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THE WHITE HOUSE

WASHINGTON

March 10, 1975

MEMORANDUM FOR: ✓ PHIL BUCHEN  
JIM CANNON

FROM: JACK MARSHALL *JM*

As mentioned early in the senior staff meeting this morning, the question of gun control legislation is receiving increased attention.

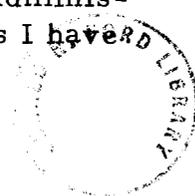
This is becoming evident in three principal areas: namely, the Congress, the media, and in organizations that support and oppose gun control legislation. As you are aware, this is a subject with highly emotional interest on both sides of the issue.

It is important to know that the President, as a member of Congress and as Minority Leader, had occasion to take positions on this subject, and you might make an effort to establish more precisely what those positions were, particularly by reviewing his public statements.

In summary, his view was to oppose gun control generally, and it should be noted that he signed the Black Powder Bill in December which was considered by some to fall into the anti-gun regulation category.

An effort is underway to try and strike some compromise on the bill by directing legislation to "Saturday Night Specials." Congressman Bob Sikes, a spokesman for the NRA and those opposing gun control, has indicated his willingness to support legislation directed against the "Saturday Night Specials."

In all events, it might be helpful to start pulling together an Administration position that takes into account a number of the factors I have mentioned earlier.



THE WHITE HOUSE  
WASHINGTON

Send copy ~~to~~ to  
Helen Lazarus, with  
my comment that  
I have already  
talked to A. B. Levi  
who is having his  
Dep't work on a  
possible fresh approach.  
I would like his  
views.

sent  
3/11/75  
FRANKLIN D. ROOSEVELT  
LIBRARY

Gun control  
Legislation

3/11/75

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Please make copy for  
Dick Parsons of  
Dom. Council staff.

P.

has been





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

March 31, 1975

Mr. Philip W. Buchen  
Counsel to the President  
The White House  
Washington, D.C. 20500

Dear Phil:

Here is a copy of the speech I am planning to give before a meeting of the International Association of Chiefs of Police April 6th. It will be the first public suggestion about the handgun proposal we have been developing here.

I ought to draw your attention to the central features of this proposal. For one thing, it would apply only in the heavily populated metropolitan areas. We expect to use the Standard Metropolitan Statistical Areas for this purpose. The federal law would apply only when the violent crime rate in the metropolitan area either exceeds the national violent crime rate by a specified percentage or increases a specified amount in a single year. The law would prohibit the possession of handguns outside of one's home or business. It would prohibit the sale or transfer of handguns and handgun ammunition. It would also prohibit importation of handguns into a metropolitan area. Of course, law enforcement officers and other narrowly defined security personnel would be exempt from the prohibitions.

We have been thinking about using a civil penalty for a first offense and criminal penalties for subsequent offenses. To avoid stop-and-go enforcement we think once the federal law goes into effect in the metropolitan area it ought to stay in effect for a period of several years.

Those are the basic features of the mechanism. The speech makes it clear that our proposal is still tentative and developing. I state that the entire idea "could be dropped, and it may be dropped." But I do hope the balloon will fly.

Sincerely,

  
Edward H. Levi  
Attorney General



*Gun  
control*

Tuesday 4/1/75

11:55 Ken Lazarus was talking with Justice and they said the AG had given you a copy of the draft speech on gun control.

Ken would like to have a copy -- if you don't mind.

*4/1/75  
copy sent to  
Lazarus*



THE WHITE HOUSE  
WASHINGTON

Date 4-5-74

TO: Phil Bucher

FROM: KEN LAZARUS

ACTION:

- \_\_\_\_\_ Approval/Signature  
\_\_\_\_\_ Comments/Recommendations  
\_\_\_\_\_ Prepare Response  
\_\_\_\_\_ Please Handle  
X \_\_\_\_\_ For Your Information  
\_\_\_\_\_ File

REMARKS:

Final draft of AG's  
Speech (Sun) to IACP





I would like to talk with you tonight about a problem that concerns us all, both as officials charged with the duty of enforcing the law and as citizens and residents of American cities. Violent crime in the nation's urban areas has reached grave proportions. As police chiefs you meet this problem every day. You see the ugly results of violence not only among the victims of such crimes, but also in the looks of fear that appear intolerably often on the faces of the people you serve.

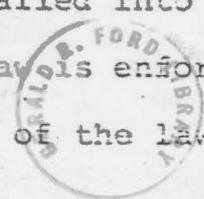
The Federal Bureau of Investigation's latest figures indicate that the rate of serious crime -- murder, forcible rape, robbery, aggravated assault, burglary, larceny, and auto theft -- was 17 per cent higher in 1974 than in 1973. That is the biggest increase in the 42 years the Bureau has been collecting statistics. Since 1960, the rate has increased about 200 per cent. Among the serious crimes, those involving violence or the threat of it have also been on the increase, in large part because of increases both in the cities and in the suburban areas around them. Once composed mainly of crimes of passion within families or circles of acquaintances, the murder rate lately has included increasing numbers of crimes in which the perpetrator and victim were strangers. Impersonal, passionless murder on the street has come to symbolize to many people the insecurity of living in crowded urban environments.



I don't want to overemphasize these statistics or to play upon people's fears. It would be easy to do so because people are already afraid and are prepared to accept arguments that give them more cause for fear. I also recognize that the statistics may give a distorted picture of the problem, representing changes in the level at which crime is reported as well as the level at which crime occurs. Yet those qualifications do not offer us much solace.

We are brought face to face with the problem of violence and we must discover new methods to bring it under control. Even the best we can offer, we must concede, will not bring an immediate end to the violence. And achieving our best will undoubtedly take time. Yet we must try to act immediately to counter a dangerous trend in our cities, in which citizens, skeptical of the government's ability to protect them, seek to guarantee their personal safety through a terrible balance of force. The idea that individual security depends on an armed standoff between citizens threatens the very heart of civilized society.

