The original documents are located in Box 9, folder "Crime (4)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

April 14, 1976

MEMORANDUM FOR: PHIL BUCHEN
ROBERT T. HARTMANN
JACK MARSH
MAX FRIEDERSDORF
ALAN GREENSPAN
JIM LYNN
BILL SEIDMAN

FROM: JIM CANNON

SUBJECT: Draft Presidential Memo on Crime and Punishment

Attached for your comments and recommendations is a draft decision memorandum for the President which reviews two proposals submitted by the Attorney General for the reform of the Federal criminal justice sentencing process.

I would appreciate receiving your comments by close of business, Monday, April 19, 1976.

Attachment

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

DECISION

MEMORANDUM FOR THE PRESIDENT

FROM: Jim Cannon

SUBJECT: Crime and Punishment

In your Crime Message, you directed the Attorney General to review the problem of the lack of uniformity and apparent fairness in Federal sentencing procedures and to give serious study to the concept of "flat-time sentencing" in the Federal law. The Attorney General has carried out your directive and has submitted a memorandum (attached at Tab A) setting forth two proposals to reform the Federal criminal justice sentencing process. This memorandum seeks your review of the Attorney General's proposals.

BACKGROUND

The sentencing process in the Federal criminal justice system is based on the concept of the indeterminate sentence. That is, the sentence to be imposed in a particular case is left almost entirely to the discretion of the judge, who is free to impose any sentence from one day's probation to the maximum imprisonment and fine authorized by law for the offense. Most Federal criminal statutes provide no criteria to guide a judge in the exercise of this discretion.

The effect of broad sentencing statutes without criteria is that judges generally abdicate in the exercise of their discretion. They sentence with virtually no minimums and no maximums and effectively transfer the sentencing decisions to the later deliberations of parole boards. Parole boards also have no criteria sufficiently specific to guide their decisions and they frequently delegate responsibility for making decisions to parole hearing examiners, who also have no standards to guide their actions.

In contrast to the public image, then, in which thoughtful and well-educated judges make informed sentencing decisions with tight reasoning behind them, the reality is that parole board employees wind up making decisions on how long sentences will be, with little or no articulated reasoning behind them. Decisions on similarly situated persons are wildly inconsistent and the decision-making process is unregulated and invisible to the public.

There is substantial evidence which suggests that the uncertainty caused by this standardless and invisible sentencing process contributes heavily to unrest within prisons and to attitudes of contempt by inmates toward the law even after their release. Faced with a system which makes decisions about them that they do not understand, without explaining to them precisely what behavior is expected of them and how precisely that behavior will affect the length of their sentences, they perceive law enforcement as arbitrary and irrational and long sentences as simply products of bad luck and of the prejudices of particular parole examiners and guards.

Moreover, there is a substantial body of research concerning the deterrent effects of sentencing. The studies conflict as to whether length of sentence has any deterrent effect on crime, but they do agree on one point -- the evidence is clear that certainty that a specified length of punishment will follow conviction of an offense has a deterrent effect on commission of that offense.

An increasing number of academic study groups, public commissions, ex-offender groups, and groups of State correctional administrators have written reports urging the diminution of sentencing discretion at all stages, from initial sentence to probation revocation to parole granting and revocation. These reports uniformly urge the end of indeterminate sentencing, the articulation of more precise sentencing standards, reviewability of sentences, and, in some cases, the end of parole. They conclude by urging enactment of either mandatory minimums and maximums or simple flat-time sentences.

PROPOSALS

To increase the certainty of appropriate punishment and to help eliminate the sense that punishment in the criminal justice system is an unfair game of chance, the Attorney General has suggested:

1. the creation of a Federal Sentencing Commission to develop guidelines indicating the appropriate sentence (or range of sentences) to be imposed upon conviction of certain categories of individuals of specific crimes; and

2. the abolition of the Federal parole system.

Since the rationale for, and detail of, these proposals are discussed at length in the Attorney General's memorandum, I will not dwell upon them here. Suffice to say, these proposals recognize that the theories upon which indeterminate sentences are predicated have been largely discredited (a more detailed discussion of this point appears at Tab B) and that the principal objectives of our sentencing policy ought to be certainty and equity. This is consistent with your position on mandatory minimum sentences and builds upon it.

On the negative side, endorsement of these proposals would be considered by some to be a "radical departure" from conventional wisdom. Senate Bill No. 1 (the Criminal Justice Reform Act of 1976), for example, would establish a Federal Sentencing Commission and would provide for appellate review of sentences, but would not affect the operation of the Federal parole system. Nevertheless, several States (notably California and Illinois) are beginning to move in this direction. When this idea was raised by the Attorney General in a recent speech, it was favorably received.

RECOMMENDATION

For the reasons outlined above, I recommend that you endorse these proposals and direct the Attorney General to prepare draft legislation to implement them.

[Views of Senior Advisers]

DECISION

Proposal #1 -- Creating a Federal Sentencing Commission

_____ Approve _____ Disapprove

Proposal #2 -- Abolishing the Federal Parole System

_____ Approve _____ Disapprove

A

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

MEMORANDUM ON SENTENCING

This memorandum outlines proposals to reform the sentencing process in the federal criminal justice system and seeks the President's direction that the Department of Justice prepare draft legislation to implement them.

In his Message to Congress on Crime the President proposed a system of mandatory minimum sentences for persons convicted of certain crimes. This proposal would rule out the possibility of parole, but it contained provisions that would allow a judge to impose less than the mandatory minimum sentence if he made a written finding that certain extenuating circumstances existed--for example, that the offender was under physical duress at the time the crime was committed or was a peripheral participant in a crime actually committed by others. The President's proposal would not require the automatic imposition of long sentences, but it would increase the degree of certainty that offenders convicted of the specified crime would serve some time in prison. And certainty of imprisonment is fundamental to deterrence. The mandatory minimum sentence proposal would also remove some of the inequality of sentencing in the federal criminal justice system.

