures or standards, and we defer to the Department of Justice concerning the constitutionality of such a provision in the absence of a general Federal death penalty statute.

TITLE III

Section 301 would amend 18 U.S.C. 924 to create a new offense for stealing a firearm, punishable by imprisonment for a term of 2 to 10 years. The Department supports this provision because it would close a gap in current law. Currently, 18 U.S.C. 922(i) punishes the receipt or transportation of stolen firearms, and 18 U.S.C. 659 punishes the theft of any goods, including firearms, from an interstate or foreign shipment. There is, however, no offense specifically directed at the theft of firearms.

Section 301 would also amend section 924 to create a new offense, punishable by up to 10-years' imprisonment, for smuggling firearms into the United States for the purpose of promoting drug trafficking or crimes of violence. The Department supports the proposed offense because it addresses an anomaly in current law. Currently 18 U.S.C. 922(l) makes it a 5-year offense to import certain firearms into the United States, and 18 U.S.C. 924(h) makes it a 10-year offense to travel interstate or from a foreign country to purchase a firearm with intent to engage in conduct constituting a Federal or State drug offense or a crime of violence. There is no reason to treat traveling to acquire a firearm for illegal drug trafficking purposes any differently from importing or smuggling a firearm into the United States for the same purpose.

Section 302 would amend 18 U.S.C. 3583 to provide for the imprisonment of persons sentenced to supervised release who violate a condition of their release concerning the possession of firearms. The Department supports this provision, which is patterned after 18 U.S.C. 3565(b), which provides for the same treatment of persons on probation.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely,

Dennis I. Foreman
Acting General Counsel

Enclosure

RIFLES RECOMMENDED TO BE DENIED IMPORTATION

AKS Variants

AK 47 type
AK47S type
AK74 type
AKS type
AKM type
AKMS type
ARM type
84S type
84S1 type
84S3 type

86S type
867S type
867S type
Galil type
Type 56 type
Type 56S type
Valmet M76 type
Valmet M78 type
M76 counter sniper type

FAL Variants

FAL type
L1A1A type
SAR 48 type

Other

AUG type
FNC type
Uzi carbine

Algimec AGM1 type
AR180 type
Australian Automatic Arms SAR type*
Beretta AR70 type
Beretta BM59 type
CIS SR88 type
HK91 type
HK93 type
HK94 type
G3SA type
K1 type
K2 type
AR100 type
M14S type
MAS223 type
SIG 550SP type
SIG 551SP type
SKS with detachable magazine

* The Australian Automatic Arms Model SP-20 will be conditionally imported to determine if it is of a type generally recognized as particularly suitable for sporting purposes.



DEPARTMENT OF THE TREASURY
WASHINGTON

GENERAL COUNSEL

The Honorable Paul Simon
United States Senate
Washington, D.C. 20510

Dear Senator Simon:

This letter responds to your request, made at a March 26, 1993 hearing, that the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF) provide you with the views of the Department of the Treasury on S. 496, "To amend chapter 44 of title 18, United States Code, to strengthen Federal standards for licensing firearms dealers and heighten reporting requirements, and for other purposes."

The Department strongly supports S. 496. With respect to sections 1, 2 and 3, however, the Department urges that they be revised consistent with the following comments:

Delivery by Common Carrier

Section 922(e) of title 18, United States Code, currently provides that it is unlawful for a person to knowingly deliver a firearm or ammunition to a carrier for shipment in interstate or foreign commerce to a person other than a Federal firearms licensee without written notice to the carrier. This provision only requires the shipper to notify the carrier of the fact that a firearm or ammunition is being shipped to someone other than a Federal firearms licensee; it does not require the shipper to notify the carrier of the identity of the person to whom the firearm or ammunition is being shipped.

Section 1 of the bill would redesignate existing section 922(e) as section 922(e)(1), and amend it to make it unlawful for a person to knowingly deliver a firearm or ammunition to a carrier for shipment in interstate or foreign commerce to any person without providing written notice to the carrier. The effect of this amendment is to broaden current law by providing notice to carriers even when the firearm or ammunition is for shipment to a Federal firearms licensee.

Section 1 would also add a new section 922(e)(2) to make it unlawful for a carrier to knowingly deliver a firearm to a Federal firearms licensee without identifying and maintaining a record of the person to whom the firearm is delivered.

While we believe the proposed section 922(e)(2) is intended to require carriers to identify and maintain records of all persons to whom firearms are delivered, the section is drafted so that the requirements are applicable only to firearms deliveries to licensees. We also note that proposed section 922(e)(2) does not extend to shipments of ammunition. Accordingly, we recommend that proposed section 922(e)(2) be amended to read as follows:

(2) It shall be unlawful for a common carrier or contract carrier knowingly to deliver in interstate or foreign commerce a firearm or ammunition unless the carrier identifies the person to whom the firearm or ammunition is delivered and makes and maintains a record of the identity of such person in such a manner as the Secretary may prescribe by regulation.

Certain Sales of Firearms

Section 2 would add a new subsection (s) to 18 U.S.C. 922 to make it unlawful for a person to transfer a firearm or ammunition if the transferor has reasonable cause to believe that the transferee is acquiring the firearm or ammunition with the intent that it be used, either by the transferee or another person, to commit a crime of violence.

Current law (18 U.S.C. 924(h)) makes it unlawful to transfer a firearm knowing it will be used to commit a crime of violence or drug trafficking crime. Unlike proposed section 922(s), this provision requires that the transferor have actual knowledge that a crime involving the firearm definitely would occur.

Rather than establishing a new offense, the Department instead recommends that 18 U.S.C. 924(h) be amended to read as follows:

(h) Whoever knowingly transfers a firearm or ammunition, having reasonable cause to believe that such firearm or ammunition will be used to commit a crime of violence (as defined in subsection (c)(3))

or drug trafficking crime (as defined in subsection (c)(2)), shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

As so amended, the "reasonable cause" element of the proposed section 922(s) is preserved and coupled with the broader reach of section 924(h).

From a technical perspective, we note that the words "to kill a person" in the title of section 2 of the bill do not reflect the statutory text of proposed section 922(s), which uses the words "to commit a crime of violence" (as defined in section 924(c)(3)).

Federal Firearms Licenses

Section 3 would amend 18 U.S.C. 923(a)(3) to increase license fees from \$25 to \$750 for pawnbrokers who are firearms dealers, and from \$10 to \$750 for other firearms dealers. An increase in firearms dealer fees is long overdue; the current fee structure has remained unchanged since 1968, while the costs for processing and investigating license applications and renewals have increased steadily. We also believe it would be appropriate to increase the license fee for dealers in destructive devices. The Department would be pleased to work with you to determine whether \$750 is an appropriate license fee for firearms dealers, and to determine an appropriate license fee for dealers in destructive devices.

Section 4 would repeal the requirement in current law (18 U.S.C. 923(d)(2)) that firearms licenses be approved or denied within 45 days. This requirement has proven unrealistic in light of the increasing amount of time involved in conducting a thorough background check.

Section 5 would amend 18 U.S.C. 923(d) to provide that a business prohibited by State or local law shall not be granted Federal firearms license, and to deny Federal firearms licenses to applicants who have failed to comply with all applicable requirements of State and local law. This provision would ensure that Federal firearms license requirements complement State and local law.

Section 6 would amend 18 U.S.C. 923(g) to repeal the requirement that ATF may conduct only one warrantless inspection of a Federal licensee's inventory and records during a twelve month period. This repeal would eliminate a serious obstacle to ensuring licensee compliance with Federal firearms laws.

Section 7 would require Federal licensees to report to the Department and local authorities the theft or loss of a firearm within 24 hours after the theft or loss was discovered. Section 8 would require licensees to respond in a timely manner to requests by the Department for information necessary to trace firearms. Section 9 would amend 26 U.S.C. 5902 to require persons who intend to manufacture, import, or deal in National Firearms Act weapons to be identified by photographs and fingerprints. These sections would enhance investigations of firearms violations.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the transmittal of this letter.

Sincerely,

Jean E. Hanson
General Counsel



DEPARTMENT OF THE TREASURY
WASHINGTON

GENERAL COUNSEL

The Honorable Daniel P. Moynihan
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for the views of the Department of the Treasury on S. 868, the "Firearm Victims Protection Act," the purpose of which is to help reduce the public health care cost resulting from firearm related injury and death.

The Department of the Treasury is examining whether an increase in the excise tax on firearms and ammunition is appropriate and whether any increase should apply to all firearms and ammunition or only to firearms and ammunition most commonly associated with gunshot fatalities and wounds. Although our examination is continuing, we would nevertheless like to offer several observations concerning the bill, and we would be pleased to work with the Committee as it considers the legislation.

Proposed section 4181(b)(1) defines "handgun" as "a firearm which, at the time of manufacture, had a barrel of less than 12 inches in length." If the purpose of this section is to tax those firearms commonly known as "handguns" at 25 percent, we note that a number of handguns have barrel lengths in excess of 12 inches (e.g., the Remington XP100 Silhouette pistol (14 1/2 inches), the Thompson Center Contender pistol (available in 10, 14 and 16 inches), and the Magnum Research SSP91 single shot pistol (14 inches)). We also note that the definition of handgun is not limited to firearms that may be fired with one hand, but would also include rifles and shotguns with barrels of less than 12 inches.

