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Folder Title:
Crime/Gun Control (1989) [1]

Stack:	Row:	Section:	Shelf:	Position:
G	15	25	1	4

MEMORANDUM

TO: EJF

FROM: Meg

DATE: 17 April 1989

RE: Gramm/Heritage Prison Initiative

Background:

In February, Senator Gramm requested a Heritage briefing on prison reform and privatization. Gramm wanted the initial briefing for himself, although he expressed interest in cosponsoring a similar briefing for his colleagues.

The preliminary briefing was held on February 23 in Senator Gramm's office. Legislative Director Dick Ribbentrop and another unidentified staffer joined Senator Gramm. I was accompanied by Chuck Logan, a visiting fellow from the National Institute of Justice and an expert in prison privatization; Patrick McGuigan, a legal historian from Free Congress Foundation who authored Crime and Punishment in Modern America; and Dana Joel, our research associate. Notwithstanding his personal interest in the issue and his interest in spearheading the project with Senator Gramm, Attorney General Ed Meese was out of town and could not be present. We were prepared to cover both prison reform and privatization issues.

As it turns out, Senator Gramm himself had other ideas and used the meeting to explain to both his staff and us the origins of his request for a briefing and his thoughts on the specific subject of prison overcrowding.

Senator Gramm defined the problem. In his view, as a result of the Omnibus Drug bill and new sentencing guidelines, etc., the current prison overcrowding problem would likely get worse in the immediate future, but then peak and recede in five years. Thus, merely building new prisons, resources for which had been provided in the drug bill, would not be a wholly adequate solution to the problems of prison overcrowding. This is especially true when the real problem of prison overcrowding is the penchant that certain liberal judges have for issuing edicts that result in the release of violent criminals into society.

Senator Gramm perceives that there is a powerful emotion and

energy present in the electorate about the use of judicial edicts to remedy overcrowding in the nation's prisons. He wants to harness this energy, which President Bush tapped with the furlough issue during the Presidential campaign. Senator Gramm, therefore, proposes as a solution either limiting the jurisdiction of the courts on prison overcrowding cases or directing the courts to take into account safety of the community and other similar factors when rendering their decisions.

He would like in the process to reaffirm the rights of law-abiding citizens. As long as the central provision accomplishes the above stated purpose, Gramm favored including other prison reform initiatives. Among these is a repeal of the 1930s era statutes that prohibit interstate commerce in prison-labor-produced products. He did not think it was politically possible to argue for a combination of diminished prison sentences and toughened restitution and supervised community hard-labor requirements for white collar (non-violent) criminals, even though this would free up prison beds for the dangerous criminals that most should be behind bars.

Result:

Ed Meese and I held several meetings in early March to discuss how to respond to Senator Gramm. The following were present in at least one if not both of the meetings: Brad Reynolds, Chuck Logan, Bruce Fein, John DiIulio (Brookings), and Dana Joel. We prepared a specific agenda, responding to both Gramm's assumptions and analysis regarding prison overcrowding and the legal and policy questions pertaining to his proposed solution.

We did not view the prison overcrowding problem as a short-term problem. From a public policy point of view, prison reform and privatization initiatives are, therefore, essential to a resolution of the prison crisis.

On April 5, Senator Gramm joined us for breakfast, which went very well. We discussed and endorsed the following general concepts:

- 1) Limiting the remedy that courts can adopt in Eighth Amendment challenges to prison overcrowding. We provided the Senator with specific language, and he asked that the text be revised to include language that would define what is meant by "cruel and unusual" punishment in this context. For example, evidence of malnutrition, exposure, or other specific and measurable physical effects. Dick Ribbentrop subsequently spoke directly with Bruce Fein regarding the requested revision. Bruce has apparently convinced Gramm and Ribbentrop that the change would in effect weaken the language that was previously drafted, to no good purpose.

- 2) Sweeping away the impediments to using abandoned military bases for prisons. Among these are state agreements prohibiting

their use, or similar judicial edicts. Attorney General Meese recommended providing for a court or other review of previous agreements and court judgments in light of the new standards that are expected in a Dole prison bill.

3) Restore a parole policy, under which after serving a determinate sentence a prisoner faces a period of supervision. Today, once a prisoner is released he apparently is unsupervised and free of any other temporary post-prison constraints.

4) Repeal impediments to interstate commerce in prison industry products embodied in the Hawes-Cooper Act. Establishment of prison industries, preferably privately managed, would enable prisoners to use their incarcerated time to learn a skill that could facilitate post-prison employment. Portions of a prisoner's salary could also be garnished to pay for room and board and to make restitution to victims.

5) Allow for private prison construction and government purchase of prison services from the private sector, as well as other initiatives to bring down the cost of prison construction.

6) Sentencing Accountability - require courts to keep records on the sentencing practices of individual judges and how the sentences are carried out. This would enable the public and the judges themselves to see their sentencing patterns and to gain a better sense of what happens to prisoners once they've been sentenced.

Subsequent Developments:

Developments in the Senate are moving in the direction of making "prisons" the major Republican initiative for this year. Senator Dole is preparing his own prison bill that would focus on prison standards and using abandoned military bases to house prisoners. He would pay for new construction with asset sales. Senator Specter is advocating increased spending on prison construction. A prison/crime bill is being billed as the next step in the war on drugs.

On April 5 and 6, Senator Dole formed a staff task force to prepare a comprehensive legislative proposal. It is comprised of two subgroups (prisons and gun control), although the primary focus will be in three areas: prisons, guns, and drugs. The Republican leadership in the Senate wants to save most of their fire on the drug issue until next year when the election cycle begins. Dick Ribbentrop, Senator Gramm's legislative director, is chairing the subgroup on prisons; Jack Gerard, Senator McClure's legislative director, is chairing the subgroup on guns & crime.

I attach the latest staff level draft of the Dole crime/prisons/drug package. I also include Gramm's outline of objectives, which was just revised by his staff on April 20. The

Dole bill proposal currently contains most of the elements that we recommended to Senator Gramm during the breakfast. But, it merely recommends a study of the repeal of Hawes-Cooper rather than going ahead with the repeal. This reflects staff level caution about having private sector businesses compete against prison industries that may or may not be subsidized.

The follow-on breakfast about which we have talked with Senator Gramm has not yet been scheduled because things have moved at such a rapid pace in the Senate. It is my view that viable prison industries are the best and almost only way to really get at a self-financing prison system that is adequate to deal with the dimensions of our crime problem and yet not a burden to the taxpayer. From that standpoint, if we were to go ahead with the breakfast, it might most productively focus on repeal of Hawes-Cooper and prison privatization.

We are currently preparing for Senator Gramm an analysis of the demand reduction initiatives that were dropped from the omnibus drug bill at various stages of the legislative process. This will provide legislative targets specifically on the drug issue for Senator Gramm and the Drug Policy Strategy Group.

GRAMM initiative in working group

Senator Phil Gramm
April 20, 1989

DRAFT

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ITEMS FOR POTENTIAL INCLUSION IN PRISON REFORM LEGISLATION

1. Congress declares a 5 year National Crime Emergency and, in order to protect the public safety, establishes conditions which govern the release of prisoners due to overcrowding. Congress finds that jail cap orders issued by Federal courts as a remedy to overcrowding unreasonably endanger the community, particularly when such orders are issued in the absence of a plaintiff inmate who has proven that detention conditions represent cruel and unusual punishment.

The proposed public safety legislation would require that a plaintiff must prove that prison conditions have inflicted cruel and unusual punishment upon him, in order to obtain a Federal Court ruling that such conditions violate the Constitution. If such a ruling is issued, inmate ceilings and jail cap orders will not be available as remedial measures (unless overcrowding, literally, was so severe that it was deemed cruel and unusual by the courts); other means of relief, such as improved medical or health care, fines, or damages would remain available.

2. Approve the use of inactive (and, where appropriate, active) military installations as detention facilities for those convicted of certain drug crimes. Tents and other temporary housing facilities will be specifically approved for use. For those cases where court orders prohibiting such use are in effect, language will be included which directs that such orders be reviewed and remain in effect only if the circumstances in (1) exist.

3. Remove any current legislative impediments to prison industry initiatives and encourage the involvement of prisoners in such activities by repealing the Hawes-Cooper restrictions on interstate commerce in these goods. The use of prisoners in local, infra-structure repair projects, as well as prison construction (with appropriate security measures) will be encouraged as will private sector involvement in prison industries.

4. Require those convicted of drug related crimes to be subject to mandatory drug testing while in prison and as a condition of parole. Parole would be denied or revoked for either failing to take such tests or for failing the tests. In addition, for those convicted of drug dealing, a list of assets should be assembled during the sentencing process.

Congress should approve "conspicuous consumption" language which would allow parole officials to insure that such individuals, once paroled, had forfeited all such assets and were not using or benefiting from previous drug trafficking profits. Parolees would be required to meet IRS standards of documentation in order to prove that assets were legally earned or obtained. Failure to produce such documentation will result in asset forfeiture.

5. Include language that promotes the privatization of construction, operation and management of prisons.

6. Require that an annual report be assembled on sentencing by U.S. District Judges. Include a description of the crime, history of the criminal and sentence imposed by the Judge. The information would enable the public to assess criminal sentencing patterns among federal judges.

#120/89 Senate language in
Eight Amendment
S.L.C. by Gramm

021011.287

101st CONGRESS
1st Session

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. Gramm introduced the following bill; which was read twice and referred to the Committee on

A BILL

To protect the public safety by providing appropriate remedies for prison overcrowding.

1 Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled,

3 SECTION 1. FINDINGS AND PURPOSE.

4 (a) Findings.--Congress finds that--

5 (1) under section 5 of the Fourteenth Amendment, the
6 Federal courts are unreasonably endangering the community
7 by sweeping equitable prison and jail cap orders as a
8 remedy for State detention conditions that they hold are
9 in conflict with the Eighth Amendment; and

10 (2) Eighth Amendment holdings frequently are
11 unjustified because of the absence of a plaintiff inmate

021011.287

S.L.C.

2

1 who has proven that detention conditions inflict cruel
2 and unusual punishment as to him.

3 (b) Purpose.--The purpose of this Act is to provide for
4 reasonable and proper enforcement of the Eighth Amendment,
5 applicable to the States by incorporation under the due
6 process clause of the Fourteenth Amendment.

7 SEC. 2. AMENDMENT TO TITLE 18.

8 (a) Amendment.--Subchapter C of chapter 229 of part 2 of
9 title 18, United States Code, is amended by adding at the end
10 thereof the following:

11 ``§ 3626. Appropriate remedies with respect to State prison
12 overcrowding

13 ``(a) A Federal court shall not hold prison or jail
14 overcrowding unconstitutional under the Fourteenth Amendment
15 except to the extent plaintiff inmates prove the overcrowding
16 causes the infliction of cruel and unusual punishment as to
17 them. The relief in such cases shall extend no further than
18 to removing the conditions that are causing the identified
19 inmates cruel and unusual punishment.

20 ``(b) A Federal court shall not place an inmate ceiling
21 on State or local detention facilities as an equitable
22 remedial measure for conditions that violate the Eighth
23 Amendment unless overcrowding itself is inflicting cruel and
24 unusual punishment on individual prisoners. Federal judicial
25 power to issue other equitable relief, including improved

021011.287

3

S.L.C.

1 medical or health care or civil contempt fines, or damages
2 where appropriate, shall not be affected by this subsection.

3 "(c) Each Federal court order seeking to remedy an
4 Eighth Amendment violation shall be reopened for
5 recommendation or alteration at a minimum of two-year
6 intervals."

7 (b) Applicability of Amendment.--Section 3626 of title
8 18, United States Code, as added by subsection (a) of this
9 section shall apply to all outstanding court orders on the
10 date of enactment of this section. Any State or municipality
11 shall be entitled to seek modification of any outstanding
12 Eighth Amendment decree pursuant to the provisions of such
13 section.

April 16, 1989 1:00 p.m.

DRAFT - staff/Dale working group
outline

NATIONAL EMERGENCY CRIME REDUCTION ACT

Purpose: To declare a National Crime Emergency, to reform existing federal and state prison systems, to authorize the construction and funding of new regional prison facilities, to enhance the enforcement of the federal firearms statutes and to increase the penalties for violations of these statutes, and to reform federal criminal procedures.

Title I. Declaration of National Crime Emergency

- A. Declare a 5-year National Crime Emergency.
- B. Declare that the public has been endangered by i) the burdensome requirements imposed by the courts upon the federal and state prison systems, ii) the lack of adequate prison space to house dangerous criminals, and iii) the failure of the federal courts to strike a fair balance between the legitimate rights of the criminally accused and the public's right to safety and security.

Title II. Prison Reform and Impact on Public Safety

Prison Overcrowding

- A. Establish that "jail cap" orders issued by federal courts as remedies to prison overcrowding unreasonably endanger the public.
- B. Authorize improved medical or health care, fines, and damages as remedial relief in lieu of inmate ceilings and "jail cap" orders.
- C. Upon application of a state, authorize the reopening of any "jail cap" order that is designed to remedy overcrowding and that is in effect on the date of the enactment of NECRA. Authorize the Attorney General of the United States to assist the respective states in such reopening proceedings in order to ensure that "jail cap" orders comply with the public safety provisions of this title.

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- D. Require a plaintiff-inmate to establish that prison conditions have inflicted a "cruel and unusual" punishment upon him prior to obtaining a federal court order declaring that such conditions violate the 8th Amendment.

Report on Sentencing Standards

- E. Direct the Attorney General of the United States to prepare an annual report on sentences imposed by federal judges during the preceding year in order to enable the public to assess criminal sentencing patterns.

Mandatory Drug Testing of Prisoners

- F. Subject any individual convicted of a drug-related crime to mandatory drug-testing as a condition of parole.
- G. Require the courts to assemble a list of assets held by any individual convicted of selling illegal drugs.
- H. Adopt "conspicuous consumption" language to prevent any individual convicted of selling drugs from using, or benefitting from, previous drug trafficking profits after parole.

Prison Industries

- I. Direct the Attorney General of the United States to prepare a study of the potential effects of lessening, and possibly removing, the current legislative impediments to prison industry initiatives, especially the Hawes-Cooper restrictions on interstate commerce in prison-manufactured goods.
- J. Direct the Federal Bureau of Prisons to conduct a test case study of the feasibility of prison industry initiatives.

Title III. Prison Construction

Temporary Measures

- A. Direct the Attorney General of the United States to cooperate with the Department of Defense and to identify "emergency confinement areas" within 180 days of the enactment of NECRA.
- B. Direct the Federal Bureau of Prisons to identify specific categories of prisoners who could be reassigned to the "emergency confinement areas" within 180 days of the enactment of NECRA. Prisoners that could be reassigned include i) non-violent criminals, ii) white collar criminals, and iii) criminals who will be released within 6-12 months.

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- C. Direct the Federal Bureau of Prisons to review and recommend the technology necessary to accomplish the reassignment.
- D. Direct the General Services Administration, the Department of Defense, the Department of Interior, and other pertinent federal agencies to prepare a joint study on the appropriateness of using federal lands to house prison facilities.
- E. Authorize the use of inactive (and, where appropriate, active) military installations as detention facilities for individuals convicted of drug-related crimes.

Permanent Measures -- Regional Prisons

- F. Authorize the construction of several large regional prisons for federal, state and multi-state use, with a cumulative capacity of approximately 70,000 inmates.
- G. Finance construction on a "pay-as-you-go" basis and exclusively from the following sources: i) proceeds from the sale of specified federal assets, ii) funds released as a result of program terminations, iii) asset forfeiture funds, iv) state contributions, and v) private construction and leasing arrangements. Construction costs will not be financed with existing funds appropriated to the Federal Bureau of Prisons or with funds requested by the Bureau during the normal appropriations process.
- H. Authorize the Federal Bureau of Prisons or the state of domicile, or both, to operate and manage new regional prisons.
- I. Finance operating costs of each regional prison with contributions by the Federal Bureau of Prisons and the participating states (contributions proportional to number of inmates each jurisdiction places in regional prison).
- J. Entitle state of domicile to largest share of prison spaces in each regional prison.
- K. Authorize the Attorney General of the United States to determine whether each state is taking independent measures to resolve its own prison overcrowding problem. Determination by the Attorney General that such measures are inadequate to resolve overcrowding problem on a timely basis disqualifies a state from i) eligibility as domicile of regional prison and ii) housing state prisoners in regional prison.

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Permanent Measures -- Improved Construction

- L. Direct the Federal Bureau of Prisons to review existing prison construction standards and to recommend changes that will reduce construction costs, consistent with necessary security measures.
- M. Authorize the deployment of state and federal prisoners to assist with the construction of new prison facilities, consistent with necessary security measures.
- N. Require any individual convicted of any drug-related offense to pay a \$1,000 fine that will be deposited in a "Prison Construction Fund" and that will be used to defray prison construction expenses. Such fine will be in addition to any other sentence or penalty imposed.

Title IV. Standardized and Biometric Identification

- A. Require the Federal Task Force on standardized identification (already in place) to issue uniform methods for biometric identification within 3 months of the enactment of NECRA.
- B. Direct the Attorney General of the United States to determine, no later than November 1989, whether to require states to implement new biometric identification for drivers licenses and state-issued non-drivers identification cards. If the Attorney General makes a favorable determination, require states to i) implement new biometric identification for drivers licenses and state-issued non-drivers identification cards within 1 year of such determination and ii) replace current drivers licenses and non-drivers identification cards within 4 years of such determination.
- C. Require states to transfer felony conviction records to proper federal authority according to a schedule, and in a manner, determined by the Attorney General of the United States.
- D. Failure to comply with B. and C. above disqualifies a state from i) eligibility as domicile of regional prison and ii) housing state prisoners in regional prison. See "Title III -- Permanent Measures -- Regional Prisons."

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Title V. Firearm Control and Integrity**Form 4473**

- A. Add "convicted of a drug offense" to question concerning whether applicant is an "unlawful user of, or addicted to" marijuana, or a depressant, stimulant, or narcotic drug.
- B. Create Federal Task Force from mental health, police and court professionals to develop a new standard in lieu of current "adjudicated mentally defective or ... ever committed to a mental institution" standard.
- C. Double current penalty for intentional or materially false statement on a Form 4473 to a maximum sentence of ten years imprisonment and a maximum fine of \$10,000.

Mandatory Minimum Sentences

- D. Require states to establish mandatory minimum sentences (equal to or greater than the current federal statutes) for those convicted of using a firearm in the commission of a felony.
- E. Failure to comply with D. above disqualifies a state from i) eligibility as domicile of regional prison and ii) housing state prisoners in regional prison. See "Title III -- Permanent Measures -- Regional Prisons."

Department of Justice Report on Dealer Check

- F. Require Department of Justice to issue report on dealer check at time of purchase no later than September 1989.

Prohibition of Firearms' Purchases

- G. Create new 5-year prohibition of firearms' purchases by individuals previously convicted of a crime punishable by a prison term of 6 months or more.

Creation of Penalties and Enhancement of Existing Penalties

- H. Authorize death penalty for use of firearms during the commission of a crime.
- I. Authorize criminal penalties and mandatory minimum sentences for theft of a firearm.
- J. Enhance penalties for the use of a semi-automatic weapon during the commission of a violent crime.
- K. Enhance penalties for smuggling firearms into the United States while engaged in, or in the furtherance of, drug trafficking.

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Restrictions on Plea Bargaining

- L. Prohibit the reduction of any charge involving a firearms violation and carrying a sentence of 1-year or more to a charge carrying a sentence of less than 1 year.
- M. Prohibit the dismissal of any charge involving a firearms violation and carrying a sentence of less than 1 year.
- N. Provide a limited exception to restrictions on plea bargaining for those individuals who cooperate with law enforcement officials.

Juvenile Justice

- O. Require that juveniles who commit crimes involving firearms be tried as adults.

Additional Assistant U.S. Attorneys

- P. Provide authorization and funding for additional U.S. Attorneys to assist in the prosecution of firearms violations.

Bureau of Alcohol, Tobacco and Firearms

- Q. Authorize additional funding for the Bureau of Alcohol, Tobacco and Firearms to enforce Section 924(c) of Title 18.

Title VI. Criminal Justice Reform

- A. Reinstate federal death penalty and reform federal sentencing laws to conform with Supreme Court guidelines.
- B. Modify exclusionary rule.
- C. Reform habeas corpus to simplify the appellate process and to impose time limitations on habeas applications by federal and state prisoners.