Under the current federal sentencing system, the sentence to be imposed in a particular case is left entirely to the discretion of the judge, and the judge is free to impose any sentence from one day's probation through the maximum imprisonment and fine authorized by Congress for the offense committed. The problem is that individual judges vary considerably in their sentencing philosophies and, as a result, sentences vary considerably--even for similar offenders committing similar offenses. Some sentences are unduly lenient, some are unduly severe. Neither the defendant nor the government may appeal to a higher court to have a sentence changed to a more appropriate one.

To increase the certainty of appropriate punishment and to eliminate the sense that punishment in the criminal justice system is an unfair game of chance, two further reforms that build on your mandatory minimum sentence system should be proposed.

I. Creating a Federal Sentencing Commission

A Federal Sentencing Commission should be established by Act of Congress to draw up guidelines indicating a narrow range of sentences that are appropriate for persons who commit various crimes under various circumstances. Under this proposal, a sentencing commission would be established to develop guidelines indicating appropriate sentences for a spectrum of specific cases.

On the basis of research conducted by the commission's staff, the commission would prepare a detailed list of characteristics of defendants and a detailed list of characteristics of offenses. The defendant list would classify a defendant according to his age, education, prior criminal record, family ties, and other pertinent characteristics. The offense list would classify a specific offense according to the number of victims, the seriousness of the injury involved, the community view of the offense, and other pertinent aggravating and mitigating factors. Thereafter, prior to imposing a sentence in a particular case, a judge would be required to ascertain the category into which the defendant fit most closely and the category into which the offense fit most closely. The applicable defendant category would be matched with the applicable offense category, and the guidelines would indicate the narrow sentencing range for such a category of defendant committing such a category of offense. For example, a first offender in his early twenties with a wife and child to support, who committed an unarmed robbery in which no personal injury was threatened, might fall into a category specifying a sentencing range of, for example, one to one and one-half years imprisonment. On the other hand, a repeat offender in his late thirties with a poor employment record, who committed a robbery at knifepoint, might fall into a category specifying a sentence of, for example, five to six years imprisonment. In each case, the judge would be expected to sentence the defendant within the range set forth in

the guidelines. The judge would only be able to impose a sentence above or below the range suggested in the guidelines if he found good reason for doing so and stated that reason in detail in writing. If the sentence imposed was within the guidelines, it would be considered presumptively appropriate and would not be subject to appellate review. However, if the sentence was above the range suggested in the guidelines, it could be appealed by the defendant, and if it was below the range suggested in the guidelines, it could be appealed by the government.

Sufficient research has been done in this area so that it seems clear that the sentencing commission proposal is entirely feasible. While the commission would operate only with respect to the federal criminal justice system, it would also serve as a model for state and local reforms.

The sentencing commission proposal would build upon the mandatory minimum proposal by extending the idea of limiting judicial sentencing discretion so that all federal crimes are covered. It would serve the two important purposes embodied in the President's mandatory minimum sentencing proposal--increasing the certainty of punishment and eliminating the game of chance quality of federal criminal justice.

II. Abolishing the Federal Parole System

Under the federal parole system as it currently exists, a defendant who is sentenced to a term of imprisonment ordinarily may expect to serve approximately one-third of the period imposed by the sentencing judge. The theory is that the judge is imposing only a maximum period of time that the defendant should be expected to remain imprisoned.

The federal parole system is thought to serve three basic purposes today. First, it attempts to mitigate unfair disparities in sentencing by releasing offenders before the specified sentence has been served--though, of course, it cannot extend a sentence that is inappropriately short. Second, it seeks to monitor a prisoner's progress in rehabilitation so that he may be released when he is ready to return to society. Third, its offer of a hope of early release serves as an incentive to good behavior in prison.

The first purpose--helping to eliminate unfairness--would be much better and more completely served by the federal sentencing commission proposal outlined above. The second purpose is based on an idea of prisoner rehabilitation and of the ability of correction authorities to predict the future behavior of prisoners that have fallen into disrepute. Scholars in the field of corrections now assert that rehabilitation is more likely to occur if it is not tied to the prospects of early release. When it is tied to parole, two problems exist. First, participation in rehabilitative programs is not truly voluntary and often not undertaken in good faith. Second, prisoners do not know precisely what they should do to secure favorable treatment by parole authorities--parole is the second game of chance. Scholars also doubt that the behavioral sciences are advanced enough to give correction authorities the tools by which to predict an inmate's future behavior--that is, to decide when he has been rehabilitated.

In addition, there is a deceptiveness about the federal criminal justice system which includes the possibility of parole. The present system makes it appear to the public that long sentences are to be served when neither the judge nor the defendant has that expectation. The public is then shocked when it learns in celebrated cases that the complete sentence was not served. Abolition of parole would serve the interests of candor--and in a related respect, of deterrence, since the message of the sentences imposed by a system without parole would be clear and unambiguous to potential criminal offenders.

A sentencing system which abolishes parole would require a reduction of a pre-determined portion of the sentence for good behavior--a necessary concession to encouraging prison discipline. To meet the argument that parole now serves the purpose of encouraging discipline in prison, good time allowances might have to be increased if parole were abolished. Other incentives for good behavior might also be developed. It is important to recognize that the sentences recommended by the commission ought not be as long as current maximum sentences. Since today few offenders spend their entire sentence in prison, if sentences were made determinate and long, the prison population would increase beyond the federal prison system's ability to handle it. Furthermore, because currently the real sentences as served by offenders are considerably shorter than the sentence imposed by the judge, sentences

under a determinate system need not be as long to serve the purposes of imprisonment.

In addition to eliminating the complexities of the current parole system and eliminating the opportunities for endless litigation over parole board determinations, such an approach would have an important collateral benefit. By eliminating the uncertainty concerning a prisoner's release date a major cause of prisoner complaints would be removed. The increased fairness, and the increased appearance of fairness, could reduce a major cause of prisoner bitterness--a bitterness which hampers preparation for reentry into society since real or imagined injustices focus a prisoner's attention upon relitigating the propriety of his incarceration rather than upon his future after release.

Should the President decide to propose the abolition of federal parole, the existence of the system would probably have to continue for some time in order to make the necessary determinations with respect to prisoners sentenced before the new system goes into effect. However, the other functions of the parole system--for example, the supervision of ex-offenders after release from prison and the provision of half-way houses and other controlled release programs--could be undertaken by prison or probation authorities.