That idea threatens the legal system directly because faith in the law -- in its effectiveness and in the fairness and decency with which it is enforced -- forms the foundation of obedience to the law. Faith in the law has also been called into question recently by a wave of cynicism about the way law is enforced. To counteract the cynicism and in that way restore some of the law's



effectiveness we must all by our conduct exemplify the evenhandedness and kindness of American law. We must show Americans the law is something in which they should believe. But that effort, while it is absolutely necessary, will not make an immediate change in the pattern of violence.

It would be comforting to know precisely what forces and conditions cause crime. But we must do without that comfort because we don't really know all the causes. Even when we think we have isolated a cause, it isn't at all clear what we can do to remedy it. To be sure, economic hardship, dissatisfaction with the quality of life, and deterioration of social institutions have had a devastating effect on obedience to law. These are fundamental matters that shape the morale of the people. Some have argued that our approach to the problem of crime must center exclusively on these matters. And they have found a contradiction between trying to remedy these social problems and trying to strengthen the deterrent impact of the criminal law. I deny that there is any incompatibility.

People's morale depends in part upon their faith in the law's ability to protect them. To reduce their fear of violence is to increase their real wealth. Likewise the decline in the deterrent force of the law impoverishes us all. Chaos in the criminal justice system makes it unlikely today that an offender will receive a punishment commensurate with his crime, and that has



reduced the deterrent effect of law drastically. An unpublished study conducted in one major American city showed that only four per cent of the persons arrested for a felony were actually convicted of that felony. Even fewer ever went to prison. FBI statistics show that there are only 19 arrests for every 100 serious crimes reported. And recent research by the Law Enforcement Assistance Administration indicates that in some categories of crime many occurrences are never even reported to police by the victims. When people know that the odds of punishment for criminal conduct decline at every level of the criminal justice system because of inefficiency and disorganization, the deterrent value of punishment is minimal. The deterrent power of the criminal law depends not so much upon the severity of punishment as it does upon the swiftness and certainty with which punishment follows the crime. Finding ways to strengthen this deterrent impact is extremely important.

While we must make our best efforts to discipline and strengthen the criminal justice system and to restore the quality of life in our cities, these things cannot be accomplished rapidly and when accomplished may still not quickly reverse the increasing incidence of violence.

The effort against crime must involve many new techniques because the problem involves many facets, but we can concentrate on the facets one by one. Tonight I would like to discuss one



element of the problem of urban violence. The handgun has become the common denominator of much of the violence that besets us. The stock of handguns in the United States has been estimated at more than 40 million, and that number increases each year by about 2.5 million. The handgun, in itself, is nothing but a relatively simple machine. In some circumstances the handgun is not socially troublesome. It can be used for sport. It can be used in the wilderness for self-protection. Nevertheless, in crowded urban areas the handgun has become a medium of terror. More than half of the murders in America -- perhaps 10,000 in 1973 -- are committed by persons using handguns. About one of every four aggravated assaults and one of every three robberies involves a handgun. In the decade ending in 1973 a total of 609 policemen died of wounds inflicted by handguns. And apart from those statistics, handguns carried on the streets of our urban centers have become the focus of fear. While handguns have reaped great carnage, they have sown an even greater anxiety.

A handgun makes an individual in a city too powerful for his environment. It is a menace because it can be so readily hidden. It is a mechanism that translates passion or a passing evil intent into destruction. The possibility, or in some neighborhoods knowledge, that people roam the streets with handguns in their pockets has called into question the safety of even venturing out from behind locked doors. And the fear of handgun violence has provoked people to purchase their own handgun for



self-defense, causing a proliferation of arms that aggravates the basic problem. In short, handguns pose a great threat in cities beleaguered by violence.

Most states have some form of gun control law, ordinarily regulating the place and manner in which firearms may be used and setting some limits on the people to whom handguns may be sold. Only two -- New York and Massachusetts -- have strict laws. Many cities have tough firearm registration or licensing laws. The latest federal statute, passed in 1968, requires manufacturers, importers and dealers in firearms to obtain a federal license. It prohibits them from selling to persons they have reason to believe are convicted felons, persons under indictment for a felony, fugitives from justice, addicts or adjudicated mental defectives. It also requires some record-keeping by gun dealers. And it bans the import, though not the manufacture, of cheap handguns, the so-called "Saturday night specials".  
*based on current levels of enforcement*

Those state, local and federal laws have proven to be insufficient.

While the 1968 federal law has made it difficult for anyone to purchase a cheap imported handgun, it has not prevented anyone from buying a similar weapon manufactured or assembled within the United States. A person who lives in a city that has a law prohibiting him from buying a handgun need only travel a short distance -- often only across the street into a suburb -- to purchase a weapon legally. The federal law requires licensed gun dealers to keep records of purchasers of handguns, but it does not require the same of individuals who sell or transfer weapons

but don't make a business of it. Consequently there are no universal records of gun ownership. That makes federal prosecution difficult. And it hampers efforts to trace the origin of weapons used in crime. In state and municipal courts, the crushing burden of other criminal cases leads prosecutors and judges to give low priority to the proper adjudication of gun law violations. Finally, judges often hesitate to impose criminal sanctions on people whose only offense is carrying a weapon for self-protection.

Finding current gun control laws ineffective, the mayors and police chiefs of many major cities, the executive director of the International Association of Chiefs of Police, the United States Conference of Mayors, the Director of the Federal Bureau of Investigation, and many other knowledgeable officials and groups have called for further restriction on handguns. Yet since 1968 no new major federal legislation has been passed.

The idea of gun control generates strong feelings. Some oppose it because they fear they will be stripped of their only defense against violent criminals who would otherwise prey upon them. <sup>Other may that</sup> There is a constitutional policy of government restraint in regulating firearms reflected in the Second Amendment, which states, "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." Gun control is criticized as missing the point because weapons alone do not

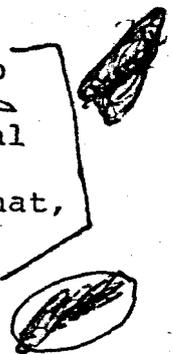


cause crime. Many of the objections to gun control, however, simply do not reflect the conditions of modern urban life. They are based on an American style of living that no longer exists in the places where people have congregated to live. And while it is easy to sympathize with those who want handguns to protect themselves from others who have handguns, it is obvious that they contribute to the unacceptable proliferation of handguns in the cities.

