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1976

A
WHITE PAPER
ON
HANDGUN CONTROLS

Senator Alexander J. Menza
(D. - Part of Union)

January 19, 1976

THE PAPER

ON

THE GOVERNMENT

Senator Alexander

(D. - Party of Oregon)

January - 19, 1911

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I. Introduction

The goal of all firearms control is both separating the legitimate from the illegitimate user of firearms and balancing the interests of legitimate firearm users against the social cost of the use of particular firearms which are often involved in violent acts.¹ Some commentators say that the compelling evidence of the widespread suffering that results from handgun abuse, based on data that shows the relationship between crime and handguns, would appear, in and of itself, to create a prima facie case for control of handguns in this country.* In fact, the issue does not seem to be handgun control at all but rather the concept and types of handgun controls which are effective, acceptable and should be adopted.

Generally, the following alternative methods for handgun control have been suggested in this country:

1. Enforcement (or stricter enforcement) of existing federal, state and local handgun control laws;
2. New federal, state and local curbs on the manufacture, sale and possession of handguns;
3. Banning the manufacture, sale and possession of handguns and ammunition except for certain legitimate uses;
4. Use of discretion in prosecuting accused persons and judicial initiative in sentencing defendants convicted of possessing or using a handgun in the commission of crimes;

*In New Jersey, a handgun is equivalent to a pistol or revolver, which is defined as "any firearm with an over-all length less than 26 inches, or a shotgun having a barrel or barrels of a length less than 18 inches, or a rifle having a barrel length less than 16 inches."
(N.J.S. 2A:151-1.)

5. Public education concerning the use and misuse of firearms;
6. Stricter regulation of the manufacturing and shipping process, particularly those interstate in nature;
7. Research and development of nonlethal weapons; and
8. A combination of the above mechanisms.

The purpose of this paper is to (1) present a picture of how many handguns there are in this country and their relationship to crime; (2) describe the pros and cons of handgun controls; (3) examine various types of controls that now exist or have been proposed, including federal, state and foreign laws, with an emphasis on the control of handguns in New Jersey; (4) discuss "Saturday Night Specials" and their relationship to handguns in general; and (5) compare arguments for the banning versus regulation of handguns.

I wish to acknowledge the research and editorial assistance provided by Dr. Peter P. Guzzo, Research Associate with the Division of Information and Research, Legislative Services Agency, in preparing this paper.

II. Firearm, Handgun and Criminal Statistics

Statistical evidence of the oversupply of all firearms, and handguns in particular, and the widespread suffering that results from handgun abuse in this country is well documented and readily available. For example, as of 1968 over 400,000,000 breech-loading firearms [i.e., receiving their ammunition at the rear of the bore] of all kinds have been made in, or imported into, the United States since 1875.² A more meaningful statistic for this paper is that there are projected to be no less than 40,000,000 handguns in circulation in the country today; approximately two and a half million handguns are added to that pool each year.³ In terms of the devastating effects handguns have in this country, approximately 10,000 Americans are killed by them in each year. In 1973 handguns were used in 53% of the 19,510 murders reported, and

in 1974 handguns were used in 54% of the 18,632 murders reported.⁴ Relatively speaking, while firearms were used in 67% of all murders nationally in 1973, handguns constituted 79% of these firearms.⁵ And from 1966 through 1973, handgun homicides tripled from 1,569 to 4,635, although total firearms assaults only doubled in the same period.⁶ Handguns are also used in one out of every three robberies, and are involved in one out of every four aggravated assaults.⁷ Professor Franklin E. Zimring of the University of Chicago Law School concluded (as of 1974) that handguns, while representing about 27% of the arsenal in this country, account for more than three-quarters of all criminal gun violence.⁸

Based on an extensive 1968 national survey on gun ownership and data on reported gun accidents and gun crimes, the National Commission on the Causes and Prevention of Violence (Eisenhower Commission) determined that the levels of firearm ownership vary significantly by geographic region, and that these regional variations correlate very closely with levels of firearm violence. Firearm ownership is highest in the South (59% of all households) and lowest in the East (33%). Ownership in the Midwest and West is close to the national average of 49%. The type of firearm owned also varies by region. Rifle ownership is highest in the West (36%) and the South (35%); shotguns are more frequently owned in the South (42%) and the Midwest (40%); and handgun ownership is highest in the West (29%) and lowest in the East (15%).⁹

During 1974 in New Jersey, firearms were used in approximately 46% of the murders reported in which the weapon was identified, and handguns alone accounted for 36% of all murders reported in the

state.¹⁰ While the 46% figure for firearms is the lowest firearm involvement in the last six years, handgun involvement in murders as a percentage of all firearms involved was 81%, up from 78% recorded in 1973.¹¹ Firearms were also used as a weapon in 16% of all atrocious assaults reported in 1974, the lowest firearm involvement for assaults recorded in the past six years.¹² However, what percentage of firearms were handguns was not reported.

The percentages for handgun involvement (both in absolute terms and as a percentage of all firearms involved) in crimes becomes greater when broken down for the large cities of this country. In 1969, it was reported that in large cities handguns were involved in 86% of all aggravated assaults, 92% of all homicides, and 96% of all robberies.¹³

III. The Pros and Cons of Handgun Control

A. Legitimate Uses of Handguns

In defense of firearms possession, firearm enthusiasts list four major legitimate uses of firearms: (1) hunting; (2) sport shooting; (3) collecting; and (4) self-defense. It is the contention of proponents of handgun control, however, that "none of these uses is sufficient to justify the unrestrained private possession of the handgun."¹⁴

In terms of sporting purposes, there is no question that handguns are used in target shooting, both as a pastime and in organized competition. And in recognition of this fact, most of the restrictive handgun control measures pending in Congress make an exception for legitimate target and marksmanship clubs.¹⁵ Ex-ceptions are also made for the collecting of handguns. As for

hunting, in a national sample of gun owners conducted in 1964, 95% mentioned hunting as a good reason for owning a rifle or shotgun, while only 16% cited hunting as a good reason for owning a handgun.¹⁶ Deputy Inspector Peter Maloney of the New York City Police Department, License Division, testified on July 25, 1975, before the United States Senate Subcommittee on Crime, Committee on the Judiciary, "that of some 28,747 pistol licenses in New York City (valid as of December 31, 1974), approximately 17 percent (N=4800) are for the purpose of target and competitive shooting. The New York City Police Department has also estimated that approximately 1,000,000 illegal handguns are in the city. Simple calculation supports the inference that the vast majority of handguns are probably not used for hunting or target shooting."¹⁷

