WITHDRAWAL SHEET
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Collection: Domestic Policy Council-Reed, Bruce
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File Folder: Wisconsin [1]

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Date: 5/12/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Elena Kagan to Jack Quinn and Kathy Wallman re: Wisconsin Waiver Application, 5p	6/10/96	P5 8079
2. memo	Reed and Ken Apfel to Chief of Staff [Panetta] re: Wisconsin Waiver, 2p (partial)	7/8/96	P5
3. & 4. memo	Wisconsin Waiver, 3p (partial)	7/11/96	P5

RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to appointment to Federal office [(a)(2) of the PRA].
P3 Release would violate a Federal statute [(a)(3) of the PRA].
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P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

PRM Personal records misfile defined in accordance with 44 USC 2201 (3).

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B9 Release would disclose geological or geophysical information

COPY

cc: Rahm
John Angell
B. Reed
Carol Rasco

THE WHITE HOUSE

WASHINGTON

June 10, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN EK

SUBJECT: WISCONSIN WAIVER APPLICATION

The Wisconsin waiver application appears to present two serious constitutional issues -- more serious than Walter knew when I last talked with him. (HHS attorneys also believe the application presents two statutory problems -- one under the Disabilities Act and one under the Fair Labor Standards Act -- but OLC has not yet started to look into these issues.) In this memo, I briefly summarize the constitutional issues, first noting the arguments (already being pressed by HHS attorneys and, more tentatively, OLC deputies) that certain provisions in the waiver application violate the Constitution and then offering the best available responses to those arguments. Finally I suggest, in light of the President's desire to approve the waiver, one way to fudge these issues; this approach would allow Wisconsin to pursue its desired course without deeming that course constitutional, effectively punting the legal questions to the courts.

1. <u>Right to travel issue.</u> Under the Wisconsin program, an individual must reside in the State for at least 60 days prior to applying for a "Wisconsin works" employment position. There is a strong argument that this provision is unconstitutional under <u>Shapiro v. Thompson</u>. It is, however, possible to distinguish <u>Shapiro</u>. Moreover, this distinction, though not very convincing on its face, gains a measure of credibility from the widespread hostility to <u>Shapiro</u>, which may make the Court grab hold of any means available to confine that case to its facts.

In <u>Shapiro</u>, the Supreme Court held unconstitutional a statute requiring a person to reside within a State for a year prior to receiving welfare assistance. The Court reasoned that because this provision burdened a person's constitutional "right to travel" (<u>i.e.</u>, to move to another state), the State had to show that the provision was necessary to achieve a compelling interest. The Court then found that the State had failed to make the requisite showing.

Under a straightforward application of <u>Shapiro</u>, the Wisconsin residency requirement is unconstitutional. On this view (currently held by both HHS attorneys and OLC deputies), the requirement, just like the one at issue in <u>Shapiro</u>, impermissibly burdens a welfare recipient's ability to move to the State.

There is, however, one obvious difference between the

Wisconsin provision and the *Shapiro* provision: the difference between a year and sixty days. This difference could change the constitutional analysis on either of two theories. First, it might be argued that because Wisconsin's provision imposes less of a burden on a person's right to travel, that provision should be held to a less strict standard of review than the one at issue in *Shapiro*. Wisconsin then could claim that its interests in the residency requirement in fact meet this lesser standard. This argument, however, seems quite weak. Standards of constitutional review do not usually vary in accordance with *how much* an action burdens a right, at least assuming the burden is not *de minimis*. And no sensible person could say that a state's determination to deprive a welfare recipient of benefits for two months would have only a *de minimis* effect on her ability to move to that state.

More promisingly, it might be claimed that Wisconsin's 60-day waiting period in fact meets the strict scrutiny standard, whereas the one-year period at issue in *Shapiro* could not. The Court in *Shapiro* clearly viewed the length of the waiting period as evidence that the State adopted the requirement to keep poor people out of the State -- an intent the Court held illegitimate; the Court saw no other, constitutionally legitimate let alone compelling, interest that would necessitate such a long waiting period. By contrast, it might be easier to portray a 60-day waiting period as a necessary administrative device, intended to promote rational budgeting, ensure orderly eligibility decisions, prevent fraud, and so forth. This argument would be strengthened to the extent Wisconsin subjects other state-provided services to the same residency requirement. (For example, it would be quite useful if Wisconsin insisted on a 60-day residency period before granting in-state tuition or voting privileges.)

Even in these circumstances, however, the argument seems fairly tenuous. *Shapiro* also contains language suggesting that states simply do not need residency requirements -- of any length -- to achieve their administrative interests. In this vein, it may be especially hard to explain why a State, acting only to advance these proper purposes, needs to completely deny benefits for a set period, rather than to delay benefits for this time (thus allowing an orderly decision on eligibility) and then grant the benefits retroactively. Thus, if the Court sticks with the basic message of *Shapiro*, Wisconsin will be hard put to show that it could not achieve its legitimate purposes through means less drastic than the 60-day period.

What gives the proposed distinction some viability is that *Shapiro* might well be on the Supreme Court's chopping block; many view the decision as one of the worst excesses of the Warren Court, and certain Justices have indicated that they want to overrule it. At the least, the current Court might welcome an opportunity to interpret *Shapiro* narrowly, as essentially applying only to its own facts. OLC does not like to take such considerations into account; it generally thinks that as long as the law remains the law, it should be treated as the law. But it would be obtuse not to recognize that any pronouncement that the Wisconsin provision violates the Constitution would stand on an uncertain foundation.

2. Procedural due process issue. The Wisconsin program offers fairly paltry procedural protections to persons dependent on it for assistance. This aspect of the program raises real concerns under the Due Process Clause: indeed, OLC told me last week that in light of the Supreme Court's decision in *Goldberg v. Kelly*, Wisconsin's proposed procedural framework clearly violates constitutional standards. I do not think this conclusion follows so easily; indeed, I think there is a reasonably strong argument that the Wisconsin program is not subject to the requirements of due process. I have communicated this argument to OLC, which is currently considering whether it agrees.

Under the Wisconsin program, a "Wisconsin works agency" -- a local (sometimes governmental, sometimes non-governmental) group under contract with Wisconsin's Department of Industry, Labor, and Job Development to administer the Wisconsin works program in a geographic area -- may refuse, modify, or terminate benefits without a prior hearing. If the person affected files a petition within 45 days, the agency must provide "reasonable notice and opportunity for a review" and as soon as possible thereafter render a decision. The Department, upon a petition of either the person affected or the works agency, generally has discretion to review this decision. (But where the decision at issue denies an application for benefits based solely on a determination of financial ineligibility, Departmental review is mandatory.) Even if the Department reverses the agency's decision, the affected person receives no retroactive benefits.

In *Goldberg v. Kelly*, the Supreme Court held that the Due Process Clause required a State providing assistance under the AFDC program to grant a recipient notice and an evidentiary hearing (including the opportunity to submit evidence orally or in writing, to cross-examine opposing witnesses, and to retain a lawyer) prior to terminating any benefits. The Court reached this conclusion upon finding that a welfare recipient's interest in avoiding "grievous loss" (and society's interest in fostering "dignity and well-being" through the welfare system) outweighed the government's interest in conserving fiscal and administrative resources.

At first blush (HHS and OLC seem to think at last blush too), *Goldberg* commands the invalidation of Wisconsin's hearing provisions. In Wisconsin, a works agency can terminate benefits prior to giving the recipient notice or a hearing. This is exactly what *Goldberg* prohibits. Indeed, Wisconsin does not guarantee even a post-termination evidentiary hearing. Only the works agency -- which may be a private actor under contract with the government -- need review the termination; the Department's review is discretionary. And there is nothing to indicate that the review -- whether by the agency or by the Department -- will

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include an evidentiary hearing of the kind Goldberg contemplates, with the ability to offer evidence and confront adverse witnesses.

But Goldberg is based on one essential premise; if that premise evaporates, so too do the due process requirements the decision articulates. That premise, in the words of the Court, is that "[welfare] benefits are a matter of statutory entitlement for persons qualified to receive them." It is only when a person has an entitlement of some kind to a substantive benefit (only when, that is, the benefit counts as "property" within the meaning of the Due Process Clause) that denial of the benefit demands procedural safeguards. This is why, to use a concrete example, the government must provide due process (notice and a hearing) before dismissing an employee who has a "for cause" provision in his employment contract, but need not provide such process to an employee who lacks such a contract clause. It is only the former who has a contractual "entitlement" to employment, and it is only this entitlement -- this property interest -- that invokes the requirements of the due process clause.

It thus becomes extremely important that the Wisconsin legislation at issue specifically disavows any creation of an entitlement on the part of welfare recipients. In the words of the statute (in a subsection labeled "Nonentitlement"), "Notwithstanding fulfillment of the eligibility requirements for any component of Wisconsin works, an individual is not entitled to services or benefits under Wisconsin works." It is at least arguable that this provision of the Wisconsin law makes Goldberg completely inapplicable. Goldberg, or so the argument goes, sets forth due process standards for cases in which a statute grants an entitlement to welfare assistance; where a statute explicitly denies such an entitlement, effectively leaving the provision of assistance to the discretion of the State, due process standards never come into play. Stated another way, the difference between Goldberg and this case is identical to the difference between the cases noted above involving "for cause" and "at-will employment" contractual clauses.

A court, of course, might reject this analysis and apply Goldberg notwithstanding the Wisconsin law's "Nonentitlement" provision. Such a court might reason that the government cannot insulate itself from due process requirements simply by labeling a given benefit as a "nonentitlement." If, for example, a law details certain qualifications for receiving a benefit -- and, further, if those qualified to receive the benefit in fact always do so -- then there is a good case for disregarding the State's terminology and treating the benefit as an property. Perhaps, then, in evaluating the Wisconsin program, a court should look behind the formal description of the benefit and ask whether (and how) the State exercises discretion and, relatedly, whether the State's actions generate legitimate expectations on the part of recipients. And perhaps (though perhaps not) when viewed in this

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non-formalist light, the Wisconsin program would look similar to the program in Goldberg, leading to adoption of the identical due process requirements.

The key point, however, is that there is a pretty decent constitutional argument that Goldberg does not apply here -- more specifically, that the due process clause imposes no procedural requirements on the Wisconsin program, because the substantive benefits provided in that program do not count as property interests.

3. Recommended Approach

One possible approach is simply to approve Wisconsin's residency requirement and procedural provisions as written, thus implicitly finding that they satisfy constitutional standards. I have argued that there is a very credible argument that the procedural provisions do so and a not wholly embarrassing argument that the residency requirement does so too. Perhaps the existence of such arguments allows simple approval of these provisions.

Another approach is to fudge the issue, allowing Wisconsin to do what it wishes, but withholding judgment on the legality of such action and pushing these questions to the courts. For example, the Secretary could approve the eligibility requirements (including the sixty-day waiting period for non-residents) and the procedural provisions "insofar as and to the extent that they comport with applicable constitutional requirements." Or the Secretary could be more specific, approving the sixty-day waiting period "insofar as that requirement is necessary to achieve a compelling state interest" (thus signalling continued approval of the Shapiro framework) or approving the procedural provisions "to the extent such provisions apply to non-property interests" (thus signalling continued approval of the Goldberg analysis). The variations here are almost endless. All would license the State to act without sanctioning the constitutionality of such action, leaving it for the courts to determine whether the action is indeed lawful.

The above suggestions of course assume that we want to allow use of Wisconsin's proposed residency requirement and procedural provisions. If for some reason we do not, we need only accept the constitutional arguments now being pressed by HHS and OLC.

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Collection: Domestic Policy Council-Reed, Bruce
OA/Box: OA 18941
File Folder: Financing [1]

Archivist: RDS
Date: 4/2/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. note	Paul Toback to McLarty re: gaming taxes, 1p	5/17/94	P5 8844

RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to appointment to Federal office [(a)(2) of the PRA].
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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B9 Release would disclose geological or geophysical information

Bruce

8044

THE WHITE HOUSE

WASHINGTON

5/17/94

Mack,

David Wilhelm called to let you know that he just retruned from Nevada where, as you know, there is an uproar over the issue of gaming taxes. He said that if we go ahead with a gaming tax we risk losing Governor Miller's race and putting a senate seat into play. He is passing along that doing something with such a specific and negative impact is bad for us.

Toback

C Abner
Wexler Gov
Leon / Carol / Rahm / Bruce
Pat / Marcia
Mack
Wilhelm

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WITHDRAWAL SHEET
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Collection: Domestic Policy Council-Reed, Bruce
OA/Box: OA 19840
File Folder: Teen Pregnancy [3]

Archivist: RDS
Date: 5/12/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Rasco et al. to Panetta re: Teen Pregnancy Initiative, 3p	7/10/95	P2/P5/ b(6)
2. memo	Stephen Neuwirth and Kathleen Whalen to Paul Diamond re: Teen Pregnancy Prevention Private Sector Initiative, 3p	6/14/94	P5 8045

RESTRICTIONS

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THE WHITE HOUSE

WASHINGTON

June 14, 1994

8045

MEMORANDUM FOR PAUL DIMOND
SPECIAL ASSISTANT TO THE PRESIDENT
FOR ECONOMIC POLICY

FROM: STEPHEN NEUWIRTH
ASSOCIATE COUNSEL TO THE PRESIDENT

KATHLEEN M. WHALEN KMW
ASSISTANT COUNSEL TO THE PRESIDENT

SUBJECT: Teen Pregnancy Prevention Private Sector Initiative

We understand that the President will be introducing his welfare reform proposal and will be addressing, among other things, teen pregnancy prevention. This memorandum sets forth two options for private sector involvement in an initiative to prevent teen pregnancy.

This memorandum concludes with suggestions for the type of Presidential statement that would be appropriate depending on the option selected.

Option One: Presidential Council

The President may establish by Executive Order, or ask Congress to establish by statute, a committee of private citizens to render advice to the President on, and participate in, efforts to reduce teen pregnancy.

Because the council would be composed of private sector individuals, and would be rendering advice to the government, it would be subject to the Federal Advisory Committee Act (FACA). The Act requires, among other things, advance notice of meetings, public meetings, and public availability of documents. Unless Congress specifically granted the council gift acceptance authority, the council would not be entitled to accept gifts.

In addition, members of the council could be considered special government employees depending on the method of selection and scope of duties. Individuals appointed to the council to represent views of outside organizations or a particular industry or sector would not be considered special government employees. Persons selected for their individual expertise but not as representatives of a particular organization, industry or sector would be considered special government employees.

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We understand that, as presently contemplated, such a council would include a number of individuals who would be representatives of particular industries or sectors (*e.g.*, educators, public health officials, or social workers), but that not all members would necessarily represent a sector. Some would be selected for their name recognition or because of personal interest in the subjects to be addressed. Such individuals would be considered special government employees.

Special government employees are subject to the Federal conflict of interest statutes and financial disclosure reporting requirements. Prominent, visible individuals are often unwilling to complete financial disclosure reports or comply with conflict statutes.

This option is restrictive and complex. Funding would be limited. Compliance with the conflict statutes and the financial disclosure reporting requirements could be burdensome and an obstacle to service for many otherwise qualified private sector individuals.

<u>Option Two: Private Sector Initiative</u>

Individuals outside the government could establish a private sector initiative directed at reducing or eliminating teen pregnancy. The group would not be subject to the FACA. It also would not be restricted from raising money from private sources, from seeking and obtaining Federal grants, or from spending the funds it obtains as it deems appropriate. The members of the private sector initiative would not be special government employees and would not be subject to Federal conflict of interest statutes or the financial disclosure requirements.

While the President may propose such a private sector initiative, the initiative must indeed be private. Individuals rather than government employees would need to initiate, and exercise complete control over the affairs of such an entity.

<u>Suggestions Regarding Statements</u>

If Option One is selected, it would be appropriate for the President to announce that he is planning to create -- or to ask Congress to create -- a council to address the issue of teen pregnancy prevention.

If Option Two is selected, it would be appropriate for the President to encourage the private sector to become actively involved in efforts to prevent teen pregnancy. The President could publicly ask that a private entity be created to sponsor such efforts. If appropriate, the President could identify individuals who have indicated a willingness to lead a private sector initiative.

If, by Tuesday, neither option has been selected, it would be appropriate for the President to encourage or ask for the assistance of the private sector or the public in combatting teen pregnancy. This statement should be open and allow for either option to be implemented at a later time.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Martha Foley and Rahm Emanuel to COS re: Initial Options on Russian Firearms Imports (4 pages)	10/93	P5 8046

COLLECTION:
Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 8413

FOLDER TITLE:
Gun Imports

Rob Seibert

rs10

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

b(1) National security classified information [(b)(1) of the FOIA]
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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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Crime -
Gun Imports

8046

DRAFT MEMORANDUM

October ??, 1994

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: MARTHA FOLEY
RAHM EMANUEL

SUBJECT: Initial Options on Russian Firearms Imports

As you requested, we have met internally to begin discussing how to approach the Russian firearms issue, and this memorandum identifies a series of short-term strategies that will temporarily restrict Russian gun imports and allow the Administration more time to gather information and explore long-term policy options.

Frankly, the gaps between our foreign, trade and domestic gun policy can not be easily bridged, and -- if the Administration is to develop an effective and politically tenable long-term solution to this problem -- some creative policy-making is warranted. This memorandum also includes a brief discussion of some of these issues.

I. Short-Term Strategies

The short-term strategies outlined below will temporarily delay the import of millions of firearms and rounds of ammunition -- most at cheap prices -- from flooding our markets over the next few months. Equally important, these options will allow the Administration more time in its search for a long-term solution, without committing to any specific long-term policy from the outset.

1. Prolong -- and then supervise -- the State Department's Study. Currently, the State Department is about two weeks into its internal review process, but we fear they are already headed down the wrong path and need to be reeled in somewhat. There are several reasons for this. First, State is on a fast track. With the recently-revoked Russian permits sure to be resubmitted for consideration any time soon, State will be under considerable pressure to complete its study and quickly take some sort of action. From our perspective, with no clearly workable long-term policy options at our fingertips, there is absolutely no reason to expedite State's study and quickly commit the Administration to an unknown course of action. We would propose taking months, not weeks, to complete an in-depth study on the imports issue.

Second, our notion is that a fast-track, State-controlled review will conclude that the worldwide proliferation of firearms has no national security significance or foreign policy relevance, and that the matter is best dealt with by amending our gun control laws. This has been the State Department's strongly held position for almost a year now -- and despite our best efforts to encourage them to approach the firearms proliferation issue more creatively.

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We have no reason to believe that State's thinking on the issue has changed. Thus, we would recommend that White House staff help supervise State's study to ensure that other agencies' options are considered -- and to make sure that the White House is not too surprised with the study's final recommendations.

2. Enforce Russia's proscribed country status for as long as possible. As you know, since 1992 the State Department has allowed Russia to import firearms and ammunition on a "presumptive approval" basis -- despite Russia still being listed as a proscribed country ineligible to import munitions. Put simply, for trade purposes, we grant Russia a blanket exemption from its prohibited status under the AECA. Overturning this "presumptive approval" would keep Russian guns out of the country until Russia was dropped from the proscribed list for legitimate foreign policy reasons (i.e., when they quit selling arms to Iran). State speculates that this might occur sometime within the next year. However, without a long-term solution, when Russia is dropped from the proscribed list we will be unable to continue to restrict the import of their munitions.

This is precisely how the Administration succeeded in stemming the flow of cheap Chinese gun imports. China -- though still on the proscribed list -- had been allowed to import firearms since 1989. By 1993, the number of imports had jumped into the millions and Treasury, Members on Congress and the press were taking note. We wanted to enforce China's status as a proscribed country, but State insisted that there simply was no good foreign policy reason for doing so, and several good trade reasons for not doing so. In the end, even as he extended Most Favored Nation trading status to China, the President chose to keep these guns out.

3. Make arms proliferation an international crime issue. Another way to pursue the search for long-term solutions to this problem is to make arm proliferation an international crime issue and hand it off to three of the Administration's prominent crime fighters -- FBI Director Louis Freeh, Treasury Undersecretary Ron Noble and Assistant Secretary of State Robert Gelbard. Freeh-Noble-Gelbard are a particularly adept trio to take on this project, and together they represent the three major agencies with interest in this issue. Freeh, who has traveled to Russia and other Former Soviet Union countries, has made internal crime a top priority. He has promised to send agents to these countries and to establish a Eastern European law enforcement center. And perhaps most importantly, his credentials -- both domestically and abroad -- are beyond reproach. Noble has also traveled to the Former Soviet Union, and -- as the law enforcement official that oversees money laundering, gun policy, etc. -- he is very active in international crime circles (he was recently elected to be an INTERPOL board member). Noble is also close to White House staff, and his involvement would allow us to stay informed and, if necessary, have some input into the process. Finally, Gelbard, who oversees international crime and drug accounts for State, is the perhaps the only individual at State with an overall interests in crime and drug policy. By making State work through him, we may have more success in getting State to consider some creative options.

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Clearly, with Freeh, Noble and Gelbard leading this effort, the Administration will be somewhat insulated from the criticisms of the press, Members of Congress and our friends overseas. And, while we are foregoing direct control of the process, we can retain the right to distance ourselves from the final product if necessary.

4. Enforce the Iran–Iraq Proliferation Act of 1992. In writing this memorandum, we learned that in July, 1993, the Russians shipped some 300 surface–to–air missiles to Iran -- a clear violation of the Iran–Iraq Proliferation Act. Under this Act, any destabilizing shipment of arms requires the United States to impose sanctions against the offender country. The President can invoke the mandatory sanctions listed in the Act, which are quite extreme, or he can waive the sanctions if he notifies Congress that is not in the U.S.'s foreign policy interest to impose them. Alternatively, there are various discretionary sanctions at the President's disposal, including those authorized in the International Emergency Economic Powers Act (IEEPA). It is our understand that under IEEPA, the President would be able to impose a one–year sanction on the import of Russian munitions. While we still need more information about the feasibility of this option, it should remain one of the short–term actions we consider.

<u>II. Long–Term Policy Issues</u>

The three policy areas that we need to be approached creatively over the next few months in order to resolve the gun imports issue are: (1) more gun control legislation; (2) a new foreign policy rationale to limit the flow of guns; and (3) bilateral trade agreements to limit firearms imports. Although all three of these areas require further study and substantial White House prodding of the agencies before any long–term solution can be developed, we thought it worthwhile to give you an early indication of what awaits our study group.

1. Amend the Gun Control Act of 1968 (GCA). From a pure legislative standpoint, the most obvious way to cut–off firearms imports is to amend the GCA, which bans the import of all surplus military and "non–sporting" weapons, to include additional firearms. From a political perspective, this is not likely to occur. In fact, the last time Congress amended the GCA (1986) it made the law weaker, not stronger. In any case, additional import restrictions would not be considered GATT legal unless domestic production of the same products was also banned. That it to say, to make further import restrictions GATT legal, we would have to ban legitimate sporting weapons at home -- some of which are explicitly protected by the recently–passed ban on assault weapons.

It may also be possible to amend the Gun Control Act of 1968, or maybe even the sporting purposes test, so as to keep out the firearms that cause the Administration the greatest angst -- cheap guns that are likely to make their way to the street ($100 or less). For instance, based on the fact that higher quality guns cost more to produce, we could amend the GCA to allow Treasury to ban the import of firearms that do not meet certain quality standards. Treasury has been very skeptical about the possibility of limiting gun imports by amending the GCA, but perhaps we can get them to consider such limited amendments.

2. Develop a foreign policy rationale to limit the worldwide proliferation of firearms. If, as a matter of foreign policy and pursuant to the Arms Export and Control Act, we were to develop a foreign policy rationale for limiting the worldwide proliferation of small arms, we could restrict the importation of munitions from Russia and other countries. This is consistent with the arguments made by the Administration's law enforcement officials (i.e., Louis Freeh, Ron Noble, Lee Brown and Tom Constantine) that organized crime and drug trafficking are national security issues. Moreover, if the national security threat posed by organized crime and drug trafficking is serious enough to warrant our giving foreign anti-crime and anti-drug assistance, constructing an Eastern European law enforcement center, etc., we should be able to include the impact of more countries engaging in the worldwide sale of firearms.

The State Department is strongly opposed to this policy direction. Justice and Treasury believe its holds the most promise for a long-term solution, and we agree.

3. Pursue Bilateral Trade Agreements. Several sections of the Trade Expansion Act of 1962 allow the U.S. Government to restrict imports for national security purposes and other purposes. These measures have been used in the past to protect our nation's industrial base -- specifically machine tools and oil. There may not be sufficient grounds to invoke any of these authorities unilaterally, but it is our understanding that threatening to invoke these authorities could be used as leverage to negotiate a Voluntary Restraining Agreement (VRA) of some sort with Russia and other countries. If not, we need to investigate what other authorities or government monies could be used to help leverage a VRA.

To date, USTR and other key trade staff have not seriously considered the gun imports issue. They need to be brought into the process soon.

Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Walter Delliger to Webb Hubbell re: D.C. National Guard (10 pages)		P5 8047

COLLECTION:

Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 8413

FOLDER TITLE:

National Guard

Rob Seibert

rs12

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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

b(1) National security classified information [(b)(1) of the FOIA]
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8047

U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

October 2, 1993

MEMORANDUM FOR WEBB HUBBELL

FROM: Walter Dellinger

Attached is a preliminary draft of our opinion concerning the legality of the President deploying the D.C. National Guard to help maintain peace and order in the District of Columbia. Our view is that the President could use the D.C. Guard, at least for a limited period of time, for this purpose.

One possible approach is for the President to "federalize" the D.C. Guard. By making the Guard part of the United States military, however, this would subject them to the Posse Comitatus Act which prohibits use of U.S. military troops for civilian law enforcement. This ban does not apply in circumstances in which use of the "federalized" guard has been authorized by Congress. We believe that use of a "federalized" D.C. National Guard could be defended as falling within an existing statutory authorization allowing such use when the President seeks to suppress "domestic violence" that "hinders the execution of the law" and thereby deprives citizens of a right "named in the Constitution" (here, for example, the right of interstate travel, or the right of law abiding citizens to be able to assemble peacefully). The use of a "federalized" D.C. National Guard in the existing circumstances, however, would stretch this provision beyond any prior historical application and could lead to requests for the President to "federalize" the National Guard in many other cities facing significant violence.

An alternative would be for the President to deploy the D.C. Guard in their "state militia" status. Our office has consistently taken the position that the President stands in a relation to the D.C. National Guard that is similar to the relation obtaining between the Governors of the States and their respective State National Guard units. His use of the D.C. National Guard as a state militia is controlled by a 1889 law governing the District of Columbia. This Office concluded in 1989 that this century-old law authorizes the deployment of the D.C. Guard in militia status to carry out or support civil law enforcement. Although the matter is not free from doubt, we concur that there is plausible legal authority for this use of the D.C. guard (although it appears that no D.C. funds are presently available for this purpose.) Our detailed analysis is attached, as well as a summary of options.

Memorandum

PRELIMINARY DRAFT

Subject	Date
The President's Use of D.C. National Guard for Civilian Law Enforcement Activities in the District of Columbia	October 1, 1993

To	From
Walter Dellinger Acting Assistant Attorney General Office of Legal Counsel	H. Jefferson Powell Christopher Schroeder Todd F. Gaziano Office of Legal Counsel

Introduction and Summary

In response to your request this morning, we have examined the possibility of the President deploying the District of Columbia National Guard (D.C. Guard) as part of an effort to maintain peace and order in the District of Columbia. This memorandum presents our preliminary view that the President could call out the D.C. Guard in its "militia status" for certain civilian law enforcement functions. Although such action would not be free from challenge, our preliminary view is that the President could use the D.C. Guard, at least for a limited period of time, to maintain peace and order under current conditions.

State National Guards enjoy a dual status under the United States Constitution because they are subject to the command of either state authority or the President. State National Guards can be called into federal service by the President under various provisions of the United States Code, particularly 10 U.S.C. §§ 331-333. When that occurs, the President is their Commander in Chief, under the constitutional provision making him Commander in Chief of the "Militia of the several States, when called into actual Service of the United States," U.S. Const., art. II, § 2. State National Guards can also be deployed in their militia status, in which case they are subject to the command of the Governor of the respective states pursuant to whatever authorities state law grants. When that occurs in the District of Columbia, the President is also their Commander in Chief, under D.C. Code 39-109.

Each of the President's dual capacities presents him with different options. This memorandum discusses first the option of "federalizing" the D.C. Guard and using them in the federal status, then the current use of D.C. Guard personnel in counterdrug activities, and finally the option of using the D.C. Guard in their militia status pursuant to D.C. law.

The President's "federal" options are defined in part by Congress. The Posse Comitatus Act, 18 U.S.C. § 1385, makes it a crime for anyone to use the Army or the Air Force to execute the laws "except in cases and under circumstances expressly authorized by the Constitution or Act of Congress." When the President calls a National Guard into federal service, the Guard becomes part of the United States Army or Air Force, and is thus subject to the Posse Comitatus restrictions. One can make a case that the restrictions would not apply here, because the President's power to enforce the laws and suppress insurrections or domestic violence under 10 U.S. §§ 332, 333 would authorize his action, but using these statutes here stretches beyond historical precedents and may otherwise be undesirable.

On the other hand, exercising his authority under the D.C. Code -- analogous to the authority of the governor of any state -- may be justifiable. If that authority is invoked, however, a significant question arises regarding funding the salaries of the D.C. Guard, as we understand that the District may not have such funds at the present time.

I. Calling the Guard into Federal Service

The Posse Comitatus prohibition is avoided if there is express statutory or constitutional authorization for deploying the National Guard in law enforcement activities. There are a number of such express statutory authorizations that are not applicable here, including authority to federalize the Guard in time of invasion. 10 U.S.C. §§ 3500, 8500.

The most nearly applicable is the President's authority under 10 U.S.C. §§ 332, 333.[1] Section 332 empowers the President to deploy the militia or the armed forces "whenever the President considers that unlawful obstructions, combinations or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States." In 1882, the Attorney General advised the President that this provision empowered him to send troops to combat "outlaws" in the Territory of Arizona, based on information from

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[1] The President's inherent constitutional authority to federalize the state militias, if any, is limited by Congress's exercise of its constitutional authority to "provide for calling forth the Militia to execute the Laws of the Union, . . . and for governing such Part of them as may be employed in the Service of the United States." U.S. Const., art. I, § 8, cls. 15-16.

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the Territory that local law enforcement had insufficient personnel to make arrests, and that a situation of lawlessness existed in the Territory. 17 Op. Atty Gen. 333. This section has also been invoked along with § 333 in connection with the urban riots of 1967 and 1968, and as authority to send troops to aid in desegregation efforts in the 1950s.

Section 333 empowers the President to suppress any "insurrection, domestic violence, unlawful combination or conspiracy" that "hinders the execution of the law," and so deprives any part of the citizenry of a right "named in the Constitution" and secured by law, so long as the President finds that the existing authorities are unable, fail or refuse to protect those rights. 10 U.S.C. § 333(1). Alternatively, he can intervene in cases of insurrection, domestic violence, unlawful combination or conspiracy if any of these "opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws." § 333(2). Before exercising any of the authority under §§ 332 or 333, the President must first issue a proclamation ordering the "insurgents" to disperse. 10 U.S.C. § 334.

As indicated earlier, the authority of § 333 has been invoked a number of times in the past, including in aid of desegregating Central High School in Little Rock, and in helping quell violence during urban riots in Detroit, Chicago, Baltimore and the District of Columbia in 1967 and 1968.

The District is not now experiencing a pronounced episode of extraordinary unrest or violence to bring it easily within the scope of such precedents. Nevertheless, the President would probably be given considerable latitude in his judgment that sufficient domestic violence existed to warrant the action. A plain meaning justification for invoking § 333(1) proceeds as follows: High levels of domestic violence restrict the First Amendment right of assembly, and right of interstate travel, insofar as they instill a fear that moves people to stay indoors or discourages people from travelling through the District. Thus citizens in the District are being deprived of rights "named in the Constitution" and protected by numerous District of Columbia laws that ostensibly protect citizens from violence, because the level of domestic violence "hinders" the execution of those laws. That the condition is chronic rather than acute may not be significant.

Still, applying § 333(1) authority at a time when the amount of domestic violence now occurring is within the range of recent historical experience for the city would stretch its application beyond historical precedents, and would constitute an admission that the "normal" condition in Washington had become one in which regular law enforcement fails to accord the citizens their constitutional rights. On the other hand, it would appear that the situation in Arizona that supported the deployment of troops in 1882 was one in which local law enforcement was proving inadequate to cope simply with day to day violence and lawlessness, but we have not researched the facts of that situation sufficiently to draw a firm comparison.

An argument for authority under § 333(2) can also be advanced. The climate of fear created by high levels of crime and violence can obstruct the enforcement of and impede the course of justice under federal criminal statutes aimed at drugs and associated violence by, among other things, making citizens less willing to cooperate in investigations.

Assuming §§ 332-333 can be invoked, there remains some doubt about the length of time the D.C. Guard could continue to be used. While the language of the statutes contains no express time limitation, the situations apparently contemplated by the statutes are ones in which local authorities are temporarily disabled from protecting citizens. In such cases, the Guard is to come in, help restore order, and then depart. This comports with the historical precedents.[2]

It would be prudent, and it may be legally necessary, to articulate a goal or objective that would enable withdrawal of the Guard after some reasonable period of time if these statutes were invoked, rather than contemplating indefinite supplementation of local law enforcement. Doing the latter would risk violating the Posse Comitatus Act. A preliminary examination of the legislative history of Posse Comitatus reveals several statements indicating that while appropriate actions under the predecessors of §§ 332-333 would not be violations, the Congress also meant "to put a stop to the practice, which has become fearfully common, of military officers of every grade answering the call of every marshall and deputy marshall to aid in the enforcement of the laws." Congressman Knott, 7 Cong. Rec. 3846, 3849 (quoted in 41 Op. Atty Gen. 313 (1957)). The limits of §§ 332-333 authority need to be read in light of the purposes the Posse Comitatus Act was designed to serve, namely to prevent the Army and the Air Force from becoming regular adjuncts to normal law enforcement activities.

Finally, not only would utilizing §§ 332-333 here run beyond existing precedents, it would also risk creating a difficult precedent for the future, as mayors of other cities and governors might ask the President to federalize the Guard in their states to aid in domestic law enforcement in other communities.

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[2] We have not completely researched the legislative history of § 333 to determine whether it sheds any light on the expectations concerning how long the Guard could remain on active duty.

II. The D.C. National Guard and Counterdrug Activity

Title 32, section 112 authorizes appropriations to "the Governor of a State" who allows "the National Guard of that State" to participate in federal "drug interdiction and counter-drug activities." A 1989 OLC opinion addressed whether the D.C. Guard could participate in that program, and specifically, whether the money authorized pursuant section 112 could be used to pay the D.C. Guard. See "Use of the National Guard to Support Drug Interdiction Efforts in the District of Columbia," 13 Op. O.L.C. 110 (1989) (preliminary print) (1989 Opinion). The 1989 opinion concluded that the D.C. Guard, in its militia status, could participate in the federal program pursuant to § 112. The 1989 Opinion relied heavily on the authorization in section 112, and did not present the situation where the President independently was considering using the D.C. Guard in militia status to enforce the District's drug laws.

The use of the D.C. Guard in counterdrug activities purusant to § 112 does not provide a useful analogy to the contemplated use of the D.C. Guard for general law enforcement activities for other reasons. Neil Woodcock, who is the National Guard Liaison Officer in the Bureau of Justice Assistance, Office of Justice Programs, DOJ, explained that the National Guard does not make any arrests, handle any contraband, testify in court, or engage in any front-line law enforcement activities. The general duties of the National Guard in the counterdrug program are to provide training to other federal officials, help in planning counterdrug operations, aerial surveillance (e.g., of marijuana fields), radar surveillance, transportation (both air and ground transportation), cargo inspection, and other logistical support, including engineering support. For example, an examiniation of the activities of the D.C. Guard volunteers for the week ending September 18, 1993 reveals that the great majority were assigned to record keeping and accounting functions. Other guard personnel were engaged in cargo inspection at Dulles Airport, aerial transportation of personnel and property to and from counterdrug operation sites, aerial surveillance, and one person was serving with the DEA as a liaison for the National Guard volunteers.

We obtained a Memorandum for the Secretary of Defense from Deborah R. Lee, Assistant Secretary of Defense for Reserve Affairs (September 30, 1993) that questions the authority of the D.C. Guard to engage in anything but support activities. Moreover, Neil Woodcock has stated that the National Guard Bureau has issued regulations that would prohibit the state national guard to engage in any activity that would violate the Posse Comitatus Act while serving pursuant to 32 U.S.C. § 112. We do not believe that these regulations are required by the Posse Comitatus Act, because § 112 provides its own congressional authorization, but it is further support for our conclusion that the existing use of the National Guard is not a good analogy for their use in general civilian law enforcement activities.

III. The D.C. National Guard in Militia Status

As we mentioned above, National Guard personnel have a dual status. "Since 1933 all persons who have enlisted in a State National Guard have simultaneously enlisted in the National Guard of the United States." Perpich v. Department of Defense, 496 U.S. 334, 345 (1990). The Supreme Court has drawn a sharp legal distinction between Guard members acting in their state capacity and the same persons acting as federal troops. "In a sense all of them now must keep three hats in their closets -- a civilian hat, a state militia hat, and an army hat -- only one of which is worn at any particular time." Id. at 348. Guard personnel in service are either acting as members of a state militia or as federal troops, never as both. See id. at 347 (state Guard personnel "ordered into federal service . . . lose their status as members of the state militia during their period of active duty"). When acting as state militia, Guard personnel do not fall within the terms of the Posse Comitatus Act. See, e.g., 1989 Opinion, 13 Op. O.L.C. at 111 n. 4. In most circumstances, therefore, the question of whether Guard personnel could be used to support law enforcement would be a pure question of state law, as long as the personnel had not been federalized.

The D.C. Guard, however, clearly present certain unique concerns. The District, of course, is not a state. Its National Guard is organized pursuant to an act of Congress, Act of Mar. 1, 1889, 25 Stat. 772, as amended, and its commander in chief is the President of the United States. D.C. Code § 39-109. It would be possible to argue, therefore, that members of the D.C. Guard are anomalous: unlike the members of state Guard organizations, the argument goes, D.C. Guard personnel have no "state militia hat" and when in service are invariably acting as federal personnel.