The test of our government may lie in its ability to open thoughtful discussion on issues marked by deep emotional divisions. I want to use this occasion to try to do just that, for there is much to talk about.

Proposals <sup>relating to</sup> ~~for controlling~~ handguns range from total prohibition of manufacture and sale coupled with confiscation of existing privately-held handguns to the repeal of all laws that currently place limits on weapon commerce and ownership. In between those extremes there have been proposals for national registration of handguns, for national licensing of handgun owners, and for tightened enforcement of current handgun controls.

Any realistic proposal for federal regulation of handguns must take into account the interests of the opponents of gun legislation. Some people may say that for that reason any new federal gun control law will be less than perfectly effective. The accommodation of strong competing interests almost always results in something different from what any single interest desires. And yet the accommodation required by our system of



government can accomplish something useful.

One approach to handgun control we have been discussing is designed to eliminate the so-called "Saturday night specials." These cheap, low-quality handguns pose a special threat simply because they are so inexpensive and so accessible to anyone willing to pay twenty or thirty dollars for a large measure of deadliness. They are the handguns most commonly used in crime. A study by the Treasury Department of more than 4,500 handguns used in crimes in four major cities indicated that 70 per cent were "Saturday night specials." The main problem in prohibiting these cheap and dangerous machines lies in defining their characteristics. We believe that an effective test can be devised to define these weapons with sufficient clarity. It would include a variety of factors such as overall size and barrel length, the presence of safety features, the metallurgical quality of the weapon's parts, and the performance of the handgun after being subjected to various strains.

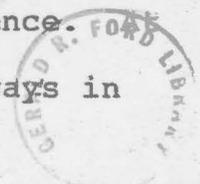
Banning manufacture and sale of "Saturday night specials" would begin to remove from circulation the kind of handgun most often used in urban street crime. Short of prohibition, a taxing system could be developed to price this variety of weapon out of existence. The only advantage purchasers see in these low-quality weapons is their low price. A graduated tax



could be designed to bring the price of every handgun up to some specified level. For example, a \$25 handgun could be taxed \$75, a \$75 handgun could be taxed \$25, and a \$90 handgun could be taxed \$10 to make the cheapest available handgun cost no less than \$100. If enforcement efforts cut off the development of black market in cheap handguns, <sup>natural market</sup> economic forces would quickly make it unprofitable for anyone to manufacture "Saturday night specials."

But "Saturday night specials" are not the only weapons on the street, and a ban on their manufacture and sale would not eliminate the threat <sup>caused by</sup> ~~that~~ existing handguns -- cheap or expensive. ~~represent~~ "Saturday night special" proposals do not discriminate between areas of the country where the need for control is greatest and the vast areas where handguns pose <sup>of a</sup> less ~~significant~~ threat. Also, it is hardly opening new vistas of discourse to come to you with suggestions about controlling cheap handguns. <sup>That</sup> ~~the~~ idea has been around for some time. A proposal to implement it passed the Senate in 1972. The Department of Justice has on more than <sup>one</sup> ~~one~~ occasion <sup>supported</sup> ~~suggested~~ the idea of controlling "Saturday night specials," and President Nixon offered some support for it in 1973.

A newer approach to handgun control is to design a mechanism which includes strong sanctions against violators but which strikes only in places where the need for handgun control has been clearly demonstrated by a critical level of violence. the Department of Justice we have been sketching out ways in



which such a mechanism might operate.

We began by concentrating on urban centers where the problem of handguns is most critical. The Standard Metropolitan Statistical Areas designated by the Office of Management and Budget are a convenient tool for defining the limits of the areas in which our proposal might operate. Those statistical areas all include a central city with a population of 50,000 or more and surrounding political subdivisions. Preliminarily, we have discussed a mechanism which would be set into operation either by a local violent crime rate significantly higher than the national average or by a high local violent crime rate coupled with a significant increase in the local rate of violent crime over the course of a year. For example, assume that the mechanism had been put into effect in 1972 and assume that the system provided federal controls in a local area if its violent crime rate was either 20 per cent higher than the national average or both 10 per cent higher than the national average and five per cent higher than the previous year's local rate. Under these assumptions, a federal gun law designed to go into effect in limited geographic areas would have applied in 62 Standard Metropolitan Areas including New York City, Washington, D.C., Chicago, Baltimore, San Francisco, and Los Angeles.

The formula could be adjusted, of course. For example, the mechanism might only apply to Standard Metropolitan Statistical Areas with core cities whose population exceed 250,000. Under the assumptions I mentioned just a moment ago, only 27 relatively

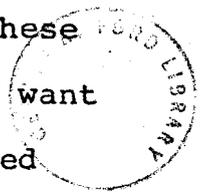
large metropolitan areas would be covered by such a mechanism. Perhaps some metropolitan areas would want to be covered but would not be under either hypothetical formula I have described. Perhaps both of the formulas are over-inclusive. The point here, though, is the broad idea and not the technical details.

In areas where the violent crime rate has reached the critical level, this proposal would ban the possession of handguns outside the home or place of business. It would apply to all handguns, not simply "Saturday night specials." It would ban the sale or transfer of handguns and handgun ammunition in the relevant metropolitan areas and also prohibit importing handguns into the metropolitan area, except in certain circumstances in which the guns are imported for the use of law enforcement or other strictly defined security personnel exempt from the law.

In these critical crime areas an owner of a handgun would be required to obtain a special permit of extremely limited duration if he wanted to transport his weapon outside his home or business for a legitimate reason. Handguns could be used at target-shooting clubs if they were kept in secure arsenals at the clubs.