The definition of "assault weapon" in proposed section 4181(b)(2) is unclear. By defining assault weapons in part as having a barrel length of between 12 and 18 inches, many assault-type rifles would be excluded from the 25 percent tax rate (e.g., the AR-15, the M1A, and the HK91 rifles, all of which have barrel lengths exceeding 18 inches). Furthermore, including the phrase "capable of receiving ammunition directly from a large capacity ammunition magazine" in the definition has little meaning since any firearm designed to accept a detachable magazine can accept a large capacity magazine.

The definition of "assault weapon" also uses the phrase "concealable by a person." This language is meaningless because any firearm, irrespective of barrel length, can be concealed "by" a person. Since the apparent intent of the language is to include within the definition firearms that are "not concealable on" a person, we recommend that proposed section 4181(b)(2)(A)(ii)(I) be amended accordingly.

Finally, we are concerned that proposed section 4181(b)(2)(B) is too vague because any semiautomatic firearm would be substantially functionally equivalent to any other semiautomatic firearm as defined in proposed section 4181(b)(2)(A)(ii).

Section 3(b) of the bill would amend chapter 31 of the Internal Revenue Code, which concerns retail excise taxes, by adding a new subchapter D, "Handguns and Assault Weapons." However, since Section 3(b) generally would only tax transactions after the first retail sale (most first retail sales of firearms and ammunition are subject to the tax imposed by IRC section 4181), we do not believe chapter 31 is the appropriate chapter in which to include the new tax. Furthermore, although proposed subchapter D imposes a tax on transactions other than sales, it fails to include a provision determining a constructive price on which to compute the tax.

Section 4 of the bill would create a Health Care Trust Fund into which the taxes collected under IRC section 4056, that portion of IRC section 4181 attributable to the tax on articles subject to the 25-percent rate, and proposed new IRC subchapter D would be deposited. It should be noted, however, that this provision appears to repeal part of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669), which states that all taxes imposed by IRC sections 4161(b) and 4181, with certain exceptions, are to be deposited into another fund and used by the States for various wildlife projects, hunter safety training programs, and recreational programs.

The Department strongly supports increasing the level of fees charged for Federal firearms licenses as proposed in section 5 of the bill. Higher fees would help defray the increased costs associated with processing and investigating firearms dealer license applications and annual license renewals. More importantly, increased fees would discourage the filing of license applications by persons who have no intent to engage in the firearms business, but whose only interest in seeking a license is to obtain firearms at wholesale prices or in

interstate commerce. The Department estimates that approximately one-third of Federal firearms licensees made no firearms sales within the past year, and that about 40 percent made ten or fewer sales during that same period. Nevertheless, determining the level at which the increased fees should be set, a level that would accomplish the foregoing without discouraging legitimate business, is a matter under study by the Department.

Finally, the Department does not support the earmarking of tax receipts for unrelated expenditure purposes, as proposed in sections 4 and 5 of the bill. Such earmarking exacerbates the problem of budgetary control, and the Department has consistently maintained that tax receipts should be available in the general fund of the Treasury for appropriation by the Congress for current programs and objectives. Furthermore, we believe that the proposed grants to health care providers from the Health Care Trust Fund to be established by section 4 of the bill should instead be considered in the context of health care reform.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely,

Jean E. Hanson
General Counsel



OFFICE OF THE
DEPUTY SECRETARY OF EDUCATION

Jose -

heres some good
ammunition against
the NRA. Thought you
might find these articles
interesting.

Mike

NEWS RELEASE

EMBARGOED FOR RELEASE
9:00 A.M. EST
April 15, 1994

Contact: Dolores Beasley
Phone: 202/331-2602

ABA DISPUTES NRA ON SECOND AMENDMENT:
AND ADVOCATES FOR STRONG GUN CONTROL LAWS

WASHINGTON, D.C., April 15 -- The president of the American Bar Association today called on all lawyers to exert leadership on gun violence, and pledged an association-wide commitment in support of strong gun control laws to educate the public on the Second Amendment of the U.S. Constitution.

In a statement before the National Press Club, ABA President R. William Ide III, took issue with "the destructive myth perpetuated by gun control opponents about the Second Amendment."

He challenged the National Rifle Association and the gun lobby to "put their convictions where their rhetoric is" and bring suit against the Brady Law on Second Amendment grounds. "They should either put up or admit there is no Second Amendment guarantee."

Ide pointed out that the strictest gun control laws in the nation have been upheld against Second Amendment challenge, including a ban on handguns imposed locally. "We are confident in our challenge because there is no confusion in the law on this issue."

- more -

ABA DISPUTES NRA, Add One

Ide announced the launching of a new initiative -- the ABA Legal Solutions to Gun Violence Project -- which will assist cities, counties and states in drafting and enacting ordinances and laws to regulate firearms, including legislation to ban the manufacture, sale and possession of all assault weapons.

In addition, Ide said, the ABA will come to the aid of any governmental entity where an existing gun ban ordinance or law is under challenge in the judicial system. The Association's Litigation Section has agreed to provide volunteer legal services on a local basis to government entities seeking to enact gun ban legislation.

Firearms in the home and at our schools are not making us safer from violence, Ide said, rather they are engendering more violence. "As a nation, we will not conquer fears or eradicate urban crime, drive-by shootings and violence by arming all our citizens," he said. "The only rational way out of this bloody mess is to rely on the law and the justice system to keep criminals unarmed and Americans unharmed."

The gun violence project will also include a public education program. The ABA has devoted itself to a system of regulating firearms since the 1960's, and over the years has reaffirmed its commitment to regulating firearms as a critical component of reducing violent crime, Ide said. "It is time we get on with the business of treating guns with the respect they require and one small step toward that end is making it clear that regulating gun ownership does not violate the Constitution."

Erwin N. Griswold

Phantom Second Amendment 'Rights'

In the recent congressional debate over crime control, there was much talk about the Constitution. Defendants' rights were hotly contested as were legal and moral constraints on capital punishment.

The constitutionality of the laws is certainly a legitimate issue to be considered on the floor of Congress. It is not legitimate, however, to manufacture a constitutional issue when the courts have agreed for years that the "issue" in question does not exist. This is what has happened in the recent debate about control of military-style assault weapons, where reasoned debate was overcome by the unsupportable claim that restrictions would violate the Second Amendment's right to keep and bear arms. ["Gun Lobby Emerged a Winner on Hill", front page, Nov. 1.] All rhetoric aside, these lawmakers and their mentors in the National Rifle Association should recognize the undeniable fact that the Second Amendment has never been an impediment to laws limiting private ownership of firearms.

Last year, the Bush administration, recognizing a special threat to the public safety from drug dealers, gang members and other criminals, barred 43 specific foreign-made assault rifles from importation. On the unassailable theory that an AK-47 made in America is no less lethal than one made abroad, the administration also supported a provision in the Comprehensive Crime Control Act of 1990 that would have prohibited domestic manufacture of identical rifles. Incredibly, lawmakers instead amended the bill to explicitly *preserve* the right to manufacture these weapons.

Prodded on by the NRA, legislators after legislators charged that restrictions on the domestic manufacture of assault weapons would violate the right to keep and bear arms. Such distortion of the well-established meaning of the Second Amendment should not go unanswered.

The full text of the Second Amendment reads: "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." The amendment is unique among the guarantees of the Bill of Rights, because its purpose is clearly expressed in its text. This was explicitly recognized by the Supreme Court in its 1939 opinion in *United States v. Miller*, where it said that the "obvious purpose" of the amendment was "to assure the continuation and render possible the



"The Constitution does not guarantee a right to be armed for private purposes."

effectiveness" of state militias and that it "must be interpreted and applied with that end in view."

The clear meaning of *Miller* is that the Constitution does not guarantee a right to be armed for private purposes unrelated to the organized state militia, whether they be hunting, recreation or even self-protection. The fact is that no American today owns an AK-47 or any other kind of firearm for reasons even remotely related to the organized militia or the "security of a free state." The days when militiamen were required by law to muster for military exercises in the town square—complete with their own guns and well-groomed horses—are long gone.

Since *Miller*, the Supreme Court has twice more

reaffirmed that the Second Amendment protects only state militias, not the private ownership of guns. In a 1968 case (*Burton v. Sills*), the court dismissed, for lack of a "substantial federal question," a gun owner's appeal from a state court decision holding that the Second Amendment permits regulation of firearms "so long as the regulation does not impair the maintenance of the active, organized militias of the states." In *Lewis v. United States* (1980), the court ruled that legislative restrictions on the use of firearms do not "trench upon any constitutionally protected liberties."

Following the Supreme Court's lead, the lower federal courts have shown a remarkable unanimity in applying the Second Amendment. Never in history has a federal court invalidated a law regulating the private ownership of firearms on Second Amendment grounds. Indeed, that the Second Amendment poses no barrier to strong gun laws is perhaps the most well-settled proposition in American constitutional law. Yet the incantation of this phantom right continues to pervade congressional debate.

The National Rifle Association and its friends in Congress are, of course, free to argue against new gun laws on policy grounds. Let them put forth whatever case they can for the wisdom and morality of allowing anyone to sell and utilize weapons like the AK-47—weapons that can fire scores of bullets in seconds with murderous effect. However, to assert that the Constitution is a barrier to reasonable gun laws, in the face of the unanimous judgment of the federal courts to the contrary, exceeds the limits of principled advocacy. It is time for the NRA and its followers in Congress to stop trying to twist the Second Amendment from a reasoned (if antiquated) empowerment for a militia into a bulletproof personal right for anyone to wield deadly weaponry beyond legislative control.

