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THE FLOW OF PRECURSOR CHEMICALS AND AS-SAULT WEAPONS FROM THE UNITED STATES INTO THE ANDEAN NATIONS

HEARING

BEFORE THE

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

NOVEMBER 1, 1989

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(101st Congress)

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THE FLOW OF PRECURSOR CHEMICALS AND ASSAULT WEAPONS FROM THE UNITED STATES INTO THE ANDEAN NATIONS

WEDNESDAY, NOVEMBER 1, 1989

HOUSE OF REPRESENTATIVES,

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL, Washington, DC.

The committee met, pursuant to call, at 10:30 a.m., in room B-318, Rayburn House Office Building, Hon. William J. Hughes, presiding.

Members present: Representatives William J. Hughes, Lawrence Coughlin, Benjamin A. Gilman, Michael G. Oxley, F. James Sensenbrenner, Jr., Bill Grant, Bill Paxon, Christopher Shays, Wally Herger, James M. Inhofe, Frank J. Guarini, Solomon P. Ortiz, Nita M. Lowey, Joseph E. Brennan and James A. Traficant, Jr.

Staff present: Edward H. Jurith, majority staff director; Nancy Hobbs, minority staff director; Richard Baum, minority professional staff; Jennifer Ann Brophy, staff assistant; Elliott A. Brown, staff consultant; Rebecca Hedlund, professional staff; Michael J. Kelley, staff counsel; Robert S. Weiner, press officer; Melanie T. Young, minority professional staff.

Mr. HUGHES. The Select Committee on Narcotics Abuse and Control will come to order.

First, I apologize for the delay, but as you may know, we just had a record vote and members had to go to the floor first.

Good morning and welcome to the hearing of the Select Committee on Narcotics Abuse and Control on the issue of assault weapons, precursor chemicals, and drug control in the Andes.

I am particularly pleased to be chairing this hearing because of the pressing nature and importance of the topics we will be discussing here today.

Our distinguished Chairman, Charlie Rangel of New York, is unfortunately involved in a conference on the budget, as you may well know. While he hopes he may be able to break away and join us at some time during this hearing, in case he doesn't do so he wanted me to express his thanks to all the witnesses for being here today.

We are all too much aware of the escalating battle and tragic results occurring in the Andean nations when chemicals, critical to creating illegal drugs, plus powerful weapons merge in the possession of drug traffickers.

Much of the impetus for today's hearing was a recent visit of Colombian President Virgilio Barco to this country. During a meeting with the House leadership, President Barco stressed that Colombia's antidrug activities are seriously undermined by the flow of American weapons and precursor and essential chemicals into his country. He urgently requested our help in curtailing this devastating situation.

I understand the frustration that President Barco expressed. We are frequently told that it is the American demand for illegal drugs which nourishes the drug enterprises flourishing in the source countries. That concern, however, has been heard far more frequently than the message conveyed by President Barco.

It is important for us to realize that Colombia's battle against the drug traffickers is exacerbated not solely by the demand for illegal drugs. In an even more immediate and visible way, United States chemicals flow into the jungle labs in Colombia and other Andean nations. United States made guns protect the drug cartels.

President Barco is not alone in his concern that these chemicals, critical for drug production, and weapons used for protecting drug enterprises are infiltrating his country.

It was precisely this kind of concern which motivated the Subcommittee on Crime of the House Judiciary Committee, which I am privileged to chair, to write the Chemical Diversion and Trafficking Act, which was enacted as part of the 1988 Anti-Drug Abuse Act.

As it is designed, the Chemical Diversion and Trafficking Act contains strict recordkeeping provisions for chemical manufacturers and distributors, who are also required to report to the Attorney General any transaction involving an extraordinary quantity of any of the chemicals identified in the act. These are just two of the procedures designed for curtailing the ability of illegal drug manufacturers to obtain the chemicals needed for their operations.

Although the act's regulations only went into effect in late August, with the reporting requirements going into effect just yesterday, I am very encouraged about the prospects for its effectiveness as a tool in fighting the domestic and foreign drug problems.

I really think that we will see that the Chemical Diversion and Trafficking Act that we just passed last year will equal in effectiveness the forfeiture legislation that our committee passed a few years ago and the new money laundering legislation we passed in 1986.

The legislation has already begun to show positive results. On August 30, two Dallas-based owners of rogue chemical companies were indicted for allegedly selling precursor chemicals to people whom they know, or should have known, were going to use the chemicals for manufacturing speed. Not only were the owners indicted, but the companies' inventories, valued at over \$100,000 for each company, were seized, along with a total of some \$30,000 in cash from the companies.

I am gratified that the act is already proving so useful and believe that this bodes well for its future success in stemming the flow of these chemicals out of this country and into the wrong hands. It sends a very strong signal to those that would divert chemicals into the illicit market.

Let me also add that I am happy to learn that the legitimate chemical manufacturers are developing their compliance programs in order to fulfill their obligations under this act. The development of the act was, I might note, enhanced by the truly open and productive discussions among the chemical industry, the Drug Enforcement Administration, and my subcommittee.

I might just note, before passing, that I thought that the chemical manufacturers received an unfortunate negative shot in the press. They were very cooperative and productive in working with us on our Chemical Tracking and Diversion Act in the last Congress, the 100th Congress, and they really should be credited with that cooperation.

We will receive testimony this morning from both those groups concerning their experiences in implementing the act.

Chemical diversion is, I am afraid, only part of the problem. This hearing also deals with the grim link between chemicals, weapons, and drugs.

Drug traffickers viciously protect their drug investments and operations using the most powerful weapons they can get their hands on. Tragically, many of the weapons being seized in Colombia by the national police and military in their narcotics efforts are from this country.

For example, 155 weapons have been seized in Colombia, including many powerful assault weapons. Of the 155 weapons, 135 were American made, including 10 Ruger Mini-14's and 63 Colt AR-15's.

The Department of Treasury's Bureau of Alcohol, Tobacco and Firearms was able to trace the sources of some of these American weapons. What they found was that some seven States from coast to coast were the sources of the some 52 weapons.

The horrors inflicted on innocent citizens, law enforcement and judicial officers in Colombia is simply intolerable. The tragedy inflicted by the drug traffickers is only compounded when it is realized that it is American made or distributed weapons that are being used in this carnage.

I fully understand President Barco's outrage and his request for our help.

[The opening statement of Chairman Hughes appears on p. 75.] The chair now recognizes the distinguished ranking Republican, Mr. Coughlin of Pennsylvania, for such remarks as he cares to make.

Mr. COUGHLIN. Thank you, Mr. Chairman. I am certainly pleased to join you in welcoming today's witnesses, and thank them for appearing here.

Certainly a very critical part of the President's antidrug strategy is the Andean initiative, which will provide some \$2 billion in military, law enforcement and economic assistance to Colombia, Bolivia, and Peru. But there is more that we have to do on the supply side, as is obvious by the displays in front of us. We have got to cut the supply of American made guns and chemicals that are currently flowing to the drug traffickers.

Andean drug traffickers are using American guns to protect their illicit interests and American chemicals to produce their illicit drugs. This diversion of U.S. guns and chemicals to the drug traffickers are American exports that must be stopped.

The legislation to prevent the transfer of U.S. chemicals to drug traffickers was included in the Anti-Drug Abuse Act of 1988.

It is important that, as these things often occur, it takes some time to get this implemented. It is just being implemented now. I am hopeful that with the continuing cooperation between the Drug Enforcement Administration and the chemical industry, we can make real progress.

In addition, we must do everything possible to prevent the drug traffickers from gaining access to deadly assault weapons.

The traffickers have demonstrated repeatedly that they will not hesitate to use any weapon they can get their hands on. The stemming of the flow of chemicals and guns has got to be part of our antidrug strategy.

Mr. Chairman, I look forward to today's hearing.

Mr. HUGHES. I thank the gentleman.

Our first panel this morning consists of Phil Orsini, special agent-in-charge of the firearms enforcement branch of the Bureau of Alcohol, Tobacco and Firearms; David Westrate, Assistant Administrator for Operations, Drug Enforcement Administration; and William Rosenblatt, Assistant Commissioner for Enforcement, U.S. Customs Service.

Mr. Rosenblatt is assisted by Rose Biancaniello, of the Office of Munitions Control at the State Department.

Before I call upon the first witness, I am going to see if we can try to stay with the 5 minute rule today. We have a lot of testimony ahead of us and we will be here most of the day as it is. If members could keep their questions to 5 minutes, I think we can move along expeditiously.

Welcome to all of you and please proceed.

TESTIMONY OF PHIL ORSINI, SPECIAL AGENT-IN-CHARGE, FIRE-ARMS ENFORCEMENT BRANCH, BUREAU OF ALCOHOL, TOBAC-CO AND FIREARMS; DAVID WESTRATE, ASSISTANT ADMINIS-TRATOR FOR OPERATIONS, DRUG ENFORCEMENT ADMINISTRA-TION; AND WILLIAM ROSENBLATT, ASSISTANT COMMISSIONER FOR ENFORCEMENT, U.S. CUSTOMS SERVICE, ACCOMPANIED BY ROSE BIANCANIELLO, OFFICE OF MUNITIONS CONTROL, DEPARTMENT OF STATE, AND JOHN KELLEY, DIRECTOR OF STRATEGIC INVESTIGATIONS DIVISION, U.S. CUSTOMS SERVICE

TESTIMONY OF PHIL ORSINI

Mr. ORSINI. With your permission, I will limit my remarks to a brief summary of the statement that was submitted for the record. Mr. HUGHES. That would be fine.

Mr. ORSINI. Mr. Chairman and members of the committee, thank you for this opportunity to testify on the issue of firearms being diverted from the domestic firearms market and smuggled out of the country.

Although public attention to this issue has increased in the past several months, the Bureau of Alcohol, Tobacco and Firearms has been concerned with this problem since the passage of the Gun Control Act in 1968.

Through ATF's International Trafficking in Arms, or ITAR program, we develop, implement, and track investigative efforts to deal with the problem of firearms being procured from legitimate and secondary sources for illegal export from the United States. Since procuring firearms for illegal export usually involves violations of the Gun Control Act, ATF has the direct jurisdiction over those responsible for obtaining the firearms and those conspiring with them.

In our investigative efforts we work closely with the U.S. Customs Service, which has been delegated enforcement responsibility for the export provisions of the Arms Export Control Act, and the Drug Enforcement Administration.

In addition to domestically initiated investigations, ATF aggressively pursues information from those countries receiving diverted firearms. Unlike bundles of narcotics, firearms are neither consummable nor anonymous.

To the extent we can receive information on seizures made in such countries, we can rapidly focus on persons supplying or procuring the weapons in this country, and we can rapidly identify where the majority of firearms turning up in criminal or terrorist hands in those countries originated.

The current situation in Colombia is typical. We know that firearms are being purchased in the United States, both from successful domestic cases and from the results of a relatively small number of traces we have been able to conduct based on information received from Colombia. What we cannot determine at this time is exactly what proportion of the firearms used by the cartels are U.S. sourced, as opposed to coming from other sources. The need for such information is vital.

To the extent we can see any pattern in successful cases, it appears that the procurement of firearms in the United States is widespread and small in scale. While we have encountered a few well organized rings specializing in large loads of weapons, more frequently we see opportunistic individuals, often involved in narcotics smuggling or trafficking themselves, making or organizing individual purchases of firearms from retail outlets or on the secondary street market.

We occasionally uncover plots to export firearms by the hundreds, but far more are trickling out a few at a time. The key to quickly identifying and apprehending these persons is tracing the firearms recovered by Colombian law enforcement and military personnel.

We have made a number of efforts to improve the flow of information from Colombia and other countries. We have gone to those countries and conducted training for their law enforcement personnel. We recently sent two special agents to Colombia on a 30 day detail.

We have submitted a request to the State Department for authorization to station two agents permanently in Colombia. The Treasury Department has approved this request and DEA has agreed to provide administrative support for the agents. We hope to accomplish this important step this fiscal year.

As I have stated, against published reports of thousands of firearms being recovered in Colombia, in the past 18 months we have only received information on a relatively small sample. We have completed processing on 292 firearms and are currently working on a list of about 400 additional firearms we recently received. Of the 292 firearms requested, we were able to initiate traces on 224 firearms. The rest were clearly untraceable because of incorrect or missing information.

Of the 224 firearms, 35 were traced out of the United States, 10 to the Panama Canal Zone, 1 to Canada, 2 to Ecuador, 1 to Thailand, and 21 to the Government of Colombia. The firearms purchased by the Colombian government were largely Smith and Wesson revolvers. Eleven of the firearms were U.S. military surplus.

Of the 178 remaining firearms, 127 were sold at retail in Florida, 18 in California, and the remainder in 18 other States. The most reliable of this data is the identification of the types of firearms and the focus of the purchasers in Florida.

It needs to be noted that certain traces, such as the one in Thailand, could be the result of a one digit error in recording the serial number.

The Florida focus is supported by our investigations in that area and by the degree of Colombian narcotics activity in that State. We believe this is probably a matter of convenience.

As to the types of firearms, I have brought with me a sample of weapons in the traces. You have had the opportunity to look at some of those weapons

One additional problem we have discovered is that our traces showed some of the firearms had been purchased as far back as 1971. Obviously, those firearms may have legally changed hands several times since then. Some of the weapons may turn out to have been stolen in the United States more recently. We are not always getting information on just where or when the firearms were recovered, nor on the circumstances surrounding the seizures.

Clearly, ATF agents working in Colombia will be able to focus on current seizures and would have the technical expertise to get and transmit accurate information. Moreover, they could coordinate the lead information developed with the Colombia authorities.

In summary, we have relevant laws already on the books. In a coordinated effort, ATF is responding to every lead. What we lack is access to the best lead information, and ATF is seeking to gain that access as soon as possible.

That concludes my summary.

[Statement of Mr. Orsini appears on p. 79.]

Mr. HUGHES. Thank you very much, Mr. Orsini.

Mr. Westrate, welcome. We have your statement also, Mr. Westrate, which, without objection, will be made a part of the record in full. We hope you can summarize for us.

TESTIMONY OF DAVID WESTRATE

Mr. WESTRATE. Thank you, Mr. Chairman. I, too, will have a very brief summary. I will split my opening remarks and focus on the weapons issue, and cover chemicals in the second panel.

The Drug Enforcement Administration works closely with the Bureau of Alcohol, Tobacco and Firearms on narcotics investigations involving the use of assault weapons.

BATF is the Federal agency responsible for reducing the criminal misuse of firearms and explosives. Although BATF has no direct statutory jurisdiction over narcotics violations, they take full advantage of their unique opportunity to suppress narcotics related crimes through the enforcement of the Federal firearms laws.

Numerous DEA investigations involve drug traffickers based in Latin America and have surfaced allegations that automatic weapons are exchanged for drugs. The most prevalent weapons mentioned are the AK-47 assault rifle, 9 millimeter pistols, and shotguns.

A review of these allegations also indicates that most of the weapons reportedly were purchased in the United States before being smuggled to Latin America. These reports also show that weapons were usually purchased by third parties with no criminal records, or by persons using false identification.

Further, the weapons were usually purchased from several gun shops in the same geographical vicinity in order not to arouse suspicion. The weapons were smuggled in quantities of 15 or less from the United States to Mexico by vehicles, using concealed compartments, and were then, in most cases, either used by Mexican traffickers or transshipped forward to Colombia.

A special report prepared by the El Paso Intelligence Center during July 1989 details several related weapons seizures in Mexico that reflect the kinds of weapons that are in demand, as well as how these arms are being smuggled to South America.

Significantly, EPIC reports that the seizures represent one of the few documented cases in which drugs were used to pay for weapons. The seizures also confirmed that the Medellin cartel was operating in Mexico on a large scale and that this cartel was smuggling weapons and ammunition through Mexico.

There are numerous other reports indicating that automatic weapons are destined for drug traffickers in Latin America, especially Colombia.

For example, on February 18, 1988 a DEA Riverside, California resident office informant reported on an arms and drug smuggling operation in Culican, Mexico. According to the informant, the proceeds from the sale of cocaine supplied by the Ochoa organization of Colombia were used to purchase weapons in the United States. The weapons were then smuggled to Culican, where they were transshipped to Medellin for the Ochoas.

In the latter part of 1988, DEA received information from the FBI that a shipment of Soviet bloc weapons was en route to Colombia for the Ochoa organization. The 80 tons of Soviet military assault weapons reportedly were purchased either with the profits from a 2,000 kilo cocaine shipment destined for Europe or by the direct exchange of weapons for cocaine.

Operation Alliance also has resulted in the development of intelligence on weapons smuggling as well as the seizure of weapons destined for Latin America.

One of the largest seizures occurred on August 8, when an undercover investigation into the illegal exportation of assault weapons resulted in the arrest of two Mexicans and two U.S. citizens in San Diego, charged with violations of the Federal firearms laws.

The undercover agents, posing as drug traffickers, negotiated for the purchase of 100 weapons and ammunition to be sent to Mexico. Seizures from this investigation included 191 AK-47 assault rifles and over 60,000 rounds of ammunition.

To deter the criminal misuse of semiautomatic firearms in this country, President Bush proposed several measures in the Comprehensive Violent Crime Control Act of 1989, introduced as H.R. 2709.

For example, assault weapons typically can be equipped with an ammunition clip or feeding device capable of holding large quantities of ammunition. This device allows the firing of large numbers of rounds in a very short time and, therefore, can transform an ordinary rifle into what many people speak of as assault weapons.

Accordingly, Title III of the President's bill would make it illegal to possess or transfer any ammunition clip or feeding device capable of holding more than 15 rounds of ammunition. There would be an exception for such devices already lawfully possessed, but subsequent transfers would have to be registered with the BATF.

The bill also doubles the mandatory penalty from 5 to 10 years imprisonment for using semiautomatic firearms in the commission of a violent crime or drug felony, and provides for a mandatory penalty of at least 2 years imprisonment for theft of a firearm.

DEA believes that the enactment of this bill is of great importance in successfully combating the violence associated with drug trafficking in general, and the criminal use of assault weapons in particular.

I would be pleased to answer any questions at the appropriate time.

[Statement of Mr. Westrate appears on p. 90.]

Mr. HUGHES. Thank you, Mr. Westrate.

Mr. Rosenblatt, we welcome you. We have your statement. Without objection, it will be made a part of the record. Would you introduce your associate, Mr. Kelley?

TESTIMONY OF WILLIAM ROSENBLATT

Mr. ROSENBLATT. I would be glad to, Mr. Chairman. John Kelley, Director of Strategic Investigations Division, U.S. Customs Service. I will summarize my testimony, Mr. Chairman.

I am pleased to be appearing before you and your committee today to discuss the role of the U.S. Customs Service in the enforcement of export controls as they pertain to munitions exports to Colombia and other Latin America narcotic source countries.

In response to our investigative and enforcement responsibilities in the area of export enforcement, in 1981 Customs initiated our Operation Exodus program which is designed to curtail the illegal movement of munitions and high technology to controlled destinations. Since its inception, Operation Exodus has evolved from a basic reactive operation to a highly structured, complex, investigative jurisdiction.

We have implemented a national and international strategy which attacks the problem with a three pronged approach, interdiction, investigation, and international cooperation.

In curtailing illegal exports, the Customs Service plays an essential role in the enforcement of both the Arms Export Control Act, which regulates the export of munitions items, as well as the Department of Commerce's Export Administration Act, which regulates the exportation of dual use or nonmunitions items.

In order to meet our export enforcement responsibility, we currently have 104 inspectors, 300 agents, and an independent intelligence branch assigned full time to Operation Exodus.

We also have 19 established overseas offices in 15 foreign countries. Each of those offices is staffed with experienced investigators in this area who work with our counterparts to obtain the necessary information on potential violations.

Since 1981, these efforts have resulted in over 1,226 arrests and 8,400 seizures valued at over \$616 million.

Our program encompasses all potential export violations.

We have not dedicated specific resources to any one aspect of export control, including munitions export to narcotics source countries, but instead we attack the problem as a whole.

We choose to do this because the methods and diversion routes used are not unique to any particular type of merchandise being illegally exported, and the skills and expertise that our employees have developed transcend all types of violations.

I assure you that all of our efforts, in both the inspection and investigative areas, are aimed at discovering and preventing as many illegal exported shipments of munitions items to narcotic source countries as possible and bringing those responsible for such actions to justice.

In furtherance of interagency relations, our Operation Exodus Command Center in Washington, DC, performs a communication and coordination function in support of the regulatory and enforcement responsibilities of various U.S. Customs Service components involved in export control.

The command center communicates with licensing authorities in the Departments of State and Commerce through Customs officers assigned full time to liaison positions with the Office of Munition Control in the State Department and the Bureau of Export Administration in the Department of Commerce.

The command center also has direct liaison contacts with the Department of Energy and the Department of Treasury's Office of Foreign Assets Control.

Industry sources, the intelligence community, other enforcement agencies and various other databases are also at their disposal.

Additionally, we have established Project Gemini, which is our public awareness program designed to inform industry of export controls and to solicit their cooperation in our endeavors.

Customs' foreign attaches enjoy productive working relations with many of their counterparts and other enforcement-oriented organizations in the countries in which they serve. Those countries have generally provided the utmost cooperation in our investigations and expressed willingness to assist in any manner.

This reflects on the professional liaison programs established by our individual attache offices and the mutual respect that we have shown our counterparts in return.

The prevention of exports of munitions to illicit end users is a cooperative effort requiring the involvement by all those concerned.