We reject this conclusion. In creating and organizing the D.C. Guard, the Congress plainly intended to establish a militia parallel in nature and status to the Guards of the several states. In light of Congress's broad powers to legislate for the District, U.S. Const., art. I, § 8 cl. 17, this intention is entitled to great weight. The 1889 Act, now codified at D.C. Code §§ 39-101 to 39-906, closely resembles state constitutional and statutory provisions organizing state Guards. The Act distinguishes between activity in militia status and activity "when called into the service of the United States," D.C. Code § 39-604, a distinction that would be meaningless if the D.C. Guard were necessarily and invariably acting in a federal capacity. The distinction Congress drew in the 1889 Act is parallel to that adopted by the Supreme Court in Perpich, although that decision did not address specifically the status of the D.C. Guard.

The President's duties and responsibilities as commander in chief of the D.C. Guard, furthermore, resemble those of a state governor with respect to a State Guard. For these reasons, "[t]his Office has consistently taken the position that 'the President . . . stands in a relation to the D.C. National Guard that is similar to the relation obtaining between the Governors of the several States and their respective State National Guard units.'" 1989 Opinion, 13 Op. O.L.C. at 113-14 (footnote with citation omitted). If this conclusion is correct, the Posse Comitatus Act, which by its terms is limited to the Army and Air Force (and which applies to Army and Air Force National Guard units **when** called into federal service), is simply inapplicable.[3] The President's authority with respect to the D.C. Guard, **in its militia status**, is defined entirely by the 1889 Act, which for these purposes is the equivalent of the state laws that define the powers of governors over state Guards. We therefore turn to the President's authority under the 1889 Act.

In our 1989 Opinion, this Office concluded that the Act authorizes the deployment of the D.C. Guard in militia status to carry out or support civil law enforcement. Citing D.C. Code § 39-602, we stated that that section's "authorization to order out the Guard for 'other duties, as [the Commanding General of the Guard] may deem proper' has long been viewed as broad enough to include law enforcement activities." 1989 Opinion, 13 Op. O.L.C. at 112. In support of this statement, the Opinion described the "natural reading of section 39-602" and two OLC memoranda from 1963. Neither of these bases for the Opinion's statement is, however, completely satisfactory. Section 39-602 states:

> **Prescribing Drills.**
>
> The Commanding General shall prescribe such stated drills and parades as he may deem necessary for the instruction of the National Guard, and may order out any portion of the National Guard for such drills, inspections, parades, escort, or other duties, as he may deem proper. The commanding officer of any regiment, battalion or company may also assemble his command, or any part thereof, in the evening for drill,

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[3] In addition to avoiding the Posse Comitatus problem, employing the District Guard in militia status, if lawful, will clothe the Guard members with immunity from civil criminal liability for actions undertaken "in the discharge of [their] military duty." D.C. Code § 39-805.

> instruction, or other business, as he may deem expedient; but no parade shall be performed by any regiment, battalion company, or part thereof, without the permission of the Commanding General.

While the 1989 Opinion's reading of § 602 is not impossible, neither is it in our view the "natural reading" of the language. Except for the reference to "other duties," the section in its entirety seems to us plainly directed toward ceremonial and training activities. Involvement in law enforcement activities certainly would not be ceremonial, and would not seem to be concerned with "the instruction of the National Guard" which is, after all, a military organization. (Section 602 is in a chapter of Title 39 labelled "Active Military Duty.")

The 1963 memoranda cited in the 1989 Opinion are not particularly persuasive on this point. One memorandum addressed the narrow question of whether the D.C. Guard in militia status could act to supplement the civilian police "during a [specific] massive demonstration or parade." Memorandum of July 30, 1963, at 1. The memorandum concluded, without discussion, that the words "or other duties" are "broad enough to be construed as authorizing the National Guard to support activities of the civilian police force during any massive demonstration or parade in the District." Id. at 2. The other memorandum addressed the liability of Guard personnel who might fail to report for duty to supplement the police in "handling the crowd . . . in [a specific planned] civil rights demonstration." Memorandum of August 9. That memorandum's discussion of § 602 was not a ringing endorsement of the section's availability as authority for the employment of the Guard in law enforcement:

> Although the term "other duties" can be reasonably interpreted as including activities in aid of civil authorities, thereby bringing such duty within the purview of the courts-martial provisions of Section 49, it is possible that such a construction would not be sustained by the courts in an action attacking the validity of such a court-martial, since it is possible that the term "other duties", as that term is used in Section [602], might be construed by the courts _in pari materia_ with the other terms used in that section which relate primarily to drill- and training-type activities as distinguished from the aid-to-civil-authorities-type activities expressly covered by Section 48.

Although the issue is not free from doubt because of the existence of contrary authority, chiefly the 1989 Opinion of this Office, it is our conclusion that § 602 does not provide the President authority to employ the D.C. Guard in militia status in the manner proposed.

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There is a second possible source of authority in the 1889 Act. Section 39-104 provides that the "enrolled militia shall not be subject to any duty except when called into the service of the United States, or to aid the civil authorities in the execution of the laws or suppression of riots." We think that § 104's reference to activity "in aid of the civil authorities in the execution of the laws" is affirmative authorization for the Guard's employment in law enforcement activities.[4] Section 104, to be sure, addresses not the Guard per se but rather the "enrolled militia" of the District, which is described in another section as all able-bodied male citizens of the District, with certain exceptions and age limitations. <u>See</u> D.C. Code § 39-101. This provision nevertheless appears to authorize the employment of the D.C. Guard for law enforcement purposes because the Guard is a subset of the "enrolled militia" and nothing in section 104 forbids the use of a part rather than the whole. <u>See</u> 1989 Opinion, 13 Op. O.L.C. at 112-13 (assuming such an argument).[5] While the question is not free from doubt, we conclude that § 104 provides plausible legal authority for the proposed use of the D.C. Guard.

Bear in mind, however, that calling up the D.C. Guard in their militia status will require funding the operation through District funds, which will require coordination with the appropriate District officials. At this time, we are unaware that such funds are presently available.

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[4] The 1989 Opinion apparently reached the same conclusion and quoted § 104 as ancillary support for its conclusion. <u>See</u> 13 Op. OLC at 112-13.

[5] The District Guard includes, we assume, female as well as male personnel, and thus is not literally a subset of the "enrolled militia" defined in § 39-101 but rather an organization only some of whose members are part of the latter group. However, section 101 does not limit membership in the militia to males but simply provides that the designated males "**shall be** enrolled in the militia" (emphasis added). Women (as well as men older than age 45) plainly may volunteer for service in the militia under § 39-106.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Ron Klain to Panetta re: Racial Justice Act--Briefing and Strategy (2 pages)	07/17/94	P5 8048
002. memo	Klain to Panetta re: The Racial Justice Act (4 pages)	07/14/94	P5 8049
003. memo	Klain and Jo Ann Harris to Attorney General re: Racial Justice Act (4 pages)	07/10/94	P5 8050

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FOLDER TITLE:
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Rob Seibert

rs15

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8648

July 17, 1994

MEMORANDUM FOR LEON PANETTA

FROM: RON KLAIN

SUBJECT: RACIAL JUSTICE ACT -- BRIEFING AND STRATEGY

Martha Foley asked me to pull together some materials for you, in anticipation the steps ahead on this issue this week. Attached is a copy of a background memorandum on racial justice that I previously sent to you. In addition, as explained below, I have attached a memorandum on administrative steps we could take in lieu of legislation.

CONFERENCE STRATEGY

As you know, if the Senate votes cannot be mustered for the racial justice compromise, the question becomes how to arrange for the Conference Report to omit any such language. There are three options; all of them presume that the President, while standing by his endorsement of the compromise, nonetheless publicly calls on the Conferees to move ahead without RJA.

The **first option** is to persuade Edwards and Conyers not to offer a racial justice provision in Conference. Chairman Brooks' staff informs me that as of this weekend, both Edwards and Conyers are still pressing Brooks hard to for such a vote. Brooks wants to avoid this, but wants us to quell this demand (in our meeting with Edwards on Tuesday at the White House).

The **second option**, if Conyers/Edwards will not back-off, is to have them voted down by the House conferees. Under this plan, Brooks and Schumer vote against RJA, pursuant to the President's request to move the bill ahead without it. But the only chance that Brooks will do this is if he witnesses Edwards rejecting our request not to offer the provision; Brooks may come away from the exchange believing Edwards' refusal to be unreasonable. Therefore, I recommend that Brooks be invited to the meeting with Edwards on Tuesday. Even so, the odds are against this strategy: beyond Brooks' distaste for voting down a colleague -- and his willingness to do it only if Schumer joins him (also, unlikely) -- Brooks fears that undercutting Edwards and Conyers on a House vote may make them more resentful of the final outcome.

Thus, the **third option**, if it comes to it, is to deal with a Senate conferee vote on racial justice. We know what DeConcini will do; Biden will probably also help vote down RJA if the President has given him public "cover." But if the Republicans all vote for RJA (as Hatch has threatened that he will), we will need all of the Democrats to vote against it. This means getting help from Kennedy, Metzenbaum, and Leahy -- with the first two being very hard.

The bottom line: the need to have Edwards and Conyers agree to forbear is clear. **This request should be the principle focus, for our side, in Tuesday's meeting**. We are at risk of considerable mischief if we cannot talk Edwards and Conyers out of a Conference vote.

ALTERNATIVES TO LEGISLATION

Given that the goal is to get Edwards and Conyers to agree to forbear, the question is: What can we offer them in exchange for their cooperation?

Obviously, the largest concession is the one we have already made: a Presidential endorsement of a version of racial justice, and a bona fide effort to get the votes for this provision. This act of good will should be met with a helpful response.

But beyond this, there are three more items that can be offered up:

(1) Commission. The President could appoint a blue-ribbon Commission to study the question of discrimination in the death penalty, and to recommend legislative responses. (To date, the only such studies have been (1) academic panels and (2) a 1990 GAO study.) Potential chairs could be Justice Blackmun (a friend of the President's) or Justice Powell (who cast the deciding vote against racial justice in the Supreme Court, but has since recanted).

(2) Executive Branch Action. The attached memo explains, in some detail, the proposals we have developed for the Justice Department to issue a new "protocol" regulating the decision-making process in federal death penalty cases so as to reduce any risk of racial discrimination in that process. If it helps, you could also offer a "Presidential directive" on this topic -- i.e., a Presidential memorandum directing the AG to issue such a protocol -- for added emphasis.

(3) Concessions on Other Issues. Finally, Conyers and Edwards have submitted to Brooks a list of other changes they want in the Conference Report; Brooks has confidentially shared that list with us. We have asked Brooks and Biden to forestall making any such concessions until we see where our talks on racial justice come out; obviously, we could be helpful on these unrelated matters if Conyers and Edwards are helpful to us. I can give you more specifics on these if you wish; suffice it to say, though, that every concession sought by Conyers and Edwards does have a price, in terms of opening the bill to attack from the right.

Let me know what else you need on this issue, or anything else related to the Crime Bill.

ATTACHMENT 1

8049

July 14, 1994

MEMORANDUM FOR LEON PANETTA

FROM: RON KLAIN RAK

SUBJECT: THE RACIAL JUSTICE ACT

One key issue in the Crime Bill Conference is the "Racial Justice Act." This provision was narrowly passed by the House, but defeated in the Senate, when the two bodies considered their respective versions of the Crime Bill.

The Racial Justice Act was developed in response to the Supreme Court's decision in McCleskey v. Kemp (1987), holding that statistical evidence that the death penalty was being applied in a discriminatory manner could never suffice to establish a claim that the death penalty was being administered in an unconstitutional manner.

In response, the RJA creates a cause of action so that a statistical showing of discrimination on the basis of the race of the defendant or victim can be actionable; specifically, under the RJA, such statistical evidence shifts the burden to the state to show that discrimination was not the reason for the death sentence being imposed.

CBC-BACKED VERSION

The key provisions of Racial Justice Act as passed by the House in April are:

- A prohibition on putting to death any person -- in state or federal court -- if the sentence was "imposed based on race";

- An inference that a death sentence was "imposed based on race" if evidence demonstrates that, at the time the sentence was imposed, the race of the victim or of the defendant was a statistically significant factor in decisions to seek or impose a death sentence in the jurisdiction;

- A requirement that the government to rebut this statistical inference, and a limitation on the sort of evidence the prosecution can use to rebut the statistics;

- And more liberal procedural rules in habeas corpus petitions seeking to raise a discrimination claim.

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As drafted, the RJA would have applied to all persons on death row, past and future. But to win its narrow victory in the House, the CBC agreed on the House floor to make the bill prospective only.

Thus, as drafted, the bill makes it very difficult (if not impossible) for state prosecutors to rebut a statistical case of racial disparity among defendants -- or among crime victims. This is what gives rise to the argument by prosecutors that the bill will, in effect, abolish the death penalty.

In our discussions with Congressman Mfume, we sought various modifications to the legislation (our views are discussed below). But Rep. Mfume indicated he would accept only the following changes to the House passed language:

1. The non-retroactivity provision, as discussed above, that had been previously pledged on the House floor;

2. A provision making it explicit that the legislation neither requires or permits a quota system for death penalties;

3. A statement that a claim cannot be made by simply showing a racial disparity between the general population and those sentenced to death; and

4. A limitation that defendants could raise these claims only in their first federal habeas petition, and not on multiple occasions.

These changes were helpful -- but while it was a disagreement over process, and not substance, that stalled our talks with Rep. Mfume -- they did not go far enough in our view.

ALTERNATIVE VERSION

Independently of the conversations with Congressman Mfume, lawyers at the Department of Justice, working in consultation with Rep. Edwards, had prepared an alternative version of the racial justice legislation. Beyond the changes outlined above, the DOJ version makes the following additional modifications:

1. It provides that the burden of proof never shifts to the government but remains with the defendant: the government's burden is to produce a nondiscriminatory reason for its decision;

2. Rather than focusing on statistical evidence, it provides that an inference is established if the defendant proves a "pattern or practice" of seeking or imposing death sentences based on race -- "pattern or practice" being a term of art in civil rights statutes;

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3. It removes the RJA provisions modifying traditional habeas law regarding the presumption of correctness that attaches to state court findings;

4. It limits use of statistical proof to <u>decisions by prosecutors and judges, but not juries</u>, because each individual jury is a one time actor in the process; and

5. It provides more specific guidance as to the order of the proceeding and the type of evidence that a court could consider in a challenge.

It was our view that, with these changes, we would have fulfilled the President's mandate to develop a statute that prevented discrimination in the death penalty -- without preventing the fair and effective imposition of that sanction.

Nonetheless, **even our version of this racial justice proposal (when quietly circulated) drew <u>substantial</u> opposition** among prosecutors and Senators. We could not get <u>even one</u> Democratic Attorney General from a death penalty state to endorse our compromise (though two or three non-death penalty Democratic AGs indicated they might be helpful); the DAs have pledged to continue to fight any proposal in this area, including ours.

Perhaps more importantly, the draft was quietly shared with several RJA opponents in the Senate (including Senators Byrd and Graham), and both said that the changes were insufficient to alter their stand on this measure.

<u>**ARGUMENTS ABOUT THE RJA**</u>

Proponents of the Racial Justice Act argue that its structure of allowing statistical evidence to create an inference of discrimination which must then be rebutted is common in anti-discrimination law. They dispute the assertion that valid studies showing patterns of racial discrimination will easily materialize around the country putting capital sentencing schemes at risk -- the study at issue in <u>McCleskey</u> was expensive and time consuming and has never been duplicated.

Proponents of the Racial Justice Act also make emotionally powerful arguments based upon both history -- and current practice. The history is obvious and well known; the current practice is that all nine of the defendants for whom the federal death penalty has been sought on the last year have been African-American. Finally, for many proponents of the Racial Justice Act, the bill has symbolic importance beyond its actual effect because it is an explicit recognition that there is racial discrimination in the criminal justice system.

Opponents argue that, while discrimination and prejudice should play no role in the criminal justice system, as drafted the Racial Justice Act would either shut down the imposition of capital punishment in the United States because of extensive litigation costs or lead to the imposition of a quota system. They maintain that it will be easy to demonstrate gross racial disproportions in the administration of capital punishment and thereby create an inference of discrimination, it will be all but impossible to rebut the inference since the government will be unable to point to factors in the particular case that make it an appropriate one for the death penalty.

Opponents use this Title VII analogy: in an employment case, an employer charged with discrimination against a particular individual for denying a promotion and presented with statistical evidence showing that African-Americans as a group are much less likely than others to be promoted <u>can</u> defend by showing that the particular employee was not qualified for the promotion. But under the <u>original</u> RJA, a state faced with statistical evidence about death sentences <u>could not</u> defend by showing that the particular defendant's sentence was proper given the facts of the crime and the defendant's prior record.

<u>**CONCLUSION**</u>

In sum, many of the modifications reflected in the "alternative version" of the legislation are explicitly designed to provide responses to the arguments made by opponents. Thus, the alternative is defensible on policy grounds, and in a principled debate.

But as noted above, while these changes do provide firm ground from which to defend against the attacks, the modifications are unlikely to silence many critics who are as committed to opposing <u>any</u> version of the RJA as proponents are committing to supporting the bill.

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ATTACHMENT 2

U. S. Department of Justice

8050

Washington, D.C. 20530

July 10, 1994

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: Jo Ann Harris
Assistant Attorney General
Criminal Division

Ronald Klain
Counselor to the Attorney General

SUBJECT: Recommended Alternatives to Enactment of a "Racial Justice Act"

After considering the alternatives to enactment of a Racial Justice Act, as set forth in the July 6 memorandum of the Racial Justice Working Group, the following strategy is recommended to address the need for assuring that death penalty statutes are applied in a non-discriminatory manner. The strategy consists of three parts: (1) issuing a general Presidential directive to the Department addressing racial justice; (2) developing a Departmental plan of action for complying with the directive; and (3) establishing a bi-partisan commission to examine issues of racial discrimination in the criminal justice system.

(1) PRESIDENTIAL DIRECTIVE

The President should issue a general directive to the Department to take necessary steps to assure that the federal death penalty statutes are applied in a non-discriminatory fashion. A generalized directive would show the President's commitment to the goals of racial justice. Because of its general nature, the directive would leave to the Department the specific actions appropriate to accomplish its goals.

(2) DEPARTMENTAL PLAN OF ACTION FOR COMPLYING WITH THE PRESIDENTIAL DIRECTIVE

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The Department's plan of action for complying with the Presidential directive should consist of four parts.

(a) Adoption and publication in the United States Attorneys' Manual (USAM) of the Attorney General's Death Penalty Protocol.

The Protocol as currently drafted focuses on the death penalty under the controlled substances laws. It requires the United States Attorneys to evaluate each prosecution under 21 U.S.C. §848(e) in writing and to submit a death penalty evaluation form to the Attorney General, whether or not the United States Attorney recommends the death penalty. The Protocol can be expanded for use in evaluating prosecutions under any federal death penalty statute enacted.

The Protocol gives clear guidance to the United States Attorneys as to the legitimate law enforcement or prosecutorial standards to be considered in seeking the death penalty and provides for review by a committee appointed by the Attorney General. Under the Protocol the Attorney General conducts an independent review and makes the final decision whether the government should seek the death penalty.

(b) Development of a decisional document, which would be made public after trial or guilty plea, reflecting the Attorney General's decision whether or not to seek the death penalty in each case subject to Attorney General approval. Such a document, which would not reveal the race of the defendant, would also be disseminated routinely to United States Attorneys.

The public disclosure of decisional documents in cases in which the Attorney General has determined whether or not to seek the death penalty would indicate the Department's willingness to hold itself accountable for its decisions. In addition, the opportunity for the defendant and the public to express views as to how to treat a case at hand, based on comparison with past cases, will encourage consistency in the Department's decisions. Finally, disseminating decisional documents to United States Attorneys will encourage consistency their recommendations regarding the death penalty.

(c) Institution of formalized training of federal prosecutors regarding the evaluation and prosecution of capital cases.

Formalized training would foster fairness and consistency in the evaluation and prosecution of capital cases. Such training could emphasize the procedures in the protocol referred to above, address the factors that weigh in favor of or against seeking the death penalty, explain the nature of the Department's review, and stress the importance of consistency and racial neutrality in deciding whether to seek the death penalty. The initial training may be most effective if conducted by a high-level Department official and directed at United States Attorneys. Follow-up training of Assistant United States Attorneys would then be appropriate.

(d) Establishment of a centralized unit within the Department to review and assist United States Attorneys in evaluating cases for treatment as capital cases and to participate in prosecuting cases under the death penalty.

A pro-active role for a Department-level unit in death penalty cases would permit centralized decision making and assure a reasonable degree of uniformity aimed at combatting any potential for racial or other inappropriate bias. In addition, it would allow a level of expertise in death penalty prosecutions that may never be achieved by a United States Attorney's office that handles such prosecutions infrequently. Centralized expertise may be particularly desirable given the likely expansion of the death penalty in the crime bill to many offenses beyond those in which it is currently sought.

The optimal degree of centralization should be considered. For example, United States Attorneys could be directed to consult with the central unit in the Department in every instance in which a case eligible for the death penalty is to be prosecuted federally. A lesser degree of centralization would authorize United States Attorneys to consult with the central unit when they deem such consultation useful, while a greater degree of centralization would authorize the central unit to handle death penalty litigation in all instances, but with the assistance of United States Attorneys.

(3) BI-PARTISAN COMMISSION

A bi-partisan commission should be established to examine issues of discrimination based on race in the criminal justice system. The work of the commission would not be limited to the death penalty but would also address whether race has been a factor in investigating crime, bringing charges, negotiating pleas, sentencing, and any other pertinent issues. The focus would be on both federal and state practices. At the completion of its study, the commission should issue recommendations for correcting any problems detected. To assure funding to accomplish these goals, a legislative enactment creating the commission is probably necessary.

If a commission is not established, the Department should engage in its own study of the impact of race in capital punishment, and, to the extent practical, other issues of possible racial discrimination in the criminal justice system. However, examination of these issues by a bi-partisan commission would produce results that are more likely to be considered unbiased than a study by the Department.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	Gun Litigation: Potential Remedies (4 pages)	nd	P5 8051

COLLECTION:
Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 21552

FOLDER TITLE:
Guns-Lawsuits

Rob Seibert

rs21

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
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RR. Document will be reviewed upon request.

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

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
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ATTORNEY WORK PRODUCT

Guns - Lawsuit

GUN LITIGATION: POTENTIAL REMEDIES

The following represents a sampling of the remedies that might be included in a complaint, injunction or consent decree. This list is not intended to signify support for any of these proposals.

Distribution

- Manufacturers could be required to develop an effective system for screening in advance the distributors or dealers that sell their guns.
- Manufacturers could be required to contribute to a fund for the education, supervision and regulation of the approximately 16,000 stocking gun dealers.
- Manufacturers could be required to provide certain training to all employees and sales agents of distributors and dealers that sell their guns, on subjects such as compliance with guns laws and how to recognize and prevent gun trafficking and attempts to illegally purchase guns.
- Manufacturers could be required to develop an effective system for monitoring sales of their products by distributors and dealers and determining when illegal or unsafe practices are occurring. This could include reviews of each dealer's and retailer's gun acquisition and disposition records ("bound books"), and all other records relating to sales incentive records, at least 4 times per year.
- Manufacturers could be required to develop an effective system to retrain, and suspend or terminate if necessary, distributors or dealers who engage in illegal or unsafe sales practices.
- Manufacturers could be required to maintain adequate liability insurance.
- Manufacturers could be required to refrain from using any unfair or deceptive advertising practices in the future.
- Manufacturers could be required to institute an industry-wide program of warranty revocation upon individual resale of handguns, unless the firearm is resold through a bona fide stocking handgun retailer so that secondary sales are subject to background checks under the Brady Handgun Violence Prevention Act.

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In addition, negligent distribution practices could be curtailed by imposing significant restrictions and requirements on gun dealers. That could be accomplished by suits directly against the dealers, but it could also be achieved by injunctive relief or settlement agreements, for example, that require the manufacturers to sell guns only to authorized dealers who have committed themselves by contract to abide by the restrictions and requirements. For example:

- Dealers could be prohibited from selling two or more guns (or some limited category of guns such as handguns or assault rifles) to any person within a 30-day period.
  - If multiple sales are permitted, there could be a waiting period (e.g. 5 days, 7 days) between picking up the first gun and picking up the second gun.
  - If multiple sales are permitted, dealers could be prohibited (or suspended) from selling guns if they have had more than one criminal trace request resulting from multiple sale transactions.

- Dealers could be prohibited (or suspended) from selling guns if they have had more than 2 criminal trace requests in any 1 month period.

- Dealers could be required to operate only from a genuine store or commercial place of business (i.e., no "kitchen table dealers") and to have a minimum dollar amount of firearm inventory (e.g. $250,000).

- Dealers could be required to certify their compliance with all local, state, and federal firearms laws.

- Dealers could be required to carry specified minimum amounts of liability insurance coverage at all times.

- Dealers could be prohibited from selling guns over the internet or at gun shows.

- Dealers could be required not to use any incentive sales practices that tie a salesperson's compensation to sales volume.

- Dealers could be required to provide documentation of their sales employees' and agents' eligibility to sell guns.

- Dealers could be required to maintain computerized inventory tracking programs containing detailed information about their acquisition and disposition of every gun.

- Dealers could be subject to audits of their inventory and sanctioned if they cannot account for any firearms.

- Dealers could be required to meet specified store security requirements to prevent theft of guns.

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- Dealers could be required to make all their employees and sales agents who sell or handle firearms participate in training programs provided by manufacturers, ATF, or law enforcement, and to pass written exams on the material covered.

- Dealers could be required to sell only guns that meet all of the safety design and warning requirements described above.

- Dealers could be required to cooperate with all monitoring of firearms distribution, whether done by manufacturers, ATF, or law enforcement.

- Dealers could be required to maintain records of all trace requests initiated by ATF, and to report those trace requests to the manufacturer of each firearm traced.

Product Design

- Manufacturers could be required to employ existing safety features such as child-proofing, internal trigger locks, magazine disconnect safeties, and chamber-loaded indicators.

- Manufacturers could be required to employ new safety features as soon as they are technologically feasible, such as personalization devices.

- Manufacturers could be prohibited from making any design or engineering decisions that produce guns that appeal particularly to criminals or to juveniles. Various indicia of such guns could be identified, such as high caliber, high power, and large capacity magazines.

- Manufacturers could be prohibited from including any features in a gun that facilitate criminal activity or make criminals more difficult to apprehend and prosecute, such as fingerprint resistance, easily obliterated serial numbers, the capability to be easily converted to an illegal firearm such as a fully automatic weapon, or the capability to accept a magazine with more than 10 rounds of ammunition.

- Manufacturers could be required to track models of their firearms to determine whether any are used illegally in disproportionate numbers, and required to make necessary design, engineering, or manufacturing changes to eliminate the features that make those models appealing to criminals.

- Manufacturers could be required to make guns that conform to safety standards that are already in effect for some places or some kinds of guns, such as the standards promulgated by the New York State Police under 9 NYCRR §§ 482.5 - 482.6.

- Manufacturers could be required not to sell packages of parts that can easily be assembled into a firearm.

- Manufacturers could be prohibited from making guns from inferior materials and, for example, required to use materials meeting specific metal strength and density standards.

- Manufacturers could be required to sell only guns that pass specified tests, such as drop tests or firing reliability tests.

- Manufacturers could be required to carry out research and development of new gun safety technology, with a minimum percentage of their revenues dedicated to such research.

- Manufacturers could be required to place prominent and strong warnings in packaging materials and to provide clear instructions about proper storage and use of guns.

Other

- Manufacturers could be required to fund public service campaigns to inform the public about risks relating to guns.

- Manufacturers could be required to issue public reports on a regular basis specifying the extent of their efforts to reduce the harm caused by their products.

- Manufacturers could be required to fire every gun before it is sold and to provide the fired casings and serial numbers to the ATF or another law enforcement agency for inclusion in a database for use in identifying guns used in crimes.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. memo	Owen Clements et al to John Coale and Ken Carter re: Key Points of [Gun] Industry Reformation (4 pages)	06/02/99	P5	8052
002. report	[Gun Industry and Public Housing] (2 pages)	08/05/99	P5	8053

COLLECTION:

Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 21552

FOLDER TITLE:

Guns-Public Housing

Rob Seibert

rs22

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
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CITY AND COUNTY OF SAN FRANCISCO

LOUISE H. RENNE
City Attorney

OFFICE OF THE CITY ATTORNEY

D. CAMERON BAKER
Deputy City Attorney
DIRECT DIAL: (415) 554-3960

MEMORANDUM
PRIVILEGED & CONFIDENTIAL

TO: John Coale
Ken Carter

FROM: Owen Clements
Cameron Baker
Ingrid Evans

DATE: June 2, 1999

RE: Key Points re Industry Reformation

We have had the opportunity to review the list of proposals you previously provided us. That list focuses on the problems of product design and safety, containing a number of proposals designed to ameliorate those problems. This focus is appropriate in light of the claims asserted by the City of New Orleans in its case against the gun industry. However, we note that other cities, including the City and County of San Francisco and other California public entities, have focused on other types of claims, such as negligent distribution and marketing of firearms. Accordingly, we have drafted a new list of proposals regarding possible industry reformation to include proposals relating to negligent distribution and marketing of firearms and other types of claims.

For ease, we have organized the list into general categories of proposals. <u>Underlined</u> proposals are proposals taken from your prior list. **Bold** proposals are proposals that are derived from your list but modified.

The list is not intended to be exclusive of all voluntary proposals within the field of firearm violence prevention, but has been limited to those proposals applicable to the defendants in the public entity lawsuits. Thus, for example, there are no direct proposals relating to ammunition such as contained in your list regarding the purchase of all "cop-killing" ammunition or proposals related to high caliber weapons such as 50 caliber weapons. The exclusion of certain proposals relating to these other issues should not be taken as an indication that such proposals should not be discussed as part of any settlement negotiations. Additionally, we have included some proposals concerning related problems that are framed in terms of legislative action. We would request that the industry support firearm legislation that will codify safe industry practices and help to protect the public.

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Memorandum
Privileged & ~~Confidential~~

DATE: June 2, 1999
PAGE: 2
RE: Key Points re Industry Reformation

FIREARMS PROPOSAL LIST

Product safety and design issues

- Incorporation of safety features to prevent accidental discharge/criminal misuse of firearm by unauthorized users, including children. Examples include the Saf-T-Lok and personalized technology and standardized level of trigger resistance that is high enough to make it difficult for children to discharge the firearm;
- Incorporation of other available safety features to avoid accidental discharges of semiautomatic weapons, such as magazine disconnect safeties (prevent firing of gun when magazine is removed) and chamber-loaded indicators;
- Produce weapons with serial numbers that are impervious to defacing **and with materials that do not enhance the "finger print" resistant qualities of the firearm**;
- Produce weapons that pass a standardized "drop" test, meet the barrel length and other standards set under the 1968 Gun Control Act for imported firearms, and pass a standardized "jam" test (such as the protocol set out in California Senate Bill 15);
- Spend 1% of gross revenues on R&D to develop and promote personalized technology;
- Redesign all gun clips to accept only magazines having ten (10) or less bullets with the exception of those firearms produced for law enforcement; and
- Agree to support industry regulation by Consumer Product Safety Commission or other appropriate governmental agency.

Marketing and distribution issues

- Adoption of an industry code of conduct incorporating improved distribution practices, including

  1. elimination of sales to kitchen dealers and gun show dealers;
  2. mandatory training for distributors and dealers concerning how to recognize and prevent straw purchases, including suspicious multiple sales;
  3. strictly limiting indirect sales -- such as telemarketing, mail offers and internet sales -- except where accompanied by regular in-person inspections of sales facilities; and
  4. limitation of sales to one gun per person per month;

- monitoring of dealers by manufacturers and distributors, in order to check compliance with federal, state and local laws through inspections, auditing and reviewing firearms sales records, periodic inventory checks, and use of electronic inventory tracking;

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- adopting measures to ensure adequate security to prevent thefts at all levels of the distribution chain;
- reviewing suspicious claims made by distributors and dealers that firearms have been stolen;
- requiring all manufacturers, distributors and dealers to maintain minimum levels of liability insurance based on the volume of firearms sold by the entity in question; and
- suspending or terminating distributors and dealers who engage in improper practices.

* Restrictions on advertisements and promotions

- **prohibiting advertisements that suggest or promote possible criminal use of the firearms (e.g., selling "concealibility" or fingerprint resistance);**
- prohibiting advertisements or claims that suggest having a firearm in the home increases personal safety or home security;
- banning product placement in television programs and movies; and
- **prohibiting advertisements that are designed to appeal to criminals or minors.**

Improvements to the current ATF tracing system

- agreement to open their sales records to local and state law enforcement officials;
- agreement to fund and support a computerized federal gun registration program to track gun ownership;
- agreement to test fire all handguns using the IBIS system ("gun fingerprinting");
- agreement to fund and support enhanced crime investigation efforts, including more ATF agents, specialized gun show and gun trafficking law enforcement units; and

We would request that the firearm industry support pending legislation that is related to the above-referenced voluntary actions taken by the firearm industry. To the extent that there is additional legislation that would also benefit the public and that is not related to the reformation topics set forth above, we would request that the industry support such further beneficial legislation. The following are examples of additional legislation that the firearm industry should support in order to ensure greater public safety:

Pending U.S. Legislative Items (U.S. Senate Juvenile Crime Bill, S. 254 amendments)

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- closing the gun show loophole;
- requiring sale of child safety lock with every handgun sold;
- banning juvenile possession of assault weapons and high capacity ammunition clips;

- prohibiting importation of high capacity ammunition clips;
- reintroducing the 3-day Brady waiting period;
- increasing criminal penalty for transferring guns to juveniles;
- imposing a criminal penalty for allowing children access to firearms where they later injure themselves or others;
- increasing the number of jurisdictions participating in ATF Youth Interdiction program;
- regulating sales of firearms over the internet; and
- prohibit the sale by any person, FFL or not, of handguns, large capacity ammunition clips and assault weapons to any person under the age of 21.
- agreement to support imposition of a stricter definition of "engaged in the business of dealing firearms," 18 U.S.C. § 921(a)(21), to preclude traffickers from raising the defense that they are selling from their "personal collections" or as part of a "hobby."

Pending California Legislative Items

- adoption of the junk gun ban (S.B. 15);
- stringent background checks for all firearm dealers' employees (A.B. 32);
- one gun a month legislation (A.B. 202);
- repeal of Civil Code section 1714.4 (S.B. 1212);
- repeal of state preemption of local gun permitting and registration (A.B. 17);
- adoption of limitation that any city or county registration of gun dealers be limited to dealers operating from areas not zoned as residential (A.B. 988); and
- legislation to raise the legal age of gun possession to 21.

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ATTORNEY-CLIENT COMMUNICATION 8053

The case for taking action against the gun industry is compelling. The problem of gun violence affects every American. Each year there are approximately 600,000 violent crimes committed in the United States with the use of guns. This results in numerous injuries and deaths. In 1996 alone, more than 34,000 Americans were killed by gunfire and it is estimated that there are 2 to 3 nonfatal shooting injuries for every death. Tragically, more than 4,500 of those killed had not even reached their 20th birthday. In fact, firearms are the second leading cause of death for Americans between the ages of 10 and 24.

Guns in Public Housing

Public housing suffers from some of the most intense, concentrated gun violence in the nation. Residents of many public housing projects – already disadvantaged by the negative effects of intense poverty – must endure constant fear of violent crime because of the widespread availability of unsafe guns. The Chicago Housing Authority (CHA) presents one example. Between 1994 and 1998 there were 1,372 people arrested with guns and an additional 788 guns seized at the CHA. This flood of guns is the result of the gun industry's failure to take even basic measures to curb marketing and selling guns to criminals. A recent report issued by Senator Schumer demonstrated that 1% of gun dealers account for 50% of all crime guns sold. Even if manufacturers and distributors merely shut down this 1% of dealers it would dramatically decrease the number of violent crimes committed and guns available in public housing.

The funds that must be expended to combat the problems of gun violence and gun trafficking in housing authorities are enormous. In 1997 for example, $43,777,157 of Chicago's Public Housing Comprehensive grant funds were budgeted for security along with $57,000 of Cook County's Public Housing Comprehensive grant funds and $3,887,445 of Chicago's Drug Elimination Grant funds. The one year cost for CHA security of $47,721,602 represents 37% of the total funds for these three grants and does not even include dollars used for security from the Community Development Block Grant program and Operation Safe Home. Yet even these huge expenditures have not ended the scourge of gun violence at the CHA. Sue a gang?

Stemming the violence is a central part of the goal of HUD and housing authorities to provide "decent, safe and sanitary" housing as called for by the United States Housing Act of 1937. However, the widespread availability of guns and prevalence of gun crimes in public housing impact upon every part of the mission of housing authorities. HUD grant funds spent on security by housing authorities reduce the funds available to carry out other functions. For example, there is a backlog of approximately $20 billion worth of unaddressed modernization needs in public housing across the nation. Removing or ameliorating the more immediate need for heavy security would allow housing authorities to direct more funds to these unattended needs.

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The Gun Industry's Responsibility for the Problem

Manufacturers bear much of the responsibility for the flood of guns into public housing and the acquisition of guns by criminals. For example, manufacturers have failed to take action against dealers that repeatedly sell guns that are used in crimes and turn up on Bureau of Alcohol, Tobacco and Firearms trace requests. Plus, manufacturers engage in advertising campaigns targeted to the criminal market. For example, the gun manufacturer Intratec has advertised its TEC-DC9 as an "assault-type pistol" with a coating that provides "resistance to fingerprints."

