Testimony of Edward H. Levi, Attorney General, before the Committee on the Judiciary Subcommittee to Investigate Juvenile Delinquency, United States Senate, concerning handgun legislation.

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TESTIMONY

OF

EDWARD H. LEVI
ATTORNEY GENERAL

Before

the

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

cconcerning

HANDGUN LEGISLATION

JULY 22, 1975
I should like to present to the Committee today some proposals which we hope, if enacted, will help alleviate handgun abuse. Handguns are a part of the heritage of our nation, a heritage that has been noble, idealistic—and sometimes violent. Statistics show the role handguns play in contemporary urban violence. The statistics about urban violence provide the reason why many Americans have purchased handguns. To millions of people in this nation guns provide a measure of security, whether sometimes illusory or not, and have a psychological importance however unsuited handguns may be to our crowded urban environment.

It is sometimes argued that the only effective means of curbing handgun violence is the total elimination of the handgun. Yet even that sweeping approach has its practical problems; there is good reason to doubt that such a prohibition would gain widespread compliance. Moreover, to speak of eliminating handguns is to speak of depriving many Americans of what they believe is a basic right. This belief is widely and strongly held. In order properly to disregard to any extent these substantial feelings we should have a more compelling interest in mind. The compelling interest is that thousands of persons die or are permanently disabled each year by shots fired from handguns.

Some months ago the Department of Justice began an inquiry to try to find a solution to the problem of handgun abuse that would take into account the strongly held opinions that come into play whenever gun control legislation is mentioned. As a result,
representatives of more than a dozen organizations which have
taken a wide range of positions on the subject met with me and
others from the Department of Justice concerned with the problem.
We found a common concern for the dangers of handgun misuse and
a general disagreement on the means necessary to curb that abuse.
We learned a good deal from the discussions and have taken that
learning into account in helping to devise the Administration's
gun control proposals. Few of those with whom we spoke will be
wholly satisfied by the proposals because the very issue of gun
control inspires that kind of passion which has little patience
with any resolution short of an absolute.

The discussions inevitably included an analysis of the
strengths and weaknesses experience has revealed in the current
federal law regulating handguns. The most important component of
the federal legislative scheme is the gun control provisions en­
acted in 1968. That law requires that gun dealers be federally
licensed: It also requires that they keep records of their sales.
The existing legislation opens those records to inspection by
Treasury Department agents. It prohibits the importation of
cheap, highly concealable handguns commonly known as "Saturday
Night Specials." It generally prohibits dealers from knowingly
selling guns interstate and from knowingly selling guns to certain
classes of individuals such as convicted felons.
It also prohibits the dealer from selling or delivering guns where their purchase or possession would be in violation of any state law or published ordinance applicable at the place of sale, delivery or other disposition.

The 1968 Act has several flaws, and our proposals are intended to correct these. It must be admitted our proposals do not contain certain features many have felt are essential to a comprehensive handgun control program. National gun registration and licensing are considered by some to be important remedies; our Administration proposals do not provide for these. But our proposals are directed at solving the same problems registration and licensing are put forward to solve. We believe that registration and licensing, as usually understood and put forward, may be illusory in their expectations.

The provisions also contain no regionally triggered ban on the sale or possession of weapons. I mentioned as early as my confirmation hearings that I favored a regionalized approach to the handgun problem, one which would strike hardest in crowded urban areas where the problem was the greatest. Some months ago I fleshed out that concept somewhat in a speech on the subject of handguns in which I suggested that a regional trigger mechanism be discussed. What I had in mind was a mechanism which would put into effect strict federal handgun controls—a prohibition on possession outside the home or business, for example—when the crime rate in a given metropolitan area reached critical proportions. The idea, as we expected, was greeted with mixed response. The
chief problem was that the concept would have involved the federal government too closely in what is essentially a local law enforcement matter. U.S. Attorneys would have become involved in prosecuting what are essentially local street crimes and the federal presence would have significantly encroached upon local law enforcement. The practical problem is that the federal criminal justice system is not equipped to handle such an imposing caseload. Moreover, drawing the boundaries and devising a proper triggering level proved themselves to be very difficult to resolve and would have inevitably resulted in some conscious and unconscious gerrymandering. Finally, the controls envisioned under the trigger proposal did not deal directly enough with the problem federal law is most equipped to treat—general commerce in guns.