TALKING POINTS ON H.R. 1190 AND S. 386

* "Assault" rifles are selective-fire military rifles capable of full-auto fire at the option of the shooter. H.R. 1190 (Stark) and S. 386 (Metzenbaum) do not affect these firearms, but ban future sale and manufacture of semiautomatic rifles, shotguns, and pistols which are not readily convertible to full-automatic fire.

* Both bills give the Treasury Secretary discretion to ban semiautomatic firearms based on vague and elastic guidelines. Conservative estimates place the number of firearms that could be affected at 20-30 million.

* Stark allows firearms to be banned if they are "substantially similar in design, function, and use" to those rifles, shotguns, and pistols listed in the bill. Stark also calls for banning those firearms based on an original military or law enforcement design. That category includes millions of popular hunting and target shooting firearms, like the Browning BAR .30-'06.

* Metzenbaum allows firearms to be banned if they are "determined by the Secretary of the Treasury . . . to be assault weapons." S. 386 also adds to its list of restricted firearms those that are "substantially identical" to those on the list, without defining the phrase "substantially identical."

* Both bills explicitly list firearms, like the Ruger Mini-14 and the Colt AR-15, that are widely used for hunting and competitive target shooting. The Ruger Mini-14 is sold in versions identical in appearance to many other popular semiautomatic hunting rifles. If firearms like the Mini-14 are on the list, and firearms similar or identical to those firearms can be banned, even absent the exercise of discretion, the Secretary may be forced to prohibit millions of popular hunting and target shooting firearms.

* Current owners of prohibited semiautomatic firearms would be put under the system of restrictions in place for machine gun owners:

- the owner would need local law enforcement permission to continue to own each semiautomatic firearm he/she now owns

- the owner would undergo an F.B.I. background check based on fingerprint identification for each firearm owned

- if the owner was going on an out-of-state hunt or competition with a restricted semiautomatic, he/she would need written authorization from the Treasury Secretary "consistent with public safety and necessity. . . ."

TALKING POINTS ON CRIME

WHAT THE PRESIDENT HAS SAID:

- *Strongly go after criminals who use these guns
- *Supports existing law banning importation of fully-automatic firearms
- *Will not support banning semiautomatic hunting rifles
- *Healthy debates going on about how you define "assault" weapons (Fitzwater statement)

AN EXPANSION OF THE PRESIDENT'S EXISTING ARGUMENTS WOULD BE:

- *Current proposals at the federal level could ban 20-30 million semiautomatic rifles, shotguns, and pistols owned by hunters and target shooters across the country.
- *The label "assault weapon" is being applied to semiautomatic firearms that merely resemble modern military firearms, but are not military firearms.
- *Treasury Department experts have testified that semiautomatic firearms resembling modern military firearms are no different mechanically from semiautomatic firearms that resemble traditional hunting rifles.
- *Debates about defining "assault" weapons must take into consideration the mechanical similarities between all semiautomatic firearms.

WHAT THE PRESIDENT COULD SAY TO SUPPLEMENT THOSE ARGUMENTS:

- *Fully support and will seek to expedite fulfillment of the McCollum Amendment to the Anti-Drug Abuse Act of 1988. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, Sec. 6213-14, 102 Stat. 4181, 4360-61 (1988).

This provision of current federal law provides that the Attorney General shall develop a system for the instantaneous screening of firearms purchasers at the point of purchase. This system will protect the rights of law-abiding citizens while ensuring that no criminals can fraudulently purchase firearms through legitimate channels.

In addition, the McCollum amendment provides for the automatic revocation of probation where any felon on probation is found in possession of a firearm.

- *Support increased enforcement of existing federal law prohibiting the mere possession of firearms by felons. 18 U.S.C. 922(g). The penalty for that mere possession is five years in prison. 18 U.S.C. 924(a)(1)(B), (D).

To ensure that this law is enforced, I have requested a 15% increase for the legal

activities of the Justice Department. As I outlined in my February 9th address to Congress, this \$996 million will be an essential complement to growth in other law enforcement areas.

*So that violent criminals are treated as violent criminals, consider proposals to eliminate plea bargain agreements for five years. All too often, violent criminals are given a misdemeanor slap on the wrist instead of a lengthy sentence behind bars. The American people expect criminals to be incarcerated, not coddled.

*Redouble enforcement of existing criminal penalties for the misuse of firearms.

Under current federal law, as amended by the Anti-Drug Abuse Act of 1988, the first time a criminal with a firearm commits any crime of violence or drug trafficking crime, he must be sentenced to an additional five years in prison with no probation or parole. 18 U.S.C. 924(c)(1).

If a criminal uses a machinegun, he must be sentenced to an additional 30 years, on top of the sentence he receives for the underlying crime, with no probation or parole. Id., as amended by Publ. L. 100-690, Sec. 6460, 102 STAT. 4373 (1988).

A second offense with a firearm gets a criminal or drug trafficker an additional 20 years. Id.

For the most dangerous and violent offenders, individuals who are convicted of a second offense with a machinegun, Congress gave us the power last year to put them away for life. Id., at 4374.

As outlined in my February 9th address to Congress, the enforcement of these tough laws requires an expansion of existing prison capacity. My budget provides additional funding to address this serious concern.

*Finally, since Justice Department-funded studies indicate that most firearms used by criminals are obtained on the black market or through theft, this Administration is considering proposals to make acquisition of a firearm through theft, fraud, or embezzlement a federal crime.

The McClure-Volkmer Firearms Owners' Protection Act, Pub. L. 99-308, for the first time gave law enforcement the tools to go after the black market traffic in firearms. This proposal will allow the federal government to render even more assistance to the states in our mutual war against crime.



A tax-exempt public policy research institute

March 15, 1989

Honorable John Sununu
Chief-of-Staff
The White House
Washington, D.C. 20500

Dear John:

As you know, the President called me on Monday and asked for a series of policy options on gun control. Secretary Bennett's action in concurrence with Secretary Brady, is a sensible first step. Further options are contained in the enclosed paper which I promised to have ready for the President by COB today, Wednesday.

I would appreciate your ensuring that he has received it.

Thank you.

Sincerely,

Edwin J. Feulner, Jr.
President

EJF/ms

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Withdrawal/Redaction Sheet

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Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
03. Memo	From Ed Feulner to POTUS Re: Gun Control [same as doc 01b] (4 pp.)	3/15/89	P/5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Crime/Gun Control (1989) [1]

Open on Expiration of PRA
 (Document Follows)
 By gf (NLGB) on 12/12/07

Date Closed: 12/2/2004	OA/ID Number: 29152-001
FOIA/SYS Case #: 1998-0004-F[1]	Appeal Case #:
Re-review Case #: 2005-0426-S	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

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

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

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

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

PRM. Removed as a personal record misfile.

(b)(1) National security classified information [(b)(1) of the FOIA]
 (b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
 (b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
 (b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
 (b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
 (b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
 (b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
 (b)(9) Release would disclose geological or geophysical information

Determined to be Administrative Marking

~~CONFIDENTIAL~~ MEMORANDUM TO THE PRESIDENT

FROM: EDWIN J. FEULNER, JR. *EF*

MARCH 15, 1989

In response to your request of March 13, I am presenting these proposals for followup actions on the gun control issue.

If the temporary import ban of semiautomatic weapons announced yesterday has removed the necessity for further immediate action, this memo provides a series of steps that can be taken in the near term. These proposals:

- 1) are consistent with each other;
- 2) will retain the support of your gun-owning constituency;
- 3) will rebuild the logical cooperative relationship that has been ruptured between the gun owners and the police; and,
- 4) will deal with a real problem.

My colleagues and I are prepared to meet with you or your staff at your convenience to elaborate on these proposals.

I hope this memorandum is helpful to you as you deal with this important issue.

ASSAULT RIFLES

POLICY RECOMMENDATIONS FOR PRESIDENT BUSH

The question of banning weapons is highly emotional and often raises constitutional issues. In deciding what federal action to take, President Bush should be guided by the following principles:

1) Individual Rights. Gun control laws must not restrict the constitutional rights of law-abiding citizens. Government action to restrict the availability of assault rifles should focus on preventing the purchase of firearms for illegal means, while preserving the right of law-abiding citizens to purchase firearms.

2) Crime, not Guns. The focus of government action should be to prevent crime, not to ban guns. Clearly, banning guns does not prevent criminals from obtaining and using them. Example: The District of Columbia, which has the most restrictive gun ban law in the nation, also has the highest murder rate. Crime is

not deterred by gun control, but by a full commitment of government to enforce the law, to protect its law-abiding citizens.

3) Federalism. In devising federal policies President Bush should follow the traditional concepts of federalism. The federal role should be in such areas as interstate commerce, where there is a clear constitutional nexus. States should handle all other issues. For example, a current proposal that trespasses on federalism is the proposed federal law to ban semiautomatic guns that are capable of carrying more than 6 rounds at one time. States may choose to consider such a course, but the federal government should not.

4) Enforcement. Present and prospective gun laws must be enforced. All persons who attempt to carry a firearm onto an airplane, for example, should be fully prosecuted under current laws. Existing laws requiring the registration of handguns, moreover, must be enforced more strictly and effectively.

FEDERAL ACTION

Appropriate federal action to restrict the supply of assault weapons includes the following:

1) Permanently ban the import of automatic or semiautomatic assault weapons without a permit from the Bureau of Alcohol, Tobacco, and Firearms. President Bush should make permanent his March 14 action to ban the import of semiautomatic assault weapons. The BATF, however, should be given the authority to issue permits where appropriate.

Before announcing a permanent ban, The President should instruct the BATF, in conjunction with the FBI and the Department of Justice, to draw up guidelines that carefully define the class of weapons being banned. Characteristics to consider in defining the banned class of imported weapons should include the following.

a) Capability of accepting multiple rounds. The number of rounds that a gun is capable of firing without reloading can indicate the intended purpose of the weapon. It is far from conclusive, however, as many legitimate hunting rifles are capable of accepting clips with as many as 30 rounds. For the purpose of defining the class of banned imports, however, BATF should consider including semiautomatic guns capable of holding more than 6 rounds at one time (NRA may not accept a limit of less than 10).

b) Physical appearance of the weapon. Many imported assault rifles have physical characteristics that give them the appearance of war weapons. Such "Rambo"- looking rifles have a strong appeal to individuals inclined to use the weapons for an unlawful purpose. BATF should consider such factors when establishing its guidelines for restricting imported guns.

c) Rate of fire. The speed at which a semiautomatic gun can fire its rounds has been suggested as another measure for distinguishing assault weapons from legitimate sporting weapons. Rate of fire, however, is a function of "cyclic rate", which essentially is how quickly a shooter can pull the trigger. A common .22 caliber semiautomatic hunting rifle, for example, could fire as quickly as an AK47 assault rifle, depending on the skill of the shooter. Rate of fire, therefore, is not a useful measure for defining the class of imported weapons to be banned.

2) Make it a federal crime for anyone to possess or transport across state lines any weapon in a manner that violates the laws of either state. Such a federal law is necessary to prevent individuals from purchasing a gun in a state with lenient gun laws and transporting it into a state with stricter laws. The federal government can exercise this power under the Commerce Clause of the Constitution.

3) Accelerate the Attorney General's development of a system to identify felons who seek to purchase firearms. The McCollum Amendment, passed in 1988 as part of the omnibus drug bill, requires the Attorney General to "develop a system for the immediate and accurate identification of felons" involved in the purchase of firearms. Under current law, the Attorney General has one year to report on his progress in complying with the statute. President Bush should accelerate the process. He should direct the Attorney General to develop a system as quickly as possible, but certainly within the next six months.

4) Enforce the Armed Career Criminal Act. Current federal law requires strict mandatory sentencing of felons convicted of a second offense involving the possession of a firearm. Unfortunately, this law is not being enforced. President Bush should instruct the Justice Department to enforce the law, and request from Congress funding for additional staff if necessary.

5) Ease federal prison crowding. Prison overcrowding is one reason prosecutors fail to prosecute existing gun control violations. President Bush should instruct the Justice Department to develop privatization alternatives and other such innovations that would encourage self-financing prisons and prison construction. The Department should use as a starting point the prison reform proposals of Senator Gramm. The federal initiatives should serve as a model for the states.

USING THE BULLY PULPIT

In addition to these federal actions, President Bush should use the bully pulpit to articulate his position on crimes committed with weapons and on gun control, and encourage state legislators to enact public policies consistent with his views.

President Bush should announce a renewed effort to enforce existing federal laws, and encourage states to enforce their own laws, as outlined in legislation proposed by Senator McClure. In particular, the federal government and the states should:

- 1) Enforce existing gun laws.
- 2) Enforce mandatory minimum sentence laws.
- 3) Enforce existing criminal laws.

The President should host an early meeting with a representative group of chiefs of police to reorient the argument away from a narrow concentration on gun control, and toward a focus on prosecuting individuals who use guns in the commission of crimes.

A preparatory meeting should be held with leaders of the various federal agencies involved (DEA, FBI, the Departments of Justice and the Treasury, and the Office of the Drug Czar), in order to insure that all senior personnel are working on the same agenda.

I. Transmit legislation to treat assault style [and easily-convertible] semi-automatic weapons exactly the same as fully automatic weapons (machine guns):

- o No new guns can be manufactured, imported or sold after enactment, except for military or law enforcement use.
- o Federal licensing with background criminal check and \$200 transfer fee.
- o Heavy penalties for violation of sale and transfer laws.
- o Mandatory add-on sentences for use in violent or drug-related crimes.
- [o Secretary of Treasury would be empowered to exempt hunting weapons.]

This will help restrict these weapons to law-abiding citizens. Import controls just raise the price for domestically-manufactured weapons.

II. Transmit legislation to impose a mandatory death penalty for murders in connection with drug-trafficking, to deter future drug-related crimes.

III. Promote strict enforcement of Federal, State and local gun laws.



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

file

March 14, 1989

Today's action by the Secretary of the Treasury to suspend further importations of certain semi-automatic firearms should put a stop to the media hysteria surrounding the issue of the semi-automatic version of the AK-47, and should provide an atmosphere for a reasoned and sensible debate on this issue.

This process will provide an opportunity and forum for presentation of the evidence concerning the sporting purposes of semi-automatic firearms. There will be administrative review process on each type of firearm.

The time is long overdue for a cool-headed look at the facts on this issue. The facts are that semi-automatic firearms are owned by 20 to 30 million Americans, and are used for hunting in 48 states.

Today's action by the Secretary of the Treasury, we trust, will end the rush to come up with ill-conceived and ill-defined legislative proposals which could turn up to 30 million Americans into felons and deprive Americans of firearms that they have lawfully owned for decades.

We are hopeful this action will serve to promote a rational and reasoned evaluation of this issue, and we are confident that public understanding of the facts will protect the rights of law-abiding citizens who lawfully own semi-auto firearms.

We look forward to participating in this debate and defending the lawful ownership and use of semi-automatic firearms of which there are 20 to 30 million in the hands of law-abiding American citizens.

From HSCA *file*

TALKING POINTS ON CRIME

WHAT THE PRESIDENT HAS SAID:

- *Strongly go after criminals who use these guns
- *Supports existing law banning importation of fully-automatic firearms
- *Will not support banning semiautomatic hunting rifles
- *Healthy debates going on about how you define "assault" weapons (Fitzwater statement)

AN EXPANSION OF THE PRESIDENT'S EXISTING ARGUMENTS WOULD BE:

- *Current proposals at the federal level could ban more than 20 million semiautomatic rifles, shotguns, and pistols owned by hunters and target shooters across the country.
- *The label "assault weapon" is being applied to semiautomatic firearms that merely resemble modern military firearms, but are not military firearms.
- *Treasury Department experts have testified that semiautomatic firearms resembling modern military firearms are no different mechanically from semiautomatic firearms that resemble traditional hunting rifles.
- *Debates about defining "assault" weapons must take into consideration the mechanical similarities between all semiautomatic firearms

WHAT THE PRESIDENT COULD SAY TO SUPPLEMENT THOSE ARGUMENTS:

*Fully support and will seek to expedite fulfillment of the McCollum Amendment to the Anti-Drug Abuse Act of 1988. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, Sec. 6213-14, 102 Stat. 4181, 4360-61 (1988).

This provision of current federal law provides that the Attorney General shall develop a system for the instantaneous screening of firearms purchasers at the point of purchase. This system will protect the rights of law-abiding citizens while ensuring that no criminals can fraudulently purchase firearms through legitimate channels.

In addition, the McCollum amendment provides for the automatic revocation of probation where any felon on probation is found in possession of a firearm.

*Support increased enforcement of existing federal law prohibiting the mere possession of firearms by felons. 18 U.S.C. 922(g). The penalty for that mere possession is five-years in prison. 18 U.S.C. 924(a)(1)(B), (D).

To ensure that this law is enforced, I have requested a 15% increase for the legal activities of the Justice Department. As I outlined in my February 9th address to Congress, this \$996 million will be an essential complement to growth in other law enforcement areas.

*So that violent criminals are treated as violent criminals, consider proposals to eliminate plea bargain agreements for five years. All too often, violent criminals are given a misdemeanor slap on the wrist instead of a lengthy sentence behind bars. The American people expect criminals to be incarcerated, not coddled.

*Redouble enforcement of existing criminal penalties for the misuse of firearms.

Under current federal law, as amended by the Anti-Drug Abuse Act of 1988, the first time a criminal with a firearm commits any crime of violence or drug trafficking crime, he must be sentenced to an additional five years in prison with no probation or parole. 18 U.S.C. 924(c)(1).

If a criminal uses a machinegun, he must be sentenced to an additional 30 years, on top of the sentence he receives for the underlying crime, with no probation or parole. Id., as amended by Pub. L. 100-690, Sec. 6460, 102 STAT. 4373 (1988).

A second offense with a firearm gets a criminal or drug trafficker an additional 20 years. Id.

For the most dangerous and violent offenders, individuals who are convicted of a second offense with a machinegun, Congress gave us the power last year to put them away for life. Id., at 4374.

As outlined in my February 9th address to Congress, the enforcement of these tough laws requires an expansion of existing prison capacity. My budget provides additional funding to address this serious concern.

*Finally, since Justice Department-funded studies indicate that most firearms used by criminals are obtained on the black market or through theft, this Administration is considering proposals to make acquisition of a firearm through theft, fraud, or embezzlement a federal crime.

The McClure-Volkmer Firearms Owners' Protection Act, Pub. L. 99-308, for the first time gave law enforcement the tools to go after the black market traffic in firearms. This proposal will allow the federal government to render even more assistance to the states in our mutual war against crime.

OTHER COMMENTS to GOVERNOR SUNUNU

1. Heard Secretary Jim Baker say resolution of the South Africa problem is a major item on his agenda. I would like to help.

Spent 12 years on the US Delegation to the UN Law of the Sea Conference; dealt with diplomats of 153 nations (1971-82);

Was an International Observer for the first elections in the southern African nation of Zimbabwe Rhodesia (now Zimbabwe), to verify the free, fair and open election procedures (1979);

Was consultant to various political parties in Namibia (SWA) in 1983, in anticipation of independence; advised formula for achieving independence quickly; was special guest next year for inauguration of existing transitional government;

Represented President Nixon as envoy in Costa Rica for the inaugural ceremonies for President Rafael Calderon Guardia;

Have met diplomatically with government dignataries in many countries (India, Nepal, Egypt, Japan, Korea, Micronesia, etc.

(a relevant personal resume' attached).

2. Would be pleased to serve as White House liaison with hunters, fishermen, outdoor community, or with the NRA, if it helped. (no publicity). Would like to keep lines of communication open.
3. Attend the weekly House Prayer Breakfast on Thursday mornings; we would like to invite the President to attend and speak, or have a prayer breakfast at the White House, as we have done a few times in the past. (bipartisan).