While housing authorities around the nation fight an uphill battle against gun violence, the gun industry has the ability to take basic steps to make thousands of Americans safer. Many shooting injuries and deaths could be prevented through the use of relatively simple safety mechanisms by the gun industry. Such measures would be particularly effective in preventing unintentional shootings. In 1996, there were 1,100 deaths from unintentional shootings. Available safety measures include: magazine disconnects that do not allow guns to be fired once the magazine is removed; warnings indicating that a round is in the chamber; child-resistant locking mechanisms; and personalization techniques (including a variety of locks such as combination locks, magnetic rings and fingerprint recognition). The General Accounting Office has estimated that 31% of accidental shooting deaths might be prevented simply by child-proofing guns and incorporating loading indicators into their design. Personalization also could help stem another form of crime – the theft of approximately 500,000 guns each year. While there are a few gun models that include safety devices, the gun industry has failed to incorporate these relatively modest safety devices on a scale that would have any significant impact.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. letter	Anne Kimball to Office of the Assistant General Counsel, Dept. of Treasury re: Smith & Wesson Settlement (6 pages)	02/29/00	P5	8054
002. draft agreement	Gun Industry Settlement Document (17 pages)	02/11/2000	P5	8055

COLLECTION:

Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 21552

FOLDER TITLE:

Guns-Settlement

Rob Seibert

rs23

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

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

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8054

February 29, 2000

~~CONFIDENTIAL~~

Office of the Assistant General Counsel
Department of the Treasury
15th and Pennsylvania Avenue, N.W.
Room 2000
Washington, D.C. 20220

Gentlemen and Ms. Edsel:

You have asked that we prepare for you a written response to your draft of February 17, 2000. The following is intended as a general response to that document. We of course continue to review this document and expect to comment in more detail as our discussions continue. This response is also intended to be held in the utmost confidentiality by you. Its purpose is purely for settlement discussion and no other and is in no way an admission of any liability on the part of Smith & Wesson. Additionally, this response is made on behalf of Smith & Wesson only and not on behalf of any other firearms manufacturer.

PAGE 1

We have no direct comments on the preamble language at this point, but would like to wait until the entire document is completed before finalizing this portion.

PAGES 2 - 3

I. Safety and design.

A.1. Standards applicable to all handguns.

Smith & Wesson has no objection to Sections a and b. Sections c and d are only acceptable if these devices are considered features that are available on certain

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INITIALS: M DATE: 9/04

product lines. It is not and has never been Smith & Wesson's intent to have these features available on all its products or on all its product lines. Additionally, with regard to the internal locking devices, the 12-month period would need to be extended to 24-months. **Section e** is acceptable with the provision concerning the limitation to the double action mode. **Section f** is acceptable if framed as in the Massachusetts spread test. **Section g**, generally speaking, is acceptable. **Section h and i** remain to be discussed.

PAGES 4 - 5

2. Additional standards for pistols.

We believe that if sections (a) and (c) are required to apply to all pistols that they are ill-advised and unacceptable to Smith & Wesson. **Section (b)** could be acceptable if appropriate language such as the Massachusetts requirement were to be developed. **Section (d)** could be acceptable if language were developed which was broad enough to encompass a variety chamber load indicators. **Section (e)** is not acceptable from a design perspective nor do we believe that it would represent any significant form of deterrence. **Section (f)** is not acceptable.

3. Additional standard for revolvers.

This section acceptable.

4. Standards for all long guns.

Smith & Wesson no longer makes any long guns.

B. Law enforcement and military exception.

We believe that it is inappropriate and unacceptable for a manufacturer such as Smith & Wesson to place requirements on and create exceptions for the law enforcement and military.

PAGE 6

C. Warnings about safe storage and handling.

This paragraph is acceptable to Smith & Wesson.

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D. Illegal firearms.

Smith & Wesson can certainly agree to the provision regarding firearms designed so that they are resistant to fingerprints. With regard to the conversion portion of this section, Smith & Wesson continues to have concerns with regard to the specificity of the language ("readily converted to an illegal firearm"). Conceptually, Smith & Wesson certainly has no objection to this section. More exacting language must be worked out.

PAGES 7 - 13

E. Retrofitting programs.

Smith & Wesson cannot agree to this section.

II. Sales and distribution.

While Smith & Wesson has largely few objections to agreeing to this section for itself, Smith & Wesson cannot agree to this section on behalf of its distributors and dealers. Further, while Smith & Wesson is agreeable to making certain recommendations for courses of action for its distributors and dealers, it cannot make these courses of action mandatory for dealers in particular and certainly is not in a position to implement the policing and investigative functions that this agreement, as drafted, envisions.

A. Authorized distributors and dealers.

Sections 1.a through d, Smith & Wesson is agreeable to these sections. **Sections 1.e through 1.f,** Smith & Wesson cannot make these agreements on behalf of its distributors or dealers. **Section 1.g,** Smith & Wesson is concerned as to how this provision would impact large dealers where physical segregation may be difficult or impossible. **Sections 1.h through 1.u,** while Smith & Wesson agrees for itself to these sections, it cannot agree to require or police these provisions as they might apply to its distributors or dealers. With regard to grandfathered ammunition magazines that are able to accept more than ten rounds of ammunition, Smith & Wesson agrees not to sell such magazines and to destroy such magazines within six months of the date of this agreement. However, with regard to the requirements of these sections that ask the manufacturer to monitor, for instance, traces made to its dealers, Smith & Wesson is a manufacturer and marketer of firearms. It has neither the staff nor the expertise to

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inspect and police the records of thousands of dealers across the country. Nonetheless, Smith & Wesson commits itself to continue to work with ATF to monitor trace requests and to initiate a program with ATF to establish training programs for salespersons, whether employed by distributors or dealers, and to training and safety programs aimed at the consumer.

PAGE 13

2. [The manufacturers and imports that are parties to the Agreement]

While Smith & Wesson respects the effort made at due process contained in this draft, and would be acceptable to some sort of provision with regard to the termination of dealers, for the reasons stated above, Smith & Wesson is not in a position to monitor or police its dealers in the way envisioned by this agreement. Further, no agreement between the parties has been reached concerning the Oversight Commission.

PAGES 14 - 16

B. Authorized distributors - additional provision.

This provision is acceptable.

C. Authorized dealers - additional provisions.

We are not sure what the purpose is of **Section 1**. **Sections 2 and 3** are agreeable. **Section 4** is the subject of ongoing discussions. **Section 5** is not agreeable.

D. Manufacturers and importers.

Sections 1 and 2 are agreeable. **Section 3** is not agreeable for reasons that we have previously discussed. **Sections 4 through 8** are agreeable.

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PAGE 16

E. Corporate responsibility.

The first portion of this section dealing with "disproportionate number of crime guns" is not acceptable for the reasons we have previously discussed. The section dealing with Oversight Commission is yet to be discussed among us.

PAGE 17

III.A. Oversight Commission.

This section remains to be discussed.

B. Role of ATF.

Smith & Wesson welcomes ATF's current role and encourages it to become more involved in working with Smith & Wesson and other manufacturers to assure the legal sale and safe use of firearms. Smith & Wesson believes this section can be expanded as we continue our discussions.

PAGE 18

C. Manufacturer and importer cooperation.

This section is acceptable.

D. Dispute Resolution.

We will need to dispute resolution. We will need to discuss this section further.

IV. Cooperation with law enforcement.

Smith & Wesson agrees absolutely with **Section A.** As you are aware, Smith & Wesson is already online with Access 2000 and believes that program is working well. Smith & Wesson is conceptually agreeable with **Section B** as it pertains to fired casings. It believes the details of this program need to be worked out.

PAGES 18-19

V. Cooperation with litigation.

We have not discussed this issue but believe that such a provision is inappropriate.

PAGE 19

VI. Legislation.

Smith & Wesson will support any piece of litigation which it believes will reduce the illegal sale of firearms and will reduce firearms violence.

VII. Education trust fund.

We have not discussed this provision.

VIII. Most favored government entity.

We have not discussed this provision yet.

Sincerely,

Anne G. Kimball

AGK/dlu
456986

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February 11, 2000
Settlement Document

AGREEMENT

Preamble

[Manufacturer and importer parties to the Agreement] and [state, city and public housing authority parties to the Agreement] enter into this Agreement to reduce the criminal misuse of firearms, combat the illegal purchase, possession and trafficking of firearms, reduce the incidence of firearms accidents, and educate the public on the safe handling and storage of firearms. Furthermore, [manufacturer and importer parties to the Agreement] enter into this Agreement as a continuation of their efforts to make their firearms as safe as practicable for their customers and the public. Accordingly, in consideration of the commitments set forth below:

1. The [state, city and public housing authority parties to the Agreement] dismiss the [manufacturer and importer parties to the Agreement] with prejudice from the lawsuit entitled __________; or

2. The [state, city and public housing authority parties to the Agreement] agree to refrain from filing suit against the [manufacturer and importer parties to the Agreement] on any cause of action arising from

   ______________.

The parties agree that this Agreement constitutes the full and complete settlement of any and all claims that were raised or could have been raised in the subject litigation. The parties agree further that this Agreement does not constitute an admission of any violation of law, rule or regulation by the [manufacturer and importer parties to the Agreement], or any of [its/their] employees. Nothing in this Agreement shall be construed to be an admission of liability. The adoption of standards for firearms design and distribution in this Agreement shall not be construed as an admission by the [manufacturer and importer parties to the Agreement] that practices they engaged in prior to the execution of this Agreement were negligent.

I. **Safety and design.**

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A. Each firearm design sold by each manufacturer or importer shall be tested by [an agreed upon proofing entity] against the following standards. Existing designs shall meet these standards within 60 days of execution of this Agreement unless a longer period is specified in the standard. New designs shall not be manufactured and sold after the execution of this Agreement unless they conform to these standards.

1. **Standards applicable to all handguns:**

   a. **Safety device.** The gun must have a positive manually operated safety device.

   b. **Second "hidden" serial number.** The gun must have both a visible serial number on the exterior of the frame or receiver, as well as a second serial number hidden on the interior of frame or receiver (e.g., under the grips) or visible only with the aid of an optical instrument.

   c. **External locking device.** As an interim measure, until the implementation of I.A.1.d, within 60 days of execution of the Agreement, each firearm shall be supplied with an external locking device that effectively prevents the operation of the firearm when locked.

   d. **Internal locking device.** Within 12 months of execution of the Agreement, each firearm shall have a built-in, on-board locking system, by which the firearm can only be operated with a key or combination or other mechanism unique to that gun.

   e. **Authorized user technology.** Within 48 months of execution of the Agreement, each firearm shall incorporate technology or a device which recognizes only authorized users and permits the gun to be used only by authorized persons.

   f. **Child safety.** Within 12 months of execution of the Agreement, each firearm shall be designed so that it cannot be readily operated by a child under the age of 6. Such mechanisms include: making ~~the~~

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trigger pull resistance at least ten pounds; designing the firing mechanism so that an average five year old's hands would be too small to operate the gun; or requiring multiple, sequenced actions in order to fire the gun.

g. **Minimum barrel length.** Each firearm must have a barrel length of at least 3". [To be discussed.]

h. **Performance test:** Each firearm will be test-fired with "proof cartridges" (cartridges loaded to generate excess pressure as set forth in accepted specifications for proof cartridges) to ensure the integrity of the material. At least one cartridge shall be fired from each chamber. Each firearm shall also pass the following performance test: the gun shall fire 600 rounds, stopping every 100 rounds to tighten any loose screws and to clean the gun (if required by the cleaning schedule recommended in the manual), and as needed to refill the empty magazine or cylinder to capacity before continuing. For any gun that loads other than with a detachable magazine, the tester shall pause every 50 rounds for ten minutes. The tester shall use the ammunition recommended in the user's manual, or if none is recommended, any standard ammunition of the correct caliber in new condition. A gun shall pass this test if it fires the first 20 rounds without a malfunction and the full 600 rounds with no more than 6 malfunctions and without any crack or breakage of an operating part of the gun that increases the danger of injury. Malfunctions caused by failure to clean and lubricate, or by defective ammunition, shall not be counted.

i. **Frame construction.** [To be discussed.]

j. **Weight.** [To be discussed.]

k. **Drop test.** Pass the more rigorous of: (a) the SAAMI Standard drop test in effect on the date the firearm is sold; or (b) the following test: The gun shall be test-loaded, set such that it is ready to fire and dropped onto a steel plate or equivalent material of similar hardness from a height of one meter from each of the following positions: (1) normal firing position; (2) upside down; (3) on the grip; (4) on the muzzle; (5) on either side; and (6) on the exposed hammer or striker (or, if no exposed hammer or striker, on the rearmost part of the gun). If the gun is so designed so that its hammer or striker may be set in other positions, it shall be tested with the hammer or striker in each such position (but otherwise ready to fire).

2. **Additional standards for pistols:**

   a. **Minimum length and height standards.** The pistol's combined length and height must not be less than 10" with the height being at least 4" and the length being at least 6". [To be discussed.]

   b. **Magazine disconnector.** Within 12 months of execution of the Agreement, each pistol shall have a magazine disconnector.

   c. **Chamber load indicator.** Within 12 months of the execution of the Agreement, each pistol shall have a chamber load indicator painted in a prominent, contrasting color and include an appropriate legend on the firearm identifying the location of the indicator and how to read it.

   d. **Large capacity magazines.** Within 18 months of the execution of the Agreement, each pistol shall not be able to accept magazines manufactured prior to September 14, 1994, with a greater than 10 round capacity, and shall not be capable of being easily modified to accept such magazines.

   e. **Additional safety features.** Each pistol must have at least one of the following:

      (1) Locked breech mechanism;
      (2) Grip safety; and
      (3) Firing pin block or lock.

3. **Additional standard for revolvers.** Each revolver must pass a safety test. Each revolver must have a safety feature which automatically (for a double action revolver) or by manual operation (for a single action revolver) causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge. The safety device must withstand the impact of a weight equal to the weight of the revolver dropping from a distance of 1 meter in a line parallel to the barrel upon the rear of the hammer spur, a total of 5 times.

4. **Standards for all long guns.** [To be discussed.]

B. **Law enforcement and military exception.** An exception to a requirement of paragraph A may be granted for firearms manufactured or imported for sale to a law enforcement agency or the military if the law enforcement agency or military organization certifies to the manufacturer or importer that the exception is necessary for official purposes. The manufacturer or importer shall maintain the certification in its records and provide a copy to the Oversight Commission. Firearms sold to law enforcement or the military pursuant to this exception, which do not comply with the design standards of this Agreement, will be accompanied by a warning:

1. Stating that the firearms do not meet the requirements of this Agreement for sale to civilians, specifying the requirements with which they do not comply, and stating that the firearms would not be sold by the manufacturer or importer to civilians.

2. Requesting that the purchasing organization prohibit the firearms' trade or resale into the civilian market.

C. **Warnings about safe storage and handling.** Within 6 months of execution of this Agreement, [manufacturer and importer parties to this Agreement] shall include in the packaging of each firearm sold a warning on risk of firearms in the home and proper home storage. At a minimum, these warnings shall state in 14 point type, bold face:

> **"WARNING: Every year over a thousand children and teenagers kill themselves with a gun in the United States. Thousands more young people are injured in unintentional shootings. Over 200,000 guns like this are stolen each year, and many are then used in subsequent crimes. To prevent these tragedies, it is imperative that you keep your gun unloaded, uncocked, securely locked, with ammunition in a separate location. In addition, take any other reasonable steps to limit the possibility of theft, accident, or suicide. Failure to properly secure and store a firearm, in addition to possibly causing death or injury, may result in criminal prosecution and imprisonment."**

D. **Illegal firearms.** Manufacturers and importers shall not sell firearms that can be readily converted to an illegal firearm, that is, a weapon designed in a manner so that with few additional parts and/or minimal modifications an owner can convert the firearm to an illegal fully automatic weapon; nor shall the firearms be designed so that they are resistant to fingerprints.

E. **Retrofitting programs.** [Manufacturer and importer parties to this Agreement] shall offer their customers the opportunity to retrofit existing firearms with improved safety devices as they become available and to the extent technically feasible. These retrofit programs shall be offered at cost and extensively advertised in several major gun magazines and at retail stores.

II. Sales and distribution.

In addition to complying with specific terms, manufacturers and importers will agree for themselves and as part of any distribution or agency agreement that they, and their authorized distributors and authorized dealers, including franchisees, shall commit to a standard of conduct to make every effort to eliminate sales of firearms that might lead to illegal firearm possession and/or misuse by criminals, unauthorized juveniles, and other prohibited persons ("suspect firearms sales"). Suspect firearm sales include sales made to straw purchasers, multiple sales of handguns without reasonable explanation (excluding sales to FFLs), and sales made to any purchaser without a completed background check.

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A. **Authorized distributors and dealers.**

1. Manufacturers and importers may sell only to authorized distributors and authorized dealers. In order to qualify to become an authorized distributor or authorized dealer, the distributor or dealer must agree in writing to:

   a. Possess a valid and current federal firearms license, and all other licenses and permits required by local, state or federal law, and certify on an annual basis, under penalty of perjury, compliance with all local, state and federal firearms laws.

   b. Execute in the presence of the purchaser the following elements of all firearms transactions at the premises listed on its federal firearms license: completion of the forms and related requirements under the Brady Act and the Gun Control Act and physical transfer of the firearm.

   c. Carry insurance coverage in amounts appropriate to its level of sales, but at a minimum no less than $1 million for each incident of damage, injury or death.

   d. Make no sales at gun shows.

   e. Maintain an inventory tracking plan that includes at a minimum the following elements:

      (1) Electronic recording of the make, model, caliber or gauge, and serial number of all firearms that are acquired no later than one business day after their acquisition and electronic recording of their disposition no later than one business day after their disposition. Monthly backups of these records shall be maintained in a secure container designed to prevent loss by fire, theft, or other mishap.

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(2) All firearms acquired but not yet disposed of must be accounted for through an electronic inventory check prepared once each week and maintained in a secure location.

(3) For authorized dealers and franchisees, all ATF Form 4473 firearm transaction records shall be retained on the dealer's business premises in a secure container designed to prevent loss by fire, theft, or other mishap.

(4) If an audit of a distributor's or dealer's inventory reveals any firearms not accounted for, the distributor or dealer shall be subject to sanctions, including termination as an authorized distributor or dealer.

f. Implement a security plan for securing firearms, including firearms in shipment. The plan must satisfy at least the following requirements:

(1) All perimeter doorways shall meet one of the following:

(a) A windowless steel security door equipped with a dead bolt and a doorknob lock;

(b) A windowed metal door that is equipped with a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch in diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door; or

(c) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and door frame;

(2) All windows shall be covered with steel bars or roll-down security gates;

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(3) Heating, ventilating, air-conditioning and service openings shall be secured with steel bars, metal grating, or an alarm system;

(4) Any metal grates shall have spaces no larger than six inches wide measured in any direction;

(5) All steel bars shall be no further than six inches apart;

(6) At least a number 10-gauge expanded steel mesh will be installed from floor to ceiling in the walls of the store's vault and the walls of the store that adjoin other businesses;

(7) All firearms shall be secured with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(8) Display cases shall be locked at all times except when removing a single firearm to show a customer, and customers shall handle firearms only under the direct supervision of an employee;

(9) All firearms shall be secured, other than during business hours, in a locked fireproof safe or vault in the licensee's business premises;

(10) Ammunition shall be stored separately from the firearms and out of reach of the customers;

(11) The store shall be protected by a burglar alarm with central monitoring, a video system, motion and glass smash sensors, and a panic button; and

(12) A common carrier will be used to ship firearms only if the common carrier warrants in writing that:

(a) it conducts criminal background checks on its delivery personnel; and

(b) it reports all thefts or losses of firearms to ATF within 48 hours of learning of the theft or loss.

g. Exclude persons under 18 years of age not accompanied by a parent or guardian from portions of their premises where firearms or ammunition are stocked or sold. Exclusion may be accomplished by means such as physically segregating that portion of the premises.

h. Not sell ammunition magazines that are able to accept more than 10 rounds regardless of the date of manufacture, not sell any semi-automatic assault weapon as defined in 18 U.S.C. 921(a)(30) regardless of the date of manufacture, provide safety locks and warnings with firearms, as specified in Section I above, and sell only firearms that comport with the design criteria of this Agreement.

i. Provide manufacturers, importers, law enforcement, and government regulators full access to any documents related to the acquisition and disposition of firearms deemed necessary by one of those parties.

j. Participate in and comply with all monitoring of firearms distribution by manufacturers, importers, ATF or law enforcement.

k. Maintain an electronic record of all trace requests initiated by ATF, and report those trace requests by make, model and serial number of firearm, date of trace, and date of sale to the manufacturer of the firearm within 24 hours unless ATF, for investigative reasons, directs the licensee not to do so.

l. Agree to cooperate fully in the oversight mechanism established in Section III of this Agreement, including providing access to all necessary documents, and to be subject to the jurisdiction of the court enforcing this Agreement.

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m. Require all employees to attend annual training provided by manufacturers and importers on an annual basis. The training shall cover at a minimum: the law governing firearms transfers by licensees and individuals; how to recognize straw purchasers and other attempts to purchase firearms illegally; how to recognize indicators that firearms may be diverted for later sale or transfer to those not legally entitled to purchase them; how to respond to those attempts; and the safe handling and storage of firearms. New employees will receive training on the above topics directly from the dealer or distributor, based on materials developed for the annual training, before handling or selling firearms and shall attend annual training thereafter.

n. Require all employees to pass a comprehensive written exam on the material covered in the training before being allowed to sell or handle firearms. Any employee who fails to pass the exam shall be prohibited from selling or handling firearms on behalf of the distributor or dealer.

o. Provide data on the volume of sales by make, model, and caliber or gauge to ATF's National Tracing Center on a quarterly basis.

p. Consent to up to three unannounced ATF compliance inspections each year.

q. Not complete any transfer of a firearm prior to receiving notice from the NICS that the transferee is not a prohibited person under the Gun Control Act.

r. Verify the validity of a licensee's federal firearms license against an ATF database before transferring a firearm to that licensee.

s. Forgo any transfer of a firearm to a licensee if the dealer or distributor knows the licensee to be under indictment.

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t. Provide monthly reports to ATF of the make, model and serial number of all used firearms that are taken into inventory.

u. Transfer firearms only:

(1) To individuals who have demonstrated that they can safely handle and store firearms through completion of a certified firearms safety training course or by having passed a certified firearms safety examination. Mandatory topics to be covered in the course and exam will include: safe handling and storage of guns and the legal restrictions on transferring or selling guns.

(2) After demonstrating to the purchaser how to load, unload, and safely store the firearm, and how to engage and disengage all safety devices on the firearm.

(3) After providing the purchaser with a copy of the ATF Disposition of Firearms Notice.

2. [The manufacturers and importers that are parties to the Agreement] will create an effective system to suspend or terminate authorized distributors and dealers that engage in conduct in violation of this Agreement. Distributors and dealers shall agree to this enforcement system as a condition of becoming authorized. At a minimum, the enforcement system shall include the following. If a dealer or distributor fails to adhere to any one of the provisions set forth in 1(a-u) above, the manufacturer(s) and/or importer(s) that have authorized the dealer or distributor to sell its/their firearms will, individually or collectively, notify the dealer or distributor within seven (7) business days of learning of such violation and inform the dealer or distributor of the breach and request information regarding the breach. The distributor or dealer will then have fifteen (15) days to provide the manufacturer(s) and/or importer(s) with the requested information. If the manufacturer(s) and /or importer(s) determine that the dealer or distributor is in violation of this section of the Agreement, this determination will void the distribution or agency agreement under which the distributor or dealer

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receives products from the manufacturer or importer. The manufacturer(s) and/or importer(s) will not honor any further orders for the distributor or dealer until the manufacturer(s) and/or importer(s) determine that the distributor or dealer is in compliance with the Agreement.

The manufacturer(s) and/or importer(s) shall inform the Oversight Commission and ATF of its/their notifications and decisions and provide them with the information provided by the dealer or distributor. If the Oversight Commission determines that suspension or termination of the dealer or distributor is warranted, and the manufacturer(s) and/or importer(s) did not take this action, the Oversight Commission shall direct the manufacturer(s) and/or importer(s) to do so.

B. **Authorized distributors - additional provision.**

Authorized distributors must agree to sell the manufacturers' or importers' products only to other authorized distributors or authorized dealers or directly to government purchasers.

C. **Authorized dealers -- additional provisions.**

In addition to the requirements in section II(A)(1), authorized dealers must:

1. Be a stocking gun store with a minimum of [$___] in firearms inventory. There shall be an exception to this requirement in rural areas in which there is no such gun store within a 100-mile radius.
2. Not to sell any of the manufacturers' or importers' products to any federal firearms licensee that is not an authorized distributor or authorized dealer of that manufacturer or importer.
3. Not to engage in sales that the dealer knows or has reason to know are being made to straw purchasers. ?

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4. Not to sell to any person who has purchased a firearm within the previous 30-day period. (To be discussed.)

5. Have no incentive sales programs that tie employee or sales agent compensation, bonuses, or benefits to the number of firearms sold.

D. **Manufacturers and importers.**

Each manufacturer or importer must:

1. Provide quarterly reports of its own sales data and downstream sales data, with the volume of sales by make, model, caliber and gauge, to ATF's National Tracing Center.

2. Not market any firearm in a way that would make the firearm particularly appealing to juveniles or criminals, such as advertising a firearm as "fingerprint resistant."

3. Refrain from selling any firearm that is disproportionately used in crime. A firearm is used disproportionately in crime if the number of crime gun traces for the firearm (as reported by ATF) divided by the number of firearms of that make and model in circulation (based on the manufacturer's or importer's sales records) is more than twice the average for all makes and models of firearms of which there are more than [___] in circulation.

4. Refrain from selling any modified or sporterized semi-automatic assault weapon of a type that cannot be imported into the United States. ?

5. Refrain from advertising in the vicinity of schools, high crime zones or public housing.

6. Verify the validity of a license against an ATF database before transferring a firearm to any licensee.

7. Forgo any transfer of a firearm to a licensee if the manufacturer or importer knows the licensee to be under indictment.

8. Implement a security plan for securing firearms, including firearms in shipment.

E. **Corporate responsibility.**

If a disproportionate number of crime guns [exact number to be determined; calculation based on the number of crime gun traces and the dealer's or distributor's sales volume] are traced to a dealer or distributor within three years of the gun's sale, the manufacturer(s) and/or importer(s) that have authorized the dealer or distributor to sell guns will, individually or collectively, notify the dealer or distributor of the disproportionate number within seven (7) days and demand an explanation and proposal to avoid a disproportionate number of traces in the future. The dealer or distributor will have fifteen (15) days to provide the explanation and proposal. If the manufacturer(s) and/or importer(s) determine that the explanation and proposal are not satisfactory, the manufacturer(s) and/or importer(s) will terminate supplies to the dealer or distributor. If the manufacturer(s) and/or importer(s) determine that the explanation and proposal are satisfactory, the manufacturer and/or importer will continue supplies, but will closely monitor traces to the dealer or distributor in question. If disproportionate traces continue, the manufacturer(s) and/or importer(s) will terminate supplies to the dealer or distributor.

The manufacturer(s) and/or importer(s) shall inform the Oversight Commission and ATF of its/their notifications and decisions and provide them with the information provided by the dealer or distributor. If the Oversight Commission determines that suspension or termination of the dealer or distributor is warranted, and the manufacturer(s) and/or importer(s) did not take this action, the Oversight Commission shall direct the manufacturer(s) and/or importer(s) to do so.

III. **Oversight**

A. **Oversight Commission.**

1. **Composition.** An Oversight Commission comprised of ____________ shall be formed.

2. **Authority.** -- To be determined.

B. **Role of ATF.** -- To be determined

C. **Manufacturer and importer cooperation.**

1. Each manufacturer shall designate an executive level manager to serve as a compliance officer.

2. Each manufacturer shall commit to full cooperation in the implementation and enforcement of this Agreement.

D. **Dispute Resolution.** To be determined.

IV. Cooperation with Law Enforcement.

A. [The manufacturer and importer parties to this Agreement] reaffirm their commitment to cooperate fully with law enforcement and regulators to eliminate illegal firearms sales and possession.

B. Within six (6) months of the effective date of this Agreement, manufacturers and importers shall fire each firearm before sale and retain three fired casings and bullets, matching the casings and bullets with the firearm's serial number. Of these, one set along with the weapon's serial number shall be entered into the National Integrated Ballistics Identification Network system.

C. Manufacturers and importers shall participate in ATF's Access 2000 program to facilitate electronic linkage to their inventory system to allow for rapid responses to ATF's firearms trace requests.

V. **Cooperation with litigation.**

Manufacturers and importers shall agree to cooperate in pending and future lawsuits brought by cities, counties, or states, including but not limited to by providing without objection documents requested and testimony relevant to such proceedings.

VI. **Legislation.**

The parties to this Agreement will work together to support pending and proposed legislative efforts to reduce gun violence.

VII. **Education trust fund.**

Manufacturers and importers shall establish a $_____ trust fund to implement a public service campaign to inform the public about the risk of firearms in the home, proper home storage, and the need to dispose of firearms responsibly through destruction or transfer through a FFL, as well as the need to reduce gun violence. The trust fund will also be available to fund a national firearms death and injury reporting system.

VIII. **Most favored government entity.**

If the [manufacturer and importer parties to this Agreement] enter into an agreement with any other entity wherein they commit to institute design or distribution reforms that are more expansive than any of the above-enumerated items, such reforms will become a part of this Agreement as well.

IX. **Enforcement.**

The Agreement will be entered and is enforceable as a Court order and as a contract.

X. **Definitions.**

Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. report	Gun Industry Regulation (6 pages)	12/13/99	P5	8056
002. draft agreement	[Gun Industry] Code of Conduct and Agreement (4 pages)	08/17/99	P5	8057
003. talking points	Gun Industry Litigation Talking Points (16 pages)	12/6/99	P5	8058
004. report	Background for Gun Meeting (1 page)	12/2/99	P5	8059

COLLECTION:

Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 21553

FOLDER TITLE:

Guns-Smith and Wesson [1]

Rob Seibert

rs24

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

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

Guns/ Smith & Wesson

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Industry Regulation

Many companies and industries have taken actions to ensure that they, their employees and their members act as responsible corporate citizens. These efforts have a long history in the United States. For example, as early as 1913 J.C. Penney Company promulgated a code of conduct. By the start of this decade, there were an estimated 6,300 national trade and professional associations in the United States and approximately 43% had promulgated a code of conduct. A 1992 survey by the Center for Business Ethics found that 93% of companies had an ethics code.

Because a comprehensive look at the ethics and safety initiatives of U.S. companies would be an overwhelming effort, this list is a small sample of the initiatives that we have found. These initiatives are grouped into the following categories: Reforms spurred by litigation; monitoring product distribution; product safety measures; public health measures; and other compliance systems. Many of these initiatives combine elements of more than one category, but are only listed once.

REFORMS SPURRED BY LITIGATION

- Life Insurance – Life insurers have paid billions of dollars in damages in class action lawsuits brought by customers. The companies have paid for the actions of their distributors – both employee distributors and independent distributors – in selling policies. Many of the settlements of these suits have included reforms that require Life insurers to regulate the actions of their distributors. Measures include additional training, closer supervision, audits of distributor practices and penalties or refusal to do business with distributors that fail to comply. In addition, the life insurance industry founded a new group – the Insurance Marketplace Standards Association (IMSA) – to promulgate a code of ethics for the distribution of life insurance. The code sets out specific requirements for ethical sales practices. Life insurance companies may become members of IMSA only if they demonstrate to an independent certifier (IMSA's approved list of certifiers includes accounting firms, law firms and others) that they meet every part of IMSA's code. Life insurers interested in joining IMSA have their distributors agree to follow IMSA's code in connection with marketing and selling their products.

- All Terrain Vehicles – Manufacturers entered a consent decree with plaintiffs who had been injured in ATV accidents. The consent decree: 1) banned future sales of three wheel ATVs; 2) required warnings to and education of consumers including free training programs; 3) limited sales of ATVs with engine sizes between 70 and 90 cc to people ages 12 and older; 4) limited sales of ATVs with engine sizes greater than 90cc to people 16 and older; 5) required manufacturers to work with retail sellers of ATVs to reasonably assure that ATVs would not be purchased by or for the use of anyone under the specified ages.

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- Direct Marketers – The Direct Marketing Association maintains a cosumerline to field consumer complaints and intercede on the consumer's behalf with direct marketers. DMA also has an Ethics and Consumer Affairs Department to handle complaints where necessary. Similarly, the Direct Selling Association requires members to adhere to a code of conduct that includes requirements for training salespeople. These services and codes are a response to numerous lawsuits and prosecutions involving direct marketers. The legal claims range from fraud and misrepresentation to predatory marketing practices such as taking advantage of older consumers. The DMA also distributes information to older consumers and their family members to help them recognize potential problems and address them.

- Buses – Some of the most common bus accidents involve curbside rear bus wheels running over pedestrians. Annual liability and related costs of such accidents amount to approximately $100 million. The Public Transportation Safety Corporation has recently developed a wheel guard that deflects pedestrians out from under buses before they can be run over. The wheel guards have been tested in Washington, DC, Boston, Chicago, Los Angeles and Rochester, MN and installed on the fleet of public buses in Montebello, CA.

- Fresh Juice – Odwalla, Inc. was the defendant in 21 civil lawsuits for shipping fresh juice that was adulterated by E. coli. The company had shipped its juice without pasteurization to maintain freshness. As a result of the litigation, the company agreed to pasteurize all of its juice products other than fresh squeezed citrus juices to avoid any future adulteration.

MONITORING PRODUCT DISTRIBUTION

- Chemical Distribution – Each member of the National Association of Chemical Distributors is required to have an active program to improve safety and reduce unsafe incidents. The NACD's Responsible Distribution Process was approved in 1991 and consists of nine codes of management practice and forty elements within the codes. The Responsible Distribution Process requires items such as training for all employees in the proper implementation of regulations and safe work practices, a process for selecting carriers that takes into account safety, regulatory compliance and performance reviews, a process for selecting storage sites that emphasize safety and includes performance reviews, and a system of internal investigation, reporting and corrective actions for each incident that results or could result in a fire, explosion, or accidental chemical release. Companies must submit third party verification to show compliance with the Responsible Distribution Process.

- Alcohol – The alcoholic beverage industry has numerous programs to address the use of its product by minors. Many of these programs focus on distributors. For example, a program called Bar Code provides training to restaurant managers to help them prevent alcohol abuse situations and underage purchases. Brewers of beer make

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available through their wholesalers pictures of valid drivers' licenses from all 50 states to help prevent underage purchases. The industry also trains nearly 250 servers per day in its TIPS (Training in Intervention Procedures for Servers of Alcohol) program to help prevent alcohol abuse and underage drinking. The Beer Industry has an advertising and marketing code that has been in effect since 1943. The code forbids advertising that in any way condones drunk driving, illegal consumption of alcohol, excessive consumption of alcohol, or appeals primarily to persons under legal drinking age.

- Spray Paint – The National Paint and Coatings Association has a responsible retailing guide and model city ordinance to help cut down the illegal misuse of spray paint for graffiti. The responsible retailing program consists of in-store activities to reduce shoplifting and stop the illegal sale of spray paint to minors. This includes education of store employees, strategic placement of signs at display and check-out points, and display of products in the constant line-of-sight of store employees. The model ordinance the NCPA has advocated requires that stores either display spray paint in the continuous line-of-sight of store employees or lock-up spray paint so that customers need to be helped by a store employee to obtain the product.

- Civil Aircraft Parts Distribution – The Federal Aviation Administration and the industry have worked out a voluntary accreditation system. To receive accreditation, distributors must have a comprehensive quality system that meets minimum criteria for items such as inspection procedures, training of personnel, a self-evaluation program, and recall control that ensures that parts shipped can be traced and recalled, among other items. The accreditation organization must periodically monitor the effectiveness of each distributor's quality system. Distributors also must arrange for an audit to receive initial accreditation.

- SCUBA Equipment – Some SCUBA manufacturers have taken the position that their "life support equipment" should be sold only through full service dive centers with trained professionals to instruct customers on the proper care and use of the equipment.

- Organic Agriculture – The Organic Trade Association is drafting American Organic Standards that determine the products that can be certified as organic. The standards cover growers, shippers, processors, distributors, importers, retailers and others. Applicants must have an organic plan and be certified to qualify under the standards. Requirements include: production and handling standards; record-keeping; and annual on-site inspections and additional unannounced inspections as determined by the certifier.

- Machine Tools – The Canadian Machine Tools Distributors Association requires that members maintain an office or other recognized place of business.

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- Fire Equipment Distributors – The National Association of Fire Equipment Distributors has a ten point code of ethics for its members which includes following industry codes and standards and following the instructions of equipment manufacturers.

PRODUCT SAFETY MEASURES

- Underwriters Laboratories – Underwriters Laboratories (UL) is a non-profit product safety testing and certification organization. It publishes product safety standards, tests products for adherence to safety standards, and conducts unannounced inspections. Products that meet the standards and testing can display the UL Mark. UL has standards for and tests tens of thousands of products including such dangerous products as chain saws, circular saws, circular knives, drills, lawn mowers, hedge trimmers

- Over the Counter Medication – The industry has a long history of self-regulation dating to a code of advertising practices established in 1934. This has evolved into an extensive series of codes and guidelines. The most recent changes (adopted in 1991) standardized and improved the readability of medicine labels. Previous voluntary codes that have led to similar federal regulations include guidelines for product identification, alcohol content guidelines, child-resistant packaging for mouthwash products containing alcohol, and label disclosure of active and inactive ingredients. These and other codes and guidelines are intended to inform consumers and prevent the possible misuse of over the counter medications.

- Prescription Medication – In 1970, Congress made child-resistant containers mandatory for medications. However, some in the industry had voluntarily introduced such safety features prior to the legal requirement. For example, Walgreens introduced child-resistant containers for medications in 1968.

- Cigarette Lighters – The Consumer Product Safety Commission worked with the industry to develop voluntary child safety standards for disposable lighters. Subsequently, the CPSC and the industry agreed to make these standards mandatory and a final rule went into effect in July 1994. The rule requirements include, among other things, that lighters must be resistant to successful operation by at least 85% of a designated child test panel.

- Bunk Beds – The industry first adopted its voluntary guidelines for bunk bed safety in 1979. Approximately 90% of U.S. made bunk beds are in compliance with the standards which dictate the allowable size of spaces between the guardrail and frame among other items. In spite of these standards and the rate of compliance, at least 89 children have died from bunk bed-related injuries since 1990.

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- Lead Paint – As far back as the early 1950s, the paint industry had voluntary standards for the lead content of paint to improve the safety of its products. It wasn't until the late 1970s that the Consumer Product Safety Commission set a mandatory standard which reduced the lead content allowed in most paints and banned lead paint in toys and furniture.

- Garage Door Openers – The industry established voluntary safety controls on garage door openers in 1982 so that garage doors that struck an object would bounce back open after about one second. Old and non-compliant garage door openers trapped and killed 29 children from 1993 through 1998.