But our proposal involves a regional concept. It would provide additional enforcement in the nation's ten largest cities to attack the black market in handguns which provides the weapons for criminals. The Treasury's Alcohol, Tobacco, and Firearms investigative force will increase by approximately fifty percent with a total of 500 new agents assigned to these target cities and these agents would not have any other duties. This is a regional approach that centers the federal effort in places that need it the most. It avoids the problems that faced the triggering concept.

The legislation sponsored by this Administration operates on three broad fronts. The first is the elimination of the Saturday Night Special. This type of handgun is cheap, highly concealable,
inaccurate, and inherently dangerous both to the possessor and to the citizenry at large. Its value lies only in its ability to create fear and inflict physical injury. A substantial step was taken in the 1968 law when the importation of these weapons was banned. That step was not sufficient because while the law also banned importation of frames and receivers, it did not ban the importation of the other parts necessary to make Saturday Night Specials and did not ban their domestic assembly and manufacture.

The Administration's gun control proposal would ban the importation and domestic manufacture, assembly and sale of Saturday Night Specials. The major difficulty in banning the Saturday Night Special is defining what it is you are prohibiting. The proposal uses a factoring system similar with the one currently used by the Treasury in its importation ban to identify Saturday Night Specials. This system was developed by the Treasury in consultation with various groups interested in handguns. It has been modified in order to make the standards more objective and more effective.

The system requires that pistols have a manually operated safety and that their combined length and height must be at least ten inches with the height being at least four inches and the length at least six inches. Revolvers must pass a safety test to assure that they will not fire if dropped and must have a barrel at least four inches long in addition to a frame that is at least four and a half inches long. These minimum standards will assure that
handguns have basic safety features and reduced concealability. Handguns that meet these minimum standards must then achieve a point total with regard to certain features. Points are given for length beyond the minimum; the use of stronger materials in the frame construction; the weight of the weapon; and the existence of various items of miscellaneous equipment such as screw adjustable sights and target equipment. The purpose of these requirements is to assure that only safe and good quality handguns are available.

It is noteworthy that unlike the system promulgated in Treasury regulations under the 1968 Act, the factoring system in the Administration proposal is included within the statute. This assures that extensions of the standards cannot take place through administrative action but must have Congressional approval.

Guns that are disapproved under the factoring test may not be manufactured, assembled, imported, sold, transferred or shipped. Such weapons may, however, be shipped to gunsmiths so that they may be altered in such a way that they would not be Saturday Night Specials.

The potential effect of a ban on Saturday Night Specials is difficult to gauge. Since very small weapons are prohibited, the problem of concealability is reduced.
The second step in the proposal would serve to cut off the flow of handguns to purchasers who cannot legally possess handguns. It is important to remember that these added restrictions apply generally only to sale of handguns by dealers. Restrictions on private handgun transactions are limited to Saturday Night Specials and transactions by persons who purchase handguns with intent to resell them.

The 1968 Act prohibits sales by dealers to persons whose possession would be illegal under state law or published local ordinance applicable at the place of sale, delivery or other disposition. Despite this prohibition, many cities which have strict gun laws cannot make those laws work because gun stores in towns beyond the city limits sell handguns to city residents in total disregard of the city's laws. The 1968 provision prohibiting such sales has not been enforced. The Administration proposal is designed to make that provision more enforceable by requiring certain steps to be taken by dealers before selling handguns.