The export controls currently in place provide restrictions honored by the law abiding firms, but do not deter the witting violator who sees a handsome profit if his gamble is successful.

As recently publicized by the news media, the U.S. Customs Service has major ongoing investigations which have reached international proportions involving the exportation of munitions to narcotics source countries. I would like to briefly discuss a few of these investigations to illustrate the diversity and complexity involved, as well as our investigative methodology. The first case we entitle is the David Candiotti and Carlos Enri-

que Gil, which are some charts over to the committee's right.

The U.S. Customs Service initiated this investigation in March 1988, into the clandestine munitions export activity of David Candiotti and Carlos Enrique Gil.

The investigation, which was conducted in West Palm Beach, FL, led to the arrest of Candiotti and Gil, who were negotiating with undercover operatives from the U.S. Customs Service and the Bureau of Alcohol, Tobacco and Firearms to purchase for export to Colombia 100 pounds of C-4 explosives, 25 MAC-11 machineguns, 20 AR-15 rifles, and 5 fully automatic M-60 machineguns.

During the investigation, agents also uncovered a shopping list which indicated that Candiotti and Gil were attempting to acquire LAW rockets, M-79 grenade launchers, and M-203 grenade launch-

The agents identified two previous shipments of munition items, including 25 pounds of Tovex plastic explosives, 30 AR-15 caliber rifles, five .50 caliber rifles, 25 silencers for MAC-11 machinepistols, two .308 sniper rifles, and night vision equipment. All of these items were clandestinely exported from the United States by way of private aircraft and delivered to an individual alleged to be associated with the Cali cartel.

During the undercover negotiations, Candiotti and Gil alleged that the munitions exports were to be used by cartel factions for protection, political assassinations, and the assassination of Pablo Escobar of the Medellin cartel.

In addition to the arrest of Candiotti and Gil, who remain incarcerated pending trial, the agents seized \$109,000 in U.S. currency, one aircraft and a vehicle.

In another case, the U.S. Customs Service initiated an investigation in April 1989 into the export activities of Enrique Gobea-Rabago and others.

The investigation ultimately led to his arrest, along with Jose Luis Rodriguez, Mario Lopez-Guttierres, and Adam Daniel Hahn, who is a licensed firearms dealer doing business as "Guns and Stuff" in California.

The investigation also resulted in the seizure of 191 Chinese manufactured AKs weapons, 78,000 rounds of ammunition, and several handguns in two separate but related enforcement actions in San Diego and Irvine, CA.

Evidence developed in the investigation indicates that the weapons and ammunition were acquired for illegal export to Mexico. Preliminary investigation indicated these weapons were legally imported into the United States prior to the recently imposed import restrictions on AK-type semiautomatic rifles.

This investigation was initiated by the Customs Service and was pursued by Customs and the Drug Enforcement Administration under the auspices of Operation Alliance, an interagency effort to control drug trafficking along the southern border.

Additional investigation is currently being conducted by the Operation Alliance group, Customs and the Bureau of Alcohol, Tobacco and Firearms.

A third case, entitled Jose Checchini, was initiated on April 29, 1988 by inspectors at the Los Angeles International Airport while examining an export shipment destined for Cali, Colombia aboard Avianca Airlines.

The examination revealed 16 hand grenades, four Colt AR-15 rifles that had been converted to fully automatic, six bulletproof vests, and one pair of night vision goggles, all concealed in a large air conditioning unit.

Investigation by Customs agents revealed that a number of the articles were purchased by Jose Checchini. Further investigation disclosed that Checchini had concealed the munitions items in the air conditioning unit.

The investigation also connected this attempted export to a previous seizure in December 1987, when Customs agents discovered ten AR-15's concealed in a shipment of stuffed teddy bears destined to Cali, Colombia.

Customs agents obtained a warrant for the arrest of Checchini, and on August 2, 1989, since he could not be apprehended, Channel 7, ABC, broadcast a story on "L.A.'s Most Dangerous." The subject of the story was the United States Customs fugitive, Jose Checchini.

The following day, Checchini telephoned U.S. Customs agents from Italy and attempted to negotiate his surrender without revealing his exact whereabouts. While negotiations between Checchini and U.S. Customs agents in Italy and the U.S. continued, the U.S. Department of Justice assisted the U.S. Customs Service in obtaining a provisional arrest warrant for Checchini.

On September 11, 1989, Customs agents, working in concert with La Guardia Di Finanza, Italian Customs and Financial Police, located Checchini and placed him under arrest based on the provisional warrant.

I have several other cases in my testimony, Mr. Chairman, and they are in the record. But I would like to say, the Customs Service has long recognized that munitions items are tools of the trade in the narcotics business, and the cases that I present here today demonstrate that in addition to firearms, such items as bulletproof vests, night vision equipment, LAW rockets, hand grenades, and plastic explosives are in high demand by the narcotics organizations.

In support of the Government of Colombia in their current crisis which was precipitated by the courageous action of Colombian officials against narco-terrorism of overwhelming proportion, the Acting Commissioner of Customs has placed an increased emphasis on our Exodus enforcement effort.

Within Customs, we have formed a Colombian Coordinating Committee which serves as a clearinghouse for all information relating to the current crisis in Colombia. Once received, we analyze the information and disseminate action requests to our Customs offices in the field.

We have also placed emphasis on outbound searches of airplanes, vessels, cargo, persons, and baggage destined to narcotics source and transshipment countries, in an effort to inflict damage on drug traffickers and their organizations relative to the maximum use of our x-ray units and other technical equipment.

These enforcement efforts are designed to disrupt the pipelines through which the cartel receives the proceeds from the sales of drugs, the chemical precursors needed to manufacture drugs, and the munitions items used to wage a war of terrorism on the people of Colombia.

In support of the war on drugs, the Customs Service at all levels will continue to man the front to stem the flow of illegal exports to narcotics traffickers.

I would be pleased to answer any of your questions at this time. [Statement of Mr. Rosenblatt appears on page 101.]

Mr. HUGHES. Thank you very much, Mr. Rosenblatt.

I gather, Ms. Biancaniello, you are just here to respond to questions.

Ms. BIANCANIELLO. That is correct.

Mr. HUGHES. You have no opening statement?

Ms. BIANCANIELLO. We gave a statement for the record.

Mr. HUGHES. Do you want to put the statement in the record? Or would you like to make an opening statement at this time?

Ms. BIANCANIELLO. We would just prefer to put that in the record.

Mr. HUGHES. Without objection, it will be so received.

[The statement referred to was not available at time of printing.]

Mr. HUGHES. Mr. Orsini, how extensive is the problem in Colombia so far regarding the presence of exported American weapons? Have you any idea at this point?

Mr. ORSINI. Well, we recently had two agents in Colombia on a 30 day detail. They came back with a list of 150-some-odd weapons. That has since been expanded to 292.

Based against the backdrop of the thousands and tens of thousands of guns that we hear of being seized in Colombia, that is a very small sample.

However, of those 155 firearms which we brought back and traced, 87 percent of them were American made firearms.

Mr. HUGHES. This is of the thousands of guns that have been seized?

Mr. ORSINI. No, sir; this is of a very small sample. This is of the 155.

Mr. HUGHES. Just a sample.

Mr. ORSINI. A very small sample. We don't know in the whole universe of weapons in Colombia what the percentage is.

Mr. HUGHES. The National Rifle Association is on a later panel today. One of the points the NRA will make, which is worth repeating for you, is that this problem is not such a big deal. For example, we have dumped literally hundreds of tons of armament, M-16's, AK-47's and what have you, Colt 45's, on the market over the years, and what we have been requested to trace, some 292, is a very small part of that. What is your answer to that? Mr. ORSINI. Well, that is one reason we are requesting to put agents in Colombia, so we can have firsthand access to the seizures at the time of seizures.

Our best tool for identifying and dealing with the sources of weapons going out of the country is the trace information from the country receiving the firearms. We have had trouble over the years, not only with Colombia but with other foreign countries as well, getting accurate, timely information.

Mr. HUGHES. Well, we often have problems getting accurate, timely information in this country.

Mr. ORSINI. Yes; we do.

Mr. HUGHES. Can we surmise from the fact that a sample of firearms from another country found that of 292 firearms that 224, or thereabouts, came from our country, that the universe of weapons from our country is pretty substantial?

Mr. ORSINI. I am certain you could surmise that it is substantial. I don't think that you can necessarily say that the 87 percent figure will hold up throughout.

Mr. HUGHES. But we are not seizing all the weapons, either.

Mr. Orsini. Exactly.

Mr. HUGHES. We are not seizing all the weapons because everybody isn't being arrested.

Mr. ORSINI. That is absolutely correct.

Mr. HUGHES. But these figures would be some indication of just how large a supplier we are?

Mr. ORSINI. I don't think there is any question about that.

Mr. HUGHES. How would you characterize an assault weapon? How would you define it?

Mr. ORSINI. Well, we were asked to define assault weapon and actually we don't have a 15 words or less definition of an assault rifle. We did a nationwide survey where we contacted shooting sports foundations, hunting guides, game and fish people, technical writers, the legitimate sporting industry. We purposely stayed away from law enforcement in this survey.

Based on that survey, on what they told us about what weapons were and were not suitable for sporting purposes, we came up with what we believe is a list of characteristics which, if a weapon possesses a number of these characteristics, puts it in a class of weapons that is not generally recognized as suitable for sporting purposes.

Mr. HUGHES. It is akin to "I can't define it but I know it whom I see it."

Mr. ORSINI. Well, not exactly. But the criteria have to be looked at as a whole, not individually. You may have a weapon that only has one of the characteristics.

Mr. HUGHES. For example, take the AK-47 and tell us, what makes that an assault weapon?

Mr. ORSINI. The three major categories that would put that in the assault weapon category are, number one, it is a semiautomatic version of a full automatic weapon. The AK-47 is the Communist bloc full automatic weapon, the AK, AK-47, by different designations, is the semiautomatic version of a full automatic weapon.

This particular one has a folding stock. It has a pronounced pistol grip. The argument can be made that a lot of hunting rifles have pistol grips, but not the pronounced pistol grip that is designed to facilitate one-handed shooting in a combat situation. It has bayonet lugs. It will accept a bayonet and a bipod. Those types of features make this type of weapon not suitable for sporting purposes.

Mr. HUGHES. You couldn't hunt rabbits with that?

Mr. ORSINI. I wouldn't say you couldn't but I don't know of anybody that does.

Mr. HUGHES. You wouldn't want to do that?

Mr. Orsini. No.

Mr. HUGHES. Well, let me ask you, would the AK-47 more accurately be characterized as a weapon that would be used by the military, rather than for sporting purposes? Aren't most of these weapons manufactured for military as opposed to sporting uses?

Mr. ORSINI. Yes. They are patterned after military weapons, very definitely.

Mr. HUGHES. Mr. Westrate, we have a number of drug enforcement agents in Colombia. Has there been an increase over the past few years in the number and types of assault type weapons and other military hardware, such as are displayed here today, which are being seized in connection with drug busts in that country? What is the trend?

Mr. WESTRATE. Chairman Hughes, there is no question about the escalation of heavy weapons and, as Bill had mentioned, explosives moving towards these cartels. The cases we have cited amongst ourselves this morning here in our testimony are only a few of the cases that have been made. There are large numbers of these weapons. They are being deliberately purchased and shipped to these cartel people.

Within the past month there was an arrest in Canada of two clearly hit team type operations of Colombian cartel people that had in their possession many of these types of automatic weapons and even hand grenades.

So, there is no doubt that these weapons are moving to the cartels for the purpose of defending themselves and taking offensive action.

Mr. HUGHES. So, we do have a serious problem in Colombia?

Mr. WESTRATE. No question. The rate of seizure and trying to get a handle on this is the reason we are working jointly with ATF to get their expertise into the problem.

Mr. HUGHES. What percentage of chemicals which we are seizing at Colombian laboratories have come from United States sources?

Mr. WESTRATE. As you know, we feel that there is a substantial percentage. The majority of the chemicals, we feel, reaching the cocaine labs in Colombia are from U.S. sources.

Mr. HUGHES. I am going to stick to the 5 minute rule, and I ask that other members do so also.

The gentleman from Pennsylvania.

Mr. Coughlin. Thank you, Mr. Chairman.

First, Mr. Orsini, based upon the information that we have on weapons seized in Colombia, are these being bought over the counter in the United States primarily? How are they being purchased in the United States? Mr. ORSINI. Most of them are being bought over the counter. What we are finding is that loosely knit groups of individuals will buy two or three at a time, three or four, from different licensed firearms dealers.

They are buying them in the commercial market, sometimes smuggling them out individually in their own luggage, sometimes pooling their weapons until there are maybe 35 or 40 at a time going out. Occasionally, we run into the large seizures, like my colleague described earlier.

Mr. COUGHLIN. So, what you are saying is that they are bought legally here over the counter, but exported illegally?

Mr. ORSINI. Well, all the provisions of a legal sale have taken place. The people have signed the forms. They may have falsified the forms. They may be prohibited persons buying them. But, yes, they have the color of legitimate sales.

Mr. COUGHLIN. Do you feel any additional Federal regulations are warranted in being able to control this kind of purchase and sale, and purchase and export?

Mr. ORSINI. Well, we have, I think---

Mr. COUGHLIN. Do you have all the tools you need?

Mr. ORSINI. All the tools we need; except the most vital link—the intelligence from the receiving countries. I think that would go an awfully long way in helping us deal with this problem.

Mr. COUGHLIN. In view of President Barco's concern, what kind of intelligence do we ask him for?

Mr. ORSINI. Well, we would like to get firsthand, on-the-spot, timely information on the seizures.

Just as an example, we have received from foreign governments a request to trace 24 Smith and Wesson revolvers. No model, no serial number, nothing. Just Smith and Wesson revolvers. They don't understand our system.

We participate with the State Department in their antiterrorist training program. We have visited several foreign countries, not only Colombia, and put on seminars for military and police officials in those countries to try to educate them on what we need. But they have their own agenda, especially in Colombia right now. They have more than they can deal with, without worrying about accurately copying down a serial number from a gun.

Mr. COUGHLIN. Let me ask, Ms. Biancaniello, how many requests for export licenses for semiautomatic weapons do you receive a year from Colombia? Do you know?

Ms. BIANCANIELLO. I do not have a statistic on that. I can take it for the record and get it. The only statistic I brought with me was the numbers of firearms that we have authorized to Colombia in 1989.

These should not be confused with exports, but we do have records where we show 1,893 pistols and revolvers authorized for export to Colombia. No particular breakdown on calibers at this point in time.

We show 24 machineguns, which were directed to the Government of Colombia, being authorized for export.

We show 181 rifles, which we know 180 of them to be .22 caliber rimfire semiautomatics.

We show two machineguns which were authorized for export to the Government of Colombia.

Mr. COUGHLIN. Those are the total licenses that were granted by the State Department?

Ms. BIANCANIELLO. For Colombia for 1989. They do not reflect exports. We could get exports against those, if you would like.

Mr. COUGHLIN. If this doesn't reflect exports, what does it reflect?

Ms. BIANCANIELLO. It reflects authorizations or quantities of firearms which have been authorized to be exported to Colombia. Our licenses are valid, up until recently, for a two year period. So that from the time we authorize an export, the person or the applicant has 2 years in which to effect shipment.

Mr. COUGHLIN. So, this is an authorization of an export?

Ms. BIANCANIELLO. Yes, an authorization. But the firearms may in fact not be in Colombia at this point in time.

Mr. COUGHLIN. Let me ask, Mr. Westrate, there has been some suggestion that weapons that are being found in Colombia come from outside the United States, from Vietnam, Cambodia, Cuba, other places. In your experience, do most of them come from out-side the United States? Or do most of them come from the United States?

Mr. WESTRATE. I would say that at least in the last couple of years our investigations would reflect that most of these weapons are coming from the United States. I wouldn't exclude potential sources from other places, but the numbers of weapons involved in these cases would indicate the majority from the United States.

Mr. COUGHLIN. Let me ask you if you feel there are any further regulations that would assist in preventing this very substantial export from the United States?

Mr. WESTRATE. Well, I am not a full expert on firearms, but I would say that the tools appear to be there. It is a question of resources and information, being able to work the investigations on these people. It is a volume question.

Mr. COUGHLIN. Let me address that same question, if I might, to

Mr. Rosenblatt, very briefly, and then I will yield. Mr. ROSENBLATT. Well, Congressman, I believe the key both domestically and internationally is intelligence.

I don't think any agency represented here, or even state and local, can be effective without sources of information.

It is extremely important with respect to foreign countries receiving shipments, whether they be of U.S. weaponry or munitions, as we like to call it, or from foreign countries, we need to know, from a U.S. perspective, not only how much is going out of this country and what is being imported illegally or diverted from legal shipments into Colombia and the other source producing countries, but we need to get a handle on the kinds of weapons and the amounts of weapons that are being shipped from other countries to these source producing countries. And that means having personnel in those foreign countries working jointly with DEA and the other members of the embassy.

Mr. COUGHLIN. Thank you, Mr. Chairman. Let me yield at this time.

Mr. HUGHES. I would say to my colleagues that we are going to follow this committee's standard procedure, which is to recognize Members on the basis of their arrival order at the hearing.

With that in mind, the gentleman from Connecticut, Mr. Shays, is recognized.

Mr. SHAYS. Thank you.

I believe we don't do an adequate job to stop the flow of chemicals to make the drugs, we don't do an adequate job to stop the weapons that are used to protect the drug dealers and terrorize law-abiding citizens, and we don't do an adequate job to stop the flow of money that buys these drugs.

The question I want to ask each of you is: How is the coordination and cooperation among law enforcement agencies to control the illicit distribution of assault weapons? Is there good coordination and cooperation?

I would like to specifically ask each of you what we, as legislators, can do to help that process, to improve that process?

Mr. ORSINI. I will begin. At this point in time, the cooperation between particularly the DEA and Customs and ATF is the best it has ever been. You read a lot about turf battles and it makes good press. But on the street level, where the agents are out there on the front line, they are working hand in hand.

Every one of the cases we make starts off as a domestic investigation, but as soon as we have any indication at all that these guns are destined for foreign country, the first phone call we make is to Customs.

Mr. SHAYS. Let me just ask the rest of you, then, if you would agree in general? How could it be improved?

Mr. WESTRATE. I would definitely agree and point out that even on the level of the domestic street crack task force, we are working very closely together on guns and drugs with ATF.

Also, I think we in Colombia have hosted the two TDY ATF agents in the DEA office space, and I believe the final arrangement will be that when they are deployed permanently they will be residing in the DEA office space.

So that we have full coordination and cooperation of agents from two executive departments, and I would say generally the cooperation is excellent and I don't know of any legislative encouragement we could have in that area.

Mr. ROSENBLATT. I think we have all the laws and regulations that we need right now to effectively do the job, in addition to what my colleague, Mr. Westrate, said about resources and the volume of the job.

Again I go back to my earlier comments. It is up to us, working with the State Department and working with the various host governments, and obtaining and optimizing the intelligence relative to munitions or money or precursor articles destined for the foreign countries.

Mr. SHAYS. Then I am going to surmise that you are saying there is excellent coordination. I am going to surmise that you do not need any legislative change from this group here or from Congress in general. I am going to surmise that the only thing you really need is more resources.

Is there an agreement on that?

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Mr. WESTRATE. Legislative in terms of coordination and cooperation, yes. I think we would all support the President's pending legislation up here, which I would put more in the category of deterrence than in, you know, trying to stimulate us working together better.

Mr. ROSENBLATT. It is not just a question of resources, Congressman. It is also an effort on our part, working with the Colombian Government and other governments, indicating to them and having them to appreciate the kinds of intelligence information we need, and once we have done that, by having people in-country, okay, and not just providing serial numbers but providing all the circumstances surrounding a particular seizure.

We like to call it post seizure analysis, to try to find all the facts so it can lead us back to whoever the violators or the co-conspirators may be. So, it is maximizing the intelligence again.

Mr. SHAYS. You are saying that there needs to be better coordination and cooperation with the so-called host country, in a sense?

Mr. ROSENBLATT. I think there is excellent cooperation. It is getting into this area, along with several other areas that you have mentioned, with the host government and explaining to their people and their managers, so it drifts down as to exactly what we need and why we need it, and how successful we get. Also, have a mechanism, based on that information, the successes in the United States be then relayed back to the host government, so their police officers and military people become aware that their information did lead to success.

Mr. SHAYS. Thank you, Mr. Chairman.

Mr. HUGHES. Before I recognize the next member, let me raise another issue on behalf of myself and my colleague from Pennsylvania.

You suggest that we have enough tools, but let me ask you the following. We have banned the importation of 43 military type weapons which do not meet the sporting purposes test. The weapons banned represent 25 percent of the universe of assault-type weapons. But 75 percent of such weapons is domestically manufactured. So, while we have effectively banned the importation there is no ban on exportation.

Now, when you suggest that we have sufficient tools, I'd ask you to address the question of how can that be when we have only done part of the job?

My second point concerns the President's legislation, which I happen to support: How long does it take to change a 15-round clip?

Mr. WESTRATE. Not very long.

Mr. HUGHES. So, how does that effectively deal with the problem?

The gentleman from Texas.

Mr. ORTIZ. Thank you, Mr. Chairman.

We talk about coordination and being able to exchange information between the different agencies. My question would be: Do we have a plan? Do we have a strategy between the different agencies as to how to attack this problem, how to seize these weapons? I mean, is there a plan that we have? Maybe this is not the place to discuss it if you do have a plan. But do we have a plan, a strategy?