The writer, a former dean of the Harvard Law School, served as solicitor general in the Nixon administration.

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OPINION PAGE

Edited by Guy MacMillin

Keene, New Hampshire

Established in 1799

Warren E. Burger

The meaning, and distortion, of the Second Amendment

The Second Amendment very briefly provides that, since a "well regulated militia" is necessary to the security of the state, the people's right to "keep and bear arms" is guaranteed.

Few things have been more vigorously debated — and distorted — in recent times than the meaning of this clause, and very few subjects have been as cluttered and confused by calculated disinformation circulated by special interest groups.

To really understand what was intended, it is necessary to look back and recall that in those days people had a great fear of a standing national army. They knew that the monarchs of Europe had held power at the expense of the people by having standing armies to preserve the status quo.

In addition, before the Constitution the 13 colonies were not re-

ally the "united states" we know today, but 13 wholly independent, sovereign nations. For example, before the Constitution was adopted, the State of Virginia was virtually as independent of the other states and of the union established by the Articles of Confederation as France was independent of all the other countries of Europe. Before the adoption of the Constitution, each state could and did have its own army, and each state could also maintain its own navy, as some of the seaboard states did.

The real purpose of the Second Amendment was to ensure that the "state armies" — "the militia" — would be maintained for the defense of the state.

In order to do that it was necessary to grant each citizen the right to maintain arms. Of course, 200 years ago, the musket —

The language of the Second Amendment shows the Framers intended to secure the right to bear arms essentially for military purposes, and not to guarantee every citizen an unfettered right to any kind of weapon he or she desires.

which was the principal military weapon in use — was a common fixture in most American households, because many Americans depended on hunting game for food. Today the "state armies" that were prevalent in the 18th century have effectively been replaced by the National Guard, and hunting has basically become a recreational activity.

The very language of the Second Amendment refutes any argument that it was intended to guar-

antee every citizen an unfettered right to any kind of weapon he or she desires. In referring to "a well regulated militia," the Framers clearly intended to secure the right to bear arms essentially for military purposes. In the late 18th century, the "militia" was the aggregate of all able-bodied men, and the word "militia" was defined as "a body of troops; soldiers collectively." Moreover, even where the militia was concerned, it is clear that the Framers con-

templated that the use of arms could be "well regulated."

If an 18th-century militia was intended to be "well regulated," surely the Second Amendment does not remotely guarantee every person the constitutional right to have a "Saturday Night Special" or a machine gun without any regulation whatever. There is no support in the Constitution for the argument that federal and state governments are powerless to regulate the purchase of such firearms so that they do not get into the hands of persons with significant criminal records or mental impairments, or persons who are engaged in criminal activity.

By analogy, although there is not a word or a hint in the Constitution about automobiles or motorcycles, no one would seriously argue that a state cannot regulate the use of motor vehicles by im-

posing licensing restrictions and speed limits based on such factors as a driver's age, health condition, and driving record, and by recording every purchase or change of ownership.

Of course, some of these observations will be challenged by weapons and ammunition manufacturers and other members of the so-called "gun lobby." That there should be vigorous debate on this subject is a tribute to our freedom of speech and press, but the American people should have a firm understanding of the true origin and purpose of the Second Amendment.

Warren E. Burger is a retired chief justice of the U.S. Supreme Court. This column, written for *The Associated Press*, is part of a series on the occasion of the bicentennial of the Bill of Rights.

12-5-93

"Of guns and 2nd Amendment myths

The 2nd Amendment to the U.S. Constitution says: *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.*

It does not say: *In order to satisfy every possible whim and desire, citizens have the right to keep and bear any kind of arms or ammunition that any damn fool might devise.*

With the Brady bill finally enacted, an assault-weapons ban pending and more gun-control measures moving up on Congress' agenda, the National Rifle Association and gun extremists can be expected to trot out again the argument that the 2nd Amendment provides an individual right to unfettered access to firearms. The Supreme Court and other federal courts have said consistently for more than a century that it does not.

The NRA makes its argument by conveniently ignoring the first half of the 2nd Amendment, the part referring to a "well regulated Militia." This omission deliberately distorts the intent of the framers of the Bill of Rights.

The power and possible abuse of a permanent national army was a widespread concern in the newly independent states of the 1780s. For their defense, the states wanted their own militias and did not want the federal government to be able to disarm their forces.

The Supreme Court, in its most direct ruling on the 2nd Amendment's scope—a 1939 case that upheld restrictions on sawed-off shotguns—said the "obvious purpose" of the amendment was "to assure the con-

tinuation and render possible the effectiveness of such forces [state militias]." The justices stated flatly that the 2nd Amendment "must be interpreted and applied with that end in view." In a 1980 case, the court said restrictions on firearms use do not "trench upon any constitutionally protected liberties."

To argue otherwise, to fight even the most elementary gun controls and bans on the most heinous weaponry, does a gross disservice to the nation and to the sport hunters and the fearful Americans that opponents of gun control claim to represent.

Today, the "well regulated Militia" of the framers' intention would be the National Guard, for which government provides the necessary arms. It is not the angry husbands, wives and friends who wind up shooting each other, not the kids who find guns a handy means to suicide, not the gang thugs who play at drive-by shootings. But these are the gun users that the NRA helps to keep armed.

Last year in the United States, the Justice Department reports, there were 308 firearm killings by civilians that police or prosecutors found to be justified. During that time, more than 16,200 people were murdered with guns; an even larger number died in gun suicides and accidents.

What's being infringed in our gun-crazed nation are our most fundamental rights, those proclaimed in the Declaration of Independence: life, liberty and the pursuit of happiness. The false freedom perpetuated by 2nd Amendment myths is robbing us of our real freedoms.

GUNS AND THE 2nd AMENDMENT TO THE U.S. CONSTITUTION

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.

-- Second Amendment to the U.S. Constitution

The Second Amendment does not provide an individual right to carry a gun. No federal court has ever overturned a gun control law on the grounds that it violates the Second Amendment to the U.S. Constitution.

WARREN E. BURGER -- RET. CHIEF JUSTICE OF THE U.S. SUPREME COURT

"Few things have been more vigorously debated -- and distorted -- in recent times than the meaning of [the Second Amendment]... few subjects have been as cluttered and confused by calculated disinformation circulated by special interest groups.

"To really understand what was intended, it is necessary to look back and recall that in those days people had a great fear of a standing national army... The real purpose of the Second Amendment was to ensure that the 'state armies' -- 'the militia' -- would be maintained for the defense of the state... The very language of the Second Amendment refutes any argument that it was intended to guarantee every citizen an unfettered right to any kind of weapon he or she desires. In referring to 'a well regulated militia,' the Framers clearly intended to secure the right to bear arms essentially for military purposes...

"That there should be vigorous debate on this subject is a tribute to our freedom of speech and press, but the American people should have a firm understanding of the true origin and purpose of the Second Amendment."

(11/26/91, Keene Sentinel)

ERWIN N. GRISWOLD -- SOLICITOR GENERAL, NIXON ADMINISTRATION

"[Gun lobby] lawmakers and their mentors in the National Rifle Association should recognize the undeniable fact that the Second Amendment has never been an impediment to laws limiting private ownership of firearms... The clear meaning of [the Supreme Court's 1939 opinion in *United States v. Miller*] is that the Constitution does not guarantee a right to be armed for private purposes unrelated to the organized state militia...

"Following the Supreme Court's lead, the lower federal courts have shown remarkable unanimity in applying the Second Amendment. Never in history has a federal court invalidated a law regulating the private ownership of firearms on Second Amendment grounds. Indeed, that the Second Amendment poses no barrier to strong gun laws is perhaps the most well-settled proposition in American constitutional law. Yet the incantation of this phantom right continues to pervade congressional debate..."

(11/4/90, Washington Post)

JUSTICE DAVID H. SOUTER -- FORMER ATTORNEY GENERAL, NEW HAMPSHIRE

"It was early recognized that the Second Amendment did not grant a specific right, but rather was a 'limitation upon the power of Congress and the National Government'... Since U.S. vs. Miller (supra) was decided, numerous lower courts have considered the precise issue raised by defendant, and have concluded that the Second Amendment does not create any right in U.S. citizens to possess any and all weapons regardless of State regulation, but rather concerns only authority of the States to keep and raise militias.

"There is, of course, no right to bear arms provided in the New Hampshire Constitution. However, even in those jurisdictions where a state constitutional right to bear arms exists, the Courts have held that the right is subject to limitation in the interest of public safety... Surely no contrary result could be reached in a jurisdiction where no state constitutional right to bear arms exists, and where the war whoop of hostile Indians was last heard in 1763... In sum, it seems apparent that Defendant has no constitutional right to carry loaded pistols upon his person without complying with valid state regulations."

[7/2/76, Brief for the State of New Hampshire, State of New Hampshire vs. Stephen Gardner Sannel]

JUDGE ROBERT H. BORK -- FORMER FEDERAL APPEALS COURT JUDGE

"For instance, the National Rifle Association is always arguing that the Second Amendment determines the right to bear arms. But I think it really is people's right to bear arms in a militia. The NRA thinks it protects their right to have Teflon-coated bullets. But that's not the original understanding."

[Fall 1990, Time Magazine Special Issue, Interview]

"I'm not an expert on the Second Amendment, but its intent was to guarantee the right of states to form militia, not for individuals to bear arms."