OTHER COMMENTS TO CONGRESS

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MINI - RESUME

of

HOWARD W. POLLOCK

" -- a trail of significant accomplishments"

- . Previously chosen "One of the Ten Outstanding Young Americans".
- . Former United States Congressman for Alaska; State Senator and Territorial Representative (Chairman, Statehood Committee).
- . International diplomat (12 years on US Delegation to the UN Law of the Sea Conference); foreign assignments in Angola, Costa Rica, Egypt, Formosa, France, India, Japan, Korea, Micronesia, Namibia, Nepal, South Africa, South Korea, Switzerland, UK, Thailand, Venezuela; plus travel on business or pleasure to dozens of others nations;
- . International Observer for first general elections, Zimbabwe-Rhodesia; diplomatic mission to Namibia (SWA) as consultant to various political leaders in anticipation of independence; wrote formula for speedily achieving independence; invited to return following year for inauguration of a new transitional government composed of a multiracial, multiparty, peaceful coalition parliament and executive council of constituent representatives; invited several times into the headquarters of UNITA (anticommunist freedom fighters) at Jamba, Angola, to visit with President Dr. Jonas Savimbi.
- . Presidential Appointee, as first Deputy Administrator of NOAA, the National Oceanic & Atmospheric Administration, with rank of Assistant Secretary of Commerce and flag rank of 4-star Admiral in the NOAA uniformed corps; the Commerce Department representative on the Inter-Agency Task Force on Law of the Sea.
- . Twice recipient of the coveted George Washington Honor Medal of the Freedoms Foundation at Valley Forge.
- . Former National President of the National Rifle Association of America, former Vice President, Parliamentarian, and Chairman of several standing committees; NRA Executive Council; NRA Benefactor; previously also served as President/Chairman of five other national and one international organizations.
- . US Association of Former Members of Congress, Explorers Club, International Platform Association, Boone & Crockett Club

Executive Committee, Vice President of Foundation for North American Wild Sheep, Shikar-Safari Club International, Safari Club International, Camp Fire Club of America, National Wild Turkey Federation, National Wildlife Federation, American Trophy Hunters Association, Game Conservation, Grand National Quail Hunt, Grand National Waterfowl Hunt (President of Past Shooters Club), One-Shot Antelope Hunt, Founder and Chairman of both the Congressional and the International Underwater Explorers Clubs; member, the International and South African Professional Hunters Associations.

- . Former Executive Director, Free Angola Office (UNITA).
- . Chairman, Advance Water Technologies International, Inc.;
Chairman, Tracking Analysis Corporation.
- . Government, Industry & International Management Consultant;
Adventure & Safari Consultant & Travel Booking Agent.
- . Doctor of Jurisprudence, University of Houston; MS, Industrial
Management, MIT; Honorary Doctorate, Los Angeles College.
- . Member of the Bars of Alaska, District of Columbia, Texas, and
the Supreme Court of the United States.
- . Retired Navy Lieutenant Commander, 1946, for injuries incurred
in line of duty in time of war (amputation, right forearm and
other injuries; but now in excellent health).
- . Avid outdoorsman -- hunter (rifle, handgun, shotgun), aquanaut,
scuba diver, fisherman; outstanding big game trophies listed
in Record Books of the Boone & Crockett Club, Rowland Ward,
Safari Club International, and the Burkett System.
- . Lifelong philosophy: DO NOT FOLLOW WHERE THE PATH MAY LEAD;
GO, INSTEAD, WHERE THERE IS NO PATH --
AND LEAVE A TRAIL.

issues

THE WHITE HOUSE

WASHINGTON

MEETING WITH SENATOR JAMES MCCLURE (R-ID)

DATE: March 10, 1989
LOCATION: Oval Office
TIME: 9:15 a.m. (30 minutes)
FROM: Frederick D. McClure *fm*

I. PURPOSE

To meet with Senator Jim McClure (R-ID), a leading opponent of gun control legislation, to discuss the "assault rifle" issue.

II. BACKGROUND

During the last Congress, legislation was considered in Congress on the issue of gun control. Senator Howard Metzenbaum (D-OH) has already introduced legislation that would prohibit the transfer or possession of "assault weapons." As defined in his bill, this would include weapons like the AK-47, or any other type of semi-automatic weapon which has, or can be modified to accomodate, a "large capacity magazine."

Senator Jim McClure and other gun control opponents have criticized the Metzenbaum bill because it would infringe upon the rights of legitimate sporting users of firearms by making most hunting rifles subject to being classified as "assault weapons."

Existing law prohibits the possession of fully automatic weapons, with limited exceptions. Senator McClure believes that these statutes are ample if strictly enforced. He believes that these provisions are appropriately directed at criminals, rather than honest citizens. Senator McClure has written you on this issue and requested this meeting.

Increased violence connected with drug related activities has recently focused attention on the use of "assault rifles." You indicated in a recent press conference that you would review reasonable proposals on this issue. In the Republican leadership meeting last Wednesday, you indicated your concern about this phenomenon and would examine ways to deal with these weapons, while protecting the rights of legitimate gun owners.

Finally, the 1988 drug bill includes an amendment by Representative Bill McCollum (R-FL) that requires the Secretary of the Treasury to develop, by November 1989, a system to identify felons who are prohibited from possessing firearms. In the Republican leadership meeting, Representative McCollum indicated that he was working on a compromise with the National Rifle Association and others to deal with the magazine capacity element used in classifying assault rifles.

III. PARTICIPANTS

The President

Senator James McClure (R-ID)

Frederick D. McClure

IV. PRESS PLAN

White House photographer only.

V. SEQUENCE OF EVENTS

Senator McClure will be met and escorted to the Oval Office.

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
04. Memo	From Roger Porter to John Sununu Re: Broadening the Suspension of Assault Rifle Imports (2 pp.)	4/4/89	P /5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Crime/Gun Control (1989) [1]

Open on Expiration of PRA
 (Document Follows)
 By JP (NLGB) on 5/12/05

Date Closed:	12/2/2004	OA/ID Number:	29152-001
FOIA/SYS Case #:	1998-0004-F[1]	Appeal Case #:	
Re-review Case #:	2005-0426-S	Appeal Disposition:	
P-2/P-5 Review Case #:		Disposition Date:	
AR Case #:		MR Case #:	
AR Disposition:		MR Disposition:	
AR Disposition Date:		MR Disposition Date:	

RESTRICTION CODES

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

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

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

PRM. Removed as a personal record misfile.

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

(b)(1) National security classified information [(b)(1) of the FOIA]
 (b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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THE WHITE HOUSE

WASHINGTON

April 4, 1989

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*

SUBJECT: Broadening the Suspension of Assault Rifle Imports

On March 14, the Department of the Treasury suspended imports of five types of semi-automatic weapons. Under the Gun Control Act of 1968, the Treasury may approve firearms imports for private citizens only when the weapons are "generally recognized as particularly suitable for, or readily adaptable to, sporting purposes."

Treasury informs me that Gun South, the importer of the Steyr, one of the suspended imports, has filed suit against Treasury and is seeking a temporary restraining order to permit imports of 4,900 guns previously approved.

As part of that suit, they are alleging "disparate treatment" — that Treasury is allowing continued imports of weapons identical or similar in form, function, and design. Treasury is extremely anxious to broaden the suspension on imports to 24 additional models that are very similar in style, appearance, and functions to those on the first list.

The first list covered approximately 80 percent of imports of assault rifles. The second list would cover approximately 20 percent of assault rifle imports.

As part of the Gun South court case, the Director of ATF, Steve Higgins, is required to file a deposition indicating how the decision was made to suspend those weapons on the first list, but no other weapons. In short, the charge by Gun South is that Treasury has engaged in selective enforcement.

Higgins believes that Treasury's case will be greatly strengthened if the second list is approved. On the merits of the case, it makes no sense to leave free for importation guns that are identical or similar in form to those on the first list. Higgins must file his deposition by Thursday, April 6. Assuming that Treasury is going to go ahead with the second list of suspended imports, the only remaining question is whether Treasury should make this announcement on its own or whether we want to announce this in a presidential statement from the White House.

A draft statement of such a White House statement is attached.

THE WHITE HOUSE

WASHINGTON

April 4, 1989

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STATEMENT BY THE PRESIDENT

On March 14, in approving a temporary suspension of imports of certain semiautomatic weapons, I sought to foster a climate in which reasonable, well intentioned people on all sides of the firearms issue could work out a solution which hits the criminal where it hurts without infringing on the rights of law abiding hunters and sportsmen. In an effort to ensure that existing laws are being enforced to the fullest extent possible, I ordered a review of the suitability of these weapons for sporting purposes.

To date, the Treasury review has disclosed that there are 24 additional types of imported firearms which, by virtue of their general appearance and capabilities, compete directly with those firearms for which import permits were previously suspended. To ensure an orderly and fair review process, I have instructed the Secretary of the Treasury to expand the temporary import suspension to include these additional weapons.

This action will accomplish two things. First, those importers whose permits were suspended on March 14, will not suffer a loss of market to importers of similar weapons during the review period. Second, this action will preclude flooding the market with firearms which might later be found unsuitable for sporting purposes.

I firmly believe that by working closely with law enforcement groups, sportsmen, concerned citizen groups, and the Congress we can reach a consensus for action on this problem that punishes criminals, not sportsmen.

STATEMENT BY THE PRESIDENT

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THE PRESIDENT HAS SEEN
2/13/90

Copies sent to
Bennett, Marlin,
Brent, Sununu,
and Bates.

THE WHITE HOUSE
WASHINGTON

February 13, 1990

Os
THE CHIEF of STAFF
has seen

Brent
we must get
such a system

MEMORANDUM FOR THE PRESIDENT

FROM: ROGER B. PORTER *RBP*
SUBJECT: U.S. Policy Toward Exports of Firearms

At a recent press conference, you were asked by Helen Thomas how to prevent sending weapons to Colombia and other countries where they may get into the wrong hands (see attached transcript). This memorandum reports on current U.S. policy and practice concerning exports of firearms available over the counter in the United States.

1. A license is required for exports of firearms.

Under the Arms Export Control Act, a license must be obtained from State before virtually any firearm, or part thereof, may be exported.

2. State denies licenses for exports to drug traffickers.

State has legal authority to withhold licenses for any good reason, and it will deny license applications whenever it has reason to believe the export is destined for drug trafficking purposes. However, there is no system currently in place to provide State with the intelligence necessary to determine when an export is likely to end up in the hands of drug traffickers.

3. State is working with drug producing countries to strengthen end-user checks.

State has proposed a memorandum of understanding, to be signed at the Cartagena Summit, under which Columbia, Bolivia and Peru would designate a government agency to certify that imports of firearms are for legitimate purposes. State would then require this certificate before issuing licenses for exports to these countries.

4. BATF is working with Colombia and other countries to trace captured firearms.

Treasury's Bureau of Alcohol, Tobacco, and Firearms (BATF) has an arrangement with the governments of Colombia, Peru and certain others to obtain U.S.-made firearms captured by the military and police. BATF traces the firearms through dealers and manufacturers to identify patterns of illegal diversion.

Attachment

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

January 24, 1990

PRESS CONFERENCE
BY THE PRESIDENT

The Briefing Room

9:16 A.M. EST

Q Mr. President, you're very concerned with drugs, and drugs are intimately connected now to guns. What do you tell your grandchildren on why you would ban semiautomatic foreign-made guns and not domestically produced? There were two students who were killed in the last 10 days -- high school students here. Aren't you deeply concerned? I mean, where's the lethal legal justification?

THE PRESIDENT: Yes, I am concerned, and I just don't happen to believe that banning of weapons will take them out of the hands of the criminals. And we've seen state law after state law violated by the bad guys getting the weapons. And I believe that -- so I don't want to go for more federal gun control. I'm not going to do it. We've taken some steps that I think are helpful.

Q Well, we are sending weapons, though, to Colombia and so forth that are made in this country. How do you stop that?

THE PRESIDENT: To Colombia?

Q And to other places where they're getting into --

THE PRESIDENT: Well, if they're going to the Columbian government I wouldn't stop it; and if they're going to the bad guys we would undergo -- follow every possible avenue to stop it.

Gramm

101st CONGRESS
1st Session

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. Gramm introduced the following bill; which was read twice and referred to the Committee on

A BILL

To protect the public safety by providing appropriate remedies for prison overcrowding.

1 Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled,

3 SECTION 1. FINDINGS AND PURPOSE.

4 (a) Findings.--Congress finds that--

5 (1) under section 5 of the Fourteenth Amendment, the
6 Federal courts are unreasonably endangering the community
7 by sweeping equitable prison and jail cap orders as a
8 remedy for State detention conditions that they hold are
9 in conflict with the Eighth Amendment; and

10 (2) Eighth Amendment holdings frequently are
11 unjustified because of the absence of a plaintiff inmate

1 who has proven that detention conditions inflict cruel
2 and unusual punishment as to him.

3 (b) Purpose.--The purpose of this Act is to provide for
4 reasonable and proper enforcement of the Eighth Amendment,
5 applicable to the States by incorporation under the due
6 process clause of the Fourteenth Amendment.

7 SEC. 2. AMENDMENT TO TITLE 18.

8 (a) Amendment.--Subchapter C of chapter 229 of part 2 of
9 title 18, United States Code, is amended by adding at the end
10 thereof the following:

11 ``§ 3626. Appropriate remedies with respect to State prison
12 overcrowding

13 ``(a) A Federal court shall not hold prison or jail
14 overcrowding unconstitutional under the Fourteenth Amendment
15 except to the extent plaintiff inmates prove the overcrowding
16 causes the infliction of cruel and unusual punishment as to
17 them. The relief in such cases shall extend no further than
18 to removing the conditions that are causing the identified
19 inmates cruel and unusual punishment.

20 ``(b) A Federal court shall not place an inmate ceiling
21 on State or local detention facilities as an equitable
22 remedial measure for conditions that violate the Eighth
23 Amendment unless overcrowding itself is inflicting cruel and
24 unusual punishment on individual prisoners. Federal judicial
25 power to issue other equitable relief, including improved

1 medical or health care or civil contempt fines, or damages
2 where appropriate, shall not be affected by this subsection.

3 “(c) Each Federal court order seeking to remedy an
4 Eighth Amendment violation shall be reopened for
5 recommendation or alteration at a minimum of two-year
6 intervals.”.

7 (b) Applicability of Amendment.--Section 3626 of title
8 18, United States Code, as added by subsection (a) of this
9 section shall apply to all outstanding court orders on the
10 date of enactment of this section. Any State or municipality
11 shall be entitled to seek modification of any outstanding
12 Eighth Amendment decree pursuant to the provisions of such
13 section.

SUPPORTING AUTHORITY FOR FACT SHEET ON OVERCROWDING

I. **Prison overcrowding.** In its bulletin entitled "Prisoners in 1987" (Attachment A), the Bureau of Justice Statistics reported the following figures on prison overcrowding as of January 1, 1988, using the lowest measure of capacity:

	<u>Population</u>	<u>Capacity</u>	<u>Overcrowding</u>
<u>Total</u>	581,609	463,661	117,948
<u>Federal</u>	48,300	27,854	20,446
<u>State</u>	533,309	435,807	97,502

II. **Jail Overcrowding.** In Table 8 of its bulletin entitled "Jail Inmates 1987" (Attachment B), the Bureau of Justice Statistics reported that as of June 30, 1987, there were 224,811 inmates in the largest local jail systems (100 or more inmates), and that those jails had a rated capacity of 203,457. Thus, jails were overcrowded by 21,454 inmates.

III. **Criminals prematurely released because of overcrowding.** In its 1984 and 1985 bulletins on prisoners (Attachments C and D), the Bureau of Justice Statistics reported that in 1983, 1984 and 1985, states used emergency procedures to release 18,617, 17,365 and 21,420 prisoners, respectively. The Bureau has not compiled this statistic since 1985.

IV,V. **Criminals convicted and not incarcerated because of insufficient prison space / Defendants released because of insufficient detention space.** In a hearing before the District of Columbia Appropriations Subcommittee chaired by Senator Specter on June 11, 1986 (Attachment E), Chief Judge Ugast of the D.C. Superior Court reported that prison overcrowding had become a sentencing factor that caused judges to refrain from imposing prison sentences in some cases. Chief Judge Pryor of the D.C. Court of Appeals concurred in this assessment. It is reasonable to assume that this phenomenon, although difficult to quantify, exists nationwide and extends to a court's decision to detain or release the defendant pending trial.

VI. **Prison systems under court order.** In its December 1, 1988 status report on the courts and the prisons (Attachment F), the National Prison Project reported that there are nine entire state prison systems and the Puerto Rico prison system under

court order. Twenty-eight states, the District of Columbia and the Virgin Islands have at least one major institution under court order, and litigation is pending in eight states, although a court order has not yet been issued. The only states not affected are Minnesota, Montana, Nebraska, New Jersey and North Dakota. The Report details the legal status of every jurisdiction's prison system.

VII. **Jail systems under court order.** A Bureau of Justice Statistics list of 102 local jurisdictions under court order to reduce jail population is attached (Attachment G). See also Attachment B, in which the Bureau reports that in 1987, 118 local jurisdictions were under court order to improve jail conditions.

VIII. **Federal Inmate Population Growth.** As part of its June 18, 1987 supplementary report on the new federal sentencing guidelines (Attachment H), the U.S. Sentencing Commission projected the federal prison population into the next century. The study, prepared with the Bureau of Prisons, forecasts that the 1987 population of 48,300 (Attachment A) will almost double in five years.

IX. **Total Inmate Population Growth.** Table 1 of the bulletin entitled "Prisoners in 1987" (Attachment A) demonstrates the growth in total inmate population (state and federal) from 1980 to 1987. Assuming the same rate of growth in the next seven years, the prison population in 1994 would be 833,397. In fact, the rate of growth is likely to increase during the coming years because of improved enforcement, new drug laws and mandatory minimum penalties.

MEMO

TO: PRESIDENT GEORGE BUSH
FROM: BILL MCCOLLUM
SUBJECT: GUNS AND VIOLENT CRIME - AN ANALYSIS OF OPTIONS
DATE: APRIL 20, 1989

The Problem

The public and police outcry following the Stockton, California shootings of school children by a man using an AK47 semi-automatic rifle has brought to the forefront of national issues the crisis of violent crimes with guns in our city streets. The question is how do we swiftly and significantly reduce the number of these violent crimes with guns and put a lid on this crisis.

Although the immediate focus has been on semi-automatic "assault" rifles, the real problem is much broader than that. As the attached column by Richard Cohen accurately states, rifles of all kinds account for a very small fraction of the murders committed in the United States; handguns account for a much, much larger share. Whatever you and the Congress do about so-called "assault rifles", police organizations and the media won't be satisfied because the rifles are only symbolic at the moment of the deeper problem which must be addressed.

Solutions:

The following questions illustrate the four different ways this problem can be tackled:

Can we keep guns out of the hands of felons and others likely to commit violent crimes with guns?

Can we change our criminal laws and procedures to more effectively deter the commission of violent crimes with guns?

Can we take off the streets and lock-up the people committing violent crimes with guns?

Can we remove guns from the streets in large enough quantities to have a significant impact on the number of violent crimes committed with guns?

KEEPING GUNS FROM FELONS

The Justice Department is hard at work to comply with the McCollum Amendment to last year's drug bill which requires it to develop and begin implementation within the year of a system of immediate and accurate identification of felons who attempt to buy guns at gun stores. Technology exists to input fingerprints of all convicted felons in a national master computer file and to have this computer file accessible through special terminals in each gun store so that every gun dealer in America could electronically take the fingerprints of everyone attempting to purchase a gun and within a matter of moments have it checked to see if it matches a convicted felon's fingerprints in the master file. The only issues to be resolved by the Justice Department before implementation are costs and the procedures of implementation.

When this system is in place, it will do just about as much as we can do to stop felons from being able to get guns. The problem is that studies show that only about 20 percent of all criminals who use guns get them by purchasing them at gun stores. So while the impact could be significant, it will be limited.

The Justice Department is studying similar procedures to screen out other purchasers who are not eligible for such things as mental disease, etc.

DETERRENTS

To deter anybody from committing a crime there has to be stiff punishment on the books for the crime and there has to be swiftness and certainty in getting convictions and having sentences carried out. Federal law presently has a minimum mandatory sentence of 5 years in prison on the first conviction of committing a felony with a firearm and a 20 year minimum mandatory sentence for the second conviction. However, we do not have a constitutionally valid death penalty on the books at the federal level for murders committed with guns (we did pass in last year's drug bill a death penalty for murders committed by drug traffickers, whether with guns or otherwise). I recommend your support of a new federal death penalty for all murders committed with guns.

The real key to beefing-up deterrents is to put more swiftness and certainty in carrying out the current laws. Besides additional resources for law enforcement, prosecutors, judges and jails, this involves a long overdue modification of the exclusionary rule which Republicans have supported for years to help prosecutors make cases and reform of current habeas corpus laws and procedures to cut down on the opportunities convicted

felons have of delaying the carrying-out of their sentences by repeated ancillary appeals in federal district courts on due process grounds. Restricting plea bargaining when firearms are involved also could add to the deterrent.