Mr. ORSINI. Certainly each agency has its own enforcement strategy.

Mr. ORTIZ. Is it compatible?

Mr. ORSINI. They are compatible and we in fact have MOU's, memoranda of understanding, between ourselves and Customs and the other enforcement agencies, yes, sir.

Mr. ROSENBLATT. We have gotten beaten up enough, if I may use that expression, from the Congress and from the media about turf fights. So, we have entered into what I would consider, as of late, effective, more effective than ever before, into the MOU's.

As my colleague from BATF has said, when they start a Gun Control Act violation, if it looks like it is going to be exported from the United States, then we work a joint case. We maximize the information from that case back into our data files.

Banning, further banning of exportations of weapons, to my way of thinking, only further exacerbates the illicit activity that will go on despite the ban. I think it would just drive them further and further underground.

As I have said before, I think it is important for every one of the agencies to have informants and to have intelligence, because, as has been said before, we don't see, except in the last 6 or 8 months, enormous shipments. What we see is, of the 270,000 gun dealers out there, there might be 30,000 or 40,000 of them.

If you have 10 or 15 people in your organization or in a trafficking organization picking up one or two weapons legally from these dealers, putting them into company baggage going back to South America or back into Mexico, it becomes a very difficult problem for us in Customs to ferret out these one and two guns that are going out in baggage. And you multiply that, okay, by 30,000 or 40,000 gun dealers and you are talking about a substantial amount of weapons that are going out of this country each year in small lots.

In the aggregate or the accumulate, it is a significant problem. What we are seeing as of late is more and more 25, 10, 15, 30, 100 guns going out, and that is a phenomenon that has occurred in the last year or so.

Mr. ORTIZ. Let me ask something else. When we talk about confidential informants, are you talking about within the United States? Or are you talking about places where the weapons are shipped?

Mr. ROSENBLATT. What I am talking about is confidential informants here in the United States. I have got to believe, at least from my agency's standpoint, in working with our law enforcement counterparts, that they have informants. If they get information, they share it with us because of the mutual interest that we have in the problem.

We also have information coming from the intelligence community, because every one of the agencies represented here today have tasked the intelligence community with information of this kind or for information of this kind.

Mr. ORTIZ. Something else, Mr. Orsini. You mentioned something about being able to trace 21 weapons to the Government of Colombia. Can you give us a little history as to where did those weapons come from? Was it the police, the military? Were they stolen? If you can.

Mr. ORSINI. They were sold directly from Smith and Wesson in this country. They were sold to the Government of Colombia. I think it was to the Colombian National Police, but I am not certain. I would have to doublecheck that. I can get that information back for you, if you would like it.

Mr. ORTIZ. My question is, because we are talking about maybe sending more people from DEA and I think we can trust them. I appreciate the efforts of Colombia to this point. I think that they are doing a great job and I think that we need to support them.

Just one more question. What about the Dominican Republic Computer Center, the intelligence center that they have? Are we utilizing it?

I was very impressed when I went to the Dominican Republic. They have an outstanding communications center, computer system that they have set up. Is it being used by us?

Mr. WESTRATE. Yes, Congressman, in our case it is, very actively. It continues to improve in its capabilities. We have made formal linkages between that center and the El Paso Intelligence Center in Texas. We are coordinating with it daily. It is quite an example of a very good facility.

Mr. ORTIZ. Should there be efforts by us to help other countries set up a similar system, like Colombia, Peru and some of the others?

Mr. WESTRATE. Yes. We are working on that in conjunction with the State Department. We have a DEA supervisor assigned to the State Department, who is pursuing this on a full time basis with one of INM's staff people. So, we are aggressively pursuing this in a number of countries.

Mr. ORTIZ. Thank you, Mr. Chairman. I certainly appreciate the fine work the gentlemen are doing.

Mr. HUGHES. I thank the gentleman.

The gentleman from Florida, Mr. Grant, has 5 minutes.

Mr. GRANT. Thank you, Mr. Chairman.

I would like to ask Ms. Biancaniello, do you have evidence that guns that are being shipped by our Government, not purchased from private arms dealers but from our Government, for use by the Colombian military are finding their way to drug traffickers?

Ms. BIANCANIELLO. When you say our Government, are you speaking in terms of the Department of Defense programs or those that are coming under State Department jurisdiction?

Mr. GRANT. If you have knowing of either or both.

Ms. BIANCANIELLO. Okay. I have no knowledge of that which goes under the government-to-government auspice. I also have no knowledge of firearms being diverted from our export system.

As a matter of fact, when we looked at, and we have been continuing to work with Customs, and we have in the investigations found out that the transactions that we have handled in fact have been valid transactions to date.

Mr. GRANT. Do any of the witnesses have evidence that any weapons that are shipped by our Government for military use in Colombia are finding their way to drug traffickers? Mr. ROSENBLATT. I agree with my colleague, Congressman. However, once it arrives into the inventory system of any Government, and let's not just pick on Colombia because we have the same problem in this country, maintaining an accurate inventory.

We have found weapons—when I say we have, the Colombians have found weapons and there have been traces done and there were weapons going back to 1971 that were shipped legally to the Government. But there are employees in any government that help themselves to some of these weapons.

Mr. GRANT. All right. Mr. Orsini, we have heard testimony in previous hearings that mercenaries are being employed by drug outlaws. Do you have evidence that this is another source of weapons to these drug outlaws?

Mr. ORSINI. You mean, are they using mercenaries to come into this country and get the guns?

Mr. GRANT. Right.

Mr. ORSINI. We have no indication of that, no.

Mr. GRANT. Has the A.T.F. been prosecuting individuals linked by the serial numbers that you mentioned earlier to the legal purchase of individual weapons in the United States, which are later confiscated in Colombia?

Mr. ORSINI. Yes, sir. We have been involved in several investigations where the target country was——

Mr. GRANT. You are prosecuting?

Mr. ORSINI. Yes, we are prosecuting them, yes, sir.

Mr. GRANT. I noticed in your testimony that Florida, my home State, is the source State for approximately 50 percent of weapons to the Caribbean. Does weapons traffic flow proportionately to drug traffic? If we stop the flow of drug through, let's say, Florida, for example, do we also see a decline in weapons traffic?

Mr. ORSINI. In certain cases. In the case of Colombia, that would probably be true. But on the west coast we have a big problem with arms going out to the Philippines. And, of course, as you would expect, California is the major source state for firearms going to the Philippines.

It is more a matter of convenience. The commercial routes to Colombia from the United States go through Florida. That is where the people pick up their guns and transship them out of the country.

Mr. GRANT. Do the drug outlaws use more weapons proportionately than other kinds of blue collar criminals?

Mr. Orsini. Yes, sir, no question.

Mr. GRANT. Can you give us your judgment on the effectiveness of the administration's ban on foreign manufactured assault type weapons? Has it been good, moderate, not so good?

Mr. ORSINI. Well, I am not trying to duck your question, but it is really too early to tell. The ban only went into effect a couple of months ago. To say that the ban has resulted in fewer assaults by drug outlaws, we really can't say that at this time. But over the long haul, it certainly will have an effect.

Mr. GRANT. Following up on Mr. Hughes' comment, can you say that we would do a better job if we had some kind of ban on the exportation of domestically produced weapons, rather than just the importation? Mr. ORSINI. I agree with the comments of my colleagues, that we do have restrictions on the exportation of weapons. Permits have to be received, licenses obtained. But people still smuggle them out and I think they would continue to do so.

Mr. GRANT. Do you think that we ought to ban the sale, the domestic public sale of so-called assault type weapons?

Mr. ORSINI. That is under study at this time and we do not take a position on that.

Mr. GRANT. Does anybody take a position on that?

Mr. WESTRATE. I think clearly the administration has taken a position on it and that is the position we would support.

Mr. GRANT. The public sale of so-called assault type weapons, I want to make sure?

Mr. WESTRATE. Yes. A decision was made not to ban domestic sales of assault type weapons. That was the decision.

Mr. GRANT. Thank you, Mr. Chairman. My time is up.

Mr. HUGHES. We all know the decision not to ban domestic sales of such weapons. All we are questioning is the wisdom of that decision. You know, we tiptoe around the tulips when it comes to guns. It is an interesting phenomenon.

Before I call upon the next member, I find it interesting that you would suggest that it wouldn't be helpful if we ban the export as well as the import of assault weapons. I mean, what good is intelligence, Mr. Rosenblatt, if in fact you can, as a legitimate nondisqualified applicant for these weapons of war, just go to the State Department and get an export license? Where does intelligence come in? You can answer it.

The gentlelady from New York.

Ms. Lowey. Thank you very much.

I would like to pursue that, too, because it seems to me, if a youngster is in a school yard and going to get shot, or if a senior citizen is going to a church or a synagogue or to the store and going to get shot, he or she doesn't care whether it is domestic or it is imported. It is the same impact.

So, I think this is a very important line of questioning. And to Mr. Orsini or to whoever of the panel, it seems on June 23, Secretary Nicholas Brady disclosed an administrative list of 17 domestically produced assault rifles that would be banned if produced abroad.

However, when the President produced his crime package, he failed to call for a ban on domestic assault rifles in his \$1.2 billion crime package.

I am a little confused, and perhaps someone can come up and discuss some of those weapons. When I have discussed this issue with the National Rifle Association, they claim that there is no clearcut definition of assault weapons and that semiautomatic weapons are legitimate sporting weapons which are confused as being assault weapons.

So, we are going to ban them when they come in, so we can be the sole manufacturer here. We can ship them abroad. We can have them go throughout the country. We don't have any kind of a real licensing procedure, any kind of a national computer system so we know who is buying and who is selling.

Perhaps if there is some equipment here, you can enlighten us as to what does an assault weapon really look like that distinguishes it from a sporting weapon. What do you think we should really do with this domestic production of these assault weapons?

I know I gave you a lot of questions at once.

Mr. ORSINI. We discussed this point a little bit earlier about the features which distinguish what is commonly known as an assault type weapon. They are the military configuration-

Ms. LOWEY. I know you did discuss it and I know that many of us read it. But somehow, there doesn't seem to be a clarification. I am continually approached by members of the N.R.A. that tell me that all these assault weapons are really used to go hunt. Hunt what? That is the question.

Mr. ORSINI. Well, I cannot attribute any statement to the NRA that says that these type of weapons are used for hunting.

Ms. Lowey. Are any of these used for hunting?

Mr. ORSINI. No. Nothing on this table is a hunting weapon.

Mr. HUGHES. Except that they can be used for hunting people.

Ms. LOWEY. Are these weapons produced domestically, what you have here?

Mr. Orsini. Some are. Some are imports.

Ms. Lowey. Are they currently being manufactured?

Mr. Orsini. Yes.

Ms. Lowey. And they are being sold? Mr. ORSINI. Yes.

Ms. Lowey. Over the counter?

Mr. Orsini. Yes.

Ms. Lowey. Without a license?

Mr. ORSINI. No. On the part of the purchaser?

Ms. Lowey. Yes.

Mr. ORSINI. No, for the purchaser no license is required.

Ms. LOWEY. They just can go to a store and buy one of those? Mr. ORSINI. Some of these are fully automatic and, of course, they are restricted. But the semiautomatic versions are available

over-the-counter.

Ms. Lowey. Just go to the store?

Mr. Orsini. That is right.

Ms. Lowey. But they are not used to shoot deer, bear or anything like that?

Mr. Orsini. No.

Ms. LOWEY. Then what legitimate reason could we have to continue manufacturing them here?

Mr. ORSINI. Well, people enjoy owning and shooting them.

Ms. Lowey. Enjoy it?

Mr. ORSINI. Right.

Ms. Lowey. Perhaps you can explain. I am sorry. Perhaps you can explain.

Mr. ORSINI, Okay. We will take this one. This is the AK's. It is a semiautomatic version of the AK-47, which is the full automatic Communist bloc military weapon.

The features which set this apart from a commercially available rifle which is readily recognizable as suitable for sporting purposes are, number one, it is patterned after a fully automatic weapon. Number two is the military configuration. It has a bayonet lug. It

has a bayonet. It has a folding stock, which there is no need for on a sporting weapon.

Again, all of these features have to be taken collectively. The argument can be made that, yes, a hunting rifle with a folding stock is easier to carry through the brush. So, just the presence of a folding stock by itself does not make this an assault weapon. But in combination with the oversized clip, the pistol grip, the pronounced pistol grip which is designed to facilitate singlehanded firing in combat situations, there is no advantage to this for hunting purposes.

The lugs for a bipod. Some of these weapons will accept a bipod. One we had with us earlier had a bipod attached. We didn't bring that one with us today.

One other consideration was the cartridge. This weapon accepts a cartridge, a centerfire cartridge two and a quarter inches or less in length. That is another consideration. That is one of the factors that goes into making the determination.

Ms. LOWEY. Well, I guess I won't take that much more time, but I guess I continue to be puzzled as to why these 17 weapons, for example, are banned into this country for import purposes and yet we continue to manufacture them here, continue to sell them there, and when we go over to the Andean nations we find that 87 percent of the weapons that are used to kill are manufactured here.

Mr. ORSINI. Well, I can answer that by saying that under existing law we had statutory authority to ban the imports. We have no statutory authority to prevent domestic production.

Ms. Lowey. Thank you very much.

Thank you, Mr. Chairman.

Mr. HUGHES. The gentleman from Connecticut.

Mr. SHAYS. I had asked a question earlier and I am very embarrassed by my question and the response, in light of your question.

I said, was there adequate coordination to stop the illicit flow of weapons. And all of you said, well, we don't need any change in legislation.

I either was not a good listener or I am just too new here, but it seems to me it is not illicit to export weapons and you need a law to say it is illegal. What am I missing?

Mr. ROSENBLATT. When you are going to export weapons from the country, you need an export license for those weapons. And that export license is supposed to be presented to U.S. Customs at the time of the departure of that shipment.

Mr. TRAFICANT. Will the gentleman yield on that question?

Mr. SHAYS. Yes, definitely.

Mr. TRAFICANT. No one comes in and files a license to export drugs or other contraband. What makes anyone in the law enforcement field believe that someone who has dastard intentions is going to file a license to export these types of weapons?

Second of all, I want to know who would ever walk through the brush and needs a folding, collapsible arm on one of those weapons? I am sorry to interrupt, but as a former sheriff I am getting a little behind the times here.

Mr. HUGHES. We are going to get to the gentleman from Ohio.

Mr. TRAFICANT. I would like someone to answer that question on the license business in regard to Mr. Shays' inquiry here.

Mr. SHAYS. If I might, I took my time. It wasn't my time. I yield back to the Chairman.

Mr. HUGHES. The gentleman from Ohio is recognized for 5 minutes.

Mr. Oxley. Thank you, Mr. Chairman.

I would ask unanimous consent that my opening statement be made part of the record at the appropriate place.

Mr. HUGHES. Without objection, it will be so ordered.

[Statement of Mr. Oxley appears on p. 114.]

Mr. OXLEY. Thank you. Mr. Chairman, first of all, I would like to put in a plug for a bill that I have introduced which would make the penalties that now exists for machine guns for semiautomatic weapons. That is, currently, if you use a machinegun in a violent crime you go to jail for 30 years, second offense you go away forever without possibility of parole. My bill would elevate the same penalties for the use of semiautomatic weapons as we do now for machineguns. I would ask any interested member of our committee to take a look at H.R. 3322 and possibly cosponsor this legislation.

I know it doesn't directly address the problem of exports, but I do think it is something that we should seriously consider.

I want to ask a question to the panel, a followup somewhat on the gentleman from Florida's question in regard to mercenaries. Not so much mercenaries coming into this country and purchasing weapons or trying to illicitly transport those across the border, but whether any of you have any evidence that the mercenaries who were training narcoterrorists in Colombia had a pipeline or had some connection to get those semiautomatic weapons and other ordnances into those countries?

I saw some testimony or some witnesses on television not too long ago who had indicated that the mercenaries were involved up to their necks in the illegal transportation of weapons, and that was part of the package that they delivered for the narcoterrorists in Colombia.

Let me ask Ms. Biancaniello, did you used to play shortstop for Kansas City?

Ms. BIANCANIELLO. No; I have no knowledge of that. I guess the only comment that I can make, and we seem to perhaps be mixing, from time to time, the domestic control of firearms with the valid licensing and the illegal transactions. But as I view it, from my perspective in Munitions Control, it is that we deal with and try to ferret out the illegal transactions. So, when we license the export, we take into account the type of firearm, the ultimate end use and the end user. In doing so, we have come to the conclusion, at least in Colombia to date, that all the firearms that we have exported have been exported for valid purposes to valid end users.

Mr. OXLEY. But you don't have any evidence that mercenaries were illegally transporting weapons into Columbia?

Ms. BIANCANIELLO. That is correct. Our licensing process does not reflect that.

Mr. OXLEY. What about from any other country besides the United States? Do you have any evidence to that end?

Ms. BIANCANIELLO. No.

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Mr. Oxley. Okay.

Mr. WESTRATE. Mr. Oxley, I think the mercenary situations, two in the recent 6 month period, were basically providing training. I don't believe the cartels really need a new source of weapons.

They have plenty of weapons. My understanding of what they did was to provide training, helicopter support, helicopter assault training, that type of activity. I am not aware that they were also responsible for supplying the weapons.

Mr. Oxley. Is that your understanding as well, Mr. Orsini?

Mr. ORSINI. Yes, sir, it is.

Mr. Oxley. You also agree with that, Mr. Rosenblatt?

Mr. ROSENBLATT. That is the best information we have.

Mr. OXLEY. Okay. Our friend from New York had to leave early, Ben Gilman, but he wanted me to ask the panel, particularly BATF and DEA, a few questions.

It is his understanding that there is only one individual in each of your particular departments that is assigned to illicit weapons in Central and South America. Is he wrong, hopefully, on this?

Mr. ORSINI. Yes, sir, that is not correct. We do have one individual in bureau headquarters, who is the program manager for our ITAR program. He oversees all the investigations nationwide under this program, provides the trace data, the leads to the field, and coordinates our responses. But he is certainly not the only person in ATF involved in this at all, no, sir.

Mr. OXLEY. How many do you have in the field in Central and South America?

Mr. ORSINI, In Central and South America?

Mr. OXLEY. Assigned to Central and South America.

Mr. ORSINI. We have no one outside the United States.

Mr. OXLEY. Mr. Westrate, I know this is not necessarily your bailiwick, but could you shed some light on this?

Mr. WESTRATE. Yes, sir. We do not have any weapons experts per se. That is ATF's business and other agencies.

We do, of course, have liaison officers formally assigned at headquarters. But I consider every DEA agent in Latin America to be responsible for feeding back to BATF any intelligence they develop in these seizures. So, we would normally do that in the course of an investigation.

Mr. ÖXLEY. What about Customs? Where do you stand with Central and South America?

Mr. ROSENBLATT. On Central and South America, to begin with, we have seven special agent personnel assigned to our munitions branch.

Mr. Oxley. Where?

Mr. ROSENBLATT. In headquarters—and three intelligence individuals.

With respect to people assigned in South America, we had an office in Panama, which we had to withdraw those representatives from Panama because of the situation in Panama. That used to cover the South American countries and Panama.

Now, we have worked for about a year with the Department of State, trying to get some agents down in South America, okay, to cover the entire South America for munitions, for money laundering, and also to assist wherever we could in cooperation with DEA on precursor chemicals.

Mr. Oxley. How many did you have based in Panama?

Mr. ROSENBLATT. At the time, we had three agents based in Panama, plus some support personnel.

Mr. OXLEY. Were they assigned to all of Central and South America?

Mr. ROSENBLATT. That is correct.

Mr. Oxley. But they just happened to be based in Panama?

Mr. ROSENBLATT. That is correct.

Mr. OXLEY. So, you are looking for a new host country?

Mr. ROSENBLATT. That is correct. We are working with the State Department in trying to acquire that new home, if you will, to cover South America.

Mr. HUGHES. Time.

Mr. OXLEY. If I could, Mr. Chairman, just follow with one more question.

Are they permanently assigned to South America? Or were they permanently assigned?

Mr. ROSENBLATT. They were permanently assigned to Panama.

Mr. Oxley. Panama, but within----

Mr. ROSENBLATT. Covering the Central and South American countries.

Mr. OXLEY. So that once you find another host country in Central or South America, they would be permanently assigned to that region?

Mr. ROSENBLATT. That is correct.

Mr. OXLEY. Thank you.

Thank you, Mr. Chairman.

Mr. HUGHES. The gentleman's time has expired.

The gentleman from Ohio.

Mr. TRAFICANT. Thank you, Mr. Chairman. I have a couple of comments.

Number one, the proliferation of these types of weapons and the problems they bring will never be solved until all law enforcement agents and agencies, including the Federal agencies, join forces for

a total ban and quit running away from the politics of the issue. Second of all, as a former sheriff, the only people carrying those types of weapons through heavy brush are hunting other people and killing them. You know it and we know it.

We are doing nothing in this country about the proliferation of murder that is coming from this type of overspray that accounts for 60 percent of murders once those things are involved.

I tell you, to hear Federal agencies continues to come in worried about what their ultimate boss feels, the President, for some political whim, is the reason this country is in such a hell of a poor shape.

Now, I am under the impression that many of those weapons are absolutely produced with similar, same ID numbers, which makes them impossible to be traced. Just one word answer, yes or no. Mr. Orsini, is that true?

