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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

DRAFT
APR 5 1982

DEPUTY ASSISTANT SECRETARY

MEMORANDUM FOR: John M. Walker, Jr.
Assistant Secretary
(Enforcement & Operations)

FROM: Robert E. Powis
Deputy Assistant Secretary
(Enforcement)

SUBJECT: Policy Statement Re: Enforcement of
Firearms Statutes

This memorandum suggests language which could be used in a policy statement which we will probably have to issue to the Director, Secret Service, after the Criminal Enforcement function of firearms is reassigned to the Secret Service. It is suggested that this policy statement could be part of a Departmental General Order which reassigns the function or it could be in the form of a directive from you to the Director, Secret Service.

I. Overall Goal of Firearms Criminal Enforcement

The overall goal of the criminal enforcement of the firearms laws is to achieve the maximum impact on illegal trafficking in and possession and/or use of firearms by criminals. This is to be accomplished by the maximum utilization of available resources in furtherance of prosecution at the Federal level. These resources will also be used to provide appropriate investigative and technical assistance to state and local law enforcement agencies in their efforts to suppress violent crime involving firearms.

Federal firearm jurisdiction derives from the Gun Control Act of 1968. The Act is divided into three subsections:

Title I - prohibits engaging in the firearms business unless licensed under the Act; generally restricts firearm buyers to their states of residence; and prohibits certain categories of persons from receiving firearms.

Title II - prohibits the possession of machine guns, silencers, destructive devices, sawed-off shot guns and certain other weapons unless registered.

Title III - is very similar to that portion of Title I which established categories of persons prohibited from possessing firearms. Title III is also commonly known as Title VII under the Omnibus Crime Control and Safe Street Act.

Overall criminal enforcement policy, particularly with reference to Title I violations, will be to concentrate on the misuse of firearms by criminals and the illegal diversion of firearms to criminals. In carrying out this goal, it is hereby directed that no undue or unnecessary Federal restrictions or burdens be placed on law-abiding citizens with the lawful acquisition, possession or use of firearms. Investigators should seek to identify persons who willfully violate the firearms laws with criminal intent and should not focus on otherwise law-abiding citizens who become involved in technical, non-willful violations of the Gun Control Act. In the later case, remedies should be sought using non-criminal sanctions.

It must be recognized that there are numerous cases involving the diversion of a significant volume of firearms to criminals by persons that are dealing without a license and/or by persons who illegally enter into interstate transactions. Such activities result in a significant number of firearms being transported into major cities in the U.S. where they are used by criminals in the commission of crimes. It shall be the policy of the Secret Service to attempt to disrupt this kind of firearm traffic.

II. Specific Policy Re: The Criminal Enforcement of Federal Firearms Laws

The following specific policy guidelines are hereby set forth as guidance in the criminal enforcement of the firearms laws:

1. Enforce the applicable Federal firearms statutes in a professional manner consistent with the intent of the Congress as expressed in the preamble to the Gun Control Act of 1968.

2. Emphasize those violations which have the greatest potential to impact on crime, and to disrupt illegal firearms activity to include the following:
 - (a) Illegal international trafficking in firearms within jurisdictional authority.
 - (b) Illegal interstate trafficking in firearms.
 - (c) Repeated suppliers of firearms to criminals.
 - (d) Concentration on illegal firearms activities of organized crime.
 - (e) Significant criminal violations involving the manufacture, possession and transfer of gangster-type weapons.
 - (f) Cooperation with other Federal, State, and local enforcement agencies in firearms enforcement providing the request for assistance is consistent with the cooperation policy outlined below.

3. Professional and effective enforcement of the firearms laws requires the application of resources to those functions which are of primary importance and have the potential for providing maximum results. The priorities outlined above are consistent with this philosophy. Use of straw man investigative techniques or the investigation of gun show or flea market activities require specific justification and approval.
 - (a) Straw man investigations require approval of the Director with notification either to the Assistant Secretary (Enforcement and Operations) or his Deputy for Enforcement.
 - (b) Gun show and Flea Market investigations require SAC approval for preliminary investigations and Headquarter's approval for any arrests or seizures.

4. The long-range goal of the firearms program is to reduce the misuse of firearms by criminals and the illegal diversion of firearms to criminals and to assist Federal, State and local law enforcement agencies in their efforts to suppress crime and violence.

5. Congress stated that it is not the purpose of the Gun Control Act of 1968 to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the lawful acquisition, possession, or use of firearms. Criminal investigations must be conducted with the intent of Congress clearly in mind.
6. Investigations will be focused on armed and violent criminals who use firearms illegally to impact on the community at large with particular emphasis on major illicit firearms sources to the criminal element.
7. To ensure that investigations involve those persons who willfully violate State, local and Federal firearms laws with criminal intent, the following points and any other relevant information will be considered.
 - (a) The criminal record and/or reputation of a suspect within the law enforcement community.
 - (b) The volume and frequency of sales.
 - (c) The prior sale by a suspect of firearms known to have been used in crimes.
 - (d) The sale or receipt of firearms known to be stolen.
 - (e) The manufacture, possession, use or transfer of firearms with criminal intent in contravention of State, local, or Federal firearms laws.
 - (f) The sale of firearms by a suspect when he or she knows they are intended to use in criminal activities.
8. Where an otherwise reputable citizen is in technical non-willful violation of the Gun Control Act, a remedy will be sought using non-criminal sanctions.
9. It is strictly prohibited for special agents to encourage, as opposed to merely provide the opportunity for, unlawful sales of firearms.

