



Department of Justice

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STATEMENT

BY

ATTORNEY GENERAL NICHOLAS deB. KATZENBACH

BEFORE THE

SUBCOMMITTEE ON JUVENILE DELINQUENCY

OF THE

SENATE COMMITTEE ON THE JUDICIARY

ON

S. 1592, A BILL TO AMEND THE FEDERAL FIREARMS ACT

WEDNESDAY, MAY 19, 1965

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

There can be no more valid domestic concern today than the increasing growth, the increasing sweep, and the increasing violence of crime. Crime is increasing in the cities. It is increasing in rural areas. It is increasing, most rapidly of all, in the suburbs.

The national crime rate has doubled since 1940. Just since 1958, it has increased at a rate five times faster than the rate of population growth and just between 1963 and 1964, the FBI's Uniform Crime Statistics inform us, serious crimes increased by 250,000--a jump of 13 percent.

These are figures which hardly require elaboration. The physical and fiscal toll of crime is learned anew each day in every city and community. What does require elaboration, however--what requires our most urgent and responsible attention is what we--the Federal Government and the Congress of the United States--are going to do about it.

President Johnson expressed the urgency of his concern about crime in a special message to Congress two months ago:

--He asked the Congress to enact legislation to make it easier to fight organized crime.

--He asked Congress to pass new anti-narcotics legislation, soon to be submitted.

--He asked you to give the Federal Government authority to provide assistance to experimental approaches to law enforcement.

--And, calling for "a sensible use of Federal authority to assist local authorities in coping with an undeniable menace to law and order and to the lives of innocent people", the President asked Congress to establish reasonable regulations on interstate shipments of the tools with which criminals work--guns.

I.

We received clear illustration of the need for S. 1592, the bill we meet to consider today, in the report just a month ago of a wager made by Mayor Francis Graves of Paterson, New Jersey, to show how easy it is to buy a gun by mail.

He ordered a .22 caliber revolver from a mail-order house in Chicago. Other than his name, address, and a money order for \$13.95, he sent no information.

After the weapon arrived, the mayor noted: "The company that sent me this gun had no way of knowing whether I was a convicted murderer, what my intentions were, or whether I was five years old or 105 years old."

He could have added, as well, that the company had no way of knowing his true identity or address. It had no way of knowing whether he was

prohibited by state or local law from owning the gun he had purchased. And he could have added that even if the company knew this information, it was likely to be of little interest.

There can be little alarm about the responsible mayor of a large city buying a pistol by mail. But there should be the greatest alarm about the scores of weapons bought every day by mail, many of them by persons who should not, either because of age, competency, or criminal record, lawfully possess them.

The story of the Paterson mayor is only a single example. The Subcommittee has received evidence disclosing that in 1963 alone, some one million "dangerous weapons" were sold by mail order. It has also been disclosed that over a three-year period in Chicago, 4,000 persons bought weapons from only two mail-order dealers and that of these, fully one-fourth had criminal records.

Almost every edition of every major newspaper carries stories reporting crimes involving guns. Most often we read of hand guns. But it remains a fact that fully 30 percent of all murders committed by firearms involve rifles or shotguns.

These are facts of which we are rapidly becoming more urgently aware. There is a gathering momentum of sorrow, outrage, and common sense concerning the deadly uses to which firearms are put.

J. Edgar Hoover has observed forcefully:

The spotlight of public attention should be focused on the easy accessibility of firearms and its influence on willful killings. Where local controls and regulations exist, they should be fully implemented.

Where there are none, measures should be taken to protect the public's interest. Loss of human lives cannot be rationalized --certainly not until all possible preventive action has been exhausted.

When the chairman of this subcommittee introduced S. 1592 on March 22, he noted that:

FBI information demonstrates that in those areas where firearms regulations are lax, the homicide rate by firearms is substantially higher than in those areas where there are more stringent controls.

In Dallas, Texas and Phoenix, Arizona, where firearms regulations are practically non-existent, the percentage of homicides committed by guns in 1963 was 72 percent in Dallas and 65.9 percent in Phoenix.

In cities where there are strong regulations, we have the following figures: Chicago, 46.4 percent; Los Angeles, 43.5 percent;

Detroit, 40 percent; and Philadelphia, 36 percent. And in New York City--which has been disparaged in many ways as being thought of by some as the center of crime in America--with its much maligned Sullivan Law, the rate of murder by gun was 25 percent. Thus, regulation has made a strong impact on this situation even though the uncontrolled interstate traffic makes it easy to evade the law.

In a country in which more than half the 8,500 murders each year are committed by firearms, many of them assuredly obtained by mail, congressional action is called for now.

In a country in which half the 20,000 suicides each year are committed by firearms, many of them assuredly obtained by mail, congressional action is called for now.

In a country in which 26,000 aggravated assaults were committed last year involving firearms, congressional action is called for now.

In a country in which 216 law enforcement officers have been murdered with firearms in the past four years (compared with only nine by other means), congressional action is called for now.