Mr. ORSINI. Would you repeat the question?

Mr. TRAFICANT. That many of these weapons are being produced, stamped with one ID number, multiple weapons are being made with the same ID number, and it makes it impossible to be traced.

Mr. Orsini. No, sir.

Mr. TRAFICANT. You have no knowledge of that?

Mr. ORSINI. I have no knowledge of that.

Mr. TRAFICANT. Mr. Rosenblatt, any knowledge of that?

Mr. ROSENBLATT. I do not have any knowledge of that.

Mr. TRAFICANT. Any knowledge of that?

Mr. WESTRATE. No, sir.

Mr. TRAFICANT. Okay. Fine. You mentioned that ATF, DEA, and Customs have never had a better working relationship. Just a one word answer. Is it just as good with the IRS, the Treasury Department, and the FBI on these issues?

Mr. WESTRATE. Yes; it is.

Mr. Orsini. Yes.

Mr. ROSENBLATT. Yes.

Mr. TRAFICANT. Fine. Man, that is really a revelation, because it sure don't look that way out there when you are in the field. Finally, one question, Mr. Rosenblatt. I don't mean to put you on

Finally, one question, Mr. Rosenblatt. I don't mean to put you on the spot. What is the Customs law on seizing one of these things? What do you have to do with them if you seize one? Who do you turn them over to?

Mr. ROSENBLATT. What do we do with them?

Mr. TRAFICANT. Yes. What does the law say, briefly?

Mr. ROSENBLATT. Firearms seized by U.S. Customs, once forfeited to the government, are handled in one of three ways. They are destroyed, retained for use, or exchanged for desirable service weapons on a one-for-one basis.

Mr. TRAFICANT. Then where do you dispose of them?

Mr. ROSENBLATT. Each method of disposition has certain qualifications. For example, no firearms are exchanged which have not first been classified by our National Firearms Program Staff at Ft. Benning, as suitable for use by U.S. Customs. This category may include nonservice type weapons which are held for use as "flash" in undercover sting operations. However, certain weapons in this category such as military type machineguns would not be exchanged, but rather destroyed. A typical exchange weapon would be a nonstandard service weapon such as a Remington Model 870 shotgun. Desired models received in exchange would be a standardized service weapon.

The exchange program is handled by our National Firearms Program Staff, in accordance with GSA regulations contained in title 41, Code of Federal Regulations, chapter 101.

Forfeited weapons which may ultimately be turned over to State or local law enforcement agencies are also from the "retained for use" category. This form of asset sharing is made in accordance with the provisions of title 19 U.S.C. 1616.

Mr. TRAFICANT. Do any of them ever end up in the hands of people as gifts?

Mr. ROSENBLATT. As gifts? No; let me put it this way: If we do an exchange sale with a manufacturer—

Mr. TRAFICANT. Just yes or no. I am going to leave out of here. Yes or no. Mr. ROSENBLATT. I cannot answer that question with a yes or no, Congressman.

Mr. TRAFICANT. Do you have any knowledge of any Customs agents that gave one of these as a gift to the retiring former Customs boss, Mr. Von Raab?

Mr. ROSENBLATT. Absolutely not; I have no knowledge of that.

Mr. TRAFICANT. Fine. Also, I would state that I think the weapons that we should be looking at and some of these weapons being produced illegally coming in here from China all have the same ID number.

I would just like to close and say, Chairman, there was a question asked earlier about a plan and a strategy. I don't think we have much of a plan or strategy—no offense to these people. I think that it is Congress' job to do that, on banning these weapons, putting a plan and strategy together. There is too much politics that override these issues.

Mr. HUGHES. I thank the gentleman. Apparently the gentleman can't make his mind up on this issue. [Laughter.]

We are going to have to break now as the House is in the process of voting. We will be back, hopefully, within 10 minutes.

The committee stands recessed.

[Recess.]

Mr. HUGHES. The Select Committee on Narcotics Abuse and Control will come to order.

We are waiting for a couple of our colleagues to return from voting who have not yet had their first round of questions. While they're returning, let me see if I can clear up a couple of things.

First of all, suppose I was a legitimate purchaser of a domestically manufactured weapon, such as are displayed before us. What if I got a permit, bought two or three weapons or, for that matter, went to several dealers and assembled 25 weapons and I wanted to export them to Colombia. Would they all require a license?

Ms. BIANCANIELLO. Yes; they would.

Mr. HUGHES. All of them?

Ms. BIANCANIELLO. Yes. All firearms, no matter what the caliber, require a license.

Mr. HUGHES. Now, let's assume that I have no criminal record, that I've filled out my ATF form and have complied with the law. Could you turn me down?

Ms. BIANCANIELLO. Yes. We may turn you down for foreign policy, national security reasons. In fact, we do have policies which we have implemented which, if in fact these firearms in question were destined for a—not destined, I should say for a government, we would turn you down. The policy is that automatic firearms are exported only for government use.

Mr. HUGHES. But these are semiautomatic weapons.

Ms. BIANCANIELLO. Okay. Semiautomatics, we would then review the end use and the end user. We also review transactions for various other things, such as validity. And then we also go in—country.

Mr. HUGHES. Let's assume I am going to sell them to a firearms dealer in Colombia.

Ms. BIANCANIELLO. There are occasions when we would view that transaction and we would favorably look upon its export, depending upon the type of firearm.

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Mr. HUGHES. What does that mean? You wouldn't turn down such a request?

Ms. BIANCANIELLO. We would not turn it down.

Mr. HUGHES. That is what I am trying to find out. Does that make sense to you? We hear that we don't need any more tools for addressing this issue. We are now exporting a lot of semiautomatic weapons, but we have banned their importation. Isn't there something hypocritical about saying, in essence, that we don't want these weapons coming into our country because they have no sporting value, yet we are continuing to export them?

Ms. BIANCANIELLO. Perhaps we don't need any new tools but in fact we have current tools that would provide us to implement a policy which would be a ban on exports to Colombia, if we wish to do that, if we found that would serve us in terms of our foreign policy or national security needs.

Mr. HUGHES. I will pursue that some more. Don't you have criteria that you use in deciding whether or not you have the right to turn down an export request? For example, do you consider whether the weapons pose any national security implications or whether the desired export is a semiautomatic weapon, or is a weapon which has not been converted to an automatic weapon, so that it does not fall into prohibited class? On what basis could you turn down an export request?

Ms. BIANCANIELLO. We may turn it down for foreign policy or procedure or policy which is implemented by the Department of State. We could, in conjunction with our policy people, determine that exports would— and we would probably work with the Government of Colombia to seek to determine that certain things would not be exported there.

We are, in fact, as I had said in my statement, working with the government to look forward to an import certificate which they would issue. In doing so, we would then know that they had a handle on these particular firearms coming into their country.

Mr. HUGHES. Is there any desire on the part of the State Department at this time to make a policy decision about banning the export semiautomatic weapons to Colombia?

Ms. BIANCANIELLO. We are reviewing that and I can get back to you with, in fact, what is determined. We have been working with the Colombian Government.

Mr. HUGHES. President Barco has asked for our help. He has said, my country and I are being besieged and many of the weapons that are creating the carnage in my country are coming from the United States. What more could you ask? If foreign policy considerations are important, wouldn't President Bario's request be a very significant factor in determining whether or not we really want to continue these exports?

Ms. BIANCANIELLO. In fact, that would be. As I had said in my statement, as early as May the Ambassador down there decided that perhaps additional controls were required, began to work with the government, and as late as last night we talked to the Ambassador and we asked about the—or he informed us regarding the import certificate, that they were working on it.

But they view the problem here as unauthorized imports, not ones which were authorized. So, perhaps the problem is one of illicit transactions leaving the United States, but also the controls within Colombia in getting the guns in there.

Mr. HUGHES. I am going to pursue this some more, but I see our colleague from New Jersey has arrived.

The Chair at this time recognizes the gentleman from New Jersey, Mr. Guarini.

Mr. GUARINI. Thank you very much, Mr. Chairman.

I listened with great intent at what was said and we talked about statistics and investigations, methodology and insights. But I didn't get or glean any strong positions, any sense of outrage, any solutions. I think that is fairly supportive of the administration's position, because President Bush did fail to include the semiautomatics in his drug package, which was a great disappointment to me.

I would like to know, how do other countries of the world handle the developed countries like England and Germany and France, Italy, Japan, how do they handle the semiautomatic weapons? Is there a policy, a strong, effective policy? Do they tolerate the manufacture and the sale of the Colt weapons and the Uzis and the AK-47's in their country like we do?

Ms. BIANCANIELLO. I can't speak for the internal controls, but I do know that in fact many countries over there, such as the United Kingdom, Germany, Austria, manufacture like or similar type weapons. In fact, the AK, which was mentioned here, is a Heckler Koch, is it not? Oh, that is the U.S. produced side.

Mr. GUARINI. Isn't that Chinese?

Ms. BIANCANIELLO. Yes.

Mr. GUARINI. The Uzis are Israelis?

Ms. BIANCANIELLO. Yes. But Heckler Koch is one of the larger manufacturers in Europe, in particular. The British have several manufacturers.

So, we have like or similar weapons coming out of the European countries.

Mr. GUARINI. But can they be sold over-the-counter in a store like the AK-47, with 32 clips which can spit out a rain of death in 4 seconds?

Ms. BIANCANIELLO. I cannot speak to their internal controls of firearms, but I do know that they export their firearms to other countries, just as we do.

Mr. GUARINI. There is no internal controls that you know of one way or the other? You didn't make any study of it, you are not curious or concerned as to what other developed countries might have as their experience. Is that correct?

Ms. BIANCANIELLO. I am just not familiar enough with that to answer it at this time.

Mr. GUARINI. The administration isn't familiar, either, as far as you know? Anybody else, the DEA or Customs, is there any other opinion from your knowledge of being in other countries in which you serve? David, do you know if there is a different approach to these semiautomatic weapons in other civilized countries of the world?

Mr. WESTRATE. No, sir, I really am not familiar with those laws and regulations. I am sorry.

Mr. GUARINI. I think it would be very interesting if we found out what is going on in the other countries of the world, because this is a social problem and it is a problem that we have got to find answers to. If there are other countries that have an experience base, we should learn from them.

Are we getting cooperation from the countries like Mexico, Colombia, Peru, and Bolivia, where there are a lot of these drug problems? Is there data that is coming up? Are they collecting the data as you want them to collect it? Are they cooperating with us?

Mr. WESTRATE. Yes, they are, because they feel very strongly on this issue. As you know, about 3 years ago we set up a formalized system with Mexico, where through the D.E.A. channels we feed information to BATF here in Washington to also follow up on the histories of these seized weapons.

So, I think the two primary countries of concern are Mexico and Colombia, to a lesser extent Peru, and still lesser Bolivia.

Mr. GUARINI. Well, are we collecting from our intelligence adequate information to make intelligent decisions?

Mr. WESTRATE. Yes; I think we are. But, you know, it is a difficult thing to follow up on a case like this, to make a prosecution in the United States. A lot of these purchasers are just like the Colombians who are trafficking in the drugs themselves, they are in the country for a few weeks or months and they are gone again. It is difficult to locate them and prosecute them.

Mr. GUARINI. Well, it has come to my attention that Mexico is less than forthcoming about data on assault weapons that are imported into their country, that they don't give us the kind of information and backup we need. Do you have any comment on that? Or do you have any information concerning that point?

Mr. WESTRATE. I would like Mr. Orsini to comment also. I think some of that frustration is reflective that it is hard to get the guys who seize the weapons on the ground in a police action to recognize the fact that this would be of interest and get it up the chain of command, so to speak.

Mr. GUARINI. Well, that goes to the question of cooperation, intelligence collection.

Mr. WESTRATE. Either that or understanding of the potential of what they are looking at. That is why these training programs are good.

I would ask Mr. Orsini to address that.

Mr. ORSINI. Yes. I agree with what Dave said. That is one of the reasons we feel so strongly that we need a presence in Colombia. It is not a matter of a lack of cooperation, it is a matter of understanding on their part, plus, you know, they are fighting a war down there.

Mr. GUARINI. But are you satisfied with all the information and data that is being collected?

Mr. Orsini. No, sir.

Mr. GUARINI. Are you satisfied with the intelligence system? Are you satisfied with the exchange of information?

Mr. ORSINI. We would like to have more and more timely information.

Mr. GUARINI. Are we doing anything concerning that?

Mr. ORSINI. Yes, sir, we have our plan in place to put agents in Bogota.

Mr. GUARINI. Just let me ask you one question. This weapon in front of me here is a grenade launcher?

Mr. ORSINI. That is an empty tube for a LAW rocket, yes, sir.

Mr. GUARINI. Was that made in the United States?

Mr. Orsini. Yes, sir.

Mr. GUARINI. Was that used by a drug trafficker?

Mr. ORSINI. That particular weapon came as a result of a Customs seizure. Maybe we will let my colleague answer that.

Mr. GUARINI. Is this a military weapon?

Mr. Orsini. Yes; it is.

Mr. GUARINI. A drug trafficker had been using it, is that correct? Mr. ROSENBLATT. It was intended to go from Corpus Christi to El Salvador, and there were narcotics involved in the case.

Mr. GUARINI. Now, how can we explain the fact that a drug trafficker got hold of an American military weapon of this dimension?

Mr. ROSENBLATT. I don't understand your question. The LAW tube on display was used by U.S. Customs undercover agents as a show or "flash" item. It was offered as an item for sale by the undercover agents to the violators who had actively negotiated for its sale. This item was not removed from U.S. Government inventory by the violators and was never in control of the violators.

Mr. GUARINI. Is there much bribery in the military as a result of this weaponry that the drug traffickers are getting?

Mr. ROSENBLATT. I am sorry, Congressman, I can't quantify the amount of bribery or theft.

Mr. GUARINI. Have any cases been brought to your attention concerning military people?

Mr. ROSENBLATT. Yes. We work very closely with the military investigators relative to their inventory and what is stolen out of their inventory, particularly with respect to these types of weapons.

Mr. GUARINI. Have you launched investigations of weaponry that has been stolen from the military and turned over to drug traffickers?

Mr. ROSENBLATT. Yes, we have. They initiate an investigation of theft from military inventory. Once we get onto these cases and we make seizures like that, it is the first time that we see the item. There is a lot of discussion about the item in an undercover capacity. Serial numbers are not exchanged between the undercover operators and the bad guys.

But once we acquire it, we try to get together with the military and see if they can backtrack it.

Mr. GUARINI. This is my last question, Mr. Chairman, if you would just indulge me 1 minute.

Has anybody been caught, prosecuted, convicted or imprisoned as a result of our military weapons going into the hands, either by bribery or being stolen from our own arsenal, into the hands of drug traffickers?

Mr. ROSENBLATT. Yes.

Mr. GUARINI. Have they gone to jail?

Mr. ROSENBLATT. On drug trafficking, I can't answer. It is on other type of munitions cases—involving what we call our high tech program—there have been military people prosecuted.

Mr. GUARINI. But on weaponry, have people gone to jail?
Mr. HUGHES. The gentleman's time has expired.

I wonder if you can tell me, what was the destiny of this grenade launcher which was seized—was it El Salvador?

Mr. ROSENBLATT. Yes; this is the light antitank weapon.

Mr. HUGHES. What was the potential end use for that?

Mr. ROSENBLATT. Possibly to take out a tank or take out a part of a building. You can use it on any kind of vehicle.

Mr. HUGHES. Did you identify the end user?

Mr. KELLEY. Yes.

Mr. HUGHES. Was somebody mad at their mother-in-law?

Mr. KELLEY. No. This was part of a flash weapon in which they were trying to acquire for export to El Salvador, and the individuals were going to export it for use down there. We don't know what potential use.

Mr. HUGHES. You don't know what was its intended end?

Mr. Kelley. No.

Mr. HUGHES. Would it be fair to say that these are all weapons of war on the table?

Mr. ROSENBLATT. For my definition, yes.

Mr. HUGHES. Pardon me?

Mr. ROSENBLATT. For my definition, yes.

Mr. HUGHES. Does anybody disagree with that definition?

Mr. ORSINI. Well, for the most part. There are, I think, one or two semiautomatic pistols over here that are not weapons of war.

Mr. HUGHES. With the exception of pistols, you would not quarrel

with the rest being defined as weapons of war?

Mr. Orsini. Right.

Mr. ROSENBLATT. You also have what I would call law enforcement utilization of the night vision goggles and also the bulletproof vests.

Mr. HUGHES. There is some functional law enforcement use for the night goggles, but it is all a matter of degree. All of these weapons are designed to inflict heavy damage.

Some of these weapons have been described as ones which will inflict a grotesque wound, but will not necessarily kill someone. Is there any substance to that? Of course, these weapons can kill, as well.

Mr. ORSINI. I don't know of a good bullet wound. But yes, some of these are worse than others.

Mr. HUGHES. All these weapons are weapons of war. People generally do not buy grenade launchers or, thank goodness, street sweepers. But since they are all essentially weapons of war why should we be exporting any of these weapons, except for legitimate end use?

Ms. BIANCANIELLO. When we exercise the export program, we take into account legitimate end use or end users.

Mr. HUGHES. But how do you know? You might negotiate, for example, a new agreement with Colombia, but what is to stop otherwise respectable people from importing these weapons to Brazil, Argentina, Chile, Peru, Bolivia, and then those weapons as transshipped to another country?

Ms. BIANCANIELLO. I guess I am going to have to say that there probably is nothing that prohibits that retransfer. We do have

within the confines of the law that I tend to try to regulate the reexport authority, so that everything that begins with the United States or is manufactured or exported from here requires retransfer authorization.

Now, that does not necessarily prohibit that retransfer, but we do rely upon the controlling government to hopefully effectively regulate it.

Mr. HUGHES. That doesn't work very effectively.

Ms. BIANCANIELLO. Well, perhaps.

Mr. HUGHES. These countries are overwhelmed with economic, political, military, and drug problems. They just can't concentrate, on creating a good paper trail given all these problems. It is very unrealistic to suggest that the governmental retransfer requirements will prevent these weapons from getting into the wrong hands.

Mr. Orsini, what do you think of banning the domestic manufacture of exact models of the assault weapons which are the exact models of those weapons already banned from importation under our sporting purposes test?

Mr. ORSINI. We don't have the authority do that now.

Mr. HUGHES. I didn't ask you that. I know that.

Mr. ORSINI. Are you asking my personal opinion?

Mr. HUGHES. Yes. You are an expert. You are here to provide expert guidance to policymakers on this issue.

Mr. ORSINI. We support the Administration's position that we should do everything within our power to prevent one more police officer or school yard from being shot up. Mr. HUGHES. You are not answering my question, which is: What

do you think of the Congress banning the domestic manufacture of exact models of the assault weapons which are the exact model of those weapons already banned from importation under the sporting purposes test?

Mr. ORSINI. Again, if you are asking for a personal opinion, I would respectfully defer to-the answer is, we support the administration's position.

Mr. HUGHES. What is the administration's position?

Mr. ORSINI. So far, they have not proposed that be done.

Mr. HUGHES. That is not so. They have proposed that in the President's crime package.

Mr. ORSINI. Maybe I misunderstood your question, then, because I am not aware of that.

Mr. HUGHES. It is controversial, but my understanding is the President did propose to ban the manufacture of exact models of those weapons that have been banned from importation under the sporting purposes test.

Mr. ORSINI. Yes, sir, that is correct. Mr. HUGHES. In addition to that, the President has also proposed, that we make illegal the manufacture, and possession of ammunition feeding devices that carry more than 15 cartridges.

Mr. ORSINI. That is correct. I misunderstood your question. I thought you meant the ban of all domestically produced weapons of similar characteristics. You mean exact duplicates, replicas of those ones that are banned. Yes, it has been proposed and we do support it.

Mr. HUGHES. Why not ban the export of those domestically made weapons which are exact replicas of those weapons banned from import to this country? Should we visit upon our friends and neighbors in this hemisphere or anywhere else what we wouldn't visit upon ourselves?

Mr. ORSINI. Again, we have no jurisdiction or authority in the area of exports.

Mr. HUGHES. I know that.

Mr. ORSINI. If you are asking for a personal opinion——

Mr. HUGHES. I am asking you for your opinion. Doesn't it seem hypocritical to you that while we would agree that it is good public policy to ban weapons from importation—because they have no legitimate sporting value—and we are going to ban their manufacture in our country, but we are going to permit export of these weapons out of our country. Isn't there something hypocritical about that?

Mr. ORSINI. I don't know that there is anything hypocritical about it.

Mr. HUGHES. Does it make sense from a policy standpoint?

Mr. ORSINI. I think we would probably support a ban on the exportation of these specific same weapons that we are banning the import of. That makes sense, yes, sir.

Mr. HUGHES. Let me ask you a couple of questions about the ammunition feeding clips similar to those I asked Mr. Westrate.

How much do you think we are going to accomplish if we ban clips of more than 15 rounds? How many States do you know that permit hunting with semiautomatic weapons which accept more than eight cartridges in a clip?

Mr. ORSINI. Are you asking Mr. Westrate?

Mr. HUGHES. No; ATF.

Mr. ORSINI. Oh, okay. I don't have a breakdown on the States, but you are right, most States limit the size of clips.

Mr. HUGHES. Let's say we ban 15 cartridge clips. How long would it take you to change the clip and put in another 15 rounds?

Mr. ORSINI. Just a matter of seconds.