It is well to remember that the areas in which these federal controls would apply are those which generally want strict controls the most. They are the areas which need

Obviously attention would have to be given to Federal enforcement capabilities.



controls the most. And they are the areas that suffer the most from the lack of effective national regulation over the interstate transportation of handguns. The regional approach I am outlining avoids more drastic nationwide measures such as registration and licencing, but it strikes no less than they do at the illegal commerce in weapons. It strikes not at the moment a handgun crosses a state line but rather at the end of the line of commerce when the weapon has reached the hands of an individual who is the reason for the commerce in the first place. It strikes at the moment when the weapon is most deadly.

There are many variations that can be built upon this regional critical crime rate mechanism. It could include a high civil penalty plus confiscation of the weapon for the first violation of the possession or transfer provisions. This kind of penalty, we believe, would be stiff enough to deter violation. But because it would be a civil penalty, judges would not hesitate to impose it on otherwise law-abiding citizens. A second offense could carry a short prison term and a third offense and any violation of the gun-running provisions of the law could carry a stiff criminal penalty.

These penalties -- indeed all features of this proposal -- could be modified. But in discussons with U.S. Attorneys and other law enforcement officials, <sup>many</sup> ~~most~~ have told us that this gun control mechanism could have a significant effect on urban gun crime. They have offered suggestions. Some have suggested,

for example, that a civil penalty for the first offense is not enough because prosecutors would not take seriously a law providing such a mild sanction. We are considering their suggestions, but they do not go to the essence of the regional approach.

As one final consideration, a gun proposal of the sort I have just outlined may not be effective unless it were imposed for a period of years once crime in a metropolitan area reached critical levels. If the federal law were to switch on and off with slight changes in the crime rate, we believe that the important deterrent effect which stems from the certainty of its enforcement would be lost. In addition, the benefits of a federal law would not flow instantaneously but would only occur when a lasting pattern of strict enforcement becomes clear. Nevertheless, the mechanism could be designed to free a metropolitan area of federal handgun regulation once the crisis level of violence had clearly passed.

This proposal has several advantages. Because it would cover not only central cities but also the suburban regions around them, it would avoid the problem encountered in so many cities whose neighboring suburbs do not control handguns strictly. The federal law could reduce the possibility of crossing the street from a city into a suburb to purchase a lethal handgun whose sale had been banned in the city. It could change people's habits with respect to handguns. And a change in the habits of a society can make the crucial

difference in its conduct. Finally, it <sup>could</sup> ~~would~~ leave unaffected the use of handguns in vast areas of the nation, in cities where violence has not reached emergency proportions and in rural areas where handgun use is both less threatening and more legitimate.

The handgun control proposals I have discussed tonight are only a small part of the universe of social inventions we could design to stem the spread of firearms. Gazing at a universe can be rather frightening sometimes because it involves seeing such a limitless range of possibilities. In the past we have often avoided ~~this~~ sense of vertigo by seizing upon one idea, reducing it to the language of legislation, then trying to sell it in a market that encompasses deeply divided interests. And in the past we have often failed. I reject the idea that the universe of possibilities for controlling handguns is foreboding. I believe it makes for a great challenge because it offers so many opportunities for thoughtful discussion and compromise.

I am calling upon you tonight and upon other law enforcement officials as well as representatives of all sides of the gun control controversy to join with the Department of Justice in conversations that can lead to legislation to stem the violence in our cities. The dangers to our society posed by uncontrolled violence are simply too great for us to fail to act.

I have concentrated tonight on only one <sup>aspect</sup> ~~approach~~ to the problem of urban violence. Of course, we must <sup>design</sup> other

approaches, other social and legal inventions to increase the efficiency of the criminal justice system -- the police, the courts, the system of corrections. I believe that if we use our best wisdom and our most resolute spirit we will be able to fashion those inventions. I chose tonight to talk of only one facet of the problem because handguns are such a basic factor in violence and the declining morale in our cities and also because finding a means of controlling handguns challenges our democratic institutions to produce a compromise measure that can still be effective.

The control of handguns is a terribly difficult problem that generates deeply emotional responses in all quarters. But it is also central to the horrible insecurity affecting so many of our cities. I need your advice and participation in the discussions I hope will begin in good faith on the subject of handgun control. And I pledge my cooperation and the cooperation of the Department of Justice in your efforts to bring peace to your communities.

~~Thank you~~



April 15, 1975

*For filing  
under  
Gun Control*

Dear Senator:

Thank you for your April 10 letter to the President commenting on recent press reports of anti-firearms proposals of the Attorney General's.

You may be assured your comments concerning these as they relate to the constitutional guarantee of the right to bear arms will be called to the attention of the President at the earliest opportunity. In addition, these will be shared with the appropriate members of the staff.

With kindest regards,

Sincerely,

William T. Kendall  
Deputy Assistant  
to the President

The Honorable James A. McClure  
United States Senate  
Washington, D.C. 20510

bcc: w/incoming to Dick Parsens for DRAFT REPLY  
w/incoming to Philip Buchen - FYI  
w/incoming to James Cannon - FYI

WTK:EF:VO:mlg



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4-11

*Copy AG Levi's  
firearms proposals*

United States Senate

M. BARRY MEYER, CHIEF COUNSEL AND CHIEF CLERK  
BAILEY GUARD, MINORITY CLERK

COMMITTEE ON PUBLIC WORKS

WASHINGTON, D.C. 20510

April 10, 1975

The Honorable Gerald R. Ford  
President of the United States  
The White House  
Washington D. C. 20500

Dear Mr. President:

*MF*

Being a staunch believer in the inviolability of constitutional guarantees on the right to bear arms, I was truly shocked and dismayed at press reports of Attorney General Levi's recent anti-firearm proposals. But upon reading the text of Mr. Levi's remarks, I was appalled.

It was nothing less than a declaration of war on the right of Americans to keep and bear arms.