Conclusion

The creation of sentencing guidelines coupled with appellate review of sentences and the abolition of parole would add a greater consistency and clarity to the federal criminal justice system. It would increase the fairness of the system, its candor, and the deterrent effect of the criminal law.

B

Sentencing indeterminacy is predicated on two assumptions -- that different people who have committed the same offense require different periods of restraint before they become no longer dangerous to society and that different people who have committed the same offense require different periods of restraint in order to be "rehabilitated." Based on these assumptions, the traditional conclusion has been that it is justified for dissimilar sentences to be given to those who have committed the same offense.

There are two critical problems with those assumptions, however. First, while it may be true that different people need to be detained for different periods before they are no longer dangerous, we do not have the knowledge to calculate sentence lengths based on dangerousness. All of the studies on dangerousness conclude that we simply do not know how to perdict it and that a judge's or a prison guard's intuition about an offender is more likely to be incorrect than it is to be correct.

It turns out, moreover, that time served in prison bears at best no relationship to how the offender will behave on release (most of the evidence, in fact, shows that, all other factors held constant, the offender who is in prison longer will commit more crime later). Time served on parole and on probation also has an inverse relationship to crime committed after release.

The second problem with the assumptions behind indeterminacy is that we do not know how to rehabilitate. Perhaps we could justify keeping one assaulter in prison for a year and another for five years if we could show that keeping the latter in for five years would result in his not committing another assault. The best we can show, however, is that any service which we provide him in prison -- whether it be individual therapy or counseling, group counseling, remedial education, vocational training, or virtually any other service -- has no effect on him. The evidence supports the conclusion, in fact, that there is an inverse relationship between the amount of services provided to an offender and his propensity to recidivate.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

INFORMATION 4/3/76

April 20, 1976

MEMORANDUM FOR: Jim Cannon

FROM: Dick Parsons

SUBJECT: Gun Control Bill (H.R. 11193)

On Tuesday, April 13, the House Committee on the Judiciary reported out a "substitute amendment in the nature of a substitute" to H.R. 11193 -- the House gun control bill. The House bill is quite similar to the Administration's, as shown by the comparison below.

Saturday Night Specials -- Like the Administration's bill, the House bill bans the manufacture, assembly or sale of cheap, highly concealable handguns after the effective date of the bill (except that upon the Treasury Secretary's authority licensed manufacturers may produce them for law enforcement, military, research and development and evaluation purposes). The House bill uses the existing Treasury criteria in evaluating imported handguns, as opposed to the Administration bill's modified version. The factoring criteria have been modified to require a minimum 4-inch barrel for revolvers (in light of recent safety feature and frame construction developments, as well as the Administration bill's technical language). Private sales and pre-effective-date manufacturers are not covered, as in the Administration's bill.

Purchase -- Both the House bill and the Administration's bill would require that purchasers of handguns appear in person to establish their identity and give sworn statements permitting police and FBI record checks to be conducted. The bills differ as to waiting period, in that the Administration's bill provides that a gun may be sold as soon as a clean police report is received (the waiting period not to exceed 14 days), while the House bill provides for a 14-day waiting period notwithstanding a police report received sooner (the waiting period not to exceed 28 days).

Regulation of Licensees -- Both bills increase dealer, manufacturer and importer license fees, though fees in the House bill are somewhat lower than in the Administration's. A distinction is made between wholesale and retail dealers, rather than handgun and long gun dealers. Both bills would also allow license suspension as an alternative to revocation for statute violations, but the House bill would not permit civil penalties, as the Administration's bill would.

As for license qualifications, the House bill's provisions are somewhat more stringent than ours, in that it has added a requirement for notice to local police of application for Federal licenses and a requirement of adequate security devices or personnel to protect against firearm and ammunition theft. However, the House bill does not pick up the Administration's requirement that the Treasury Secretary find that the applicant is likely to commence the business for which he is being licensed within a reasonable period of time.

Miscellaneous -- Both bills contain similar provisions on multiple sales, mandatory minimum sentences for offenses committed with firearms (though the House bill limits application to crimes of violence) and transfers to unlawful possessors.

The House bill also contains provisions imposing safety regulation compliance requirements on carriers transporting firearms and ammunition; requiring the reporting of losses of thefts of such articles by carriers, licensed manufacturers, importers and dealers; and establishing a 30-day delay in the effective date of regulations so the House can pass a resolution disapproving them, if necessary. None of these provisions is contained in the Administration's bill. Finally, the House bill, unlike ours, does not make it a Federal offense to transport firearms and ammunition in interstate commence in violation of State or local law.

Attached for quick reference is a one-page outline of the Administration's gun control bill.

Summary -- As you can see, the House bill is sufficiently close to ours that we would be hard pressed to justify failure to support its enactment. On the other hand, the gun lobby strenuously opposes the bill and could make life difficult for us if we were to vigorously seek its enactment.

For the time being, I have told the Press Office that I think our posture ought to be that we are "encouraged" by the action of the House Judiciary Committee but that we are still reviewing the bill to see if it adequately addresses the concerns of the Administration. Sooner or later, however, we are going to have to take a position on the bill. You ought to begin to see where the political types are on this issue.

OUTLINE OF THE PRESIDENT'S HANDGUN LEGISLATION

The President's Handgun Bill would:

- Ban the import, domestic manufacture and sale of cheap, highly concealable handguns -- "Saturday Night Specials" -- which have no apparent use other than against human beings;
- Restrict the issuance of Federal licenses to bona fide gun dealers;
- Restrict multiple sales of handguns (authorizing the purchase of no more than one handgun within a 30-day period);
- Impose a 14-day waiting period between the purchase and receipt of a handgun, during which time the dealer can check to determine whether the purchaser may lawfully own a handgun;
- Require the dealer to take reasonable steps to ensure that the purchaser of a handgun is not prohibited from possessing it under State or applicable local law; and
- Require the imposition of a mandatory minimum term of imprisonment on any person convicted of using a handgun in the commission of a Federal offense.