Mr. HUGHES. Then how much would we be accomplishing by a ban on 15 cartridge clips? Why not look at what States permit? If States permit, for instance, a maximum of eight rounds in a clip, why not reduce the ban limit down to what we permit for sporting purposes?

Isn't that what we are trying to do? Aren't we trying to make the clip bar relevant to what is a legitimate end use?

Mr. ORSINI. Yes, sir, that is correct.

Mr. HUGHES. Isn't that the relationship, as you see it?

Mr. Orsini. Yes, sir.

Mr. GUARINI. Mr. Chairman, just as an observation, when you say sporting purposes, I would imagine the idea would be to give the animal a sporting chance, too. So, anything more than one shot deserves reconsideration.

Mr. HUGHES. Mr. Guarini, I was a hunter for many, many years and I would say that with any of these weapons, most animals are pretty safe based on the range of such weapons.

The gentleman from Pennsylvania.

Mr. COUGHLIN. Thank you, Mr. Chairman. I realize we have other panels ahead of us and I just want to make sure I have straight in my own mind, I guess, our procedure. As I understand it, Ms. Biancaniello, all semiautomatic weapons,

As I understand it, Ms. Exancaniello, all semiautomatic weapons, whether assault type or not, are included on the U.S. munitions list and require an export license to export. Is that correct?

Ms. BIANCANIELLO. That is correct. Nonautomatics also are included, I might add.

Mr. COUGHLIN. So that all weapons are on the U.S. munitions list that are semiautomatic and nonautomatic as well?

Ms. BIANCANIELLO. That is correct.

Mr. COUGHLIN. But in order to deny an export license, you require some reason for denying that. It is not automatic that it is denied. Is that correct?

Ms. BIANCANIELLO. Yes. The reason could be policy or inadequate end use, end user, and/or inadequate background to review the transaction.

Mr. COUGHLIN. You would require some reason to deny an export license, whether it was an assault weapon or not. Is that right?

Ms. BIANCANIELLO. Yes; any transaction we would handle, firearms or otherwise.

Mr. GOUGHLIN. Thank you, Mr. Chairman.

Mr. HUGHES. The gentleman from Connecticut.

Mr. SHAYS. Thank you. I have been trying to pay close attention to what is happening and I realize we are all in the same country and we are all concerned about the same general issue. I mean that sincerely. I don't feel that we are on opposite sides here. But I am not getting a clear picture. I am starting to, but there are still some missing parts here.

I made an assumption, wrongly, that we do not allow the exporting of assault weapons. The fact is, we do. I made an assumption that we allow exporting to law enforcement agencies overseas or to countries for military use. But in fact, we allow assault weapons to be exported to private parties. Is that not correct?

Ms. BIANCANIELLO. That would be correct.

Mr. SHAYS. So, I guess I am still back to the same question. Am I to gather that when I asked my question earlier about the coordination and cooperation among various law enforcement agencies, it is just cooperation in terms of trying to monitor the transfer or the exporting of these weapons? Is that really what we are saying, that we are coordinating the monitoring? Any of you.

Ms. BIANCANIELLO. I guess if I were to speak for myself, we coordinate the licensing and the enforcement or the illegal transactions.

Mr. SHAYS. But the illegal transaction is almost meaningless. In other words, there are so many loopholes here you could drive a Mack truck through them. The fact is, that we really do not make an effort to prevent the exporting of assault weapons or even semiautomatic weapons.

Ms. BIANCANIELLO. We have some policies which do that. For example, automatic firearms are denied to any country as long as the firearm is going for personal use. Another policy we have is no silencers for firearms exported anywhere. So, we have in fact instituted in some cases policies which are prohibitive. Mr. SHAYS. Just taking the silencer, it seems to me we are saying that is wrong, but we really haven't looked at the full picture. In a way, isn't some of this dialog almost meaningless, then? Because when I asked about needing any new legislation, I didn't get anyone who said, you know, Mr. Shays, you need to know we have a policy that allows us to export these weapons.

So, I guess what I am saying to you is that I feel in a way like I know a little bit more, but I am very unimpressed with what we are doing to try to stop the flow of these weapons overseas.

I guess I would like to ask this question: Given our existing laws, isn't it relatively easy for the drug traffickers to get these weapons? Isn't it relatively easy for them to get weapons? I am seeing heads nodding. Can I have a yes on the record?

Mr. WESTRATE. Yes, it is very easy.

Mr. SHAYS. Okay. So, therefore, what could we do to make it harder for them to get these weapons? That was really my question, just not asked very well earlier. What do we need to do to make it harder to get these weapons? I am not even going to ask you if you advocate it. I just want to know, I have to help set policy, even though I am way down in rank. What do we have to do?

Mr. WESTRATE. You have to either have more law enforcement and/or different legislation.

Mr. SHAYS. What would that different legislation be? Not that you are recommending it.

Mr. WESTRATE. I suppose it would be to also ban domestic sales of these weapons.

Mr. ROSENBLATT. What you are basically talking about, Congressman, is unavailability.

Mr. SHAYS. Okay. Just expand a little bit more, and I will relinquish the floor after that.

Mr. ROSENBLATT. Well, if the type of weapons that we are talking about are not available for purchase or for export, you don't have a problem.

Mr. SHAYS. To make them not available?

Mr. ROSENBLATT. That is right. They are not available, unavailability. I mean, we are talking speculatively here. When I mention that word, it is almost Draconian in some circles.

Mr. SHAYS. I understand that the National Rifle Association and others hit some of you people hard a few years ago, and I realize that you are dealing with this tenderly. But the answer to the question is, if we want to make it more difficult for drug traffickers to get these weapons, we need to ban the exporting of assault weapons and the semiautomatic weapons for everything except for law enforcement agencies overseas and the military. Isn't that true? Wouldn't that have an impact? Not that you are recommending it

Wouldn't that have an impact? Not that you are recommending it. Mr. ROSENBLATT. Well, Congressman, if you are going to consider that, okay, I have sat here listening about firearms and I have tried to get across the point that from a Customs perspective, we don't just deal with firearms. We deal with munitions.

Mr. SHAYS. Right.

Mr. ROSENBLATT. Under the ITAR, we have to go with category 1. If you will just humor me for a moment—

Mr. SHAYS. Yes; I am learning.

Mr. ROSENBLATT. Category 1 also includes insurgency—counter insurgency type firearms.

Mr. SHAYS. Let me just say this. My five minutes is up. Just translate that. What do you want me to learn from what you just said?

Mr. ROSENBLATT. That we are not dealing with just firearms, we are dealing with the hand grenades, we are dealing with the bulletproof vests, we are dealing with explosives. It is all under the caption of munitions.

So, whatever we are going to consider with respect to this issue, I would hope that it is not limited just to firearms.

Mr. SHAYS. I think that is a very good point. But the bottom line is, we had better do some limitation or otherwise it is really a meaningless effort. That is what I am getting from this, whether you want to say that with just a nod. That is what I am getting. Thenk you

Thank you.

Mr. HUGHES. Do any other members have additional questions? Mr. GUARINI. Mr. Chairman, I just want to ask one question of Mr. Orsini, just one short line.

You take the President's position, is that correct?

Mr. ORSINI. That is correct.

Mr. GUARINI. Are you a career person?

Mr. ORSINI. Yes, I am.

Mr. GUARINI. How many years have you been there?

Mr. ORSINI. With ATF, since 1965.

Mr. GUARINI. So, you have been over 23 years. Are you protected by civil service?

Mr. Orsini. That is correct.

Mr. GUARINI. You don't voice your own opinion, you just do the administration's opinion, even though you are civil service, protected by civil service, and a career man. Is that correct?

Mr. Orsini. No, sir, I do express----

Mr. GUARINI. Because if that is so, I just wonder how we are ever to get opinions from people who work for government that could help us legislate properly.

Mr. ORSINI. Well, you know, not to be flip at all, but in this setting, to ask for a personal opinion is somewhat paradoxical.

Mr. GUARINI. You don't have a personal opinion that you could give the inquiring committee concerning your form of expertise? What would all your experience be worth if you couldn't give us your opinion?

Mr. ORSINI. Well, I have expressed my opinion that we should do everything possible to prevent one more tragedy with these types of weapons.

Mr. GUARINI. But you gave us no solutions and you gave us no reasoning as to how we could do it. You just sat there and testified about statistics and investigations, but gave us no conclusion, and never gave us the benefit of your experience.

Mr. HUGHES. Would the gentleman yield to me? I really think the gentleman is probably correct, but it is a problem we have all the time with witnesses, particularly when we deal with guns. It is a highly volatile issue and witnesses come in representing the professional position of the ATF. Mr. GUARINI. But it is nice, Mr. Chairman, to know what everyone thinks, because we, in a free society, have free speech. If we are protected by civil service, we should be able to state how we feel and what our experience leads us to believe.

I have no further questions.

Mr. HUGHES. I thank the gentleman.

Any further questions?

Before excusing this panel, I just want to make one other point. Even on the enforcement side, we just don't have enough resources.

How often do we inspect dealers to make sure that their records are even accurate? Once in 10 years?

Mr. ORSINI. Certainly not on a regular basis. There are approximately 270,000 dealers in the country.

Mr. HUGHES. How many enforcement agents do we have, Mr. Orsini?

Mr. ORSINI. Enforcement agents do not do the inspections of the dealers' records.

Mr. HUGHES. How many inspection agents?

Mr. ORSINI. The inspection agents, I am not sure. Probably in the neighborhood of 1,000.

Mr. HUGHES. The last time I checked, it averaged about once in ten years for such an inspection.

I thank the panel for their testimony. You have been very helpful to us today.

Mr. COUGHLIN. We join in thanking you very much. We appreciate your taking the time to come here.

Mr. Orsini. Thank you.

Mr. HUGHES. Our second panel consist of, Darrel Stephens, Executive Director of the Police Executive Research Forum; Philip McGuire, Law Enforcement Advisor, Handgun Control, Inc. and James J. Baker, Director of Federal Affairs for the National Rifle Association.

Gentlemen, if you will, come forward. We have your statements, which, without objection, will be made a part of the record in full, and we hope that you can summarize for us.

TESTIMONY OF DARREL STEPHENS, EXECUTIVE DIRECTOR, POLICE EXECUTIVE RESEARCH FORUM; PHILIP MCGUIRE, LAW ENFORCEMENT ADVISOR, HANDGUN CONTROL, INC.; AND JAMES J. BAKER, DIRECTOR OF FEDERAL AFFAIRS, NATIONAL RIFLE ASSOCIATION

Mr. HUGHES. Do any of the witnesses want to refer to any of these weapons? Mr. Stephens, are you going to need to refer to any of these weapons?

Mr. Stephens. No, sir.

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Mr. HUGHES. How about you, Mr. Baker?

Mr. BAKER. I don't think so, Mr. Chairman.

Mr. HUGHES. Why don't we begin with you, Mr. Stephens. Welcome. Your statement is part of the record. Please summarize it for us.

TESTIMONY OF DARREL STEPHENS

Mr. STEPHENS. I will do that.

Mr. Chairman, members of the committee, thank you for inviting me to speak with you about law enforcement concerns with the proliferation of assault weapons in this country.

I am here today on behalf of the members of the Police Executive Research Forum, who are law enforcement chief executives dedicated to improving the delivery of police service and promoting professionalism in police departments. PERF members represent some of the largest jurisdictions in this country and serve more than 30 percent of our total country's population.

PERF member police agencies deal with some of the worst drug problems facing our urban centers. Their regular encounters with the corrosive effects of drug abuse have become more dangerous because drug traffickers and abusers have turned to semiautomatic assault guns as their weapons of choice.

These weapons are purchased, often without a waiting period, and used against police officers making drug arrests, against other drug traffickers in turf battles, and certainly against innocent bystanders caught in the crossfire of drug addicts whose high turns to violent madness.

When PERF members were surveyed on the proposed regulation of assault weapons, 96 percent indicated that they would support measures designed to curb the unrestricted flow of these weapons.

When the administration's ban on the importation of assault weapons was made public, members sent letters both to President Bush and William Bennett.

For example, the New York City Police Commissioner and PERF member, Ben Ward, commended the President and Mr. Bennett for taking a stand against the importation of semiautomatic assault weapons.

His letter stated:

As the Chief Executive of the Nation's largest police force, I am well aware of the danger posed by these weapons. In New York City, 226 assault weapons were seized during 1988 alone. These weapons serve no legitimate hunting purpose and no law abiding sportsman will suffer by the unavailability of such weapons as the AK-47.

This letter was one of many written by our members that went on to urge the administration to extend the ban to the domestic manufacture of assault weapons as well.

Until all assault weapons, semiautomatic assault weapons are banned, police will be caught in the bloody drug battles being waged by drug dealers against anyone that gets in the way of reaping the tremendous profits associated with this enterprise.

How should the police respond? Some reluctantly have provided their officers with 9 millimeter semiautomatic weapons. The FBI has recently announced the switch to 10 millimeter weapons.

But a domestic arms r_{e} ce with drug dealers and abusers clearly is not the answer. What law enforcement needs and what we ask for today is your assistance in curtailing the criminal use of assault weapons.

While there are endless incidents that one could relate to the committee, one only needs to review the day's news to hear of another drug bust where assault weapons were seized or used.

Semiautomatic assault weapons have no legitimate private use that we know of. It is that simple.

Many PERF members are hunters. Yet they recognize that the type of weapons under consideration today are not the kinds that legitimate hunters or shooters would use. They are designed and used for only one purpose. That is to kill people.

How many Louisville and Stockton tragedies does it take to show that these weapons are used by the deranged, by drug-induced madmen, and by drug traffickers, with the dealer considering assault weapons as much a tool of the trade as his beeper?

In December 1988, from the Dallas Police Department, members of the Dallas Police Department were making a buybust drug transaction. During the transaction, one of the suspects shot a Dallas officer several times with a TEC-9 semiautomatic.

Since that December killing, the Dallas Police Department has served 67 narcotics warrants which resulted in the seizure of semiautomatic and automatic assault weapons that were found in the possession of drug dealers.

It is hard to forget the tragedy experienced by another PERF member department, that of the San Diego County Sheriff's Office.

The sheriff's department received a report that a methamphetamine abuser was shooting through the walls of his apartment in an adjoining residence because he didn't like Mexicans. The police arrested Gary Taschner and confiscated an arsenal of weapons that included a machinegun and an AK-47 assault rifle.

On his release from jail, he stopped at a local gun dealer and paid cash for another AK-47 and additional ammunition.

Taschner, when he arrived home, began shooting through the walls again, this time injuring a small baby in a crib located in the apartment next door.

The police returned. After failing to negotiate his surrender, the SWAT team, wearing helmets and body armor, attempted to gain access to the residence and were met again with semiautomatic gunfire.

He wounded two deputies. One member of the team bled to death with a severed aorta. He left a wife, who is also a member of the sheriff's department.

This is how semiautomatic assault weapons are used. Not for hunting, not for sporting purposes, but for murder.

Since that incident, the San Diego County Sheriff's Department has continued to be plagued by the use of semiautomatic assault weapons in drug-related cases. The department has seized 35 of them since just the beginning of 1989.

PERF members are well aware of the debate surrounding the definition of these weapons. There are others present today that can better speak to the legislative construction and technical problems involved. But as a police practitioner and a former police chief in three U.S. cities, we fail to understand how the definitional problem can remain an obstacle to the passage of effective legislation.

The drug dealers seem to know what assault weapons are. Colt, a leading manufacturer, had no difficulty recognizing which weapons were used by criminals instead of legitimate sportsmen. The administration quite capably identified a class of weapons that have no legitimate sporting purpose. It seems to us it is just common sense that weapons failing to meet the importation standard, because they are not suited for sporting use, should not be permitted to be manufactured and sold in this country.

On behalf of our members, I would like to thank the committee for their continuing efforts to search out the truth about assault weapons. We appreciate the opportunity to present our views and your concern for the safety of state and local law enforcement officers. Thank you.

[Statement of Mr. Stephens appears on p. 116.]

Mr. HUGHES. Thank you very much, Mr. Stephens.

Our next witness is Philip McGuire, Law Enforcement Advisor to Handgun Control, Inc. It is nice to welcome Mr. McGuire in that capacity. He served for many, many years with distinction at ATF. We are delighted to have you with us today. We hope you can summarize your prepared statement.

TESTIMONY OF PHILIP MCGUIRE

Mr. McGuire. Thank you, Mr. Chairman. I will summarize the statement. I think you will find it quite short.

Mr. Chairman and members of this distinguished committee, thank you for the opportunity to testify today. I would like to commend you and your leadership in combating the drug and drug-related violence that is plaguing our Nation.

Hardly a day goes by without seeing gruesome newspaper and television accounts of firearms violence stemming from the trafficking and abuse of illegal drugs. I congratulate this committee for holding this hearing, which will shed additional light on the relationship between drugs and guns.

As you know, Mr. Chairman, I retired a little less than a year ago from the Bureau of Alcohol, Tobacco and Firearms, after some 26 years of service. The last 8 years I served as Associate Director for Law Enforcement.

I am pleased to be here today in my role as Law Enforcement Advisory for Handgun Control, Inc., a national citizens organization seeking to keep handguns out of the wrong hands.

While Handgun Control, Inc. has traditionally been involved in efforts to prevent handgun violence, the organization has taken an active role in working to stem the violence associated with semiautomatic assault weapons.

The dramatic increase in the numbers and criminal use of these deadly weapons in the last 3 years has caused grave concern among law enforcement. These weapons threaten the public safety and, like fully automatic machine guns, have no place in civilian arsenals.

Assault weapons are a major problem both here at home and abroad. A recent study conducted by Cox Newspapers, using data from the Bureau of Alcohol, Tobacco and Firearms, found that a semiautomatic assault weapon is 20 times more likely to be used in the commission of a crime than a conventional firearm.

The study also found that although semiautomatic assault weapons comprise only a small percentage, perhaps half of one percent, of the 200 million firearms in circulation, they show up in almost 30 percent of crimes involving gun trafficking, organized crime, including drug cartels, and terrorism.

A recent example of this occurred in New Jersey, when a state trooper was gunned down on the turnpike by three crack dealers armed with a MAC-11, after he pulled them over for a routine traffic violation.

Unfortunately, the United States has become the major assault weapons supplier to drug cartels in Central and South American nations. According to ATF, of the 569 foreign firearm seizures reported to the bureau in 1988, 540, or 95 percent, were assault type rifles.

I don't have to tell members of this committee of Colombian President Barco's repeated request to our leaders to stem the flow of these drug guns.

Semiautomatic assault weapons were designed for military, not sporting purposes. Distinctions can be made between semiautomatic assault weapons and semiautomatic weapons used for sport. ATF has successfully made these distinctions when they barred the importation of 43 types of semiautomatic assault weapons.

Handgun Control, Inc. strongly supports the use of objective criteria to serve as the basis for designating semiautomatic assault weapons. ATF has applied specific criteria for imported assault rifles. Similar criteria are contained in H.R. 1190, introduced by Representative Pete Stark.

Because of the Stark bill's reliance on objective criteria, we have actively worked for its passage.

The criteria ATF used to determine which semiautomatic rifles to bar from import are basically as follows: The ability to accept a detachable magazine; folding or telescoping stocks; a pistol grip that protrudes conspicuously beneath the action of the weapon; the ability to accept a bayonet, a flash suppressor, bipods, grenade launchers, and night sights.

Other criteria ATF considered include whether the firearm is a semiautomatic version of a machinegun, and whether the rifle is chambered to accept a centerfire cartridge case having a length of less than 2.25 inches.

The Stark bill also includes consideration of barrel length.

In addition, H.R. 1190 includes objective criteria for designating assault pistols. For example, the Secretary of Treasury would be required to consider the following: Whether the pistol is capable of accepting a silencer; whether the pistol is equipped with a barrel shroud; and whether the ammunition magazine extends outside the pistol grip.

We commend this administration's action on imported assault rifles and shotguns, like the Street Sweeper.

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We are concerned that previously developed sporting criteria, which has been in place for many years, has allowed and continues to allow the import of the concealable Uzi and other assault pistols. We urge Congress to correct this loophole.

The administration has acted courageously in stopping the importation of assault rifles and shotguns. It is now up to the Congress to get imported assault pistols and domestic assault weapons off our Nation's streets.

We urge your support for H.R. 1190 and hope that Congress will act quickly to outlaw these weapons or war.

Thank you very much for the opportunity to testify.

[Statement of Mr. McGuire appears on p. 123.]

Mr. HUGHES. Thank you, Mr. McGuire. Mr. Baker, welcome. Mr. Baker is the Director of Federal Affairs. National Rifle Association.

TESTIMONY OF JAMES J. BAKER

Mr. BAKER. Thank you, Mr. Chairman.

On behalf of the National Rifle Association, thank you for the opportunity to testify today. We commend you for holding this hearing and for seeking the views of those who know far more than the National Rifle Association or Handgun Control about the flow of firearms on the international black market. To that end, I brought Mr. Johnson to my right here, who has a long history of interest and has worked for the Department of Defense in this field for years and has, in fact, been to Colombia at the request of the Colombian Government in the 1980's to identify firearms that were seized in Colombia.

I do not pretend to be an expert on the issue of international arms trade. What my written testimony and this verbal summary presents is based solely on written public works and our experience and involvement in the firearms issues generally.

The issue, as we see it, has three facets. First, there are the facts about arms acquisition by international narco-terrorists and their ideologically motivated colleagues.

Second, there is the nature of the U.S. firearms market and what, if any, role it plays in filling the pipeline that results in arms acquisitions by narcotics traffickers.