[3/14/89, Distinguished Lecture Series, University of California (Irvine)]

STUART M. GERSON -- FORMER ACTING U.S. ATTORNEY GENERAL

"Nor should the Second Amendment be the barrier that some would claim. The framers tied an unfringible right to bear arms to the protection of the security of the country by a 'well-regulated Militia.' They did so at a time when there was no standing army or organized reserve and where the 'militia' was composed of every able-bodied man, each of whom was expected to arm himself for the common defense in war... The private use of handguns today, especially in street crime, has nothing to do with the literally-stated intention of the Second Amendment."

[2/16/93, Remarks to the FBI Symposium at the FBI Academy, Quantico, VA]

AMERICAN BAR ASSOCIATION

"[T]he U.S. Supreme Court had several occasions to review state regulation of firearms in the context of the Second Amendment. A review of these cases reveals the courts have uniformly held that the Second Amendment relates merely, solely, totally and only to the unhampered regulation of a state militia. It does not confer an individual right."

[5/90, ABA Journal Editorial by then-ABA President L. Stanley Chauvin]

U.S. SUPREME COURT ON THE 2nd AMENDMENT

U.S. v. Miller, 1939

"In the absence of any evidence tending to show that possession or use of a [shotgun] 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... With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view."

Burton v. Sills, 1969

Dismissed for want of a substantial federal question an appeal from the Supreme Court of New Jersey, which stated:

"As the language of the [U.S. Constitution's Second] Amendment itself indicates it was not framed with individual rights in mind. Thus it refers to the collective right "of the people" to keep and bear arms in connection with "a well-regulated militia"... [most agree this term] must be taken to mean the active, organized militia of each state, which today is characterized as the state National Guard... Reasonable gun control legislation is clearly within the police power of the State and must be accepted by the individual though it may impose a restraint or burden on him."

Lewis v. United States, 1980

"These legislative restrictions on the use of firearms are neither based upon constitutionally suspect criteria, nor do they trench upon any constitutionally protected liberties...the Second Amendment guarantees no right to keep and bear a firearm that does not have 'some reasonable relationship to the preservation or efficiency of a well regulated militia.'"

U.S. COURTS OF APPEALS ON THE 2nd AMENDMENT

Stevens v. United States, 1971 (6th Circuit)

"Since the Second Amendment right 'to keep and bear arms' applies only to the right of the State to maintain a militia and not to the individual's right to bear arms, there can be no serious claim to any express constitutional right of an individual to possess a firearm."

United States v. Synnes, 1971 (8th Circuit)

"[W]e decide only that the right to bear arms is not the type of fundamental right to which the 'compelling state interest' standard attaches... Although Sec. 1202(a) is the broadest federal gun legislation to date, we see no conflict between it and the Second Amendment since there is no showing that prohibiting possession of firearms by felons obstructs the maintenance of a 'well regulated militia.'"

Eckert v. City of Philadelphia, 1973 (3rd Circuit)

"Appellant's theory in the district court which he now repeats is that by the Second Amendment to the United States Constitution he is entitled to bear arms. Appellant is completely wrong about that... It must be remembered that the right to keep and bear arms is not a right given by the United States Constitution."

United States v. Johnson, 1974 (4th Circuit)

"The courts have consistently held that the Second Amendment only confers a collective right of keeping and bearing arms which must bear a 'reasonable relationship to the preservation or efficiency of a well regulated militia.'"

United States v. Warin, 1976 (6th Circuit)

"It is clear that the Second Amendment guarantees a collective rather than an individual right... It would unduly extend this opinion to attempt to deal with every argument... based on the erroneous supposition that the Second Amendment is concerned with the rights of individuals rather than those of the States..."

Quilici v. Village of Morton Grove, 1982 (7th Circuit)

"Construing [the language of the Second Amendment] according to its plain meaning, it seems clear that the right to bear arms is inextricably connected to the preservation of a militia... we conclude that the right to keep and bear handguns is not guaranteed by the second amendment."

**REMARKS OF L. STANLEY CHAUVIN, JR.
PRESIDENT, AMERICAN BAR ASSOCIATION
BEFORE THE
JOINT LUNCHEON OF THE
FELLOWS OF THE AMERICAN BAR FOUNDATION
AND THE
NATIONAL CONFERENCE OF BAR PRESIDENTS
12:00 NOON, GOLDEN STATE BALLROOM
LOS ANGELES HILTON
SUNDAY, FEBRUARY 11, 1990**

I am delighted to speak to you this afternoon on a subject which I consider of the greatest importance: limiting the destruction wrought by the continued easy availability of assault weapons.

I am not going to talk to you about guns used for hunting and organized target shooting competitions...although I do believe that state legislatures should adopt waiting periods for purchasing these guns as the Senate here in California did last Thursday. The ABA has long supported such waiting periods. California also led the way last year in banning specified assault weapons...and it is these weapons that I wish to discuss today.

Assault weapons are manufactured for one sole purpose: the destruction of human life.

These high-tech guns, designed all over the world, have swept the American market in just the last four years. They are, in fact, weapons of death, and the time has long since come to regulate their manufacture, sale and use.

Any lawyer likes to begin by setting the scene, and I am no exception. Let us take a few minutes to review together the history of the Second Amendment to the United States Constitution. As you know, it is this Amendment which opponents to regulation of assault weapons wave as their banner.

Our review will not take long. The Second Amendment, its history and meaning, is not complex or subject to multiple interpretations. On the contrary, it is so plain and so direct that idle speculations and hypotheticals simply won't fit.

The Amendment reads in its entirety as follows:

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.

The language was patterned after earlier writings and discussions concerning state constitutions, including those of Virginia and Pennsylvania.

The organizers of our country were determined that come hell, high water, Confederation, or Union, the state militia would be the primary source of defense...and further that a centralized standing Army should not exist.

It took the fine hand of James Madison and others to mold these earlier provisions regarding the exclusive role of state militias into the Second Amendment, and thereby satisfy the leaders of that day.

This history is informative. The framers of our government mistrusted, with good cause perhaps, a centralized government in the first place...but one with military authority in any case. No one doubted that a centralized military force had been and would be a source of abuse. The previous bad experiences could not be allowed to repeat. Thus, the concept emerged of federal constitutional protection and recognition of the state militias.

Indeed, throughout American history, state militias have been a source of great pride to all of our states, both as an emblem of patriotic endeavor and as a local and first-hand stand against anyone who would disrupt or encroach upon the authority of our organized government.

State militias were normally commanded by leading citizens who, when duty called, donned the uniform and fought the battles. Interestingly, Harry Truman was elected to the rank of Captain in the National Guard of Missouri by his fellow guard members. This was not unusual then. I have a friend in Louisville whose father's great delight was talking about the time he was elected an officer of the Kentucky National Guard.

The right to bear arms was seen as necessary to the discharge of the duties of the state militia. It was a central part of this "insisted upon" formula to assure control of weaponry by the locals, rather than the nationals.

It was only after our government had been in operation for a significant period of time, in fact not until 1903, that an Act was passed which provided for what we now call the National Guard. The National Guard was to be equipped and armed by the federal government...but with control shared locally. Even to this day, the commanding officer of the National Guard in every state is appointed by the state authorities, usually the Governor.

So, now having journeyed through the historical perspective of the origin and enactment of the Second Amendment, our next station stop is at interpretation of this Amendment.

Actually, federal laws on guns did not exist until the 1930's. Prior to the '30's, however, the United States Supreme Court had several occasions to review state regulation of firearms in the context of the Second Amendment. In United States v. Cruikshank, 92 U.S. 542, 553 (1875), Presser v. Illinois, 116 U.S. 252, 265 (1886) and Miller v. Texas, 153 U.S. 535, 538 (1894), the Court held unanimously that the Second Amendment restrained only the power of the federal government, not the state's.

The central and sole purpose of the Amendment was to forbid state militias being disarmed by any federal act. With one exception, a 1902 Idaho Supreme Court case (In re Brickey, 70 P. 609 (1902)), the courts have unanimously refused to apply the Second Amendment to state regulation of firearms. There are more recent cases: Quilici v. Village of Morton Grove, 695 F.2d 261, 270 (7th Cir. 1982), cert. denied, 484 U.S. 863 (1983); Application of Atkinson, 291 N.W.2d 396, 398, n. 1 (Minn. 1980) and others.

One of the clearest statements of the courts' reasoning appears in United States v. Miller, 307 U.S. 174 (1939). That case involved the National Firearms Act of 1934 and whether it violated the Second Amendment by barring interstate transportation of an unregistered shotgun with a barrel length of less than 18 inches.

The United States Supreme Court held that the Second Amendment must be interpreted and applied in light of its "obvious purpose": the assurance of the continuation of state militias.

The Court upheld the statute on the grounds that there had been no showing of any relation between the Firearms Act and the need for a state militia. The Court stated: "Certainly it is within judicial notice that this weapon is not any part of the ordinary military equipment or that its use could contribute to the common defense."

In the Lewis case, the Court upheld a statute barring convicted felons from possessing firearms. The Court rejected an equal protection argument, finding that only a rational basis was required for the restriction given that it did not infringe any constitutionally protected liberty.

One could logically conclude from the Miller and Lewis cases that only a statute which would hinder the arming of a state militia would contravene and violate the Second Amendment.

How much clearer could it be? Well, I could go on relating more cases...but there is really no need. The courts have uniformly held that the Second Amendment relates merely, solely, totally, and only to the unhampered regulation of a state militia; it does not confer an individual right.