The President's Handun Bill would not:

- Require a Federal license to purchase a handgun;
- Require that handguns be registered with the Federal government;
- Prohibit law-abiding citizens from possessing handguns;
- Authorize the Federal government to keep records of everyone who buys handguns; or
- Apply to possession of long guns.

cc: Parsons
Justice
Gun Control

THE PRESIDENT HAS SEEN....

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

MAY 17 1976

MC 4

MEMORANDUM FOR: THE PRESIDENT

FROM: James T. Lynn

SUBJECT: Funding problems for the Administration's initiative against illegal trafficking in firearms

Your initiative to crack down on illegal firearms by hiring and deploying an additional 500 Federal investigators to intensify enforcement efforts in eleven major metropolitan areas is again encountering funding problems. You will recall that supplemental funding in 1976 for this initiative, announced in your June 19, 1975 Crime Message, was reduced by the Congress from $15.5 M for implementation of the program in eleven cities to $5.5 M for three cities. The House Appropriations Subcommittee insisted at that time that an evaluation be performed before consideration would be given to expansion to other cities.

Funds to expand the effort to eleven cities were requested again in the 1977 budget. The House Appropriations Subcommittee (Chairman Steed) on Treasury, Postal Service, and General Government recently considered this issue during its markup of the Treasury appropriations bill and denied the request for additional funds to expand the firearms initiative beyond the three cities previously approved. Unless the funds are restored by the Senate, the full implementation of this initiative will be delayed at least half a year and probably a full year until the 1978 budget.

Treasury will, of course, vigorously appeal for restoration in the Senate. However, realistically only partial restoration should be expected because the Subcommittee's contention that an evaluation is prudent before further expansion is a difficult type of argument to overcome, even on an issue as important as cracking down on illegal firearms traffickers. Treasury is currently performing the requested evaluation and a report should be ready by December 1976, the completion date set by the Subcommittee.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 21, 1976

MEMORANDUM FOR: Jim Cavanaugh

FROM: Dick Parsons

SUBJECT: San Diego Federal Youth Correctional Facility

You requested a report on the progress of the Bureau of Prisons in divesting itself of the San Diego Federal Youth Correctional Facility construction site.

As nearly as I can determine, the allegations raised by Mayor Wilson with the President are without foundation. The facts are as follows:

- On February 13, 1976, the Bureau of Prisons forwarded to Main Justice the necessary documents declaring the Tierrasanta site surplus to its needs.
- Approximately one week thereafter, Main Justice endorsed the Declaration of Surplus and forwarded it to the General Services Administration.
- On March 1, the Bureau of Prisons "cleared" the site (i.e., it took down the fence surrounding the property and removed all of its property and equipment to a location outside of San Francisco).
- On March 5, the General Services Administration declared the property surplus to the needs of the Department of Justice; therefore, the property is no longer available to Justice.

I am informally advised that GSA will put the property up for public bid within the next three to four weeks.

cc: Jim Cannon ✓

THE WHITE HOUSE

WASHINGTON

May 20, 1976

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MIKE DUVAL

SUBJECT: SAN DIEGO PRISON

In a meeting yesterday with the President, San Diego Mayor Pete Wilson raised the subject of the Terrasanta Prison. The Mayor thanked the President for his decision to sell this facility as surplus Federal property. However, he pointed out that the decision was not being implemented quickly and, in fact, it appeared that the agencies involved were dragging their feet.

The President directed that the Domestic Council look into this immediately and report back as quickly as possible. May we please have a response by Saturday, May 22.

Thank you.

cc: Jim Connor
Jim Cannon

THE WHITE HOUSE

WASHINGTON

September 26, 1975

MEMORANDUM FOR: DICK CHENEY

FROM: JIM CAVANAUGH

SUBJECT: San Diego Federal Youth Center

Attached is our draft decision paper for the President on San Diego. The Attorney General called this evening and asked for extra time until Monday so that he could review the cost implications of both options more fully.

Wednesday we staffed it to Hartmann, Buchen, Marsh, Friedersdorf, and Lynn. To date Hartmann and Friedersdorf favor Option 2.

Attachment

THE WHITE HOUSE

WASHINGTON

DECISION

September 30, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: San Diego Federal Youth Center

Pete Wilson is seeing you at 3 p.m. today about a Bureau of Prisons problem.

A few months ago when you were in San Diego, the Mayor mentioned to you his concern about the Bureau's plan to construct a Federal youth detention facility in the city of San Diego. Over the weekend he again raised this issue with Dick Cheney, Jim Cavanaugh, and Jim Falk. Dick Cheney suggested that we seek your guidance on our response to the Mayor's request that the Bureau of Prisons drop this project.

BACKGROUND

In 1970 the Federal Bureau of Prisons developed a long-range program designed to accomplish the following objectives: (a) To reduce the critical overcrowding in existing institutions; (b) to replace the most antiquated institutions; (c) to build or acquire smaller institutions with environments designed to facilitate correctional programs and meet human needs for privacy and dignity; and (d) to ensure maximum safety for both staff and inmates while pursuing the larger mission of protecting the community.

In 1971 San Diego was selected as a location for one of three Federal youth centers for the West Coast. The site was to be on a 200-acre Federally-owned tract which was formerly occupied by the Marine Corps as Camp Elliott. At that time, the area was nonresidential.

Site work began on the project in June 1973, but was halted from September 1973 until March 1975, due to litigation involving an environmental impact statement. In March the U.S. District Court in San Diego ruled that the Bureau of Prisons' environmental impact statement was satisfactory and construction activity was resumed.

CURRENT STATUS

In the years between selection of the site in 1971 and termination of the environmental impact litigation this year, a substantial amount of private home construction has occurred in the area, to the point where the location of the Federal youth center is now residential. Approximately 14,000 middle class people now reside in the area. As a result, Mayor Wilson and other community leaders have registered increasing levels of opposition to continued construction of the center.

At our request Norm Carlson, director of the Bureau of Prisons, appeared at a public hearing called by Mayor Wilson ten days ago to discuss this project. He also met with Mayor Wilson to discuss possible alternative sites in San Diego. To date, the Mayor has been unable to identify any alternatives.