Third, there are the policy considerations involved in ending the legal transfer of firearms to Colombia and other Central and South American nationals.

Simply put, Mr. Chairman, the world is awash in fully automatic, and I emphasize fully automatic, AK-47's and other true assault rifles. AK-47 assault rifles, machineguns, manufactured in Com-munist countries, are widely available from leftist insurgents throughout Central and South America, including Colombia itself.

Uzi submachineguns are imported from Israel by the Colombian Government for use by the Colombian police.

The Galil fully automatic rifle, a semiautomatic example of which we had here earlier, is imported also from Israel and is the official service arm of the Colombian military.

It comes as no surprise, then, as the Washington Post recently reported, that the Colombian military seized more than two tons, and I emphasize 2 tons, of weapons and ammunition belong to Jose Gacha, known as "the Mexican," including AK-47 fully automatic firearms, Galil fully automatic rifles, Uzi fully automatic submachineguns, as well as hand grenades.

The magnitude of arms smuggling in Colombia is also exemplified by the seizure earlier this year of 1,000 rifles, 250 light machineguns, and 10 mortars being shipped to that country from Portugal.

Again, less than 2 weeks ago the Washington Post reported on the arms flow between Nicaragua and El Salvador, as Honduras seized 307 rocket propelled grenades, 74 automatic rifles, including fully automatic AK-47's and fully automatic M-16's.

The number of fully automatic AK-47's alone is mind boggling. Noted small arms expert, Ed Ezell, called the AK-47 the most widely distributed and best known military shoulder weapon in the post World War II era. He pointed out that an estimated 30 to 50 million fully automatic AK rifles and light machineguns have been manufactured since the introduction of this design.

"At least 55 nations and an untallied number of guerrilla and terrorist organizations use these guns daily," to quote Mr. Ezell. With 30 to 50 million fully automatic AK-47 rifles manufactured

With 30 to 50 million fully automatic AK-47 rifles manufactured in the world, to focus on a minute number of semiautomatic rifles designed for target shooting and sold in the United States may very well be irrelevant.

In fact, according to the most recent Treasury Department statistics available to the National Rifle Association, only 158 firearms seized in Colombia are currently known to have come from U.S. dealers.

That bears repeating. Out of literally tons of arms seized, most of which are fully automatic machineguns smuggled from Cuba and other Communist countries, only 158 firearnes that we know of at this point have come from United States commercial markets.

Such a miniscule number of U.S. commercial firearms is no surprise, however. Insurgents and drug dealers don't stay alive long being dumb. Such individuals have no incentive to obtain expensive designs from the United States.

A black market fully automatic AK-47 in Colombia can be obtained for something between gratis and \$100. Even before the import ban in the United States, the suggested retail for a semiautomatic version in this country was between \$595 and \$675.

Of course, these firearms, these semiautomatic designs are approved by the Treasury Department so as not to be readily convertible to fully automatic fire.

Even assuming narco-terrorists are in the market for inferior but more expensive firearms from this country, retail purchase in the United States also entails completion of ATF Form 4473 and identification requirements. Firearms exports must then be approved by the Department of State. A license from the Office of Munitions Control must also be obtained.

In light of the above, it is indeed surprising that even 158 firearms out of several tons held by the narcotics traffickers originated in the U.S. commercial market.

It is equally surprising and disturbing that despite the tons of automatic arms available in Colombia and Central and South America, the Colombian Government has called attention to a small trickle of semiautomatic firearms coming from the United States.

I will conclude here, Mr. Chairman.

Nonetheless, the National Rifle Association of America represents law abiding citizens and gun owners in the United States, not firearms exporters. Accordingly, the NRA has no objection to a prohibition on the exportation of firearms to Colombia. As you know, it is currently the policy of the United States to deny export licenses to Communist countries, such as Cuba, the Soviet Union, Vietnam, South Africa, where an export would be against the furtherance of world peace and the security and foreign policy of the United States.

If the exportation of firearms from the United States to Colombia is contrary to U.S. interests, then the State Department should deny licenses. If individuals are buying them and illegally shipping them to Colombia, they should be caught and prosecuted.

One thing is clear, however. Based on all the available and reliable data, the violation of the second Amendment rights of target shooters and other law abiding citizens of the United States by banning semiautomatic rifles in our country will not reduce the violence in Colombia in the slightest respect.

Thank you, Mr. Chairman.

[The statement of Mr. Baker appears on p. 133.]

Mr. HUGHES. Let me first ask you a question, Mr. Baker. Does anybody have a second amendment right to export firearms out of our country?

Mr. BAKER. I don't think that the second amendment speaks to exports, no, sir.

Mr. HUGHES. I would take that to mean that someone outside our country does not have the right to import our weapons into his country.

Mr. BAKER. I think it speaks in terms of possession of firearms, Mr. Chairman.

Mr. HUGHES. Do you have any problem with the characterization of the weapons that are at this table as military type weapons?

Mr. BAKER. Some of them I do, yes, sir. For instance, the one firearm closest to you is a Ruger Mini-14. I haven't had a chance to examine it closely. The other is a Colt .45, I believe, semiautomatic pistol there.

By the way, this M-16 here is marked "U.S. Property." It is not a semiautomatic. It is a fully automatic that came from, at some point in time, the U.S. Government.

But the semiautomatic versions of the AR-15 are used in countless high power matches across the country for target shooting.

Obviously, LAW rockets and hand grenades do not, but some of those firearms there definitely do have legitimate purposes.

Mr. HUGHES. You know, it wouldn't be beyond the American ingenuity to establish clubs that would want to fire grenade launchers. Would that be protected under the second amendment?

Mr. BAKER. Congressman, I don't think it would. You and I have had this conversation on a number of occasions. I think that there are reasonable limitations to every right. Just as you cannot yell "fire" in a movie theater, there are limitations.

We have 20,000-some-odd gun laws in this country that restrict the second amendment, the same as we have laws that restrict libel and slander. So, we can continue down this road as long as you would like. But yes, there are reasonable restrictions and then there are unreasonable ones.

Mr. HUGHES. I am not going to pursue this area further because I only have 5 minutes. But it is just a matter of degree.

Mr. BAKER. That is true.

Mr. HUGHES. Most of the military-type weapons we talk about were manufactured for military purposes, with a few exceptions. I am not sure what the Street Sweeper was manufactured for. I haven't figured that out yet. But it is just a matter of degree.

Don't you think as policymakers in this country, we have a right to determine that, as a matter of policy, there are some weapons possessing very little sporting value and having the potential to do tremendous damage to our society?

Mr. BAKER. I think, Congressman, that most firearms, shoulderheld firearms were originally developed for military purposes, all the way from the flintlock to the M-1 carbine, to the M-1 Garand. I don't think that the second amendment speaks to strictly sporting purposes, as you may envision it.

Clearly, people are not skulking through the woods hunting with an Uzi. Just as clearly, people enjoy going out and punching holes in targets, and they are no more a threat to law enforcement or anybody else than you or I are.

So, it is a question of focusing on the people that use them in an illegitimate manner, the people that are criminals and keeping them out of their hands, and putting those people in jail and keeping them there. I don't think we are doing a good enough job on that issue.

Mr. HUGHES. Mr. Stephens, that is not what I hear from the police today. The police with whom I talk tell me that they view these military type weapons as a very direct threat. You characterized what is happening in our neighborhoods as an arms race. The police are basically outmanned. Many of these assault weapons have become the weapons of choice. Isn't that so? The police view these weapons as a direct threat to them, as they are the ones who come in contact most often with these weapons. Isn't that so?

Mr. STEPHENS. That is exactly the case. The police in America at all levels, from police executives to the officers throughout America, are calling for the Congress and the administration to take action on banning these military type semiautomatic assault weapons because they view them not only as a threat to themselves, and they very clearly are, but as a threat to innocent people who happen to be on the street in their day-to-day activities being confronted by drug dealers who use these to protect their own turf.

Mr. HUGHES. Not to mention the nuts, unfortunately, who come into possession of these weapons—weapons which can wipe out 25 kids in a school yard in a matter of seconds.

Mr. STEPHENS. Or eight people in a manufacturing facility.

Mr. HUGHES. Precisely.

Mr. STEPHENS. And injure 16 others.

Mr. HUGHES. Mr. McGuire, as I indicated, it is a pleasure to have you.

Mr. McGuire. Thank you, sir.

Mr. HUGHES. It is almost like "free at last." After 26 years at ATF, where you have had to toe the administration line, you can finally give us some insight on what we need to do to deal with this problem.

Mr. McGuire. Well, if you will allow me, I will begin by giving the administration a pat on the back for what they did as it relates to imports. Mr. HUGHES. They deserve it. They certainly do.

Mr. McGuire. Then I will tell you that I survived in Washington through more than one administration where that perhaps was not done, but has been now, fortunately.

I believe that we need a ban on assault type weapons. You mentioned a war on drugs. You mentioned weapons of war. Unfortunately, these weapons of war are in the hands of our enemy. I think it would be important to take them off the street.

The issue of a waiting period has not come up today. But earlier questions were asked about what legislation was needed that would assist in stopping the illegal export of these weapons out of the country.

I think that a reasonable waiting period, such as proposed in the Brady amendment, a 7 day waiting period, would give law enforcement an opportunity to look into some of the purchasers who are purchasing these weapons in Florida and Texas and California and elsewhere. That, in itself, might avoid the illegal export of weapons that are ostensibly bought legally across-the-counter.

I think both of these moves would go a long ways in correcting the problem.

Mr. HUGHES. Mr. McGuire, my time is up. I am just trying to figure out how, after struggling with gun legislation over the years, you with the administration and me here in the Congress, how I ended up getting so much gray hair and you don't seem to have any.

Mr. McGuire. I spend more time hunting than you do, and fishing.

Mr. HUGHES. I see. All right. [Laughter.]

The gentleman from Pennsylvania.

Mr. Čoughlin. Thank you, Mr. Chairman.

The subject of these hearings, of course, is what we can do to try and prevent the export of arms to Colombia in particular, where President Barco has made a very strong appeal to try to prevent that. One in the previous panel indicated that one of the things you could do is simply make—if such weapons are unavailable here, they are less likely to be exported to Colombia, than if they are available here.

Mr. Baker indicates that there is an interest of sportsmen in using assault type weapons to poke holes in targets, for target practice, and I guess I would appreciate your comments, Mr. Stephens, and yours, Mr. McGuire, as to the extent that that occurs in the United States, at least from your knowledge, whether that is a major pastime and whether the right to do that perhaps in your view overweighs the need to have those weapons available.

Mr. McGUIRE. If the question is posed to me, I am not a target shooter. I am a hunter and I do quite a bit of hunting. I see no need for what we characterize as the assault weapon on the part of the legitimate sportsman.

Mr. COUGHLIN. Most of these guns would be prohibited for hunting anyway in most jurisdictions. I am just talking about target shooting.

Mr. McGuire. There is no question that some of these weapons are used by—absolutely no question that some of these weapons are legitimately used by target shooters. They are not, I don't think, the choice, the firearm of choice for target shooting. But some people do.

The last part of your question, I think, goes more directly to whether or not we would be infringing on the rights of these individuals to do something about that weapon. I think it is a small price to pay for the safety of the public and the safety of law enforcement in this country to do something about it. I think that they can continue their sport with other weapons that do not fall under the category of the assault weapon.

I also feel like there is something that I can't explain about the assault type weapon that brings out the very worst in the criminally insane. There is no question that your sporting rifles are just as lethal as the weapons on the table. But it is a matter of fact that such as in Louisville and in Stockton and in San Jose, these individuals are not going to that type of weapon.

There is something about the Rambo aspect, the ugliness of the weapon, the camouflage, the black, the whatever, that draws them to that weapon.

Mr. COUGHLIN. Let me ask Mr. Stephens, then, to comment on both the extent of the use of these assault type weapons for target shooting and your feeling about whether that is a legitimate right.

Mr. STEPHENS. Unfortunately, I am not a hunter and all my experience with firearms has been in the military and as a police officer. But I have asked a lot of people in the police field about the question of sporting purposes, both hunting and target.

Clearly, the hunters don't use them to go out and hunt deer or bear or whatever it is that they are hunting. Target shooters, some do use the AR-15 as a weapon for target practice. But the police officers of America, who are around firearms in their day-to-day life, and many of them are collectors and sportsmen, are not unwilling to give up the use of weapons of that nature for target practice if it is in the interest of reducing the violence and the mayhem that we see in this country every day as a result of those kind of weapons.

Mr. COUGHLIN. Let me ask, Mr. Baker, in the earlier testimony it was indicated that unavailability would have an effect on the shipment of arms to Colombia. You indicated that automatic arms were readily available.

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Mr. BAKER. Yes, sir. Mr. Coughlin. So that unavailability of assault type weapons in this country would not make a significant difference in the arms shipped to Colombia. So, I take it you would disagree with the previous panel on that question.

Mr. BAKER. Congressman, I would. I would like to have, if I could—Mr. Johnson is a bona fide expert on the international arms trade. I am not. If he could answer that question, I would appreciate it.

Mr. HUGHES. Mr. Johnson.

Mr. JOHNSON. Thank you. I was with the Army's Foreign Science and Technology Center, the Army Technical Intelligence Activity, from 1965 through 1982. I was in charge of the foreign infantry weapons desk.

Upon my retirement in 1982, I have severed all connections with them and have no dealings, official or unofficial, with them.

In 1981, I was sent down to South America, to Colombia, at the request of the then President of Colombia to President Reagan, to look at a large quantity of weapons that had been seized from the M19 organization.

These weapons had been unloaded from a tramp steamer on the Pacific coast of Colombia, loaded into a number of 5 ton Mercedes trucks, covered with coconuts, and driven into the jungle towards Bogota.

They hit the first checkpoint and a young Colombian Army conscript looked in the trucks, asked the truck driver, just wait a moment, please, went into his, fortunately, armored guard shack and pushed the panic button.

A severe firefight results. A lot of the guns showed evidence of bullet impacts on them. Most of the M19 people, I gather, were killed.

When they asked the young conscript why he pulled the alarm button, he said, nobody takes coconuts into the jungle. [Laughter.]

The drug dealer mentality or the terrorist mentality is a little odd.

In any event, the Government of Colombia was very concerned because they thought these guns were made in West Germany, and they wanted to know why the West Germans were providing an urban terrorist organization with their guns. At this point I was sent down to sort it out.

They had an enormous warehouse, an area about the size of this room, with probably 300 to 500 of these rifles on the floor. There were U.S. made 2.36 inch rocket launchers of World War II vintage, with the rockets, U.S. 60 millimeter mortars, mortar ammunition, Portugese grenades, Portugese submachineguns, a lot of Portugese ammunition——

Mr. COUGHLIN. My time has already expired, but I guess I would like the answer to the question, whether unavailability would reduce the problem.

Mr. JOHNSON. Well, I am telling you what the availability is, sir. It turned out that these guns were not West German. They were made in Portugal. They were Portugese M-963's and they had been abandoned, according to their dates, in Angola. The Cubans either gave these guns to the M19 group or factored the sale to M19.

Mr. COUGHLIN. I take it you disagree with the statement of the previous panel that unavailability would restrict the exports to Colombia, A, and B, that most of the weapons in Colombia that they have recovered are manufactured in the United States?

Mr. JOHNSON. Yes, sir, these are a drop in the bucket. The Vietnamese are flogging off on the world market almost 1 million M-16rifles that were there. These were recovered. The Army has an extremely good computerized record system and these rifles, on the Army records system as having been lost in Vietnam, are showing up in South and Central America, lots of them.

Mr. COUGHLIN. I am not trying to cut you off, but my time has expired. Thank you.

Mr. HUGHES. The gentleman's time has expired. The gentlelady from New York. Ms. LOWEY. Thank you, Mr. Chairman. I want to thank you all for your testimony. This certainly has been an educational morning for me, in particular.

 $\overline{M}r$. Baker, \overline{I} would be most appreciative if you would comment on the problems of the NRA with the seven day waiting period. I just don't understand it at all.

Mr. BAKER. Congresswoman, we had supported last session, as you may be aware, the socalled McCollum amendment, introduced by Bill McCollum and Harley Staggers, that called for the Attorney General to develop an instantaneous system, much like a credit card where you can go in and determine whether there is credit available on an instantaneous point-of-sale basis.

The Attorney General is due to report back with his findings on the feasibility of that system on November 19 of this year. So, we support an instantaneous check.

We supported it in Virginia where I believe it is going into effect in the next day or so. They have a different system, where it is an 800 number system where the gun dealer can call into the State police and have it checked. So, we are supporting an instantaneous check.

Ms. Lowey. Would you comment on your problems with the seven day waiting period, the Brady amendment, which would give law enforcement the opportunity to check backgrounds?

Mr. BAKER. Well, Congresswoman, that is why we are supporting the instantaneous check. If we can do it instantaneously, as they can for Mastercard and Visa, why not do it instantaneously for gun purchases?

Ms. Lowey. So that you feel that is a more efficient way, rather than waiting. You would rather know instantly, rather than seven days.

Mr. BAKER. Yes, ma'am.

Ms. LOWEY. I don't understand, frankly, and perhaps the people with whom you are working could explain it to me, or you could explain it to me, how you can really search the background of a person instantaneously.

Mr. BAKER. Well, I think there are going to be two threshold problems with any system—both instantaneous and 7 days—and they are these:

First of all, the Justice Department, in their comments that they put out in the Federal Register recently suggesting different possible options for an instantaneous system, has identified the fact that given the current state of criminal history databases in this country, the records which they would have to go to, to check anybody out, you are likely to get 50 percent false positives.

In other words, if they put a given name in and a given date of birth, given the poor state of criminal history records in this country, you are likely to get 50 percent false positives. In other words, identifying somebody as a felon that is not.

The other aspect that I think is a benchmark problem with any system is the prevalence of false ID's. Those very people that we are trying to interdict, the felons, are the very ones most likely to have false identification in this country.

have false identification in this country. First of all, a small percentage of felons buy their firearms through legitimate channels. Most of them steal them or get them on the black market. Those that do buy them through legitimate channels tend to have false ID.

So, until we get a type of ID that is not so easily made fraudulently, those are going to be two big problems, the criminal history records and the identification.

Ms. LOWEY. Maybe I am missing something. I understand that these are problems. But why would they be less of a problem instantaneously than the 7 days?

Mr. BAKER. I don't know that they are going to be less.

Ms. Lowey. It would seem to me it would be more of a problem instantaneously.

Mr. BAKER. I don't know that they are going to be any less, Congresswoman. I just think that these are two basic problems that we are going to face, no matter what type of system it is that we are trying to implement.

Ms. LOWEY. I guess I feel that given the state of the country, I would rather err on the side of caution than the opposite side. But let me go on to another question.

We have heard testimony from the last panel and we have heard it from Mr. Stephens and Mr. McGuire that there are clear ways to distinguish the semiautomatic assault weapons from semiautomatic sporting weapons. Yet the NRA does oppose banning them. Could you please amplify?

Mr. BAKER. We, respectfully, Congresswoman, disagree with the contention that you can, through cosmetic features such as a pistol grip or a folding stock which can rapidly be changed, distinguish between one semiautomatic firearm and another.

Also, we would disagree with the contention that hunting is the only legitimate sporting purposes.

There are thousands and thousands of these firearms in private hands. A very, very, very small percentage of them ever get used in crime. According to Uniform Crime Reports, 1½ percent of the firearms used in crime are semiautomatic rifles.

So, de facto they are being used for legitimate purposes. I mean, you may not want to target shoot and I may not want to, but there are evidently a lot of people that do want to. Our members and I think law abiding gun owners get concerned

Our members and I think law abiding gun owners get concerned when the criminal justice system is rapidly turning crime into something that pays, when less than half of the convicted felons ever spend a day in jail. They don't feel like giving up their rights until and unless something is done about the criminal justice system in this country that actually jails people for crimes they commit.

Ms. Lowey. Well, I will just conclude quickly. Let me just make two comments.

First, my son is an expert marksman. You are right. I have never had one and I have never participated in that sport. But he does. And I have never seen him use any of these at all, ever. That is number one.

Second, as a Congressperson, I get very frustrated, too, and we would all like to see the ultimate and we would like to see people locked up and put away, go to jail forever. But in the interim, I just wonder if together we can work on some interim legislation.

Mr. BAKER. I would be happy to.

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Ms. Lowey. It would seem to me that there are some steps we can take when it is clear that a lot of these weapons are getting in the hands of people who are shooting down people in school yards and making seniors afraid to go to the corner. I wonder if we couldn't work together while we are beefing up our——

Mr. BAKER. I think there are some very constructive things we can work together on, yes, ma'am.

Ms. Lowey. Okay, thank you very much.

Mr. HUGHES. The gentleman from New Jersey, Mr. Guarini.

Mr. GUARINI. Thank you, Mr. Chairman.

I understand that you say that there are many legitimate purposes for guns and that there are perhaps hundreds of thousands or millions of guns that are used by our citizenry for various kinds of purposes.

Nonetheless, you agree with the statistic that 25,000 people approximately were killed by guns last year in America?

Mr. BAKER. I don't have the statistics at hand. But I think that includes suicides, homicides, those people shot by police.

That statistic includes a lot of things that aren't strictly homicides.

Mr. GUARINI. Well, I think we can agree that the majority of people aren't suicides.

Mr. BAKER. No. I think that there were more than that many killed in auto accidents.