Mr. President, are the views of Mr. Levi, either in his specific proposal or his general view of the "universe" of gun controls, the official position of the Ford Administration?

Such an assault on the Second Amendment of the Constitution as Mr. Levi's is unacceptable and senseless from any quarter, but coming from a member of your administration, it is a gratuitous insult to those Americans who believe in constitutional guarantees.

In his remarks Mr. Levi says his own proposals -- proposals involving what I among tens of millions of Americans see as police-state restrictions -- "are only a small part of the universe of social inventions we could design to stem the spread of firearms." That is, at the very least, a terrifying admission. What if Mr. Levi had said, limited censorship of newspapers and television is only a small part of the universe of social inventions we could design to stem the spread of free speech? That is not a question put lightly. Nor can it be answered lightly. The amendments of the constitution are individually equal.

Sincerely,

*James A. McClure*  
James A. McClure  
United States Senator



McC:nR

THE WHITE HOUSE

WASHINGTON

April 22, 1975

MEMORANDUM FOR: PHIL BUCHEN  
FROM: KEN LAZARUS *kl*  
SUBJECT: Treasury Statement on Gun Control

Last night I reviewed the attached statement of David Macdonald, Assistant Secretary (Enforcement) at Treasury, and communicated my comments to him by phone.

Dave seemed receptive to my suggestions which may be summarized as follows:

1. The general introductory rhetoric beginning on page 3 should be expanded and clarified to indicate that the discussion which follows is Treasury's contribution to the continuing dialogue on handgun control a la Attorney General Levi's speech of several weeks ago. In due course, the President will evaluate these various options and present the Administration's position on the subject.
2. Beginning at page 8 there is a discussion on the possibility of increasing licensing fees. I suggested to Dave that due to constitutional restraints these would have to be cast in the form of taxes rather than fees.
3. Beginning at page 15, there appears a discussion of the utility of mandatory minimum sentences for firearm violators. Dave indicated that this recommendation was included at the request of Dick Parsons. I pointed out that there are two types of mandatory minimum sentences in federal criminal law. So-called "phony" mandatory minimum sentences are required to be imposed but parole is not precluded. True mandatory minimums, on the other hand, preclude the possibility of early parole. The latter type of sentence is extremely regressive and generally frowned upon by sentencing specialists representing both ends of the political spectrum.

I suggested to Dave that at most his statement concentrate on the "imposition" of mandatory minimums in this area and not create the impression that the Department is supporting true mandatory minimums. In this regard, a plausible argument can be made to the effect that "phony" mandatory sentences have some symbolic utility in our law but do not cut against the grain of sound sentencing philosophy.

4. On page 16, I suggested that Dave delete the sentence discussing the doctrine set down in U. S. v. Perez. The sentence does not lend much to the statement and could lead to an unnecessary line of inquiry in terms of the appropriate federal role in gun control.

At the conclusion of our conversation Dave indicated that he would make all of these suggested changes.

Attachment



Department  
of the Treasury

to: HONORABLE PHILIP W. BUCHEN  
~~ADVISOR TO THE PRESIDENT~~

Assistant Secretary  
(Enforcement,  
Operations, and  
Tariff Affairs)

room \_\_\_\_\_ date: 4/21/75

For comments. A final draft of this testimony must be delivered to the Committee staff tomorrow morning. A copy of this draft has also been sent to Dick Parsons at the Domestic Council, with whom we have been working closely, and to Attorney General Levi.

*David Macdonald*

Attachment

David R. Macdonald  
room 3442  
ext. 2033

STATEMENT OF  
DAVID R. MACDONALD  
ASSISTANT SECRETARY  
(ENFORCEMENT, OPERATIONS,  
AND TARIFF AFFAIRS)  
DEPARTMENT OF THE TREASURY

BEFORE THE  
SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY  
OF THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE

ON  
PROPOSED  
FIREARMS LEGISLATION

APRIL 23, 1975  
10:00 A.M.



Mr. Chairman, I am David R. Macdonald, Assistant Secretary for Enforcement, Operations, and Tariff Affairs, Treasury Department. I am pleased to be here today to discuss with you several legislative proposals which are being considered by the Treasury Department in the area of firearms regulation. Accompanying me are James B. Clawson, Deputy Assistant Secretary for Operations; James J. Featherstone, Deputy Assistant Secretary for Enforcement; Rex D. Davis, Director, Bureau of Alcohol, Tobacco and Firearms; and Marvin J. Dessler, Acting Chief Counsel, Bureau of Alcohol, Tobacco and Firearms.

This Committee has undertaken the awesome task of isolating and legislatively addressing itself to one of the most basic and distressing national problems -- that of rooting out the causes of juvenile crime. Handgun availability is undoubtedly a factor to be considered in pursuing the solution<sup>to this problem</sup>. Nevertheless, we believe that any discussion of gun control in the context of a growing problem of juvenile crime and delinquency may imply a simplistic and exclusive cause and effect relationship between the two. There is no doubt, in our opinion, that the easy availability of handguns does contribute to the



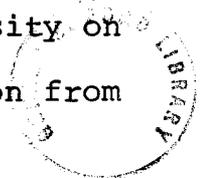
opportunity to commit violent crimes and thus to the frequency with which they are committed. This may be particularly true in the case of adolescents.

[Insert FBI figures]

Nevertheless, efforts at gun control legislation may address more of a symptom than a cause of juvenile delinquency. This is not to say that any legislative effort in this area will be fruitless. I would, however, qualify the importance of my testimony on gun control laws before this Committee by pointing out that deeper, more basic roots may be found to the thorny tree of violent juvenile crime in a growing lack of confidence in the ability of State and local enforcement agencies to protect the public, and to loss of faith in the ability of the judicial system to bring criminals swiftly and certainly to trial and conviction, particularly in large metropolitan areas. This loss of confidence finds objective support in the low percentage of convictions to arrests:

[Insert figures]

This loss of faith leads naturally to a propensity on the part of citizenry to attempt their own protection from



criminal elements -- hence, a race to arms for self-protection. Even beyond the loss of confidence in our judicial system, there appears to be a deeper cause of anxiety and instability in a large section of our youth which has resulted from a weakening of our social institutions. The decline in stable social institutions historically appears to have gone hand in hand with a rise in violence.