Concerning the use of handguns for self-defense, available research data demonstrates that a handgun in the home more often increases the probability of homicide and serious injury resulting from domestic quarrels than it deters a robber or burglar. "The handgun is rarely an effective instrument for protecting the home against either the burglar or the robber because the former avoids confrontation, and the latter moves too swiftly."¹⁸ As the Eisenhower Commission concluded:

The low death rate of homeowners at the hands of home robbers and burglars and the limited opportunity homeowners have to defend themselves against such intruders suggests that having a loaded firearm in the house does not now, nor is it likely to, result in substantial saving of life in the home.... Possession of a gun undoubtedly provides a measure of comfort to a great many Americans; but for the homeowner this comfort is largely an illusion bought at the high price of increased accidents, homicides, and more widespread illegal use of guns.¹⁹

B. The "Wolfgang Substitution Hypothesis"

A practical argument is made that if handguns were banned or greatly restricted, people prone to commit violent acts would switch to knives or clubs. This is known as the "Wolfgang substitution hypothesis," named after its most prestigious proponent, Dr. Marvin Wolfgang of the University of Pennsylvania.²⁰ Professor Franklin E. Zimring of the University of Chicago Law School has attacked this hypothesis on the grounds that the "more ambiguous intention might well lead to the termination of an attack before lethal consequences ensue" were not handguns so readily available.²¹ Zimring also has assumed, for purposes of argument, the truth of Wolfgang's hypothesis, but concluded that a switch from handguns to knives and clubs, even if it did not cut down on the rate of violent attacks, would save lives because the death rate from these attacks is much lower than the rate from handgun attacks.²² He argues that the presence or absence of a handgun in the home or on the person is often a critical factor in the outcome of an argument or assault. "The public fear of stranger to stranger murders clouds the fact that such incidents are only one-third as frequent as killings among acquaintances of anger or passion."²³ According to FBI statistics for 1973, 71% of the murders in the United States fell within one of the following categories: spouse killing spouse, parent killing child, other family killings, and killings due to romantic triangle or lovers' quarrels, and other arguments among acquaintances.²⁴

C. The Constitutional Right to Bear Arms

Proponents and opponents of handgun control also differ over the meaning of the constitutional right(s) to bear arms. When the issue of the abolition of handguns is considered, the question

of whether such a ban is permissible under the Second Amendment to the U.S. Constitution arises. Opponents of an outright ban on handguns contend it would violate the Second Amendment, which reads: "A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed."²⁵ Repeated decisions of the United States Supreme Court--on four occasions (see United States v. Cruickshank, 92 U.S. 588 [1875], Presser v. Illinois, 116 U.S. 252 [1886], Miller v. Texas, 153 U.S. 535 [1894] and United States v. Miller, 397 U.S. 174 [1939])--have indicated that this is not a private, individual right; rather, the Second Amendment protects the collective right of the people to bear arms in a military capacity for the security of the state political framework and state sovereignty. To this end, state militias were maintained to prevent encroachment and oppression by the federal government.²⁶

In United States v. Cruickshank the Court ruled that:

... the 'bearing of arms, for a lawful purpose'
... is not a right granted by the Constitution
....The second amendment declares that it shall
not be infringed; but this, as has been seen,
means no more than it shall not be infringed by
Congress. This is one of the amendments that
has no other effect than to restrict the powers
of the national government....²⁷

The Federal Courts have also had to grapple with the question of whether firearms and weapons have a "reasonable relationship to the preservation and efficiency" of a well-regulated militia. As far back as 1842 it was decided that

[T]he [2nd] constitutional amendment...could not be said to guarantee the right to keep an automatic pistol in absence of evidence tending to show that the possession of the pistol at the time involved had some reasonable relationship to the preservation of efficiency of a well-regulated militia.²⁸

In United States v. Miller, it was held that a sawed-off shotgun did not have such "reasonable relationship," and that other handguns should be treated similarly.

In Cases v. United States in 1942 (131 F2d. 916) the Court "emphatically laid to rest" the "reasonable relationship" provision seized upon by gun proponents as implying that any weapon used or useable by the modern militia is beyond government regulation. The Court stated

to hold that the Second Amendment limits the federal government to regulations concerning only weapons which can be classified as antiques or curiosities, - almost any other might bear some reasonable relationship to the preservation or efficiency of a well-regulated militia unit of the present day, - is in effect to hold that the limitation of the Second Amendment is absolute.²⁹

The conclusion of proponents of handgun control is "that there is no reason to anticipate the Second Amendment forbidding handgun confiscation. The handgun, a weapon of at best marginal utility, would not, in all probability, satisfy the 'preservation or efficiency' standard of Miller."³⁰

In the absence of specific state constitutional authority to regulate arms, the authority for such regulation stems solely from the general police power, i.e., "the general authority of state governments to enact legislation protecting or promoting the public health, safety, morals or general welfare."³¹ The range of legislation permissible under the police power is restricted by the notion of reasonableness:

[B]oth the goals of legislation and the means chosen to achieve these goals must be reasonable in light of the public welfare. State legislation is rarely invalidated on this basis, however, since courts usually defer to the legislative determination of the public welfare and

presume the reasonableness of the means employed. In view of the limited uses and dangerous nature of firearms, even a law outlawing all possession would probably withstand the requirements of reasonableness. Thus states without arms provisions, disregarding all other constitutional constraints, appear free to enact any of the familiar forms of firearms legislation under the general police power.³²

At one extreme--as of 1970--"legislation banning all arms is forbidden in the twenty states whose constitutions definitely protect private possession, and a similar result is likely in states whose constitutions probably protect private possession."³³ While no state has yet limited the possession of handguns to police officers and security guards, small businesses in high crime areas, and others with a special need for self-protection, New Jersey, New York and Massachusetts have statutes which in practice might effectively forbid possession of handguns by all but a very small percentage of the population--which by liberal interpretation might allow the licensing authority to ban handguns.