- Upholstered Furniture – The industry has a voluntary standard for making upholstered furniture resistant to cigarette heat. Upholstered furniture fires in homes kill 2 people per day in the U.S.

PUBLIC HEALTH MEASURES

- Car Seats – General Motors and DaimlerChrysler have implemented programs to inspect and help install child safety seats in automobiles. The DaimlerChrysler program is being piloted in Minneapolis, Denver, Sacramento and Washington, DC with plans to expand the program to 500 dealerships by February 2000 and to 1,000 dealerships by the end of 2000. General Motors has worked with the National Safe Kids Campaign since 1996 to hold periodic weekend and day-long child-seat checks at 1,200 of its dealerships. These programs are geared to address the foreseeable misuse of child safety seats. It is estimated that about 80% of the seats are installed improperly.

- Sheep and Goats – The Animal and Plant Health Inspection Service of the Department of Agriculture worked with the industry to adopt a voluntary scrapie flock certification program. Scrapie is a degenerative disease of the central nervous system of sheep and goats. Under the voluntary program, participants comply with flock identification, recordkeeping and other requirements and may be certified as free of scrapie. If a participating flock is found to have scrapie, it must complete a plan including an epidemiologic investigation to remove high risk animals, cleaning and disinfection of premises, educating personnel in recognizing the presence and controlling the spread of scrapie. Change of ownership of sheep and goats is closely tracked to allow for tracing the origin or spread of scrapie.

- Meat Industry – The American Meat Institute Foundation has launched a multi-year, multi-million dollar food safety initiative to eliminate listeria and E. coli. Efforts include improved testing, sanitation, anti-bacterial ingredients and post-packaging pasteurization processes. These measures are designed to combat any possible consumption of the bacteria that could result from the improper handling or undercooking of meat products.

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OTHER COMPLIANCE SYSTEMS

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- Bottled Water – The International Bottled Water Association (IBWA) maintains a set of standards that are stricter than that imposed by the Food and Drug Administration. The IBWA Model Code sets standards for water production, transport, processing, packaging, labeling, and storage. All IBWA members are subject to an annual, unannounced inspection by a third party organization to ensure compliance.

- The Body Shop – In 1994, the Body Shop established an Ethical Audit Department to ensure that the company adhered to its ethical goals in the areas of environmental management, animal protection and employment issues. This includes assessing the raw materials used in its products, and screening and rating the practices of its suppliers.

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**Code of Conduct
and
Agreement**

Whereas the undersigned manufacturers of firearms recognize the tragedy caused by the intentional and accidental misuse of guns;

Whereas the undersigned manufacturers herein commit to actions intended to combat the illegal purchase, possession, and use of firearms;

Whereas the undersigned manufacturers herein commit to actions intended to make their firearms as safe as reasonably possible for their law-abiding owners, their families, friends, and innocent fellow citizens:

THEREFORE, in consideration of the Attorney General of the State of New York's instant forbearance from initiating litigation against the undersigned and other consideration described below, the undersigned agree to the following code of conduct:

I. Design

A. Manufacturers shall not engage in any conduct that directly or indirectly causes guns to be manufactured, sold, distributed, marketed or promoted in a manner that facilitates, encourages, or makes it more likely that guns will be used in or for criminal activity. Manufacturers shall not design guns to make them appealing to criminals, or promote firearm features attractive to juveniles or criminals. Manufacturers will not produce weapons with design features that (either individually or when combined) unreasonably facilitate criminal uses, even if a substantial lawful demand for such features exists.

1. *Elements making firearms attractive to the criminal, and, particularly, the juvenile criminal market.* It is not responsible, and it is forbidden by this code, to make design or engineering decisions that produce guns that appeal particularly to criminals or to the juvenile criminal market. No single criterion fully defines what in a firearm appeals to criminals. Current indicia include, but are not limited to, low performance standards and inferior materials or component parts, especially when coupled with high calibers, high power, or large capacity magazines.

a. Manufacturers will track different models of their firearms to determine whether any are used illegally in disproportionate numbers (as reflected in trace requests initiated by the federal Bureau of Alcohol, Tobacco, and Firearms ("ATF")), and will promptly take necessary design, engineering or manufacturing steps to eliminate the features that make any such models appealing to criminals. This may include discontinuing a model.

b. At a minimum, manufacturers shall not make firearms that fail to meet the standards promulgated by the New York State Police and set forth in 9 NYCRR

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aa. That the firearm being sold to law enforcement or the military does not comport with the requirements of this Code of Conduct for sale to civilians, and, consequently, would not be sold by the manufacturer to civilians. The advisory from the Attorney General will state the provision or provisions of this Code of Conduct that would be violated by such a civilian sale.

bb. That, pursuant to this Code of Conduct, the Attorney General requests that the purchasing agency place sufficient restrictions on the disposal of the weapon to prevent its later migration into the civilian population. The advisory from the Attorney General will request that these restrictions include prohibitions on trade or resale into the civilian market.

d. Each manufacturer shall fund, at an annual dollar level specified in Appendix A, an outreach program to facilitate the sale of effective locking devices for all of their handguns that are currently in circulation. As a part of this program, each manufacturer shall sell said locking devices for no more than the actual cost to the manufacturer of the device.

e. Manufacturers shall immediately institute a recall program for firearms that do not pass the drop test promulgated by the National Institute of Justice.

2. Manufacturers shall continue to invest in technological research and development on gun safety.

a. Each Manufacturer shall set aside [Percent of sales to be determined] for the development, licensing or acquisition of "authorized user handgun" or "personalized handgun" research.

II. *Responsible distribution and sales*

A. Manufacturers shall not sell firearms to wholesalers or retailers they know or have reason to believe have sold or will sell their products to those not legally entitled to purchase guns or to wholesalers or retailers they know or have reason to believe allow their products to be diverted, intentionally or otherwise, for later sale or transfer to those not legally entitled to purchase or possess guns.

1. By January 1, 2000, manufacturers shall have in place a due diligence program for their wholesalers and retailers. At a minimum, the program shall include:

a. A screening program for wholesalers and retailers. Manufacturers and the monitor (as defined in III below) shall establish criteria governing what type of entity constitutes a suitable distributor of their products, both on the wholesale and retail levels. On the retail level. this shall include, but not be limited to, being a stocking gun store that does not sell products at gun shows and that carries appropriate liability insurance.

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b. Specific criteria for wholesale and retail sales. At the retail level, criteria shall include, among other things, restrictions that prevent knowing sales to straw purchasers. Towards the goal of thwarting straw sales, at a minimum, the purchasers of multiple handguns will be permitted to remove only a single handgun from a store at the time of sale, and may physically obtain the remaining weapons from the store one week later. The Manufacturers shall include any requirements and restrictions on wholesalers and retailers specified herein in all contracts with wholesalers, and require wholesalers, in turn, to include them in contracts with retailers.

c. A training program for wholesalers and retailers. Manufacturers shall provide training for those who distribute their guns on how to recognize attempts to illegally purchase firearms, how to recognize indicia that firearms may be being diverted (intentionally or otherwise) for later sale or transfer to those not legally entitled to purchase them, and how to respond to those attempts. Training shall also address how to teach ultimate consumers rules of firearms safety including proper, safe storage of firearms.

d. A monitoring program. Manufacturers shall monitor their downstream sales to determine where handguns are being actually sold or transferred to those not legally entitled to purchase or possess handguns and where handguns are being diverted, intentionally or otherwise, for later sale or transfer to those not legally entitled to purchase or possess handguns. On an ongoing basis, Manufacturers will make this analysis fully available to the monitor (as defined in III below).

i. Manufacturers shall require wholesalers to maintain downstream sales information, including the serial numbers of handguns sold, dates of sale, and customers. Manufacturers will require wholesalers to make this information available for review by the Manufacturer, its designee, and/or the monitor (as defined in III below).

ii. Manufacturers shall require wholesalers to maintain records of traces initiated by the Bureau of Alcohol, Tobacco, and Firearms ("ATF"), and to report those traces, by serial number, date of trace, date of sale, and customer, to the Manufacturer, its designee, and/or the monitor (as defined in III below).

e. An enforcement program. Manufacturers and the monitor (as defined in III below) shall create an effective means to suspend or, as necessary, discontinue irresponsible downstream distributors or retailers, and shall contractually provide for these remedies. Based on monitoring, or other appropriate input, manufacturers shall retrain, suspend, or discontinue distributors who fail to adhere to the criteria established pursuant to this Code of Conduct or who otherwise act in an irresponsible manner. The monitor shall have the power to require the Manufacturers to suspend or terminate distributors. retailer

III. *Self-imposed, independent Monitoring*

The manufacturers shall retain, at their own expense, an independent external monitor, under the terms and conditions set forth below:

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A. Duties of the monitor. The monitor shall audit and otherwise test or investigate, including in a proactive manner, compliance with this code of conduct and the standards and practices established pursuant to it by the manufacturer and its downstream distributors. The manufacturers shall make all best efforts to assist the monitor in performing its duties, shall fully cooperate with the monitor in every way, and shall contractually require all downstream distributors to do so as well.

B. Powers of the monitor. The monitor shall have full access to the books and records that, in the sole judgment of the monitor, are necessary to perform the requisite tests and audits. The monitor shall have the right to conduct interviews and perform or commission necessary tests or other examinations. The monitor shall have the power to determine whether the Manufacturers are in or out of compliance with this Code of Conduct.

C. Reporting. The independent monitor shall have a reporting line directly to the Manufacturers' Boards of Directors. In addition, in order to assure its independance, the monitor may consult with or provide any information obtained from any source to any law enforcement body or regulator that it deems appropriate, and may do so in confidence. The monitor shall promptly report to the Attorney General of the State of New York any violations of this Code of Conduct and Agreement.

D. Public reports. From time to time, but at least annually, the monitor shall issue a public report evaluating the Manufacturers' compliance with this Code of Conduct and Agreement. Before publicly issuing any such report, the monitor shall provide each Manufacturer with copies those portions of the report that pertain to that Manufacturer. The Manufacturer will have 15 (fifteen) calendar days to object to the public release of trade secrets or other information contained within the report. If the Manufacturer and the monitor are unable to agree on the extent of material to be make public, the dispute shall be submitted to the Attorney General of New York State, who shall make the final determination in the sound exercise of his or her discretion.

E. Term. The term of the monitor shall be 10 (ten) years. Based on internal monitoring and compliance systems that a Manufacturer may institute during this term, a Manufacturer may apply to the Attorney General for relief from some or all oversight by the monitor. Each Manufacturer may make such an application once during the first five years of the term, and once during the second five years of the term. Manufacturers agree that the Attorney General's decision as to such relief is unreviewable.

F. Funding. Manufacturers shall bear the cost of the monitor, each contributing to a fund according to the schedule annexed in Appendix B. The monitor shall be paid periodically from that fund upon review and approval by the Attorney General of invoices that the monitor submits to the Attorney General.

G. Retention of monitor. The Manufacturers shall each retain the monitor designated by the Attorney General of the State of New York under terms and conditions approved by the

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Talking Pt Suggested Changes:

2nd Bullet Point: Replace 3rd & 4th sentences with -- "After consulting widely with legal experts, HUD has concluded that a suit would indeed be viable, and one is ready to be filed. HUD and the rest of the Administration, however, would prefer a strong ..."

5th Bullet Point: Add "HUD" to departments consulted in putting together remedies.

That's it.

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Questions and Answers

I. General Questions About the Litigation

What is the legal theory of the case?

The legal principle behind this case is very simple: the gun industry should be held to the same basic liability standards that every other industry in America must observe. There are two overriding legal claims here. First, gun manufacturers irresponsibly distribute and market their products. For example, gun makers know that only 1% of dealers account for 50% of the guns that are used in crime and yet they do absolutely nothing to limit the sale of guns to those dealers. Some gun manufacturers even explicitly advertise to the criminal market. Gun maker Intra-Tec has advertised one of its weapons as an "assault-type" pistol that has "excellent resistance to fingerprints." In discussing this ad, Intra-Tec's sales director said, "Hey, it's talked about, it's read about, the media write about it. That generates more sales for me. It might sound cold and cruel, but I'm sales oriented."

Second, gun manufacturers have failed to put basic safety devices on their guns that would help prevent approximately 1300 accidental gun deaths that occur each year. Technology to make guns safer has been around since the late 1800s and the General Accounting Office says that these basic safety devices would have stopped all accidental shootings by children 0 to 6 years old. If aspirin is sold only in child-safe bottles, why shouldn't the gun industry make guns child-safe when technology to do this has been around for over 100 years? Child safety and other safety devices would save thousands upon thousands of lives – but the gun industry has failed to live up to this most basic obligation.

Isn't this an untested, novel theory?

No, these theories are sound and have been tested. Twenty-eight cities and counties across the country as well as the NAACP have filed suits making these same claims over the past year. Moreover, earlier this year, a federal district court judge ruled in favor of the negligent distribution theory and against the gun industry. Just last month, a Georgia court upheld the Atlanta city suit, finding that it could go forward. And again last week, an Illinois court ruled in favor of several families who have sued the gun industry.

It is important to understand that these theories of liability apply to every industry in our country. The law simply says that when you know your product may be misused by people you can't simply turn your back on the problem. Your responsibility as a good corporate citizen is to take

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reasonable measures to reduce the chances that your product will be misused. This happens all the time.

One simple example is spray paint. We all know that graffiti is a problem. So paint companies do the responsible thing – they require any retailer that sells their products in areas where graffiti is a problem to lock them up and not sell them to kids. If dealers don't agree to these basic measures they don't get to sell spray paint. But gun makers – who sell deadly weapons – only care about the prices their retailers charge. Even when they know from law enforcement that a retailer repeatedly sells to criminals they let that retailer sell more guns. You don't even have to have a store and keep guns under lock and key like spray paint – gun makers will let you sell their guns out of the trunk of your car.

Similarly, product manufacturers in all sorts of industries (from makers of cigarette lighters to aspirin bottles to garage door openers) have been required to make their products safer by including reasonable design features. Why should gun manufacturers be treated different?

But haven't the city suits already failed, for example in Cincinnati?

No, there have been two decisions on motions to dismiss among the 28 lawsuits filed by cities and counties, and, so far, the cities are batting .500. The gun industry won the first round in Cincinnati but it lost in Atlanta. Moreover, the Cincinnati case is on appeal. And the same legal theories that are being used in these suits have also been upheld in New York and California.

Remember as well that it will take only one case to get beyond the motion to dismiss stage before we will begin to see some discovery in these cases. My guess is that the landscape will become much more difficult for the gun manufacturers once we learn what they have been up to – as happened in the tobacco litigation.

Isn't this really regulation through litigation?

Absolutely not. The courts provide a forum to hold bad actors responsible for their actions and keep them from repeating their offenses. That is all these suits ask. Other manufacturers have to live by the same laws. Take All Terrain Vehicles. Several companies that sell ATVs have entered into a Consent Decree – approved by a court – to limit sales of more powerful ATVs to adults. The Consent Decree also requires ATV manufacturers to monitor their retailers to be sure that these basic rules are followed. It is this basic monitoring function – making sure retailers act responsibly – that gun makers utterly fail to do.

Don't forget, this lawsuit is only one of many ways in which the Administration is addressing the epidemic of gun violence. The Administration has pushed for sensible legislative controls on guns and passed the Brady Bill, among other accomplishments. Recently, however, Congress

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has simply failed to address this important issue. I expect the Administration will continue to push for new legislation and aggressively enforce the laws we have on the books.

How many Public Housing Authorities are party?

Housing Authorities from all across this nation support this suit against the gun industry. The suit that will be filed is a class action on behalf of every housing authority in the U.S. – 3,191 of them. As is usual in a class action, only a handful of the public housing authorities will have their names on the Complaint, but they will represent their brethren from across the nation.

What is HUD's role; Justice's role?

HUD's statutory mission of providing safe and decent housing to the Nation's neediest citizens has lead HUD to play two roles here. First, we have facilitated the public housing authorities in their efforts to organize against gun violence and work through this litigation. This includes providing expert assistance to the housing authorities in looking at their legal and other options. Second, HUD is the receiver for a small number of troubled housing authorities. These housing authorities will support the law suit.

The Department of Justice does not have a role in this action. The housing authorities are not part of the Federal Government, and they hire their own private counsel just like any other non-federal entity.

Is the lawsuit being brought by HUD or the Housing Authorities?

This suit will be a class action on behalf of all Housing Authorities, including those controlled by HUD. Although HUD, the federal agency is not suing, it has worked closely with Housing Authorities to develop this suit and HUD's Housing Authorities will be part of the nationwide class action.

Note: The Housing Authorities controlled by HUD are New Orleans, East St. Louis, Camden, and a few other smaller rural Authorities.

How much has/will the Federal Government/HUD spend?

This suit is not being brought by the federal government, and the federal government will not be paying for the litigation. Pursuant to its statutory mission, HUD will continue to provide technical assistance to the public housing authorities on this and a range of other efforts to combat gun violence and injuries. To date, HUD's expenditures on this issue have been very small and consist almost entirely of the time spent by staff.

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It is important to remember that the federal government has an important mission and investment at stake. Each year, HUD provides billions of dollars for the operation of the housing authorities, much of which goes to security needs generated by guns. These grants are a huge investment that is being siphoned away from other critical areas -- making physical improvements and needed repairs to public housing. Indeed, public housing in this country already labors under a shortfall of about $20 billion in needed repairs and infrastructure improvements [Confirm]. We would be ignoring our duties to make sure that the Federal Government's investment in public housing is protected if we didn't take the time and effort to explore every avenue to reduce gun violence in public housing.

How much of the amount PHAs spend for security is attributable to gun violence? How do you know?

Serious crime in housing authorities almost always involves guns. It is therefore not surprising that a large proportion of the money spent by public housing authorities on security is attributable to the epidemic of guns.

Of course, this is a question that ultimately will get fought out in the courts.

What remedies does the lawsuit seek? Money? Changes in gun manufacture?

The public housing authorities seek, first, to have the gun industry behave responsibly in the way they market and advertise their product and second, to make their products safer. Of course, the Housing Authorities have suffered very significant monetary damages resulting from the industry's misconduct and will make claims for these, but the increased safety of residents that can result from better industry practices is the primary goal. In more concrete terms, manufacturers should be required, among other duties, to monitor their retailers and cut-off the ones that consistently supply the criminal market. A mere 1% of gun retailers sell 50% of the guns used in crime. Just getting rid of the 1% of bad apples would dramatically reduce the number of guns in the hands of criminals. They should also limit the kind of retailer who can receive their product to ones that actually have retail establishments. Store owners will comply with the law because they have an investment to lose if they break it. The guy selling guns out of his trunk may have nothing to lose when he sells to criminals.

Second, guns should be made with safety devices. Guns can easily be made with combination or other locks to ensure that only the rightful owner can use the gun. Guns should also have child safety devices – much like any medicine bottle does – so that young children don't accidentally shoot themselves or others. And there should be warnings and safeties so that people won't accidentally shoot someone because they don't know a bullet is in the gun.

Third, gun makers should take responsibility for the huge human and economic losses that their products inflict in public housing. In just 100 of the larger housing authorities more than 500

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people are murdered each year. And there are many more shootings and injuries that take place every day in public housing across the nation. Just last month, not far from here in East Capitol Dwellings, grandmother Helen Foster-El was struck down by a stray bullet while she tried to usher neighborhood children to safety from a gun fight. Two year-old children in public housing are learning how to yell "Hit the deck!" and dive to the floor when the shooting starts in their neighborhood. And we must spend billions of dollars to try to combat this awful toll on some of the most vulnerable members of our society. The gun industry's marketing and selling to the criminal market bears some responsibility for this.

Why do you want to enter into discussions with the gun industry before filing suit?

As you know this Administration had some fruitful discussions with the industry last year. It is our view that sitting down at the negotiating table may help the industry see the need to change its behavior. I believe we should negotiate first before taking the issue to the courts.

Does the Government target manufacturers or dealers or both?

The lawsuit will hold manufacturers liable for their negligent and harmful conduct. They could take reasonable measures to control the marketing, distribution and design of their products to make all of us safer, but they have failed to do so. That failure is the problem here. Marketing and selling guns to criminals is wrong. Making guns without safety devices is wrong. Manufacturers have control over these practices, but they fail to exercise that control in a responsible way. That is why liability ultimately rests with the manufacturers.

Isn't it fundamentally unfair for the Federal Government to weigh in on behalf of one party in a private lawsuit?

No. In fact this happens all the time. For example, the Department of Justice files numerous briefs in private lawsuits before the Supreme Court to express the Government's position on the issues in the suit. Plus, HUD has a mandate to aid Housing Authorities in solving the problems they face. This action should help Housing Authorities reduce gun violence in their projects – we think that is a good thing and our Mission says we should help.

Who is representing you in this suit? How were the lawyers selected? How are they being paid?

The lawyers have not yet been selected, and it will be up to the Housing Authorities to choose counsel. Presumably the Housing Authorities will have the option of retaining counsel on a contingent fee basis, as has been done by the cities and counties that have filed suit.

In August, the HUD General Counsel repeatedly testified that HUD had no plans to bring a lawsuit. This must obviously be false.

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HUD's General Counsel was absolutely right. HUD is not bringing suit. Public Housing Authorities from all around the nation are bringing suit because they face tremendous costs from the epidemic of gun violence. What we have done is help Housing Authorities take this step – and that is exactly what three HUD employees told Congress.

We have 20,000 gun control laws already on the books – isn't the right answer to solving the problems of guns simply to enforce the laws we already have?

Strong enforcement of our gun laws is a critical component of addressing the problem of gun violence and this Administration has worked hard to punish those who break existing laws. For example, the President fought for and got 100,000 new police officers to protect our streets.

These efforts are working. The FBI's latest Uniform Crime Report shows a 7% drop in homicides in 1998, accounted for almost entirely by a decrease in killings by guns. Experts suggest that this drop is due to our efforts to place reasonable controls on the availability of guns, increased efforts to trace guns used in crime by ATF, and tighter federal restrictions on gun purchases by the Brady law.

The problem of gun violence is so difficult, however, that everyone must do their part before we will be able to master it. The gun industry has not yet met its responsibilities and that is why we need to sit down with them at the negotiation table.

[Note: the number of gun control laws bandied about by pro-gun activists is apocryphal.]

If 1% of the gun deals account for 50% of the guns going to criminals, why doesn't the Administration simply close down that 1%?

The Administration is working to close down gun dealers who break the law. While that process is ongoing, it does not absolve the gun manufacturers from meeting their responsibilities to distribute their product in a safe manner.

First it was tobacco, now it is guns – what's next? Alcohol? Automobiles? Chewing gum?

Unlike the gun industry, other industries such as automobile manufacturers have taken numerous steps to make sure that their products are reasonably safe and that they are distributed and marketed safely. The gun industry has not behaved responsibly and it does not deserve a pass but instead should be held accountable for its actions.

Isn't the real effort here simply to put the gun manufacturers out of business? Won't that hurt our ability to arm properly our police officers and military?

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This is a classic red herring. The legitimate demand for guns, including the needs of the police and military, will always support a gun industry. The real question is whether that industry should be able to duck its responsibilities to design, distribute and market its products in a reasonably safe fashion.

It is worth noting that several of the junk gun manufacturers have openly stated their intent to use bankruptcy as a shield to avoid paying for any of their misconduct and to restart new companies once the litigation is over. So far, the courts have seen through this and not allowed them to get off scot-free.

II. Gun Industry's Culpability

What about the second amendment? Doesn't this lawsuit infringe Americans' basic constitutional rights to bear firearms?

This suit is not about the Second Amendment. This is about the negligent and harmful marketing and distribution of guns and the failure of the industry to incorporate basic safety devices into their products. No matter how you view the right to bear arms under the Second Amendment it plainly does not give gunmakers the right to ignore their basic responsibilities as corporate citizens. These companies know about the huge illegal trade in guns, but refuse to take simple actions to monitor how their guns are sold. In fact, they do just the opposite – they purposely bury their heads in the sand to avoid liability. Dr. David Stewart, a professor of Marketing at the University of Southern California, has analyzed the gun industry's practices and noted that they don't even do basic product sales tracking that is simply good business practice in other industries. He concludes that this "indicates either extraordinary managerial malfeasance with respect to shareholders or a marketing decision to sacrifice carefulness for increased revenues or market share even when some of these revenues or sales may be obtained from potentially identifiable abusers and misusers."

[Note: Second Amendment states, "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."]

Do you really think that going after the gun industry will reduce crime in public housing? Don't you have to stop the criminals?

It's not just criminals that we deal with every day. It's criminals with arsenals of guns including semi-automatic weapons that give them more firepower than the cops on the beat. Look at the behavior of the gun industry after the assault weapons ban was passed. As part of the Violent Crime Control and Law Enforcement Act of 1994 the manufacture of many guns including the TEC-9 was banned. Did the industry honor this Act of Congress? No. Gunmaker Intra-Tec made some tiny cosmetic changes to the TEC-9, renamed it the TEC-DC9 and kept right on selling it to the criminal market. Not only that, they advertise that gun directly to criminals.

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Their ads have said the gun provides "excellent resistance to fingerprints." Who cares if their fingerprint gets on their gun? Criminals – no law abiding citizen cares. But this is what we're up against – an industry that sells to the criminal market without regard for the 600,000 gun crimes committed in this Nation each year. There is no doubt in my mind, changing the availability of these weapons to criminals will have a dramatic effect – making it much easier for the cops to do their jobs.

III. HUD's role

What's the statutory authority for HUD's involvement in this issue?

Part of HUD's core mission – part of the Department's enabling legislation – is to "encourage the solution of problems of housing [and] urban development . . . through State, county, town, village or other local and private action, . . ." That is exactly what we have done here. Plus, the United States Housing Act of 1937 requires that one indicator by which HUD judges the performance of Housing Authorities is the extent to which each authority "implements effective screening and eviction policies and other anticrime strategies."

Today's action is just one part of an overall strategy to address the problem of crime and violence in our Nation's public housing. Other parts of this strategy include:

- We go after some of the root causes of crime through our Public Housing Drug Elimination Grant program.
- We have a gun buy back program that will be the largest effort of its kind.
- We have adopted a zero tolerance "One Strike and You're Out" policy in public housing.
- We work cooperatively with local law enforcement through our Operation Safe Home program.
- We have worked with the Centers for Disease Control to develop a Youth Violence Prevention Program.
- We have sponsored a Gang Abatement Conference and Healing Neighborhoods Conference
- We improve the lay out of grounds and buildings to deter crime through the Crime Prevention Through Environmental Design program.
- We have a Peacemaker Corps Initiative to help reduce violence among teenagers.
- We also provide training and assistance for violence and delinquency through our Safe Futures initiative.

I could go on and on – the point is that we are deeply engaged in trying to stem the tide of violence in public housing because it is part of our core mandate and is necessary to give residents a safe place to live.

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You say that this was instigated by the Housing Authorities, but isn't this really your brainchild? And didn't HUD take the lead in pulling this together?

This is an idea that has many parents. We have all seen the awful tragedies. In April of last year, five year old Taquan Mikell was walking home with his mother in the Few Gardens public housing complex in Durham, North Carolina when a stray bullet from a gunfight shattered his spine. We don't know if he'll ever walk again. In May of last year a New Orleans mother of seven, Melissa Stone, was abducted at gunpoint, raped, shot and left to die in an apartment in the Desire Public Housing development. In October of last year, 4 year old Javina Holmes of Frederick Douglass Dwellings was killed when her 8 year old brother found a loaded shotgun in their home and accidentally shot her. And just this past summer – not far from here in East Capitol Dwellings – grandmother Helen Foster-El was shot and killed by the crossfire as she tried to usher neighborhood children to safety. Tragedies like this occur every day and the gun industry needs to reform its ways to help make all of us safer.

I'll tell you – I wish that I could take all the credit for this idea because it is a good one. But HUD, Housing Authorities and concerned citizens across this Nation have all seen the violence and read about the city lawsuits filed by New Orleans and 27 others. All of us have recognized the need to change the bad actions of the gun industry and we have come together with our Housing Authorities to say that it is time to act.

What is a Public Housing Authority and what is its relationship to HUD?

Public Housing Authorities are State and Local creations that build and maintain public housing and act as landlords for public housing in their area. HUD provides a significant amount of the funding for these Authorities and works closely with them to help ensure that they provide safe, decent and affordable housing for their residents. For example, as part of HUD's Management Reform Plan, the Department now has a Real Estate Assessment Center that inspects the housing of every Housing Authority in the Nation each year. These comprehensive inspections – which were not performed under any previous Administration – identify any maintenance or repair problems that might require closer regulatory scrutiny by the Department. Then, HUD works intensively with below par Housing Authorities to make sure that they improve the quality of Housing to their residents. And, if necessary, HUD can take action against Housing Authorities that cannot or will not live up to their responsibilities to provide safe, decent and affordable housing.

IV. Gun violence in public housing

Why is HUD interested in the issue of guns in public housing?

Three primary reasons:

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- Statutory responsibility -- Stemming violence is a central part of HUD's and housing authorities' responsibility to provide "decent, safe and sanitary" housing as called for by the United States Housing Act of 1937.

- Cost to government -- Congress appropriates billions of dollars for public housing -- and expects HUD to ensure that the funds are spent effectively, and in ways that fulfill HUD's Congressional mandates. The possession and use of guns in and around public housing is imposing significant additional costs on public housing authorities -- costs that are limiting HUD's ability to ensure safe and decent housing for public housing residents.

- Risk to children -- A very high percentage of public housing residents are children -- an average of 60% nation-wide. For example, at Robert Taylor Homes in Chicago it's 67%. That means that kids in public housing are especially at risk of exposure to guns and gun violence.

What's the scope and scale of gun violence in public housing?

Each year there are thousands of incidents of gun violence in and around public housing projects. From 1994 to 1997 there were 500 murders in just the 100 largest public housing authorities, many involving guns.

Some examples: 177 murders in Washington DC public housing from 1995 to 1997 -- one murder for every 61 public housing units; 185 murders in New Orleans public housing from 1994 - 1997 -- one murder for every 70 homes. 454 murders in New York City public housing from 1994 to 1997. Almost 70% of all murders nationwide are committed with guns.

But this is about more than statistics. It's about the climate of fear that prevails in many of our public housing projects -- fear of assault, or of being caught in deadly crossfire. Barely a week goes by without a news story somewhere in America of innocent victims -- often children -- being hit by a stray bullet: Taquan Mikell -- hit by a stray bullet walking home from dinner with his mother in Durham NC; Grade school principal Patrick Daly -- caught in crossfire and shot to death while looking for a missing pupil in Brooklyn NY. Four-year old Javina Holmes -- killed when her eight-year old brother found a loaded shotgun inside their apartment and began shooting.

How many gun-related crimes occur in public housing? Do you have figures for all 3,200 authorities, as well as for the top 100?

Reporting of crimes involving guns in public housing varies considerably -- some housing agencies keep close track of such incidents; others do not. HUD monitors drug and violence in public housing through the Drug Elimination Grant program as mandated by Congress.

Housing authorities such as Washington, DC, Roanoke, VA, Charlotte, NC, Durham, NC, and Rockford, IL, report that:

- About one-quarter of all offenses involve guns.
- Reports of shots being fired are one of the most frequent calls for service to the police and their management offices.
- Shooting in the developments is a major problem. In Durham, NC, for example, shooting was the highest concern reported by residents, closely followed by drugs and drug sales.
- Arrests for discharging a firearm make up about 10 percent of the number of calls received by the police.

How much of this is youth violence? 18-20 year olds commit 23% of all gun murders. Is this the case in public housing as well?

We don't have a specific breakout of gun violence by age. But we suspect that it equals and most likely exceeds the national rate, given the high number of children in public housing.

What's the cost to HUD of gun violence? What percentage of HUD funds is used on crime prevention?

The costs to HUD derive from two sources, running into the billions of dollars.

Each year HUD awards about $3 billion in grants to public housing. Many Housing Authorities are forced to spend huge portions of these funds on security, much of it gun related – funds that would otherwise go for badly needed maintenance or repairs. Chicago, for example, spent 38% of its Comprehensive Grant funds -- $43 million -- on security. That's not unusual for the larger housing authorities around the country.

A concentrated source of funding to combat violence in public housing is the Drug Elimination Grant program. We spend about $250 million a year, $1.7 billion since 1990. Almost half of these funds are being used for security, law enforcement, investigators and tenant patrols – again, much of it gun related.

The funds spent on security reduce the funds available to carry out other functions. For example, there is a backlog of **$20 billion** in unaddressed modernization needs in public housing. Removing the more immediate need for heavy security would allow housing authorities to direct more funds to these unmet needs.

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How does crime in public housing compare to crime elsewhere? Is it higher, lower, or about the same? Has crime/gun violence come down in public housing at the same rate as in general population?

It's very hard to generalize. Most of the 3,200 public housing authorities are quite safe. Many, especially the smaller authorities, are crime free. Others, especially those in our larger cities, reflect the crime patterns of their surrounding communities – and crime rates are too high.

But in virtually every case where we have comparative data, we're seeing declines in crime rates that mirror the overall decline in crime rates. That's a result of the booming economy, community policing, and the effectiveness of our own crime prevention efforts in public housing.

What is HUD's record of success with previous policies and procedures regarding guns in public housing?

Many specific gun policies are the responsibility of local public housing agencies. But HUD has set out broad guidelines in the Lease and Grievance regulations (24 CFR 960-966) which requires housing agencies to adopt lease language stating that those engaged in serious criminal activities, drug-related criminal activities and activities which infringe on the rights on other residents to the peaceful enjoyment of their premises shall be evicted from their units following due-process proceedings.

Some agencies, such as San Francisco, have modified their leases and developed policies to specifically restrict the open display or carrying of weapons on their properties. These authorities report reductions in firearm violence as a result of these policies.

Besides this lawsuit, what other initiatives are underway in public housing to curb gun violence?

Since I took office, I have made safety one of my main priorities in public housing. We've made extraordinary progress through several initiatives:

One Strike You're Out – allows housing authorities to deny occupancy to evict residents if involved in alcohol abuse and illegal drug-related activities, including gun-related violence.

Drug Elimination Grants and Technical Assistance – provides funds and technical assistance to local housing authorities to combat drugs and related gun violence.

Gun Buy Backs – Provides funds through Drug Elimination Grants to allow cities to get guns off the streets.

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Operation Safe Home – a joint initiative of the HUD Inspector General, Department of Justice and Treasury – first-time ever unified approach to address violent and drug-related crime in public housing.

Youth Violence Prevention – joined with Centers for Disease Control to train housing authorities in dealing with growing problem of youth violence, especially gun violence.

Crime Prevention Through Environmental Design – aimed at creating safe havens in public housing through safe design.

Peacemaker Corps – just announced joint initiative with the Friends of the United Nation, aimed at fostering racial tolerance among high school students, and positive alternatives to violence.

Safe futures – joint venture with DOJ to prevent violence and juvenile delinquency in public housing.

As a result of these programs, crime in public housing is down significantly and communities are much safer than they have ever been. But until demand for illegal drugs comes down, public housing will continue to see unacceptable levels of drug dealing -- and the violence and threats that accompany such activity. That's why this lawsuit is so important.

Are guns specifically covered under HUD's "One Strike and You're Out" policy?

No. But the One Strike and You're Out policy does allow local Housing Authorities to restrict eligibility for occupancy to applicants who do not have criminal histories. Weapons violations are among the offenses that can be used as the basis for restricting eligibility. Similarly, weapons offenses can be the basis for terminating the lease under the One Strike provisions and the Lease and Grievance Regulations in 24 CFR 960-966.

Aren't you filing this suit to mask the failure of these programs to stem gun violence?

No. In fact, these programs have been very successful. This suit is about finishing the job. But unless we do something about the quick and easy availability of guns, law enforcement authorities are going to be stymied, and the availability of funds to finish the job.

V. Other Administration initiatives/legislation

What has the Administration done so far to curb gun violence?

The centerpiece of the President's accomplishments has been the enactment of the Brady Law that put in place a five day waiting period to allow law enforcement agencies to review the criminal background an individual before the purchase of a handgun. In less than five years since the President's enactment, the Brady Law has denied guns to more than 470,000 felons, fugitives and stalkers. Also, the historic 1994 Crime Bill banned 19 of the deadliest assault weapons and their copies, keeping assault weapons off our streets. And, it is important to remember that The President kept his commitment to put an additional police on America's streets: ahead of schedule and under budget. Other initiatives include:

- banning juvenile possession of handguns;
- enforcing zero tolerance for guns and schools; and,
- combating illegal gun trafficking by tracking more crime guns to their source.

As a result, it should come as no surprise that the rate of violent crime is at its lowest level since 1973 -- violent crime rate fell 7 percent in 1997 and 21 percent since 1993. The murder rate is down more than 25 percent since 1993, its lowest point in 30 years.

What do you think of Vice President Gore's proposal for requiring gun purchasers to pass a safety test and apply for a gun license?

The Vice-President has been an energetic and thoughtful advocate for finding solutions to gun violence, and I support his recent proposals. We should also remember that the Vice President and this Administration have been fighting hard on this issue for many years. Last April, the President proposed common sense gun legislation to help keep guns out of the hands of criminals and children -- especially by closing the gun show loophole. He has repeatedly urged the Congress to pass these measures as part of the juvenile crime legislation and it is a shame that Congress did not act on it.

Overall, the Vice President has put forward a strong anti-crime plan. It builds on the many successful proposals put forward by the Clinton/Gore Administration over the last 7 years. The Vice President's plan also puts forth a number of bold new ideas, including new proposals on guns and gang, that will take the next steps to keep crime coming down into the 21st Century. The Vice President's plan contains many good initiatives, and I support his efforts as he begins to make his case to the American public for his new anti-crime agenda.

What do you think of Bill Bradley's gun control proposals?

Like Vice-President Gore, Senator Bradley has recognized the seriousness of the problem of gun violence and proposed effective measures for addressing the problem. I support both of these leaders' efforts.

What are the Administration's current gun control proposals?

The President challenged Congress to pass legislation that restricts youth access to guns by:

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- permanently bans all violent juveniles from buying guns;
- raises the age of the youth handgun ban from 18 to 21 years of age;
- bans semiautomatic assault riffles;
- holds adults responsible for child access to guns;
- requires gun dealers to provide child safety locks with guns; and,
- increases penalties for transferring handguns to juveniles.