Thus, the solutions to difficulties which the Treasury Department has experienced in administering the Gun Control Act of 1968 which I am about to discuss do not purport to present a "cure-all" legislative solution to the Nation's crime problem or to youthful involvement in it. Instead, the proposals represent what the Department considers to be realistic and administratively feasible responses to some of the more critical facets of the firearms dilemma and which responses should not engender unwarranted and deleterious side-effects. Moreover, while these proposals neither individually nor in the aggregate constitute a complete solution to the problem, they would in the Department's view promote a more effective system of firearms regulation than currently exists.

Generally speaking, it has been the experience of the Treasury Department that the basic precepts embodied in

the Gun Control Act of 1968 present a workable format for regulating the sale of firearms in the United States. That is to say, the Federal dealer-licensee concept and its attendant recording provisions and restrictions upon the transfer of firearms have proved to be a viable approach to the firearms problem. Nevertheless, experience has also shown that existing law is inadequate in many respects. More specifically, the Department perceives the following to be the most critical deficiencies:

(1) the absence of sufficient licensing standards to insure that Federal licenses will only be issued to responsible, law-abiding persons who actually intend to conduct a bona fide business;

(2) the absence of controls upon the importation of parts for and the domestic manufacture and assembly of small, lightweight, easily concealable, and inexpensive handguns commonly known as "Saturday Night Specials"; and

(3) the absence of an effective statutory means to prosecute and punish felons and other dangerous persons for the possession and use of firearms.

The legislative history underlying the licensing provisions of the Gun Control Act of 1968 reflects a major

Congressional concern that licenses would be issued only to responsible, law-abiding persons actually engaged in or intending to engage in business as importers, manufacturers, or dealers in firearms or ammunition. Unfortunately, it has become apparent in recent years that Congressional aspirations in this regard have been frustrated by a proliferation of applications from individuals who never intended to engage in a bona fide firearms business, but who merely desire a Federal license in order to obtain firearms or ammunition for their personal use at wholesale prices or to receive firearms in interstate commerce for that purpose. Frequently, such individuals are undercapitalized and lack both the business experience and financial capacity needed to conduct a business. In many instances no business is conducted at all, or a marginal business is carried on which disregards Federal regulations.

Present Federal law requires every applicant for a Federal firearms dealers license who pays his \$10 annual fee to be issued a license within 45 days unless he is under indictment for a felony, convicted of a felony, a fugitive from justice or a drug user or addict. Consequently, the Bureau of Alcohol, Tobacco and Firearms has been compelled to issue literally thousands of licenses



to individuals, not all of whom engage in the business of dealing in firearms full time. Under existing law, more than 156,000 individuals or entities are currently licensed to conduct firearms businesses in the United States. Since the passage of the 1968 Act, this figure has increased yearly. Of this number, it is estimated that less than 30 percent actually conduct a bona fide firearms business. Due to the sheer magnitude of the number of licensees, it is impossible for ATF to monitor each licensee and it is becoming increasingly difficult to maintain a meaningful and effective compliance program based upon even random or periodic inspections.

Accordingly, the Department proposes a number of interrelated amendments to the Gun Control Act which are designed to tighten existing licensing standards in order to reduce the number of Federal licensees and discourage what might be called "nominal" applications.

First, we propose amending the existing licensing standards by including a provision which would permit the Treasury's Bureau of Alcohol, Tobacco and Firearms (ATF) to inquire into each applicant's business experience, financial standing, and trade connections in order to determine whether the applicant is likely to commence the



proposed business within a reasonable period of time and maintain such business in conformity with Federal law. The proposed provision has been utilized for a number of years in the issuance of liquor permits to persons engaged in liquor businesses under the Federal Alcohol Administration Act. In this regard, the provision has functioned fairly and effectively and has been reasonably construed by the courts. If incorporated into the firearms licensing area, the proposed amendment would be of significant value in weeding out "nominal" or disreputable licensees.

As an additional means of strengthening the licensing standards, we would propose an amendment which would require a finding that the business to be conducted would not be prohibited by any State or local law applicable in the jurisdiction where the applicant's premises is located. This provision would further a major Congressional objective in enacting the Gun Control Act which was to provide support to State and local law enforcement officials and would furnish the Department with a specific statutory basis for denying a firearms application where State or local law would prohibit the business sought to be conducted.

A third proposal is to amend the Act to create special license categories for ammunition dealers, gunsmiths and dealers in long guns only. Experience has shown that a



large portion of existing licensees (perhaps 20 to 30 percent) are engaged almost exclusively in selling ammunition. In fact, many of these licensees are small "mom and pop" stores which carry ammunition only as a convenience to their customers. Under existing law, separate categories do not exist for these persons and they receive the same dealer's license that is issued to firearms dealers. The establishment of these special licenses would restrict those persons to engaging in their limited activities. Hence, neither a gunsmith nor an ammunition retailer could lawfully sell firearms, and a long gun dealer could not sell handguns, but a firearms dealer would be permitted to sell all firearms, ammunition and to repair firearms. The new licensing structure would facilitate a more efficient and economical assignment of inspection priorities since these "limited" licensees would not require the same scrutiny as would dealers in firearms.

We would also propose that the fee schedule be amended by increasing license fees generally, particularly for (1) firearms dealers handling handguns and (2) pawnbrokers dealing in firearms. Thus, we would raise the handgun firearms dealer's fee to a high multiple of the present



\$10 paid annually which would assure that only those seriously interested in pursuing the business would pay it, and we would increase the pawnbroker - gun dealer's license to an amount which basically finances frequent inspections by ATF personnel. With regard to the increase in license fees for pawnbrokers, it should be noted that ATF's "Project Identification", which involved the tracing of firearms used in crime in eight major urban areas, reflected that 30 to 35 percent of the handguns used in crime had passed through pawnshops. In order to encourage applicants to apply for a "limited" license, we would establish substantially lower fees for gunsmiths and dealers in ammunition only, and moderate fees for firearms dealers who do not deal in handguns.