Mr. GUARINI. Well, one doesn't justify the other.

Mr. BAKER. No; it certainly doesn't. But there were more people killed in Chicago, for instance, with baseball bats than there were with firearms. So, I think that there are reasons to——

with firearms. So, I think that there are reasons to—— Mr. GUARINI. I fail to understand your rationale, because to every family that lost someone killed by a firearm, they don't look at statistics, they look at the fact of what has happened in their own family.

Mr. BAKER. No. You brought up the statistics, Congressman.

Mr. GUARINI. Now, let me ask you, does the NRA plan to repeal the ban on machineguns, the automatic weapons?

Mr. BAKER. No, Congressman, we don't. That was put into the effect, the restrictions on machineguns were put into effect in 1934. Although they have worked singularly poorly in order to keep them out of the hands of criminals, there has never been a registered machinegun ever used in a crime, according to ATF.

Mr. GUARINI. As Mr. McGuire said, the Bush administration completed a review and to its credit did ban permanently and reevaluate 43 different kinds of firearms that were imported. Is that correct?

Mr. BAKER. Those were semiautomatic firearms, not machineguns.

Mr. GUARINI. That is correct. Does the NRA plan to consider or challenge this ruling of the Administration in a court of law?

Mr. BAKER. We are not challenging it ourselves, Congressman, but there are a number of affected importers. We represent individual owners of firearms, not importers, not manufacturers, not dealers, not distributors. We would certainly assist any importer that wanted to challenge the basis upon which he has been denied importation of a semiautomatic firearm, yes, sir. Mr. GUARINI. Is it true that there are more and more semiautomatic weapons used in crime and used by organized crime in America today?

Mr. BAKER. I think that based on the statistics, if you want to get back into statistics, the statistics that we have show that total, according to the Uniform Crime Reports, the latest years for which they have figures, 4 percent of the firearms used in homicides are rifles of any kind.

Obviously, somewhat less than that are going to be military style semiautomatic rifles. That percentage hasn't changed dramatically over the years.

Mr. GUARINI. You challenge the fact that there are not more and more semiautomatic weapons?

Mr. BAKER. There are more and more, Congressman. But semiautomatic firearms are not a new technology. The U.S. Government, for example, sold hundreds of thousands of M-1 carbines after the Second World War. Semiautomatic technology has been around since the turn of the century.

Mr. GUARINI. Now, can semiautomatic weapons be turned into automatic weapons, which you say you won't challenge the illegality of?

Mr. BAKER. Congressman, in the hands of a skilled craftsman, any firearm can be turned into a fully automatic firearm. However, all the imports, if I just might add, all the imports that are approved by the Secretary of the Treasury are determined to not be readily convertible. Sure, somebody with the requisite knowledge, machine shop and skill can do that. But the Treasury Department makes a determination on each firearm that is imported that it is not readily convertible to fully automatic firearms.

Mr. GUARINI. Well, aren't there books that are published for people to show them as to how to turn semiautomatic weapons into automatics?

Mr. BAKER. There certainly are. And anybody that does it——

Mr. GUARINI. Like the book I have here, which is a very simple book.

Mr. BAKER. Sure. It looks like a simple book, but I can assure you that any firearm that meets the Treasury Department's exacting standards is not readily convertible.

Mr. GUARINI. This says how to modify a Uzi and it says that it is illegal to do it, however, please be advised the publishing of this book is for academic purposes only.

Mr. BAKER. Well, please be advised that we didn't publish it, either.

Mr. GUARINI. I don't think anybody would, for academic purposes, be thinking about buying a book and a semiautomatic weapon and to be thinking of converting it into an automatic weapon.

Mr. BAKER. Maybe we should look at some restrictions on the first amendment, too, then. Mr. GUARINI. You do admit, however, that the traffickers and

Mr. GUARINI. You do admit, however, that the traffickers and the criminals and the drug lords do use the firepower that is often used by military and paramilitary?

Mr. BAKER. I think that the drug lords that have huge amounts of cash can get, Congressman, anything they want, either buying it from U.S. military arsenals through bribes—look at the firearms the Treasury Department traced for the Government of Colombia. Twenty some of those revolvers came from the Colombian Government. Twenty-five hundred police were recently dismissed in Colombia for being in league with the Colombian drug lords.

The problem is much more complex, Congressman, than a trickle of 158 rifles from the U.S. Government.

Mr. GUARINI. But does it make it right, if they can purchase it from other sources, that we should be supplying it from our sources and have the President of Colombia, Barco, say to us, please give us help, don't send these kind of weapons down to our country, we are in the middle of a revolution?

Mr. BAKER. I have already indicated that if the State Department determines or the President of the United States determines that it is not in the best interest of the security of the United States or Colombia, they should shut off arms shipments to Colombia.

Mr. GUARINI. But you still think that domestically we should produce these kinds of semiautomatic weapons?

Mr. BAKER. I don't think you should abridge the rights of law abiding Americans who are not drug traffickers and who aren't street criminals simply because there are 158 United States manufactured firearms in Colombia.

As I said, you can buy a fully automatic firearm on the streets of Colombia, fully automatic, without reading the book, without converting it, for \$100.

Mr. GUARINI. Well, didn't the Colt industry that makes the semiautomatic weapons, when the flap first came out, admit to themselves that it was wrong to produce them? Basically, is that not a fact?

Mr. BAKER. No; they did not admit anything was wrong. They decided voluntarily to take the——

Mr. GUARINI. To stop manufacturing them.

Mr. BAKER. To stop manufacturing it, yes, they did. And that is entirely up to them. It is a free country.

Mr. GUARINI. No further questions.

Ms. LOWEY. Would the gentleman yield?

Mr. HUGHES. The gentlelady from New York.

Ms. LOWEY. I just want to clear up the record. During our questioning, did you say that more people were killed in Chicago with baseball bats?

Mr. BAKER. Yes, ma'am, than with rifles.

Ms. Lowey. Than firearms?

Mr. BAKER. Than with rifles. I am sorry.

Ms. LOWEY. I think it is important that we clear this record up.

Mr. BAKER. Yes, and thank you.

Ms. LOWEY. I would be very interested, if you have any of those statistics.

Mr. BAKER. I do, and I would be happy to give them to you. And that was with rifles. I apologize.

Ms. Lowey. Thank you very much.

Mr. HUGHES. The gentleman from Connecticut.

Mr. SHAYS. Thank you.

We seem, Mr. Baker, to be focusing our attention more with you, but let me ask you this.

Mr. BAKER. That is usual.

Mr. SHAYS. Well, let me say to you that conceptually I want to ban automatic weapons and certain semiautomatic weapons, and I fully acknowledge to you that there is a definite problem dealing with what is really legitimately a semiautomatic hunting rifle or target rifle and one that is designed to kill and maim people, and I acknowledge that.

I understand the position of your organization is that Americans have the right to bear arms. But I have trouble understanding why you would be reluctant at all to at least prevent people overseas from having that same right.

Mr. BAKER. Congressman, I would like to deal with the first part of your question. You indicated that some firearms, or at least you believe, in your statement, that some firearms are designed to kill people and some aren't.

Basically, all firearms are designed to kill animals or people. It is a question of whose hands that firearm is in. In the hands of a law abiding person, they present no more threat than a golf club.

Mr. SHAYS. I only have 5 minutes and that is really a meaningless comment either way.

Mr. BAKER. Well, I don't think so.

Mr. SHAYS. Well, the bottom line is, these clearly are not designed to hunt.

Mr. BAKER. But just as clearly, semiautomatic versions of them can be used to target shoot and for self protection. There are many legitimate reasons to own firearms, Congressman, beyond hunting.

Mr. SHAYS. I am not planning to get into a debate with you, because you are not going to convince me and I am not going to convince you.

Mr. BAKER. Okay. Ask the rest of the question again, then.

Mr. SHAYS. My point is, dealing with the constitutional right of Americans to own certain firearms, do you feel it is your organization's responsibility to guarantee the right of Colombians to bear firearms?

Mr. Baker. No, sir.

Mr. SHAYS. So, there is no reluctance on your part at all for the U.S. Government to ban the exporting of weapons of any kind?

Mr. BAKER. None whatsoever.

Mr. SHAYS. I just wanted to have that on the record.

Now, would you agree that right now the way our laws are written, or in particular the way the State Department is using its licensing procedures, that it is extraordinarily easy for drug lords, et cetera, in Colombia and elsewhere to get guns that are manufactured in this country, whether they are semiautomatic or automatic?

Mr. BAKER. I think, Congressman, that it is extraordinarily easy for drug lords or criminals to obtain firearms in Colombia either from this country or from any number of other ready sources.

Mr. SHAYS. I understand that point. But the fact is, you do agree that right now, if they want to get weapons from this country, they can? Mr. BAKER. Congressman, with the amount of cash that drugs generate, they can get weapons, as some of these come from government arsenals in this country.

Mr. SHAYS. Okay. Now, is the message to us that because the international supply of assault weapons is so huge that it is almost meaningless for us to try to at least do our part?

Mr. BAKER. No. I thought that the subject matter of this hearing basically was to try to gather information on assault weapons and percursor chemicals.

Mr. SHAYS. Why don't you make that point later. Just answer the question for me.

Mr. BAKER. I was attempting to do that, Congressman. I don't think—restate it.

Mr. SHAYS. I am trying to understand your position. Is your message to us that because the international supply of assault weapons, whether it is from Portugal, whether it is from West Germany, whether it is from the United States, that it is so huge that for us to at least do our part——

Mr. BAKER. No. My message is to not violate the rights of law abiding Americans in an attempt to reduce the violence in Colombia, because there are so many other sources that it won't work. Even if it would, we don't think that is a proper justification.

Mr. SHAYS. When you say violates the rights, I thought you had told me earlier that you are not fighting for the rights of people overseas.

Mr. BAKER. No. We are fighting for the rights of people in this country. The suggestion here is that we ought to ban them here, domestically, imported for private possession of individuals, law abiding individuals, in an attempt to reduce the violence in Colombia.

Mr. SHAYS. But you are very clear that you have no problem with Congress limiting, just cutting off the transfer of any weapons to Colombia or any other place?

Mr. BAKER. Absolutely none. We represent individual gun owners, not manufacturers and not importers.

Mr. SHAYS. I consider that progress. I mean, that is one thing we both can agree on.

Mr. BAKER. Sure.

Mr. SHAYS. It seems to me we should pursue that, because admittedly they will be able to go somewhere else, they will be able to go to West Germany, they will be able to go to Portugal, they will be able to go to a lot of places, but at least we are doing our part.

Mr. BAKER. I think that it only ought to be done, to be quite honest with you, if it is found that a large percentage of legally shipped firearms to Colombia are being diverted.

I think that there is some evidence that legally exported firearms to Colombia are being diverted. Whether that is a significant portion of the overall problem is another question. I think not. But if the Congress believes that is a way to go, then we certainly wouldn't oppose it.

Mr. SHAYS. The one thing I think we can agree on, and then I will finish, is that for us to say that American citizens can't buy certain weapons but it is all right for us to export to another country and have those citizens buy, that is somewhat ludicrous.

Mr. BAKER. I think that as a matter of logic, it is, yes. Of course, it depends on who they are being shipped to in Colombia.

Mr. SHAYS. Well, I think they should only be shipped to two sources. They should be shipped to the government for military use or to law enforcement agencies. That is my general opinion.

Do any of you gentlemen want to make a point before I give up my time?

Mr. STEPHENS. I have heard a lot about the law abiding views of citizens in America, and everything that I have seen reported from the polls and the national press and from the government polls on this issue of banning assault weapons and establishing reasonable controls over handguns, the American public supports those measures.

The American public is afraid. They are faced daily with accounts of people being killed with these weapons. They are faced daily with the possibility of going to work and facing these weapons. The police officers are faced daily with these weapons. And the American public supports reasonable regulations on firearms and certainly bans on assault weapons.

Mr. SHAYS. I think I have almost gone over my time.

Mr. McGUIRE. Just a final comment. Of course, Phil Orsini, from the Bureau of Alcohol, Tobacco and Firearms, is the appropriate person to speak to it. But so that we are not either misled or misinformed, the idea that only 158 firearms from the United States were seized in Colombia is not correct. That was simply of the sample that were traced, which was about 500 were traced, about 158 of that sample came from the United States. But the number of firearms seized in Colombia, it is my understanding, far exceeded that.

Mr. SHAYS. Thank you very much.

Thank you, Mr. Chairman.

Mr. HUGHES. Just for the record, even beyond the sample which was traced, it is important that we understand that, as I understand it, the ATF has indicated that there are thousands of weapons that are in question in Colombia, but we have just taken a sample.

What is significant, however, is, of the sample that we took, a substantial number of those weapons are American made weapons.

It would be hard to say with any degree of certainty what percentage of the universe of weapons that are in Colombia or South America is American made. But we can surmise that it might be a substantial number.

There have been tremendous changes in South America since Mr. Johnson was there in Colombia 8 years ago. The advent, the proliferation, of assault type weapons has been astronomical, particularly in the last 5 or 6 years.

I just have a couple of other questions. I am a little confused about the question of export of weapons, Mr. Baker.

The administration has, as you know, enforced the sporting purposes test, which has been a part of the law since 1968.

Mr. BAKER. As to imports.

Mr. HUGHES. Yes, on imports. I know that you have great problems with that.

Mr. Baker. Yes.

Mr. HUGHES. The NRA opposed it. Let me ask you, is there something inconsistent about banning the importation of such weapons and not banning the exportation of those same weapons? If, in fact, we have problems with the weapons and feel that they have no sporting value and therefore have banned their import, is it logical to say that we are not also going to ban domestic manufacture of those weapons?

Mr. BAKER. The domestic manufacture? First of all, I don't agree that the imports should have been banned. That is a question you should direct to the administration. We are going to oppose it both ways.

Mr. HUGHES. I know what the administration says. But I am saying, is it illogical to say that we don't think that there is any-thing——

Mr. BAKER. I think it is illogical, yes, sir.

Mr. HUGHES. That is what I wanted you to say. Would it not follow that it would be illogical not to carry that through for exports?

Mr. BAKER. I think that probably would be illogical, too, based on pure logic, as opposed to reasonable. I don't know.

Mr. HUGHES. I understand. We are just talking about logic.

Mr. BAKER. That is based on the pretext that there is a problem to start with.

Mr. HUGHES. I would like to get back to the waiting period that Mr. McGuire raised and about which the gentlelady from New York asked some questions. Do I take it that your concern about, and your opposition to, the 7 day waiting period is one, of course, of philosophy, but is also based on inconvenience to the gun applicant?

Mr. BAKER. No; they don't work. They are more likely to identify somebody as a felon that is not one, just as likely to identify somebody as a felon that is not one.

Based on Justice Department studies, the criminal history databases in this country are in such a poor state of repair——

Mr. HUGHES. Well, I agree that our database is not very accurate. There are a number of areas where we get false positives, and a very high percentage of them.

Mr. BAKER. Up to 50 percent.

Mr. HUGHES. Yes. So, your testimony is accurate. But let me ask you, you support an instantaneous——

Mr. BAKER. The concept of it, yes, sir.

Mr. HUGHES. Let me just finish. You support an instantaneous transfer. How does that correct the problem? That would only seem to compound the problem.

At least if we have an opportunity to run a record check, particularly in small communities where chiefs of police and those running record checks often know the individuals, the families, and they know the unstable persons, quite often, they have an opportunity to—

Mr. BAKER. You may very well be right, Mr. Chairman. I think that there are two threshold problems that we are going to have to deal with, whether it is a 7-day waiting period, instantaneous or 15 or 30 days. I think, as I talked to the Congresswoman, until we get a handle on the problem of false identification and criminal history databases, I don't think any of those systems are going to work very well.

Mr. HUGHES. Any other questions?

Mr. GUARINI. Yes.

Mr. HUGHES. Mr. Guarini.

Mr. GUARINI. I just want to clear up one point, Mr. Chairman. Mr. Baker, is there anything inconsistent with what you have said before about selling arms or bearing arms as an American citizen, as opposed to a Colombian citizen? If we can sell arms to an American citizen, why shouldn't we have the same free rights in a free society, in a democracy, to insist on those same kind of rights of a Colombian citizen?

Mr. BAKER. Colombia is a sovereign nation, Congressman.

Mr. GUARINI. I know. But we are talking about philosophy.

Mr. BAKER. I am not a philosopher.

Mr. GUARINI. Wait a minute. You are testifying and I am just asking you, is this an inconsistency. If bearing arms makes a free nation strong and freer, and if this is the essence of a democracy, and we are talking about our Bill of Rights which we have as free people, why shouldn't we insist on those same rights for the Colombian people and therefore sell them all the arms that they want?

Mr. BAKER. Congressman, everybody in Colombia except the law abiding people have arms. That is the realistic state of affairs in Colombia. I think that the Colombian Government——

Mr. GUARINI. But we are talking about an ideological concept.

Mr. BAKER. The Colombian Government ought to be able to decide for itself what it wants for its citizens. I am not an expert on Colombia. I am not an expert on philosophy.

Mr. GUARINI. But human rights and rights of society and rights of free men and a free country——

Mr. BAKER. I believe that they ought to be able to.

Mr. GUARINI. Should be about the same in one democracy as another. You defend the rights for people to have assault weapons in the United States. Why not also be consistent and also defend those rights in this poor country that is under siege in South America?

Mr. BAKER. I think that is up to the individual law abiding citizens of the country of Colombia.

Mr. GUARINI. Then it is not a matter of constitutional rights from an ideological concept?

Mr. BAKER. I am sorry?

Mr. GUARINI. It is not a matter of constitutional rights, then, you are talking about.

Mr. BAKER. In Colombia?

Mr. GUARINI. When you are talking about the right to bear arms. Mr. BAKER. Oh, it is very definitely in this country. I don't even know what type of constitution, if any, the country of Colombia has, whether they have a bill of rights, what other personal liberties their individual citizens are guaranteed. I am simply not an expert on that.

Mr. HUGHES. Would the gentleman yield to me?

Mr. GUARINI. I just want to submit that it is inconsistent and illogical.

Mr. HUGHES. I think the gentleman did concede that there is no constitutional right to purchase a firearm in this country for export. That is not a constitutional right.

Mr. BAKER. No. I think that there is a constitutional right to purchase a firearm here. I don't think that there is any constitutional right to export per se.

Mr. HUGHES. I thought that you had conceded there is no constitutional right to purchase for export.

Mr. BAKER. Well, it is a matter of semantics. I think that there is a constitutional right, Congressman Hughes.

Mr. HUGHES. Well, of course, you and I could argue all day about the second amendment.

Mr. BAKER. We have.

Mr. HUGHES. As you know, I don't buy your arguments on the second amendment.

Mr. BAKER. I understand that.

Mr. HUGHES. But that is something else again.

Well, thank you very much. You have been very helpful to us and we have gone over a lot of ground today. We thank you for your time.

Mr. HUGHES. The third panel consists of, once again, David Westrate, the Assistant Administrator for Operations, Drug Enforcement Administration; Robert Myers, Director of the Program Office, Bureau on International Narcotics Matters, Department of State; Samuel H. Banks, the Assistant Commissioner for Inspection and Control, U.S. Customs Service; John R. Hess, President, National Association of Chemical Distributors; and Gene Browning of the Chemical Manufacturers Association.

I wonder if you will come forward.

While they are assuming their seats, I am going to ask unanimous consent to admit the statement of Robert E. Johnson for the record. Is there any objection?

[No response.]

Mr. HUGHES. Hearing none, so ordered.

[Statement of Mr. Johnson appears on p. 127.]

Mr. HUGHES. Why don't we begin with you, Mr. Westrate. As you know, we are running very late. We have read your statements and, without objection, all your statements will be made a part of the record. We hope you can summarize them for us.

TESTIMONY OF DAVID WESTRATE, ASSISTANT ADMINISTRATOR FOR OPERATIONS, DRUG ENFORCEMENT ADMINISTRATION, AC-COMPANIED BY ROBERT MYERS, DIRECTOR, PROGRAM OFFICE, BUREAU ON INTERNATIONAL NARCOTICS MATTERS, DEPARTMENT OF STATE AND SAMUEL H. BANKS, ASSISTANT COMMISSIONER FOR INSPECTION AND CONTROL, U.S. CUS-TOMS SERVICE; GENE BROWNING, CHEMICAL MANUFACTUR-ERS ASSOCIATION; AND JOHN R. HESS, PRESIDENT, NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS

TESTIMONY OF DAVID WESTRATE

Mr. WESTRATE. I have just a few short pages here that I would like to read.

Although it is impossible to determine the exact percentage of United States made chemicals that are used in the manufacture of cocaine, trade records and intelligence reports indicate that the United States is by far the largest exporter of chemicals to Latin America and that Europe has steadily increased its essential chemical exports over the past several years.

The United Nations reported that in 1986 Latin America had received 80 percent of its methyl ethyl ketone, known as MEK, and 90 percent of its acetone from the United States. In 1987, the top three cocaine producing countries ranked second, fourth and seventh in essential chemical imports from the United States.

It should be noted that the essential chemicals used in the manufacture of cocaine have a number of legitimate uses as well.

First, potassium permanganate is used as a water purifier and as a bleaching agent for wood and fibers.

Second, ether and its substitutes, acetone, toluene and MEK are used in a number of legitimate industries, such as petrochemicals, plastics, rubber, munitions, pharmaceutical, and chemical industries.

To date, there have been no known official assessments by the governments of Bolivia, Colombia or Peru as to their legitimate need and consumption of essential chemicals.