The Mayor, as well as Jack Walsh, the county supervisor, has asked us to get the Bureau of Prisons to abandon its plan to proceed with construction of the youth center at the Camp Elliott site. They and many local residents believe that the Bureau of Prisons has been completely insensitive to the wishes of local residents, and our failure to "see it their way" will no doubt result in bad feelings and bad press for the Administration. Jerry Warren, now back at the San Diego Union, confirms this. Editorially the paper has come out against siting the youth facility at Camp Elliott.

The changing nature of the area immediately adjoining the project site could justify discontinuation of the project in favor of a less residential setting. Without our encouragement the Bureau of Prisons will not abandon the Camp Elliott site.

On the other hand, the Bureau of Prisons has already spent between $1.5 and $2 million (of an estimated $6 million) on the project. Some amount of this may be recoverable if the Bureau abandons the site. Substantially greater costs would be incurred in finding a new site and putting the needed facility on line (OMB has estimated a cost escalation of between $60,000 and $80,000 for each month's delay).

Additionally, in your Crime Message you announced your support for the overall Bureau of Prisons' program to construct smaller, more modern and community-based facilities. A decision to terminate the San Diego Youth Center would seem to contradict the message.

The immediate timing problem is that the Bureau of Prisons has bids on the project which it must act on soon.

OPTIONS

1. Let the Bureau of Prisons proceed with their plan.

   Pro: -- Keeps White House out of day-to-day agency decisions.

   -- Provides fastest way to proceed with development of smaller community-based Federal Bureau of Prisons facilities.

   -- Insures $2 million committed to project will not be lost if it cannot be recovered.

   Con: -- Will be viewed by local leaders and residents as another example of "unresponsive government."

   -- Will appear that government cannot respond to changing conditions; i.e., site was undeveloped in 1971; now there is a residential area around it.

2. Ask the Attorney General to terminate this project and find another site.

   Pro: -- Would be cheered by local residents and media.

   -- Serves as an example of your desire to keep the Federal government from intruding into areas against the wishes of local residents.

   Con: -- Contradicts your Crime Message on developing smaller community-based Bureau of Prisons facilities.

-- White House intervention in the San Diego project could create expectations on the part of other communities for similar action where there is opposition to Federal projects.

DECISION

_____Option 1. Let the Bureau of Prisons proceed with their plan.

Marsh.

Justice (Tyler) "would be disappointed if we can't."

_____Option 2. Ask the Attorney General to terminate this project and find another site.

Hartmann: "Do what Pete Wilson wants."

Friedersdorf.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 21, 1976

MEMORANDUM FOR: Jim Cavanaugh

FROM: Dick Parsons

SUBJECT: Gun Control

You requested a comparative analysis of the President's gun control legislation and H.R. 11193, which has been reported out of the House Judiciary Committee.

Attached at Tab A is a chart, prepared by the Bureau of Alcohol, Tobacco and Firearms, which sets forth the most significant features of H.R. 11193 and the corresponding provisions of the Administration's bill (H.R. 9022, S. 2186).

Generally speaking, the two bills share the same basic objectives -- to prohibit the manufacture and sale of "Saturday Night Specials"; to provide mandatory prison sentences for persons using a gun in the commission of a crime; and to tighten up existing Federal firearms laws. As the comparative chart indicates, the bills do not vary substantially in their respective approaches to achieving these objectives. Notable differences do exist in certain areas, however, which the President ought to be aware of. The following discussion focuses upon these particular provisions.

In the "Saturday Night Specials" area, the Committee's bill is significantly less ambitious than the Administration's proposals. Significantly, the Committee's bill defines the term "concealable handgun" so as to include only those handguns manufactured after the bill's effective date. As a practical consequence, existing handguns will not be affected by the bill and only future production will be prohibited. This, of course, is considerably less expansive than the Administration's bills, which would prohibit the sale as well as the manufacture of these weapons and would extend the sales prohibition to include weapons already in circulation. Likewise, the Committee's bill would not prohibit secondary transfers by non-licensees, as would the Administration's proposals.

From a practical standpoint, one potential drawback of the Committee's approach is the likelihood that news of the future production ban may stimulate a present production push, especially in the three-month interim between the bill's enactment and its effective date. On the other hand, the prospective approach effectively negates both the "due process" argument and the compensation issue that invariably arise when existing firearms are outlawed.

The bills vary in minor regards with respect to their mandatory sentencing provisions. The Committee's bill would impose mandatory sentencing only for certain enumerated Federal "crimes of violence," whereas the Administration's bill would apply such sentencing to all Federal felonies in which firearms are carried or used.

One aspect of the Committee's bill that must be considered disappointing from a regulatory standpoint is the elimination of the Administration's proposal that firearms licenses be issued only to applicants having suitable business experience, financial standing and trade connections. The Administration's bill was intended to provide the Secretary of the Treasury with a means of denying licenses to persons who are undercapitalized or otherwise lack the capacity to conduct a bona fide firearms business.

Like the Administration's bill, the Committee's version would (a) afford the Secretary more flexible administrative options in dealing with non-complying licensees; and (b) create new licensee categories. The license fees to be imposed under the Committee's bill would, however, be generally lower than those recommended in the Administration's bill.

Finally, the Committee's bill, unlike the Administration's bill, would establish procedures requiring all firearms-related rules, regulations and orders to be forwarded to both Houses of Congress for review. If neither House passes a resolution disapproving a rule, regulation or order within thirty calendar days of continuous session after its transmittal to Congress for review, then such rule, regulation or order would become effective at the expiration of the thirty-day period or at the effective date specified by the Secretary, whichever is later.

As noted above, H.R. 11193 has been reported out of the House Judiciary Committee. It is now in the House Rules Committee. The Senate counterpart has been reported out of Senator Bayh's Subcommittee to Investigate Juvenile Delinquency to the Senate Committee on the Judiciary.