D. Policy Positions on Handgun Control

(1) Handgun Recommendations of National Commissions Dealing With Guns and Violence Since 1966.

(a) National Commission on the Reform of Federal Criminal Laws (Created by Public Law 89-801 of 1966).

The staff report of the Commission on "Firearms and Violence in American Life" concluded that the only way to reduce gun violence is to reduce sharply the number of handguns in civilian hands in this country. It called for the establishment of minimum standards for state firearms control systems, a national standard for handgun licensing, a safety test for handgun owners, strict regulation of firearms dealers, establishment of a notification system to record stolen or lost handguns, and a system of periodic auditing of licensed handgun owners. The Report also recommended a federally financed program to purchase handguns from private citizens and to grant

amnesty to persons handing in illegally-owned handguns.

(b) National Commission on the Causes and Prevention of Violence (Established through Executive Order #11412 on June 10, 1968).

The majority of Commissioners recommended that Congress ban the production and possession of and trafficking in handguns with exceptions only for military, police and similar official activities; and require registration of all firearms. (Note: A substantial body of opinion of this Commission opposed any Federal involvement in firearms control beyond that embodied in existing legislation.)

(c) National Advisory Commission on Criminal Justice Standards and Goals (Appointed by the Administrator of the LEAA on October 20, 1971).

The Commission recommended that existing Federal, state, and local laws relating to handguns be strenuously enforced. It further recommended that states undertake publicity campaigns to educate the public fully about laws regulating the private possession of handguns; the enactment of state legislation providing for an extended prison term with a maximum term of 25 years for committing a felony while in possession of a handgun; the enactment of state legislation providing for police discretion in stop-and-frisk searches of persons and searches of automobiles for illegal handguns; the enactment of state legislation prohibiting the manufacture of handguns, their parts, and ammunition; the enactment of state legislation prohibiting the sale of handguns, their parts, and ammunition to other than law enforcement agencies or Federal or state governments for military purposes; the enactment of State legislation establishing and funding a state agency authorized to purchase all voluntarily surrendered handguns, and further authorized to register and modify handguns to be retailed by private citizens as curios, museum pieces,

or collector's items; and the enactment of state legislation not later than January 1, 1973, prohibiting the private possession of handguns after that date.

(2) Handgun Recommendations of Five Key Law Enforcement Officials.

In October of 1975 five key law enforcement officials pled with members of the United States Senate Committee on Government Operations to enact the strictest sort of federal controls on handguns. The men involved are in charge of police in Los Angeles County, Boston, Atlanta, Newark and San Antonio. They all stressed the growing number of violent crimes committed with a handgun--and how much deadlier handguns are than any other possible weapon.³⁴ Handguns, asserted Boston Police Commissioner Robert di Grazia, are "the main source of violent crime.... The handgun is used for nothing except to kill people."³⁵ In addition, Los Angeles County Sheriff Peter Pitchless stated that for every robber stopped by an armed homeowner or storeowner, "four homeowners or members of their family suffer death in a gun accident."³⁶ Atlanta's Commissioner of Public Safety, A. Reginald Eaves, said three-fourths of the 161 handgun homicides in his city last year were motivated by "anger and drunken argument, jealousy and revenge--three out of four deaths which I believe could have been prevented, were a handgun not available."³⁷

Hubert Williams, Police Director of Newark, pointed out that handguns are not only being used in more crimes, but escalate the damage caused in those crimes, and "an even more ominous trend-- is the rapid increase in gun violence by juveniles."³⁸ In 1974, he reported, one-fourth of Newark's 75 gun homicides were charged to youths between 12 and 18 years of age.³⁹

Police Chief E. E. Peters reported that during the first eight months of 1975, San Antonio had 92 murders, including 60 committed with handguns. Despite state and local laws against carrying firearms, the city has had 595 robberies and 419 assaults with guns.⁴⁰

"Unanimously," the five men found state and local laws incapable of doing the job, since "guns don't observe state boundaries" but flow easily from one place to another. Four of the five urged a federal law "outlawing handgun ownership for all but police and military personnel, arguing that more registration would be ineffective and a waste of time." Mr. Peters endorsed either registration or outlawing handguns.⁴¹

(3) Public Response to the Registration of Firearms and Banning the Possession of Handguns, Gallup Survey (released June 4, 1975).⁴²

Registration of Firearms

	Favor Registration	Oppose Registration	No Opinion
Nationwide	67%	27%	6%
Men	61	33	6
Women	72	22	6
College background	73	22	5
High school	68	27	5
Grade school	57	33	10
East	74	20	6
Midwest	64	31	5
South	66	28	6
West	63	33	4

Banning the Possession of Handguns

	Should be Law Forbidding Possession	Should Not be	No Opinion
Nationwide	41%	55%	4%
East	58	37	5
Midwest	44	53	3
South	27	69	4
West	29	65	6
City size:			
1 million & over	66	29	5
500,000-999,999	44	53	3
50,000-499,999	40	55	5
2,500-49,999	36	58	6
Under 2,500	28	69	3
Men	35	62	3
Women	46	49	5
College background	49	47	4
High school	39	57	4
Grade school	36	59	5
Gunowners	24	74	2
Non-gunowners	54	40	6

IV. Major Federal Efforts at Firearm Controls

A. Existing Laws

Until 1968 the two basic federal statutes regulating the manufacture and distribution of firearms were the Firearms Act of 1934⁴³ and the Federal Firearms Act of 1938.⁴⁴ Both of these laws were tailored to curb the excesses of the criminal gangsters of the

1920s and 1930s. The 1934 Act was specifically directed at machine guns, sawed-off shotguns, destructive devices (bombs, rockets, etc.), and silencers (concealable firearms other than pistols or revolvers were also included). A fine of up to \$200.00 was levied on the manufacture or transfer of each such weapon. The Act also required disclosure of the production and distribution from manufacturer to eventual buyer, and provided maximum penalties for violations of a \$2,000.00 fine, 5 years in prison, or both.