TAKE VIOLENT CRIMINALS WHO USE GUNS OFF THE STREETS

A dramatic and immediate way for you to address the gun issue would be to use current law to take a lot of people who have committed crimes with guns off the streets right now. It is a federal crime with a long minimum mandatory sentence for any one to commit a felony, state or federal, using a firearm of any type. Most of the felonies committed with guns are being prosecuted in state courts because the underlying crimes are state crimes. For many reasons including overcrowded state prisons, these felons are being turned back onto the streets very rapidly serving little or no time after their convictions for the underlying felonies. Clearly they are the ones most likely to commit future crimes with guns. If you set the priorities with the Attorney General through strike forces or otherwise federal prosecutors could bring gun charges against thousands of criminals in the state systems across the country in a matter of a few days. If priorities and resources were devoted to these prosecutions, convictions could be obtained rather easily in most cases and everyone of these criminals would be serving a minimum mandatory five-year sentence, or greater, in a federal prison. That would be getting tough!

The obvious draw-back to this approach rests in the tremendous new need for federal prison space that would immediately result. While the Bureau of Federal Prisons would raise an initial objection, I see no reason why temporary prison facilities could not be set-up across the country on federal properties, including some military outposts, to house the additional load while more permanent federal prisons are being constructed and states are being encouraged to build new prisons with federal incentives.

In my judgment this would be the single most effective thing you could do to impact the gun situation now. However, there must be follow through after this is initiated to make sure that critics have no basis to claim this is a one-time shot that is not going to resolve anything in the long run. We must build more prisons, federal and state and make some fundamental changes in the criminal justice system in regard to guns. Only with the fundamental changes can we be assured of taking the violent criminals off the streets and keeping them off.

TAKING GUNS OFF THE STREETS

In my judgment this approach has the most practical and political problems of all of them and would be the least effective in impacting the problem. It is this approach that we're talking about when we discussed banning the importation or manufacture or sale of "assault weapons." In a broad perspective this is very

ineffective because we are not going to take a sizable proportion of all guns off the streets and criminals are going to use whatever guns we leave out there for them to obtain.

As noted at the beginning of this memorandum, "assault rifles" are only a very minor portion of the gun problem, and even if every semi-automatic rifle currently in existence were removed from society we would hardly make any kind of a dent in killings committed by criminals with guns. Politically, whatever we do on the assault rifle issue we are only going to whet the appetites of those whose primary focus on the violent crime problem is the removal of guns from the streets.

In the rifle area there is the additional problem of defining an "assault" rifle and making it distinguishable from any other semi-automatic rifle so that we can ban it and not ban all hunting weapons commonly in use. The Bureau of Alcohol, Tobacco and Firearms (BATF) has clearly stated that there is no functional distinction between the various semi-automatic rifles commonly in use in the United States; no matter what they look like they all have the same fire power and the same killing power. BATF uses very arbitrary means to distinguish some by saying that they can see no "sporting purpose" in the cosmetic features of some of these weapons. Some are mean and ugly looking because they are made out of all metal and have folding stocks and pistol grips and so forth, but outside of their having some kind of appeal made glamorous by their use in cops and robbers television programs there is no more danger to society in these rifles than there is any other semi-automatic rifle whose cosmetic appearances resemble our image of a hunting or sporting rifle because of woodstock, or whatever.

Current approaches to defining an "assault rifle" may be expedient in dampening the media created fire over these particular weapons, but if this is all that is done then most assuredly the fires will be rekindled in short order and will burn stronger than ever. Given time BATF studies may show us specific models of rifles that are more commonly used by criminals which could provide the basis for rational judgment to ban or restrict some, but I suspect that these same studies will come back forcefully showing that it is the handgun and not the rifle that's the real problem and where do we go from there?

It is my recommendation to you that a systemic approach be taken on the gun matter. I believe that if you endorse a tough new package of legislative proposals to get at the criminals who use guns, endorse and encourage the current Justice Department efforts to develop a system of identification to keep felons from being able to buy guns and at the same time order a dramatic sweep of our cities by federal law enforcement agents and

prosecutors to arrest and take off the streets those who have committed felonies of a state or federal nature with a gun and proceed to lock them up in federal prisons or temporary camps, you will have done the best thing you could do politically and practically.

Richard Cohen

Every Gun Is an Assault Weapon

Americans love a label. Put a catchy one on something and we pay attention. Nowhere is this truer than guns. Call a gun a "Saturday Night Special" and we recoil in horror. Call a semi-automatic rifle an "assault weapon" and even a life-member of the National Rifle Association such as President Bush moves against it. Had the AK-47 been called a "Peacekeeper," no one would have dared restrict it.

But while we are banning the importation of certain weapons, let's take a hard look at the statistics. As bad as assault rifles are, they are not really the problem. In 1987, rifles of all kinds accounted for only 4 percent of all murders and shotguns accounted for another 6. Handguns, on the other hand, accounted for 44 percent of murders.

So the question is: Why is there a virtual consensus about banning or restricting a weapon such as the assault rifle and almost no movement to ban or restrict most handguns? The answer, it seems, is that Americans will do something about guns only when some awful label is applied to them—when they are stripped of their romance and their real purpose is bared.

For instance, the so-called "Saturday night spe-

cial" ran into trouble mostly because it got a descriptive term applied to it. It's cheap and not really a trusty weapon—but in most respects it's not different from any other handgun. Importation of these shoddy weapons was prohibited in two stages (1968 and 1988), but nothing was done about more trusty (and more expensive) handguns. What doomed the weapon was its price (the one John Hinckley bought cost \$29), its short, non-sense barrel—and its monicker. A higher price and a longer barrel make a gun no less dangerous, yet these proliferate.

In a similar way, the assault weapon is a victim of nomenclature. The word "assault" is frightening, and the weapon keeps bad company: drug dealers and war lovers whose minds are cesspools of violent fantasies. Here, once again, the label too bluntly proclaims the weapon's purpose.

But an assault weapon is really not much different from other rifles, many of which are semi-automatic. In fact, the shotgun I recently used for skeet shooting (50 clay pigeons escaped with their lives) could fire three shells with three separate squeezes of the trigger—so it was semi-automatic. If it's semi-automatic rifles we fear, then we have good

reason to be afraid. There are some 20 million to 30 million of them out there.

The current effort to ban assault weapons makes sense, since these rifles are increasingly popular. But rifles pale as a menace when compared with handguns. Indeed, you have a better chance of being killed by a blunt instrument (6 percent of all murders) than by a rifle. Assault rifles may be the preferred weapon of the deranged and the drug pusher, but they remain what they have always been—terribly hard to conceal. In Washington, a wide-open town by any standard, it is the old six-shooter we fear.

Consider: when you feel like saluting a rude driver with an obscene gesture, is it fear of an assault weapon that stifles the urge? Hardly. On a dark street, do you fear that two youths up ahead are carrying a rifle? No. In both cases, it's the handgun. The handgun is the weapon of choice of the mugger and the stick-up artist, the midnight caller and the hair-trigger motorist who's mad at the world.

Occasionally, the thinking of Nancy Reagan is worth considering. Back when she was a crusading first lady on the subject of drug abuse, she maintained that the casual drug user was linked to drug

violence. The same argument could be made for noncriminals who buy handguns. The guns they buy are also bought by others. The guns they keep at home are often stolen.

Their debatable constitutional right to buy a gun—often with no questions asked—is abused by those who use it for crime. The insistence, given voice by the NRA, that any weapon that can be used by sportsmen and target shooters should not be regulated means that, for the sake of a hobby, the rest of us are endangered. In 1987, the most recent year for which statistics are available, 10,566 people were killed by guns. Some hobby.

Were it not for the staggering number of handgun victims, America's preoccupation with assault weapons would be downright funny. But the plight of the inner city, the horrible realization that eye contact can trigger a shooting, means that the joke is on us. We are deceived by labels and restrict certain weapons as if, in ways that matter, they were significantly different from all others.

The Saturday night special and the assault weapon are two examples. But the statistics know better. Every night is Saturday night in the ghetto, and every gun is an assault weapon. Restrict them all.

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
05. Paper	Re: Assault Weapons (7 pp.)	4/12/89	P/5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Crime/Gun Control (1989) [1]

Open on Expiration of PRA
 (Document Follows)
 By JP (NLGB) on 5/12/05

Date Closed: 12/2/2004	OA/ID Number: 29152-001
FOIA/SYS Case #: 1998-0004-F[1]	Appeal Case #:
Re-review Case #: 2005-0426-S	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

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

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

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

PRM. Removed as a personal record misfile.

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

(b)(1) National security classified information [(b)(1) of the FOIA]
 (b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
 (b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
 (b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
 (b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
 (b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
 (b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
 (b)(9) Release would disclose geological or geophysical information

For Discussion
April 12, 1989

ASSAULT WEAPONS

I. BACKGROUND

The current debate over "assault weapons" is being conducted against the background of three important realities.

A. Firearms have been widely held by individual American citizens and are likely to remain so.

- o Roughly half of all U. S. households possess one or more guns. These guns fall into three broad categories:
 - Fully automatic weapons (machine guns) which have been subject to federal registration since 1934, and which are now prohibited from being imported or manufactured domestically for sale to private citizens. The existing stock of these guns is approximately 191,000. These weapons are rarely, if ever, used in the commission of crimes. Most are in the hands of collectors.
 - Semiautomatic weapons. Treasury estimates that there are 20-30 million such guns held by private U.S. citizens, the overwhelming majority of which are used for hunting or sporting purposes.

Approximately 2-3 million are so-called "assault weapons" which have a high capacity magazine, a military-style appearance, and are often semi-automatic versions of fully automatic weapons.
 - Manually operated weapons (bolt action, lever action, pump action rifles and shotguns, and ordinary revolvers). Estimates of the number of these guns range from 130-180 million.
- o In total, there are an estimated approximately 160-200 million guns in private hands in the U.S today. About 40-50 percent of these weapons are handguns. However, of the so-called assault weapons, approximately 90 percent of these are rifles.

B. Recent years have witnessed an explosive growth in sales of so-called "assault rifles."

- o Since 1985, partially as a result of declining prices driven by inexpensive imports, mostly from the People's Republic of China, and the fascination with such weapons, both imports and domestic production have risen.

- Imports of "assault rifles" have soared:

1985	4,000
1986	4,500
1987	40,000
1988	45,000
1989	A marked expansion of permits

- Domestic production during the period 1985-87 of "assault type rifles" exceeded 100,000.

C. Regulation and sales of firearms in the U.S. is highly decentralized and basically governed at the state and local level.

- o There are at the present time 237,686 licensed gun dealers (individuals or businesses which sell five or more weapons a year).
- o There are over 1,000 companies that manufacture guns in the country and over 1,100 importers.
- o State and local laws vary widely with respect to the licensing of guns, laws related to carrying weapons, possessing weapons, etc.

II. PROBLEMS

In successfully addressing the problem of assault weapons there are several challenges:

- A. Defining an assault weapon in such a way that satisfactorily differentiates such weapons from semiautomatic guns that are widely used for hunting and sporting purposes is extremely difficult.
- b. Keeping guns out of the hands of criminals has proven elusive.
 - o The best recent studies indicate that upwards of 80 percent of the weapons used by criminals in the commission of felonies are obtained either by theft, purchase on the black market (from someone other than a licensed dealer), or through a friend or relative.

- C. The most promising approaches to reducing the illegal activities involving these guns are expensive.
- o Enhanced law enforcement to apprehend and prosecute violators of firearms laws and the costs associated with incarcerating convicted felons for longer periods of time are extremely expensive.
 - o The cost of building prison facilities runs approximately \$50,000 per bed.

III. OBJECTIVES

Three objectives seem paramount in the quest for addressing the highly emotional issue of assault weapons:

- A. Finding a sensible middle ground that acknowledges the legitimate concerns of law abiding gun users, many of whom are members of the National Rifle Association, and of law enforcement authorities.
- B. Taking decisive action to deal with a growing concern that is widely held by Americans that public safety is seriously threatened by increased numbers of "assault weapons."
- C. Taking actions that have a reasonable prospect of significantly diminishing the increased threat to public safety.

In short: be balanced, be decisive, and be effective.

There are three basic approaches to meeting these objectives.

IV. LIMITING WEAPONS

There are a variety of possible measures to limit the importation, manufacture, or sale of "assault weapons."

- A. On March 14, Treasury suspended imports of five types of semiautomatic weapons using existing law which permits Treasury to prohibit imports of weapons not considered "particularly suitable for, or readily adaptable to sporting purposes."

Last week the President authorized extending the current suspension to 24 other semiautomatic imports to cover the remaining approximately 20 percent of "assault rifle" imports.

This suspension could be made permanent at the conclusion of Treasury's investigation of these weapons which should be concluded in approximately three months.

- B. While the suspension is in effect, the President could request domestic manufacturers to follow the lead of Colt Industries and suspend or eliminate the production for domestic private use of "assault rifles" similar to those that are prohibited for importation.

Note: U.S. gun manufacturers would still continue to manufacture for use by the U.S. military, law enforcement authorities, or for export.

- C. The administration could seek legislation to prohibit the importation, manufacture or sale of assault weapons.

The most controversial approach, proposed by Senator Metzenbaum, would ban by name certain existing weapons and ban by reference other weapons determined as similar in design or function. This approach would grant broad discretion to the Secretary of the Treasury in making such determinations on future weapons.

There are three other less restrictive approaches:

1. Rather than propose a specific list of prohibited weapons request that administration officials meet with representatives from the House and the Senate, law enforcement authorities, and hunting and sporting associations to develop a definition that will define "assault weapons" in a way that does not include guns "particularly suitable for, or readily adaptable to sporting purposes."

The objective of this exercise would be to produce both an acceptable definition and a set of procedures for making determinations on weapons in the future.

2. Support the Deconcini approach of specifying a limited number of weapons, widely recognized as "assault weapons" such as the AKS-47, but not giving any discretionary authority to expand the list without additional legislation.
3. Seek legislation to prohibit the possession or sale of large capacity magazines (20 rounds or 10 rounds) by private citizens. This seeks to avoid the definitional problems associated with particular weapons, while getting at the detachable magazine feature of most "assault rifles."

V. LIMITING ACCESS TO WEAPONS BY FELONS

A second general approach involves seeking to keep weapons out of the hands of criminals.

- A. Accelerate the National Identification System Review.
The Anti-Drug Abuse Act of 1988 requires the Attorney General to develop a system for the immediate and accurate identification of felons attempting to purchase firearms. The Attorney General has one year to prepare a plan for implementing this system.

The President could request the Department of Justice to accelerate the review called for by the McCollom Amendment so that it could be ready for consideration this summer.

- B. Encourage all states to adopt procedures similar to those that exist in Illinois, Virginia, and some other states that impose waiting periods or use other devices to facilitate accuracy in determining whether an individual seeking to purchase a weapon from a licensed gun dealer fits one or more of the prescribed disqualifying characteristics:

1. Convicted of a crime punishable by imprisonment for a term exceeding one year;
2. Currently under indictment;
3. A fugitive from justice;
4. Addicted to a controlled substance or a user of a controlled substance;
5. An illegal alien;
6. Adjudicated a mental defective or have been committed to a mental institution;
7. Dishonorably discharged from the armed forces;
8. Renounced one's U.S. citizenship.

The central difficulty with these approaches is that there is a good deal of evidence to suggest that most felons obtain their weapons other than from licensed gun dealers. Even if one could develop and implement an identification system that involved all licensed gun dealers, it would effectively address only a small part of the problem.

VI. ENHANCED ENFORCEMENT, PENALTIES, AND ACCOUNTABILITY

A third general approach involves measures to strengthen current laws, enhance enforcement, and hold perpetrators of violent crimes accountable for their actions.

This approach would have the greatest likelihood of affecting behavior. It also has the consequence of requiring additional resources (either new ones or diverting existing ones from other endeavors) to apprehend, prosecute, and incarcerate offenders.

- A. Strengthen enforcement resources at the Departments of Treasury and Justice.
 - o The 1989 enacted budget for Treasury's Bureau of Alcohol Tobacco and Firearms (ATF) includes \$118 million for firearms compliance and enforcement programs, a 20% increase over 1988.
 - o The 1990 budget sustains this rapid buildup providing \$124 million for ATF firearms programs.
- B. Ensure quick and full prosecution.
 - o In 1989, 940 additional staff and \$69 million was added to the prosecutorial arm of the Justice Department. Of these new staff, 470 are for additional assistant U.S. Attorneys to prosecute violations of Federal law.
 - o The Attorney General has been requested to hire these new attorneys as quickly as possible and employ them to try firearms cases as appropriate.
- C. Direct the Department of Justice not to plea bargain away mandatory minimum sentences for firearm violations. Establish a climate that every person will clearly understand, if you use a gun to commit a crime, you will do a minimum of five years in jail.
- D. Tie grants to states to changes in state laws to establish mandatory minimum sentences for violent or drug-related crimes committed with a firearm.
 - o Award state and local drug grants only to states whose mandatory minimum sentences for crimes committed with firearms are consistent with federal minimum sentencing standards.

- o States would be given two or three years to bring their laws into compliance with this stipulation before grants would be affected.
- E. Strengthen the current Federal firearms forms (Form 4473) by doubling the current penalty for writing false information to up to ten years imprisonment and up to \$10,000.
 - o Impose a five year prohibition on purchasing firearms for anyone convicted of a crime punishable by a prison term of six months or more.
- F. Enact procedures for imposing currently existing Federal death penalties. This involves adding the language the Supreme Court (Furman v. Georgia) says is necessary for a death penalty not to violate the eighth amendment.
- G. Enact exclusionary rule reform providing for a good faith exception for police officers in warrantless search situations.
- H. Enact habeus corpus reform that would streamline and simplify the appellate process for convicted felons.
- I. Commend and encourage state prison construction.
 - o States have already funded over 79,000 new bedspaces to be constructed by 1994.
 - o The states are also considering constructing 70,000 additional bedspaces.
- J. Expand federal prison capacity.
 - o The Administration has proposed adding over 25,000 federal prison bedspaces during 1989-1993 to meet the increased requirements necessitated by stricter application of Federal laws.
 - o In 1989 \$1.37 billion will fund 5,160 new bedspaces and 1,600 new staff. The FY 1990 budget proposes \$1.564 billion, a 14% increase over 1989, to fund 7,845 new bedspaces and 1,500 new staff.
 - o In addition, the administration could allocate an additional \$115 million for new federal prison construction from the \$135 million drug asset forfeiture fund.

DRAFT
April 12, 1989
11:00 am

DRAFT

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Initial
Response

ITEMS FOR POTENTIAL INCLUSION IN PRISON REFORM LEGISLATION

1. Congress declares a 5 year National Crime Emergency and, in order to protect the public safety, establishes conditions which govern the release of prisoners due to overcrowding. Congress finds that jail cap orders issued by Federal courts as a remedy to overcrowding unreasonably endanger the community, particularly when such orders are issued in the absence of a plaintiff inmate who has proven that detention conditions represent cruel and unusual punishment.

The proposed public safety legislation would require that a plaintiff must prove that prison conditions have inflicted cruel and unusual punishment upon him, in order to obtain a Federal Court ruling that such conditions violate the Constitution. If such a ruling is issued, inmate ceilings and jail cap orders will not be available as remedial measures; other means of relief, such as improved medical or health care, fines, or damages would remain available.

2. Approve the use of inactive (and, where appropriate, active) military installations as detention facilities for those convicted of certain drug crimes. Tents and other temporary housing facilities will be specifically approved for use. For those cases where court orders prohibiting such use are in effect, language will be included which directs that such orders be reviewed and remain in effect only if the circumstances in (1) exist.

3. Remove any current legislative impediments to prison industry initiatives and encourage the involvement of prisoners in such activities by repealing the Hawes-Cooper restrictions on interstate commerce in these goods. The use of prisoners in local, infra-structure repair projects will be encouraged as will private sector involvement in prison industries.

4. Require those convicted of drug related crimes to be subject to mandatory drug testing while in prison and as a condition of parole. Parole would be denied or revoked for either failing to take such tests or for failing the tests. In addition, for those convicted of drug dealing, a list of assets should be assembled during the sentencing process. Congress should approve "conspicuous consumption" language which would allow parole officials to insure that such individuals, once paroled, had forfeited all such assets and were not using or benefiting from previous drug trafficking profits.

Barbara
to
D-208

5. Include language that promotes the privatization of construction, operation and management of prisons.

6. Require that an annual report be assembled on sentencing by U.S. District Judges. Include a description of the crime, history of the criminal and sentence imposed by the Judge. The information would enable the public to assess criminal sentencing patterns among federal judges.



STURM, RUGER & Company, Inc.

Southport, Connecticut 06490 U.S.A.

ALL RUGER FIREARMS ARE DESIGNED AND MANUFACTURED IN OUR OWN FACTORIES IN THE UNITED STATES OF AMERICA.