The President has also called on the Congress to require Brady background checks at all gun shows and flea markets; limit handgun sales to one per month per individual; require federal gun dealers to report to the ATF the manufacturer, model and serial number of all used guns sold; and, increase the penalties for illegal gun trafficking.

So far this term, however, Congress has abdicated its responsibilities and failed to pass any legislation to meet the challenges of gun violence.

What evidence is there that these initiatives are working?

This past week, the President released findings showing that the Brady Law has blocked over 470,000 illegal gun sales since taking effect in 1994. . Two-thirds of these potential purchasers had a previous felony conviction or current felony indictment.

During May, the FBI released preliminary figures for 1998 showing a 7% drop in violent and property crimes. These figures indicate a decline in serious crime for seven years in a row.

Gun related crime is down 25 percent since 1993, and the rate of violent crime is at its lowest level since 1973 -- violent crime rate fell 7 percent in 1997 and 21 percent since 1993. The murder rate is down more than 25 percent since 1993, its lowest point in 30 years.

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Background for Gun Meeting
December 2, 1999

Brief summary of proposed executive order on firearms procurements

The President would issue an executive order that: (1) directs the Attorney General and the Secretary of the Treasury to create a code of conduct for federal firearms contractors within a specified timeframe; and (2) directs the Federal Acquisition Regulations (FAR) Council to propose regulations barring federal law enforcement agencies from contracting with any firearms manufacturer that does not agree to comply with the code of conduct.

While the specifics of the code of conduct should not be included in the text of the executive order, we must establish a short purpose statement for the code that establishes a statutory link to the FAR Council's authority to promulgate the regulations.

II. Analysis of President's authority to issue executive order

OLC generally determined that the President does not have the authority to issue an executive order directly barring the procurement of firearms from manufacturers that do not comply with our proposed code of conduct. However, OLC believes that he may have the authority to issue an executive order directing the FAR Council to propose regulations to that same end. It should also be noted that, while the President may direct the FAR Council to propose regulations, he does not have the authority to determine the outcome of the rulemaking.

The Federal Acquisition Regulations, which are enforced by the FAR Council, provide that a contractor may be debarred for various reasons or "any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor." Also, several statutes require agencies to do business with "responsible sources," which are defined as any prospective contractor who "has a record of integrity and business ethics."

In order to secure the statutory authority for the FAR Council to promulgate these regulations, we must make the case that firearms manufacturers that do not comply with our code of conduct do not have "integrity and business ethics." There is no statutory definition of this term, though a recent executive order on child labor, and regulations proposed by the FAR Council completely independent from the order, have deemed that "integrity and business ethics" would be breached where there was a violation of law. Our proposed executive order would require an even broader interpretation of "integrity or business ethics" since it would debar contractors for engaging in business practices that are otherwise wholly legal but that result in or facilitate gun-related crimes, deaths, or injuries. We are working with Treasury to develop a factual basis to support this interpretation.

Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. draft agreement	[Gun Industry] Code of Conduct and Agreement (7 pages)	12/07/99	P5 Dup
002. draft agreement	[Gun Industry] Code of Conduct and Agreement (16 pages)	09/17/99	P5 8060

COLLECTION:

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RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

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

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PRIVILEGED AND CONFIDENTIAL:
ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT

Code of Conduct
and
Agreement

Whereas the undersigned manufacturers of firearms recognize the tragedy caused by the intentional and accidental misuse of guns;

Whereas the undersigned manufacturers herein commit to actions intended to combat the illegal purchase, possession, and use of firearms,

Whereas the undersigned manufacturers herein commit to actions intended to make their firearms as safe as reasonably possible for their law-abiding owners, their families, friends and innocent fellow citizens:

THEREFORE, in consideration of the Attorney General of the State of New York's instant forbearance from initiating litigation against the undersigned and the suspension of litigation by signators representing plaintiff cities and counties and other consideration described below, the undersigned agree to the following Code of Conduct ("Code").

I. Public Safety Campaign

Manufacturers shall fund a public service campaign to inform the public of the risks of guns in the home to the family and the community and the need to safely store guns. Manufacturers shall provide two hundred fifty million dollars ($250 million) to the National Crime Prevention Council [or other organization], which shall implement the campaign.

II. Design

A. Manufacturers shall not engage in any conduct that directly or indirectly causes guns to be manufactured, sold, distributed, marketed or promoted in a manner that facilitates, encourages, or makes it more likely that guns will be used in or for criminal activity. Manufacturers shall not design guns to make them appealing to criminals, or promote firearm features attractive to juveniles or criminals. Manufacturers will not produce weapons with design features that (either individually or when combined) unreasonably facilitate criminal uses, even if a substantial lawful demand for such features exists.

1. *Elements making firearms attractive to the criminal, and, particularly, the juvenile criminal market.* It is not responsible, and it is forbidden by this Code, to make design or engineering decisions that produce guns that appeal particularly to criminals or to juveniles. No single criterion fully defines what in a firearm appeals to criminals. Current indicia include, but are not limited to, low performance standards and inferior materials or component parts, high calibers, high power, or large capacity magazines, or a combination thereof.

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DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: M DATE: 9/04

a. Manufacturers will track different models of their firearms to determine whether any are used illegally in disproportionate numbers (as reflected in trace requests initiated by the federal Bureau of Alcohol, Tobacco, and Firearms ("ATF")), and will promptly take necessary design, engineering or manufacturing steps to eliminate the features that make any such models appealing to criminals. Remedial measures may include discontinuing a model. Manufacturers shall be prohibited from increasing production in anticipation of a model being discontinued and from publicizing that a model is being discontinued.

b. At a minimum, manufacturers shall not make firearms that fail to meet the standards promulgated by the New York State Police and set forth in 9 NYCRR §§482.5 - 482.6. Manufacturers of domestic firearms shall conform to the standards made applicable to imported firearms pursuant to 18 USC § 925.

c. Manufacturers shall not sell packages of parts that, with the addition of a limited number of other parts, can easily be assembled into a firearm.

2. *Features that facilitate criminal activity.* It is not responsible, and it is forbidden by this Code, to include features in a gun that facilitate criminal activity or make criminals more difficult to apprehend and prosecute. These features may change as technology advances. However, as of June 1, 2000 at a minimum each gun shall not be made or sold with:

a. Fingerprint resistance, that is, with coatings or materials that make it more difficult to obtain fingerprint evidence from the firearm, or with advertising or promotional material that may reasonably be interpreted to suggest or state that it is difficult to obtain fingerprint evidence from a firearm;

b. Easily obliterated serial numbers, that is, any serial number engraved in a firearm that is susceptible to being defaced or eradicated. To prevent defacement or eradication of serial numbers, at a minimum the serial number on each gun shall be placed in a location and with sufficient strength so that it is not susceptible to defacement. Additionally, the serial number shall be located on the interior of the handgun; or on the exterior of the gun in a way that is not visible to the unaided eye, but is visible with the aid of an infrared detector or other device. The manufacturer shall provide information regarding the location of the serial number, and the means to view it, to law enforcement officials upon request;

c. The capability to be easily converted to an illegal firearm, that is, a weapon designed in a manner so that with few additional parts and/or minimal modifications an owner can convert the firearm to an illegal, fully automatic weapon.

d. Magazines with capacity for over 10 rounds of ammunition, or with the capability to accept such magazines;

e. Inferior materials. This shall include, at a minimum, that the frame, barrel, cylinder, and breechblock of each gun shall not be composed of: any metal having a melting point of less than 900 degrees F; any material having an ultimate tensile strength of less than

55,000 pounds per square inch; or any powdered metal having a density of less than 7.5 grams per cubic centimeter;

B. Manufacturers shall design firearms to be as safe as reasonably possible for their law-abiding owners, their families, friends, and innocent fellow citizens. Manufacturers shall employ existing and new safety-enhancing features as technologically and functionally feasible.

1. Manufacturers shall implement the following practices:

   a. All firearms, including those currently in distributors' inventory, shall be sold with effective locking devices or locking technology by January 1, 2000.

   b. By January 1, 2000, no firearms shall be made with a propensity to occasionally repeat firing based on a single pull of the trigger, or to explode during firing with standard ammunition, or to accidentally discharge.

   c. By January 1, 2000, no firearms shall be made that do not pass appropriate testing, and manufacturers shall institute a recall program for firearms that do not pass those tests, which shall include, at a minimum, the following:

      (i) The gun shall pass the following drop test: the gun shall be test-loaded; set such that it is ready to fire; and dropped onto a solid slab of concrete from a height of one meter from each of the following positions: 1) normal firing position; 2) upside down; 3) on grip; 4) on the muzzle; 5) on either side; 6) on the exposed hammer or striker (or, if there is no exposed hammer or striker, then the rearmost part of the gun). If the gun is designed so that its hammer or striker may be set in other positions, it shall be tested with the hammer or striker in each such position (but otherwise ready to fire).

      (ii) The gun shall pass the following performance test: it shall fire 600 rounds, stopping every 100 rounds to tighten any loose screws and to clean the gun (if required by the cleaning schedule recommended in the manual), and as needed to refill the empty magazine or cylinder to capacity before continuing. For any gun that loads other than with a detachable magazine, the tester shall also pause every 50 rounds for ten minutes. The tester shall use the ammunition recommended in the user's manual, or, if none is recommended, any standard ammunition of the correct caliber in new condition. A gun shall pass this test if it: 1) fires the first 20 rounds without a malfunction; and 2) fires the full 600 rounds with no more than 6 malfunctions and without any crack or breakage of an operating part of the gun which increases the danger of injury.

   d. By June 1, 2000, no new model pistol may be introduced for sale to the general public unless it has a magazine disconnect safety. By January 1, 2001, all models of all pistols sold to the general public shall have magazine disconnect safeties, and no pistol shall be sold without one.

e. By June 1, 2000, all firearms shall prominently provide in their packaging materials, warnings on the risks of gun in the home and clear instructions regarding proper home storage of guns. These instructions and warnings shall include explicit statements concerning the risks posed by guns in the home and the risks posed by not locking guns. At a minimum, these warnings shall state, in at least 12 point type, bold face: "**WARNING: Every year over a thousand children and teenagers kill themselves with a gun in the United States. Hundreds more young people are injured in unintentional shootings. Over 200,000 guns like this are stolen each year, and many are then used in subsequent crimes. To prevent these tragedies, it is imperative that you keep your gun unloaded, uncocked, securely locked, with ammunition in a separate location. In addition, take any other reasonable steps to limit the possibility of theft, accident, or suicide.**"

f. By January 1, 2001, all firearms manufactured, distributed, and sold shall contain a chamber-load indicator that effectively alerts operators to the existence of a bullet in the chamber, along with appropriate warnings engraved in the gun and painted in a prominent, contrasting color, alerting the user to the device and its purpose, along with warnings and instructions in the packaging enclosing the gun.

g. By January 1, 2001, all firearms manufactured, distributed, and sold shall contain a mechanism which would effectively prevent operation of the firearms by children under the age of five. Such mechanisms may include, but are not limited to making: the trigger resistance at least a ten pound pull; the firing mechanism such that an average five year old's hands are too small to operate the gun; or making it necessary to make a series of multiple motions in order to fire the gun.

h. By January 1, 2001, all firearms, manufactured and sold shall have an internal locking mechanism, incorporated into the gun and or its magazine by which the firearm can only be operated with a key or combination or other mechanism unique to that gun.

i. By January 1, 2004, all firearms shall have a mechanism, incorporated into the firearm, which recognizes only authorized users and can only be operated by authorized users.

j. Manufacturers shall institute retrofit programs at the time they institute each of these changes listed in provisions a-g, above, in which they will offer customers the opportunity to have their guns retrofited with the new technology at cost. These retrofit programs shall be extensively advertised in several major gun magazines, advertisements, and at retail stores.

k. Manufacturers shall continue to invest in technological research and development on gun safety. At a minimum this shall include that each manufacturer shall set aside at least 1% of gross profits for the development, licensing or acquisition of additional safety features to prevent unintentional shootings and shootings by unauthorized persons.

l. Exemptions

i. Manufacturers may apply to the monitor for exemptions from these restrictions in I(B)(1)(b) for collectible or historically significant pistols, custom pistols, or competition pistols. Sales of handguns exempted by reason of being a collectible or historically significant shall be limited to persons licensed as a collector pursuant to Chapter 44, (commencing with Section 921) of Title 18 of the United States Code and regulations promulgated therein. For any such exemption to be granted, the manufacturer will maintain and provide the monitor with data on accidents involving such pistols, which data the monitor shall consider in determining whether to extend, renew or discontinue such exemptions. The aggregate number of firearms sold under this exemption by each manufacturer shall be subject to approval of the Monitor.

ii. Handguns sold to law enforcement or the military shall be exempt from all design standards set forth elsewhere in this Code of Conduct. For all handguns sold to law enforcement or the military that would not comport with this Code of Conduct if sold to the general public, manufacturers shall include a written advisory from the Oversight Panel containing, in sum and substance, the following warnings:

aa. That the firearm being sold to law enforcement or the military does not comport with the requirements of this Code of Conduct for sale to civilians, and, consequently, would not be sold by the manufacturers to civilians. The advisory from the Oversight Panel will state the provision or provisions of this Code of Conduct that would be violated by such a civilian sale.

bb. That, pursuant to this Code of Conduct, the Oversight Panel requests that the purchasing agency place sufficient restrictions on the disposal of the weapon to prevent its later migration into the civilian population. The advisory from the Oversight Panel will request that these restrictions include prohibitions on trade or resale into the civilian market.

II. Distribution

A. *Standard of conduct.* In addition to complying with the specific provisions outlined below, manufacturers, and licensed and authorized dealers hereunder, shall make every effort to completely eliminate suspect sales of firearms, which often provide the source of illegally trafficked weapons and lead to illegal firearm possession and/or misuse by criminals, juveniles, and other prohibited purchasers. Suspect firearm sales include sales made to "straw purchasers," multiple sales of handguns or assault weapons, sales made to any purchaser without a completed background check or proof of a valid government-issued firearms license, sales made to "kitchen table" dealers, and sales made at gun shows.

B. *Selling only through licensed and authorized dealers.* By January 1, 2000, manufacturers shall sell or distribute their firearms only through duly licensed and authorized dealers, as set forth below, or directly to government purchasers.

C. *Requirements for licensed and authorized dealers.* To qualify as a licensed and authorized dealer, a firearms dealer must agree in writing, under oath, to comply with the following terms:

1. Possess a valid, current federal firearms license.

2. Possess all licenses and permits required by local, state, and federal laws and regulations.

3. Operate only from the premises located at the street address shown on the federal firearms license and any local or state permit, and possess a land use permit for that location.

4. Annually certify compliance, under penalty of perjury, with all local, state, and federal firearms laws.

5. Carry insurance coverage at all times appropriate to the dealer's level of sales, but no less than $1,000,000 for each incident of damage to property or incident of death or injury to a person.

6. Certify, under penalty of perjury, that no sales of firearms or ammunition will be made over the internet or at gun shows.

7. Terminate all incentive sales practices among employees or sales agents with respect to firearms and ammunition.

8. Provide an annual *certificate of eligibility* for all employees and sales agents who handle, purchase, or sell firearms or ammunition indicating that the person is not prohibited from possessing or purchasing handguns or other firearms under federal, state, or local law. For each of these employees and sales agents, provide their name, social security number, date of birth, photo identification, and resume of prior employment.

9. Maintain an inventory tracking plan, subject to approval by the Monitor, that satisfies at least the following specified requirements:

   a. An electronic inventory system must be maintained in which the acquisition and disposition of all firearms shall be recorded, including their type, model, caliber or gauge, and serial number, no later than one business day after their

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acquisition or disposition, and monthly backups of these records shall be prepared and permanently maintained in a secure container designed to prevent loss by fire, theft, or other mishap; moreover, all firearms acquired but not yet disposed of must be accounted for through an electronic inventory check prepared at a minimum of once each week and thereafter permanently maintained in a secure location.

b. All stolen or missing firearms shall be reported to local law enforcement and the Bureau of Alcohol, Tobacco & Firearms ("ATF") within 48 hours of discovery that the item is stolen or missing.

c. For retail firearms dealers, all ATF Form 4473 firearm transaction records shall be retained on the dealer's business premises in a secure container designed to prevent loss by fire, theft, or other mishap. On the date that a dealer becomes authorized under this Code, a duplicate of each Form 4473 firearm transaction record retained pursuant to federal law by the dealer up to that date shall be forwarded to ATF. Subsequently, each authorized dealer shall forward to ATF, on the first business day of each month, a duplicate of each Form 4473 firearm transaction record completed by the dealer during the previous month.

d. At the time retail firearms dealers forward Form 4473 firearm transaction records to ATF, they shall also send to the Monitor a certification that those records comprise all firearm sales for which a Form 4473 is required under federal law.

e. If an audit of a dealer's inventory reveals any firearms not accounted for, the dealer shall be subject to sanctions, including termination as an authorized dealer.

10. Maintain a security plan, subject to approval by the Monitor, that satisfies at least the following specified requirements:

a. Firearms shall be kept at all times in a secure facility, which shall meet all of the following specifications:

(1) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock; or

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch in diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door; or

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and door frame;

(2) All windows shall be covered with steel bars;

(3) Heating, ventilating, air-conditioning and service openings shall be secured with steel bars, metal grating, or an alarm system;

(4) Any metal grates shall have spaces no larger than six inches wide measured in any direction;

(5) All steel bars shall be no further than six inches apart;

(6) All firearms shall be secured with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(7) All firearms shall be secured, other than during business hours, in a locked fireproof safe or vault in the licensee's business premises;

b. Persons under 18 years of age shall not be permitted to enter or remain within any premises where firearms are located without being accompanied by his or her parent or legal guardian.

11. Require all employees or sales agents who sell or handle firearms to participate in all training programs provided by manufacturers, ATF, and/or law enforcement, and to pass a comprehensive written exam, administered under the auspices of the Monitor, before being allowed to sell or handle firearms.

12. Effective from the date of authorization, provide a child-safety lock, and all warnings and other instructions called for by this Code, with all firearms sold to consumers.

13. Effective from the date of authorization and once current inventory is sold, agree to sell no firearms which would fail federal import standards pursuant to 18 U.S.C. § 925, even if the firearm was made domestically or predates those criteria, agree to sell no firearms which would be classified as an assault weapon under 18 U.S.C. § 921 et seq., even if the firearm predates that statute, and agree to sell no ammunition magazines able to accept more than ten (10) rounds of ammunition.

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14. Effective as of the dates provided in the Design section of this Code, agree to sell only those firearms which comply with those design criteria.

15. Agree to provide manufacturers, law enforcement, government regulators, and the Monitor, upon request, with full access to any documents that these parties deem necessary. In addition, dealers shall provide manufacturers and the Monitor on a quarterly basis the make, model and serial numbers of firearms sold, date of sale, shipping date, and customer information.

16. Agree to participate in and comply with all monitoring of firearms distribution, whether done by manufacturers, ATF, law enforcement, or the Monitor.

17. Agree to maintain a record of all trace requests initiated by ATF, and to report those trace requests by make, model, and serial number of firearm, date of trace, date of sale, and customer name, to the manufacturer of each firearm and the Monitor within 24 hours of receiving the trace request.

18. Agree to be subject to the jurisdiction of the Monitor and the court empowered to enforce this Code.

D. *Additional wholesale dealer requirements.* In addition to the terms sworn to in paragraph II(D), wholesale firearms dealers must agree to sell and distribute firearms and ammunition only to other licensed and authorized dealers, or directly to government purchasers.

E. *Additional retail dealer requirements.* In addition to the terms sworn to in paragraph II(D), retail firearms dealers must agree to the following additional terms to be licensed and authorized:

1. Be a stocking gun store, the majority of whose revenue is derived from the sale of firearms and/or sporting equipment. Such stocking gun stores shall maintain a minimum of $250,000 in firearms inventory, and a minimum inventory level of a manufacturer's product.

2. For each sale or transfer of a firearm or ammunition made to a federal firearms licensee, agree that such sales or transfers will be made only to a licensed and authorized dealer.

3. No sales or transfers of two or more handguns or assault rifles shall be made to any person, other than to a licensed and authorized federal firearms licensee, within a 30-day period. The dealer shall keep a log of customers, the dates of their purchases, and the make and model of firearms purchased to insure compliance with this provision.

4. No sales or transfers of any firearm or ammunition shall be made to anyone whom the dealer knows or has reason to believe is attempting to complete a "straw

purchase." Furthermore, no sales or transfers of any firearm or ammunition shall be made to anyone whom the dealer knows or has reason to believe will divert firearms, intentionally or otherwise, for later sale or transfer to those not legally entitled to purchase handguns or other firearms under federal, state, or local laws.

F. *Compliance officer.* Each manufacturer shall designate an executive-level manager to serve as a compliance officer whose name and contact information shall be submitted to the Monitor. Duties of the compliance officer, shall include, but are not limited to, reviewing ATF trace data, maintaining records pertinent to compliance with this Code, and in all manner cooperating with the Monitor.

G. *Training.* Manufacturer signatories to this Code shall collectively provide training to all licensed and authorized firearms dealers and their employees and sales agents prior to such dealers becoming authorized, and thereafter at least once a year. Such training shall include instruction on how to recognize attempts to illegally purchase firearms, how to recognize indicia that firearms may be being diverted (intentionally or otherwise) for later sale or transfer to those not legally entitled to purchase them, and how to respond to those attempts. Training shall also address how to teach firearm purchasers rules of firearms safety including proper, safe storage of firearms, and any other subjects required by the Monitor. The training program and training materials shall be submitted each year to the Monitor for his or her edits and approval. At the end of each training session, all persons subject to training shall be required to pass a comprehensive written exam, administered under the auspices of the Monitor. Any person failing to pass the exam shall be prohibited from selling or handling firearms.

H. *Monitoring.* Manufacturers shall maintain an electronic database of all trace requests initiated by ATF, and all trace information provided by licensed and authorized dealers, including the make, model, and serial number of the firearm, the date of trace, and all other information provided by the dealers or ATF, and shall forward this database to the Monitor on the first business day of each month.

I. *Access to records.* Manufacturers shall provide law enforcement, government regulators, and the Monitor, upon request, with full access to any documents that these parties deem necessary.

J. *Reports.* Manufacturers shall provide the Monitor on a quarterly basis the make, model and serial numbers of firearms sold by the manufacturer, the date of sale, shipping date, and customer information. Each quarter, manufacturers shall also report to the Monitor all suspect firearm sales made by the manufacturer or any licensed and authorized firearms dealer, and all efforts made to reduce such sales.

K. *Sales Data Clearinghouse.* Each manufacturer shall fund a database program approved by the Monitor to tabulate sales records provided by manufacturers and licensed and authorized dealers and to facilitate the implementation of anti-gun trafficking measures, including but not limited to the log kept in accordance with

§II(E)(3), above.

L. *Enforcement.* Manufacturers, under the direction of the Monitor, shall create an effective system to retrain, suspend or, as necessary, terminate licensed and authorized firearms dealers who engage in conduct in violation of this Code, and this enforcement system shall be specified and agreed to as a condition of becoming a licensed and authorized firearms dealer. As the Monitor directs, and at his or her discretion, manufacturers shall retrain, suspend, or terminate dealers who fail to adhere to the criteria established pursuant to this Code.

M. *ATF traces as presumptive evidence of misconduct.* The initiation of an ATF firearms trace request for a firearm sold after this Code takes effect shall provide a rebuttable presumption that the manufacturer and dealer who sold the weapon have not complied with all of the terms of this Code, and provides grounds for the Monitor to sanction the manufacturer and dealer. In any sanction proceeding under this Code, the burden shall be on the manufacturer and the dealer to prove that the firearm in question was not sold or transferred improperly.

III. *Independent Monitoring*

The manufacturers shall retain, at their own expense, an independent external Monitor, under the terms and conditions set forth below:

A. *Duties of the Monitor.* The Monitor shall audit and otherwise test or investigate, including in a proactive manner, compliance with this Code and the standards and practices established pursuant to it by the manufacturer and licensed and authorized dealers. The manufacturers and dealers shall make all best efforts to assist the Monitor in performing his or her duties and shall fully cooperate with the Monitor in every way.

B. *Powers of the Monitor.* The Monitor shall have full access to the books and records of manufacturers and licensed and authorized dealers that, in the sole judgment of the Monitor, are necessary to perform the requisite tests and audits. The Monitor shall have the right to conduct interviews and perform or commission necessary tests or other examinations. The Monitor shall have the power to determine whether the manufacturers and licensed and authorized dealers are in or out of compliance with this Code. The Monitor shall also have the power to retain investigators to conduct undercover "sting" operations and other unannounced investigations and audits to determine compliance with this Code. The Monitor shall have the power to hire whatever staff or independent consultants are needed to carry out the duties of the office.

C. *Sanctions.* The Monitor and the court may levy fines and other sanctions against manufacturers for non-compliance with any terms or conditions in this Code. The determination of the specific fine or other sanction shall take into account the seriousness of the violation, the extent of prior violations by the manufacturer, the

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frequency with which the manufacturer's guns are traced to crime or used in accidental shootings and other factors bearing on the sufficiency of the sanction to deter future violations.

D. *Reporting*. The independent monitor shall have a reporting line directly to the Manufacturers' Boards of Directors. In addition, in order to assure its independence, the Monitor may consult with or provide any information obtained from any source to any law enforcement body or regulator that it deems appropriate, and may do so in confidence. The Monitor shall promptly report to the Oversight Panel any violations of this Code and Agreement.

E. *Public reports*. From time to time, but at least every six months, the Monitor shall issue a public report documenting with specificity the extent of the manufacturers' compliance with this Code. Before publicly issuing any such report, the Monitor shall provide each manufacturer with copies of those portions of the report that pertain to the manufacturer. The manufacturer will have fifteen (15) calendar days to object to the public release of trade secrets or other information contained within the report. If the manufacturer and the Monitor are unable to agree on the extent of material to be make public, the dispute shall be submitted to the Oversight Panel, which shall make the final determination in the sound exercise of its discretion.

F. *Term*. The term of the Monitor shall be twenty (20) years. The Oversight Panel may apply to the Court for an order extending the Monitor's term upon a showing that an extension is necessary for compliance with the standards and goals set out in the Code of Conduct and Agreement.

G. *Funding*. Manufacturers shall bear the cost of the Monitor, each contributing to a fund according to the percentage annexed in Appendix B. The Monitor shall be paid periodically from that fund upon review and approval by the Oversight Panel of invoices that the Monitor submits to the Oversight Panel.

H. *Budget*. The budget of the Monitor's office shall set by the Monitor at a level sufficient to perform all duties specified in this Agreement. The Manufacturers agree to pay this amount promptly upon request from the Monitor. After each annual budget has been set and paid for by the manufacturers, the Monitor may seek court approval for additional funds, which shall also be paid by the manufacturers.

I. *Retention of the Monitor*. The manufacturers shall each retain the Monitor designated by the Oversight Panel under terms and conditions approved by the Oversight Panel. The Oversight Panel shall designate the Monitor before the manufacturers subscribe to this Code of Conduct.

J. *Removal of the Monitor*. The Monitor may be discharged during his or her term only by the Oversight Panel and only for good cause. The Monitor shall not contest any such removal. Manufacturers may contest or object to any such removal, but only on the grounds that good cause has not been shown.

K. *Filling the unexpired term of the Monitor.* In the event the Monitors' position becomes vacant during the term set forth in III(E), the position shall be filled by the Oversight Panel within thirty (30) days of the vacancy.

III. Cooperation With Law Enforcement

A. The manufacturers reaffirm their commitment to cooperate fully with law enforcement and regulators to eliminate illegal firearms sale and possession.

B. *Retention of bullets and casings.* Manufacturers shall fire each firearm before it is sold and shall retain at least three fired casings and three fired bullets, matching each casing/bullet pair with the weapon's serial number. Each manufacturer will begin retaining the casings and bullets within six (6) months of the effective date of this agreement. The manufacturers will, on a regular and ongoing basis and without charge, provide the actual casings and bullets with the corresponding serial numbers to such law enforcement agency or agencies as are designated by the Oversight Panel.

V. Cooperation With Litigation

The manufacturers shall cooperate in pending and future lawsuits brought by cities, counties, states or other governmental entities against manufacturers who are not signatories to this Code, including but not limited to providing documents and testimony relevant to those proceedings.

VI. Legislation

Manufacturers shall support pending or proposed legislative efforts to address gun violence that is endorsed by the Oversight Panel, including, at a minimum, publicly supporting such legislation in testimony before, and written submissions to, appropriate legislative committees and bodies. Such legislation shall include but not be limited to legislation placing gun design and safety under regulation by the federal Consumer Product Safety Commission, and legislation barring sales of more than one handgun or assault rifle to any person within 30 days.

VII. Enforcement Mechanism

This agreement shall be entered as an order in a court of appropriate jurisdiction and shall be enforceable and enforced as such. The plaintiffs have the right to seek enforcement of this Agreement in that court, and to seek appropriate remedies, including injunctions and penalties.

VIII. Miscellaneous Matters

A. *Definitions:*

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1. *Manufacturer* – Each of the manufacturers who are signatories to this Code of Conduct and Agreement, and all affiliated firms.

2. *Dealer* – Any person or entity engaged in the business of selling firearms at wholesale or retail.

3. *Wholesale dealer* – Any person or entity engaged in the business of selling firearms who sells only to federal firearms licensees, or directly to government purchasers.

4. *Retail dealer* – Any person or entity engaged in the business of selling firearms who sells any firearm to any person or entity that is not a federal firearms licensee or a government purchaser.

5. *Straw purchase* – the purchase (or sale) of a firearm in which the person filling out the Form 4473 firearm transaction record is not the actual buyer of the weapon, but instead transfers the firearm to another person, who may or may not be prohibited from buying the weapon.

6. *Handgun* – A firearm as defined in 18 U.S.C. § 921(29).

7. *Assault weapon* – A weapon as defined in 18 U.S.C. § 921(30).

8. *Assault rifle* – Rifles defined and listed in 18 U.S.C. §921 (30)(a) and (30)(b).

9. *Gun show* – Any event (A) at which fifty (50) or more firearms are offered or exhibited for sale, transfer, or exchange; and (B) at which (1) not less than twenty percent (20%) of the exhibitors are firearm exhibitors; (2) there are not less than ten (10) firearm exhibitors; or (3) fifty (50) or more firearms are offered for sale, transfer, or exhange.

10. *Kitchen table dealer* – A wholesale or retail firearms dealer that is not licensed and authorized under this Code.

11. *Federal import standards* – Federal criteria developed pursuant to 18 U.S.C. § 925(d)(3) to review the importability of firearms.

12. *ATF* – The United States Bureau of Alcohol, Tobacco and Firearms.

13. *Undercover "sting" operations* – Any undercover investigation conducted under the auspices of the Monitor.

14. *Firearm* – A weapon as defined in 18 U.S.C. § 921(3).

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15. *Oversight Panel* – Panel comprised of the Attorney General of the State of New York and signatories to this Code representing cities and counties who have brought suit against the gun industry.

A. *Successors and assigns.* This Agreement shall be binding upon the successors and assigns of a manufacturer and upon any company or concern with which it may merge or enter into a joint venture or by which it may be acquired. Dealership authorizations under this Code cannot be sold or transferred.

B. *Full agreement.* This Agreement constitutes the full agreement between the parties and its terms may not be charged orally. Each provision of this Agreement is a material provision.

C. *Parties authorized to enter agreement.* Each of the undersigned signatories covenants and represents that it is authorized to enter into this Agreement with full force and effect on behalf of the party represented.

D. *Notice.* Any telefax or other written notification or report required by or prepared pursuant to this Agreement shall be made, mailed, or delivered as set forth below:

1. To the Oversight Panel:

2. To Manufacturers:

E. *Benefit of agreement.* This Agreement is for the benefit of the undersigned parties only and is not for the benefit of any other person or entity who is not a party to this Agreement.

F. *Time.* All duties and responsibilities of the manufacturers shall be required within six months of execution of this Code of Conduct unless another time deadline is otherwise specified.

G. *Document review.* Prior to execution of this Agreement, the Oversight Panel shall have an opportunity to review signatory manufacturers' documents pertaining to design, marketing, and distribution.

H. *No withdrawal.* The undersigned manufacturers shall not be permitted to withdraw from the terms of this Code during its twenty (20) year term.

I. *Application in bankruptcy.* Should any party to this Code declare bankruptcy, the Code shall remain in full force and effect during the pendency of the bankruptcy.

J. *Additional relief.* In the event that any relief to any state or municipal government exceeds the terms in this agreement, the signatories shall be entitled to such further relief.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. draft agreement	[Gun Industry] Settlement Document (22 pages)	03/13/00	P5 8061
002. draft letter	Reed to Eliot Spitzer re: Letter of March 6, 2000 and Moving Forward (3 pages)	03/13/00	P5 8062
003. draft agreement	[Gun Industry] Settlement Document (21 pages)	03/16/00	P5 8063

COLLECTION:

Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 21553

FOLDER TITLE:

Guns-Smith and Weeson [3]

Rob Seibert

rs25

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

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

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March 16, 2000
Settlement Document

AGREEMENT

Preamble

The manufacturer parties to the Agreement and the Department of the Treasury, the Department of Housing and Urban Development, and the undersigned state, city and county parties to the Agreement enter into this Agreement to reduce the criminal misuse of firearms, combat the illegal acquisition, possession and trafficking of firearms, reduce the incidence of firearms accidents, and educate the public on the safe handling and storage of firearms. Furthermore, the manufacturer parties to the Agreement enter into this Agreement as a continuation of their efforts to make their firearms as safe as practicable for their customers and the public. Accordingly, in consideration of the commitments set forth below:

1. The undersigned state, city, and county parties to the Agreement dismiss the manufacturer parties to the Agreement with prejudice from the lawsuits entitled __________; and

2. The undersigned state, city and federal parties to the Agreement agree to refrain from filing suit against the manufacturer parties to the Agreement on an equivalent cause of action.

The parties agree that this Agreement constitutes the full and complete settlement of any and all claims that were raised or could have been raised in the subject litigation. The parties agree further that this Agreement does not constitute an admission of any violation of law, rule or regulation by the manufacturer parties to the Agreement, or any of their employees. Nothing in this Agreement shall be construed to be an admission of liability. The adoption of standards for firearms design and distribution in this Agreement shall not be construed as an admission by the manufacturer parties to the Agreement that practices they engaged in prior to the execution of this Agreement were negligent.

I. Safety and design.

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A. Each firearm make and model sold by each manufacturer party to this Agreement shall be tested by ATF or an agreed upon proofing entity against the following standards. Existing makes and models shall meet these standards within 60 days of execution of this Agreement unless a longer period is specified in the standard. New makes and models shall not be manufactured and sold after the execution of this Agreement unless they conform to these standards.

1. **Standards applicable to all handguns:**

   a. **Second "hidden" serial number.** The gun must have both a visible serial number on the exterior of the frame or receiver, as well as a second serial number hidden on the interior of frame or receiver (e.g., under the grips) or visible only with the aid of an optical instrument.

   b. **External locking device.** As an interim measure, until the implementation of 1.A.1.c, within 60 days of execution of the Agreement, each firearm shall be supplied with an external locking device that effectively prevents the operation of the firearm when locked.

   c. **Internal locking device.** Within 24 months of execution of the Agreement, each firearm shall have a built-in, on-board locking system, by which the firearm can only be operated with a key or combination or other mechanism unique to that gun.

   d. **Authorized user technology.** The manufacturer parties to this Agreement shall each commit two percent of annual firearms sales revenues to the development of a technology that recognizes only authorized users and permits a gun to be used only by authorized persons. Within 36 months of the date of execution of this Agreement, this technology shall be incorporated in all new firearm ~~models~~ designs, with the exception of curios and collectors' firearms, ~~and [illegible]~~
   This doesn't apply to existing designs currently in production.

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If the eight firearms manufacturers and/or importers with the largest United States firearms sales volume agree to incorporate authorized user technology in all firearms, the manufacturer parties to this Agreement will incorporate authorized user technology in all firearms.

e. **Child safety.** Within 12 months of execution of the Agreement, each firearm shall be designed so that it cannot be readily operated by a child under the age of 6. Such mechanisms include: making the trigger pull resistance at least ten pounds in the double action mode; or designing the firing mechanism so that an average five year old's hands would be too small to operate the gun; or requiring multiple, sequenced actions in order to fire the gun.

f. **Minimum barrel length.** Each firearm make and model must have a barrel length of at least 3", unless it has an average group diameter test result of 1.7" or less at seven yards, 3.9" or less at 14 yards, and 6.3" or less at 21 yards. The average group diameter test result is the arithmetic mean of the results of three separate trials, each performed on a different sample firearm of the make and model at issue. For each trial, the firearm shall fire five rounds at a target from the specified distance and the largest spread in inches between the center of any of the holes made in a test target shall be the result of the trial.

g. **Performance test:** A sample of each firearm make and model will be test-fired with "proof cartridges" (cartridges loaded to generate excess pressure as set forth in accepted specifications for proof cartridges) to ensure the integrity of the material. At least one cartridge shall be fired from each chamber. Following this test firing, the firearm will be examined for hairline cracks or other signs of material failure and will pass this test only if there are no hairline cracks or other signs of material failure. Each firearm make and model shall also pass the following performance test: the gun shall fire 600 rounds, stopping only every 100 rounds to tighten any loose screws and to clean the gun (if required by the cleaning schedule recommended in the manual), or as needed to refill the empty magazine or cylinder to capacity before

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continuing. For any gun that loads other than with a detachable magazine, the tester shall pause every 50 rounds for ten minutes. The tester shall use the ammunition recommended in the user's manual, or if none is recommended, any standard ammunition of the correct caliber in new condition. A gun shall pass this test if it fires the first 20 rounds without a malfunction and the full 600 rounds with no more than 6 malfunctions and without any crack or breakage of an operating part of the gun that increases the danger of injury. Malfunctions caused by failure to clean and lubricate, or by defective ammunition, shall not be counted.

h. **Drop test.** Pass the more rigorous of: (a) the SAAMI Standard drop test in effect on the date the firearm is sold; or (b) the following test: The gun shall be test-loaded, set such that it is ready to fire and dropped onto a steel plate or equivalent material of similar hardness from a height of one meter from each of the following positions: (1) normal firing position; (2) upside down; (3) on the grip; (4) on the muzzle; (5) on either side; and (6) on the exposed hammer or striker (or, if no exposed hammer or striker, on the rearmost part of the gun). If the gun is so designed so that its hammer or striker may be set in other positions, it shall be tested with the hammer or striker in each such position (but otherwise ready to fire).