The 1938 Act was specifically directed at certain classes of individuals deemed unfit for firearms possession. The thrust of the Act was to require the licensing of all firearms manufacturers and dealers who used interstate commerce. Firearms could not be sent in interstate commerce to those convicted or indicted for crimes punishable by more than a term of one year in prison, to fugitives from justice, or to anyone who did not have a license to purchase if one was required by state law. The interstate shipment of stolen firearms or firearms with altered or obliterated serial numbers was prohibited.

The Gun Control Act of 1968⁴⁵ was basically directed at "the twin abuses of the mailorder sale of handguns, and the glut of cheap foreign handguns that had been literally flooding the American market."⁴⁶ Specifically, the Act prohibited interstate mailorder handgun sales; forbade the possession of handguns by convicted felons and other dangerous classes; banned the importation of the cheap handguns generically known as "Saturday Night Specials"; and extended the 1934 Act's provisions to include the so-called "destructive devices" (bombs, grenades, etc.) then in vogue with fanatical radicals.

The 1968 Act was hailed as a laudable attempt to bring the handgun under stricter control, but in practice this has been judged to be far from the case because of conceptual flaws and

loopholes. One commentator has concluded that the act, "although well-intentioned and widely heralded as a major step forward, is a sadly inadequate compromise law, one riddled with as many holes as a marksman's target."⁴⁷ The National Commission on the Causes and Prevention of Violence concluded that "the 1968 Act is not designed to affect either the overall size of the tremendous United States gun population---or the hand-to-hand or 'street' sales of second-hand guns."⁴⁸

Specific defects of the 1968 Gun Control Act are said to be that:⁴⁹

- (1) Credentials are easily contrived to buy a gun in a neighboring state, since no verification of personal data is required in jurisdictions other than those requiring licenses.
- (2) Only initial purchases of handguns are regulated; nothing in the Act controls handgun ownership and use or the sale of handgun ammunition, or intermediate sales.
- (3) Although the Act states that no one may import a firearm unless he satisfies the Secretary of the Treasury that it is "particularly suitable for or readily adoptable to sporting purposes" and is not a surplus military firearm, this restrictive test has not inhibited an increasing flow of foreign weapons into this country during recent years.

HANDGUN IMPORTS, BY YEAR
(1970 - 1974)⁵⁰

Year	Number of Handguns Imported
1970	279,537
1971	357,170
1972	439,883
1973	247,251
1974	408,485

To avoid the restrictions on handgun importation, a number of companies turned to the importation of handgun parts,

a commodity not controlled by the law. The following is a breakdown of Treasury Department estimates on the number of handguns produced from imported parts each year from 1970 to 1974:

HANDGUNS MADE FROM IMPORTED PARTS, BY YEAR
(1970 - 1974)⁵¹

Year	Handguns Made From Imported Parts
1970	922,400
1971	1,421,700
1972	1,220,200
1973	772,000
1974	687,000

However, "due in large part to the elimination of competition from foreign markets, domestic manufacture of handguns has risen steadily since 1968, ---":

ESTIMATED DOMESTIC PRODUCTION OF HANDGUNS
FOR CIVILIAN USE BY YEAR,
(1964 - 1973)⁵²

1964	491,073	1969	1,367,300
1965	666,394	1970	1,393,690
1966	699,798	1971	1,420,692
1967	926,404	1972	1,667,000
1968	1,259,356	1973	1,609,000

According to Rex Davis, Director of the United States Bureau of Alcohol, Tobacco, and Firearms, who appeared before the United States Senate Subcommittee on Crime, Committee on the Judiciary, on March 20, 1975, of the 1.89 million handguns produced in the United States in 1974, "54% would have failed the sporting test for importation."⁵³

B. Representative Legislation Pending in the 94th Congress⁵⁴

H.R. 40

"Handgun Control Act of 1975"
Sponsor-Jonathan Bingham (N.Y.)

Prohibits the importation, manufacture, sale, purchase, transfer, receipt, possession or transportation of handguns and handgun ammunition except for the military, law enforcement officials, licensed pistol clubs, licensed security guards, or handguns manufactured before 1890 which are not restorable to firing condition; and/or handguns intended for museum or collector use.

H.R. 267

Sponsor-Edward P. Boland (Mass.)

Prohibits the sale of "Saturday Night Special" handguns in the United States.

Bill sets very specific criteria for defining Saturday Night Special, including melting point (less than 1,000 F), tensile strength (less than 55,000 pounds per square inch), and density of powered metal (less than 7.5 grams per cubic centimeter).

H.R. 626

Sponsor-Robert McClory (Illinois)

Bill provides for the systematic registration of handguns.

S 2153

Sponsors-Jacob Javits (R-N.Y.) and Charles Percy (R-Ill)

A comprehensive approach to gun control, calling for a ban on possession, sale or use of handguns in areas experiencing acute violent crime, banning multiple sale of handguns to any one person, and prohibiting manufacture or importation of Saturday Night Specials, which are defined in the legislation as having a barrel length of less than 10 inches. The bill would also transfer enforcement of the 1968 Gun Control Act from Treasury to the Justice Department.

H.R. 638

"Handgun Crime Control Act of 1975"
Sponsor-Abner Mikva (Illinois)

Prohibits the importation, manufacture, sale, purchase, transfer, receipt, or transportation of handguns except for the military, law enforcement officials, licensed importers, manufacturers, dealers and pistol clubs.

[H.R. 638 and H.R. 40 are very similar pieces of legislation. Please note, however, that H.R. 638 does not ban possession of handguns, does not provide for security guards and makes no provision for licensed pistol clubs to store handguns at a police facility. H.R. 638 tightens the time element for awarding of club license from 60 days in H.R. 40 to 45 days in H.R. 638. H.R. 638 places no restriction on handgun ammunition.]

H.R. 2313

"Handgun Control Act of 1975"
Sponsor-Walter Fauntroy (District of Columbia)

Prohibits the importation, manufacture, sale, purchase, transfer, receipt, transportation and ownership of handguns and handgun ammunition except for the military, law enforcement officials, licensed pistol clubs, licensed security guards.

[Almost identical to H.R. 40, with the following modifications: H.R. 2313 uses a tax credit of \$25 or fair market value of handgun instead of cash refund for handgun; pistol club licenses are issued for three year period with Secretary setting licensing fee; and the bill does not specifically exempt collector or museum type handguns from prohibitions cited.]