FACTS TO REMEMBER WHEN CONSIDERING "SEMI-AUTOMATIC" FIREARMS LEGISLATION

1. All that "semi-automatic" means is that some of the energy generated to propel a bullet is used to recock and reload the rifle for the next shot. Each shot requires a separate pull and release of the trigger.
2. Semi-automatic firearms have been in widespread use in this country since 1905. It is estimated that between 20-30 million have been made. Obviously, they have a legitimate place in the sporting rifle field and are not only used by criminals. Sturm, Ruger has manufactured over 4,000,000 semi-automatic firearms since 1949.
3. Semi-automatic firearms are legal to hunt within 48 states, as long as their magazine capacity is limited to 5 shots. .22 caliber semi-automatic rifles holding up to 20 shots have been the most popular type of small bore rifle for the last 30 years. The most popular shotguns for duck hunting have been semi-automatics for at least this long. All recognized pistol target matches have been dominated by semi-automatic pistols since before World War II.
4. True "assault rifles" are large capacity military weapons which can be switched to full automatic ("machine gun") fire by the push of a button. They have always been strictly regulated as machine guns by the Federal and State governments.
5. What are now being termed by some as "assault rifles" are actually semi-automatic only versions of the above military weapons. They are a recent phenomenon, being imported in quantity for less than 10 years. They retain the military appearance and large, protruding, high capacity magazines of their military predecessors.
6. THEREFORE, TO DEFINE "SEMI-AUTOMATIC FIREARM" AS SYNONYMOUS WITH "ASSAULT WEAPON" IS AKIN TO DEFINING ALL "HATS" AS "HELMETS", OR ALL "VEHICLES" AS "TANKS".
7. Viewed objectively, the concern today as it relates to illegal misuse of firearms should be viewed as one of firepower, rather than trying to define the type of firearm from which the bullets emanate. To do otherwise is to risk confusion and ensnaring many legitimate firearms in an attempt to separate "good" from "bad" in a most arcane area.



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- 2 -

8. A semi-automatic firearm with a limited magazine capacity is actually not much different from a functional standpoint than manually operated firearms. Operating most rifle actions manually, whether they operate by the flick of a lever, bolt, or slide, takes about a second.
9. The best way to address the firepower concern is therefore not to try to outlaw or license many millions of older and perfectly legitimate firearms (which would be a licensing effort of staggering proportions), but to prohibit the possession of high capacity magazines.
10. As stated, most semi-automatic hunting rifles come with 5-shot magazines. Many older and collectible semi-automatic rifles (obviously little used in crime) made prior to 1954 had up to 10-shot magazines. Conventional pistols come with up to 15-shot magazines, and many .22 caliber semi-automatic rifles hold up to twenty .22 long rifle caliber cartridges. Strict regulation of magazines of greater capacities than these would respect the rights of citizens and at the same time reduce the firepower of the so-called "assault rifles" to that of ordinary rifles.
11. By a simple, complete and unequivocal ban on large capacity magazines, all the difficulty of defining "assault rifles" and "semi-automatic rifles" is eliminated. The large capacity magazine itself, separate or attached to the firearm, becomes the prohibited item. A single amendment to Federal firearms laws could prohibit their possession or sale and would effectively implement these objectives.
12. Regulating large capacity magazines seems the best way to respect the rights of everyone - the hunter, target shooter, collector, and the general public - while depriving the drug lords of their firepower. And it is precisely in an atmosphere of near panic that we must be the most vigilant to preserve the fundamental freedoms of law-abiding citizens who are not contributors to the urban drug wars in any way.

STURM, RUGER & COMPANY, INC.

Manufacturers of Firearms for the Responsible Sportsman

THE WHITE HOUSE
WASHINGTON

DATE: March 23, 1989

FROM THE PRESIDENT

TO: Governor John Sununu

WS

SUBJECT: Phone Call from Senator Howard Metzenbaum

Metzenbaum in Pompano Beach, Florida, opened with pleasantries re: his meeting with Barbara.

He was calling regarding assault weapons.

His committee will mark-up the bill as soon as he comes back.

He is not trying to "confront", preferring instead, to work out language acceptable to the White House.

He told Bill Bennett and Boyden Gray he would like to move forward and to consult.

He wants to talk as to avoid a battle.

cc: William Bennett
C. Boyden Gray
Fred McClure

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01a. Note	From POTUS to Ed Feulner Re: Memo on gun control (1 pp.)	3/17/89	P /5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Crime/Gun Control (1989) [1]

Open on Expiration of PRA
 (Document Follows)
 By JP (NLGB) on 12/12/07

Date Closed: 12/2/2004	OA/ID Number: 29152-001
FOIA/SYS Case #: 1998-0004-F[1]	Appeal Case #:
Re-review Case #: 2005-0426-S	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

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

P-1 National Security Classified Information [(a)(1) of the PRA]
 P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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 P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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

PRM. Removed as a personal record misfile.

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

(b)(1) National security classified information [(b)(1) of the FOIA]
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 (b)(9) Release would disclose geological or geophysical information



THE PRESIDENT

March 17th '89
Flying to Hamilton

Ream Ed

Outstanding memo on guns
(yours of March 13th)

I have asked Bill
Bennett to move on your suggestions
asap. Many Thanks -

By B/

Photo Copy Preservation

FROM
THE WHITE HOUSE
WASHINGTON, D.C.

Mr. Edwin J. Feulner, Jr.
President
The Heritage Foundation
214 Massachusetts Avenue, N. E.
Washington, D. C. 20002

bcc: Jan Burmeister

890318

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01b. Memo	From Ed Feulner to POTUS Re: Gun Control (4 pp.)	3/15/89	P 7	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Crime/Gun Control (1989) [1]

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Determined to be Administrative Marking

THE PRESIDENT HAS SEEN

~~CONFIDENTIAL~~ MEMORANDUM TO THE PRESIDENT

FROM: EDWIN J. FEULNER, JR. *S*

MARCH 15, 1989

In response to your request of March 13, I am presenting these proposals for followup actions on the gun control issue.

If the temporary import ban of semiautomatic weapons announced yesterday has removed the necessity for further immediate action, this memo provides a series of steps that can be taken in the near term. These proposals:

- 1) are consistent with each other;
- 2) will retain the support of your gun-owning constituency;
- 3) will rebuild the logical cooperative relationship that has been ruptured between the gun owners and the police; and,
- 4) will deal with a real problem.

My colleagues and I are prepared to meet with you or your staff at your convenience to elaborate on these proposals.

I hope this memorandum is helpful to you as you deal with this important issue.

ASSAULT RIFLES

POLICY RECOMMENDATIONS FOR PRESIDENT BUSH

The question of banning weapons is highly emotional and often raises constitutional issues. In deciding what federal action to take, President Bush should be guided by the following principles:

- 1) Individual Rights. Gun control laws must not restrict the constitutional rights of law-abiding citizens. Government action to restrict the availability of assault rifles should focus on preventing the purchase of firearms for illegal means, while preserving the right of law-abiding citizens to purchase firearms.
- 2) Crime, not Guns. The focus of government action should be to prevent crime, not to ban guns. Clearly, banning guns does not prevent criminals from obtaining and using them. Example: The District of Columbia, which has the most restrictive gun ban law in the nation, also has the highest murder rate. Crime is

not deterred by gun control, but by a full commitment of government to enforce the law, to protect its law-abiding citizens.

3) Federalism. In devising federal policies President Bush should follow the traditional concepts of federalism. The federal role should be in such areas as interstate commerce, where there is a clear constitutional nexus. States should handle all other issues. For example, a current proposal that trespasses on federalism is the proposed federal law to ban semiautomatic guns that are capable of carrying more than 6 rounds at one time. States may choose to consider such a course, but the federal government should not.

4) Enforcement. Present and prospective gun laws must be enforced. All persons who attempt to carry a firearm onto an airplane, for example, should be fully prosecuted under current laws. Existing laws requiring the registration of handguns, moreover, must be enforced more strictly and effectively.

FEDERAL ACTION

Appropriate federal action to restrict the supply of assault weapons includes the following:

1) Permanently ban the import of automatic or semiautomatic assault weapons without a permit from the Bureau of Alcohol, Tobacco, and Firearms. President Bush should make permanent his March 14 action to ban the import of semiautomatic assault weapons. The BATF, however, should be given the authority to issue permits where appropriate.

Before announcing a permanent ban, The President should instruct the BATF, in conjunction with the FBI and the Department of Justice, to draw up guidelines that carefully define the class of weapons being banned. Characteristics to consider in defining the banned class of imported weapons should include the following.

a) Capability of accepting multiple rounds. The number of rounds that a gun is capable of firing without reloading can indicate the intended purpose of the weapon. It is far from conclusive, however, as many legitimate hunting rifles are capable of accepting clips with as many as 30 rounds. For the purpose of defining the class of banned imports, however, BATF should consider including semiautomatic guns capable of holding more than 6 rounds at one time (NRA may not accept a limit of less than 10).

b) Physical appearance of the weapon. Many imported assault rifles have physical characteristics that give them the appearance of war weapons. Such "Rambo"- looking rifles have a strong appeal to individuals inclined to use the weapons for an unlawful purpose. BATF should consider such factors when establishing its guidelines for restricting imported guns.

c) Rate of fire. The speed at which a semiautomatic gun can fire its rounds has been suggested as another measure for distinguishing assault weapons from legitimate sporting weapons. Rate of fire, however, is a function of "cyclic rate", which essentially is how quickly a shooter can pull the trigger. A common .22 caliber semiautomatic hunting rifle, for example, could fire as quickly as an AK47 assault rifle, depending on the skill of the shooter. Rate of fire, therefore, is not a useful measure for defining the class of imported weapons to be banned.

✓ 2) Make it a federal crime for anyone to possess or transport across state lines any weapon in a manner that violates the laws of either state. Such a federal law is necessary to prevent individuals from purchasing a gun in a state with lenient gun laws and transporting it into a state with stricter laws. The federal government can exercise this power under the Commerce Clause of the Constitution.

3) Accelerate the Attorney General's development of a system to identify felons who seek to purchase firearms. The McCollum Amendment, passed in 1988 as part of the omnibus drug bill, requires the Attorney General to "develop a system for the immediate and accurate identification of felons" involved in the purchase of firearms. Under current law, the Attorney General has one year to report on his progress in complying with the statute. President Bush should accelerate the process. He should direct the Attorney General to develop a system as quickly as possible, but certainly within the next six months.

4) Enforce the Armed Career Criminal Act. Current federal law requires strict mandatory sentencing of felons convicted of a second offense involving the possession of a firearm. Unfortunately, this law is not being enforced. President Bush should instruct the Justice Department to enforce the law, and request from Congress funding for additional staff if necessary.

5) Ease federal prison crowding. Prison overcrowding is one reason prosecutors fail to prosecute existing gun control violations. President Bush should instruct the Justice Department to develop privatization alternatives and other such innovations that would encourage self-financing prisons and prison construction. The Department should use as a starting point the prison reform proposals of Senator Gramm. The federal initiatives should serve as a model for the states.

USING THE BULLY PULPIT

In addition to these federal actions, President Bush should use the bully pulpit to articulate his position on crimes committed with weapons and on gun control, and encourage state legislators to enact public policies consistent with his views.

President Bush should announce a renewed effort to enforce existing federal laws, and encourage states to enforce their own laws, as outlined in legislation proposed by Senator McClure. In particular, the federal government and the states should:

- 1) Enforce existing gun laws.
- 2) Enforce mandatory minimum sentence laws.
- 3) Enforce existing criminal laws.

The President should host an early meeting with a representative group of chiefs of police to reorient the argument away from a narrow concentration on gun control, and toward a focus on prosecuting individuals who use guns in the commission of crimes.

A preparatory meeting should be held with leaders of the various federal agencies involved (DEA, FBI, the Departments of Justice and the Treasury, and the Office of the Drug Czar), in order to insure that all senior personnel are working on the same agenda.

// *improvement*

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Withdrawal/Redaction Sheet

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Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
02. Paper	Re: Combating Violent Crime (8 pp.)	5/5/89	P /5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Crime/Gun Control (1989) [1]

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By JP (NLGB) on 5/12/05

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May 5, 1989
9:00 a.m.

COMBATting VIOLENT CRIME

I. Assault Weapons

A. Announce that you will make permanent the temporary suspension on imported assault weapons that fail to pass the sporting purposes test.

specific
B. Amend current law to prohibit the domestic manufacture or sale of ~~all~~ ^{the foreign weapons} weapons banned for import. *F. Disapproval*

C. Seek legislation prohibiting the importation, manufacturing, transfer or sale of gun magazines of over 10 rounds for use by private citizens.

II. Limiting Access to Weapons by Felons

The Anti-Drug Abuse Act of 1988 requires the Attorney General to develop a system for the immediate and accurate identification of felons and others who attempt to purchase firearms but are barred by federal law [18 U.S.C. 922(g)(1)] from buying or possessing firearms.

A. Direct the Attorney General to expand the National Criminal Records Identification System Implementation study to include a review and evaluation of state and local procedures which have effectively limited criminal access to firearms, and based on that review develop recommendations for model state legislation to complement and enhance efforts to reduce felons access to firearms. Local procedures should be included in the review to the extent that they can be identified.

This model legislation might include a reasonably structured waiting period, or use other devices to facilitate accuracy in determining whether an individual seeking to purchase a weapon from a licensed gun dealer is ineligible by reason of federal law. Under current law the following categories of ineligibility are included on Treasury's Form 4473:

1. Convicted of a crime punishable by imprisonment for a term exceeding one year;
2. Currently under indictment;

3. A fugitive from justice;
 4. Addicted to a controlled substance or have been committed to a mental institution;
 5. An illegal alien;
 6. Adjudicated a mental defective or have been committed to a mental institution;
 7. Dishonorably discharged from the armed forces; and
 8. Renounced one's U.S. citizenship.
- B. Provide for states to transfer felony conviction records to the proper Federal authorities in a manner to be determined by the Attorney General.
- C. Modify existing federal law to further control access to weapons by felons and other ineligible individuals.
- o Bar the sale of firearms to, or possession of firearms by, persons convicted of any serious drug offense.

[N.B. A variation of this option was included in NECRA as: add "convicted of any drug offense" to Form 4473 question concerning whether the applicant is an "unlawful user of, or addicted to marijuana, or a depressant, stimulant, or narcotic drug." Its inclusion in the Administration package is not recommended by Justice and Treasury.]

- o Bar the sale of firearms to, or possession of firearms by, persons convicted of any violent offense.

[N.B. This option would expand the existing prohibition to cover individuals convicted of violent misdemeanor offenses, such as some of those on Purdy's record. It is supported by both Justice and Treasury.]

- o Double the current penalty for a knowing or materially false statement on Form 4473 to a maximum sentence of ten years imprisonment and a maximum fine of \$10,000.

- o Enact provisions to close loopholes and clarify existing offenses related to the sale or transfer of firearms:
 - to facilitate the prosecution of unlicensed gun dealers engaged in illegal weapons transfers to aliens or transients;
 - to expand federal jurisdiction to permit prosecution of transactions in stolen firearms and weapons lacking serial numbers in cases where the firearms have previously moved in interstate or foreign commerce, (present law requires the firearms be moving in interstate commerce at the time of the offense);
 - to provide a uniform standard to determine whether or not a person is under federal firearms disabilities based upon state convictions;
 - to require that persons convicted under state law of a serious drug offense or violent felony apply to federal authorities in order to have their firearms rights restored;
 - to amend provisions regarding the disposal of forfeited firearms; and
 - to clarify the definition of burglary in the Armed Career Criminal Act to eliminate loopholes caused by differing state laws.

III. Crime Control and Criminal Justice System Reforms

A. Strengthening Current Laws

1. Enact constitutionally sound procedures for imposing the federal death penalty provisions that now appear in federal statutes for homicide, espionage, and treason; the Administration's legislative proposal specifies the use of an automatic or semi-automatic firearm in committing the offense, or a previous conviction of a violent felony involving a firearm, as aggravating factors for capital murder sentencing.

2. Enact habeas corpus reform to:

- o establish a general one-year time limit on federal applications by state prisoners; and
- o require deference in federal proceedings to the results of fair and reasonable state court determinations.

This will correct the existing system of review, under which over 10,000 cases are annually filed and release time equivalent to approximately 40 federal judge-years.

3. Establish a general "good faith" exception to the exclusionary rule:

- o evidence would be admitted if the officers carrying out a search or seizure acted with an objectively reasonable belief that their conduct was in conformity with the Fourth Amendment; and
- o clarify that courts may not exclude evidence on the basis of non-constitutional violations in the absence of statutory authority for doing so.

4. Enhanced penalties for federal firearms violations

- o Double the mandatory penalty under 18 U.S.C. 924(c) for the use of a semi-automatic firearm during the commission of a violent crime or drug felony from five to ten years. ✓
- o Allow for pre-trial preventive detention of defendants in cases involving certain serious firearms and explosive offenses. ✓
- o Authorize criminal penalties and mandatory minimum sentences for theft of a firearm. ✓
- o Enhance penalties for smuggling firearms into the United States while engaged in, or in the furtherance of, drug trafficking. ✓
- o Amend the Armed Career Criminal statute to count as predicate offenses acts of juvenile delinquency which if committed by an adult would constitute a serious drug offense. ✓

(N.B. Many youthful repeat offenders presently escape coverage of the enhanced career criminal penalties because most of their prior offenses were charged as juvenile delinquency.)

5. Urge all states to adopt model state legislation providing mandatory minimum sentences for criminal offenses involving firearms and provide them with related technical assistance through LECCs. ✓
- o Provide a 5 percent bonus of law enforcement grants to those states adopting model legislation. (\$6 million) ✓
6. Amend the Anti-Drug Abuse Act of 1988 to provide that upon completion of the first year of the eight district pilot test of drug testing as a condition of parole or supervised release, the Attorney General be given the authority to implement such mandatory testing on a national basis.
 - o Urge states to adopt similar mandatory drug testing programs as a condition of parole.

B. Enhancing Enforcement

1. Increase funds for the Alcohol, Tobacco and Firearms Bureau to provide for the hiring, training and equipping of 250 ATF special agents, inspectors and support personnel to investigate assault weapon and other firearms violations by armed career criminal and repeat offenders. (\$12.5 million)
2. Increase funds for the U.S. Marshals to provide for about 100 additional positions for the Marshals Fugitive Investigations and Court Orders Program. This would direct greater Federal efforts to capturing fugitives and career criminals. (\$8 million)
3. Increase funds for the FBI to provide for about 200 additional positions for the Bureau's Violent Crime and Major Offenders Program and Organized Crime Program. In part, this would assist States and localities improve their efforts in fighting violent crime through greater Federal/State cooperation. (\$13 million)

\$50%

4. The Attorney General and Secretary of the Treasury will be directed to develop a coordinated strategy for the deployment of the additional U.S. Marshals, ATF and FBI agents. Their deployment will emphasize working closely with state and local authorities in Task Forces to target and investigate career criminals who are subject to prosecution as repeat offenders under Federal firearms laws and related statutes.
5. Urge state and local authorities to increase their law enforcement resources devoted to the identification and apprehension of violent criminal offenders.

C. Enhancing Prosecution

1. Increase funds for the U.S. Attorneys to support 1,600 additional positions to handle the increased number of federal defendants and to prosecute more drug cases, weapons offenses, and other priority matters. (\$50 million)
2. Increase funds for the Criminal Division to support 168 additional positions to be applied to drug cases, weapons offenses, and other priority matters. (\$5 million)
3. Additional funds to U.S. Marshals to provide transportation and 300,000 added jail days for unsentenced prisoners and pre-trial detainees. (\$13 million)
4. Direct the Attorney General to issue and fully implement guidelines for federal prosecutors regarding plea bargaining under the Sentencing Reform Act to assure that the exercise of prosecutorial discretion effectively reflects the seriousness of the defendant's conduct and the Department's commitment to statutory sentencing goals and procedures.
5. Urge state and local prosecutors to reform their plea bargaining practices and to devote increased resources to prosecutions.

6. Enhance support to the Judiciary by \$40 million for FY 1990 to cover costs associated with processing increased numbers of criminal defendants and for additional federal criminal prosecutions.