2. **Additional standards for pistols:**

a. **Safety device.** The pistol must have a positive manually operated safety device as determined by standards relating to imported guns promulgated by ATF .

b. **Minimum length and height standards.** The pistol's combined length and height must not be less than 10" with the height being at least 4" and the length being at least 6", unless it has an average group diameter test result of 1.7" or less at seven yards, 3.9" or less at 14 yards, and 6.3" or less at 21 yards. The average group diameter test result is the arithmetic mean of the results of three separate trials, each performe

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on a different sample firearm of the make and model at issue. For each trial, the firearm shall fire five rounds at a target from the specified distance and the largest spread in inches between the center of any of the holes made in a test target shall be the result of the trial.

FXX Glock

c. **Magazine disconnector.** Within 12 months of execution of the Agreement, each pistol shall have a magazine disconnector. available for those customers who desire this feature

d. **Chamber load indicator.** Within 12 months of the execution of the Agreement, each pistol shall have a chamber load indicator painted in a prominent, contrasting color or a feature that allows the operator physically to see the round in the chamber. ~~Each pistol must include an appropriate legend on the firearm identifying the location of the indicator or feature and how to read it.~~

e. **Large capacity magazines.** No pistol make or model designed after January 1, 2000 shall be able to accept magazines manufactured prior to September 14, 1994, with a greater than 10 round capacity, and such models shall not be capable of being easily modified to accept such magazines. Nor shall ammunition magazines that are able to accept more than 10 rounds be sold by the manufacturer parties to this Agreement or their authorized dealers and distributors. See Part II.A.1.h, below.

f. **Additional safety features.** Each pistol must have a firing pin block or lock.

3. **Additional standard for revolvers.** Each revolver make and model must pass a safety test. Each make and model must have a safety feature which automatically (for a double action revolver) or by manual operation (for a single action revolver) causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge. The safety device must withstand the impact of a weight equal to the weight of the revolver dropping from a distance of 1 meter in a line parallel to the barrel upon the rear of the hammer spur, a total of 5 times.

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B. **Law enforcement and military exception.** An exception to a requirement of paragraph A may be granted for firearms manufactured or imported for sale to a law enforcement agency or the military if the law enforcement agency or military organization certifies to the manufacturer party to this Agreement that the exception is necessary for official purposes. Where a law enforcement agency authorizes or requires its officers to purchase firearms individually for official use, an appropriate certification from the agency will be permitted to apply to sales to a number of individual officers. The manufacturer party to this Agreement shall maintain the certification in its records and provide a copy to the Oversight Commission. Firearms sold to law enforcement or the military pursuant to this exception, which do not comply with the design standards of this Agreement, will be accompanied by a statement:

1. "On [date], [manufacturer parties to this Agreement] and [governmental parties to this Agreement] entered into an Agreement establishing certain design standards for firearms sold to civilians. Pursuant to that Agreement, we are obliged to inform you that this firearm does not comply with ~~the following~~ all of the design standards of the Agreement: ~~{______}~~. We are further obliged to request that you not resell this firearm to civilians. This statement is not intended to suggest that there are any design flaws with this firearm, and you remain entitled to dispose of it in any lawful manner."

C. **Warnings about safe storage and handling.** Within 6 months of execution of this Agreement, manufacturer parties to this Agreement shall include in the packaging of each firearm sold a warning on risk of firearms in the home and proper home storage. At a minimum, these warnings shall state in 14 point type, bold face:

> "This handgun is not equipped with a device that fully blocks use by unauthorized users. More than 200,000 firearms like this one are stolen from their owners every year in the United States. In addition, there are more than a thousand suicides each year by younger children and teenagers who get access to firearms. Hundreds more die from

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accidental discharge. It is likely that many more children sustain serious wounds, or inflict such wounds accidentally on others. In order to limit the chance of such misuse, it is imperative that you keep this weapon locked in a secure place and take other steps necessary to limit the possibility of theft or accident. Failure to take reasonable preventative steps may result in innocent lives being lost, and in some circumstances may result in your liability for these deaths."

D. **Illegal firearms.** The manufacturer parties to this Agreement shall not sell firearms that can be readily converted to an illegal firearm, that is, a weapon designed in a manner so that with few additional parts and/or minimal modifications an owner can convert the firearm to an illegal fully automatic weapon; nor shall the firearms be designed so that they are resistant to fingerprints.

take out

E. **Upgrade programs.** The manufacturer parties to this Agreement shall offer their customers the opportunity to retrofit existing firearms with improved safety devices as they become available and to the extent technically and commercially feasible.

II. **Sales and distribution.**

In addition to complying with specific terms, the manufacturer parties to this Agreement will agree for themselves and as part of any distribution or agency agreement that they, and their authorized distributors and authorized dealers, including franchisees, shall commit to a standard of conduct to make every effort to eliminate sales of firearms that might lead to illegal firearm possession and/or misuse by criminals, unauthorized juveniles, and other prohibited persons ("suspect firearms sales"). Suspect firearm sales include sales made to straw purchasers, multiple sales of handguns without reasonable explanation (excluding sales to FFLs), and sales made to any purchaser without a completed background check.

As specified in Part II.A.2 below, the manufacturer parties to this Agreement will take action against dealers and distributors that violate these requirements if the manufacturers receive actual notice of such a violation.

A. **Authorized distributors and dealers.**

1. The manufacturer parties to this Agreement may sell only to authorized distributors and authorized dealers. In order to qualify to become an authorized distributor or authorized dealer, the distributor or dealer must agree in writing to:

   a. Possess a valid and current federal firearms license, and all other licenses and permits required by local, state or federal law, and certify on an annual basis, under penalty of perjury, compliance with all local, state and federal firearms laws.

   b. Execute in the presence of the purchaser the following elements of all firearms transactions at the premises listed on its federal firearms license: completion of the forms and related requirements under the Brady Act and the Gun Control Act and physical transfer of the firearm.

   c. Where available, carry insurance coverage against liability for damage to property and for injury to or death of any person as a result of the sale, lease, or transfer or a firearm in amounts appropriate to its level of sales, but at a minimum no less than $1 million for each incident of damage, injury or death.

   d. Make no sales at gun shows unless all sales by any seller at the gun show are conducted only upon completion of a background check.

   e. Within 24 months of the date of execution of this Agreement, maintain an inventory tracking plan for the products of the manufacturer parties to this Agreement that includes at a minimum the following elements:

      (1) Electronic recording of the make, model, caliber or gauge, and serial number of all firearms that are acquired no later than one business day after their acquisition and electronic recording of their disposition no later than one business day

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after their disposition. Monthly backups of these records shall be maintained in a secure container designed to prevent loss by fire, theft, or other mishap.

(2) All firearms acquired but not yet disposed of must be accounted for through an electronic inventory check prepared once each week and maintained in a secure location.
month

(3) For authorized dealers and franchisees, all ATF Form 4473 firearm transaction records shall be retained on the dealer's business premises in a secure container designed to prevent loss by fire, theft, or other mishap.

(4) If an audit of a distributor's or dealer's inventory reveals any firearms not accounted for, the distributor or dealer shall be subject to sanctions, including termination as an authorized distributor or dealer.

f. Implement a security plan for securing firearms, including firearms in shipment. The plan must satisfy at least the following requirements:

(1) Display cases shall be locked at all times except when removing a single firearm to show a customer, and customers shall handle firearms only under the direct supervision of an employee;

(2) All firearms shall be secured, other than during business hours, in a locked fireproof safe or vault in the licensee's business premises; and

(3) Ammunition shall be stored separately from the firearms and out of reach of the customers.

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g. Require persons under 18 years of age to be accompanied by a parent or guardian when they are in portions of the premises where firearms or ammunition are stocked or sold.

h. Not sell ammunition magazines that are able to accept more than 10 rounds regardless of the date of manufacture, not sell any semi-automatic assault weapon as defined in 18 U.S.C. 921(a)(30) regardless of the date of manufacture, provide safety locks and warnings with firearms, as specified in Section I above, and sell only firearms that comport with the design criteria of this Agreement.

i. Provide law enforcement, government regulators conducting compliance inspections, and the Oversight Commission, for purposes of determining compliance with conditions imposed as a result of this Agreement, or for any other authorized purpose, full access to any documents related to the acquisition and disposition of firearms deemed necessary by one of those parties.

j. Participate in and comply with all monitoring of firearms distribution by manufacturers, ATF or law enforcement.

k. Maintain an electronic record of all trace requests initiated by ATF, and report those trace requests by make, model and serial number of firearm, date of trace, and date of sale to the manufacturer of the firearm on a monthly basis, unless ATF, for investigative reasons, directs the licensee not to report certain traces.

l. Agree to cooperate fully in the oversight mechanism established in Section III of this Agreement, including providing access to all necessary documents, and to be subject to the jurisdiction of the court enforcing this Agreement.

m. Require all employees to attend annual training developed by manufacturers in consultation with ATF and approved by the Oversight Commission. The training shall cover at a minimum: the law

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governing firearms transfers by licensees and individuals; how to recognize straw purchasers and other attempts to purchase firearms illegally; how to recognize indicators that firearms may be diverted for later sale or transfer to those not legally entitled to purchase them; how to respond to those attempts; and the safe handling and storage of firearms. New employees will receive training on the above topics, based on materials developed for the annual training, before handling or selling firearms and shall attend annual training thereafter. Such training may be delivered by electronic medium. Within 12 months of the date of execution of this Agreement and annually thereafter, the manufacturer parties to this Agreement will obtain from all authorized dealers and distributors certifications that such training has been completed, with a list of the names of all trained employees.

n. Require all employees to pass a comprehensive written exam, which shall be developed by the manufacturers in consultation with ATF and approved by the Oversight Commission, on the material covered in the training before being allowed to sell or handle firearms. Any employee who fails to pass the exam shall be prohibited from selling or handling firearms on behalf of the distributor or dealer. The annual certification discussed in II.A.1.m, above, will include certification that all employees have passed the exam.

o. Not complete any transfer of a firearm prior to receiving notice from the NICS that the transferee is not a prohibited person under the Gun Control Act.

p. Verify the validity of a licensee's federal firearms license against an ATF database before transferring a firearm to that licensee.

q. Forgo any transfer of a firearm to a licensee if the dealer or distributor knows the licensee to be under indictment for violations of the Gun Control Act or any violent felony or serious drug offense as defined in 18 U.S.C. § 924(e)(2).

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r. Transfer firearms only:

(1) To individuals who have demonstrated that they can safely handle and store firearms through completion of a certified firearms safety training course or by having passed a certified firearms safety examination.

(2) After demonstrating to the purchaser how to load, unload, and safely store the firearm, and how to engage and disengage all safety devices on the firearm.

(3) After providing the purchaser with a copy of the ATF Disposition of Firearms Notice.

(4) After obtaining the purchaser's signature on a form certifying that the purchaser has received the instruction described in subparagraph (2) and the notice described in subparagraph (3) and maintaining that form in its files.

(5) After providing the purchaser with a written record of the make, model, caliber or gauge, and serial number of each firearm transferred to enable the purchaser to accurately describe the firearm to law enforcement in the event that it is subsequently lost or stolen.

2. The manufacturer parties to the Agreement shall incorporate into any distribution or agency agreement with their authorized distributors and authorized dealers, including franchisees, procedures for terminating distributors, dealers or franchisees that engage in conduct in violation of this Agreement. Distributors and dealers shall agree to this enforcement system as a condition of becoming authorized. The manufacturer parties to this Agreement shall require annual certification by their authorized dealers and distributors that they are in compliance with the requirements in II.A.1(a-r) of this Agreement and applicable provisions of B. and C. below. If the manufacturer parties to this Agreement receive actual notice

of a violation of the Agreement through their course of dealing with their authorized dealers and distributors, from ATF, state or local law enforcement, the Oversight Commission, another dealer or distributor, a customer or other credible source, the manufacturer parties to this Agreement will either immediately terminate sales to the dealer or distributor in violation or take the following actions. The manufacturer(s) that have authorized the dealer or distributor to sell its/their firearms will, individually or collectively, notify the dealer or distributor within seven (7) business days of learning of such violation and inform the dealer or distributor of the breach and request information regarding the breach. The distributor or dealer will then have fifteen (15) days to provide the manufacturer(s) with the requested information. If the manufacturer(s) determine that the dealer or distributor is in violation of this section of the Agreement, this determination will void the distribution or agency agreement under which the distributor or dealer receives products from the manufacturer. The manufacturer(s) will not honor any further orders for the distributor or dealer until the manufacturer(s) determine that the distributor or dealer is in compliance with the Agreement.

The manufacturer(s) shall inform the Oversight Commission and ATF of its/their notifications and decisions and provide them with the information provided by the dealer or distributor. If the Oversight Commission determines that suspension or termination of the dealer or distributor is warranted, and the manufacturer(s) did not take this action, the Oversight Commission shall direct the manufacturer(s) to do so.

B. **Authorized distributors - additional provision.**

Authorized distributors must agree to sell the manufacturer's products only to other authorized distributors or authorized dealers or directly to government purchasers.

C. **Authorized dealers – additional provisions.**

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In addition to the requirements in section II(A)(1), authorized dealers must agree:

1. Not to sell any of the manufacturers' products to any federal firearms licensee that is not an authorized distributor or authorized dealer of that manufacturer.

2. Not to engage in sales that the dealer knows or has reason to know are being made to straw purchasers.

3. To adhere to the following procedure for multiple handgun sales. If a purchaser wants to purchase more than one handgun, the purchaser may take from the dealer only one handgun on the day of sale. The dealer at that point will file a Multiple Sales Report with ATF. The purchaser may take ~~one~~ the additional handguns from the dealer 14 days thereafter. ~~until the sale is completed~~. This provision shall not apply to sales to qualified private security companies licensed to do business within the State where the transfer occurs for use by the company in its security operations.

D. **Manufacturers.**

Each manufacturer must:

1. Provide quarterly reports of its own sales data and downstream sales data, with the volume of sales by make, model, caliber and gauge, to ATF's National Tracing Center.

2. Not market any firearm in a way that would make the firearm particularly appealing to juveniles or criminals, such as advertising a firearm as "fingerprint resistant."

3. Refrain from selling any modified or sporterized semi-automatic assault pistol of a type that cannot be imported into the United States.

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4. Reaffirm their longstanding policy and practice of not placing advertisements in the vicinity of schools, high crime zones, or public housing.

5. Verify the validity of a license against an ATF database before transferring a firearm to any licensee.

6. Forgo any transfer of a firearm to a licensee if the manufacturer knows the licensee to be under indictment violations of the Gun Control Act or any violent felony or serious drug offense as defined in 18 U.S.C. § 924(e)(2).

7. Implement a security plan for securing firearms, including firearms in shipment. The plan will include the following elements.

   a. Employee and visitor movement into and out of the manufacturer's facility will be only through designated security control points, and visitors will be admitted only after positive identification and confirmation of the validity of the visit. Employees and visitors will pass through a metal detector before leaving

   b. All areas where firearms are assembled and stored will be designated as restricted areas. Access will be authorized only for those employees whose work requires them to enter these areas or for escorted visitors. Protective barriers will be installed in restricted areas to deny or impede unauthorized access.

   c. Each facility or area where firearms, ammunition, or components are stored will be provided with a system to detect unauthorized entry.

   d. If firearms are shipped in cartons, the cartons will bear no identifying marks or words. The manufacturer parties to this Agreement will use only very strong cartons to protect against concealed pilferage in truck shipments, and large cartons will be secured with steel strapping in two directions. The manufacturer parties to this Agreement will use only carriers and freight forwarders that warrant in writing that they comply

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criminal background checks on delivery personnel and report all thefts or losses of firearms to ATF within 48 hours of learning of the theft or loss. The manufacturer parties to this Agreement will inspect carriers' and forwarders' local facilities periodically.

8. Encourage its authorized dealers and distributors to consent to up to three unannounced ATF compliance inspections each year.

E. **Corporate responsibility.**

If ATF or the Oversight Commission informs the manufacturer parties to this Agreement that a disproportionate number of crime guns have been traced to a dealer or distributor within three years of the gun's sale, the manufacturer(s) that have authorized the dealer or distributor to sell guns will either immediately terminate sales to the dealer or distributor or take the following actions. The manufacturers will, individually or collectively, notify the dealer or distributor of the disproportionate number within seven (7) days and demand an explanation and proposal to avoid a disproportionate number of traces in the future. The dealer or distributor will have fifteen (15) days to provide the explanation and proposal. If the manufacturer(s) determine that the explanation and proposal are not satisfactory, the manufacturer(s) will terminate supplies to the dealer or distributor. If the manufacturer(s) determine that the explanation and proposal are satisfactory, the manufacturer will continue supplies, but will closely monitor traces to the dealer or distributor in question. If disproportionate traces continue, the manufacturer(s) will terminate supplies to the dealer or distributor.

The manufacturer(s) shall inform the Oversight Commission and ATF of its/their notifications and decisions and provide them with the information provided by the dealer or distributor. If the Oversight Commission determines that suspension or termination of the dealer or distributor is warranted, and the manufacturer(s) did not take this action, the Oversight Commission shall direct the manufacturer(s) to do so.

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Disproportionate number of crime guns: Upon execution of this Agreement, the Oversight Commission will convene to determine a formula to identify what constitutes a disproportionate number of crime guns. In determining the formula, the Oversight Commission shall consider the available data and establish procedures to ensure that the relevant data is obtained. This provision will not take effect until the Oversight Commission sets the formula and a mechanism for its implementation.

III. Oversight

A. Oversight Commission.

1. **Composition.** An Oversight Commission comprised of five members shall be formed. The Commission members shall serve five-year terms except for first terms as noted and shall be appointed as follows:

   a. Two members by the city and county parties to the Agreement. First appointees to serve two- and three-year terms, respectively.

   b. One by the State parties to the Agreement. First appointee to serve a three-year term.

   c. One member by the manufacturer parties to the Agreement. First appointee to serve a four-year term.

   d. One selected by ATF. First appointee to serve a five-year term.

2. **Authority.** -- The Oversight Commission, which will operate by majority vote, will be empowered to oversee the implementation of this Agreement. Its authorities will include but not be limited to the authority to (1) review the findings of ATF or the proofing entity that will oversee the design and safety requirements of Part I of this Agreement, (2) maintain records of firearms sold pursuant to the law enforcement exception, as set forth in Part I.B of this Agreement, (3) review the safety training materials and test set forth in Parts II.A.1.m-n of this Agreement, and (4) participate in the

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oversight of the distribution and sales provisions established in Part II of this Agreement, as set forth in Parts II.A.2 and II.E.

The Oversight Commission shall have a staff, which will be entitled to inspect participating manufacturers and their authorized dealers and distributors to ensure compliance with the Agreement. The costs of the Commission shall be funded by the manufacturer parties to the Agreement. Each manufacturer party to this Agreement will pay no more than [CAP] $25,000 annually.

B. **Role of ATF.** -- ATF will continue to issue, regulate and inspect federal firearms licensees, collect multiple sales forms, conduct firearms traces, investigate firearms traffickers and straw purchasers, enforce the Gun Control Act and the National Firearms Act and fulfill its other statutory responsibilities. To the extent consistent with law and the effective accomplishment of its law enforcement responsibilities, ATF will work with the manufacturer parties to the Agreement and the Oversight Commission to assist them in meeting their obligations under the Agreement. In particular, to the extent that ATF uncovers violations of the following provisions in its inspections or other contacts with federal firearms licensees, it will inform the Oversight Commission: II(A)(1)(a), (b), (e), (h), (i), (j), (k), (o), (p), and (q), (C)(2) and (D)(1) and (5). Nothing in this paragraph shall diminish the obligation of the manufacturer parties to this Agreement to make reasonable efforts to identify noncompliance and respond to notifications of violations from parties other than ATF.

C. **Manufacturer cooperation.**

1. Each manufacturer shall designate an executive level manager to serve as a compliance officer and shall provide the compliance officer with sufficient resources and staff to fulfill the officer's responsibilities under this agreement.

2. The compliance officer shall be responsible for

COPY

a. Ensuring that the manufacturer fulfills its obligations under this agreement;

b. Training the manufacturer's officers and employees on the obligations imposed by this agreement; and

c. Serving as the liaison to the Oversight Commission.

3. Each manufacturer shall commit to full cooperation in the implementation and enforcement of this Agreement.

IV. Cooperation with Law Enforcement.

A. The manufacturer parties to this Agreement reaffirm their commitment to cooperate fully with law enforcement and regulators to eliminate illegal firearms sales and possession.

B. Within six (6) months of the effective date of this Agreement, if technologically available, the manufacturer parties to this Agreement shall fire each firearm before sale and enter the digital image of its casing along with the weapon's serial number into a system compatible with the National Integrated Ballistics Identification Network system. The digital image shall be made available electronically to ATF's National Tracing Center.

C. Manufacturers shall participate in ATF's Access 2000 program to facilitate electronic linkage to their inventory system to allow for rapid responses to ATF's firearms trace requests.

V. Legislation.

The parties to this Agreement will work together to support ~~pending and proposed~~ legislative efforts to reduce ~~gun violence.~~ firearms misuse and the development of user only technology

VI. Education trust fund.

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Upon the ~~signature to this Agreement of ten~~ resolution of the current 30 lawsuits brought by cities, counties, or States, the manufacturer parties to this Agreement shall dedicate one percent of annual firearms revenues to a trust fund to implement a public service campaign to inform the public about the risk of firearms ~~in the home~~ misuse, ~~proper home~~ safe storage, and the need to dispose of firearms responsibly. ~~through destruction or transfer through a FFL, as well as the need to reduce gun violence. The trust fund will also be available to fund a national firearms death and injury reporting system.~~

VII. Most favored government entity.

If the manufacturer parties to this Agreement enter into an agreement with any other entity wherein they commit to institute design or distribution reforms that are more expansive than any of the above-enumerated items, such reforms will become a part of this Agreement as well.

VIII. Enforcement.

The Agreement will be entered and is enforceable as a Court order and as a contract.

Dated this ____ day of March, 2000.

Approved and Authorized by:

Manufacturer parties to this Agreement:

____

Smith & Wesson

...

...

Governmental parties to this Agreement:

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March 16, 2000
Settlement Document

____
Department of the Treasury

____
Department of Housing and Urban Development

____
[City, State, and County parties to this Agreement]

....

...

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ATTORNEY WORK PRODUCT

March ~~6~~ 13, 2000

I am also pleased that you reiterated your suggestion that we explore whether the federal government has the authority ~~to~~ through its purchasing power to help make sure that ~~guns~~ firearms are safely manufactured and distributed. I hope we can make progress on that front as well.

I know that we have all been frustrated by the decision in January by a handful of intransigent manufacturers to use the federal government's interest in ~~a negotiated settlement~~ gun safety as an excuse to ~~[illegible]~~ divide the litigants and put off ~~any~~ negotiations with the industry as a whole.

INSERT A.

But rather than become discouraged, we should look at how far we have come. Before ~~we~~ the federal govt ~~[illegible]~~ became involved in December,

BY FACSIMILE

Mr. Eliot Spitzer
Attorney General
State of New York
The Capital
Albany, NY 12224

Re: Letter of March 6, 2000 and Moving Forward

Dear Eliot:

In your recent letter, you expressed your trust that we will be able to move forward together in a true partnership toward our common goal of seeking fundamental changes in the way firearms are manufactured and distributed. I agree with you wholeheartedly, and I hope that this letter will continue to clear the air. We both seek to make the gun industry take a responsible role in stopping the awful toll of gun violence by incorporating reasonable safety devices in the guns they manufacture and by implementing distribution and advertising practices that will keep guns out of the hands of criminals and children. I look forward to sitting down with you and the city litigants next week to take stock of where we are now and how we can move forward. My understanding is that Louise has requested on your behalf that we have a pre-meeting on the 22nd, and I am happy to do so.

~~Your understanding of the current state of negotiations with the gun industry, however, seems to be guided by a misimpression about our role and the history of our involvement, which I am glad to be able to correct. To begin with, prior to our involvement, we have been told by many of the participants that the~~ your negotiations ~~you had been conducting~~ with the manufacturers had reached a ~~clear~~ virtual stalemate. Your negotiations had taken place for nine months and the cities and counties involved in the litigation were expressing deep frustration at the lack of progress. You had received no counter-offer from the industry, and the prospects for receiving one were diminishing rapidly. Moreover, the city and county litigants, with whom we were in contact through our ordinary business, felt that their interests were not being adequately represented and, as you heard from the litigants themselves in our January meeting at the OEOB, that many of the litigants felt that they had been effectively cut out of the process.

For months, the industry had refused to give you a counteroffer

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It was at that point that several city and county litigants approached the Administration, seeking our involvement to break the stalemate, recognizing, as you have acknowledged, that we bring unique resources to this effort. We agreed to participate because we felt that our presence at the table could significantly increase the prospects for a global settlement, and because it was becoming increasingly clear that, given the role of the federal government in regulating firearms, any negotiated solution would require our involvement.

Our presence immediately reinvigorated the negotiation process and has led to real progress. We have convened the only comprehensive strategy meeting for all litigants (city, county and NAACP); we have lent our expertise and resources to assisting in this effort, including convening a unique seminar by the Bureau of Alcohol, Tobacco, and Firearms to provide insights for litigants about firearms and firearm regulation; we have sought input from all 31 litigants on what settlement terms are desired; and we have used the bully pulpit of the federal government to ensure that the need for a negotiated settlement remains a pressing public policy concern.

It is true, as you noted in your letter, that a handful of intransigent manufacturers reacted to our presence in the negotiations by seeking to divide the litigants and by using our involvement as an excuse to politicize the process. The stance of this small group of manufacturers prior to our proposed January meeting with the industry in Las Vegas (recall that the industry initially welcomed the Administration's involvement in the Las Vegas negotiations) was calculated to derail negotiations entirely, and we urged a united front in response. Everyone involved on our side deeply appreciated your willingness to stand with us in resisting the efforts of a few manufacturers, working in bad faith, to divide our side and dictate negotiating terms and conditions to litigants and potential litigants.

Our on-going discussions with the industry flow from an entirely different premise and show real promise of bearing fruit. We have stated consistently and publicly that we would be happy to sit down with responsible manufacturers, even if the industry as a whole was unwilling to negotiate in good faith. This is in fact what we have done and are continuing to do. It is simply not true, moreover, that we are using your settlement framework and negotiating drafts. Although we have our own view of ideal settlement terms, we have sought to synthesize the array of input we have received from a range of current and potential litigants.

It is critical that as we move forward, we do so in a spirit of understanding. It does not do our joint cause any good for there to be threats to derail our current, productive discussions by violating the clear need for confidentiality. I respect the sensitivity of this process, and for that reason, I have no intention of releasing this letter to a wider audience, and I would appreciate a similar sensitivity on your part.

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We can accomplish so much more if we put our need for constant personal involvement second and our goal of saving lives first. We have worked hard at every stage to include you in our discussions, and we have made the same effort with other actual and potential litigants. Other participants in this process have reacted favorably to our involvement and now that we are so close to making a real breakthrough it would be unfortunate to find the process undermined by anyone from our side.

As I said at the outset, I hope that our partnership can continue in good faith, and I look forward to continuing our dialogue and meeting next week.

Sincerely,

8063

WORKING DRAFT
Privileged & Confidential

March 13, 2000
Settlement Document

AGREEMENT

Preamble

[Manufacturer and importer parties to the Agreement] and [state, city and public housing authority parties to the Agreement] enter into this Agreement to reduce the criminal misuse of firearms, combat the illegal acquisition, possession and trafficking of firearms, reduce the incidence of firearms accidents, and educate the public on the safe handling and storage of firearms. Furthermore, [manufacturer and importer parties to the Agreement] enter into this Agreement as a continuation of their efforts to make their firearms as safe as practicable for their customers and the public. Accordingly, in consideration of the commitments set forth below:

1. The [state, city and public housing authority parties to the Agreement] dismiss the [manufacturer and importer parties to the Agreement] with prejudice from the lawsuit entitled __________; or

2. The [state, city and public housing authority parties to the Agreement] agree to refrain from filing suit against the [manufacturer and importer parties to the Agreement] on any cause of action arising from

   ______________.

The parties agree that this Agreement constitutes the full and complete settlement of any and all claims that were raised or could have been raised in the subject litigation. The parties agree further that this Agreement does not constitute an admission of any violation of law, rule or regulation by the [manufacturer and importer parties to the Agreement], or any of [its/their] employees. Nothing in this Agreement shall be construed to be an admission of liability. The adoption of standards for firearms design and distribution in this Agreement shall not be construed as an admission by the [manufacturer and importer parties to the Agreement] that practices they engaged in prior to the execution of this Agreement were negligent.

I. Safety and design.

Issues
Smart gun
Oversight role
~~[illegible]~~ One gun/mo.
Oversight comp[illegible]
Mag. disconnect
Large clips

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A. Each firearm design sold by each manufacturer or importer shall be tested by [an agreed upon proofing entity] against the following standards. Existing designs shall meet these standards within 60 days of execution of this Agreement unless a longer period is specified in the standard. New designs shall not be manufactured and sold after the execution of this Agreement unless they conform to these standards.

1. **Standards applicable to all handguns**:

a. **Second "hidden" serial number.** The gun must have both a visible serial number on the exterior of the frame or receiver, as well as a second serial number hidden on the interior of frame or receiver (e.g., under the grips) or visible only with the aid of an optical instrument.

b. **External locking device.** As an interim measure, until the implementation of I.A.1.c, within 60 days of execution of the Agreement, each firearm shall be supplied with an external locking device that effectively prevents the operation of the firearm when locked.

c. [**Internal locking device.** Within 24 months of execution of the Agreement, each firearm shall have a built-in, on-board locking system, by which the firearm can only be operated with a key or combination or other mechanism unique to that gun.

d. [**Authorized user technology.** A Technical Advisory Panel shall be convened to determine whether it is feasible to incorporate into all firearms or certain models or types of firearms a device or technology that recognizes only authorized users and permits the gun to be used only by authorized persons. If the Technical Advisory Panel concludes that such technology is feasible, it shall be incorporated in all new firearm models on a schedule to be established by the Panel. The schedule will require the technology to be incorporated in new firearm models 36 months after the execution of this Agreement or 18 months after the panel determines that it is feasible, whichever date is later.

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The Panel will also determine whether it is possible to incorporate the technology into existing models. If the Panel determines that such incorporation is feasible, the Panel shall establish a schedule for the phase-in of such technology into existing models. In no case shall it take longer than 5 years from the date on which the Panel concludes that it is feasible to incorporate the technology into an existing model for the technology to be fully phased in. If the Panel concludes that such technology is not feasible when it meets, it shall reconvene every six months thereafter for the purpose of making the determinations and establishing the schedules called for by this paragraph.]

e. **Child safety.** Within 12 months of execution of the Agreement, each firearm shall be designed so that it cannot be readily operated by a child under the age of 6. Such mechanisms include: making the trigger pull resistance at least ten pounds [in the double action mode]; or designing the firing mechanism so that an average five year old's hands would be too small to operate the gun; or requiring multiple, sequenced actions in order to fire the gun.

f. [**Minimum barrel length.** Each firearm [design] must have a barrel length of at least 3".] [Spread test alternative to be proposed. S&W to provide information on the necessary level of accuracy.]

g. **Performance test:** A sample of each firearm design will be test-fired with "proof cartridges" (cartridges loaded to generate excess pressure as set forth in accepted specifications for proof cartridges) to ensure the integrity of the material. At least one cartridge shall be fired from each chamber. Following this test firing, the firearm will be examined for hairline cracks or other signs of material failure and will pass this test only if there are no hairline cracks or other signs of material failure. Each firearm design shall also pass the following performance test: the gun shall fire 600 rounds, stopping only every 100 rounds to tighten any loose screws and to clean the gun (if required by the cleaning schedule recommended in the manual), or as

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needed to refill the empty magazine or cylinder to capacity before continuing. For any gun that loads other than with a detachable magazine, the tester shall pause every 50 rounds for ten minutes. The tester shall use the ammunition recommended in the user's manual, or if none is recommended, any standard ammunition of the correct caliber in new condition. A gun shall pass this test if it fires the first 20 rounds without a malfunction and the full 600 rounds with no more than 6 malfunctions and without any crack or breakage of an operating part of the gun that increases the danger of injury. Malfunctions caused by failure to clean and lubricate, or by defective ammunition, shall not be counted.

h. **Frame construction.** [S&W and Glock will talk to engineers to identify any possible standards to ensure high-quality firearms of the type S&W and Glock currently manufacture. These standards could address metal and polymer materials separately.]

i. **Weight.** [To be discussed. To be eliminated if frame construction standards are agreed upon.]

j. **[Drop test.** Pass the more rigorous of: (a) the SAAMI Standard drop test in effect on the date the firearm is sold; or (b) the following test: The gun shall be test-loaded, set such that it is ready to fire and dropped onto a steel plate or equivalent material of similar hardness from a height of one meter from each of the following positions: (1) normal firing position; (2) upside down; (3) on the grip; (4) on the muzzle; (5) on either side; and (6) on the exposed hammer or striker (or, if no exposed hammer or striker, on the rearmost part of the gun). If the gun is so designed so that its hammer or striker may be set in other positions, it shall be tested with the hammer or striker in each such position (but otherwise ready to fire).

2. **Additional standards for pistols:**

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a. **Safety device.** The pistol must have a positive manually operated safety device as determined by standards relating to imported guns promulgated by ATF .

b. [**Minimum length and height standards.** The pistol's combined length and height must not be less than 10" with the height being at least 4" and the length being at least.] [Spread test alternative to be proposed. S&W to provide information on the necessary level of accuracy.]

c. **Magazine disconnector.** Within 12 months of execution of the Agreement, each pistol shall have a magazine disconnector. Glock-no

d. **Chamber load indicator.** Within 12 months of the execution of the Agreement, each pistol shall have a chamber load indicator painted in a prominent, contrasting color and include an appropriate legend on the firearm identifying the location of the indicator and how to read it. [S&W/Glock to provide proposal as to how this can accommodate a variety of mechanisms, while maintaining industry-wide clarity as to the proper reading of the indicator.]

e. **Large capacity magazines.** No pistol models designed after January 1, 2000 shall be able to accept magazines manufactured prior to September 14, 1994, with a greater than 10 round capacity, and such models shall not be capable of being easily modified to accept such magazines. Nor shall ammunition magazines that are able to accept more than 10 rounds be sold by [the manufacturer and importer parties to this Agreement] or their authorized dealers and distributors. See Part II.A.1.h, below. Glock-no

f. **Additional safety features.** Each pistol must have a firing pin block or lock.

3. **Additional standard for revolvers.** Each revolver design must pass a safety test. Each design must have a safety feature which automatically (for a double action revolver) or by manual operation (for a single action

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revolver) causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge. The safety device must withstand the impact of a weight equal to the weight of the revolver dropping from a distance of 1 meter in a line parallel to the barrel upon the rear of the hammer spur, a total of 5 times.

4. **[Standards for all long guns.** If [the manufacturer and importer parties to this Agreement] decide to make or import long guns in the future, the Oversight Commission will establish safety and design standards similar to the ones in this Agreement.]

B. **Law enforcement and military exception.** An exception to a requirement of paragraph A may be granted for firearms manufactured or imported for sale to a law enforcement agency or the military if the law enforcement agency or military organization certifies to the manufacturer or importer that the exception is necessary for official purposes. [Where a law enforcement agency authorizes or requires its officers to purchase firearms individually for official use, an appropriate certification from the agency will be permitted to apply to sales to a number of individual officers.] The manufacturer or importer shall maintain the certification in its records and provide a copy to the Oversight Commission. Firearms sold to law enforcement or the military pursuant to this exception, which do not comply with the design standards of this Agreement, will be accompanied by a statement:

1. "On [date], [manufacturer and importer parties to this Agreement] and [governmental parties to this Agreement] entered into an Agreement establishing certain design standards for firearms sold to civilians. Pursuant to that Agreement, we are obliged to inform you that this firearm does not comply with the following design standards of the Agreement: [________]. We are further obliged to request that you not resell this firearm to civilians. This statement is not intended to suggest that there are any design flaws with this firearm, and you remain entitled to dispose of it in any lawful manner."

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C. **Warnings about safe storage and handling.** Within 6 months of execution of this Agreement, [manufacturer and importer parties to this Agreement] shall include in the packaging of each firearm sold a warning on risk of firearms in the home and proper home storage. At a minimum, these warnings shall state in 14 point type, bold face:

> "This handgun is not equipped with a device that fully blocks use by unauthorized users. More than 200,000 firearms like this one are stolen from their owners every year in the United States. In addition, there are more than a thousand suicides each year by younger children and teenagers who get access to firearms. Hundreds more die from accidental discharge. It is likely that many more children sustain serious wounds, or inflict such wounds accidentally on others. In order to limit the chance of such misuse, it is imperative that you keep this weapon locked in a secure place and take other steps necessary to limit the possibility of theft or accident. Failure to take reasonable preventative steps may result in innocent lives being lost, and in some circumstances may result in your liability for these deaths.

D. [**Illegal firearms.** Manufacturers and importers shall not sell firearms that can be readily converted to an illegal firearm, that is, a weapon designed in a manner so that with few additional parts and/or minimal modifications an owner can convert the firearm to an illegal fully automatic weapon;] nor shall the firearms be designed so that they are resistant to fingerprints. <u>[Jannuzzo to review case law and propose language making "readily converted" more exact.]</u>

E. [**Upgrade programs.** [Manufacturer and importer parties to this Agreement] shall offer their customers the opportunity to retrofit existing firearms with improved safety devices as they become available and to the extent technically feasible. These upgrade programs shall be extensively advertised in several major gun magazines and at retail stores.

II. **Sales and distribution.**

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[In addition to complying with specific terms, manufacturers and importers will agree for themselves and as part of any distribution or agency agreement that they, and their authorized distributors and authorized dealers, including franchisees, shall commit to a standard of conduct to make every effort to eliminate sales of firearms that might lead to illegal firearm possession and/or misuse by criminals, unauthorized juveniles, and other prohibited persons ("suspect firearms sales"). Suspect firearm sales include sales made to straw purchasers, multiple sales of handguns without reasonable explanation (excluding sales to FFLs), and sales made to any purchaser without a completed background check.]