And in a country which has lost four Presidents to assassins' bullets and which suffered the wrenching shock of November 22, 1963, congressional action is called for now.

As long as I live, I can never forget that it was a mail-order rifle--sent to a post office box, that had been rented under an assumed name, by a man with an established record of defection and mental instability--that killed President Kennedy.

II.

It is for these compelling reasons of public interest and public safety that the Administration has proposed and most vigorously supports S. 1592, to control the mail-order sale of guns.

This measure is not intended to curtail the ownership of guns among those legally entitled to own them. It is not intended to deprive people of guns used either for sport or for self-protection. It is not intended to force regulation on unwilling states.

The purpose of this measure is simple: it is, merely, to help the states protect themselves against the unchecked flood of mail-order weapons to residents whose purposes might not be responsible, or even lawful. S. 1592 would provide such assistance to the extent that the states and the people of the states want it.

First. The central provision of this measure is one which prohibits unlicensed persons from transporting, shipping, or receiving firearms in interstate or foreign commerce. It is this provision which eliminates the unarguable evils of mail-order traffic in weapons. Sportsmen could continue to take their shotguns or rifles across state lines. Pistols could

continue to be carried in conformity with present state laws. But no longer could hundreds and thousands of persons with criminal records buy weapons interstate from mail-order dealers--nor could the dealers sell to them. Sales would be made by retail dealers and would thus be subject to record-keeping requirements.

These records would then have new meaning; they would not be rendered futile by an unrecorded flow of mail-order guns. I think it is safe to say that this result alone would earn the committee and the Congress the gratitude of law enforcement officers in all parts of the country.

Second. Retail gun dealers would be required to limit their sales of hand guns to persons who are residents of the state and to limit all sales of weapons to those eligible by age and state and local law to own them. The age minimum established is 21 years, except for rifles and shotguns for which the age is 18.

Third. The bill would raise the annual license fees from the present token \$1.00 for a dealer and \$25 for a manufacturer to realistic figures, calculated to discourage applications from persons not genuinely in the firearms business. This provision is designed to bring about a higher level of responsibility in the firearms trade.

Fourth. Another strengthening amendment would give the Secretary of the Treasury reasonable discretion as to who should be licensed to manufacture, import or deal in the deadly weapons with which the Federal Firearms Act is concerned.

The bill before this Subcommittee does not address itself to the question of permits, leaving it to the states and local communities to decide what they need and want in that regard. While the bill does limit the sales of hand guns to persons over 21 years of age and that of shotguns and rifles to persons over 18 years of age, it does not address itself to whether persons under 21 and 18, respectively, should be permitted to use guns. That question and its resolution also is left to the states and communities. By and large the states are free to have such firearms controls as they consider desirable within their boundaries.

A major advance under this bill would be to curb the great, unrestricted volume of imported weapons; about a million are imported each year. These include pistols, rifles, and shotguns--notably surplus military weapons--and the importation of even bazookas and antitank guns. I think we all recall the incident in New York a few months ago when a bazooka was used to fire across the East River at the United Nations.

The bill would stringently restrict the importation of firearms. Weapons imported for science, research, or military training, or as antiques and curios, could be allowed. So could weapons particularly suitable for lawful sporting purposes if they are not surplus military weapons and their importation would not be contrary to the public interest.

III

There is demonstrable need for regulation of the interstate mail-order sale of guns. This bill is a response to that need. It was carefully drafted; it is receiving detailed attention from this Subcommittee.

But, nevertheless, S. 1592 now has itself become a target--for the verbal fire of the National Rifle Association and others who represent hunters and sporting shooters. These opponents feel their views most deeply, as is evident from the bitterness and volume of their opposition. It is no secret to any member of Congress that the NRA sent out a mailing of 700,000 letters to its membership urging a barrage of mail to Senators and Congressmen.

There is no question that the views of the NRA should be heard and given full weight. There is no question that so many people with an interest in gun legislation should have every opportunity to express it. But those views also need to be evaluated and thus I would like now to turn to analysis of the opposition arguments.

It has been suggested, for example, by Franklin Orth, executive vice president of the NRA, that S. 1592 gives the Secretary of the Treasury "unlimited power to surround all sales of guns by dealers with arbitrary and burdensome regulations and restrictions."

I fear this is an exaggeration flowing from the heat of opposition. The Secretary's regulations must be reasonable. I should think that the reasonableness of the regulations promulgated by the Secretary of the Treasury under the existing provisions of the Federal Firearms Act would contradict the assumption of "burdensome regulations".

Further, the Administrative Procedure Act assures all interested parties of an opportunity to be heard before the issuance of substantive rules and regulations. The NRA and other gun interests have, in the past, taken full advantage of this opportunity and clearly could do so in the future. And still further, the regulations are subject to review and reversal by the courts and by Congress should they be felt arbitrary and capricious.

It has also been suggested that S. 1592 requires anyone engaged in the manufacture of ammunition to pay \$1,000 for a manufacturer's license. The bill does not do so. It does not cover shotgun ammunition at all, and the license fee for manufacturers of other types of ammunition is \$500.