D. Expanding Prison Capacity

1. Seek legislation authorizing an additional \$1 billion for prison construction, bringing the total 1990 budget to \$1.5 billion. This will increase prison capacity by about 85 percent, adding over 26,000 new federal prison beds. Present rated federal prison capacity is 30,951 beds, the present federal prison population is 48,000, or 54 percent overcrowded.
2. Direct the Secretary of Defense, the Secretary of Education, and the Administrator of the General Services Administration to work with the Attorney General to identify expeditiously properties and facilities suitable for conversion to use as federal prisons or jails.
3. Direct the Attorney General to recommend means for expediting the deportation of convicted criminal aliens.
4. Commend and encourage state prison construction efforts.
 - o States have already funded over 79,000 new bedspaces to be constructed by 1994.
 - o The states are also considering constructing 70,000 additional bedspaces.

E. Resource Enhancement Summary

Rewards:

State Grant Bonus \$ 6.0 million

Enforcement:

BATF \$12.5 million

U.S. Marshals \$ 8.0 million

FBI \$13.0 million

Prosecution:

U.S. Attorneys \$50.0 million

Criminal Division \$ 5.0 million

Unsentenced Prisoner Support \$13.0 million

Courts \$40.0 million

Prisons:

Federal Prison Construction \$ 1.0 billion

(This will bring the total 1990 prison construction budget to \$1.5 billion, which includes \$115 million available from the Special Forfeiture Fund available to the Office of National Drug Control Policy, and \$401 million in the original Bush Budget.)

Total \$1,666.5 billion

— *Laurel* (*Laurus nobilis*) is a small tree or large shrub with alternate, dark green, glossy leaves and small, fragrant flowers. It is native to the Mediterranean region and is widely used in cooking and as a natural preservative.

465-2121

Congress of the United States

House of Representatives

Washington, DC 20515

March 31, 1989

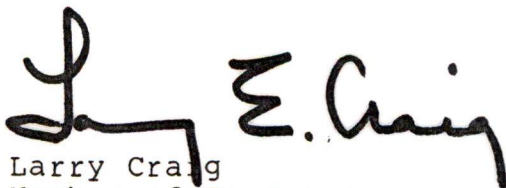
Dear Colleague:

Attached is a letter recently received from Edward C. Ezell, Ph.D, Curator, National Firearms Collection, Armed Forces History Division, National Museum of American History. Dr. Ezell presents some rather startling facts about so-called "assault rifles."

Considering that much of the current debate has been fueled by inaccurate and misleading information about the functional operation and use of semiautomatic firearms, we thought some measured and accurate data would be worth consideration.

Please take the time and read this important material.

Sincerely yours,



Larry Craig
Member of Congress



John D. Dingell
Member of Congress

NATIONAL MUSEUM OF AMERICAN HISTORY

SCIENCE, TECHNOLOGY, AND CULTURE

27 March 1989

The Honorable John D. Dingell
United States House of Representatives
2221 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Dingell:

In recent weeks the legislative debate over so-called "assault rifles" has grown increasingly heated. In following these developing discussions, I have noted that much of the colloquy has been characterized by both the absence of accurate data and unsubstantiated allegations. Since, I still harbor the belief that public policies should be based upon facts rather than emotions, I would like to offer the following observations.

First, there are no adequate statistics currently available that will permit policy makers to determine exactly where "assault rifles" fall on the spectrum of weapons used in crimes of violence. Many public figures have talked of their danger and the extent to which they are employed in criminal acts. Nearly all of their pronouncements are based upon anecdotal information. For example, when I have queried major law enforcement agencies for information about "assault rifles" in crimes I have been told that such data does not exist. Generally it is the "gut feeling" of police forensics officials that .38 caliber revolvers and 12 gauge shotguns continue to be the primary firearms used in crimes and shootings. Such limited data as does exist (e.g., the Uniform Crime Reports) substantiate this impression. The Uniform Crime Report for 1987 indicates that rifles (which includes "assault rifles") are used in only 4 percent of homicides, while cutting weapons of all sorts are used in 20 percent. In homicides of law enforcement officers in the small percentage of those deaths caused by rifles less than one of five involved rifles shooting cartridges that would qualify them as "assault rifles." In Los Angeles of the 4,000 weapons confiscated in the last year only 120 could be classified as military-type weapons. Despite the current mythology, no one, including drug dealers, seem to have much use for the longer and more cumbersome rifles for criminal acts.

The firearms owning public is increasingly aware of the "data free" nature of the legislative debate. Many of these law abiding citizens believe that their rights are being treated as less important than those of others in our society. They sense a "lynch mob" sentiment in the Congress that will deny them of a cherished freedom with little evidence of fairness. Perception of fairness in the law is a keystone for public support of the social contract between the Government and the Governed. "Draconian" legislation such as that proposed in S.386 and H.R.1190 could produce a Volstead Act-type of law which would simply not be enforceable.

Since there are at least 3 to 4 million semiautomatic "assault rifle" look-a-like firearms in private hands that would fall under the terms of the proposed Federal legislation, the registration of such weapons would be a major undertaking. It is a fact that in those areas of California where laws have recently been enacted which totally ban the possession and ownership of "assault weapons" the response from gun owners has been negative. Only a negligible number of firearms have been turned in. The inference must be made that we are creating a new group of law breakers who simply refuse to acknowledge this legislation. A severe Federal law would also be probably doomed from the start if the gun owning public doubted the fairness and the motives of the Government.

Further S.386 and H.R.1190 give the Secretary of the Treasury the authority to ban many other semiautomatic firearms beyond the 3 to 4 million semiautomatic "assault rifle" look-a-likes mentioned. Given the present state of affairs, legislation is necessary and inevitable, but it needs to address the "real" not the "believed" problems. Therefore, the Congress should try to collect the facts before making up its collective mind. Once the facts are in hand, the Congress will have a better idea of the dimensions of the guns-in-crime problem and then the members may be able to more calmly evaluate the proper nature of the legislative remedies that will work while maintaining respect for the process of law and order.

To aid your conversations with your colleagues, I have attached two fact sheet that may be of some utility.

Thank you for your concern in this matter.

Sincerely,



Edward C. Ezell. Ph.D.
Curator
National Firearms Collection
Armed Forces History Division

ENCL.: As stated.

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ASSAULT RIFLE FACT SHEET #1 DEFINITIONS AND BACKGROUND

Recent discussions of so-called "assault rifles" in both the media and legislative arenas have seen imprecise usage of the terms used to describe such firearms. This fact sheet is designed to improve the technical accuracy of future discussions.

ASSAULT RIFLE: This term was coined during World War II. It is a translation of the German Sturmgewehr. Two key characteristics that identify "assault rifles" are full automatic fire and detachable magazines with a capacity of 20 or more cartridges. These weapons were designed to produce roughly aimed bursts of full automatic fire. While some assault rifles offer an option of semiautomatic fire (i.e., single-shot), all true assault rifles fire at least fully automatic.

SELF-LOADING: Weapons generally called semiautomatic today were originally called self-loading. This more precise term indicates that the fired cartridge provides energy to reload the weapon for the next shot. Such self-powered arms may be semiautomatic, full automatic, or have a means of selecting one or the other.

SEMI-AUTOMATIC: In such weapons, the operating mechanism is designed to permit only a single shot with each pull of the trigger.

AUTOMATIC: In such weapons, the operating mechanism is designed to permit the discharge of multiple shots with each pull of the trigger. Firing ceases when the shooter releases the trigger.

BURST FIRE: Multiple shots during automatic fire are called bursts. These can either be controlled by the shooter's manipulation of the trigger or by a mechanical device built into the weapon that interrupts the automatic cycle after a preset number of shots have been discharged; e.g., 3-shots or 5-shots.

Ownership of automatic and burst fire weapons has been regulated by Federal laws since the 1930s through revenue taxes enforced by the Treasury Department's Bureau of Alcohol, Tobacco, and Firearms.

4

RATE OF FIRE: All automatic weapons have a theoretical cyclic rate of fire that is expressed in shots per minute (s.p.m.) or rounds per minute (r.p.m.). This is the rate of fire that would be attained if the weapon could be fired continuously without need for reloading. In actual practice the number of shots that can be delivered from any self-loading weapon is limited by shooter skill, especially the need to reload.

PRACTICAL RATE OF FIRE:

With weapons such as the military 5.56mm M16A1 rifle and the 7.62mm AKM rifle the maximum rates of fire for a well trained shooter are as follows:

	<u>M16A1</u>	<u>AKM</u>
Semiautomatic:	45/65 s.p.m.	40 s.p.m.
Automatic:	100/150 s.p.m.	100 s.p.m.

An average or less experienced shooter can deliver about half as many shots per minute. The shooter's probability of hitting a target with a self-loading rifle when pulling the trigger as rapidly as possible is about 1 hit in 5 shots fired.

CATEGORIZING SELF-LOADING RIFLES BY CALIBER

Modern military-type rifles (automatics and semiautomatics) are generally categorized by the class of cartridge they use.

- Full power rifle ammunition: This includes rifles such as the M14, FAL and G3 that shoot the 7.62 x 51mm NATO cartridge.
- Intermediate rifle ammunition: This includes rifles such as the Kalashnikov-type ("AK47") imported from China, Egypt, Hungary, Finland, and Yugoslavia that shoot the 7.62 x 39mm cartridge.
- Small caliber, high velocity rifle ammunition: This includes rifles such as the M16 series, the Mini-14, AUG and others that fire the 5.56 x 45mm cartridge.
- Weapons firing the US .30 Carbine cartridge: The US M2 carbine is an example of a firearm that shoots the relatively low power 7.62 x 33mm cartridge.

Semiautomatic variants of many of the world's automatic ("assault") rifles have been sold in the United States since the end of World War II. A majority of these sales occurred since the passage of the Federal "Gun Control Act of 1968." That law ban further importation of surplus military rifles, most of which were of the manually operated bolt-action-type. It is estimated that approximately four million semiautomatic variants of "assault rifles" are held by private individuals in the United States.

The vast majority of semiautomatic military style rifles sold in the United States are military rifles that have been specifically modified to permit only semiautomatic fire and to thwart easy conversion to automatic fire. These modifications must be made in compliance with Bureau of Alcohol, Tobacco and Firearms guidelines, and they must be approved by BATF prior to importation and/or sale of the firearm in the United States.

ADDITIONAL READING ABOUT ASSAULT RIFLES

Edward C. Ezell, Small Arms Today: Latest Reports on the World's Small Arms (Stackpole Books, 1988).

A country-by-country review of infantry weapons (25mm or smaller in caliber) usage. The types of weapons are described, and data is presented on the origin of such weapons. Many supplier-client relationships are explained. This book grows out of a continuing interest in the transfer of small arms by the nations manufacturing such weapons.

R. Blake Stevens and Edward C. Ezell, The Black Rifle: M16 Rifle Retrospective (Collector Grade Publications, Inc.: Toronto, 1987).

A history of the development and production of the M16 rifle.

Edward C. Ezell, The AK47 Story: Evolution of the Kalashnikov Weapons (Stackpole Books, 1986).

Narrative history of military rifles in Russia and the Soviet Union, 1800 to present. Describes world wide production of Kalashnikov assault rifles.

_____, The Great Rifle Controversy: Search for the Ultimate Infantry Rifle from World War II to Vietnam and Beyond (Stackpole Books, 1984).

Narrative history examining issues related to US and NATO small arms research, development and acquisition from 1945 to 1984, concentrating on the history of the M14 rifle and M16 rifle development programs.

Small Arms of the World: A Basic Manual of Small Arms, 12th edition (Stackpole Books, 1983).

The first five chapters of this encyclopedia summarize the development of small arms from 1945 to 1983.

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ASSAULT RIFLE FACT SHEET #2 QUANTITIES OF SEMI-AUTOMATIC "ASSAULT RIFLES" OWNED IN THE UNITED STATES

RIFLES OF AMERICAN MANUFACTURE

Colt AR-15 caliber .223	to date	279,600
Springfield Armory Inc. M14A caliber .308	" "	60,000
Springfield Armory Inc. R3 (Copy of HK91) caliber .308	" "	1,000
Springfield Armory Inc. FAL caliber .308	" "	6,000
Springfield Armory Inc. BM59 caliber .308	" "	500
Ruger Mini-14 caliber .30	" "	500,000+
Commercial and surplus US M1 .caliber .30	" "	700,000+
US Government sales and GI souvenirs US M1 .caliber .30 ...	" "	1,500,000 est.

RIFLES OF FOREIGN MANUFACTURE (IMPORTS)

China AK-type rifles caliber .223 and 7.62mm	" "	90,000
China SKS w/ detachable magazine 7.62mm	" "	25,000
Finland (Valmet) AK-type rifles caliber 7.62mm.....	" "	16,000
Hungary AK-type rifles caliber 7.62mm.....	" "	7,000
Yugoslavia AK-type rifles caliber 7.62mm.....	" "	4,000
Israel Galil .223 and .308	" "	9,000
Israel M14 (built from surplus parts) .308	" "	16,000
Israel FAL (built from surplus parts — Armscorp) .308	" "	3,000
Argentina FAL (Armscorp) .308	" "	4,000
FN FAL and FNC .308/.223	" "	25,000
West Germany (HK91) caliber .308	" "	38,000
West Germany (HK93) caliber .223	" "	8,510
Beretta BM-59 caliber .308	" "	2,000
Switzerland SIG 510 and SIG 550 caliber .308 and .223	" "	1,000
Austria Steyr AUG caliber .223	" "	5,000
Korea K1 and K2 (Similar to AR-15) caliber .223	" "	25,000
Miscellaneous	" "	25,000

ESTIMATED TOTAL 3,335,610

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ASSAULT RIFLE FACT SHEET #2
QUANTITIES OF SEMI-AUTOMATIC SUB-CARBINES
(Firing pistol ammunition)
OWNED IN THE UNITED STATES

SUB-CARBINES OF AMERICAN MANUFACTURE

Marlin Camp Carbine caliber 9mm and .45	to date	3,000
Volunteer and other makers "Commando" carbine caliber 9mm and .45	" "	40,000+
Cobray, MAC and other makers MAC10-type semiautos caliber 9mm and .45	" "	50,000+
Intratec and Intertec TEC9 caliber 9mm	" "	110,000
Numrich M1927A1 Thompson Semiautos caliber .45	" "	16,000
Miscellaneous: AP9 etc.	" "	40,000

SUB-CARBINES OF FOREIGN MANUFACTURE
(IMPORTS)

Israel Uzi (carbines and pistols) caliber 9mm and .45	" "	90,000
West Germany HK 94 caliber 9mm (30% sold to law enforcement) ..	" "	16,200
United Kingdom Sterling MK6 caliber 9mm	" "	1,000
Miscellaneous	" "	5,000

ESTIMATED TOTAL 371,200



Congressional Research Service
The Library of Congress

Washington, D.C. 20540

March 30, 1989

TO: The Honorable Larry E. Craig
Attn: Brooke Roberts

FROM: Harry Hogan
Specialist in American National Government
Government Division

SUBJECT: Gun Control: Proposals for the Further Regulation of Certain
Semiautomatic Firearms, 101st Congress

A number of bills have been introduced to add to Federal controls on a class of firearms designated by proponents of such moves as "assault weapons." Principal among these are H.R. 669 (Berman *et al.*), H.R. 1154 (Gibbons), H.R. 1190 (Stark *et al.*), and S. 386 (Metzenbaum *et al.*). Sponsors of the bills see such weapons as potentially more lethal than other firearms and characterize them as "the weapons of choice of drug dealers, violent criminals, terrorists, and psychopaths."¹

EXISTING FEDERAL LAW

Under current law, all commerce in firearms is subject to the controls of chapter 44 of title 18 of the U.S. Code (secs. 921-929), which was created by Title I of the Gun Control Act of 1968² and amended by a number of subsequent enactments. In its basic provisions, this statute

- Requires all persons dealing in firearms to be federally licensed; sets standards for such licensing;
- Prohibits the interstate mail-order sale of all firearms;
- Prohibits interstate sale of handguns generally;
- Sets forth categories of individuals to whom firearms or ammunition may not be sold (by any person) or who may not purchase firearms nor ship and receive them in interstate commerce (convicted felons,

¹"Dear Colleague" letter of Representatives Fortney "Pete" Stark, Tom Campbell, Don Edwards, Vic Fazio, and Richard H. Lehman; March 1, 1989.

²P.L. 90-618.

fugitives from justice, unlawful users of or persons addicted to a controlled substance, mental defectives, illegal aliens, and so forth);

- Places age restrictions on commercial sales (no handguns to anyone under 21, no long guns to anyone under 18);
- Generally prohibits the importation of non-sporting firearms; and
- Provides for various penalty enhancements for the use or carrying of a firearm in perpetration of a Federal crime of violence or drug trafficking crime.

Further, the class of firearms traditionally referred to as "assault" firearms--i.e., "selective fire" firearms, capable of fully automatic fire³--is subject to the special controls of the National Firearms Act of 1934, as amended.⁴

The National Firearms Act (NFA) is designed to make it difficult and costly to obtain the weapons it covers. It taxes both the manufacture and transfer of such weapons and compels the disclosure, through a national registration system, of their ownership from the time of manufacture. Every time a controlled firearm, firearm accessory, or device changes hands, the Secretary of the Treasury must be notified and the \$200 transfer tax paid by the transferor.

Under Title I of the Gun Control Act, no firearm covered by the National Firearms Act may be imported.⁵

³For example, with respect to assault rifles, a Department of Defense manual on small arms states the following:

Assault rifles are short, compact, selective-fire weapons that fire a cartridge intermediate in power between submachinegun and rifle cartridges. Assault rifles have mild recoil characteristics and, because of this, are capable of delivering effective full-automatic fire at ranges up to 300 meters. (U.S. Army Foreign Science and Technology Center. Small Arms Identification and Operation Guide--Eurasian Communist Countries, by Harold E. Johnson. November 1970. p. 67)

⁴26 U.S.C. 5801-5872 was originally aimed at "gangster" weapons. It also covers sawed-off long guns, silencers, mufflers, and--as added in 1968 by Title II of the Gun Control Act--such "destructive devices" as bombs, grenades, and missiles.

⁵18 U.S.C. 925 (d)(3).

The National Firearms Act defines "machinegun" as follows:

The term 'machinegun' means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

Those portions of the definition relating to parts designed to convert a weapon into a machinegun are intended to address the problem of the convertibility of semiautomatic firearms into fully automatic ones. Covered are so-called "conversion kits" as well as individual parts that answer to the description included in the definition.

Under the Firearms Owners Protection Act--amendments to the Gun Control Act that were enacted in 1986⁶--machineguns, or fully automatic firearms, were additionally restricted by a ban on the transfer or possession of any such firearm not lawfully possessed prior to the date the Act was signed by the President (May 19, 1986).⁷ Thus, the number of machineguns that may legally be owned or transferred in the U.S. by private individuals has been frozen (although some exceptions are allowed) at approximately 193,000.

Also included in the 1986 amendments was an addition to the existing provisions for mandatory penalty enhancements for use of a gun in committing certain Federal offenses. The amendment established enhancement penalties twice as high where the firearm used is a machinegun or is equipped with a silencer or muffler (ten years for a first offense; 20 years for a second).

One other provision of Federal law which has a major effect on the use of machineguns is the prohibition, under Title I of the Gun Control Act, of the *transport* of any NFA weapon from one State to another, even though legally owned, without authorization by the Secretary of the Treasury.⁸

With respect to importation of firearms not covered by the NFA, Title I of the Gun Control Act requires the Secretary of the Treasury to permit it in

⁶P.L. 99-308, popularly known as the McClure-Volkmer Amendments.

⁷18 U.S.C. 922 (o).

⁸18 U.S.C. 922 (a)(4).

the case of firearms "generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms." [18 U.S.C. 925 (d)(3)] Since enactment of the statute, many handguns, but only two long guns,⁹ have been determined to fail the sporting purposes test.

PROPOSALS FOR FURTHER REGULATION

Broadly characterized, the Berman bill (H.R. 669) would impose an outright ban on the transfer or possession of any of the firearms covered by its definition of "assault weapon"; the Stark bill (H.R. 1190) and the Metzenbaum bill (S. 386) would ban the importation of the firearms covered, ban the possession or transfer of any such firearm not in circulation as of the act's effective date, and make those in circulation subject to the controls of the National Firearms Act, i.e. treat them the same as fully automatic firearms. The Gibbons bill (H.R. 1154), aimed at the same general category of firearms, is confined to importation, which it would ban.

The Stark, Metzenbaum, and Gibbons bills also target "large-capacity" magazines and "large-capacity" ammunition belts (under the Stark bill, more precisely, "ammunition feeding devices"--meaning detachable magazines, drums, belts, feed strips, or similar devices). All three define "large-capacity" as being any such device holding more than ten rounds. The Gibbons bill would include the devices in its importation ban; the Metzenbaum bill would prohibit import, transfer, transport, shipment, receipt or possession--allowing 60 days after enactment for divestiture¹⁰; the Stark bill would create a "freeze" in which the devices that are legally owned at the time of enactment may apparently continue to be owned but not transferred after 60 days.