10. Federal Firearms Licensee Investigations.

- (a) Most persons licensed to engaged in the firearms business are pursuing their interests for lawful purposes. It shall be the policy to initiate criminal investigations of licensees only when the licensee is engaged in criminal activity such as dealing in stolen or illegal type weapons, is willfully supplying firearms to the criminal element or is engaged in such willful and flagrant violations of the requirements of his/her license that it can be reasonably assumed that the firearms will find their way into criminal hands or be criminally misused. Technical or minor willful violations with no criminal nexus will be dealt with administratively.
- (b) Preliminary investigation of firearms licensees require approval of the SAC and is monitored by Headquarters. No undercover purchase of evidence, arrests, searches, or seizures are allowed at this level of investigation. Full investigations must be approved and monitored by Headquarters. Arrest warrants and search warrants must have prior approval of Headquarters. SAC approves cases for prosecution.

III. Regulatory Policy

In carrying out the regulations, which are promulgated as the result of the passage of the Gun Control Act of 1968, it should be kept in mind that the purpose of the regulations is to ensure that applicants meet all of the requirements for obtaining a license and that licensees are aware of their rights and responsibilities for conducting their businesses and maintaining records necessary for firearms tracing and other law enforcement purposes in accordance with the Gun Control Act of 1968. To meet this goal, the following policy guidelines are hereby set forth:

1. Available resources will be used to ensure that applicants meet all requirements of the Act.
2. Licenses to all qualified applicants, or notices of denial to those disabled under the Act, will be issued promptly and within a 45-day period.

3. Applicants and licensees will be advised of their rights and responsibilities as firearms licensees.
4. A program of licensee education by inspection and other means of contact will be developed and administered to reinforce the concept that compliance with the Act is an integral part of the nationwide crime-control effort.
5. Non-willful technical violations of the Gun Control Act and regulations will be subject to administrative remedies.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 13, 1981

MEMORANDUM FOR MARTIN ANDERSON

FROM: MICHAEL UELMANN

SUBJECT: Violent Crime Task Force Recommendations
Dealing with Firearms

At its final deliberative session last week, the Attorney General's Task Force on Violent Crimes made the following recommendations on the subject of firearms:

(1) The AG should propose or support legislation to require a mandatory sentence for the use of a firearm in the commission of a federal felony.

Current law provides for an additional 1 to 10 year sentence, but it is non-mandatory and therefore subject to court discretion. It is argued that the mandatory element, by making punishment more certain and severe, would induce the criminals to conclude that the risk of using a firearm outweighs potential benefits. Generally speaking, the N.R.A. types approve of mandatory minima.

A number of states have enacted mandatory sentencing schemes, but there is some doubt about their efficacy -- e.g., some say that the desired calculus does not apply to spur-of-the-moment crimes; others point out that judges and prosecutors have been able to devise ways to avoid bringing mandatory prosecutions.

(2) The AG should support or propose legislation to amend the 1968 Gun Control Act to require (a) that individuals be required to report the loss or theft of a handgun to local police and (b) that there be a waiting period to allow for a records check to ensure that the purchaser is not in one of the categories of persons now forbidden by federal law from possessing a handgun.

The 1968 Act had as one of its purposes the prevention of handgun ownership by certain classes of people and accordingly forbade sales to felons, those with a history of mental illness, drug addicts, and persons under 21. There is at present, however, no effective means of verifying the purchaser's eligibility.

About a dozen states now have a required waiting period, run from a few days to as many as fifteen (e.g., California and Tennessee). During the waiting period, the dealer forwards the application to the local police, which conducts a record search, approves or disapproves the application, and so notifies the dealer.

I do not know for sure, but I suspect that the gun people will take a dim view of any system that increases police record information of who buys guns; and it may well be that the failure of the 1968 Act to include a mandatory records check bespeaks the opposition of the N.R.A. and like-minded people.

They may have a similar objection to a reporting requirement for theft or loss.

(3) The AG should support or propose legislation to amend the position of the 1968 Gun Control Act dealing with importation of certain kinds of handguns to reach unassembled parts.

The 1968 importation prohibitions were directed at so-called "Saturday night specials", but failed to address the importation of parts which could be subsequently assembled here. This is considered by law enforcement types to be a loophole which effectively guts the '68 Act. Contrary arguments are (a) that there are one helluva lot of El Cheapos manufactured domestically in any event and (b) that restricting access to cheap handguns only increases the incentive to purchase more accurate and lethal weapons.