It is true that anyone selling rifle ammunition, even .22 caliber, would be compelled to have a \$100 dealer license. Why shouldn't he? He is dealing in ammunition for a lethal weapon. The many dealers in ammunition who also sell firearms would not, however, be required to pay an additional ammunition fee. Nor is there anything in the legislation that would, as has been stated, require a club engaged in reloading for its members to obtain a manufacturer's license.

A further specific objection raised against this measure is that it would forbid a dealer to sell to a non-resident of his state. The objection is stated in a misleading way. The bill does forbid such sales of hand guns, but it specifically excepts weapons like rifles and shotguns most commonly used by sportsmen and least commonly used by criminals.

A similar objection is made on the grounds that the measure would prohibit all mail-order sales of firearms to individuals. While this is an accurate description of the measure with respect to interstate and foreign commerce, the bill would not foreclose now allowable shipments within a state. Any control of such commerce is left to the states.

One last comment on the specific NRA objections, as expressed in the letter sent to its membership. The letter described this measure as one which conceivably could lead to the elimination of "the private ownership of all guns". I am compelled to say that this is not conceivable. I am compelled to say that there is only one word which can serve in reply to such a fear--preposterous.

IV.

Beyond specific objections to the legislation, opposition to it continues to be founded on the assertion that it is unconstitutional. Let me therefore now turn to discuss, as you have asked me to do, the question of the constitutionality of Federal firearms legislation, particularly S. 1592, from the standpoint of the Second Amendment to the Constitution and of the congressional authority under which the legislation could be enacted.

Clause 3 of Section 8 of Article I of the Constitution provides that the "Congress shall have power . . . To regulate Commerce with foreign Nations and among the several States, and with the Indian Tribes." The Federal Firearms Act is based on this, the Commerce Clause, as is the amendment which the Subcommittee is considering.

I will not now take your time to present a legal dissertation on this point but, with your permission, offer for the record a memorandum prepared by the General Counsel of the Treasury Department, which makes abundantly clear that the Commerce Clause of the Constitution supports all that is undertaken in S. 1592.

With respect to the Second Amendment, the Supreme Court of the United States long ago made it clear that the Amendment did not guarantee to any individuals the right to bear arms. I offer for the record a second memorandum, which I have had prepared in consultation with representatives of the Secretary of the Treasury. It documents the opinion that the right to bear arms protected by the Second Amendment relates only to the maintenance of the militia.

Today, of course, the organized or "well-regulated" militia is the National Guard of the individual states. Therefore, in considering the relationship of S. 1592 to the Second Amendment, the question is whether

it would interfere with the maintenance and training of the National Guard.

The answer is "No". The Federal Government supplies arms to maintain and train the Guard and this would be unaffected by the bill. Further, section 4 of the bill exempts State departments and agencies, and independent establishments from its restrictions just as they are exempted by section 4 of the original Act. S. 1592 would in no way regulate or disarm the National Guard.

Even beyond this, the Second Amendment argument fails. Even if it were applicable, the fact remains that this measure does not infringe on the right of the people to keep and bear arms. It may make purchase of weapons a little more inconvenient--but it does so for a reason: so that any state which itself wishes to regulate firearms more closely may effectively do so.

More generally, I really cannot understand why the legislation we are talking about should seem a threat at all to sportsmen, hunters, farmers and others who have a productive or necessary or enjoyable interest in the use of rifles, shotguns or sporting hand guns. Nothing that we propose here could intelligently be construed as impairing the enjoyment they derive from shooting.

This legislation would, indeed, make some changes in the distribution of firearms. It would, indeed, by outlawing mail-order sales of firearms between states, bring about changes in the commercial firearms world. It would, indeed, challenge interests which have thrived on the present state of unregulated chaos. But such a challenge is tragically overdue.

V.

I have sought to make it plain that S. 1592 applies only to the sale and distribution of firearms; their use would remain a question for state and local law. I have sought to make it plain that our effort is, as the President said in March, to keep "lethal weapons out of the wrong hands".

These issues have been widely debated over a period of years. There have been extensive congressional hearings. There has been wide debate among the public and in the press. The pros and cons have been fully discussed. Now we approach the time of decision.

The NRA has warned, in the letter to its membership, that if "the battle is lost, it will be your loss, and that of all who follow."

It is impossible for me to understand the NRA's view of what battle is being fought and what the stakes are. In my view, we are all joined in a nationwide battle--a battle against rape and robbery and muggings and murder--and the stakes are public order and safety for every citizen.

Which is more significant, the right not to be slightly inconvenienced in the purchase of a firearm, or the right not to be terrorized, robbed, wounded, or killed?

As the chief law enforcement officer of the United States, I come before you today to ask you to supply the only conceivable answer to that question. I come, with all the urgency at my command, to ask the Subcommittee to report this measure favorably and to ask the Congress to enact it without delay.