I am advised that the prospect of a bill this year is not good. Representative Madden, Chairman of the House Rules Committee, has no interest in the bill and Senator Mansfield has indicated that he does not intend to force action in the Senate. On the other hand, Representatives Rodino and O'Neill and Senator Bayh are interested in securing action this year.

cc: Jim Cannon ✓

COMMITTEE'S BILL	ADMINISTRATION'S BILL
Saturday Night Special Ban Bans the manufacture or assembly of "concealable handguns" defined by application of a minimum point system utilizing objective criteria and including mandatory size and safety prerequisites. Would allow licensees to sell or transfer existing Saturday Night Specials but prohibits licensees from selling any such firearms produced after the effective date of the bill. Does not affect sales by non-licensees. Among the mandatory prerequisites for a revolver would be an overall frame length of 4 1/2" and a minimum barrel length of 4". Pistols would be required to have: a positive manually operated safety device or its equivalent; a combined length and height of at least 10", with a minimum height requirement of 4" and a minimum length requirement of at least 6". Neither a licensee nor a non-licensee may modify a handgun that meets the above standards if such modification will render the weapon non-qualifying.	Prohibits licensees and non-licensees from manufacturing, assembling, selling, or transferring unapproved handguns. To be approved, handguns must pass an objective factoring type test similar in content to the Subcommittee's criteria and requiring the same minimum size prerequisites.
Mandatory Sentencing Imposes mandatory sentences of from 1-10 years (first offense) and from 2-25 years (second offense) for persons who carry, use, display, or offer to use a firearm in the commission of certain enumerated Federal "crimes of violence."	Similar except the mandatory sentencing applies to all Federal felonies in which a firearm is carried or used.
New Licensing Prerequisites The applicant must meet local requirements to conduct business and must notify local officials of his pending application. The applicant must agree to maintain adequate security devices on his premises to safeguard firearms. The Secretary would be required to conduct annual inspections of manufacturers and importers premises and records prior to granting renewal of licenses.	The applicant must be qualified under local, State, and Federal law to conduct the firearms activity applied for. The Secretary must find that the applicant is by reason of his business experience, financial standing, or trade connections, likely to commense a bona fide business and maintain operations in conformity with Federal, State, and local law.
New Licensee Categories and Fees New licensee categories would be created for wholesale firearms dealers, retail firearms dealers, gunsmiths, and ammunition retailers. Importers and manufacturers would be charged higher fees for dealing in handguns, but wholesale and retail dealers would not be required to pay a higher fee to deal in handguns. (See attached fee schedule.)	New categories created for gunsmiths and ammunition retailers and significantly higher fees would be imposed on all dealers dealing in handguns. (See attached fee schedule.)
Multiple Handgun Sales Makes it unlawful for both licensees and non-licensees to sell or transfer two or more handguns to the same person within any 30-day period, unless the Secretary has approved such sales pursuant to regulations. Also, non-licensees would be prohibited from making multiple handgun purchases without prior approval of the Secretary.	Similar except that non-licensees could lawfully make multiple handgun sales.

Increased Restrictions on Firearms Sales by Non-licensees Prohibits non-licensees from transferring firearms to another non-licensee whom the transferor knows to be prohibited from purchasing or possessing firearms by Federal, State, or local law.	Similar.
Licensee's Obligation to Insure That State and Local Law are Complied With Specifically requires that before a firearm may be sold in a jurisdiction which imposes firearms licensing or registration requirements, the dealer must insure that the purchaser has complied with such provisions and thereafter must notify local authorities of the firearms sale. Also, local waiting requirements must be complied with and notice sent to local authorities.	Similar provisions exist with respect to handgun sales but such requirements would not extend to all firearms sales.
Procedures for Purchasing a Handgun From a Licensee (1) Purchaser must appear in person and submit sworn statement to the effect that his purchase or receipt of a handgun will not violate Federal, State, or local law. (2) The sworn statement must be forwarded by the dealer to the chief law enforcement officer at the purchaser's place of residence in order that such officer may run a background investigation and request an F.B.I. name check. A copy of any required permit or license must be attached. (3) Delivery of the handgun may be made if the dealer has not received an unfavorable response from local authorities within 28 days or if a favorable response is received sooner. But in no case may delivery be made until at least 14 days have elapsed after submission of the sworn statement by the prospective purchaser.	Similar procedures specified except that local authorities must also be consulted in the jurisdiction where the purchaser intends to store the handgun. The 14-day waiting period would not be required if local authorities reported favorably within the 14-day period.
Theft Reporting Requirement Both licensees and carriers would be required to report firearms thefts within 48 hours.	No counterpart in Administration's bill.
Congressional Review of Administrative Action Requires the Secretary to transmit each firearms ruling, regulation, and order to both Houses of Congress for review.	No counterpart in Administration's bill.
Effect on Felons and Other Dangerous Persons Eliminates the interstate commerce nexus from the existing prohibitions against felons and other dangerous persons possessing, shipping, transporting, or receiving firearms. Result--simple possession, receipt, etc., will be an offense without the Government having to establish that the firearms in question moved in interstate commerce.	Same.

Comparative Fee Schedule
(Since neither bill modifies existing fees with respect to destructive devices, the following chart refers only to conventional firearms and ammunition)

Committee's Bill	Administration's Bill
Firearms Manufacturer (other than handguns) $200	Firearms Manufacturer (other than handguns) $250
Firearms Manufacturer (including handguns) $500	Firearms Manufacturer (including handguns) $500
Manufacturer of ammunition $200	Manufacturer of ammunition $250
Importers (other than handguns) $200	Importers (other than handguns) $250
Importers (including handguns) $500	Importers (including handguns) $500
Pawnbroker $100	Pawnbroker (other than handguns) $250
	Pawnbroker (including handguns) $500
Wholesale firearms dealer $125	Dealer (other than handguns) $100
Retail firearms dealer $50	Dealer (including handguns) $200
Gunsmith $10	Gunsmith $50
Ammunition retailer $25	Ammunition retailer $25

Parsons Rle Justice

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: July 9, 1976 Time:

FOR ACTION: cc (for information):

Jim Cannon Jack Marsh
Max Friedersdorf Bob Hartmann
Jim Lynn

FROM THE STAFF SECRETARY

DUE: Date: Monday, July 12 Time: 10 A.M.