A. **Authorized distributors and dealers.**

1. Manufacturers and importers may sell only to authorized distributors and authorized dealers. In order to qualify to become an authorized distributor or authorized dealer, the distributor or dealer must agree in writing to:

   a. Possess a valid and current federal firearms license, and all other licenses and permits required by local, state or federal law, and certify on an annual basis, under penalty of perjury, compliance with all local, state and federal firearms laws.

   b. Execute in the presence of the purchaser the following elements of all firearms transactions at the premises listed on its federal firearms license: completion of the forms and related requirements under the Brady Act and the Gun Control Act and physical transfer of the firearm.

   c. Carry insurance coverage in amounts appropriate to its level of sales, but at a minimum no less than [$1 million] for each incident of damage, injury or death. [Jannuzzo to determine cost of insurance and propose appropriate coverage. S&W also to look into this.] LA Cty - $1m

   d. Make no sales at gun shows unless all sales by any seller at the gun show are conducted only upon completion of a background check.

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e. [S&W to make further inquiries as to the feasibility of this proposal and propose alterations if deemed necessary. Maintain an inventory tracking plan that includes at a minimum the following elements:

24-mo phase in on computers

(1) Electronic recording of the make, model, caliber or gauge, and serial number of all firearms that are acquired no later than one business day after their acquisition and electronic recording of their disposition no later than one business day after their disposition. Monthly backups of these records shall be maintained in a secure container designed to prevent loss by fire, theft, or other mishap.

(2) All firearms acquired but not yet disposed of must be accounted for through an electronic inventory check prepared once each week and maintained in a secure location.

(3) For authorized dealers and franchisees, all ATF Form 4473 firearm transaction records shall be retained on the dealer's business premises in a secure container designed to prevent loss by fire, theft, or other mishap.

(4) If an audit of a distributor's or dealer's inventory reveals any firearms not accounted for, the distributor or dealer shall be subject to sanctions, including termination as an authorized distributor or dealer.]

f. [Jannuzzo to price/ propose alternatives. S&W also to ask internally what would be reasonable, with particular focus on 7, 8, 9, 10, 12] [Implement a security plan for securing firearms, including firearms in shipment. The plan must satisfy at least the following requirements:

Drop 1-7, 11, 12

(1) All perimeter doorways shall meet one of the following:

(a) A windowless steel security door equipped with a dead bolt and a doorknob lock;

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(b) A windowed metal door that is equipped with a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch in diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door; or

(c) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and door frame;

(2) All windows shall be covered with steel bars or roll-down security gates;

(3) Heating, ventilating, air-conditioning and service openings shall be secured with steel bars, metal grating, or an alarm system;

(4) Any metal grates shall have spaces no larger than six inches wide measured in any direction;

(5) All steel bars shall be no further than six inches apart;

(6) At least a number 10-gauge expanded steel mesh will be installed from floor to ceiling in the walls of the store's vault and the walls of the store that adjoin other businesses;

(7) All firearms shall be secured with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

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(8) Display cases shall be locked at all times except when removing a single firearm to show a customer, and customers shall handle firearms only under the direct supervision of an employee;

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(9) All firearms shall be secured, other than during business hours, in a locked fireproof safe or vault in the licensee's business premises;

(10) Ammunition shall be stored separately from the firearms and out of reach of the customers;

(11) The store shall be protected by a burglar alarm with central monitoring, a video system, motion and glass smash sensors, and a panic button; and

(12) A common carrier will be used to ship firearms only if the common carrier warrants in writing that:

(a) it conducts criminal background checks on its delivery personnel; and

(b) it reports all thefts or losses of firearms to ATF within 48 hours of learning of the theft or loss.]

g. [S&W will see if their sales people can propose alternative language] [Exclude persons under 18 years of age not accompanied by a parent or guardian from portions of their premises where firearms or ammunition are stocked or sold. Exclusion may be accomplished by means such as physically segregating that portion of the premises.]

h. Not sell ammunition magazines that are able to accept more than 10 rounds regardless of the date of manufacture, not sell any semi-automatic assault weapon as defined in 18 U.S.C. 921(a)(30) regardless of the date of manufacture, provide safety locks and warnings with firearms, as specified in Section I above, and sell only firearms that comport with the design criteria of this Agreement.

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i. [Provide manufacturers, importers, law enforcement, and government regulators conducting compliance inspections, for purposes of determining compliance with conditions imposed as a result of this Agreement, or for any other authorized purpose full access to any documents related to the acquisition and disposition of firearms deemed necessary by one of those parties.] [Provision acceptable in principle. S&W to review language.] Swap for oversight commission

j. Participate in and comply with all monitoring of firearms distribution by manufacturers, importers, ATF or law enforcement.

k. Maintain an electronic record of all trace requests initiated by ATF, and report those trace requests by make, model and serial number of firearm, date of trace, and date of sale to the manufacturer of the firearm within 24 hours unless ATF, for investigative reasons, directs the licensee not to do so. weekly, not 24 hrs.

l. Agree to cooperate fully in the oversight mechanism established in Section III of this Agreement, including providing access to all necessary documents, and to be subject to the jurisdiction of the court enforcing this Agreement.

m. [Require all employees to attend annual training ~~provided~~ developed by manufacturers and importers and approved by the Oversight Commission. approved by ATF The training, which shall be developed in consultation with ATF, shall cover at a minimum: the law governing firearms transfers by licensees and individuals; how to recognize straw purchasers and other attempts to purchase firearms illegally; how to recognize indicators that firearms may be diverted for later sale or transfer to those not legally entitled to purchase them; how to respond to those attempts; and the safe handling and storage of firearms. New employees will receive training on the above topics, based on materials developed for the annual training, before handling or selling firearms and shall attend annual training thereafter. Within 12 months of the date of execution of this Agreement and annually thereafter, the [manufacturer and importer parties to this Agreement] will obtain from all authorized dealers and distributors certifications that such training has been completed, with a list of the names of all trained employees.] [Provision agreed to in principle.]

n. [Require all employees to pass a comprehensive written exam, which shall be prepared in consultation with ATF (and approved by the Oversight Commission) on the material covered in the training before being allowed to sell or handle firearms. Any employee who fails to pass the exam shall be prohibited from selling or handling firearms on behalf of the distributor or dealer. The annual certification discussed in II.A.1.m, above, will include certification that all employees have passed the exam.] [Provision agreed to in principle.]

o. Provide data on the volume of sales by make, model, and caliber or gauge to ATF's National Tracing Center on a quarterly basis.

p. Consent to up to three unannounced ATF compliance inspections each year.

q. Not complete any transfer of a firearm prior to receiving notice from the NICS that the transferee is not a prohibited person under the Gun Control Act.

r. Verify the validity of a licensee's federal firearms license against an ATF database before transferring a firearm to that licensee.

s. Forgo any transfer of a firearm to a licensee if the dealer or distributor knows the licensee to be under indictment for [violations of the Gun Control Act or any violent felony or serious drug offense as defined in 18 U.S.C. § 924(e)(2)].

t. Provide monthly reports to ATF of the make, model and serial number of all used firearms that are taken into inventory.

u. Transfer firearms only:

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(1) [To individuals who have demonstrated that they can safely handle and store firearms through completion of a certified firearms safety training course or by having passed a certified firearms safety examination. Mandatory topics to be covered in the course and exam will include: safe handling and storage of guns and the legal restrictions on transferring or selling guns. Within ~~3~~ 6 months of execution of this Agreement, a panel with members selected by the [manufacturer and importer parties to this Agreement] and ATF will determine what courses and examinations qualify as certified firearms safety courses and examinations. Within ~~12~~ 18 months of execution of this Agreement, this provision will take full effect.

(2) After demonstrating to the purchaser how to load, unload, and safely store the firearm, and how to engage and disengage all safety devices on the firearm.

(3) After providing the purchaser with a copy of the ATF Disposition of Firearms Notice.

(4) After obtaining the purchaser's signature on a form certifying that the purchaser has received the instruction described in subparagraph (2) and the notice described in subparagraph (3) and maintaining that form in its files.

(5) After providing the purchaser with a written record of the make, model, caliber or gauge, and serial number of each firearm transferred to enable the purchaser to accurately describe the firearm to law enforcement in the event that it is subsequently lost or stolen.

2. [[Manufacturer and importer parties to the Agreement] shall incorporate into any distribution or agency agreement with their authorized distributors and authorized dealers, including franchisees, procedures for terminating distributors, dealers or franchisees that engage in conduct in violation of this Agreement. Distributors and dealers shall agree to this

enforcement system as a condition of becoming authorized. [The manufacturer and importer parties to this Agreement] shall require annual certification by their authorized dealers and distributors that they are in compliance with the requirements in II.A.1(a-u) of this Agreement and applicable provisions of B. and C., below. If the [manufacturer and importer parties to this Agreement] learn of a violation of the Agreement through their course of dealing with their authorized dealers and distributors, from ATF, state or local law enforcement, the Oversight Commission, another dealer or distributor, a customer or other credible source, the [manufacturer or importer parties to this Agreement] will take the following actions. The manufacturer(s) and/or importer(s) that have authorized the dealer or distributor to sell its/their firearms will, individually or collectively, notify the dealer or distributor within seven (7) business days of learning of such violation and inform the dealer or distributor of the breach and request information regarding the breach. The distributor or dealer will then have fifteen (15) days to provide the manufacturer(s) and/or importer(s) with the requested information. If the manufacturer(s) and /or importer(s) determine that the dealer or distributor is in violation of this section of the Agreement, this determination will void the distribution or agency agreement under which the distributor or dealer receives products from the manufacturer or importer. The manufacturer(s) and/or importer(s) will not honor any further orders for the distributor or dealer until the manufacturer(s) and/or importer(s) determine that the distributor or dealer is in compliance with the Agreement.]

[The manufacturer(s) and/or importer(s) shall inform the Oversight Commission and ATF of its/their notifications and decisions and provide them with the information provided by the dealer or distributor. If the Oversight Commission determines that suspension or termination of the dealer or distributor is warranted, and the manufacturer(s) and/or importer(s) did not take this action, the Oversight Commission shall direct the manufacturer(s) and/or importer(s) to do so.] Balking

B. **Authorized distributors - additional provision.**

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Authorized distributors must agree to sell the manufacturers' or importers' products only to other authorized distributors or authorized dealers or directly to government purchasers.

C. **Authorized dealers -- additional provisions.**

In addition to the requirements in section II(A)(1), authorized dealers must:

1. Be a stocking gun store with a minimum of [$___] in firearms inventory. There shall be an exception to this requirement in rural areas in which there is no such gun store within a 100-mile radius. [S&W to propose minimum value for inventory.]

2. Not to sell any of the manufacturers' or importers' products to any federal firearms licensee that is not an authorized distributor or authorized dealer of that manufacturer or importer.

3. Not to engage in sales that the dealer knows or has reason to know are being made to straw purchasers.

4. Agree to the following procedure for multiple handgun sales. If a purchaser wants to purchase more than one handgun, the purchaser may take from the dealer only one handgun on the day of sale. The dealer at that point will file a Multiple Sales Report with ATF. The purchaser may take one additional handgun from the dealer each 14 days thereafter until the sale is completed. This provision shall not apply to sales to qualified private security companies licensed to do business within the State where the transfer occurs for use by the company in its security operations.

BIG ISSUE

5. [Have no incentive sales programs that tie employee or sales agent compensation, bonuses, or benefits to the number of firearms sold.]

D. **Manufacturers and importers.**

Each manufacturer or importer must:

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1. Provide quarterly reports of its own sales data and downstream sales data, with the volume of sales by make, model, caliber and gauge, to ATF's National Tracing Center.

2. Not market any firearm in a way that would make the firearm particularly appealing to juveniles or criminals, such as advertising a firearm as "fingerprint resistant."

3. [Refrain from selling any firearm that is disproportionately used in crime. A firearm is used disproportionately in crime if the number of crime gun traces for the firearm (as reported by ATF) divided by the number of firearms of that make and model in circulation (based on the manufacturer's or importer's sales records) is more than twice the average for all makes and models of firearms of which there are more than [___] in circulation.] BIG CUT

4. Refrain from selling any modified or sporterized semi-automatic assault ~~weapon of a type~~ pistol that cannot be imported into the United States.

5. [Consistent with their long-standing practice,] refrain from advertising in the vicinity of schools, high crime zones or public housing.

6. Verify the validity of a license against an ATF database before transferring a firearm to any licensee.

7. Forgo any transfer of a firearm to a licensee if the manufacturer or importer knows the licensee to be under indictment [violations of the Gun Control Act or any violent felony or serious drug offense as defined in 18 U.S.C. § 924(e)(2)].

8. Implement a security plan for securing firearms, including firearms in shipment. [S&W to provide information on current security procedures.]

E. **Corporate responsibility.**

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[If a disproportionate number of crime guns [exact number to be determined; calculation based on the number of crime gun traces and the dealer's or distributor's sales volume] are traced to a dealer or distributor within three years of the gun's sale, the manufacturer(s) and/or importer(s) that have authorized the dealer or distributor to sell guns will, individually or collectively, notify the dealer or distributor of the disproportionate number within seven (7) days and demand an explanation and proposal to avoid a disproportionate number of traces in the future. The dealer or distributor will have fifteen (15) days to provide the explanation and proposal. If the manufacturer(s) and/or importer(s) determine that the explanation and proposal are not satisfactory, the manufacturer(s) and/or importer(s) will terminate supplies to the dealer or distributor. If the manufacturer(s) and/or importer(s) determine that the explanation and proposal are satisfactory, the manufacturer and/or importer will continue supplies, but will closely monitor traces to the dealer or distributor in question. If disproportionate traces continue, the manufacturer(s) and/or importer(s) will terminate supplies to the dealer or distributor.]

Glock-no

[The manufacturer(s) and/or importer(s) shall inform the Oversight Commission and ATF of its/their notifications and decisions and provide them with the information provided by the dealer or distributor. If the Oversight Commission determines that suspension or termination of the dealer or distributor is warranted, and the manufacturer(s) and/or importer(s) did not take this action, the Oversight Commission shall direct the manufacturer(s) and/or importer(s) to do so.]

Black-Mar

BIG ISSUE

III. Oversight

A. Oversight Commission.

1. **Composition.** [An Oversight Commission comprised of five members shall be formed. The Commission members shall be appointed as follows:

   a. One member by the [manufacturer and importer parties to the Agreement].

They want ?

b. Two members the city and county parties to the Agreement.

c. One by the State parties to the Agreement.

d. One selected by ATF.]

2. **Authority.** -- The Oversight Commission will be empowered to oversee the implementation of this Agreement. Its authorities will include but not be limited to the authority to (1) review the findings of the proofing entity that will oversee the design and safety requirements of Part I of this Agreement, (2) appoint the Technical Advisory Panel discussed in Part I.A.1.d of this Agreement, (3) maintain records of firearms sold pursuant to the law enforcement exception, as set forth in Part I.B of this Agreement, (4) review the safety training materials and test set forth in Parts II.A.1.m-n of this Agreement, and (5) participate in the oversight of the distribution and sales provisions established in Part II of this Agreement, as set forth in Parts II.A.2 and II.E.

   The Oversight Commission shall have a staff of [ ], which will be entitled to inspect participating manufacturers and their authorized dealers and distributors to ensure compliance with the Agreement. The costs of the Commission shall be funded by the [manufacturer and importer parties to the Agreement]. Each manufacturer and importer party to this Agreement will pay no more than [cap based on average United States sales revenues in three most recent years] annually.

B. **Role of ATF.** -- [ATF will continue to issue, regulate and inspect federal firearms licensees, collect multiple sales forms, conduct firearms traces, investigate firearms traffickers and straw purchasers, enforce the Gun Control Act and the National Firearms Act and fulfill its other statutory responsibilities. To the extent consistent with law and the effective accomplishment of its law enforcement responsibilities, ATF will work with the [manufacturer and importer parties to the Agreement] and the Oversight Commission to assist them in meeting their obligations under the Agreement. In particular, to the extent that ATF uncovers violations of the

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following provisions in its inspections or other contacts with federal firearms licensees, it will inform the Oversight Commission: [II(A)(1)(a), (b), (e), (h), (i), (j), (k), (o), (p), (q), (r), (s) and (t), (C)(3) and (D)(1) and (6). Nothing in this paragraph shall diminish the obligation of the [manufacturer and importer parties to this Agreement] to make reasonable efforts to identify noncompliance and respond to notifications of violations from parties other than ATF.]

C. **Manufacturer and importer cooperation.**

1. Each manufacturer shall designate an executive level manager to serve as a compliance officer and shall provide the compliance officer with sufficient resources and staff to fulfill the officer's responsibilities under this agreement.

2. The compliance officer shall be responsible for

   a. Ensuring that the [manufacturer or importer] fulfills its obligations under this agreement;

   b. Training the [manufacturer's or importer's] officers and employees on the obligations imposed by this agreement;

   c. Serving as the liaison to the Oversight Commission; and

   d. [Other responsibilities to be determined.]

3. Each manufacturer shall commit to full cooperation in the implementation and enforcement of this Agreement.

D. ~~**Dispute Resolution.** [Arbitration or mediation of certain disputes].~~

IV. **Cooperation with Law Enforcement.**

A. [The manufacturer and importer parties to this Agreement] reaffirm their commitment to cooperate fully with law enforcement and regulators to eliminate illegal firearms sales and possession.

B. [Within six (6) months of the effective date of this Agreement, manufacturers and importers shall fire each firearm before sale and retain three fired casings and bullets matching the casings and bullets with the firearm's serial number. Of these, one set along with the weapon's serial number shall be entered into the National Integrated Ballistics Identification Network system.]

C. Manufacturers and importers shall participate in ATF's Access 2000 program to facilitate electronic linkage to their inventory system to allow for rapid responses to ATF's firearms trace requests.

V. ~~**Cooperation with litigation.**~~

~~[Manufacturers and importers shall agree to cooperate in pending and future lawsuits brought by cities, counties, or states, including but not limited to by providing without objection documents requested and testimony relevant to such proceedings.~~]

VI. **Legislation.**

[The parties to this Agreement will work together to support pending and proposed legislative efforts to reduce gun violence.]

VII. **Education trust fund.**

[Manufacturers and importers shall establish a $_____ trust fund to implement a public service campaign to inform the public about the risk of firearms in the home, proper home storage, and the need to dispose of firearms responsibly through destruction or transfer through a FFL, as well as the need to reduce gun violence. The trust fund will also be available to fund a national firearms death and injury reporting system.] [S&W to provide number.] $?

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VIII. **Most favored government entity.**

If the [manufacturer and importer parties to this Agreement] enter into an agreement with any other entity wherein they commit to institute design or distribution reforms that are more expansive than any of the above-enumerated items, such reforms will become a part of this Agreement as well.

IX. **Enforcement.**

The Agreement will be entered and is enforceable as a Court order and as a contract.

X. **Definitions.**

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. draft agreement	[Gun Industry] Settlement Document (21 pages)	03/07/00	P5	8064
002. draft letter	Reed to Eliot Spitzer re: Letter of March 6, 2000 (1 page)	nd	P5	8064
003. draft letter	Reed to Eliot Spitzer re: Letter of March 6, 2000 (2 pages)	03/09/00	P5	8065
004. draft letter	Reed to Eliot Spitzer re: Letter of March 6, 2000 (2 pages)	03/10/00	P5	8066
005. draft letter	Reed to Eliot Spitzer re: Letter of March 6, 2000 (2 pages)	03/09/00	P5	8067
006. draft agreement	[Gun Industry Code of Conduct?] (6 pages)	02/07/00	P5	8068

COLLECTION:

Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 21553

FOLDER TITLE:

Guns-Smith and Wesson [4]

Rob Seibert

rs27

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

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

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8064

WORKING DRAFT
Privileged & Confidential

March 7, 2000
Settlement Document

AGREEMENT

Preamble

[Manufacturer and importer parties to the Agreement] and [state, city and public housing authority parties to the Agreement] enter into this Agreement to reduce the criminal misuse of firearms, combat the illegal acquisition, possession and trafficking of firearms, reduce the incidence of firearms accidents, and educate the public on the safe handling and storage of firearms. Furthermore, [manufacturer and importer parties to the Agreement] enter into this Agreement as a continuation of their efforts to make their firearms as safe as practicable for their customers and the public. Accordingly, in consideration of the commitments set forth below:

1. The [state, city and public housing authority parties to the Agreement] dismiss the [manufacturer and importer parties to the Agreement] with prejudice from the lawsuit entitled __________; or

2. The [state, city and public housing authority parties to the Agreement] agree to refrain from filing suit against the [manufacturer and importer parties to the Agreement] on any cause of action arising from _____________.

The parties agree that this Agreement constitutes the full and complete settlement of any and all claims that were raised or could have been raised in the subject litigation. The parties agree further that this Agreement does not constitute an admission of any violation of law, rule or regulation by the [manufacturer and importer parties to the Agreement], or any of [its/their] employees. Nothing in this Agreement shall be construed to be an admission of liability. The adoption of standards for firearms design and distribution in this Agreement shall not be construed as an admission by the [manufacturer and importer parties to the Agreement] that practices they engaged in prior to the execution of this Agreement were negligent.

I. **Safety and design.**

A. Each firearm design sold by each manufacturer or importer shall be tested by [an agreed upon proofing entity] against the following standards. Existing designs shall meet these standards within 60 days of execution of this Agreement unless a longer period is specified in the standard. New designs shall not be manufactured and sold after the execution of this Agreement unless they conform to these standards.

1. **Standards applicable to all handguns**:

   a. **Second "hidden" serial number.** The gun must have both a visible serial number on the exterior of the frame or receiver, as well as a second serial number hidden on the interior of frame or receiver (e.g., under the grips) or visible only with the aid of an optical instrument.

   b. **External locking device.** As an interim measure, until the implementation of I.A.1.d, within 60 days of execution of the Agreement, each firearm shall be supplied with an external locking device that effectively prevents the operation of the firearm when locked.

   c. [**Internal locking device.** Within 24 months of execution of the Agreement, each firearm shall have a built-in, on-board locking system, by which the firearm can only be operated with a key or combination or other mechanism unique to that gun.]

   d. **Authorized user technology.** Within 36 months of execution of the Agreement, the Technical Advisory Panel shall be convened to determine whether it is feasible to incorporate into all firearms or certain models or types of firearms a device or technology that recognizes only authorized users and permits the gun to be used only by authorized persons. If the Technical Advisory Panel concludes that such technology is feasible, it shall be incorporated in all firearms or all models or types of firearms for which it is feasible. The Panel shall also establish a schedule within which the technology will be incorporated into the firearms, but in no event shall that schedule not require

new models
old models
technology

Trust.

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incorporation of the technology more than 18 months from the date on which the Panel determines that incorporation of the technology is feasible. If the Panel concludes that such technology is not then feasible, it shall reconvene every six months thereafter for the purpose of making the determinations and establishing the schedules called for by this paragraph.

e. **Child safety.** Within 12 months of execution of the Agreement, each firearm shall be designed so that it cannot be readily operated by a child under the age of 6. Such mechanisms include: making the trigger pull resistance at least ten pounds [in the double action mode]; or designing the firing mechanism so that an average five year old's hands would be too small to operate the gun; or requiring multiple, sequenced actions in order to fire the gun.

clamp. - spread test. - actual test

f. [**Minimum barrel length.** Each firearm [design] must have a barrel length of at least 3".] Sth

g. **Performance test:** Each firearm [design] will be test-fired with "proof cartridges" (cartridges loaded to generate excess pressure as set forth in accepted specifications for proof cartridges) to ensure the integrity of the material. At least one cartridge shall be fired from each chamber. ~~[Magnaflux ???]~~ Each firearm design shall also pass the following performance test: the gun shall fire 600 rounds [add time limit -- each hundred continuous, break after 100 rounds only long enough to complete the following?], stopping every 100 rounds to tighten any loose screws and to clean the gun (if required by the cleaning schedule recommended in the manual), and as needed to refill the empty magazine or cylinder to capacity before continuing. For any gun that loads other than with a detachable magazine, the tester shall pause every 50 rounds for ten minutes. The tester shall use the ammunition recommended in the user's manual, or if none is recommended, any standard ammunition of the correct caliber in new condition. A gun shall pass this test if it fires the first 20 rounds without a malfunction and the full 600 rounds with no more than 6

timing

malfunctions and without any crack or breakage of an operating part of the gun that increases the danger of injury. Malfunctions caused by failure to clean and lubricate, or by defective ammunition, shall not be counted.

S-HW

h. **Frame construction.** [To be discussed.]

~~i. **Weight.** [To be discussed.]~~

j. **[Drop test.** Pass the more rigorous of: (a) the SAAMI Standard drop test in effect on the date the firearm is sold; or (b) the following test: The gun shall be test-loaded, set such that it is ready to fire and dropped onto a steel plate or equivalent material of similar hardness from a height of one meter from each of the following positions: (1) normal firing position; (2) upside down; (3) on the grip; (4) on the muzzle; (5) on either side; and (6) on the exposed hammer or striker (or, if no exposed hammer or striker, on the rearmost part of the gun). If the gun is so designed so that its hammer or striker may be set in other positions, it shall be tested with the hammer or striker in each such position (but otherwise ready to fire).]

2. **Additional standards for pistols:**

OK

a. **[Safety device.** The pistol must have a positive manually operated safety device as determined by standards relating to imported guns promulgated by ATF .]

SHW →

b. **[Minimum length and height standards.** The pistol's combined length and height must not be less than 10" with the height being at least 4" and the length being at least.]

c. **Magazine disconnector.** Within 12 months of execution of the Agreement, each pistol shall have a magazine disconnector.

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d. **Chamber load indicator.** Within 12 months of the execution of the Agreement, each pistol shall have a chamber load indicator painted in a prominent, contrasting color and include an appropriate legend on the firearm identifying the location of the indicator and how to read it. [S&W/Glock should provide proposal as to how this can accommodate a variety of mechanisms, while maintaining industry-wide clarity as to the proper reading of the indicator.]

e. [**Large capacity magazines.** Within 18 months of the execution of the Agreement, each pistol shall not be able to accept magazines manufactured prior to September 14, 1994, with a greater than 10 round capacity, and shall not be capable of being easily modified to accept such magazines.]

f. **Additional safety features.** Each pistol must have a ~~at least one of the following:~~

~~(1) Grip safety; and~~
~~(2)~~ Firing pin block or lock.

3. **Additional standard for revolvers.** Each revolver design must pass a safety test. Each design must have a safety feature which automatically (for a double action revolver) or by manual operation (for a single action revolver) causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge. The safety device must withstand the impact of a weight equal to the weight of the revolver dropping from a distance of 1 meter in a line parallel to the barrel upon the rear of the hammer spur, a total of 5 times.

4. **Standards for all long guns**. [To be discussed.]

B. **Law enforcement and military exception.** An exception to a requirement of paragraph A may be granted for firearms manufactured or imported for sale to a law enforcement agency or the military if the law enforcement a~~gency or~~ military organization certifies to the manufacturer or importer that the exception is necessary for official purposes. [Where a law enforcement agency authorizes or requires its officers to purchase firearms individually for official use, an appropriate certification from the agency will be permitted to apply to sales to a number of individual officers.] The manufacturer or importer shall maintain the certification in its records and provide a copy to the Oversight Commission. Firearms sold to law enforcement or the military pursuant to this exception, which do not comply with the design standards of this Agreement, will be accompanied by a statement:

1. "On [date], [manufacturer and importer parties to this Agreement] and [governmental parties to this Agreement] entered into an Agreement establishing certain design standards for firearms sold to civilians. Pursuant to that Agreement, we are obliged to inform you that this firearm does not comply with the following design standards of the Agreement: [ ]. We are further obliged to request that you not resell this firearm to civilians. This statement is not intended to suggest that there are any design flaws with this firearm, and you remain entitled to dispose of it in any lawful manner."

C. **Warnings about safe storage and handling.** Within 6 months of execution of this Agreement, [manufacturer and importer parties to this Agreement] shall include in the packaging of each firearm sold a warning on risk of firearms in the home and proper home storage. At a minimum, these warnings shall state in 14 point type, bold face:

[Replace w/ Massachusetts: "This handgun is not equipped with a device that fully blocks use by unauthorized users. More than 200,000 firearms like this one are stolen from their owners every year in the United States. In addition, there are more than a thousand suicides each year by younger children and teenagers who get access to firearms. Hundreds more die from accidental discharge. It is likely that many more children sustain serious wounds, or inflict such wounds accidentally on others. In order to limit the chance of such misuse, it is imperative that you keep this weapon locked in a secure place and take other steps necessary to limit the possibility of theft or acciden

Failure to take reasonable preventative steps may result in innocent lives being lost, and in some circumstances may result in your liability for these deaths.]

"**WARNING: Every year over a thousand children and teenagers kill themselves with a gun in the United States. Thousands more young people are injured in unintentional shootings. Over 200,000 guns like this are stolen each year, and many are then used in subsequent crimes. To prevent these tragedies, it is imperative that you keep your gun unloaded, uncocked, securely locked, with ammunition in a separate location. In addition, take any other reasonable steps to limit the possibility of theft, accident, or suicide. Failure to properly secure and store a firearm, in addition to possibly causing death or injury, may result in criminal prosecution and imprisonment."]**

Part J.

D. [**Illegal firearms.** Manufacturers and importers shall not sell firearms that can be readily converted to an illegal firearm, that is, a weapon designed in a manner so that with few additional parts and/or minimal modifications an owner can convert the firearm to an illegal fully automatic weapon;] nor shall the firearms be designed so that they are resistant to fingerprints. [Jannuzzo to review case law and propose language making "readily converted" more exact.]

E. [Upgrade **programs.** [Manufacturer and importer parties to this Agreement] shall offer their customers the opportunity to retrofit existing firearms with improved safety devices as they become available and to the extent technically feasible. These upgrade programs shall be offere~~d at cost~~ and extensively advertised in several major gun magazines and at retail stores.]

II. **Sales and distribution**.

[In addition to complying with specific terms, manufacturers and importers will agree for themselves and as part of any distribution or agency agreement th~~at they~~, and their authorized distributors and authorized dealers, including franchisees, ~~shall~~

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commit to a standard of conduct to make every effort to eliminate sales of firearms that might lead to illegal firearm possession and/or misuse by criminals, unauthorized juveniles, and other prohibited persons ("suspect firearms sales"). Suspect firearm sales include sales made to straw purchasers, multiple sales of handguns without reasonable explanation (excluding sales to FFLs), and sales made to any purchaser without a completed background check.]

A. **Authorized distributors and dealers.**

1. Manufacturers and importers may sell only to authorized distributors and authorized dealers. In order to qualify to become an authorized distributor or authorized dealer, the distributor or dealer must agree in writing to:

   a. Possess a valid and current federal firearms license, and all other licenses and permits required by local, state or federal law, and certify on an annual basis, under penalty of perjury, compliance with all local, state and federal firearms laws.

   b. Execute in the presence of the purchaser the following elements of all firearms transactions at the premises listed on its federal firearms license: completion of the forms and related requirements under the Brady Act and the Gun Control Act and physical transfer of the firearm.

Steve → Jannuzzo

   c. Carry insurance coverage in amounts appropriate to its level of sales, but at a minimum no less than [$1 million] for each incident of damage, injury or death. [Jannuzzo to determine cost of insurance and propose appropriate coverage.]

Steve — →

by any seller

   d. Make no sales at gun shows [unless all sales at the gun show are conducted only upon completion of a background check].

STW

   e. [Maintain an inventory tracking plan that includes at a minimum the following elements:

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(1) Electronic recording of the make, model, caliber or gauge, and serial number of all firearms that are acquired no later than one business day after their acquisition and electronic recording of their disposition no later than one business day after their disposition. Monthly backups of these records shall be maintained in a secure container designed to prevent loss by fire, theft, or other mishap.

(2) All firearms acquired but not yet disposed of must be accounted for through an electronic inventory check prepared once each week and maintained in a secure location.

(3) For authorized dealers and franchisees, all ATF Form 4473 firearm transaction records shall be retained on the dealer's business premises in a secure container designed to prevent loss by fire, theft, or other mishap.

(4) If an audit of a distributor's or dealer's inventory reveals any firearms not accounted for, the distributor or dealer shall be subject to sanctions, including termination as an authorized distributor or dealer.]

f. [Jannuzzo to price/ propose alternatives] [Implement a security plan for securing firearms, including firearms in shipment. The plan must satisfy at least the following requirements:

(1) All perimeter doorways shall meet one of the following:

(a) A windowless steel security door equipped with a dead bolt and a doorknob lock;

(b) A windowed metal door that is equipped with a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be ~~covered~~ with steel bars of at least one-half inch in diameter or metal

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grating of at least nine gauge affixed to the exterior or interior of the door; or

(c) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and door frame;

(2) All windows shall be covered with steel bars or roll-down security gates;

(3) Heating, ventilating, air-conditioning and service openings shall be secured with steel bars, metal grating, or an alarm system;

(4) Any metal grates shall have spaces no larger than six inches wide measured in any direction;

(5) All steel bars shall be no further than six inches apart;

(6) At least a number 10-gauge expanded steel mesh will be installed from floor to ceiling in the walls of the store's vault and the walls of the store that adjoin other businesses;

(7) All firearms shall be secured with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(8) Display cases shall be locked at all times except when removing a single firearm to show a customer, and customers shall handle firearms only under the direct supervision of an employee;

(9) All firearms shall be secured, other than during business ho~~urs, in a~~ locked fireproof safe or vault in the licensee's business pre~~mises;~~

(10) Ammunition shall be stored separately from the firearms and out of reach of the customers;

(11) The store shall be protected by a burglar alarm with central monitoring, a video system, motion and glass smash sensors, and a panic button; and

(12) A common carrier will be used to ship firearms only if the common carrier warrants in writing that:

(a) it conducts criminal background checks on its delivery personnel; and

(b) it reports all thefts or losses of firearms to ATF within 48 hours of learning of the theft or loss.]

S+W

g. [S&W will see if their sales people can propose alternative language]. Exclude persons under 18 years of age not accompanied by a parent or guardian from portions of their premises where firearms or ammunition are stocked or sold. Exclusion may be accomplished by means such as physically segregating that portion of the premises.

h. [Not sell ammunition magazines that are able to accept more than 10 rounds regardless of the date of manufacture, not sell any semi-automatic assault weapon as defined in 18 U.S.C. 921(a)(30) regardless of the date of manufacture, provide safety locks and warnings with firearms, as specified in Section I above, and sell only firearms that comport with the design criteria of this Agreement.]

i. [Provide manufacturers, importers, law enforcement, and government regulators conducting compliance inspections, for purposes of determining compliance with conditions imposed as a result of this Agreement, or for any other authorized purpose full access to ~~any~~

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documents related to the acquisition and disposition of firearms deemed necessary by one of those parties.]

j. [Participate in and comply with all monitoring of firearms distribution by manufacturers, importers, ATF or law enforcement.]

k. [Maintain an electronic record of all trace requests initiated by ATF, and report those trace requests by make, model and serial number of firearm, date of trace, and date of sale to the manufacturer of the firearm within 24 hours unless ATF, for investigative reasons, directs the licensee not to do so.]

l. [Agree to cooperate fully in the oversight mechanism established in Section III of this Agreement, including providing access to all necessary documents, and to be subject to the jurisdiction of the court enforcing this Agreement.]

m. [Require all employees to attend annual training ~~provided~~ by manufacturers and importers on an annual basis. The training, [which shall be developed in consultation with ATF,] shall cover at a minimum: the law governing firearms transfers by licensees and individuals; how to recognize straw purchasers and other attempts to purchase firearms illegally; how to recognize indicators that firearms may be diverted for later sale or transfer to those not legally entitled to purchase them; how to respond to those attempts; and the safe handling and storage of firearms. New employees will receive training on the above topics directly from the dealer or distributor, based on materials developed for the annual training, before handling or selling firearms and shall attend annual training thereafter.]

spell it [illegible] how [illegible] [illegible] from dealer

n. [Require all employees to pass a comprehensive written exam, which shall be prepared in consultation with ATF, on the material covered in the training before being allowed to sell or handle firearms. Any employee who fails to pass the exam shall be prohibited from ~~selling or~~ handling firearms on behalf of the distributor or dealer.]

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o. [Provide data on the volume of sales by make, model, and caliber or gauge to ATF's National Tracing Center on a quarterly basis.]

p. [Consent to up to three unannounced ATF compliance inspections each year.]

q. [Not complete any transfer of a firearm prior to receiving notice from the NICS that the transferee is not a prohibited person under the Gun Control Act.

r. [Verify the validity of a licensee's federal firearms license against an ATF database before transferring a firearm to that licensee.]

s. [Forgo any transfer of a firearm to a licensee if the dealer or distributor knows the licensee to be under indictment for ______.]

t. [Provide monthly reports to ATF of the make, model and serial number of all used firearms that are taken into inventory.]

u. [Transfer firearms only:

(1) To individuals who have demonstrated that ~~they~~ can safely handle and store firearms through completion of a certified firearms safety training course or by having passed a certified firearms safety examination. Mandatory topics to be covered in the course and exam will include: safe handling and storage of guns and the legal restrictions on transferring or selling guns. [Need to define "certified".]

(2) After demonstrating to the purchaser how to load, unload, and safely store the firearm, and how to engage and disengage all safety devices on the firearm.

(3) After providing the purchaser with a copy of the ATF Disposition of Firearms Notice.]

(4) After obtaining the purchaser's signature on a form certifying that the purchaser has received the instruction described in subparagraph (2) and the notice described in subparagraph (3) and maintaining that form in its files.

(5) [After providing the purchaser with a written record of the make, model, caliber or gauge, and serial number of each firearm transferred to enable the purchaser to accurately describe the firearm to law enforcement in the event that it is subsequently lost or stolen.]