H.R. 2433

Sponsor-Robert Drinan (Mass.)

Provides for the licensing and registration of all firearms, and establishes a special criteria used for approved pistols involving a point system (total of 75 points necessary) including the following criteria: (a) length, (b) frame construction, (c) pistol weight, (d) caliber, (e) safety features, etc. Approved revolvers use similar criteria and need 45 points under system to be approved.

FEDERAL LEGISLATION INTRODUCED TO INCREASE
PENALTIES FOR CRIMES COMMITTED WITH A FIREARM

H.R. 452-Flynt	H.R. 4760-Fish et al.
H.R. 465-Fuqua	H.R. 4851-Findley
H.R. 486-Heckler	H.R. 4890-Roybal
H.R. 510-Hillis	H.R. 4894-Casey
H.R. 524-Holt	H.R. 5237-Cohen
H.R. 1136-Waggonner	H.R. 5292-Kemp
H.R. 2075-Young (Fla.)	H.R. 5379-Danielson
H.R. 3223-Edwards (Ala.)	H.R. 5538-Russo
H.R. 3325-McDonald	H.R. 5561-Casey et al.
H.R. 3627-Collins	H.R. 5638-Russo
H.R. 3757-Casey	H.R. 5672-Anderson (Cal.)
H.R. 3772-Dingell	H.R. 5734-Miller (Ohio)
H.R. 3882-Risenhoover	H.R. 5889-Russo
H.R. 4011-Serbelius	H.R. 6056-Beard (Tenn.)
H.R. 4310-Michel	H.R. 6242-Moore
H.R. 4281-Crane	H.R. 6419-Rinaldo
H.R. 4361-Anderson (Cal.)	H.R. 6888-Railsback
H.R. 4633-Mathis	H.R. 6925-Traxler
H.R. 4653-Mazzoli	
H.R. 4758-Fish et al.	S. 142-McClure, Fannin, Garn
H.R. 4759-Fish et al.	S. 216-Domenici

FEDERAL LEGISLATION INTRODUCED SEEKING TO RESTRICT
AMMUNITION JURISDICTION OF CONSUMER PRODUCT
SAFETY COMMISSION

H.R. 1087-Symms	H.R. 5076-Foley
H.R. 2217-Johnson (Penn.)	H.R. 5186-Symms et al.
H.R. 2598-Mathis	H.R. 5779-Miller (Ohio)
H.R. 2897-Ketchum	H.R. 5781-Myers (Penn.)
H.R. 3110-McEwen (N.Y.)	H.R. 6075-Shipley
H.R. 3607-Roncalio	S. 143-McClure, Goldwater, Hansen, McGee
H.R. 3633-Fish	S. 1007-Dole
H.R. 3844-Gaydos	S. 1471-Roth
H.R. 4200-Lujan	

V. State Gun Control Laws

In the absence of specific constitutional authorization to regulate firearms, the authority for such regulation stems solely from the general police power.⁵⁵ The term "police power" refers to the general authority of state governments to enact legislation protecting or promoting the public health, safety, morals or general welfare.⁵⁶ The range of legislation permissible under the police power "is restricted by the notion of reasonableness; both the goals of legislation and the means chosen to achieve these goals must be reasonable in light of the public welfare."⁵⁷ In view of the limited uses and dangerous nature of firearms, "even a law outlawing all possession would probably withstand the requirements of reasonableness."⁵⁸ Since no state has yet wholly outlawed firearms, no holdings to this effect exist. But there are some indications that "such a statute would withstand attack in a state without a constitutional guarantee."⁵⁹ Thus, "states without arms

provisions, disregarding all other constitutional constraints [due process, equal protection, self-incrimination, and the Second Amendment to the United States Constitution], appear to be free to enact any of the familiar forms of firearms legislation under the general police power."⁶⁰

At present there are more than 20,000 state and local gun laws and ordinances in this country.⁶¹ State laws governing the purchase and possession of firearms vary widely. Among the more stringent laws are the Massachusetts law [the Bartley-Fox Act], which requires that a person who carries a gun outside his home must have a license to do so. Anyone who is convicted of carrying a gun without a license is given a mandatory sentence of one year in jail.

However, the first study of the tough Massachusetts gun law reveals that it has had little effect in its first six months. According to Boston Police Department figures, the number of reported murders, robberies, and assaults committed with a handgun from April, 1975, when the law was implemented, through September of 1975 is about the same as the number in the same period last year. Twenty-six of 61 murders were committed with a handgun in that period in 1975 compared with 26 of 59 in 1974. Armed robberies decreased slightly from 953 to 939, and assaults with guns decreased from 313 to 261, drops that police officials say are too small to be significant or attributable to any one factor.⁶² In addition, the law is now being challenged because its mandatory provisions are said to be

unconstitutional, i.e., the mandatory sentence violates the power of the state judiciary, is "cruel and unusual punishment" for simply not getting a license, and violates the defendant's protection under due process of law by not requiring proof of criminal intent.

The following is a compilation of state laws to control handguns by method of control:⁶³

a. License Required to Sell Handguns at Retail: Alabama, California, Connecticut, Delaware, Georgia, Hawaii, Indiana, Iowa, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, North Dakota (local option), Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia (certain counties), Washington, West Virginia. Also the District of Columbia.

b. Ban on the Assembly of Handguns With Imported Parts: Florida (1972 law declared unconstitutional by the Florida Supreme Court in March, 1973).

c. Registration of Firearms: Hawaii and Mississippi (handguns and certain other firearms), Michigan (handgun safety inspection), New York (license to possess a handgun). Also the District of Columbia (all firearms).

d. License Required to Carry a Handgun on or About the Person:
Concealed: Alabama, California, Colorado, Delaware, Idaho, Iowa, Maine, Michigan, Montana, Nevada, New Hampshire (loaded), Oregon, Pennsylvania, South Dakota, Utah, Virginia, Washington, Wyoming.

Concealed or Openly: Connecticut, Florida, Hawaii, Indiana, Maryland, Massachusetts, New Jersey, New York, North Dakota, Rhode Island, West Virginia. Also the District of Columbia.

Openly only (carrying a concealed weapon prohibited):

Georgia.

e. Prohibition of the Carrying of a Handgun on the Person

(and no provision for a license to carry):

Concealed: Alaska, Arizona, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico (loaded), North Carolina, Oklahoma, Wisconsin.