⁹The "Striker", a double action shotgun made in South Africa, and the USAS-12, a semiautomatic shotgun made in South Korea. On March 14, 1989, the Bureau of Alcohol, Tobacco and Firearms announced a temporary suspension of import approval for five semiautomatic rifle models and "similar types" pending a review of whether they meet the sporting purposes criterion.

¹⁰Presumably, the devices would have to be either destroyed or sold or donated to a Federal, State or local government agency; however, if sold, it would apparently be necessary for the owner to negotiate the compensation--the bill contains no provision for it.

H.R. 669

To provide an indication of the general approach of the above bills to the problem of definition, a more detailed summary of one of them--H.R. 669--follows.

Entitled "a bill to prohibit the transfer or possession of assault weapons," H.R. 669 was introduced by Representative Berman on January 27, 1989, and referred to the Committee on the Judiciary. It would amend Title I of the Gun Control Act of 1968 (18 U.S.C. 921 *et seq.*).

Specifically, the bill would amend 18 U.S.C. 922 by adding a new prohibition against the transfer or possession, by any person, of an assault firearm ("weapon") as defined. The ban against possession would become effective 30 days after the date of enactment; the ban against transfer would be effective on the date of enactment. Excluded from the transfer ban would be a surrender of the firearm to any Federal, State, or local law enforcement officer. No provision is made for compensation for a surrendered firearm.

"Assault weapon" is defined under H.R. 669 as meaning any of the following:

- (i) Any semiautomatic center fire rifle that accepts a detachable magazine with a capacity of 20 or more rounds of ammunition.
- (ii) Any shotgun which has a barrel of less than 19 inches in length and a folding stock or magazine capacity of more than 6 rounds of ammunition.
- (iii) Any firearm which has a barrel of less than 12 inches in length, that is--
 - (1) a modification of any rifle described in clause (i) and has the same make, caliber, and action design as, but has a shorter barrel than, such a rifle and has no rear stock; or
 - (2) a semiautomatic weapon designed to accept a magazine with a capacity of 20 or more rounds of ammunition.
- (iv) Any of the following specific firearms or copies of such firearms:
 - (1) Any pistol or carbine known as an 'Uzi.'
 - (2) Any Ingram MAC 10 or 11 pistol or carbine.
 - (3) Any semiautomatic rifle or military style known as an 'Avtomat Kalashnikov' or a 'Kalashnikov'.

- (iv) Any shotgun of the type known as a 'street sweeper'.
- (v) Any firearm which may be readily restored to be an operable weapon described in a preceding clause of this subparagraph.
- (vi) Any part or combination of parts, designed or intended to convert a firearm into a weapon described in any other clause of this subparagraph, or any combination of parts from which a weapon may be readily assembled if such part or parts are possessed or controlled by the same person.

Additionally, the bill lists the following firearms to be *excluded* from the definition of assault weapon:

- (i) Any weapon that does not use fixed ammunition.
- (ii) Any weapon that was manufactured before the calendar year 1898.
- (iii) Any manually operated bolt action weapon that is not a semiautomatic weapon.
- (iv) Any lever action weapon that is not a semiautomatic weapon.
- (v) Any slide action weapon that is not a semiautomatic weapon.
- (vi) Any multiple barrel weapon that is not a semiautomatic weapon.
- (vii) Any revolving cylinder weapon that is not a semiautomatic weapon.
- (viii) Any semiautomatic weapon with a fixed magazine capacity of 10 or fewer rounds of ammunition.
- (ix) Any semiautomatic weapon that uses exclusively Mannlicher style clips.
- (x) Any semiautomatic weapon manufactured before 1954.
- (xi) Any rimfire weapon that employs a tubular magazine.
- (xii) Any short-barreled shotgun or short-barreled rifle used solely as a prop for motion picture film or television program production.
- (xiii) Any firearm that uses .22 caliber rimfire ammunition.
- (xiv) Any weapon described in subparagraph (A) which has been modified so as to--
 - (i) permanently render such weapon inoperative; or

- (ii) make such weapon permanently a device that is not a weapon described in any clause of subparagraph (A).

General Discussion

Efforts to further restrict the availability of "assault" semiautomatic rifles, shotguns, and pistols give rise to the usual general pro and con arguments as to the desirability, constitutionality, and effectiveness of gun regulation.¹¹ Additionally, as in the case of the issue concerning special controls on so-called "Saturday night specials", a central question is whether or not it is possible, for legislative purposes, to distinguish between such firearms and many firearms now commonly used for hunting and other sporting purposes as well as for self-defense.

The position of the National Rifle Association, as expressed in an Association official's recent testimony before the Senate Subcommittee on the Constitution (February 10, 1989) and in a general letter to Members of Congress dated February 21, 1989, is that there is no functional difference between "assault weapons" and semiautomatic firearms generally. This point was also made at the same hearing by Deputy Associate Director Edward D. Conroy of the Bureau of Alcohol, Tobacco and Firearms in the following statement concerning the AKS rifle, the gun used in the killing and wounding of schoolchildren in Stockton, California, on January 17, 1989:

AKS is but one of at least eight model designations for the same semiautomatic rifle manufactured in China and imported into the United States. The AKS is a semiautomatic version of the AK-47, standard assault rifle of the Soviet Army since the 1950's. The AK-47 is a select fire weapon capable of firing 600 rounds per minute on full automatic and 40 rounds per minute on semiautomatic. The

¹¹Since presumably the major goal of firearms regulation is the prevention of violent crime, central questions are (1) whether there is a positive correlation between such crime and gun availability and (2) whether legal controls function to reduce gun availability to those who would use them for illegal purposes. Additionally, a corollary question explored by a number of researchers in recent years is whether widespread gun ownership can serve as a crime deterrent. Among relevant discussions are: (1) U.S. Department of Justice. Bureau of Justice Statistics. *The Use of Weapons in Committing Crime*. January 1986. (Special Report); (2) Wright, James D. and Peter H. Rossi. *The Armed Criminal in America. A Study of Incarcerated Felons*. Washington, National Institute of Justice, 1985; and (3) Kleck, Gary. *Crime Control through the Private Use of Armed Force*. *Social Problems*, v. 35, Feb. 1988: 1-21. For references to further reading, see the Congressional Research Service bibliography "Gun Control: Selected References, 1982-1988" (88-405 L).

AKS and the AK-47 are similar in appearance. The AK-47 is an NFA type weapon,¹² having been manufactured as a machine gun. The AKS is difficult to convert, requiring additional parts and some machinery.¹³...The AKS is a semiautomatic that, except for its deadly military appearance, is no different from other semiautomatic rifles. As a matter of fact, the identical firearm with a sport stock is available and, in appearance, no different than other so-called sporting weapons.

All of the four bills under discussion pose definitional questions, central examples of which may be drawn from the Berman bill (H.R. 669) and the Stark bill (H.R. 1190).

The Berman bill (H.R. 669), by specifically excluding categories of firearms considered to be widely owned and used in the U.S., seeks to neutralize the effects, on hunters and other users of firearms for legitimate purposes, of its proposed ban. However, the following key parts of the definition would apparently still include many commonly possessed guns:

Any semiautomatic center fire rifle that accepts a detachable magazine with a capacity of 20 or more rounds of ammunition.

[Sec. 1(b). *Comment:* Presumably included would be any center fire semiautomatic rifle that accepts a detachable magazine of *any* size, since a rifle that accepts a 5-round magazine can also accept a magazine holding 20 or more rounds.]

Any shotgun which has a barrel of less than 19 inches in length and a folding stock or magazine capacity of more than 6 rounds of ammunition.

[Sec. 1(b). *Comment:* Among the exclusions to the definition is "any semiautomatic weapon with a fixed magazine capacity of 10 or fewer rounds of ammunition." However, with the use of a magazine extender, almost any shotgun using a magazine--including a pump action shotgun--would appear capable of being converted so as to fall within the definition.]

¹²I.e., subject to the controls of the National Firearms Act of 1934 (26 U.S.C. 5801-5872), a tax and registration law applying to so-called "gangster-type" weapons such as machineguns, sawed-off rifles and shotguns, and silencers, as well as to such 'destructive devices' as bombs, grenades, and missiles.

¹³Mr. Conroy went on to say, nevertheless, that "a firearms expert with the knowledge and aptitude, as well as the additional parts and necessary tools, would take about 30 minutes to convert the AKS to fire fully automatic."

Any firearm which has a barrel of less than 12 inches in length, that is...(II)a semiautomatic weapon originally designed to accept a magazine with a capacity of 20 or more rounds of ammunition.

[Sec. 1(b). *Comment:* The definition would appear to cover all pistols using detachable magazines since any pistol designed to accept a magazine will accept a magazine of 20 or more rounds; the significance of the term "originally" is unclear.]

The Stark bill (H.R. 1190) also lists a number of specific models to be included in the definition of "semiautomatic assault weapon", further specifying that any firearm which is a "type" of such models be covered, as in "any UZI type semiautomatic firearm." Also like the Berman bill, it sets forth types of weapons not covered. Moreover, it includes the following:

- (1) Any semiautomatic weapon into which ammunition may be fed by means of an ammunition belt or feed strip.
- (2) Any semiautomatic shotgun with a magazine, cylinder, or drum capacity exceeding 6 rounds of ammunition.
- (3) Any weapon designated as a semiautomatic assault weapon by the Secretary [of the Treasury] in accordance with [proposed new 18 U.S.C.] section 925A.

The salient feature of the Stark bill is its proposed new section 925A of title 18 of the U.S. Code, authorizing the Secretary of the Treasury to designate as semiautomatic assault weapons additional firearms not specifically listed in the bill but which are "substantially similar in design, function, and use to a weapon" listed. A key question posed by the Stark bill, in addition to questions about the appropriateness of any of the explicit parts of the definition, concerns the interpretation of the phrase "substantially similar."

The Stark and Metzenbaum bills have essentially the same purpose with respect to the firearms in question, following the approach of the existing "freeze" on machineguns, but they differ in a number of details. The Stark bill would directly amend the subsection of 18 U.S.C. 922 [subsec. 922(o)] that establishes the machinegun freeze. The Metzenbaum bill adds new subsection 922(p) repeating the language of the machinegun provision and applying it to the semiautomatic firearms covered by the bill. The Stark bill provision would be effective on the 60th day after enactment and the Metzenbaum bill thirty days after. The firearms covered would, if otherwise lawfully possessed, be eligible for registration.

The Metzenbaum bill provides that any firearm specifically listed must be registered within 30 days of enactment, and any firearm subsequently designated as an "assault weapon" within 30 days from the date the Secretary of the Treasury provides public notice of the designation. The Stark bill does

not specify the period of time during which the owner of a subsequently designated firearm would be required to register nor does it require that public notice of the designation be given.

Under the Metzenbaum bill, the firearms covered would not be subject to any NFA taxes; the effect of the Stark bill in this regard is not clear.¹⁴

I trust this information meets your needs. If I can be of further assistance, please call me at 707-8688.

HLH:rda

¹⁴As amended in 1968, the NFA provides for registration only by a transferor (26 U.S.C. 5812 and 5841). Given the obvious intent of the bill, however, it is likely that the Secretary of the Treasury would declare an amnesty during which current owners could register, and unlikely that a tax would be levied.



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D. C. 20036

March 9, 1989

Dear Member of Congress:

Congressman Stark recently introduced H.R. 1190, "The Semiautomatic Assault Weapons Act of 1989." **The National Rifle Association opposes H.R. 1190 as an unprecedented ban on semiautomatic firearms.** While H.R. 1190 enumerates certain "types" of specific semiautomatic firearms, it would also give discretion to the Secretary of the Treasury by creating a new section of Title 18, Section 925A. This section requires the Secretary to ban any firearm he finds "substantially similar in design, function, and use" to one of the firearm "types" listed in the bill.

The Treasury Department has already testified that the "AKS is a semi-automatic that, except for its deadly military appearance, is no different from other semi-automatic rifles." (135 Cong. Rec. 19, S. 1865, Feb. 28, 1989.) In other words, all new semiautomatic firearms can and may well be banned under H.R. 1190's elastic definition.

Further, H.R. 1190 would require that all semiautomatic firearms designated by the Treasury Secretary as "semiautomatic assault weapons" be registered as machineguns under Title 26 U.S.C. Section 5841. Registration under Title 26 requires for each firearm:

- * fingerprints of the owner for each firearm registered
- * \$200 transfer tax for each firearm registered
- * F.B.I. background check for each firearm registered
- * local law enforcement sign-off on each registration

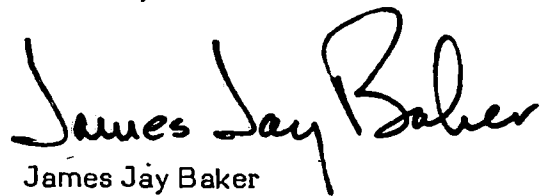
Local law enforcement are under no duty to "sign-off" on any registration. If a local chief of police or sheriff decides not to give his permission, and they are under no obligation to do so, the firearm would be contraband and possession of the firearm would subject the owner to a federal felony prosecution. Conservative estimates put the number of semiautomatics that would be covered at 20-30 million semiautomatic firearms legally purchased and possessed since the turn of the century.

Additionally, current law requires notification be given to the Secretary of the Treasury each time a registered firearm moves across state lines and therefore, any hunter or competitive target shooter who owns a semiautomatic rifle, shotgun, or pistol covered by H.R. 1190 could not travel to an out-of-state hunt or competition without authorization from the Secretary of the Treasury.

H.R. 1190 is clearly not a "reasonable" measure as it is being portrayed. The specific provisions of H.R. 1190 alone are among the most onerous restrictions ever proposed on sporting long guns and pistols. When the specific provisions of the bill are taken in conjunction with the sweeping discretion allowed to the Treasury Secretary, H.R. 1190 is a prospective ban on the manufacture and sale of most semiautomatic firearms and a federal registration system for current lawful owners of these firearms that could result in their possessing contraband and subjecting them to federal felony prosecutions.

The National Rifle Association urges you to oppose this legislation.

Sincerely,

A handwritten signature in black ink that reads "James Jay Baker". The signature is written in a cursive, flowing style with a large, prominent "B" at the end.

James Jay Baker
Director
Federal Affairs Division

Encls.

ANALYSIS OF H.R. 1190:
A BAN ON SO-CALLED "ASSAULT" FIREARMS

March 1989

I. DEFINITION

A. Definition of "assault rifle" contrasted with semiautomatic firearms

An "assault" rifle is a selective-fire military rifle, capable of firing on fully-automatic, burst, or semiautomatic at the option of the shooter. (Department of Defense, Small Arms Identification and Operations Guide, p. 105 (1980)). "Assault" rifles are therefore machineguns for the purposes of federal law. (26 U.S.C. Sec. 5845(b)).

H.R. 1190 does not apply to true assault rifles, but seeks to create a new sub-class of semiautomatic firearms under the designation of "assault weapons." Firearms manufactured in semiautomatic mode have been owned in this country for most of this century, and they include many of the most popular hunting and target shooting rifles, shotguns, and pistols currently owned.

B. "Assault Weapons" in H.R. 1190

1. H.R. 1190 grants the Secretary of the Treasury unlimited discretion to ban the future sale of firearms.

H.R. 1190 gives the Treasury Secretary discretion to put semiautomatic rifles, shotguns, and pistols under the machine gun "freeze" enacted in 1986, 18 U.S.C. 922(o). (H.R. 1190, Section 2(a).)

Section 2(c) of H.R. 1190 purports to guide the Secretary by creating a new section of Title 18, providing (Sec. 925A) for the designation by the Secretary of firearms as "semiautomatic assault weapons." Section 925A(b) details six factors for the Secretary to "take into account, among other things"

What the "other things" might be are not indicated in the bill, but the six factors include whether a firearm was "originally designed or has been used" for military or law enforcement purposes (factor 2). Since military and law enforcement personnel use all types of firearms in the course of their training and duties, this guidance factor is so broad as to be meaningless. Another factor is whether a firearm was "originally designed for fully automatic fire" (factor 4). Many common semiautomatic rifles are copies of firearms originally so designed. To take just one example, the popular Browning BAR .30-'06 hunting rifle is based on the original Browning full-auto service rifle of World War II. That semiautomatic hunting rifle thus falls under both of these factors and would logically be classified as a "semiautomatic assault weapon" by the Secretary.

In addition to those broad guidelines, the Secretary is to consider "the degree to which" a firearm is "similar in design" to a firearm explicitly listed (factor 3)". Since all semiautomatic firearms are virtually identical in their mechanical operation, this provision can only be construed two ways. Either any semiautomatic could be covered, or the similarity would be considered on the basis of the physical appearance only. Under the second interpretation, any manufacturer could then easily change the outward appearance of a firearm while preserving identical internal components, rendering this "factor" useless as well.

The final guidance factor is similarly useless, i.e., whether "a kit is available to convert the weapon to a fully automatic weapon." Under current federal law, 26 U.S.C. 5845(b), all parts or combinations of parts which can be used to convert a semiautomatic to full-auto fire are machineguns for the purposes of federal law, and are thus not "available" for sale to private individuals.

In addition to the guidance factors, Section 925 would require the Secretary to designate a firearm as a "semiautomatic assault weapon" if it is "substantially similar in design, function, and use" to a firearm listed (see below). The term "substantially similar" is nowhere defined in H.R. 1190. This provision has the same flaws as factor 3 above, and would result in either a freeze on most semiautomatic firearms or would allow manufacturers to change the cosmetic appearance of firearms to produce them lawfully.

H.R. 1190 also designates specific brand "types" of firearms as "semiautomatic assault weapons." (Sec. 2(b).) Use of the term "type" duplicates the problems of "similarity" in design or function outlined above. Regardless of the effect of the term "type," firearms designated include semiautomatic versions of the Kalashnikov and the Uzi, the Ruger Mini 14 and the AR-15 Sporter. The first two are imports already approved by BATF as "generally recognized as particularly suitable for or readily adaptable to sporting purposes." The second two are domestic rifles widely used for hunting and competitive matches.

2. H.R. 1190 bans magazines

In addition to prohibiting the future sale of some semiautomatic firearms, H.R. 1190 bans magazines with a capacity of more than 10 rounds of ammunition. (Section 3.) This prohibition appears to allow for the "grandfathering" of currently possessed magazines -- with no future transfer -- but it provides for no registration procedure for lawful owners of magazines covered. Tens of millions of such magazines are lawfully owned by private citizens and would require the addition of a serial number to be registered with BATF if this provision is to be enforced. Absent such a procedure, prior ownership would be nearly impossible to prove.

II. PROHIBITION

H.R. 1190 places semiautomatic firearms designated by the Secretary as "semiautomatic assault weapons" under 18 U.S.C. 922(o), the machinegun "freeze." (Section 2(a).) Thus, only those semiautomatics currently possessed could be owned. No new semiautomatic firearms covered could be manufactured for sale to private citizens and those currently owned would be registered as machineguns. Additionally, H.R. 1190 places semiautomatic firearms so designated under the same transportation restrictions that apply to machineguns, i.e., any hunter or competitor wishing to take a semiautomatic rifle covered by the bill to an out-of-state hunt or competition would be required to receive authorization from the Secretary "consistent with public safety and necessity . . ." 18 U.S.C. 922(a) (4) (H.R. 1190, Section 2(c)).

III. REGISTRATION

H.R. 1190 appears to provide for the registration of currently-possessed firearms as machineguns under Title II of the 1968 Gun Control Act, Section 5841 of Title 26 U.S.C. (H.R. 1190, Sec. 4).

The requirements under Title II include a lengthy federal background check,

registration, restrictions on transportation, fingerprinting, and a sign-off by local law enforcement. That system processed less than 100,000 individuals over a 52-year span. Conservative estimates indicate more than 20 million firearms currently possessed, and their owners, would be put into this system if S. 386 or H.R. 1190 becomes law.

IV. CRIMINAL PENALTIES

H.R. 1190 provides for criminal misuse penalties commensurate with those provided for the criminal misuse of machineguns. (H.R. 1190 Sec. 2(c) (3).) For the law-abiding individual in possession of a firearm covered by the bill, the penalties for failure to register that firearm would be the same as for failure to register a machinegun, i.e., a ten-year prison sentence and a \$10,000 fine.