We believe that the suggested fee modifications will be reasonable and would not impose an impediment to any applicant who is truly desirous of engaging in a bona fide firearms business. Rather, the increased fees would discourage the filing of license applications by those who would not or should not qualify for licensing. From a fiscal standpoint, the increased fees would, of course, absorb a portion of the Department's costs with respect to processing and investigating license applications.



We also find that there is a need for a greater range of penalties than presently exists with which to deal with firearms dealers who violate the laws. In this connection, we believe that ATF should have authority to suspend firearms licenses and accept monetary offers in compromise for such violations. Under existing law, licenses are subject to revocation if the holder has violated any provision of law or regulation. The only alternative to administrative revocation, however, is the criminal prosecution of the licensee for violations that frequently are only inadvertent. While any violation of the Gun Control laws may be deemed to be serious, some are less serious than others and do not warrant the institution of criminal or revocation proceedings. Even inadvertent violations, however, may warrant administrative action less severe than license revocation.



The "suspension" and "offer in compromise" authority would afford ATF a more flexible vehicle with which to equitably insure compliance. Ample precedent exists for the granting of suspension and compromise authority under other laws administered by the Treasury Department, including laws relating to regulation of distilled spirits and tobacco industries. This authority would appear to be equally appropriate in the area of firearms regulation.

Turning now to the matter of handguns, the problems engendered by the proliferation of handguns in American cities has become self-evident and requires no real elaboration at this point. Suffice it to say that recent estimates place the number of handguns in America at about 40 million while deaths by handguns have increased almost 50 percent in the last decade. Accordingly, the Department's proposals embrace a number of provisions which are directed at the handgun problem generally and more specifically at the proliferation of low quality, inexpensive handguns known as "Saturday Night Specials."

In recent years the Department has carefully evaluated a number of legislative proposals which have had as their principal objective the eventual removal of the "Saturday Night Special" from the American scene. Although the various



proposals have taken a wide range of approaches, all of the proposals are premised upon the fact that these small, light-weight, easily concealable and inexpensive handguns present a unique danger to the American public.

Thus far, one of the difficulties encountered in these legislative attempts to address the Saturday Night Special problem has centered around the formulation of adequate criteria to define that term. Obviously, effective proscriptions cannot be implemented against such firearms unless the law also defines with precision what weapons are to be affected. In this regard, we propose that the so-called "factoring criteria" utilized under the Gun Control Act of 1968 for determining the eligibility of handguns for importation under the "sporting purpose" test be adopted, with certain modifications, for use in the Saturday Night Special area.

Thus, we would propose that it be made unlawful for any licensed manufacturer or licensed importer to manufacture, assemble, or import for purposes of sale in the United States any handgun that has not been approved pursuant to detailed specification criteria which would be set forth in the statute. Prescribing the criteria by statute would negate the objection that mutable standards determined by administrative officials govern the trade in handguns. Under such criteria, the key characteristic would be overall size: No handgun failing to meet certain minimum size standards would be acceptable for



manufacture, assembly, or importation. In the case of revolvers, a barrel length of greater than three inches would be mandatory.

In addition, various safety features would also be required before a weapon would be acceptable. Other characteristics would be dealt with by means of a point system which would take into account such characteristics as size, frame construction, weight, caliber, safety features, and miscellaneous equipment. In addition to the prerequisites of size and safety features, a pistol and a revolver to be approved for manufacture, assembly, or importation must achieve a minimum point value (85 points in the case of a pistol and 60 points in the case of a revolver).

Although the Department's proposal adopts the same fundamental approach as the existing "factoring system," the existing system has been modified somewhat by increasing the point value which must be met before a handgun is acceptable. A wider variety of characteristics are provided, however, under which a particular handgun model can achieve points. It is believed that the revised point system is more objective and provides greater flexibility to allow quality handguns to meet the criteria for approval, while at the same time eliminating the same lightweight, easily concealable, cheap handguns which have no legitimate sporting purpose. Exceptions



would be provided for sales to law enforcement agencies and modification of weapons which cause them to lose their qualification would be prohibited.

Further, our proposal would include provisions for the notification of licensed importers and manufacturers of the results of handgun evaluations and would afford judicial review of adverse decisions by ATF. In order to provide an identical test to cover both foreign and domestic handguns, we would recommend that the import provisions of the 1968 Act be amended to substitute the detailed criteria I have described for the general language of the "sporting purpose" test for importation.

Our proposals dealing with the so-called "Saturday Night Special" are directed primarily at licensed importers and licensed manufacturers and would, therefore, strike at the source of the problem. While these proposals would not rid the nation of these firearms, they would effectively stop the yearly flood of cheap handguns into the domestic marketplace. In this connection, recent ATF studies disclose that handguns recently acquired are those largely used in the commission of violent crimes. Moreover, given also increased controls over interstate dealings in handguns, our proposal to remove the supply source of Saturday Night Specials could place the problem where it may be adequately further regulated by State Governments as they see fit.



As the Gun Control Act now stands, second or subsequent offenders who are convicted of the offenses of carrying unlawfully or using a firearm in the commission of a Federal crime are subject to a mandatory minimum of two years imprisonment and a maximum of twenty-five years imprisonment. We believe that the Act should be modified so that a mandatory sentencing provision would be applicable to first offenders as well as to recidivists. That is to say, we would propose for first offenders a mandatory minimum sentence of one year, with a discretionary five-year maximum. The new penalty proposal would not be so harsh as to be counterproductive in terms of acceptability by courts and juries, but would serve as a more formidable deterrent to the misuse of firearms.