Concealed or openly: Arkansas (as a weapon), South Carolina, Tennessee (with the intent to go armed), Texas.

With the intent to injure: Minnesota, Vermont.

f. License Required to Carry a Handgun in a Vehicle:

Concealed: California, Idaho, Oregon.

Concealed or Openly: Alabama, Connecticut, Hawaii, Indiana, Iowa, Maryland, Massachusetts, Michigan, New Hampshire (loaded), New Jersey, New York North Dakota, Pennsylvania, Rhode Island, South Dakota, Washington (loaded).

g. Permit Required (or equivalent) to Purchase a Handgun:

Hawaii, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Virginia (certain counties).

h. Waiting Period Between Purchase and Delivery of a Handgun:

Alabama, California, Connecticut, Illinois (any firearm), Indiana, Maryland, New Jersey, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Washington. Also the District of Columbia.

i. Ban On the Sale of "Saturday Specials": Illinois and South Carolina.

By and large, the vast majority of criminal activity is concentrated in urban centers, where armed violence is a major

problem. Since outside these centers there is little demand for additional firearms regulation, one commentator on gun control laws believes

that stringent firearms legislation should originate at the state or local level, to permit the imposition of controls to suit the particular needs of the jurisdictions involved, without subjecting those areas and people not experiencing the problems to the same strenuous controls.⁶⁴

VI. New Jersey Gun Control Laws

New Jersey handgun statutes require (1) a license to carry a handgun on or about person, concealed or openly; (2) a license to carry a handgun in a vehicle, concealed or openly; (3) a permit to purchase a handgun; and (4) a waiting period between purchase and delivery of a handgun. New Jersey statutes do not require the registration of firearms as a prerequisite for legal possession although the registration of firearms by the firearms dealer at the time of the purchase is required.

Proposed legislation in New Jersey in the 1974-1975 Legislative Session concerning handguns would require affirmative proof of ability to safely handle handguns as a condition precedent to purchase;⁶⁵ establish a procedure whereby police officers may confiscate handguns from an individual carrying such weapons if they believe the person, by virtue of some physical or mental characteristic, is a threat to himself or others;⁶⁶ encourage the voluntary surrender of firearms, with immunity from prosecution for possession of the

firearms surrendered;⁶⁷ provide for mandatory minimum penalties for the illegal possession, sale, or use of firearms;⁶⁸ and require that any person who commits a serious offense while armed with a firearm or other dangerous weapon must serve the minimum of the sentence imposed for such offense before being eligible for parole.⁶⁹

[N.J.S. 2A:151-5 now imposes an additional sentence in addition to the punishment provided for the crime on anyone committing or attempting to commit an assault, robbery, larceny, burglary, breaking and entering, rape, murder, mayhem, arson, abduction, extortion, kidnapping, sodomy or treason, or who is a fugitive from justice, when armed with or having in his possession any firearm, whether or not capable of being discharged or dangerous instrument of any kind]

A proposal to ban the manufacture, sale or disposition of handguns known as "Saturday night specials" (Assembly Bill No. 1091 of 1974) was conditionally vetoed by the governor for "technical" reasons, on December 15, 1975.

After the assassination of President John F. Kennedy in November, 1963, hundreds of firearms bills were introduced in state legislatures, but only one such bill had passed by 1966. In that year New Jersey adopted its gun control law requiring a permit to buy a handgun and a purchaser's I.D. card to buy a rifle or shotgun. For both the permit and the I.D. card the buyer has to submit his fingerprints to a police check. While these provisions may sound like very ordinary precautions now, New Jersey was the first state to pass such gun control laws in the three years after President Kennedy's assassination.

VII. Foreign Gun Control Laws

Despite evidence that this country has the greatest number of handguns of any nation in the world and the highest rate of handgun homicides, the United States remains one of the last nations with largely unrestricted gun ownership. Most foreign jurisdictions administer stronger control mechanisms, as the following sampling of countries indicates:⁷⁰

Great Britain requires a certificate of competence from police to buy or own a gun.

In France, all guns must be registered and owners undergo an intensive investigation before licensing.

The Netherlands requires a permit for all firearms.

Australia requires a license to possess or carry or the registration of all firearms, or both in many cases.

Japan restricts private ownership of firearms entirely.

Twenty-nine European countries require either a license to carry a firearm or registration of the ownership or sale of each privately owned firearm, or both in many circumstances.

Five European countries prohibit the private possession of handguns.

In North and South America, 15 countries require a license to possess or carry a firearm or registration of all firearms, or both under certain circumstances.

In Asia, 20 countries require a license to possess or carry or the registration of all firearms, or both under certain circumstances.

In Africa, 25 countries require registration of the ownership or sale of firearms.

In Brazil, France, Italy, and elsewhere

the trend is toward more restrictions on who can own firearms and how and when they can be used. Some governments report that restrictions reduce crime.⁷¹

VIII. The "Saturday Night Special"

The term "Saturday Night Special" (SNS) became popular in Detroit to describe the numerous cheap, flimsy, and frequently unreliable handguns that were purchased in the late sixties and early seventies to "satisfy the passions of Saturday Night."⁷² However, the term SNS does not have a fixed meaning other than denoting a caste gun--even though various measures of price, size, barrel length, metallurgical construct, and caliber have been proposed. The caliber does not necessarily denote a SNS; .38s can be SNSs if they are "junky" enough. But most SNSs are .22s or .25s or at most .32s. While cheapness and shoddiness are considered great evils, concealability is not reduced by banning SNSs.

The only characteristic that could justifiably subject the SNS to banishment would be its menacing qualities. But as a matter of fact, there is no definite proof that the special is more of a threat to society than a gun of superior quality.