Before leaving this subject, it is illuminating to note that immediately before the Second Amendment, the First Amendment lists the broad freedoms of free speech, press, and religion to which full protection must be given. If the arms language was also intended to be a personal right, we might rhetorically ask, why these wise people did not also put it in the First Amendment. The answer is simple: the Framers did not want it there and did not intend for it to be there.

Moving ahead to the next step, in 1968 Congress enacted the Gun Control Act requiring that imported firearms be suitable for "sporting purposes." The intent of this Act is obvious. Importation would be allowed for firearms suitable for hunting and organized target shooting competitions but the federal government could forbid importing weapons used in crime.

In 1968, the weapon of choice for criminals was the Saturday Night Special. Since that time, it has become the assault weapon. Going back to the 1968 Act, guidelines were established called "factoring criteria" which assigned certain weights and criteria to various factors to determine whether or not it violated the Act. I won't go into this with you but it is interesting to note that it was limited to pistols because at that time, rifles and shotguns were pretty much accepted as legitimate sporting firearms.

Time marches on, and by 1989, the assault weapons were found by the ATF not to have a generally recognized sporting purpose and 43 types of imported semi-automatic assault rifles were banned on July 7, 1989.

However, the ban on automatic rifles was not extended to pistols and, know-how being what it is, assault pistols have now become commonplace as weapons of crime. Under the factoring criteria as constructed, they are found to be suitable for sporting purposes not excludable as rifles and thus, legally importable.

These assault pistols present a new situation, and in fact a glaring loophole in current regulation. Before these redesigned pistols hit the streets and became the darlings of drug traffickers and other hardened law breakers, there wasn't much reason to consider them. But we can ignore them no longer.

There is another loophole. The domestic manufacturing and sale of assault rifles has not been regulated . . . only their importation. We are now in the illogical position of barring the import of these weapons, but not their local manufacture, sale or export. These people-killing weapons are easier to buy some places than to get a driver's license. Less checking is done and less information is required than for a marriage certificate.

All you have to do is have the money in hand and check off a box on a form swearing you are not a felon.

What kind of weapons are we talking about? We are talking about weapons which simply have no legitimate hunting or sporting purpose, weapons which are designed to be shot from the hip in a spray-firing position, firing as long as the trigger is held or firing each time the trigger is pulled as a result of automatic reloading. Slide action, bolt action, lever action, and single shot type weapons logically are not included.

I'd go for a show of hands now if anyone can find a legitimate hunting or sporting purpose for any of the following attributes of a weapon:

Capability to accept detachable magazine.

Folding or telescoping stocks.

Pistol grip that protrudes conspicuously beneath the action of the weapon.

Ability to accept a bayonet.

Flash suppressor. This allows the shooter to be concealed when shooting at night.

Bipods.

Grenade launcher.

Night sights.

Capability of accepting a silencer.

A barrel shroud. This cools the barrel so firing in rapid succession won't overheat.

Does anyone really believe that these weapons are for legitimate sporting or shooting purposes? Of course not. Nobody uses them but dope dealers and criminals. We know that an assault gun is 20 times more likely to be used in crime than a conventional firearm. We know that as recently as two years ago, there was a 78% jump in use of assault weapons in crime and sadly enough, we know that 2/3 of assault guns traced to crime are produced domestically.

The drug cartels love them. They suit their purpose well to intimidate and murder to protect their ghastly wares. In fact, there is even a subtrade being traced now of guns for dope. U.S. gun stores are supplying assault weapons to drug traffickers in other countries. Drug sweeps in Mexico, the Philippines, Jamaican, South and Central America have turned up weapons originally purchased in the U.S. A study by the Bureau of Alcohol, Tobacco and Firearms last year found that 87% of the weapons seized from drug traffickers in Colombia over an 18 month period were U.S.-made.

Something must be done, and done now, to stop the domestic production, import and export of these killer weapons.

Today we have an important opportunity to improve this situation. Two bills, House Bill 1190 and Senate Bill 747, would ban the future manufacture and importation of the most commonly used semi-automatic assault weapons. Current owners would keep their guns. The legislation would apply only to specifically named semi-automatic assault weapons which comprise only a tiny fraction of all firearms currently in circulation. Both bills explicitly exclude hunting firearms.

In opposing this legislation, pressure groups, and regrettably, some citizens who have been misled and honestly believe the propaganda, have raised a mistaken interpretation of the Second Amendment to a plane of religious dogma. Yet they cannot point to a single federal court decision in our nation's history which supports their view.

The opponents of regulation of assault weapons are so grossly intolerant of any opposing view and respond with such a fusillade of falsehoods that many back away from the controversy. This should not be--and surely cannot continue.

How many more tragedies need to take place? Aren't the ones in Stockton, California and Louisville, Kentucky and other places enough?

How much longer will dope dealers be able to protect their turf because of pressure group shenanigans?

How much longer will criminals be better armed than police?

We are in a building constructed under state imposed safety codes.

We are meeting in a room to exercise a constitutional right, but the room capacity is limited by law.

We were served a meal prepared under certain state imposed health standards.

We ride on elevators inspected by state mandate.

Surely to God we have a right through legislation to protect ourselves from death in the spray of assault weapon gunfire.

Reasonable regulation of firearms is both constitutionally permissible and increasingly necessary so that other fundamental, constitutional rights may be enjoyed. Our other liberties cannot be held hostage to an extreme, historically unjustified political view of the Second Amendment. Just as Congress outlawed sawed off shotguns and undetectable plastic guns, it can limit availability of assault weapons to the police and military.

As lawyers, we must counteract the propaganda and disinformation that is being used by the gun lobby based on the Second Amendment. And we need to do it now.

The time to act came long ago; we have already waited much too long. Today, not tomorrow, we must insist on a correct reading of the Second Amendment. Today, not tomorrow, we must demand reasonable laws on assault weapons for the safety of us all.

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DENNIS HENIGAN**Exploding the NRA's Constitutional Myth**

As gun violence in this country reaches unprecedented proportions, the perennial debate over the regulation of firearms is heating up again on Capitol Hill.

The current congressional focus is on the Brady bill—legislation named for James Brady, the former presidential press secretary wounded in John Hinckley Jr.'s attempt on President Ronald Reagan's life. The Brady bill would mandate a seven-day cooling-off period for handgun sales to allow local police to conduct background checks on prospective buyers. On March 28, 10 years after the Hinckley shooting, the Brady bill was endorsed by former President Reagan himself—a lifetime member of the National Rifle Association with a long record of opposition to federal gun laws. And earlier this month, the Bush administration started sounding more amenable to the principle reflected in the Brady bill.

Even so, it is impossible to predict the outcome of this legislative battle. One feature of the debate, however, is entirely predictable: the gun lobby's religious devotion to the idea that the Brady bill and other gun laws threaten our rights under the Second Amendment to the Constitution. In this respect, it is a reprise of the congressional debate last year over military-style assault weapons.

Last fall, the House of Representatives inserted a provision into the crime bill to protect the domestic assembly of foreign assault rifles—like the AK-47 used in the Stockton, Calif., schoolyard massacre—which President George Bush had already barred from importation. The NRA's congressional friends insisted the provision was needed to protect "the right of the people to keep and bear arms" under the Second Amendment.

Crumbling Bedrock

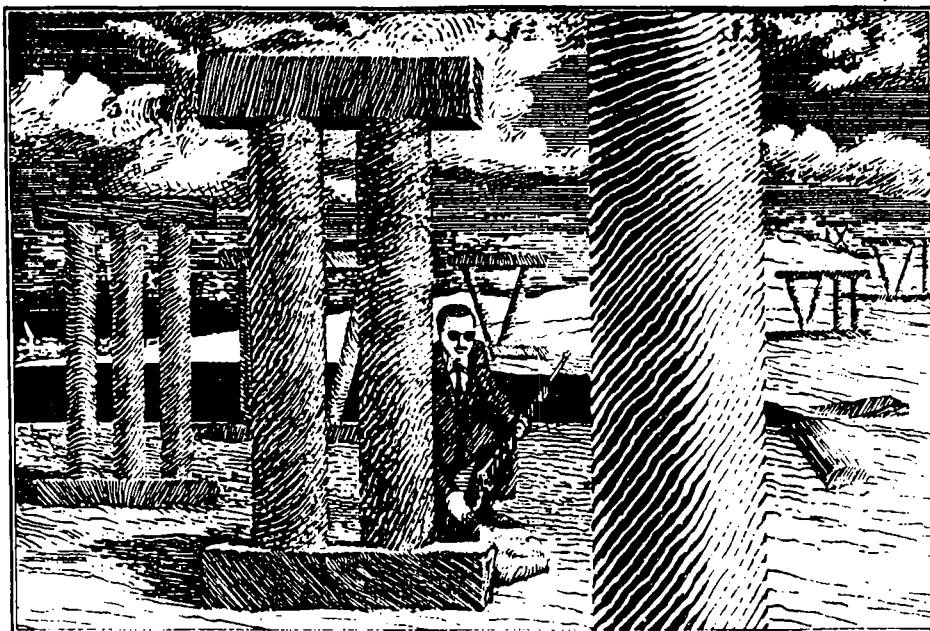
The Second Amendment argument is the bedrock of the NRA's opposition to every reasonable proposal to address the epidemic of violence victimizing our nation. Who hasn't seen Charlton Heston assure us that the NRA is fighting for our constitutional rights?