Under the 1968 Act dealers are required to obtain and file a written statement by the purchaser listing his identity and affirming that he is old enough and otherwise qualifies to own a handgun. But the 1968 Act does not require any more effort by dealers to determine whether a purchaser can legally own a handgun. Under the Administration proposal licensed handgun dealers would be required to take a series of steps to verify that the purchaser is legally entitled to possess a handgun. A dealer
could not sell to anyone who does not appear personally at the dealer's place of business. Mail order sales and purchases by "strawmen" who intend to sell or transfer handguns to third parties are restricted in order to insure that the identification procedures will not be circumvented.

At the dealer's office the buyer would have to fill out a form stating his name, his age, his residence, and the place where the handgun will be kept. This latter provision is to aid dealers in verifying that the ultimate disposition of the handgun, its possession in the place where it is actually to be possessed, is lawful. In addition, the buyer would have to state that he is not among the disqualified groups, for example, that he is not a former felon or presently being charged with a felony; that he is not a fugitive from justice nor a user of various types of drugs; that he is not an unlawful alien. The purchaser would be required to state that he does not intend to transfer the weapon to a person barred by any law from having the gun and that receipt of the gun by him will not violate any law applicable at the place where he intends to keep the handgun.

In order to facilitate further checking, the buyer would be required to supply the name of the chief law enforcement officer in the locality where he resides and in the place where the gun is to be kept and would be required to attach a copy of a permit if a permit is required under local law at the place where the gun is to be kept.
The purchaser would also be required to provide adequate identification in order to establish that he is who he says he is and that he lives where he says he lives.

The verification procedures required of the dealer require a waiting period of up to 14 days before the handgun may be turned over. The dealer would be required to check through the local police—who would run an FBI name check on the purchaser—to establish whether he has a record of felony convictions which would disqualify him from purchasing a handgun. When the dealer receives from local police the results of the criminal records check and a statement that the purchaser may possess a handgun in the locality where he intends to keep the weapon, he may complete the transaction provided that he has no reason to believe the purchaser contemplates an unlawful sale to a third party. If local police fail to respond within 14 days, the handgun may be delivered. I would hope and expect that local police would give full cooperation in this effort.

As in existing law, the records of handgun transactions are to be kept by the dealer. There would be no central registry.

The Administration proposal also contains two new criminal provisions designed to aid in the enforcement of federal and local handgun control laws. The first prohibits shipping handguns into or through a locality where the shipment would violate local law. This provision is similar to various other provisions in the federal criminal code and is designed to aid local law enforcement by stopping illegal shipments at the outset rather than having to wait
for their arrival and mass distribution.

The second new provision is one of particular importance. One recent study has shown that in a random sampling of handgun purchases some two to seven percent involved apparent violations of the law. Yet when multiple purchases by a single buyer were audited, the rate of apparent violations reached 58 percent. The Department of the Treasury has recently promulgated regulations requiring dealers to report multiple sales. This should provide an important law enforcement tool in tracing illegal handgun purchasers. The Administration proposal goes further. It would outlaw the sale of two or more handguns to one individual within one month. Only in rare instances is there any sound reason for the purchase of a large number of handguns. Exceptions would be made according to regulations established by the Secretary of the Treasury to allow for multiple sales and purchases for security agencies, through estate sales, to or from collectors and in similar special situations.

The third major aspect of the Administration proposal involves the tightening of various aspects of existing law including restrictions on granting dealers' licenses.

Part of the problem in the present proliferation of handguns is the ease by which one can become a dealer. The current dealer's license fee is $10.00. The restrictions are practically nonexistent. The likelihood of inspection, given the 150,000 existing dealers, is minimal. Many of these dealers wish simply to
sell ammunition as a service to their customers. Others serve hunters and marksmen, and their chief business interest is in long guns. Yet, there is only one class of license. The small grocery store for its $10 fee may sell all varieties of guns and ammunition. The revenue raised by these fees does not come near to covering the administrative costs nor the costs of adequate inspection. Current law does not even require that the licensee really be in the business of buying and selling guns. The more persons who hold dealer's licenses the more difficult it is to make routine checks of their sales records to determine whether they are complying with the law. The 1968 Act was never intended to be a voluntary licensing system for anyone willing to pay the price for the privilege of purchasing weapons from persons in another state. It was designed to require certain conduct by persons in the business of buying and selling handguns, and it was intended as a strict limitation on interstate sales. The Treasury Department advocated a change in the requirements for obtaining a dealer's license so that only a bona fide dealer can obtain one and these changes are incorporated in the Administration bill.