Many proponents of handgun controls have claimed that as much as 70% of violent crimes nationwide involve SNSs, drawing upon data from the United States Department of Treasury's Bureau of Alcohol, Tobacco, and Firearms. The bureau's figure is based upon a survey in four cities which utilized an arbitrary definition of SNSs as "guns which cost less than \$50.00, had a barrel length of three inches or less, and of .32 caliber or less."⁷³ One criticism of this study was made by Congressman Michael Harrington of Massachusetts, who pointed out that the bureau actually classified a handgun as a SNS even if it met only one of the three criteria, i.e., cost less than \$50.00, had a barrel length of three inches or less, and was a .32 caliber or less.⁷⁴ Harrington concluded that

by portraying SNSs as greater factors in crime than is actually the case, the bureau's study encourages "the false belief that legislation banning the Special would substantially cut back on the number of weapons used by criminals."⁷⁵

This position was also taken by Patrick V. Murphy, New York City's Police Commissioner, when he appeared before the Senate Juvenile Delinquency Subcommittee in September of 1971 to testify about the dangers of the SNS. In the course of his testimony he stated that

---Saturday Night Specials are only one part of the handgun problem, and by no means the most significant part. Most of the guns we seized are quality weapons manufactured by reputable foreign and domestic companies ---.⁷⁶

It has been asserted by some commentators that most of the handguns in this country are the quality jobs and will still be around and just as dangerous 50 years from now unless they are bought up (or confiscated) and melted.⁷⁷ Proponents of banning all handguns contend that for this reason a bill prohibiting only SNSs would have little effect on crime, because criminals would simply buy (or rob) larger, more durable and more expensive handguns.

IX. Banning versus Regulation of Handguns

The banning of handguns presupposes two critical assumptions:

(1) current laws have failed to control the intolerable use of handguns; and (2) lesser legal measures than abolition would not work. Proponents of banning handguns take the position that the possession of handguns should be barred except for police officials and other authorized people, and then try to find out how to seize them in the days ahead.

Experience shows that collecting arms via surrender in periods of amnesty or by the government purchasing privately owned guns can work to some extent; at least psychologically it is soothing. In addition, proponents of handgun abolition assert that the government would undoubtedly spend less money buying banned handguns at market value than it would spend in trying to continuously administer an effective control system. But the recorded successes have usually been temporary and have usually been in simpler, more contained societies. Short of voluntary methods, however, the government would have to remove all handguns by methods that might offend constitutional rights, e.g., stop-and-frisk and entering and searching homes for weapons without probable cause and a warrant to do so.

Even if handguns were banned, "drying up" the reservoir of guns in private hands would be a tedious endeavor. Senator Philip Hart claims that "success would depend heavily on citizen appreciation of the fact that handguns are an unacceptable element in our society."⁷⁸

Proponents of banning handguns also claim that if 20,000 state and local gun laws and regulations have failed, why would any more help. Similarly, it is argued, what good would a uniform federal registration and licensing statute do if the wide-spread present availability of handguns was allowed to continue?

Opponents of an outright ban on handguns contend that some statistics indicate that existing guns laws do, in fact, reduce crime. For example, in 1968---

Texas, without gun control laws, recorded the highest number of homicides - (5,104) - of which 70% were gun deaths. This compared with more populous New York State which, with the country's most stringent firearms controls, had 4,835 murders, of which 34.9% were the use of guns----. Statistics for cities are comparable. Boston and New York City report 2.8 and 6.1 murders respectively, while Atlanta - in Georgia, a state with few gun controls - and Dallas have 11.5 and 10.3 gun murders per 100,000.⁷⁹

Proponents of handgun abolition argue, however, that licensing, registration and all other means of existing control cannot ultimately work. With over half of all handguns purchased secondhand, with about 30% of those weapons acquired from friends and other private parties, "permissive licensing may not make it physically more difficult for a disqualified individual to obtain a gun in the hand-to-hand market."⁸⁰

Opponents of an outright ban on handguns contend that the banning of handguns, or even more stringent handgun controls, will eventually lead to a more restrictive control of rifles and shotguns. Proponents of such controls contend, however, that countries and states that have had stringent handgun controls for some time have not inevitably moved toward restrictive licensing of rifles and shotguns.

X. Conclusions and Recommendations

Stringent handgun control laws are an absolute necessity in this country, especially in the East, and most emphatically in urban centers, where armed violence is a problem. The real issue is: How stringent should the inevitable legislation be? New Jersey handgun statutes are presently among the most restrictive in the nation. As this paper points out, of all major forms of handgun control, only the registration of firearms as a prerequisite for legal possession is lacking. Yet even the registration of handguns will not eliminate the availability of handguns in private hands.

The three alternatives to strengthening handgun control appear to be (1) stiffer penalties for crimes committed with a handgun; (2) establishing more "condition precedents" to the purchase and possession of handguns; or (3) the total banning of handguns. While opinions differ on the merits of the last approach it should be noted that, if nowhere else, a majority of people in the eastern part of the United States favor forbidding the possession of handguns. (See P. 13 above.)

It is my firm opinion that while alternatives two and three should be followed, in a graduated manner, I do not believe stiffer penalties for crimes committed with a handgun will serve to curtail crimes committed with handguns. The emphasis must be on eliminating handguns from our society. Therefore, I will either endorse pending legislation -- if there is legislation pending -- or sponsor my own legislative proposals to accomplish the following:

1. Require the immediate registration of handguns as a prerequisite for their legal possession.

2. Require immediately affirmative proof of the ability to safely handle handguns as a "condition precedent" to their purchase.

3. Ban immediately the manufacture, sale or disposition of "Saturday night specials" in New Jersey.

4. Establish immediately a procedure whereby police officers may confiscate handguns from an individual carrying such weapons if they believe the person, by virtue of some physical or mental characteristic, is a threat to himself or others.

5. Encourage immediately the voluntary surrender of handguns, with immunity from prosecution for the possession of handguns surrendered.

6. Prohibit the sale of handguns, their parts, and ammunition to other than law enforcement agencies or Federal or state governments for military purposes one month after the enactment of this proposal.

7. Prohibit the manufacturing of handguns, their parts, and ammunition except for those categories listed in number six above one month after the enactment of this proposal.

8. Prohibit the private possession of all handguns one year after the enactment of this proposal.

9. Memorialize Congress to ban nationwide the production and possession of, and trafficking in, handguns with exceptions only for military, police and similar official activities.