What is peculiar about the gun-control debate is that this Second Amendment argument has acquired a political significance that bears no relationship to its legal validity. As a matter of law, the NRA's Second Amendment claims are insupportable.

Although the NRA maintains that the right guaranteed by the Second Amendment is as broad as the rights guaranteed by the First, the courts have noted a substantial difference in the language of the two provisions. Contrast the unqualified commands of the First Amendment—"Congress shall make no law . . . abridging the freedom of speech"—with the Second Amendment, in which the statement of right is preceded by an expression of purpose—"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."

In *United States v. Miller*, 307 U.S. 174, 178 (1939)—a challenge to the National Firearms Act and the Supreme Court's fullest discussion of the Second Amendment—the Court held, not surprisingly, that the "obvious purpose" of the amendment was "to assure the continuation and render possible the effectiveness" of the state militia. The amendment, said the Court, "must be interpreted and applied with that end in view."

Since the modern "well-regulated militia" does not use privately owned firearms, courts since *Miller* have un-



The gun lobby's Second Amendment argument has acquired a political significance that bears no relationship to its legal validity.

animously held that laws affecting such guns do not offend the Second Amendment. No federal court in history has overturned a gun law on Second Amendment grounds.

High Court Confirmation

This remarkable judicial consensus has twice been reaffirmed by the Supreme Court. In *Horton v. Sills*, 394 U.S. 812 (1968), the Court dismissed, for want of a substantial federal question, a gun owner's appeal of a New Jersey Supreme Court holding that the Second Amendment permits regulation of firearms "so long as the regulation does not impair the active, organized militias of the states." (As the Court has repeatedly made clear, a dismissal of an appeal, as in *Horton*, is a decision on the merits.)

More recently, in *Lewis v. United States*, 445 U.S. 55 (1980), the Court held that, for purposes of equal-protection analysis, legislative restrictions on the use of firearms do not "trench upon any constitutionally protected liberties." The Court cited *Miller* in support.

These decisions recognize that the Second Amendment differs from the First not only in language, but also in subject matter. Whereas the First Amendment addresses freedom of personal belief and expression, the Second Amendment addresses the distribution of military power in society. Many colonists strongly distrusted a standing army composed of professional soldiers and controlled by the central government. They sought in the Bill of Rights a reaffirmation of the right of the states to have their own armed militia, composed of ordinary citizens, as a check on the power of the standing army. The concern of those seeking to amend the Constitution was, in George Mason's

words, that "Congress may neglect to provide for arming and disciplining the militia, and the state governments cannot do it, for Congress has an exclusive right to arm them."

The first Congress could have adopted an amendment divorcing the right to be armed from the militia purpose. Indeed, the New Hampshire ratification convention had proposed that the Constitution be amended to read: "Congress shall never disarm any citizen unless such as, are, or have been in actual rebellion." Such language would have supported the NRA's position. It was not adopted.

Public Oblivion?

The NRA, therefore, has no valid argument that courts are torturing the original intent of the Second Amendment to adapt it to contemporary circumstances. The judicial interpretation of the amendment does not renounce the original intent, but rather enforces it.

Nevertheless, there continues to be a robust public debate about whether gun-control laws violate the Constitution—a debate that often seems oblivious to what the courts have said and what the Founders intended.

A recent illustration of the failure of Second Amendment law to penetrate the public consciousness is the reaction to the Supreme Court's denial in January of a petition for certiorari in *Farmer v. Higgins*. This was a suit brought by a Georgia machine-gun manufacturer, represented by the NRA's Firearms Civil Rights Legal Defense Fund, which sought to strike down the 1986 federal ban on possession of new machine guns as a violation of the Second Amendment. The U.S. Court of Appeals for the 11th Circuit had upheld

the ban, thinking so little of the NRA's constitutional argument that the appellate court rejected it without comment.

Many in the press were puzzled at the Supreme Court's refusal to hear the NRA suit. If the Court is willing to face such controversial issues as affirmative action, abortion, and the death penalty, why will it not finally resolve the never-ending dispute over gun control and the meaning of the Second Amendment? This question is probably asked as often by gun-control supporters as it is by those opposed to stricter gun laws.

The Court's refusal to hear *Farmer* reflects not its unwillingness to tackle controversy, but rather the settled state of Second Amendment law. Further guidance from the high court is simply not needed. The controversy over the meaning of the Second Amendment exists only in the public debate over gun control; it does not exist in the law.

What we have, therefore, is a situation in which discussion of our national policy toward crime and violence is dominated by a constitutional myth, an illusion created by mass advertising to advance a political objective. At a time when 19 American cities set new homicide records during the past year, we cannot afford to be guided by myths.

If the National Rifle Association and its friends in Congress want to argue against stronger gun laws on policy grounds, let them make the best case they can. Let them argue against a seven-day waiting period on the ground that avoiding "inconvenience" to handgun buyers is more important than saving lives. Let them make the case for laws allowing the sale of an AK-47, with a 30-round ammunition clip, to anyone who can pay the price. But let them no longer pretend that there is some fundamental constitutional liberty at stake. It's time to stop the Second Amendment nonsense.

Dennis Henigan is director of the *Legal Action Project* at the Center to Prevent Handgun Violence in Washington, D.C. The center regularly appears as amicus curiae in cases challenging federal, state, and local gun laws.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

13 pages
TESTIMONY

TESTIMONY

March 18, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-1232

TO: Legislative Liaison Officer -

JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
TREASURY - Richard S. Carro - (202)622-1146 - 228
ONDCP - Babette Hankey - (202)395-6739 - 257

FROM: JAMES J. JUKES (for) *JJ*
Assistant Director for Legislative Reference

OMB CONTACT: Douglas STEIGER (395-3386)
Secretary's line (for simple responses): 395-3454

SUBJECT: HHS Proposed Testimony on Gun Violence

DEADLINE: 10 AM MONDAY March 21, 1994

COMMENTS: This referral contains testimony for Surgeon General
Elders on gun violence as a public health issue. Much of it
has been previously cleared - new passages are indicated in
the text.

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
C. Walden/J. Cerda
Bill Galston
Nancy-Ann Min
Mark Schwartz
Jim Duke
Harry Meyers
Barry Clendenin
Bill Dorotinsky
Bob Pellicci

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: Douglas STEIGER (395-3386)
Office of Management and Budget
Fax Number: (202) 395-3109
Analyst/Attorney's Direct Number: (202) 395-3386
Branch-Wide Line (to reach secretary): (202) 395-3454

FROM: JOSE CERDA (Date)
3-21-94 (Name)
DPC (Agency)
6-5568 (Telephone)

SUBJECT: HHS Proposed Testimony on Gun Violence

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur
_____ No objection
_____ No comment
_____ See proposed edits on pages _____
_____ Other: _____
_____ FAX RETURN of _____ pages, attached to this response sheet

See Edits

Call me if this isn't legible.

Joe

Draft 4
3/17/94, 5:10PM - WM/CRoddy/CDC/Aduran
"metzenba.vic"

STATEMENT BY
M. JOYCELYN ELDERS, M.D.
SURGEON GENERAL
U.S. PUBLIC HEALTH SERVICE

Before the
SUBCOMMITTEE ON THE CONSTITUTION
COMMITTEE ON THE JUDICIARY
U.S. SENATE

Room 226 Dirksen Senate Office Building
Washington, D.C.

Wednesday, March 23, 1994
10:15AM

**(THIS TEXT IS THE BASIS OF DR. ELDERS' ORAL REMARKS.
IT SHOULD BE USED WITH THE UNDERSTANDING THAT
SOME MATERIAL MAY BE ADDED OR OMITTED DURING
PRESENTATION.)**

Good morning, Mr. Chairman, Senator Metzenbaum and other members of the subcommittee.

I am honored to be with you this morning to discuss why the epidemic of gun violence has become a public health issue. We ordinarily think of violence as a crime, something to be dealt with under the criminal justice system. But if we are serious about addressing the issue of violence in our society, we must start thinking of it as a public health problem because it kills and injures so many people, especially our young people and our children.

The following statistics, they bear repeating -- violence permeates our lives:

- o In 1991, the most recent year for which we have information, there were approximately 26,000 homicides and 31,000 suicides in this country.
- o The number of deaths caused by violence, then, is 1 every 9 minutes and 162 per day.
 - This number is greater than deaths caused by AIDS, over 30,000 per year or 1 every 16 minutes (90 per day).
 - And it is greater than deaths caused by drunk driving, nearly 18,000 persons per year or 1 every 30 minutes (49 per day).
 - By the time I finish this statement, another person will have died from violence. By the time we had to our homes tonight, another 36 will have died.
- o The average child sees 8,000 murders and 100,000 acts of

violence on television before finishing elementary school.

Gun violence is an important contributing factor to this explosion of violence in general:

- o During 1991, over 38,000 people died from firearm-related injuries -- 49% were suicides, 46% were homicides, and 4% were unintentional.
- o Every day in America, 14 children ages 19 and under are killed in gun-related suicides, homicides, and unintentionally when a gun goes off.
- o Among teenagers 15 to 19 years old, one of every four deaths is attributable to a firearm injury.
- o Since 1985, the risk of dying from a firearm injury has increased by 77% for teenagers 15 to 19 years of age.
- o Homicide is the second leading cause of death among 15- to 34-year olds in the United States and the leading cause of death for young African-American males and females. Look at the chart I brought that compares homicides among our young people with those in other industrialized countries. Almost the entire increase is attributable to firearms.
- o Between 1980 and 1991, the suicide rate increased by 27% in the 10 to 19 year old age group; 77% of this increase is attributable to an increase in firearm suicide.
- o The leading cause of death for both black and white teenage boys in America is gunshot wounds.
- o Gunshot wounds to youngsters ages 16 and under nearly

doubled in major urban areas between 1987 and 1990.