SUBJECT:

Phil Buchen memo 7/8/76 re Capital Punishment

ACTION REQUESTED:

____ For Necessary Action
X For Your Recommendations
____ Prepare Agenda and Brief
____ Draft Reply
X For Your Comments
____ Draft Remarks

REMARKS:

7-12-76
OK
R.D.P.
R.D.B.

Called 6:25
7/12
Ed

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

.THE WHITE HOUSE

WASHINGTON

July 8, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN P.

SUBJECT: Capital Punishment

As you know, the Supreme Court on July 2 decided five cases involving the imposition of the death penalty. This is to present a brief background and analysis of these cases in the context of current Federal statutory law and to offer two options relative to the issue of capital punishment which are available to you at this time.

Present Federal Statutes

The death penalty is presently specified as an authorized sentence upon conviction under at least ten sections of Federal law, including offenses proscribing murder, treason, rape, air piracy, and delivery of defense information to aid a foreign government: 18 U.S.C. 34 (destruction of motor vehicles or motor vehicle facilities where death results); 18 U.S.C. 351 (assassination or kidnapping of a Member of Congress); 18 U.S.C. 794 (gathering or delivering defense information to aid a foreign government); 18 U.S.C. 1111 (murder in the first degree within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. 1716 (causing the death of another by mailing injurious articles); 18 U.S.C. 1751 (Presidential and Vice Presidential murder and kidnapping); 18 U.S.C. 2031 (rape within the special maritime or territorial jurisdiction of the United States); 18 U.S.C. 2381 (treason); and 49 U.S.C. 1472(i) (aircraft piracy).

As drafted, however, the death penalty provisions in these sections, except for the recently revised provision relating to aircraft piracy which is discussed below, are unconstitutional under the U. S. Supreme Court's decision in the case of Furman v. Georgia [408 U.S. 238 (1972)].

The Furman Case

In Furman, a five-justice majority of the Supreme Court held that the imposition and carrying out of the death penalty in the cases in question would constitute "cruel and unusual punishment" in violation of the

Eighth and Fourteenth Amendments. The Court did not hold that capital punishment per se is unconstitutional. Rather, they concluded that the application of statutes leaving the imposition of the death penalty to the unfettered discretion of a judge or jury was constitutionally infirm.

Referring to the "wanton and freakish imposition" of the death penalty, which was noted with disfavor in the pivotal concurring opinions of Justices Stewart and White, the Chief Justice in his dissent noted:

* * *

> "Since the Court's decision turns on the assumption that the punishment of death is now meted out in a random and unpredictable manner, legislative bodies may seek to bring their laws into compliance with the Court's ruling by providing standards for juries and judges to follow in determining the sentence in capital cases or by more narrowly defining the crimes for which the penalty is to be imposed. If such standards can be devised or the crimes more meticulously defined, the result cannot be detrimental." (Emphasis added.) (at 396-401)

* * *

As articulated in the Furman decision then, it appeared clear that the objection of the Supreme Court to the death penalty as a punishment for certain crimes went not to its nature but to the manner of its imposition.

Post-Furman Legislative Initiatives

In the wake of the Furman decision, there developed three different approaches to the reinstatement of the death penalty: (1) mandatory imposition of the death penalty upon conviction of certain offenses; (2) establishment of exclusive and determinative criteria to be applied by the sentencing authority to determine whether the penalty is to be imposed; and (3) establishment of designated criteria to serve as a guideline for the discretionary imposition of the penalty.

By a literal reading of Furman, some argued that mandatory death would be able to withstand the test of constitutionality by precluding

the exercise of any discretion on the part of the sentencing authority and thereby eliminating the danger of "wanton and freakish" application. Such penalties would attach to the conviction of specified offenses, e.g., murder, and would preclude the consideration of any mitigating circumstances that might justify a lesser punishment in a particular case. This concept was embraced in legislation enacted in a number of states.

The second approach would allow for the imposition of the death penalty upon conviction of certain classes of heinous offenses, but only when one or more of certain designated aggravating circumstances is found to exist (e.g., if the defendant were shown to be a hired killer) and none of certain specified mitigating circumstances is found to exist (e.g., immaturity, duress, etc.). This concept was advanced by the Department of Justice and incorporated into Pub. L. 93-366, enacted on August 5, 1974, which relates, however, only to murder incident to aircraft piracy [49 U.S.C. 1472(i)(n)(Supp. IV)]. Additionally, the Department supported the same concept in the context of a general capital punishment measure which passed the Senate in 1974 (S. 1401, 93d Cong.) by a margin of over 3 to 2, but received no attention in the House. The same approach is included in the bill to recodify the totality of Federal criminal law (S. 1, 94th Cong.), but has not been introduced as a separate measure in the current Congress.

The third approach to reinstatement of the death penalty involved the establishment of criteria to serve as a guide in the discretionary imposition of the penalty. This was the course originally adopted before the Furman opinion by the American Law Institute (ALI) in its Model Penal Code. Under this scheme even if several aggravating and no mitigating circumstances are found to exist, the death penalty need not be imposed. This discretionary element distinguishes the ALI approach from the Justice Department concept.

In your speech before the Federal Bar Association in Miami, Florida, on February 14, 1976, you stated:

* * *

> "I favor the use of the death penalty in the Federal criminal system in accordance with proper Constitutional standards. The death penalty should be imposed upon the conviction of sabotage, murder, espionage and treason. Of course, the maximum penalty should not be applied if there is duress or impaired mental capacity or similar

extenuating circumstances. But in murders involving substantial danger to the national security, or when the defendant is a coldblooded hired killer, the use of capital punishment is fully justified."

* * *

Thus, you are on record in support of a limited reinstatement of the death penalty in accordance with the Supreme Court's teachings in Furman. More specifically, your statement is supportive of both the ALI and Justice approaches.

The Gregg Case

In the lead case decided last week [Gregg v. Georgia, 44 LW 5230], the Supreme Court held that a statutory scheme similar to that advanced by the ALI and applied to the offense of first-degree murder was consistent with the constitutional requirements announced in Furman.* The Court expressly reserved judgment with respect to possible application of the sanction to other crimes, e.g., rape and kidnapping.

The Gregg case established the jury as the sentencing authority, but in a companion case the Court also sustained a statute allowing for imposition by a judge under the same standards [Profitt v. Florida, 44 LW 5256].