FOOTNOTES

1. As defined in N.J.S. 2A:151-1, firearm or firearms includes any pistol, revolver, rifle, shotgun, machine gun, automatic and semiautomatic rifle, or other firearm as the term is commonly used, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectile, ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It also includes, without limitation, any firearm which is in the nature of any air gun, spring gun or pistol, carbon dioxide or compressed air gun or pistol, or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas, or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than 3/8 of an inch in diameter, with sufficient force to injure the person.

2. Benenson, "A Controlled Look At Gun Controls," New York Law Forum 14 (1968), 718,719.

3. United States Conference of Mayors, National Forum on Handgun Control (Los Angeles, Calif.: n.p., May 27-29, 1975), 6.

4. United States, Federal Bureau of Investigation, Department of Justice, Uniform Crime Reports for the United States, 1973 (Washington, D.C.: Government Printing Office, 1973), 8-9; and Uniform Crime Reports for the United States, 1974 (Washington, D.C.: Government Printing Office, 1974), 17.

5. United States Conference of Mayors, 6.

6. Franklin E. Zimring, "Firearms and Federal Law: The Gun Control Act of 1968," The Journal of Legal Studies 4 (January, 1975), 171-172.

7. United States Conference of Mayors, 6.

8. Franklin E. Zimring, "Shooting to Kill the Handgun: Time to Martyr Another American 'Hero,'" Journal of Urban Law 51 (1974), 495.

9. George D. Newton and Franklin E. Zimring, Firearms and Violence in American Life, A Staff Report to the National Commission on the Causes and Prevention of Violence (Washington, D.C.: Government Printing Office, 1970), 10.

10. State of New Jersey, Division of State Police Uniform Crimes Reporting Unit, Uniform Crime Reports, 1974 (West Trenton, N.J.: n.p.), 39-4.

11. Ibid.

12. Ibid., 45-46.
13. Newton and Zimring, Firearms and Violence, 185.
14. Zimring, "Shooting to Kill the Handgun," 496.
15. Joseph D. Alviani and William R. Drake, eds., Handgun Control--- Issues and Alternatives (Washington, D.C.: United States Conference of Mayors, 1975), 10.
16. Newton and Zimring, Firearms and Violence, 61.
17. See footnote 42 in Alviani and Drake, Handgun Control, 61.
18. Alviani and Drake, Handgun Control, 6.
19. Newton and Zimring, Firearms and Violence, 66, 68.
20. Zimring, "Shooting to Kill the Handgun," 504.
21. Ibid.
22. Franklin E. Zimring, "Firearms Control: Hard Choices," Trial Magazine (January/February, 1972), 53.
23. Alviani and Drake, Handgun Control, 4.
24. Uniform Crime Reports for the United States, 1973, 9.
25. The Constitution to the United States, Second Amendment.
26. Alviani and Drake, Handgun Control, 9.
27. 92 U.S. 542 (1874).
28. U.S. v. Tot (131 F.2d. 261) (1842).
29. 131 F.2d. 916, 922; also, see McClure, "Firearms and Federalism" 7 Idaho L. Rev. 197, 213 (1970), 208-210.
30. Zimring "Shooting to Kill the Handgun," 519.
31. "The Impact of State Constitutional Right to Bear Arms Provisions on State Gun Control Legislation," The University of Chicago Law Review 38 (Fall, 1970), 187-188.
32. Ibid.
33. Ibid., 201-202
34. "Politics and People" ["Guns Do Kill People"]. The Wall Street Journal, 13 November 1975, 20.
35. Ibid.

36. Ibid.
37. Ibid.
38. Ibid.
39. Ibid.
40. Ibid.
41. Ibid.
42. "Firearms Control Has Wide Backing." New York Times, 5 June 1975, 20.
43. 48 Stat. 1236 (1934), 26 U.S.C. § § 5801-62 (1967).
44. 52 Stat. 1250 (1938), 15 U.S.C. § § 901-09 (1968).
45. 82 Stat. 1213 (1968), 18 U.S.C. § § 921-28.
46. Zimring, "Shooting to Kill the Handgun," 509.
47. Carl Bakol, "The Failure of Federal Gun Control," Saturday Review (July 3, 1971), 13.
48. Newton and Zimring, Firearms and Violence, 176.
49. Alviani and Drake, Handgun Control, 27.
50. Ibid.
51. Ibid.
52. Zimring, "Firearms and Federal Law," 169.
53. Alviani and Drake, Handguns Control, 28.
54. Ibid., 55-57.
55. "The Impact of State Constitutional Right to Bear Arms Provisions," 187.
56. Ibid., See footnote 13 on 187.
57. Ibid., 188.
58. Ibid.
59. Ibid., See footnote 16 on 188.
60. Ibid., 188.
61. See Department of the Treasury, Internal Revenue Service, Published Ordinances: Firearms, Pub. No. 603 (rev. ed., 1972), 52-189.

62. "Tough Gun Control Law Shows Little Effect in Massachusetts" Trenton Evening Times (Trenton, N.J.), 10 November 1975, A 1.
63. Alviani and Drake, Handgun Control, 29.
64. Harold W. Glassen, Esq., "Firearms Control: A Matter of Distinction," Trial Magazine (January/February, 1972), 52.
65. Assembly Bill No. 3401 and Senate Bill No. 3197.
66. Senate Bill No. 3230 and Assembly Bill No. 3402.
67. Assembly Bill No. 3470.
68. Assembly Bill No. 3370.
69. Senate Bill No. 3389.
70. Alviani and Drake, Handgun Control, 21.
71. "Gun Control Measures Working in Many Countries," Sunday Times Advertiser (Trenton, N.J.), 16 November 1975, 29.
72. Robert Sherrill, The Saturday Night Special (New York: Charterhouse Press, 1973), 98.
73. Alviani and Drake, Handgun Control, 12.
74. Ibid., 12-13.
75. Ibid., 13.
76. Juvenile Delinquency Subcommittee, Judiciary Committee Senate, Hearings on S-2507, (1968 Gun Control Act to Prohibit the Sale of Saturday Night Special Handguns). (U.S. Government Printing Office, 1971), 177.
77. Sherrill, The Saturday Night Special, 317.
78. 119 Congr. Rec. S. 1948 (daily edit. Feb. 2, 1973).
79. Mosk, "Gun Control Legislation: Valid and Necessary," 14 New York Law Forum (1968), 716.
80. Zimring, "Arms Control," 57.

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