- o For young people 10 to 34 years of age, firearms are the second leading cause of death, and one out of five deaths of U.S. teens is due to guns. In 1990, more U.S. teenagers died from firearm-related injuries than from all natural diseases combined.
- o Over half (57%) of all African American teenage males who died in 1990 were killed with guns. This is up from 48% of in 1988.
- o The direct cost of treating firearm injuries alone to our health care system is \$1.4 billion a year.
- o Handguns account for 72 million of the 211 million guns in the U.S. -- about one in three, but they account for at least 2/3 of all firearm-related deaths.

especially easy access our children have to
What concerns me is the ~~availability~~ of firearms, particularly to
our young people.

- o In 1992, The Federal Bureau of Alcohol, Tobacco and Firearms estimates that more than 2 million new guns were made available for sale legally in the U.S. *delete*

- o CDC estimates that about 1.2 million elementary-aged, latch-key children have access to guns in their homes each day.
- o A nation-wide survey of high school students found that 1 in 20 students had carried a gun, usually a handgun, during a one-month period in 1990.

SOME OF
As I have said before, it is often easier for our children to

obtain a gun than it is to find a good friend, a good teacher, a good school or even a good minister.

THAT THERE ARE
We have also learned about the risk^s associated with guns in the home. If you have a gun at home:

- o You or a household member are 3 times more likely to be killed or to kill someone in your home.
- o You or a household member are 5 times more likely to commit suicide.

When you add alcohol and a history of domestic violence to the mix, the risk of homicide is twenty times greater!

- o Firearm assaults on family members and other intimate acquaintances are 12 times more likely to result in death than are assaults using other weapons.

What strategies does public health offer to combat this epidemic?

- 1) First, violence as a public health issue requires a public health approach. As a public health professional, I feel we must emphasize prevention and use a scientific basis for defining and solving the problem.
- 2) Second, using similar techniques as those applied to traffic fatalities, we must use an array of interventions to reduce violence. We can educate, we can enact laws and enforce regulations, we can change the environment, we can restore hope in the future for our children, we can take back our streets.
- 3) Third, violence in the family often results in violence in

the community. Children who witness violence at home are often the ones who resort to violence to solve conflicts in the streets.

- 4) And finally, prevention begins with education in our schools, with violence prevention a part of comprehensive health education in grades K through 12.

The statistics I just cited are powerful proof that gun violence is a public health crisis of the first order. Let me now turn to the reasons why solving this public health crisis demands a public health approach.

THE PUBLIC HEALTH APPROACH

Public health's emphasis is on prevention and on a scientific basis for defining and solving the problem. The public health model looks at causes. It takes a comprehensive view. Most importantly, it seeks to empower communities. And, it works to prevent violence before it occurs.

Until recently, most of our nation's response to violence has been to apprehend, arrest, adjudicate, and incarcerate violent offenders through the criminal justice system. This response is important, but, ~~as I have said, it is too little, too late in the chain of violence and, by itself, will not stop the problem.~~

Although we must learn much more about how to prevent violence, what we do know clearly shows that violent behaviors, and the injuries and deaths that result, can be prevented. The police, judges and others in the criminal justice system agree. We should not wait until violence happens to look for solutions. We must stop the violence before it starts. This means paying more attention to our children, to what they learn and to what kind of

people they will become.

Public health also provides a scientific basis for defining the problem and finding solutions. ~~For example, in addressing the problem of firearm injuries to children and youth by using scientific methods, we have been able to quantify the actual risks and benefits to children and families of having a gun in the home, as I outlined above.~~

SOLUTIONS

Recently, I have had several opportunities to speak about family violence and I have learned something very simple, but very profound: if we ever expect to put an end to violence and victimization in America, we have to start where the violence starts -- in our homes, in our families.

Because violence is so much a learned behavior and not a fact of life, we must focus on primary prevention. We actually need to begin at birth or before, and then provide education and training -- and opportunity -- throughout a young person's life.

Primary prevention strategies are nothing new for public health. Twenty-some years ago, when the toll of traffic crashes captured public attention, the first thing we did was strengthen drivers' education classes and make them a requirement. Then we worked with the automobile manufacturers to make cars safer, adding seat belts and child safety seats; we worked with the highway designers to make highways safer. And then we cracked down on unsafe, usually drunken, driving.

Just as we reduced the number of deadly traffic crashes, I maintain, we can engage in a similar process to reduce the deaths and injuries caused by violence. ~~For example, just as we~~

2
~~collected data to help us prevent motor vehicle crashes, we can establish a similar national system to identify firearm deaths and injuries and prevent them. Also, we can identify and evaluate a wide array of strategies and interventions to prevent firearm injuries, focusing on changing the ways we resolve conflict, on changing the ways we use guns, and on changing the design of those weapons. For example, we can assure guns are used or stored safely, and we can limit who has guns.~~

Added
by CDC;
underscored

Before anything else can happen, we must keep the tools of violence out of the hands of our children. The Brady law was a wonderful and courageous first step, but we must do more. Let me add my voice to that of the President's in calling for a ban on semiautomatic assault weapons that serve no other purpose but to kill.

After this, then, the first step in preventing violence, the one I care most passionately about, is education. We must devote our tools of commitment to education for the prevention of violence.

1. We must educate our parents, beginning with prenatal classes.

Having nurses visit homes of expectant parents to talk about child rearing, the risks of child abuse and how to prevent it is a proven way to prevent violence and abuse in the home.

2. We must offer and support early childhood education classes like Head Start for all children.

This Administration is on record supporting full funding for Head Start.

3. We must provide comprehensive health education in our schools, from kindergarten through high school, and that health education must include violence prevention. I am convinced that schools offer us the best and easiest way to reach as many children as possible.

We need more classes in conflict resolution designed to help children develop empathy with others, learn ways to control impulses, develop problem-solving skills, and manage anger.

4. Because at the root of violence is poverty and hopelessness, the final measure of prevention is HOPE. Hope means developing programs to train young people and make jobs available for them. I could not agree more with Attorney General Janet Reno that the best social worker is a good job.

I am concerned that children today are not learning the skills they need to be employable and productive in today's work force. I am worried that one study has found that 1/4 of all young African American males ages 20-29 are incarcerated, on probation or on parole, while only 1/5 are enrolled in higher education.

~~Here is what experts agree are steps we can take to reduce firearm violence:~~

- ~~1. Make it harder for people who should not have guns to get them.~~
- ~~2. Regulate how firearms are used, carried and stored.~~
- ~~3. Reduce the lethality of firearms.~~

Added
by
CDE;
Unclassified

- ~~4. Support research to develop a sound scientific basis for preventing firearm injuries, including the reporting system I mentioned earlier.~~
- ~~5. Reframe the public debate on firearms, from one of "gun control" to one of "preventing firearm injuries."~~

CONCLUSION

Just like traffic accidents and tobacco, the problem of firearm violence does not lend itself to a single solution. We must take a multi-disciplinary approach to ending violence -- the kind of approach that draws from criminal justice, education, social services, and health. Our experiences over the past 20 years have taught us that the criminal justice system alone cannot solve the problem of violence. Merely adding more police and building more prisons to ^{lock-up} warehouse violence offenders for the balance of their lives ~~is no solution as there will never be~~

~~enough money for these solutions.~~ WILL HELP, BUT THESE POLICIES ALONE CANNOT SOLVE OUR PROBLEMS. WE MUST BE TOUGH + SMART.
The only lasting solution to violence is a comprehensive solution -- one that focuses on support for families and on building strong neighborhoods -- while, at the same time, promoting an underlying bases of safety, self-worth, and economic security for all Americans.

Youth can be taught skills to help them deal with violence. They can be helped to develop strategies needed to solve differences without violence. Young people can be taught about the situations or actions that are likely to result in violence or violent injuries, such as associating with violent peers, using alcohol or drugs, and possessing a firearm or other weapon.

Young people can be provided with mentors, who can serve as role

TOUGHER GUN LAWS - LIKE A BAN ON ASSAULT WEAPONS +
 REFORMS IN HOW WE LICENSE FEDERAL GUN
 DEALERS - CAN HELP US REDUCE GUN VIOLENCE + DEATHS. ^{Was cleared by WH, but Needs reviewing}
~~models. Laws and regulations can be developed specifically to~~
~~reduce injuries and deaths, such as stronger laws governing the~~
~~use, ownership, and sale of guns.~~ Teenage parents, abused
 children, or wayward teenagers can be provided with training,
 support, and recreation.

In the end, we all can CARE.

The "C" in CARE is for Concern and Commitment. We must care
 enough to change our Concern to Commitment, sharing our time, our
 talents, and our treasure.

The "A" is for Awareness and Advocacy. We must increase our own
 Awareness, and the awareness of every citizen, of the magnitude
 and cost of this epidemic -- and we must Advocate for change, and
 develop Action plans at every level to attack this problem.

The "R" is for Reaching out and Resources. We must Reach out to
 those in our community who may be at risk; we must take
 Responsibility, and we must use our Resources.

And, finally, the "E" is for Education and Empowerment. We must
 Educate our children and each other about violence and how to
 prevent it -- we must Empower ourselves and our communities to
 reclaim our neighborhoods. To do anything less is to sacrifice
 our children, our future.