TOLL-FREE NUMBER FBI CRIMINAL RECORD CHECKS FOR SALES OF
FIREARMS BY DEALERS

AMENDMENT

§922 is amended to add the following new subsection:

"(q)(1) No licensed importer, licensed manufacturer, or licensed dealer shall sell or deliver from his inventory at his licensed premises any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, until he has:

(A) obtained the written consent of the potential buyer or transferee on a form provided by the Secretary, which shall include the name, birth date, gender, race, and social security number or other identification number of such potential buyer or transferee;

(B) requested, by means of a telephone call, the Federal Bureau of Investigation (FBI) to conduct a criminal history record check; and

(C) received a unique approval number for that inquiry from the FBI, and recorded the date and such number on the consent form.

(2) Upon receipt of a request for a criminal history record check, the FBI shall immediately, during the licensee's call or by return call, forthwith:

(A) review its criminal history records to determine if the potential buyer or transferee is prohibited from receipt or possession of a firearm pursuant to §922(g)(1) of this chapter;

(B) inform the licensee making the inquiry either (i) that its records demonstrate that the buyer or transferee is so prohibited, or (ii) provide the licensee with a unique approval number.

(3) In the event of electronic failure or similar emergency beyond the control of the FBI, the FBI shall immediately notify the licensee of the reason for, and estimated length of, such delay. After such notification, the FBI shall forthwith, and in no event later than the end of the next business day of the licensee, either (A) inform the requesting licensee if its records demonstrate that the buyer or transferee is prohibited from receipt or possession of a firearm pursuant to §922(g)(1) of this chapter, or (B) provide the licensee with a unique approval number. Unless notified by the end of said next business day that the buyer or transferee is so prohibited, and without regard to whether he has received a unique approval number, the licensee may complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

(4) (A) Any records containing any of the information set forth in subsection 1(A) of this section pertaining to a buyer or transferee who is not found to be prohibited from receipt or transfer of a firearm by reason of §922(g)(1) of this chapter which are created by the FBI to conduct the criminal history record check shall be confidential and may not be disclosed by the FBI or any officer or employee thereof to any person or to another agency. The FBI shall destroy any such records forthwith after the FBI communicates the corresponding approval number to the licensee and, in any event, such records shall be destroyed within 48 hours after the day of the receipt of the licensee's request.

(B) Notwithstanding the provisions of this subsection, the FBI may maintain a log of dates of requests for criminal history records checks and unique approval numbers corresponding to such dates for a period of not longer than one year.

(C) Nothing in this chapter shall be construed to allow the United States to maintain records containing the names of licensees who receive unique approval numbers or to maintain records of firearm transactions, including the names or other identification of licensees and purchasers, involving persons not prohibited by law from the receipt or possession of firearms.

(5) The FBI shall establish a toll-free telephone number which shall be operational seven days a week, twenty-four hours a day, for purposes of responding to inquiries as described in this section from licensed manufacturers, licensed importers, and licensed dealers. The FBI shall employ and train such personnel as are necessary expeditiously to administer the provisions of this section.

(6) Any person who is denied the right to receive or purchase a firearm as a result of the procedures established by this section may request amendment of the record pertaining to him pursuant to Title 5, U.S. Code, §552a. If the record as corrected demonstrates that such person is not prohibited from receipt or possession of a firearm by §922(g)(1) of this chapter, the FBI shall destroy any records it maintains which contain any information derived from the criminal history records check set forth in subsection (1)(A) of this section.

(7) It shall be unlawful for any licensed dealer, licensed manufacturer, or licensed importer willfully and intentionally to request criminal history record information under false pretenses, or willfully and intentionally to disseminate criminal history record information to any person other than the subject of such information.

(8) The FBI shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided pursuant to this section.

(9) This section shall become effective at such time as the FBI has notified all licensed importers, licensed manufacturers, and licensed dealers in writing that the procedures and toll-free number described in this section are operational, and published same in the Federal Register. This section shall remain in effect only during such times as the procedures described in subsection (2) of this section remain operational.

(10) A licensed importer, licensed manufacturer, or licensed dealer is not required to comply with the requirements of this section in the event of:

(A) unavailability of telephone service at the licensed premises due to:

- (i) the failure of the entity which provides telephone service in the state, region, or other geographical area in which the licensee is located to provide telephone service to the premises of the licensee due to the location of said premises, or;
- (ii) the interruption of telephone service by reason of hurricane, tornado, flood, natural disaster, or other act of God, or war, invasion, insurrection, riot, or other bona fide emergency, or other reason beyond the control of the licensee; or

(B) failure of the FBI reasonably to comply with the requirements of subsection (2) and (3) of this section.

(11) Compliance with the provisions of this chapter shall be a complete defense to any claim or cause of action under the laws of any state for liability for damages arising from the importation or manufacture, or the subsequent sale or transfer to any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, of any firearm which has been shipped or transported in interstate or foreign commerce.

§924(a)(2)(B) is amended to add after "subsection (m)" the words "or (p)".

A second new sentence to §927 as follows:

"Notwithstanding the provisions of this section, on such date as the procedures established by §922(q) become effective and thereafter, no provision of any law or any rule or regulation of a state or any political subdivision thereof shall require any person acquiring a firearm from a licensed dealer, licensed manufacturer, or licensed importer to be subject to a criminal history record check.

Explanation

This creates an "800" number for dealers to call before selling a firearm. The FBI does an immediate computer check and informs the dealer if a person is prohibited from possession of a firearm due to a criminal record. If the buyer has no felony record, the FBI gives the dealer a unique approval number, and the dealer may sell the firearm.

The dealer records the date of the sale and unique approval number in his permanent records. Since the approval number is unique, the dealer can establish his compliance with the law, and the FBI can verify that it released the approval number on a given date. Thus, an unscrupulous dealer would not be able to avoid getting FBI approval for the sale.

The remainder of the bill provides for the duties of purchasers, dealers, and the FBI; provides for emergency exceptions in the event of a natural or civil disaster; provides criminal penalties for violations; provides that compliance with the provisions preclude civil liability under state law for good faith sales; and precludes duplicative criminal history record checks under state or local law.

Death Penalty for
Murder of Law Enforcement Officer
With Machinegun in Drug Trafficking Offence

Add a new §1118 to Title 18, U.S. Code, as follows:

Whoever, during and in relation to a drug trafficking crime, commits murder in the first degree, as defined in §1111, Title 18, U.S. Code, with a machinegun which has been shipped or transported in interstate or foreign commerce, of a law enforcement officer of the United States or of any State or political subdivision thereof, shall suffer death unless the jury qualifies its verdict by adding thereto "without capital punishment," in which event he shall be sentenced to imprisonment for life.

Enhanced Penalties for Use of Large
Capacity Magazine/Semiautomatic in Crime

Amendment

Add to Sec. 924(c)(1) (first and second sentences), after "or is equipped with a firearm silencer or firearm muffler" the words: ", or with a box magazine loaded with, or capable of being loaded with, more than twenty cartridges,".

Alternative Amendment

Add to Sec. 924(c)(1) (first and second sentences), after "if the firearm is a machinegun" the words: "or a semiautomatic firearm"

Explanation

These amendments would provide mandatory sentences of ten years or, for a second offender, twenty years for use of firearms equipped with high capacity magazines (regardless of whether such magazines are fully loaded) and/or use of semiautomatic during and in relation to any crime of violence or drug trafficking crime.

Illegal Conversion of Machineguns
for Criminal Purposes

Amendment

Add a new Sec. 924(h): "Whoever willfully and knowingly converts a firearm into a weapon which shoots automatically more than one shot, without manual reloading, by a single function of the trigger, with the intention that such weapon be used during and in relation to, or to commit, a crime of violence, drug trafficking crime, or terrorism, shall be sentenced to

imprisonment for ten years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment. The term 'terrorism' has the meaning given such term in section 921(a)(22) of this chapter.

Explanation

This punishes machinegun conversions committed both by perpetrators of crime, and by unscrupulous manufacturers who supply machineguns to violent criminals, drug traffickers, and terrorists.

Definition of High Capacity
Magazines as Firearms

Amendments

Sec. 921(a)(3) is amended to add a new definition of "firearm" to include: "(C) any detachable box magazine manufactured after January 1, 1990 which is capable of being loaded with more than twenty cartridges for any such weapon;" [current "C" and "D" to be redesignated "D" and "E".]

Sec. 923(1) is amended to add a new sentence: "Licensed importers and licensed manufacturers may identify any firearm or firearms as defined in Sec. 921(a)(3)(C) by the same serial number engraved or cast on the receiver or frame of the weapon for which such firearm or firearms were designed and with which such firearm or firearms were intended to be distributed.

Sec. 923(g)(1)(A) is amended to add a new sentence following the first sentence: "The Secretary may not prescribe any regulation requiring that a separate record be maintained for a single importation, production, shipment, receipt, sale or other disposition of a firearm as defined in Sec. 921(a)(3)(A) or (B) when accompanied by a firearm or firearms as defined in Sec. 921(a)(3)(C) which are identified by the same serial number."

Sec. 924(a) is amended to add a new subsection (3): "Notwithstanding any other provisions of this subsection, whoever willfully violates any provision of this chapter involving a firearm as defined in Sec. 921(a)(3)(C) shall be fined not more than \$1,000, imprisoned not more than one year, or both."

Sec. 927 is amended to add the following: The current

section is amended to add before the current language: "(a) Except as provided in subsection (b),". A new provision is inserted as follows: "(b) No provision of any law or any rule or regulation of a State or any political subdivision thereof, may prohibit the manufacture, importation, distribution, sale, transportation or possession of a detachable box magazine for a firearm, or of a semiautomatic firearm: Provided that this subsection shall not apply to any such law, rule or regulation which applies to persons described in Sec. 922(g) of this chapter.

Explanation

This defines high capacity detachable magazines made after enactment as "firearms," allows the serial numbers thereof to be the same as the guns they are made and sold with (magazines sold separately would require unique serial numbers), and allows a single record for guns and accompanying magazines sold together. Violation of GCA provisions involving magazines (e.g., sale of a single magazine without recordkeeping) is a misdemeanor. Finally, the provisions would preempt any state ban on transfer or possession of semiautomatics other than as applied to felons and other prohibited persons, but would allow other state regulations such as waiting periods.

NATIONAL EMERGENCY CRIME REDUCTION ACT

THE PROBLEM

Over the past decade, Congress, state legislatures and local governments have made wholesale changes to laws prohibiting drug trafficking and use, mainly by increasing the lengths of prison sentences. Unfortunately, courts have been unable to use these new, longer, and in many cases supposedly mandatory, sentences, since we have not followed our tough rhetoric with sufficient action.

Simply put, our prisons -- federal and state -- are seriously overcrowded and cannot house additional prisoners.

(figures)

In turn, this has overburdened police, prosecutors and the courts, as criminals who should be behind bars are arrested over and over again in a never ending cycle.

(figures on re-arrests)

If we put criminals in jail the first time we get our hands on them, the police, the prosecutors and the courts will be free to concentrate on actually reducing the amount of crime.

REQUIREMENTS PLACED ON STATES

At the same time, states must work with us in attacking this emergency. Therefore, they would be required to adopt, if they haven't already, the tough federal criminal sanction of XX years and up to a \$XXXXXX fine for the use of a firearm in the commission of a crime.

Make no mistake, criminal use of firearms is increasing.

(figures)

In the 1988 Drug Bill, we included a new program aimed at stopping the sale of guns to criminals. As it now stands, even states and localities with waiting periods don't check criminal conviction records for all gun purchasers. Police are just too busy fighting crime.

The new program will require an on-the-spot check of all gun purchasers -- 100% of them. It will work much like the purchase of an item with a credit card. A machine now reads your credit card and tells the merchant if the card is real and if there is credit remaining.

Gun File

What we propose is to add biometric identification -- say a thumbprint or a magnetic strip with unalterable codes -- to all drivers licenses. There is a group already meeting on this. We make it a formal panel and tell them to give us a final plan within three months. States would then begin issuing new drivers licenses in one year, and change all licenses with four years.

As an aside, this new identification system will also aid police by allowing them to conduct instantaneous criminal checks through computers installed in squad cars.

States would also be required to transfer information on all felony convictions to the federal government, so it can be placed into this new computer system.

If the states want to house prisoners in the new prison facilities, this -- at a minimum -- is what we expect from them.

GUN PURCHASE INFORMATION

Additionally, we want to toughen the current system of purchasing firearms. Now, someone comes in off the streets, fills out a form and says "no" to eight questions, and then buys a firearm. Criminals simply lie on the form and walk out with the gun. Therefore, we will double the penalty for giving incorrect information along with following up with the computer check.

As well, we need to stop people like Patrick Purdy -- who has had several brushes with the law but no felonies -- from buying firearms. So, we add a new category. If you are convicted of a crime for which you can be given a six month prison term, you will not be allowed to purchase a firearm for the next five years. Stay clean, we'll restore the privilege. Stay in the shadowy corners of major crime -- you'll never get to legally purchase a firearm.

Then we bring the drug problem, and its related violence, home to those most responsible -- the drug user. The law now says if you are using illicit drugs, you cannot legally purchase a firearm. That is true if the drug is marijuana, crack cocaine or heroin. The trouble is that for most drug users, there is no easy check to determine if they are violating the law at the time of purchase. Therefore, we will change the law to say if you get convicted on any drug offense -- including simple possession, you lose your right to firearms.

While this may sound too strict, it is actually less stringent than current law, but should be far more effective in ending drug abuse, and its related violence.

Finally, the form also excludes those who have been "adjudicated mentally defective" and those who have ever been "committed to a mental institution" from buying a gun.

Most of the well publicized multiple murder cases involve an assailant who has had contact with the mental health profession. We will establish a task force of mental health, police, prosecutor and court professionals to review the standard and determine if there is a more effective way to screen out those who should be excluded from gun ownership due to a mental health condition.

NATIONAL EMERGENCY CRIME REDUCTION ACT

I. PRISON CONSTRUCTION

- A. Construction by the Federal government of regional prisons with a total cumulative capacity of at least 70,000 new beds.
- B. States and the U.S. Bureau of Prisons to pay costs of operation determined by prison population.
- C. Possible reduced "minimum standards" guidelines to reduce costs of prison construction and operation.
- D. Construction financed by specified asset sales and program terminations.

II. REQUIREMENTS PLACED ON STATES

- A. Mandatory minimum sentences (equal to or greater than the current federal statutes) for those convicted of using a firearm in the commission of crime.
- B. 1) Federal Task Force on standardized identification (already in place) required to issue uniform method for biometric identification within 3 months of enactment.

2) States required to begin using new identification for drivers licenses and state-issued non-drivers identification cards within one year and replace current drivers licenses and non-drivers identification cards within four years.
- C. Transfer of felony conviction records to proper federal authorities under schedule and in a manner determined by the U.S. Attorney General.
- D. Failure to adopt the above excludes a state from housing prisoners in new regional prison facilities.

III. CHANGES IN FORM 4473

- A. Double current penalty for writing false information on a Form 4473 to up to ten years imprisonment and up to \$10,000.
- B. New five year prohibition on purchasing firearms for those convicted of a crime punishable by a prison term of six months or more.
- C. Substitute "convicted of a drug offense" for "unlawful user of, or addicted to" marijuana, or a depressant, stimulant, or narcotic drug.

- D. Create Federal Task Force from mental health, police and court professions to create a new standard in lieu of current "adjudicated mentally defective or ... ever committed to a mental institution."

IV. ENHANCED FEDERAL PENALTIES, PROSECUTION AND DETENTION

- A. Reinstate general federal death penalty.
- B. Use of a firearm in a capital offense is to be automatically considered to be an aggravating circumstance.
- C. Penalty for smuggling an automatic firearm into the United States while engaged in drug trafficking will be life with no parole or death penalty.
- D. Reform federal bail statutes to give "safety of the community" and "prevention of crime" equal status with "assuring the appearance of the accused at trial" as a basis for granting bail and setting bond for persons previously convicted of specified crimes.
- E. Reform federal parole laws to give the sentencing judge veto power over release by the Parole Board of any person convicted of specified crimes of violence, and to require a hearing at which the victims may be heard.
- F. Exclusionary Rule.
- G. Habeas Corpus.

V. AMENDMENTS TO GUN CONTROL ACT

- A. New detachable box or drum magazines, for center fire rifles and pistols, having a capacity of up to 20 rounds of ammunition, to be classified as Title I "Firearms."
- B. New detachable box or drum magazines, for center fire rifles and pistols, having a capacity of 20 to 35 rounds of ammunition, to be classified as Title II "Any Other Weapons."
- C. All detachable box or drum magazines, for center fire rifles and pistols, having a capacity of over 35 rounds of ammunition, to be classified as Title II "Machine Guns," with notice to local police.
- D. All detachable box or drum magazines, for shotguns, having a capacity of over eight rounds of ammunition, to be classified as Title II "Machine Guns."
- E. Transfer of existing magazines subjects the magazine to classification.
- F. Continued exemption for military and law enforcement.

ENHANCED PENALTIES, PROSECUTION AND DETENTION

We have also reviewed problems associated with deterring crime, as well as convicting and holding on to criminals. While prisons will go a long way toward solving the crisis, more must be done.

First, we add a federal death penalty for the most heinous crimes. Just last year we enacted the death penalty for killings by drug lords. We must expand this ultimate sanction to crimes which are equally vile.

Along with it, we propose to make the use of a firearm in the commission of a capital crime an aggravating circumstance, something which must be found to exist before the death penalty can be imposed.

A real problem is about to explode, and we need to act now before it happens. Some of the fully-automatic firearms -- the machine guns -- that were left in Vietnam are now showing up in the possession of members of the Columbian drug cartels. These weapons have been seen in other areas -- particularly Central America -- and we don't need them here.

Therefore, anyone caught smuggling these weapons into the United States while trafficking drugs will be given life with no parole or death.

We will also change the federal bail law so that "safety of the community" and "prevention of crime" are given equal footing with "assuring the appearance of the accused at trial." There is simply too much crime being committed by individuals who have already been arrested of a crime. As we said earlier, if we have our hands on a hardened criminal, we ought to keep a hold on him.

As for early releases -- the Willie Horton cases -- we will finally allow sentencing judges to have a veto over the early release of violent criminals and require a hearing at which the victims may be heard.

Two matters that we have proposed before, but which were defeated in by efforts to protect the criminal, are also included. Currently, the Exclusionary Rule allows evidence which was obtained in good faith to be thrown out of court on technicalities. We simply cannot allow guilty, violent criminals to be set free on technicalities.

Finally, those convicted of crimes are clogging our court systems with a seemingly never ending series of appeals. Changes in the Habeas Corpus statutes will allow constitutionally protected rights of appeal, while prohibiting the large number of frivolous appeals now being filed.

AMENDMENTS TO GUN CONTROL ACT

This all brings us to what is on the minds of many Americans -- what about all of these military style assault weapons? A little demonstration is probably in order.

This firearm is a Ruger Mini-14 semi-automatic hunting rifle. As you can see, it has a walnut stock, a scope and a five-round box magazine. We think very few Americans favor banning this type of firearm.

On the other hand, there is alarming concern over this weapon. As you can see, it has a collapsable butt, plastic stock, a bi-pod support and a thirty-round banana clip. Many Americans want some controls on this type of weapon.

Unfortunately, this, too, is a Ruger Mini-14. It has had the walnut stock replaced with plastic and a supporting bi-pod simply screwed on. The only real difference is the five round magazine has been replaced with the thirty-round banana clip.

That, in a nutshell, is the difficulty in defining assault rifles. Yet it's that difference that we need to address.

We proposed regulating these magazines -- or clips -- for the first time. We want them treated as firearms, for they make one firearm change into something entirely different in a matter of seconds.

The proposal treats what we'll call "normal" detachable magazines as regular firearms. They well need to have a serial number stamped on them and purchasers will be run though the new computer system, just as if it were the whole firearm. Felons and others would be prevented from possession.

Banana clips, those holding twenty to thirty five rounds, would be classified the way automatic firearms -- machine guns -- use to be. A federal permit, total background check, fingerprinting and notification of the local police would all be required.

The mega-sized detachable magazines -- those over 35 rounds -- would be banned from further production, just as machine guns now are.

We are also concerned with a type of shotgun now being sold. It's called the "Street Sweeper." It has a shortened barrel and a detachable magazine that holds twelve shells. Again, this high number of rounds of ammunition is inconsistent with legitimate uses of firearms. Therefore, any shotgun magazine capable of holding in excess of eight shells will also be banned. Good bye Street Sweeper.