Finally, we propose new legislation which would prohibit felons and other classes of dangerous persons from possessing firearms. While existing law, enacted as Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, was intended by the Congress to proscribe mere possession, receipt, and transportation of firearms by such persons, this law was construed by the Supreme Court on December 20, 1971 in a five to two decision in United States v. Bass to require proof of an interstate commerce nexus with respect to these offenses. More specifically, it was held that the statutory language "in commerce or affecting commerce" modified each



offense defined by the statute. In deciding the Bass case as it did, the Supreme Court rejected the Government's position that mere possession constitutes a crime under Title VII, a position which was upheld by five of the six United States Courts of Appeals that had ruled on this issue.

A review of the legislative history of the existing statute convincingly demonstrates that the true intent of Congress was to prohibit mere possession of firearms by certain classes of people deemed too dangerous to society to own them. This intent, however, was thwarted by the use of inartful statutory language which led to the narrow construction by a majority of the Court. Under the doctrine of United States v. Perez, 402 U.S. 146, moreover, we believe that a valid finding can be made by Congress that the possession of weapons by such persons itself poses a threat to interstate commerce, and thus that a commerce nexus need not be proved as to each violation. Accordingly, the Department would propose to delete the troublesome language from the statute. If amended in this manner, these laws could be enforced as Congress originally intended.

Additionally, we propose to repeal existing Title VII and place the substance of its provisions, together with needed corrective amendments, within chapter 44 of Title 18, United States Code (Title I of the Gun Control Act of 1968).



This chapter, of course, contains all other provisions of Federal law relative to the shipment, transportation, and receipt of firearms by felons and other proscribed categories of persons. It should also be noted that Title VII was a ~~hastily prepared~~ floor amendment to the Omnibus Crime Control and Safe Streets Act, and it is obvious that <sup>less than normal</sup> ~~little~~ consideration was given to conforming it to Title IV of the Act, the predecessor to chapter 44. As a result, the categories of persons who are prohibited by chapter 44 from shipping, transporting, or receiving firearms in interstate commerce and to whom Federal firearms licensees may not lawfully sell firearms are not in conformity with the proscribed categories of persons under Title VII. Therefore, we propose to make these categories more closely conform.

Our proposals, Mr. Chairman, are addressed primarily to the question of interstate traffic in firearms and particularly handguns. We would like to preserve local control over gun regulation. Our studies have convinced us, however, that an interstate traffic exists with respect to guns used in crimes which deserves more Federal attention than it has received. We believe that the proposals in the area of dealer licensing are somewhat analogous to the regulation of interstate traffic in investment securities under the Securities and Exchange Act of 1934. What we are attempting to do is place ATF in a position to control the "boilershops" in the handgun field and provide the necessary support to



enable local law enforcement agencies to be effective instead of becoming engulfed in an uncontrollable interstate handgun traffic.

We also believe that these legislative proposals are acceptable to a majority of the people in this country. With the polarized state of public opinion on the subject of gun control, it is doubly important to structure laws regulating human endeavor in such a manner that the incentive to comply with the law is maximized and its enforceability is enhanced by its acceptance. A drastic extension of regulations in this area we believe can pose a real danger of creating substantial illicit traffic in handguns, controlled by organized crime groups, unless the underpinnings of public acceptance accompany the regulations sought.

We appreciate your having provided us with an opportunity to appear here today and to present our views on the subject of firearms control. At this point, my associates and I would be glad to attempt to answer any questions which the subcommittee may have.



THE WHITE HOUSE  
WASHINGTON

May 9, 1975

MEMORANDUM FOR: KEN LAZARUS

FROM: PHILIP BUCHEN *P.W.B.*

Attached is a copy of a letter from Congressman Robin Beard to the President concerning H. R. 6056 along with a copy of Vern Loen's acknowledgment.

Kindly prepare an appropriate reply for me to sign.

Attachment

*Gene  
Contract*



THE WHITE HOUSE

WASHINGTON

*Gun  
Control*

May 6, 1975

Dear Chuck:

Thank you very much for your letter concerning the issue of gun control and your favorable comments on Ed Levi's recent treatment of the subject.

Our office is taking part in drafting a proposed message from the President on the general subject of alleviating the crime situation and I will pass on the material you inserted in the Congressional Record for the use of others working directly on the message. Probably, the message will deal only in general terms with the subject, but as there is movement to develop specific legislation, I would very much like to get your ideas of what would be feasible and effective legislation.

Very warmest regards to you and Lorraine.

Sincerely,



Philip W. Buchen  
Counsel to the President

The Honorable Charles H. Percy  
United States Senate  
Washington, D. C. 20510



THE WHITE HOUSE  
WASHINGTON

May 21, 1975

Dear Congressman McClory:

Your recent letter to the President setting forth a series of suggested amendments to our Federal gun control laws has been referred to my office.

As you are probably aware, staff work is now being finalized on a proposed Crime Message to be delivered to the Congress sometime during the upcoming month. Your letter is especially helpful in this regard as it presents a cogent analysis of the deficiencies of a complex body of current law. I can assure you that your views will be reflected in the various options to be considered by the President.

I might note that Chris Gekas of your staff recently discussed this matter with Ken Lazarus of my office.

Sincerely,

*Philip W. Buchen*

Philip W. Buchen  
Counsel to the President

The Honorable Robert McClory  
House of Representatives  
Washington, D. C. 20515



*Gun Control*

THE WHITE HOUSE  
WASHINGTON

*Gun  
Control*

May 21, 1975

Dear Congressman Beard:

Your recent letter to the President on the subject of gun control has been referred to my office.

As you may be aware, staff work is now being finalized on a proposed Crime Message to be delivered to the Congress sometime during the upcoming month. Thus, your comments are especially timely and you may be assured that they will be reflected in the various options to be considered by the President.

Sincerely,

*Philip W. Buchen*

Philip W. Buchen  
Counsel to the President

The Honorable Robin Beard  
House of Representatives  
Washington, D. C. 20515