Our young people must have hope for their future. We must make
 this happen because they are our future.

As your Surgeon General, I believe it is time for America to get
 over its love affair with ^{GUN VIOLENCE.} guns. It's time to send the Terminator
 and Dirty Harry packing, along with the Marlboro Man and Joe
 Camel. The time is right, the time is now.



Published by the Foundation for National Progress

1663 Mission Street, San Francisco, CA 94103-2499

415 558 8881 fax: 415 863 5136

December 16, 1993

Dear Friend:

The passage of the Brady Bill was an important first step in dealing with handgun violence, but much work remains in combating this particularly American epidemic.

The enclosed issue of *Mother Jones* features a special package of articles on our society's fascination with guns, including two items we feel will be extremely effective in a continuing campaign to raise public consciousness about handgun violence:

- "STAMP OUT HANDGUN VIOLENCE" is a special bound-in page of gummed, perforated stamps featuring images of a world without guns. Twelve nationally known graphic artists donated their work for this page.
- "THE RIGHT TO BEARS & ARMS" is a pullout poster comparing the regulations governing the manufacture of guns with those governing the manufacture of teddy bears. The pullout also highlights several shocking statistics about handguns.

We've printed extra pullouts on 100# stock as well as extra sheets of stamps. I'm hoping organizations and individuals that receive this mailing will order a quantity of stamps or posters and/or mention them in organizational newsletters (we expect to have both in stock for several months). The stamps and posters are priced at a break-even cost, with significant discounts for bulk orders:

- Stamp sheets are \$1.95 each for 1-9, \$1 each for 10-49, and 50 cents each for 50 or more. Posters are \$1.95 each for 1-9, \$1.25 each for 10-49; and 75 cents each for 50 or more (shipping included).

If you chose to mention these items in a newsletter, please note that we're moving, and orders sent after January 15 should be sent to our new address: 731 Market St., #600, San Francisco, CA 94103.

Sincerely,

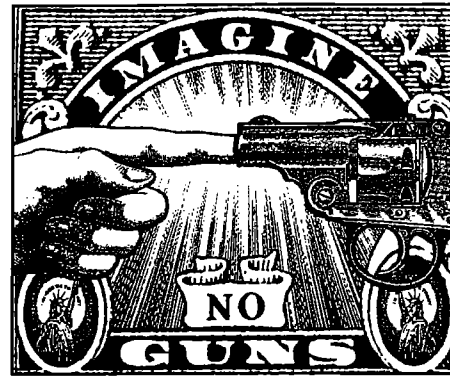
A handwritten signature in black ink, appearing to read "Richard Reynolds".

Richard Reynolds
Communications Director

IMAGINE NO HANDGUNS



Art by Peter de Sève for Mother Jones magazine

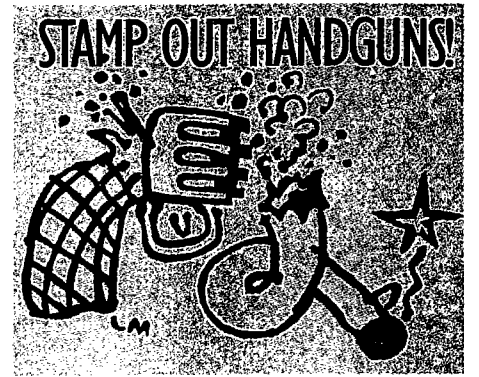


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IMAGINE NO HANDGUNS!



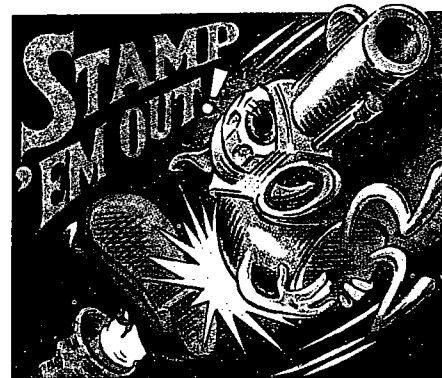
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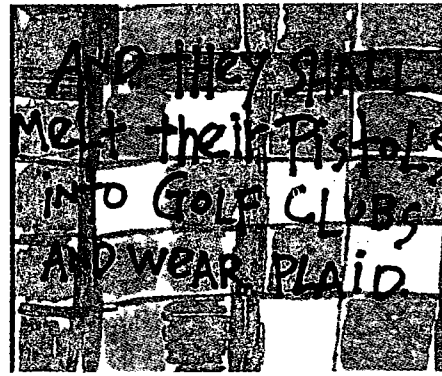


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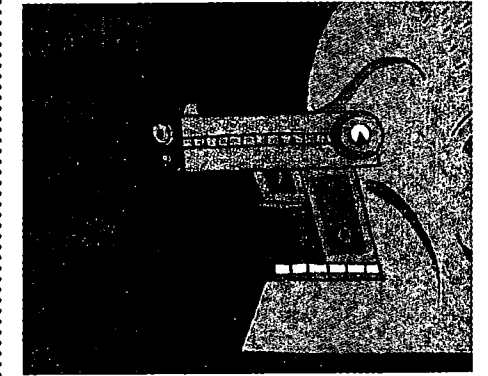
Art by Mark Zingarelli for Mother Jones magazine



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Art by Steven Guarnaccia for Mother Jones magazine

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Together,
we can lick this problem!

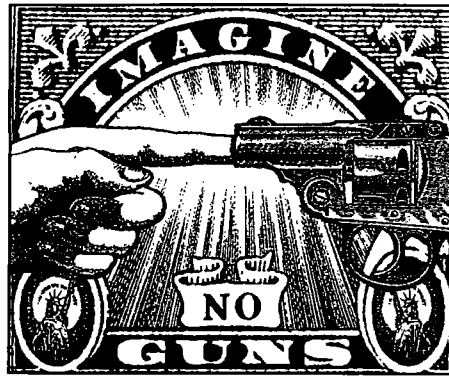
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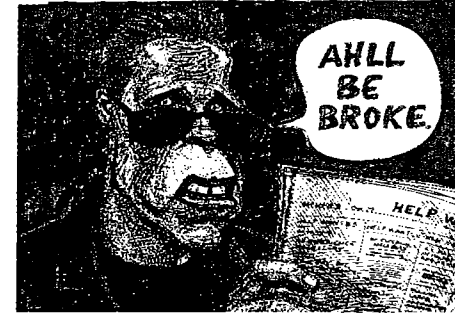


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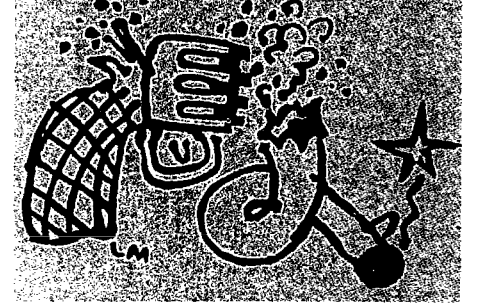
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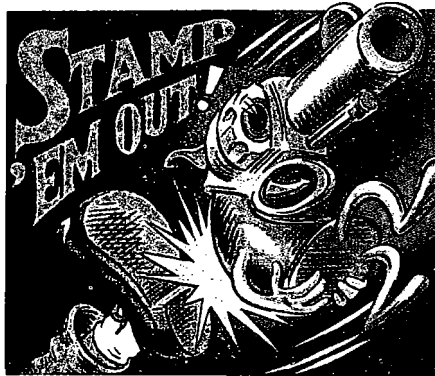
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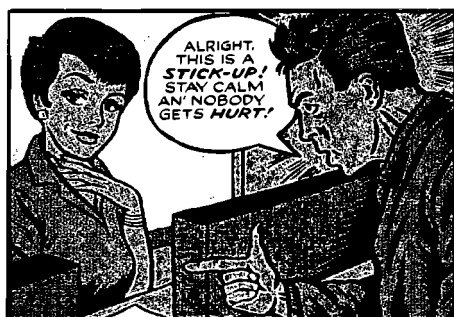


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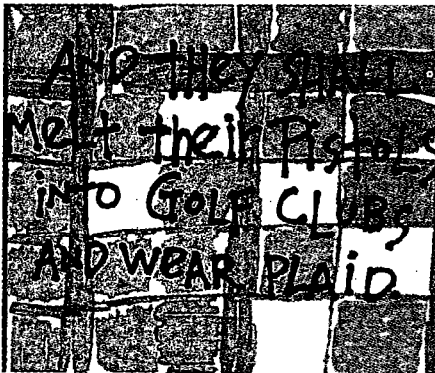


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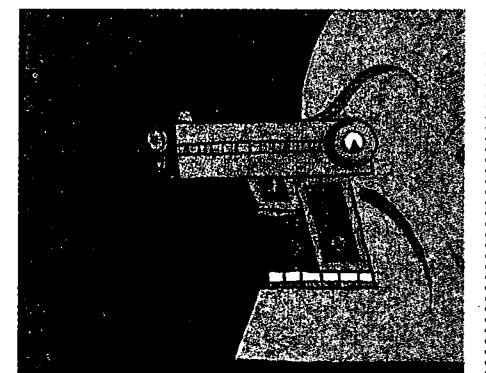
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to end America's fatal
fascination with
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plus

GANGSTAS
by Richard
Rodriguez



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Joycelyn Elders, our
surprising Surgeon General



and
**AN ALTERNATIVE
TO RU 486?**