2. [The manufacturers and importers that are parties to the Agreement] shall incorporate into any distribution or agency agreement with their authorized distributors and authorized dealers, including franchisees, procedures for terminating distributors, dealers or franchisees that engage in conduct in violation of this Agreement. Distributors and dealers shall agree to this enforcement system as a condition of becoming authorized. [The manufacturer and importer parties to this Agreement] shall require annual certification by their authorized dealers and distributors that they are in compliance with the requirements in II.A.1(a-u) of this Agreement and applicable provisions of B. and C., below. If the [manufacturer and importer parties to this Agreement] learn of a violation of the Agreement through their course of dealing with their authorized dealers and distributors, from ATF, state or local law enforcement, the Oversight Commission, another dealer or distributor, a customer or other credible source, the [manufacturer or importer parties to this Agreement] will take the following actions. The manufacturer(s) and/or importer(s) that have authorized the dealer or distributor to sell its/their firearms will, individually or collectively, notify the dealer or distributor within seven (7) business days of learning of such violation and inform the dealer or distributor of the breach and request information regarding the breach. The distributor or dealer will then have fifteen (15) days to provide the

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manufacturer(s) and/or importer(s) with the requested information. If the manufacturer(s) and /or importer(s) determine that the dealer or distributor is in violation of this section of the Agreement, this determination will void the distribution or agency agreement under which the distributor or dealer receives products from the manufacturer or importer.. The manufacturer(s) and/or importer(s) will not honor any further orders for the distributor or dealer until the manufacturer(s) and/or importer(s) determine that the distributor or dealer is in compliance with the Agreement.

The manufacturer(s) and/or importer(s) shall inform the Oversight Commission and ATF of its/their notifications and decisions and provide them with the information provided by the dealer or distributor. If the Oversight Commission determines that suspension or termination of the dealer or distributor is warranted, and the manufacturer(s) and/or importer(s) did not take this action, the Oversight Commission shall direct the manufacturer(s) and/or importer(s) to do so.

B. **Authorized distributors - additional provision.**

Authorized distributors must agree to sell the manufacturers' or importers' products only to other authorized distributors or authorized dealers or directly to government purchasers.

C. **Authorized dealers -- additional provisions.**

In addition to the requirements in section II(A)(1), authorized dealers must:

SAW

1. Be a stocking gun store with a minimum of [$___] in firearms inventory. There shall be an exception to this requirement in rural areas in which there is no such gun store within a 100-mile radius.

2. Not to sell any of the manufacturers' or importers' products to any federal firearms licensee that is not an authorized distributor or authorized dealer of that manufacturer or importer.

COPY

3. Not to engage in sales that the dealer knows or has reason to know are being made to straw purchasers.

call Paul 4. [Not to sell to any person who has purchased a firearm within the previous 30-day period. (To be discussed.)]

tabled 5. [Have no incentive sales programs that tie employee or sales agent compensation, bonuses, or benefits to the number of firearms sold.]

D. **Manufacturers and importers**.

Each manufacturer or importer must:

1. Provide quarterly reports of its own sales data and downstream sales data, with the volume of sales by make, model, caliber and gauge, to ATF's National Tracing Center.

2. Not market any firearm in a way that would make the firearm particularly appealing to juveniles or criminals, such as advertising a firearm as "fingerprint resistant."

3. [Refrain from selling any firearm that is disproportionately used in crime. A firearm is used disproportionately in crime if the number of crime gun traces for the firearm (as reported by ATF) divided by the number of firearms of that make and model in circulation (based on the manufacturer's or importer's sales records) is more than twice the average for all makes and models of firearms of which there are more than [___] in circulation.]

tabled

4. Refrain from selling any modified or sporterized semi-automatic assault weapon of a type that cannot be imported into the United States.

5. [Consistent with their long-standing practice,] refrain from advertising in the vicinity of schools, high crime zones or public housing.

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6. Verify the validity of a license against an ATF database before transferring a firearm to any licensee.

7. Forgo any transfer of a firearm to a licensee if the manufacturer or importer knows the licensee to be under indictment [for _______.]

8. Implement a security plan for securing firearms, including firearms in shipment.

E. **Corporate responsibility**.

Formula

[If a disproportionate number of crime guns [exact number to be determined; calculation based on the number of crime gun traces and the dealer's or distributor's sales volume] are traced to a dealer or distributor within three years of the gun's sale, the manufacturer(s) and/or importer(s) that have authorized the dealer or distributor to sell guns will, individually or collectively, notify the dealer or distributor of the disproportionate number within seven (7) days and demand an explanation and proposal to avoid a disproportionate number of traces in the future. The dealer or distributor will have fifteen (15) days to provide the explanation and proposal. If the manufacturer(s) and/or importer(s) determine that the explanation and proposal are not satisfactory, the manufacturer(s) and/or importer(s) will terminate supplies to the dealer or distributor. If the manufacturer(s) and/or importer(s) determine that the explanation and proposal are satisfactory, the manufacturer and/or importer will continue supplies, but will closely monitor traces to the dealer or distributor in question. If disproportionate traces continue, the manufacturer(s) and/or importer(s) will terminate supplies to the dealer or distributor.

The manufacturer(s) and/or importer(s) shall inform the Oversight Commission and ATF of its/their notifications and decisions and provide them with the information provided by the dealer or distributor. If the Oversight Commission determines that suspension or termination of the dealer or distributor is warranted, and the manufacturer(s) and/or importer(s) ~~did not~~

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take this action, the Oversight Commission shall direct the manufacturer(s) and/or importer(s) to do so.]

III. Oversight

A. Oversight Commission.

1. **Composition.** [An Oversight Commission comprised of five members shall be formed. The Commission members shall be appointed as follows:

    a. One member by the [manufacturer and importer parties to the Agreement].

    b. Two members the city and county parties to the Agreement.

    c. One by the State parties to the Agreement.

    d. One by ATF.]

2. **Authority.** -- To be determined.

B. **Role of ATF.** -- [ATF will continue to issue, regulate and inspect federal firearms licensees, collect multiple sales forms, conduct firearms traces, investigate firearms traffickers and straw purchasers, enforce the Gun Control Act and the National Firearms Act and fulfill its other statutory responsibilities. To the extent consistent with law and the effective accomplishment of its law enforcement responsibilities, ATF will work with the [manufacturer and importer parties to the Agreement] and the Oversight Commission to assist them in meeting their obligations under the Agreement. In particular, to the extent that ATF uncovers violations of the following provisions in its inspections or other contacts with federal firearms licensees, it will inform the Oversight Commission: III(A)(1)(a), (b), (e), (h), (i), (j), (k), (o), (p), (q), (r), (s) and (t), (C)(3) and (D)(1) and (6). Nothing in this paragraph shall diminish the obligation of the [manufacturer and importer parties to this Agreement] to make reasonable efforts to identify

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noncompliance and respond to notifications of violations from parties other than ATF.]

C. **Manufacturer and importer cooperation**.

1. Each manufacturer shall designate an executive level manager to serve as a compliance officer and shall provide the compliance officer with sufficient resources and staff to fulfill the officer's responsibilities under this agreement.

2. The compliance officer shall be responsible for:

   a. Ensuring that the [manufacturer or importer] fulfills its obligations under this agreement;

   b. Training the [manufacturer's or importer's] officers and employees on the obligations imposed by this agreement;

   c. Serving as the liaison to the Oversight Commission; and

   d. [Other responsibilities to be determined.]

3. Each manufacturer shall commit to full cooperation in the implementation and enforcement of this Agreement.

umf.

D. **Dispute Resolution.** [Arbitration or mediation of certain disputes].

IV. **Cooperation with Law Enforcement**.

A. [The manufacturer and importer parties to this Agreement] reaffirm their commitment to cooperate fully with law enforcement and regulators to eliminate illegal firearms sales and possession.

B. Within six (6) months of the effective date of this Agreement, manufacturers and importers shall fire each firearm before sale and retain three fired casings

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and bullets, matching the casings and bullets with the firearm's serial number. Of these, one set along with the weapon's serial number shall be entered into the National Integrated Ballistics Identification Network system.

C. Manufacturers and importers shall participate in ATF's Access 2000 program to facilitate electronic linkage to their inventory system to allow for rapid responses to ATF's firearms trace requests.

V. Cooperation with litigation.

[Manufacturers and importers shall agree to cooperate in pending and future lawsuits brought by cities, counties, or states, including but not limited to by providing without objection documents requested and testimony relevant to such proceedings.]

VI. Legislation.

The parties to this Agreement will work together to support pending and proposed legislative efforts to reduce gun violence.

VII. Education trust fund.

Ed

Manufacturers and importers shall establish a $_____trust fund to implement a public service campaign to inform the public about the risk of firearms in the home, proper home storage, and the need to dispose of firearms responsibly through destruction or transfer through a FFL, as well as the need to reduce gun violence. The trust fund will also be available to fund a national firearms death and injury reporting system.

VIII. Most favored government entity.

If the [manufacturer and importer parties to this Agreement] enter into an agreement with any other entity wherein they commit to institute design or distribution reforms that are more expansive than any of the above-enumerated items, such reforms will become a part of this Agreement as well.

IX. **Enforcement.**

The Agreement will be entered and is enforceable as a Court order and as a contract.

X. **Definitions.**

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8064

— DRAFT —

Dear Elliott:

I was disappointed in your letter of March 6th, and in your subsequent tirades. Your letter was filled with mischaracterizations, and appeared to be written more for public consumption than for its professed purpose of clearing the air.

I, for one, am genuinely interested in clearing the air, and repeat my offer to have representatives of the administration meet with you to discuss where the current talks stand. But I fear that we will not get far if you continue your repeated threats to "blow up" the progress our side has already made. We can accomplish so much more if we put our goal of saving lives first.

COPY

DRAFT
NOT FOR CIRCULATION

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

March 9, 2000 8065

BY FACSIMILE

Mr. Eliot Spitzer
Attorney General
State of New York
The Capital
Albany, NY 12224

Re: Letter of March 6, 2000

Dear Eliot:

In your recent letter, you expressed your trust that we will be able to move forward together in a true partnership toward our common goal of seeking fundamental changes in the way firearms are manufactured and distributed. I agree with you wholeheartedly, and I hope that this letter will continue to clear the air. We both seek to make the gun industry take a responsible role in stopping the awful toll of gun violence by incorporating reasonable safety devices in the guns they manufacture and by implementing distribution and advertising practices that will keep guns out of the hands of criminals and children.

Your understanding of the current state of negotiations with the gun industry, however, seems to be guided by a misimpression about our role and the history of our involvement, which I am glad to be able to correct. To begin with, prior to our involvement, the negotiations you had been conducting with manufacturers had reached a clear stalemate. Your negotiations had dragged on for nine months and the cities and counties involved in the litigation were expressing deep frustration at the lack of progress. You had received no counter-offer from the industry, and the prospects for receiving one were diminishing rapidly. Moreover, the city and county litigants, with whom we were in contact through our ordinary business, felt that their interests were not being adequately represented and that you had effectively cut them out of the process.

It was at that point that several city and county litigants approached the Administration, seeking our involvement to break the stalemate, recognizing, as you have acknowledged, that we bring unique resources to this effort. We agreed to participate because we felt that our presence at the table could significantly increase the prospects for a global settlement, and because it was becoming increasingly clear that, given the role of the federal government in regulating firearms, any negotiated solution would require our involvement.

COPY

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: MS DATE: 9/14

One of the key challenges is that our "side" of the table consists of over 31 separate litigants. We must be united. No one entity has the lead – real or perceived. I must let you know as well that there is a feeling among the manufacturers that much leaked to the press during the negotiations you conducted for which, rightly or wrongly, they blame you.

Our presence immediately reinvigorated the negotiation process and has led to real progress. We have convened the only comprehensive strategy meeting for all city and county litigants; we have lent our expertise and resources to assisting in this effort, including convening a unique seminar by the Bureau of Alcohol, Tobacco, and Firearms to provide insights for litigants about firearms and firearm regulation; and we have used the bully pulpit of the federal government to ensure that the need for a negotiated settlement remains a pressing public policy concern.

It is true, as you noted in your letter, that a handful of intransigent manufacturers reacted to our presence in the negotiations by seeking to divide the litigants and by using our involvement as an excuse to politicize the process. The stance of this small group of manufacturers prior to our proposed meeting with the industry in January was calculated to derail negotiations entirely, and we urged a united front in response. Everyone involved on our side deeply appreciated your willingness to stand with us in resisting the efforts of a few manufacturers, working in bad faith, to dictate negotiating terms and conditions to litigants and potential litigants.

Our current discussions with the industry flow from an entirely different premise and show real promise of bearing fruit. It is simply not true, moreover, that we are using your settlement framework and negotiating drafts. Although we have our own view of ideal settlement terms, we have sought to synthesize the array of input we have received from a range of current and potential litigants.

It is critical that as we move forward, we do so in a spirit of understanding. I hope that you can move beyond your irresponsible threats to derail our current, productive discussions by violating the clear need for confidentiality. I respect the sensitivity of this process, and for that reason, I have no intention of releasing this letter to a wider audience, and I would appreciate a similar sensitivity on your part.

We can accomplish so much more if we put our need for constant personal involvement second and our goal of saving lives first. We have worked hard at every stage to include you in our discussions, and we have made the same effort with other actual and potential litigants. Other participants in this process have reacted favorably to our involvement and now that we are so close to making a real breakthrough it would be unfortunate to find the process destroyed by anyone our side.

As I said at the outset, I hope that our partnership can continue in good faith, and I look forward to continuing our dialogue.

COPY

8066

March 10, 2000

Mr. Eliot Spitzer
Attorney General
State of the New York
The Capitol
Albany, NY 12224

Dear Eliot:

In your recent letter, you expressed your trust that we will be able to move forward together in a true partnership toward our common goal of seeking fundamental changes in the way firearms are manufactured and distributed. I continue to share that desire. We both seek to make the gun industry take a responsible role in stopping the awful toll of gun violence by incorporating reasonable safety devices in the guns they manufacture and by implementing distribution and advertising practices that will keep guns out of the hands of criminals and children.

Your understanding of the current state of negotiations with the gun industry, however, seems to be guided by a misimpression about our role and the history of our involvement, which I am glad to be able to correct. To begin with, prior to our involvement, the negotiations you had been conducting with manufacturers had reached a clear stalemate. Your negotiations had dragged on for nine months and the cities and counties involved in the litigation were expressing deep frustration at the lack of progress. You had received no counter-offer from the industry, and the prospects for receiving one were diminishing rapidly. Moreover, the city and county litigants, with whom we were in contact through our ordinary business, felt that their interests were not being adequately represented and that you had effectively cut them out of the process.

It was at that point that several city and county litigants approached the Administration, seeking our involvement to break the stalemate, recognizing, as you have acknowledged, that we bring unique resources to this effort. We agreed to participate because we felt that our presence at the table could significantly increase the prospects for a global settlement, and because it was becoming increasingly clear that, given the role of the federal government in regulating firearms, any negotiated solution would require our involvement.

Our presence immediately reinvigorated the negotiation process and has led to some progress. We have convened the only comprehensive strategy meeting for all city and country litigants; we have lent our expertise and resources to assisting in this effort, including convening a unique seminar by the Bureau of Alcohol, Tobacco, and Firearms to

COPY

provide insights for litigants about firearms and firearm regulation; and we have used the bully pulpit of the federal government to keep up the pressure for a negotiated settlement.

A handful of intransigent manufacturers tried to use our involvement as an excuse to derail negotiations and divide the litigants. Everyone involved on our side deeply appreciated your willingness to join with us in a united front resisting the efforts of a few manufacturers, working in bad faith, to dictate negotiating terms and conditions to litigants and potential litigants.

In our side's recent discussion with a few responsible manufacturers, we have sought to synthesize the array of input we have received from a range of current and potential litigants. We do not know whether these discussions will bear fruit.

It is critical that as we move forward, we do so in a spirit of understanding. I hope that you can move beyond your unproductive threats to derail our side's current progress.

We can accomplish so much more if we put our goals of saving lives first. Other participants in this process have reacted favorably to our involvement. Now that we are so close to making a real breakthrough, it would be unfortunate to find the process destroyed by anyone on our side.

As I said at the outset, I hope that our partnership can continue in good faith, and I look forward to continuing our dialogue.

Sincerely,

Bruce N. Reed
Assistant to the President
for Domestic Policy

COPY

DRAFT
NOT FOR CIRCULATION

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

8067

March 9, 2000

BY FACSIMILE

Mr. Eliot Spitzer
Attorney General
State of New York
The Capital
Albany, NY 12224

Re: Letter of March 6, 2000

Dear Eliot:

continue to share that desire.

In your recent letter, you expressed your trust that we will be able to move forward together in a true partnership toward our common goal of seeking fundamental changes in the way firearms are manufactured and distributed. I ~~agree with you wholeheartedly, and I hope that this letter will continue to clear the air.~~ We both seek to make the gun industry take a responsible role in stopping the awful toll of gun violence by incorporating reasonable safety devices in the guns they manufacture and by implementing distribution and advertising practices that will keep guns out of the hands of criminals and children.

Your understanding of the current state of negotiations with the gun industry, however, seems to be guided by a misimpression about our role and the history of our involvement, which I am glad to be able to correct. To begin with, prior to our involvement, the negotiations you had been conducting with manufacturers had reached a clear stalemate. Your negotiations had dragged on for nine months and the cities and counties involved in the litigation were expressing deep frustration at the lack of progress. You had received no counter-offer from the industry, and the prospects for receiving one were diminishing rapidly. Moreover, the city and county litigants, with whom we were in contact through our ordinary business, felt that their interests were not being adequately represented and that you had effectively cut them out of the process.

It was at that point that several city and county litigants approached the Administration, seeking our involvement to break the stalemate, recognizing, as you have acknowledged, that we bring unique resources to this effort. We agreed to participate because we felt that our presence at the table could significantly increase the prospects for a global settlement, and because it was becoming increasingly clear that, given the role of the federal government in regulating firearms, any negotiated solution would require our involvement.

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DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: NM DATE: 9/24

Our presence immediately reinvigorated the negotiation process and has led to ~~tangible real~~ some progress. We have convened the only comprehensive strategy meeting for all city and county litigants; we have lent our expertise and resources to assisting in this effort, including convening a unique seminar by the Bureau of Alcohol, Tobacco, and Firearms to provide insights for litigants about firearms and firearm regulation; and we have used the bully pulpit of the federal government to ~~ensure that the need~~ keep up the pressure for a negotiated settlement ~~remains a pressing public policy concern~~.

~~It is true, as you noted in your letter, that a~~ A handful of intransigent manufacturers ~~reacted to our presence in the negotiations by seeking to divide the litigants and by using our involvement as an excuse to politicize the process. The stance of this small group of manufacturers prior to our proposed meeting with the industry in January was calculated to derail negotiations entirely, and we urged a united front in response~~ tried to use our involvement as an excuse to derail ~~the~~ any negotiations and divide the litigants. Everyone involved on our side deeply appreciated your willingness to ~~stand~~ join with us in a united front resisting the efforts of a few manufacturers, working in bad faith, to dictate negotiating terms and conditions to litigants and potential litigants.

~~Our current~~ In our side's recent discussions with ~~the industry~~ a few responsible mfgrs, ~~willing to~~ ~~flow from an entirely different premise and show real promise of bearing fruit. [Max to add.]~~

~~It is simply not true, moreover, that we are using your settlement framework and negotiating drafts. Although we have our own view of ideal settlement terms, we~~ While we have sought to synthesize the array of input we have received from a range of current and potential litigants. We do not know whether these discussions will bear fruit.

It is critical that as we move forward, we do so in a spirit of understanding. I hope that you can move beyond your ~~irresponsible~~ unproductive threats to derail our side's current ~~productive discussions by violating the clear need for confidentiality. I respect the sensitivity of this process, and for that reason, I have no intention of releasing this letter to a wider audience, and I would appreciate a similar sensitivity on your part.~~ progress

We can accomplish so much more if we put our ~~need for constant personal involvement second and our~~ ~~mutual~~ goal of saving lives first. ~~We have worked hard at every stage to include you in our discussions, and we have made the same effort with other actual and potential litigants.~~ Other participants in this process have reacted favorably to our involvement. ~~and~~ Now that we are so close to making a real breakthrough, it would be unfortunate to find the process destroyed by anyone on our side.

As I said at the outset, I hope that our partnership can continue in good faith, and I look forward to continuing our dialogue.

~~As I~~
As I told

Sincerely,

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80608

WORKING DRAFT

February 7, 2000

Summary of Terms

Preamble

[Manufacturer and importer parties to the agreement] and [state, city and public housing authority parties to the agreement] enter into this agreement to reduce the criminal misuse of firearms, combat the illegal purchase, possession and trafficking of firearms, reduce the incidence of firearms accidents, and educate the public on the safe handling and storage of firearms. Furthermore, [manufacturer and importer parties to the agreement] enter into this agreement as a continuation their efforts to make their firearms as safe as practicable for their customers and the public. Accordingly, in consideration of the commitments set forth below:

1. The [state, city and public housing authority parties to the agreement] dismiss the [manufacturer and importer parties to the agreement] with prejudice from the lawsuit entitled __________; or

2. The [state, city and public housing authority parties to the agreement] agree to refrain from filing suit against the [manufacturer and importer parties to the agreement] on any cause of action arising from ____________.

I. Safety

A. Training

Manufacturers and importers should ensure that their products are sold only to persons who are properly trained in the safe handling and storage of firearms. See II(A)(1)(u) below.

B. Design

1. Each firearm design sold by each manufacturer or importer shall be tested by an agreed upon proofing organization against the following standards. The firearm design must:

   a. Comply with design standards to be specified in the agreement, but which will include the standards established for imported weapons under 18 USC § 925 (with possible revision of barrel length requirements), material standards based on the strongest existing state law or regulation at the time of the agreement (Massachusetts law at this point), and performance standards on accidental discharge, repeat firing, or risk of explosion. (Within 12 months of execution of the agreement.) **[Industry may resist stringent standards here.]**

   b. Have a second serial number hidden inside the firearm or visible only with the aid of an infrared detector or other optical instrument. (Within 6 months of execution of the agreement.)

   c. Have a locking device that effectively prevents the operation of the firearm when

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locked. (External: within 6 months of execution of the agreement; internal: within 12 months of execution of the agreement.)

d. Be designed so that it cannot be [readily] operated by a child under the age of 6. (Within 12 months of execution of the agreement.)

e. Incorporate a magazine disconnect safety if the firearm is a pistol. (Within 12 months of execution of the agreement.)

f. Incorporate a chamber load indicator including an appropriate legend on the firearm identifying the location of the indicator and how to read it. (Within 12 months of execution of the agreement.)

g. Authorized user technology. (Within 4 years of execution of the agreement). **[Industry resistant to requiring authorized user technology on all guns.]**

h. Not readily accept magazines manufactured prior to September 14, 1994, with a greater than 10 round capacity, and not be easily modified to accept such magazines. (Within 12 months of execution of the agreement.) (To be discussed.) **[This could require the industry to redesign large numbers of guns. Industry will push to narrow.]**

[Generally, industry is concerned that agreement to follow specified design standards could be used to show that existing guns that do not conform to those standards are defective. They would like language stating that failure to follow these standards is not a sign of negligence. Appropriate language can probably be negotiated.]

2. An exception to a requirement of paragraph 1 may be granted for firearms manufactured or imported for sale to a law enforcement agency if the agency certifies that the exception is necessary for law enforcement purposes. And military.

3. Manufacturers and importers shall include in the packaging of each firearm sold a warning on risk of firearms in the home and proper home storage. (Within 6 months of execution of the agreement.)

4. Manufacturers and importers shall not sell firearms that can be converted to an illegal firearm or firearms that are resistant to fingerprints

5. To the extent feasible, manufacturers and importers shall retrofit existing firearms with improved safety devices as they become available. **[Industry concerned about the scope of the retrofitting duty.]**

II. Sales and Distribution

In addition to complying with specific terms, manufacturers and importers will agree for themselves and as part of any distribution or agency agreement that they, their franchisees and their authorized distributors and dealers shall commit to a standard of conduct to make every effort to eliminate suspect sales.

A. Authorized Distributors and Retail Dealers

1. Manufacturers and importers may only sell to authorized distributors and authorized retail dealers. In order to qualify to become an authorized distributor or authorized retail dealer, the distributor or dealer must:

a. Possess a valid and current federal firearms license, and all other licenses and permits required by local, state, or federal law, and certify on an annual basis, under penalty of perjury, compliance with all local, state, and federal firearms laws.
b. Appear at the premises listed on those licenses and permits for purposes of completing the forms and related requirements under the Brady Act and the Gun Control Act and transferring the firearm.
c. Carry an appropriate amount of insurance coverage in amounts at a minimum no less than $1 million for each incident of damage, injury or death. **[Possible industry concern; they will gather facts.]**
d. Make no sales at gun shows. **[Possible industry resistance.]**
e. Have no incentive sales programs that tie employee or sales agent compensation, bonuses, or benefits to the number of firearms sold. **[Ok if it applies only to retailers, not manufacturers or distributors.]**
f. Maintain an inventory tracking plan which includes at minimum electronic recording of firearms acquisition and sales data, security from data loss, and forwarding of data to manufacturers or importers. The plan should include a complete inventory of all firearms to be completed at least once each year, with any losses or thefts being reported to ATF.
g. Implement a security plan for securing firearms, including firearms in shipment. In addition, authorized dealers will exclude persons under 18 years of age not accompanied by a parent or guardian from portions of the authorized retail dealer's premises where firearms or ammunition are stocked or sold. Exclusion may be accomplished by means such as physically segregating that portion of the premises.
h. Not sell ammunition magazines able to accept more than 10 rounds, provide child safety locks and warnings with firearms, and sell only firearms that comport with the design criteria of this Agreement, federal import standards, and the assault weapons ban.
i. Provide manufacturers, importers, law enforcement, and government regulators full access to any documents deemed necessary by one of those parties.
j. Participate in and comply with all monitoring of firearms distribution by manufacturers, importers, ATF or law enforcement.
k. Maintain an electronic record of all trace requests initiated by ATF, and report those traces to the manufacturer of the firearm within 24 hours unless ATF, for investigative reasons, directs the licensee not to do so.
l. Agree to cooperate fully in any mechanism established to enforce the terms of this agreement, including providing access to all necessary documents, and to be subject to the jurisdiction of the court enforcing this Agreement.
m. Require all employees to attend training provided by manufacturers and importers on an annual basis on __________________.

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[n. Require all employees to pass a comprehensive written exam before being allowed to sell or handle firearms.]
o. Provide all sales data to ATF's National Tracing Center.
p. Consent to up to three unannounced ATF compliance inspections each year.
q. Not complete any transfer of a firearm prior to receiving notice from the NICS that the transferee is not a prohibited person under the Gun Control Act.
r. Verify the validity of a licensee's federal firearms license against an ATF database before transferring a firearm to that licensee.
s. Forgo any transfer of a firearm to a licensee if the dealer or distributor knows the licensee to be under indictment.
t. Provide monthly reports to ATF of the make, model and serial number of all used firearms that are taken into inventory.
u. Transfer firearms only to individuals who have demonstrated that they can safely handle and store firearms through completion of a certified firearms safety training course or by having passed a certified firearms safety examination. **[Possible industry concern; must be fleshed out.]**

2. Failure to adhere to any one of the provisions set forth in 1(a-u) above may void the distribution or agency agreement under which the distributor or retail dealer receives products from the manufacturer or importer.

B. Authorized Distributors - additional provision

Authorized distributors must agree to sell the manufacturers' or importers' products only to other authorized distributors or authorized retail dealers or directly to government purchasers.

C. Authorized Retail Dealers - additional provisions

In addition to the requirements in section II(A)(1), authorized retail dealers must:

1. Be a stocking gun store with a minimum total inventory level. There would be an exception for federal firearms licensees in certain rural areas that are underserved by stocking gun stores.

2. Not to sell any of the manufacturers' or importers' product to any federal firearms licensee that is not an authorized distributor or authorized dealer of that manufacturer or importer.

3. Not to engage in sales that the retailer knows or has reason to know are being made to straw purchasers.

4. Not to sell to any person who has purchased a firearm within the previous 30-day period. (To be discussed.) **[Industry may propose less-restrictive limit on multiple ~~sales.]~~**

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D. Manufacturers and Importers

Each manufacturer or importer must:

1. Provide quarterly reports of its own sales data and all downstream sales data to ATF's National Tracing Center.

2. Not market any firearm in a way that would make the firearm particularly appealing to juveniles or criminals, such as advertising a firearm as "fingerprint resistant."

3. Refrain from selling any firearm that is disproportionately used in crime (a measure of disproportionate use to be determined by the parties). **[Possible industry resistance/concern about coming up with a measure.]**

4. Refrain from selling any modified semi-automatic assault weapon of a type that cannot be imported into the United States.

5. Refrain from advertising in the vicinity of schools, high crime zones or public housing.

6. Verify the validity of a license against an ATF database before transferring a firearm to any licensee.

7. Forgo any transfer of a firearm to a licensee if the manufacturer or importer knows the licensee to be under indictment.

8. Implement a security plan for securing firearms, including firearms in shipment.

E. Enforcement Corporate Respons

If a significant number of crime guns [exact number to be determined] are traced to a retailer or distributor within three years of the gun's sale, this shall create a rebuttable presumption that the retailer has engaged in misconduct under this Agreement. The burden shall be on the retailer and/or distributor to prove that the traces do not show a failure to abide by this Agreement. **[Industry concern; they would prefer to leave actions against dealers responsible for significant numbers of crime guns entirely to ATF.]** volume adj.

[III. Monitor or Other Enforcement Mechanism

[A. Authority
To be determined.]

[Industry very resistant to a third-party monitor financed by industry. It may be possible to work out an oversight structure using both ATF and an Oversight Commission of some sort, but the details are likely to be contentious.]

B. Manufacturer and Importer Cooperation

1. Each manufacturer shall designate an executive level manager to serve as a compliance officer.

2. Each manufacturer shall commit to full cooperation in the implementation and enforcement of this Agreement.

IV. Cooperation with Law Enforcement

1. Manufacturers and importers shall fully disclose marketing, market research, development and production data and documents sought by law enforcement or regulators.

2. Manufacturers and importers shall fire each weapon before sale and retain three fired casings and bullets. Of these, one set along with the weapon's serial number shall be entered into the National Integrated Ballistics Identification Network system.

3. Manufacturers and importers shall facilitate electronic linkage to their inventory system to allow for rapid responses to ATF's firearms trace requests.

V. Cooperation with Litigation

Manufacturers and importers shall agree to cooperate in pending and future lawsuits.

VI. Legislation

The parties to this agreement will work together to support pending and proposed legislative efforts to reduce gun violence.

VII. Education Trust Fund

Manufacturers and importers shall establish a $_____trust fund to implement a public service campaign to inform the public about the risk of firearms in the home, proper home storage, and the need to dispose of firearms responsibly through destruction or transfer through a FFL, as well as the need to reduce gun violence. The trust fund will also be available to fund a national firearms death and injury reporting system.

VIII. Enforcement

The Agreement will be entered and is enforceable as a Court order and as a contract.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Jim Kennedy to Reed and Chuck Ruff re: Racial Profiling (1 page)	ca 1999	P5 8069

COLLECTION:
Clinton Presidential records
Domestic Policy Council
Bruce Reed (Crime)
OA/Box Number: 21553

FOLDER TITLE:
Racial Profiling

Rob Seibert

rs29

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C.

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

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

8069

File:
Crime - Racial Profiling

cc: EK
Jobe

MEMO

To: Chuck Ruff, Bruce Reed
From: Jim Kennedy
Re: Racial Profiling

The attached material relates to an inquiry from the Washington Times. It is working on a story based on allegations by the Hispanic Business Roundtable that then-Governor Clinton supported an Arkansas State Police program that involved profiling. The Criminal Apprehension Program allegedly allowed state police to pull over drivers who fit a certain drug profile, including people who appeared to be Hispanic with out-of-state plates.

We pulled up the related articles and court case. It is not clear from the case itself whether the program explicitly allowed such ethnic profiling, though the charge is that, in practice, that's what happened. (I checked with Bruce Lindsey, who does not have a specific recollection about this matter).

One of the articles seems to suggest that Governor Clinton supported the use of such profiles, though there is not a direct quote from the relevant speech. I would hesitate to argue that the Criminal Apprehension Program and Governor Clinton's views back then were kosher, for fear of additional information surfacing to more directly contradict us. On the other hand, I'm not keen on giving up a "live and learn" mea culpa on behalf of the President.

In terms of how to respond, then, perhaps the best course is to say, "President Clinton's record on civil rights is strong and his views on racial profiling are clear. He shares with law enforcement officials a desire to build trust between police and the communities they serve. [If people want to go rifling through Nexis for musty old clippings in an effort to take pot shots, that's fine. But we would rather concentrate on taking the steps that are necessary to heal the nation's racial and ethnic divides]."

(FYI, my initial search for info on the Hispanic Business Roundtable only yields an article by Deposada in a Heritage Foundation connected publication. I suspect the roundtable is a Heritage-like organization of conservative business owners).

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Katzen et al. to Chief of Staff [McLarty] re: Sen. Boren's Revolving-Door Proposal (2 pages)	12/20/93	P5 8070
002. notes	Bruce Reed Campaign Finance Reform meeting notes, February 2, 1993 [POTUS with Congressional members] (4 pages)	2/3/93	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21207

FOLDER TITLE:

Political Reform [1]

Rob Seibert

rs67

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

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8070

December 20, 1993

MEMORANDUM FOR THE CHIEF-OF-STAFF

FROM: SALLY KATZEN
BRUCE REED
MICHAEL WALDMAN

SUBJECT: SEN. BOREN'S REVOLVING-DOOR PROPOSAL

Since early in the congressional session, Sen. David Boren has been pushing a legislative proposal that would codify our "revolving door" ethics rules for appointees, and that would go significantly further than our rules. We have been asked by Sen. Levin to tell Sen. Boren that we oppose his moving forward with this measure.

Senator Boren has stated his belief that he is acting at President Clinton's behest on this matter (based on a conversation last January or February). (We have since told him that we are not pushing him to move forward.) The Office of Government Ethics testified last spring that the administration wanted to see how the revolving door executive orders worked before statutory change was warranted.

Boren's proposal codifies our rules, but goes further. For example, Executive Office of the President officials paid more than $70,000 per year would be barred from lobbying top level executive branch officials for two years. It also applies to a larger universe of people the five year "cooling off" period barring lobbying of an official's former agency.

Sen. Levin has been negotiating with Sen. Boren, and has made some progress, but has not been able to dissuade him from pushing his proposal altogether. Levin is concerned that Boren's bill would pass the Senate if offered. He has asked the White House to meet with him and Sen. Boren to warn Boren off of this bill -- to state that the President is not asking him to proceed with this, or, more actively, that we do not want him to proceed with this.

OPTION A: TELL BOREN THAT WE OPPOSE HIS BILL

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We should inform Sen. Boren that we do not want him to proceed with this proposal. Sen. Boren's proposal goes further than our executive order, and further than is warranted. It would make it difficult for the administration to attract talented individuals to serve in government, at a senior -- or even lower -- level. We should see how the executive order works before resorting to a federal statute with severe penalties.

[This view is held by Sally Katzen.]

OPTION B: REMAIN SILENT

We should remain silent, and refrain from telling Sen. Boren that we don't want him to move forward. The administration, at Howard Paster's insistence, has refrained from supporting legislative provisions that would *strengthen* ethics bills. We should not break this moratorium for the first time by intervening *against* ethics legislation, no matter what our quarrels with it. In particular, the continuing controversy over Roy Neel and Howard Paster's post-White House employment has made the political context for such an intervention especially tricky. It would appear that we are seeking to "protect ourselves" from an effort to strengthen our ethics rules.

This view is held by Bruce Reed and Michael Waldman.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Michael Waldman to Panetta & Ickes re: Campaign Finance Reform-Other Options (1 page)	3/29/95	P5 8071

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21207

FOLDER TITLE:

Political Reform-1995

Rob Seibert

rs69

RESTRICTION CODES

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

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Pol. Reform

8071

THE WHITE HOUSE

WASHINGTON

March 29, 1995

MEMORANDUM FOR LEON PANETTA
HAROLD ICKES

FROM: MICHAEL WALDMAN MW

SUBJECT: CAMPAIGN FINANCE REFORM -- OTHER OPTIONS

If we conclude that the risks of discussing campaign reform outweigh the benefits of drawing a contrast with Dole and the GOP, there are a few remaining options that would enable us to "do something" with less risk of looking hypocritical. (I do not believe lobby reform poses such risks.)

The way to be for reform without making an actual proposal is to say:

This issue has been caught up for years in disputes among the parties. We will never see real and reasonable reform until both parties come together. The way to cut the Gordian Knot is to bring together Democrats and Republicans to thrash out their differences. I want to wait to see what they propose -- and if it is reasonable, I expect to support it.

We could:

* Propose a bipartisan commission and pledge to introduce its findings -- This is a proposal made both by Sen. Dole and by Trevor Potter, former GOP chair of the FEC. Depending upon who is appointed, the results could be minimalist or far-reaching. One possibility would be to propose a Base Closing and Realignment Commission model, in which the findings of the commission would be proposed intact (or not at all) by the White House, and voted on intact by the Congress. This is the way to actually get this issue out of the Presidential race, if that is our goal, without making proposals that render us hypocritical.

* Engage with the "bipartisan group" of lawmakers led by Rep. Chris Shays -- If we encourage the bipartisan group, then we need not have a proposal of our own. Their product will probably not pass, either but that way we can engage the issue without getting specific.

* Encourage a private sector "blue ribbon commission" -- George Soros' Open Society foundation is putting together a bipartisan group to propose a campaign finance plan. They will make their presentation at the end of the year. We could say that we are waiting for them to cut the Gordian Knot, and we look forward eagerly to what they come up with.

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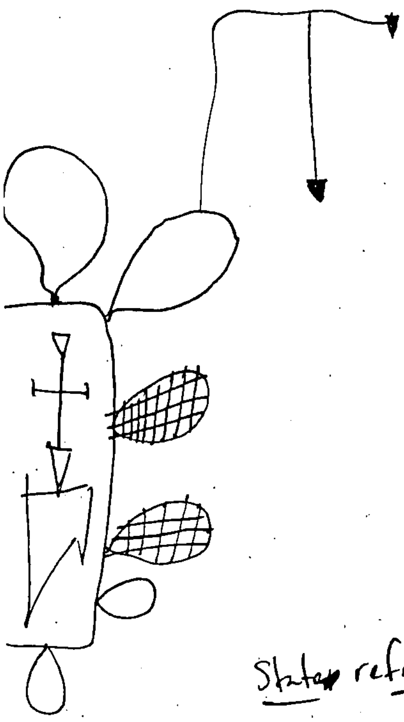

State referendum