The proposed bill would establish various classes of licenses and fees ranging up to $500. The Secretary of the Treasury, prior to issuing a license, would determine the bona fide nature of the business, its capitalization, the owner's business experience and other relevant factors in order to establish that the licensee is really in the gun business. These restrictions are similar to those already in force with regard to alcoholic beverages.
It is hoped that these provisions will enable the Bureau of Alcohol, Tobacco, and Firearms to keep a closer watch on firearm dealers, particularly those who obtain licenses to deal in handguns.

In order to regulate dealers more effectively, the Secretary would be given wider enforcement powers. At present he is limited to revoking a license. Under the Administration proposal a civil penalty of up to $10,000 would be available depending on the gravity of the violation. Of course, the dealer restrictions and penalties would also provide for review of the administrative determinations so that arbitrary action may be avoided or corrected.

In addition to tightening dealership restrictions, the Administration proposals would alleviate a problem in enforcing the criminal provision of the current law. The 1968 Act made it unlawful for certain persons to receive, possess or transport any firearm "in commerce or affecting commerce." That provision was construed by the Supreme Court in United States v. Bass to require proof that, in each case, the illegal possession had some nexus with interstate commerce. In practice this means, for example, prosecutors who catch a convicted felon carrying a weapon must prove that he carried the weapon interstate before they can get a conviction under the federal law against possession. The consequence of this interpretation has been greatly to weaken the effectiveness of the law.
The only resolution to this problem is the legislative one. Our proposal omits the language found to be ambiguous and substitutes a Congressional finding that possession or receipt of firearms by the prohibited classes constitutes itself a burden on commerce in general thus obviating the need to establish the burden in each case. We believe that the rising rate of gun crime itself coupled with the potential danger involved in gun possession by persons within each of the proscribed classes more than justifies such a finding. A similar finding adopted with the existing loansharking law provided a basis for upholding the constitutionality of that law in the Supreme Court.

The Administration has also submitted an amendment to Senate bill 1, the criminal code reform bill, which would impose a mandatory sentence upon persons convicted of using a dangerous weapon--including a handgun--in the commission of a crime. In the Administration's gun control proposal there is also a change in the mandatory minimum provisions of current law. This provision is merely designed to strengthen current provisions pending the passage of a complete criminal code reform package.

Current federal law does impose a mandatory minimum sentence for federal felonies committed with a gun. The mandatory minimum term is set for one year for first offenses and two years for repeat offenses. The court, however, is given the discretion to suspend sentence altogether or to put the defendant on proba-
tion rather than send him to prison if the defendant is a first offender. Pending the passage of S.1, the Administration's handgun proposals would eliminate the possibility of probation or suspended sentence for first offenders convicted of using a gun in the commission of a crime.

The package which I have described is in substance the proposal of the Administration for handgun control. It is a proposal which has the potential of saving lives and making the streets of our cities and towns a little more habitable. It concentrates on illegal commerce in handguns, the commerce which has stymied local and state efforts to regulate. And it centers its new enforcement efforts on ten large metropolitan areas where the problem of handgun violence has reached crisis proportions.

We recognize that there are a number of bills before the Congress dealing with this subject and we recognize that they differ in detail and in substance. We believe, however, that this proposal is a sound and promising one, and that it is an important step which recognizes the problems to be solved and the interests to be protected.

I thank you for your time and your patience and I would be pleased to answer any questions you might have on this proposal.