My recollection is that the N.R.A. types opposed the extension of the Act to handgun parts in 1968 on the grounds of regulatory overburden that would inevitably restrict the importation of parts for other, and presumably licit, purposes.

(4) The AG should propose or support legislation to classify semi-automatic weapons which are easily converted into fully automatic weapons.

Title II of the Gun Control Act of 1968 prohibited the manufacture, possession, and transfer of so-called contraband weapons, including machine guns and full automatics. The Act requires that all such weapons be registered and that the Treasury Department approve all subsequent transfers. Some semi-automatics, however, can be easily converted to full automatics. The purpose of the new legislation would be to impose stiffer manufacturing requirements for semi-automatics, or to have certain kinds of semi-automatics classified under Title II in the same manner as automatics.

I do not know the position of the N.R.A. types on this proposal, although they generally oppose anything which enhances the regulatory reach of the Bureau of Alcohol, Tobacco, and Firearms.

(5) The AG should direct United States Attorneys to develop agreements with state and local prosecutors to increase federal prosecutions of convicted felons apprehended in possession of a firearm in violation of either the 1968 Gun Control Act or the Special Offender provisions of the Organized Crime Control Act of 1970.

Most offenses involving firearms fall within state and local jurisdiction. But in the case, e.g., of felons, the possession of a firearm is a separate federal offense. What is sought here is simply greater coordination between the feds and the locals, in an effort to bring the best prosecutorial resources to bear against the most serious offenders. In appropriate circumstances, the feds may be the best party to bring the action, if for no other reason than that federal penalties under the two relevant statutes are more severe than those imposed by states for illegal firearms possession.

If the agreements are merely discretionary the N.R.A. types may not kick but I would hazard the guess that they will complain about anything which expands federal jurisdiction beyond what current law permits.

Finally, you should bear in mind that the Task Force recommendations are only recommendations of an independent body appointed by the AG to study the matter. They are not necessarily the position of either the Department or the Administration. The Task Force will formally present its recommendations to the AG within the next two weeks.

I should perhaps add that these recommendations are a considerable falling-off from where the Task Force was originally headed. I will provide you with details on this latter point whenever you wish.


MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 14, 1982

FOR: EDWIN MEESE III
EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN 

SUBJECT: Regulation of Firearms, continued

Status of Pending Issues

(1) McClure-Volkmer

Senate Judiciary cancelled the mark-up session scheduled for yesterday. Our delay in conveying a bottom-line position is drawing flak from all sides. Kennedy & Co. are using our failure to respond as an excuse to tie up other committee business, while Hatch and other supporters of McClure wonder whether we're backing off earlier statements of support. McClure's staffers are urging him to offer the bill as an amendment to the crime package now being readied for floor action. Such a move could jeopardize the crime package both in the Senate and the House.

(2) BATF

The House Subcommittee will yield to whatever the Senate does. According to John Walker, Burkett van Kirk is anxious to talk some sort of compromise -- Walker's theory being that van Kirk is embarrassed about the Abdnor-Laxalt conflict and wants to mend fences. DeConcini's people, meanwhile, continue to take the hardline and are now threatening that the Subcommittee will not only reject our proposal but mandate one of their own.

Decisions

(1) Time is running short on both issues. The central question is whether and to what extent we should link McClure-Volkmer with BATF. The advantage of linkage is that we can better protect our law-enforcement flanks when attacked for "selling out" to NRA on McClure-Volkmer. The disadvantage is that almost all of our bargaining chips will probably have to be used on BATF, leaving precious little room for further negotiation on the details of McClure-Volkmer.

(2) There is much confusion within NRA and allied groups about what BATF reorganization will really do. Tom Korologos believes that the only way to dispel this is to have the most

influential NRA people hear you explain the rationale. Now that the convention is over, Tom feels that you will receive a better hearing. His proposed cast of characters:

Harlan Carter

Tom Korologos

Jim Reinke (chairman of NRA's legislative committee and Eastern Airlines D.C. Rep.)

Alan Cors (NRA legislative committee and Corning Glass D.C. Rep.)

John Dingell

There is almost no disadvantage to having such a meeting, and much to be gained.

(3) With or without such a meeting, some sort of signal should be given to Senator McClure on what sorts of problems we have and when we're likely to have them resolved. This can be done orally or in writing, but should be done as soon as possible. Treasury is comfortable with all but one provision of the current draft of McClure-Volkmer and is prepared to endorse it publicly (a) if that provision is altered and (b) if they get a reasonable break on BATF reorganization. Justice remains strongly opposed but will, if asked, "defer" to Treasury. If Justice defers, they (and we) will almost certainly take heat from Kennedy and Co. for being "soft" on law enforcement. But if we don't have an agreement on BATF worked out before Judiciary's next mark-up, what kind of communication should be sent to the committee?