A third case involved a state statutory scheme which made reference to a series of aggravating circumstances but did not explicitly speak of mitigating circumstances. However, since the statute had been judicially construed to embrace the jury's consideration of such circumstances, its validity was also sustained [Jurek v. Texas, 44 LW 5262].

Two state capital punishment statutes were struck down by the Court. These required a mandatory death penalty upon conviction of first-degree murder and a range of other homicidal offenses without reference to any aggravating or mitigating circumstances. The Court concluded that both were inconsistent with the requirements established by Furman. [Woodson v. North Carolina, 44 LW 5267 and Roberts v. Louisiana, 44 LW 5281]

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* The Georgia statute contained provision for the automatic appellate review of death penalty cases. Although this does not appear to be a constitutional necessity, it should be noted that the Justice Department model contains a similar provision. Additionally, both the Georgia statute and the Justice Department bill required a bifurcated trial and a criminal evidentiary standard, i.e., "beyond a reasonable doubt", at the sentencing proceeding.

Options

The Supreme Court's ruling is entirely consistent with your expressed views on the matter of capital punishment. It also logically invites enactment of legislation (incorporating either the ALI or Justice Department model, both of which are constitutional under Gregg) to reinstate the death penalty as an available sanction on the Federal level. The question now posed is to what extent do you personally wish to become involved in an attempt to expedite Congressional consideration of an appropriate legislative proposal? Two options arise:

1. Direct the Attorney General to forward a bill to Congress incorporating the features of S. 1401 as passed by the Senate during the 93d Congress and to work with the key committees of Congress on a priority basis toward enactment. [Supported by the Attorney General and Counsel's Office.]

2. Schedule a meeting with the Attorney General and Counsel's Office to review specific legislative proposals and to explore further your role in enacting an appropriate measure.

Approve: Option 1 _____

Option 2 _____

Crime

THE WHITE HOUSE

WASHINGTON

July 14, 1976

MEMORANDUM FOR: DICK PARSONS

FROM: JIM CANNON

I met with Baldwin and Burden last Friday.

Would you talk to me about this?

Attachment

DONALD BALDWIN ASSOCIATES
Government Relations Consultants

SUITE 906, 1625 EYE STREET, N.W.
WASHINGTON, D. C. 20006
202—223-6850

an affiliate of
GCI

July 9, 1976

The Honorable James M. Cannon
Assistant to the President for Domestic Affairs
The White House
Washington, D. C.

Dear Mr. Cannon:

This is to follow up on the visit Mr. Ordway P. Burden and I had with you this morning at which time we discussed the proposal Mr. Burden has made for a Presidential advisory commission or panel on law enforcement officers' views on the criminal justice system.

A copy of the original proposal made to Presidential Counselor John O. Marsh, Jr., and Counsel to the President Philip W. Buchen over a year ago is enclosed for your information.

After we left your office, we visited briefly with Mr. Marsh and told him of our meeting with you. He stated that he would be seeing you later today and would give you his strong endorsement of the proposal.

As I explained, a number of members of Congress, on both sides of the aisle, as well as the Republican National Committee (both former co-chairman Dick Obenshain, and present co-chairman Bob Carte have spoken to Rog Morton about the political implications and advantage of the proposal. Rep. John Rhodes, the Minority Leader of the House of Representatives, told Mr. Burden, Rep. Hamilton Fish and myself, that he would discuss it with the President, giving the proposal his strong endorsement.

We are very encouraged by your indicated interest in the propos and look forward to working with you further in an effort to see thi Administration get some well-deserved credit for doing something positive to help limit the number of crimes inflicted on our citizen This proposal would go a long way toward coming up with workable solutions and to prove to the American people that the President can do something about street crime across our nation.

Again, thank you for giving us so much of your valuable time, and with kindest personal regards.

Sincerely yours,

Donald Baldwin

DB/tcs
Enclosure

cc: The Honorable John O. Marsh, Jr.
Counselor to the President

PROPOSAL FOR THE ESTABLISHMENT OF A NATIONAL PRESIDENTIAL COMMISSION ON LAW ENFORCEMENT VIEWS ON THE CRIMINAL JUSTICE SYSTEM AND CRIME REDUCTION AND PREVENTION

I. INTRODUCTION

Crime in the United States rose an appalling 17% in 1974 and 6% in 1973 (Uniform Crime Reports). These figures follow almost seven years of Republican promises to reduce crime, promises made both before and during our stewardship of the executive branch and in the face of the expenditure of over three billion dollars by the Law Enforcement Assistance Administration alone.

Americans have, since the crime commission report of 1967,[1/] been documented as having serious, and from time to time primary, concern about the likelihood of being a victim of crime. As early as 1967 almost half the American public had indicated that it had altered its way of life out of a fear of crime.[2/] This concern has changed our way of life, and has seriously altered the face of America. We now live almost as prisoners in our homes and our businesses out of fear of crime.

The L.E.A.A. "victimization" study,[3/] initially released in early 1974, which surveyed over six hundred thousand Americans, gave a clear picture that there is at least another time, and in the city of Philadelphis five times, more crime victims than there are crime reports to the police. The controversy over victimization continues to escalate, and people continue to become more fearful.

MEMORANDUM

R'le FYI

THE WHITE HOUSE

WASHINGTON

INFORMATION

August 28, 1976

MEMORANDUM FOR: Jack Marsh

FROM: Dick Parsons

SUBJECT: District of Columbia Gun Control Law

You requested a short summary of the major provisions of the gun control law recently enacted by the Council of the District of Columbia and approved by the Mayor.

The bill:

- Would prohibit the possession of a handgun by any person within the District of Columbia on and after its effective date, except for police officers, special officers, or persons owning handguns which had been properly registered under the old law;
- Would not prohibit the ownership of rifles or shotguns but would require their owners to register them annually;
- Would prohibit the sale of unregistered firearms and would require that all sales of lawfully registered firearms be accomplished only through a licensed dealer; and
- Sets a mandatory minimum penalty of 10 days' imprisonment and a $300.00 fine for violations.

cc: Jim Cannon ✔