Figures derived from seizure reports of the Colombian National Police indicate that from January 1 to September 18, 1989, chemical seizures included more than 620,000 gallons of ether, almost 850,000 gallons of acetone, nearly 120,000 gallons of sulfuric acid, 500,000 gallons of MEK, and more than 165,000 kilos of potassium permanganate.

On August 9, the Colombian National Police also seized five major cocaine hydrochloride laboratories, 1,200 kilos of cocaine hydrochloride, and 500,000 gallons of precursor chemicals in the Magdelena Medio area.

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One entire laboratory, including a filter system that extended 30 feet into the air, was under camouflage. Six 22,000 gallon tanks were hidden under a road. This laboratory could not have been located by plane or helicopter.

A 40 bed dormitory and tractortrailer tankers were also found at the site.

The huge volume of chemicals could have been used to produce an additional 125 tons of cocaine hydrochloride, and the elaborate recycling processing equipment found at the site conceivably could have quadrupled that amount, or close to 500 metric tons.

Critical to our efforts to stem the flow of precursor chemicals to cocaine producing countries is the recently enacted Chemical Diversion and Trafficking Act of 1988.

The preparatory actions necessary for the implementation of the act are now complete.

The reporting and recording requirements of the act for domestic transactions went into effect on August 31, 1989, and the requirements for notification to DEA for all imports and exports of listed chemicals became effective yesterday, as you noted earlier.

chemicals became effective yesterday, as you noted earlier. All U.S. importers and exporters of listed chemicals were required to submit the names of their foreign suppliers and customers for these products to DEA by August 31, so that we would be able to determine if the foreign firms were legitimate.

In view of the large number of firms in Latin America which had to be verified, investigators have been sent on temporary assignments to this region to work with our local field offices.

In other areas of the world, the verification is being conducted by the DEA office with responsibility for the country in which the firm is located.

DEA has had considerable dialogue with the U.S. chemical industry and industry trade associations since publication of the proposed regulations in February 1989. The final regulations contain a number of revisions that were made as a result of comments received from the chemical industry.

I would like to add to your earlier comments about the cooperation that we have received from the chemical industry in negotiating these regulations.

Since the publication of the final regulations on August 1, 1989, DEA has held conferences with representatives of the chemical industry in Houston, New York and Chicago in order to discuss the impact of the law and to respond to questions regarding its implementation.

A total of over 325 individuals, representing both large and small chemical companies, attended, and their response to both the law and the implementing regulations has been very positive.

The industry recognizes that this law will change the way that they normally do business, but at the same time they recognize the need for the legislation. I want to commend them for their attitude.

While there has been no indication that the U.S. chemical industry feels that the new regulations will unfairly impact on American business interests, a number of individuals have expressed the opinion that the governments of other chemical producing countries must be persuaded to publish similar legislation or the traffickers will merely go elsewhere to purchase their chemicals and their illicit activities will not be impeded.

Aware of this fact, DEA, in conjunction with the Department of State, is involved in a series of diplomatic initiatives with countries significantly involved in commerce with chemicals.

The goals of these initiatives are to familiarize these countries with the provisions of the act, to solicit their cooperation in its enforcement, and to encourage the enactment of similar laws and the

ratification of a new convention against illicit traffic in narcotic drugs and psychotropic substances.

This convention contains an article which deals specifically with preventing the diversion of essential and precursor chemicals.

We are very encouraged with the level of interest in chemical control which we have found in those countries which we have visited so far.

Major international organizations, such as the Division on Narcotic Drugs and the European Community, have been strongly supportive of chemical control measures.

Mr. Chairman, although this has been a very quick summary statement, I would be happy to answer any questions.

Mr. HUGHES. Thank you, Mr. Westrate.

Welcome, Mr. Myers. Do you have a statement for the record? Mr. Myers. No, sir, I don't.

Mr. HUGHES. We are delighted to have you with us. I understand you are here to respond to questions.

Mr. Myers. That is correct.

Mr. HUGHES. Thank you, Mr. Myers.

Mr. Banks, welcome.

Mr. BANKS. Thank you, sir. I have no statement.

Mr. HUGHES. You are here to respond to questions, are you?

Mr. BANKS. Yes, sir.

Mr. HUGHES. We are also pleased to have representatives of the industry with us. I want to tell you again that I thought you got a bum rap recently with some of the media attention that the chemical industry received. We found the industry to be very responsible, good corporate citizens, working with us to develop the Chemical Diversion and Trafficking Act, and we appreciate your contributions.

Mr. Browning, why don't we begin with you. Welcome. We have your statement. Please summarize.

TESTIMONY OF GENE BROWNING

Mr. BROWNING. I will be happy to summarize.

Mr. HUGHES. Also, I might tell you that we don't want to get into too much detail about the regulations and any problems with them because it is my intent to have an oversight hearing on the issue. You might touch upon it, but we can get into the problem in that context.

Mr. BROWNING. Thank you, Mr. Chairman. I will try to make my statement as brief as possible.

My name is Gene Browning, and I am the Manager of the Product Regulatory Compliance Operations for the Silicone Products Division of General Electric Plastics. Today I am speaking on behalf of the Chemical Manufacturers Association.

My company and the other member companies of CMA are opposed to the misuse of our products for their use in making illicit drugs.

The U.S. chemical industry has a long history of cooperation with the Drug Enforcement Administration. Going back to the 1960's and 1970's, chemical companies have voluntarily reported suspicious purchases to DEA and actively cooperated in DEA investigations of diversion.

As this cooperation has shown, companies can play a significant role in helping stem the production of illicit drugs.

In summarizing our written statement, I would like to cover several aspects of the diversion problem.

First, I would like to briefly highlight a CMA analysis of government trade data that examines exports to Andean countries.

CMA has performed an analysis of trade data from the U.S. Department of Commerce on exports of some of the essential chemicals to Andean countries. This analysis shows that overseas diversion is relatively small compared with all exports, and that international control efforts will be needed to control illegal drug making.

This analysis gives a more useful picture of U.S. exports than the figures previously reported. For example, DEA reported a fivefold increase since 1986 of exports to Colombia of 2-Butanone, more commonly known as methyl ethyl ketone or MEK.

However, Department of Commerce trade data show that United States MEK exports to Colombia were 12.8 million pounds in 1988, more than a million pounds less than in 1986.

DEA also reports the seizure of over 13.5 million pounds of potassium permanganate in 1988. United States trade data do not indicate exports of this magnitude.

Furthermore, the sole U.S. producer of potassium permanganate has told CMA that less than 60,000 pounds of potassium manganate were exported to Andean countries in 1988. As a matter of fact, less than 20,000 pounds went to Colombia.

Thus, for potassium permanganate, DEA's seizures must capture material from outside the United States.

The chemical industry is committed to managing our responsibilities, but these data show that an international effort is required.

Throughout the regulatory process and continuing with DEA's ongoing implementation process, CMA has maintained its cooperative approach with DEA.

CMA's second major area of concern is that DEA's interpretation of the CDTA imposes requirements that do not help prevent diversion, yet create a significant burden on legitimate business. We would like to cite several areas of concern about this implementation process.

The chemical industry has questions about the implementation of the CDTA, especially receipt records. CMA believes this to be an unnecessary and burdensome record—keeping requirement which clearly is not intended under the CDTA.

Next, on proof of identity, in CMA's opinion DEA has made considerable progress in clarifying the CDTA's proof of identity requirements. DEA, however, should find a way to acknowledge the longstanding commercial relationships that exist between customers in its proof of identity requirements.

Our third concern deals with import-export transactions with regular customers. The CDTA specifically waives the 15 day waiting period for regular customers.

However, DEA allowed insufficient time for the establishment of regular customer lists and is now penalizing those companies who are in compliance with the law by submitting their regular customer lists and is contradicting the import-export provisions established in the CDTA.

Finally, the issue of free on board, free alongside and export notices. CMA believes it is a paperwork burden that is unnecessary and contrary to congressional intent.

In commercial chemical contracts, delivery of material is often stated as FOB or FAS. In the usual FOB or FAS contract, the buyer takes ownership and possession when the material is transferred to the carrier. Therefore, the seller is not the exporter and should not be held liable for completion of the DEA export notification forms.

Next we would like to offer several suggestions for effective implementation of the Chemical Diversion and Trafficking Act.

DEA has taken useful steps to promote the full implementation of the CDTA in the regulated community.

The CMA proposes that the following additional actions are in order:

More practical guidance is needed to fully engage the chemical industry in the use of CDTA to control diversion.

DEA should begin a fuller dialogue with the chemical industry to develop an interpretive guidance needed for effective implementation of the CDTA. A very useful way to accomplish this guidance is to develop questions and answers with CDTA.

The interpretation process could be made more transparent and effective if DEA were to adopt a specific waiver and exemption request process.

CMA and its member companies are firmly committed to the concept of product stewardship. The CMA is confident that no CMA member company knowingly sells chemicals for illegal drug end uses.

In conclusion, the Chemical Diversion and Trafficking Act is now at an important stage, the implementation of the regulations by the industry and enforcement of the act by DEA.

At this critical juncture, DEA needs to give practical guidance to the regulated community. CMA wants to help develop such guidance and believes that this process will forge an even stronger partnership of the DEA and the chemical industry.

That concludes my remarks and I would be delighted to answer any questions from the panel.

Mr. HUGHES. Thank you very much, Mr. Browning.

Mr. Hess, welcome. We hope you can summarize your statement, Mr. Hess.

TESTIMONY OF JOHN R. HESS

Mr. HESS. Thank you, Chairman Hughes. Good afternoon.

My name is John R. Hess. I am chairman of John R. Hess and Company, Inc., a chemical distributorship in Providence, RI, and I appear here today in that role and also as president of the National Association of Chemical Distributors.

Industrial chemical distributors sell and distribute the products defined as essential chemicals under the Chemical Diversion and Trafficking Act. Their legitimate uses are numerous, paint, textile coatings, water purification, detergents, medicines, cosmetics, and a host of others.

We all use these products every day and the transactions necessary to fill the manufacturing requirements number in the hundreds of thousands per year. The essential chemicals are commodities, and I can't emphasize that point strongly enough. They move in large volume, at a very low profit margin. They are not production controlled pharmaceutical intermediates.

The task faced by the chemical industry, the Congress and the DEA is how to do everything possible to keep these essential chemicals from being diverted to illicit use, without disrupting legitimate commerce unnecessarily.

How distributors function is described in my written statement. Briefly, we provide commodity chemicals to numerous small and mid-size businesses, providing that function for the chemical manufacturer. These legitimate enterprises rely on our personalized service to supply quality goods when and where they are needed.

The United States, embodied in the chemical distributor, has a reservoir of available information, as well as a mobilized force to monitor the distribution of essential chemicals already in place. That effective force must be tapped by encouraging voluntary industry assistance. Please do not discourage such activity by unreasonable regulation.

Legislatively, the act is complete. But the implementation is still in its early stages. The act is a good law and we are proud to have worked with you, Congressman Hughes, and your colleagues on the Subcommittee on Crime during its development.

The act is premised on the continued vigorous support which the chemical industry has demonstrated of its own volition in the past.

NACD and the Chemical Manufacturers Association have been working with DEA to ensure that industry is clear on how certain provisions in the act are being interpreted. Some of these provisions and their interpretations are of particular concern.

We share those concerns mentioned by CMA, such as receipt record-keeping requirements, ultimate accountability for commodities sold fob or fas, and proof of identity.

Two areas of particular concern to us are the question of regular customer and import prenotification. Enforcement interprets this rule to mean that current customers do not exist until they are registered with DEA, despite the fact that a business relationship may have been in effect for decades.

With regard to export sales, a sales history in a specific regulated commodity is required for a regular customer status.

This means that a legitimate export customer with regular customer status for one essential commodity chemical must wait 15 days and be granted regular status again before he can purchase a different essential chemical.

Providing a new service to an existing customer is not servicing an entirely new customer. This places U.S. distributors at a severe competitive disadvantage when trying to service legitimate foreign need.

It also effectively prevents distributors from expanding their businesses by responding to market conditions and providing new product lines to established customers. In addition, when a product is imported, it becomes part of the domestic product pool and is subject to tracking from seller to seller.

By requiring prenotification, U.S. distributors are denied the opportunity to take advantage of the foreign spot markets. This is a severe disadvantage in a market where service is key and prompt action is a condition of sale.

Chemicals are the raw materials for the manufacture of innumerable products. Excessive regulation will artificially inflate commodity chemical costs by creating new overhead requirements for compliance.

Similar price increases could be expected in other manufacturing sectors as raw material costs rise.

Our members want to cooperate, but we need to know how to comply. We wish to understand the regulations and for the regulators to understand us. This is critical to an efficient and effective program.

We make no pretentions about approving regulations, but we would appreciate the opportunity to comment before they become final and explain their potential effects on our industry.

With appropriate regulation, we can supply these commodities to legitimate users and remain alert to any diversion attempt.

Making access to these materials unrealistically difficult, by regulation or any other means, could and would change more than just the chemical industry.

The National Association of Chemical Distributors is ready and willing to work with DEA in the continued development of a meaningful program which will provide useful information without unnecessarily burdening industry.

Thank you, gentlemen, for listening. I will be happy to answer any questions.

[The statement of Mr. Hess appears on p. 163.]

Mr. HUGHES. Thank you, Mr. Hess.

I'd rather not explore at this time in any great detail, any differences that might exist concerning the regulations and whether they are being properly interpreted or whether the regulators are being heavy handed relative to regular customers or concerns about the 15 day notice requirement. We have already begun a process of attempting to address the concerns, and we will continue that process. This is not the forum, where we can resolve that.

We will utilize the process we used in attempting to pass the legislation. We'll try to get the parties together and see if there aren't some areas where we can reach some accommodation and understanding.

I presume that will be satisfactory, will it not, Mr. Westrate? I see we have the czar of diversion here, Gene Haislip.

Mr. WESTRATE. Yes. We have worked closely, I think, with the industry to get to the point we are at. I think that these gentlemen would appreciate, on behalf of their colleagues, that we have to start somewhere here.

DEA has a history of many decades of regulating the pharmaceutical industry and I am particularly proud of the agency's ability to satisfy our needs as a regulator and their needs in terms of legitimate business.
Mr. HUGHES. Suffice it to say, Gene Haislip is a real professional, and a credit to the DEA. I am sure we can work on trying to solve the problems and have an effective piece of legislation. I know we can have regulations that are balanced, that don't overreach and don't require unnecessary things. I think we can reach some accommodation on this issue.

Let me just move on, if I could.

I think that Mr. Browning's testimony is right on target. It is an international problem. We could argue about what percentage of the chemicals that we are finding in South America, for instance, come from America. Whatever it is, it is too much.

My own sense is that the amount has increased over the years. When I was in Peru and Bolivia just back in February, we found a large quantity there of chemicals, most of which came from the United States. So, it is a problem.

What are we doing to get other countries involved in this problem? How much of an effort are we making to get other countries to do their part in developing very similar initiatives and committing the resources to attempt to look at shipments as they come into countries?

Mr. WESTRATE. First of all, let me say that I think the most important thing we can do to stimulate international action is to ensure that we have our own house in order in the United States. I think the discussion we just heard about weapons is sort of a similar thing. I think we are well along in that regard.

At the same time, we agree 100 percent that we should not penalize American business interests in this and we have got to work on the international front.

Mr. HUGHES. Are we committing DEA agents in source and transit countries to work on our own legislation?

Mr. WESTRATE. Yes, indeed. We have had most recently DEA personnel, both diversion and special agents, TDY in nine different countries. I think more important than that even is the diplomatic efforts that have been undertaken by Mel Levitski and Mr. Myers at INM to pursue with DEA in various source countries, to stimulate some firm action there.

Mr. HUGHES. Mr. Myers, is that a priority for us in our International Narcotics Department at State?

Mr. MyERS. It is, indeed, Mr. Chairman.

Mr. HUGHES. That is, attempting to get other countries to commit resources, and to develop legislation similar to ours, so they can do the same tracking?

Mr. MYERS. Very much so. It is very much a lead item in the strategy as it was drafted by Mr. Bennett's office.

You mentioned Mr. Haislip. We went together to Europe on a trip about 1 month or 6 weeks ago, talking to foreign government representatives, chemical industry representatives, and international organization representatives about this very issue.

Mr. HUGHES. What is Customs finding? Are you finding much of the diversion? Are you picking up at our ports chemicals which have been diverted from their legitimate destinations?

Mr. BANKS. Well, that is very difficult to say at this point, primarily because this act is brand new. In fact, the Customs portion of it really hasn't even gone into effect at this point, won't go into effect until about November 15, when some action can be taken.

I have got to say that we have been working with DEA on a regular basis to try to identify potential shipments. But we really haven't had the legal authority to block those shipments prior to this act.

Mr. HUGHES. Have you found illegal shipments?

Mr. BANKS. We have found probably over 1,000 shipments that at least caused us some degree of concern. We referred information on those shipments to DEA to research further, with some mixed results.

Understand, the only thing that we had in the past were very generic shipping documents on which to try to base this targeting process. This new act provides a lot more specificity.

Mr. HUGHES. So, basically, you are now just in the process of developing your strategy to deal with that?

Mr. BANKS. We are fairly well along in terms of developing a strategy. We are linking in an automated manner to make sure that we can expedite this process and that we don't, you know, cause a hindrance or a delay to the domestic industry.

Mr. HUGHES. Thank you.

The gentleman from Pennsylvania.

Mr. COUGHLIN. Thank you, Mr. Chairman. We thank each of you for being here very much, indeed, and also for your patience. It has been a long series of hearings. So, we appreciate the fact that you are here and you have waited as long as you have.

To some extent, this part of the hearing is a little bit premature, because, of course, the law is just going into effect now, many parts of it, and it is hard to evaluate where we are until that shakes itself down some.

My only question would be, I guess, to both the representatives of the industry here and to the government representatives.

What we are trying to do is identify shipments that would appear to be outside of the normal course of business. And I take it from both sides, both standpoints, those are not impossible to identify and you feel that you would have some feel for when an order came that was likely to be diverted or likely to go to an unusual source, that that is something that you can work together to find. Is that the feeling of those representing the industry?

Mr. HESS. Speaking for the chemical distributor, I would say yes,

that we would. That type of thing would stand out and can be very carefully monitored just from existing sales records and the way that a chemical distributing company works.

They are regionalized and with salesmen calling repetitively in an area. They know the territories.

Strange orders stand out and would be checked, obviously, for credit first off, and then from that point.

We make no cash sales. We are very careful to identify. I say we, I think I am talking about most or the majority, 99 percent of the chemical distribution community.

Mr. COUGHLIN. How about from the manufacturers' standpoint? Mr. BROWNING. Yes, I agree with the comments of Mr. Hess. It is not impossible for us to look for unusual shipments, unusual methods of payment, unusual delivery locations, and to report those kinds of things to the DEA for further action.

Mr. COUGHLIN. I suppose if we have done that, why at least we would have an enormous start on getting some handle on the problem of precursors being shipped to illegitimate areas.

Mr. BROWNING. Watching for those types of transactions is not without precedent. The Commerce Department imposes those same sorts of things on those of us in the chemical industry who are specifically regulated by the Commerce Department for export controls, and we have to look for suspicious exports for things that are on the Commerce Department list. So, there is precedent there.

Mr. COUGHLIN. Let me ask from the DEA standpoint and then from the Customs standpoint, as well.

Mr. WESTRATE. I think, sir, that the first year in particular is going to be like a sorting out process. We are learning. Both sides, I think, are learning details.

We are looking to sort through this barrel and find the bad apple that is really the source of these chemicals, and I would point out, too, for domestic laboratories. Not all of this activity has to do with exported chemicals.

I am convinced that within the next 6 months to 1 year we are going to be able to set up a pretty smooth running activity in relation to established, legitimate, continuing customers with the industry, which will allow us then really to focus on the types of cases that the Chairman mentioned in his opening statement, such as the case in Dallas where we ended up seizing the entire company.

I think we can make real good progress in the next few months to get this working efficiently.

Mr. BANKS. From the Customs perspective, Mr. Congressman, I would say that we are really looking forward to the additional information and the cooperation of the chemical industry in this process. We think with this additional information, we are going to be able to really refine the targeting process and be able to apply our resources much more effectively.

So, we are looking forward to this next year in getting this process underway.

Mr. COUGHLIN. I guess I would suggest that I suspect, at least, as in so many other things that we do in government, that if we really take the really egregious and obvious cases off the top and we can get those behind us, we will find that the recordkeeping and all the rest of the things may be less necessary because the obvious ones are the ones that are contributing most of the problem.

Does that make sense?

Mr. WESTRATE. Yes. We would certainly expect to look at these regulations continuously, to see how we can reduce the burden. At the same time, we feel at least initially we have responsibilities as the law enforcement arm taking a look at this to not simply coopt any areas where we think we want to take a look and satisfy ourselves that there is no problem.

So, we are trying to be as accommodating as we can and yet exercise the amount of regulation and control that is going to be required to see what we have here. Mr. COUGHLIN. I can remember, and I guess my only brief warning would be, I remember when Superfund was enacted in another committee of which I am active, I suggested that we should perhaps concentrate on the ten most egregious toxic waste sites, rather than trying to catalog every waste site in the country and fritter away our resources on doing that. I think a similar situation is here.

Mr. HUGHES. We are under 5 minutes.

Mr. COUGHLIN. If we observe the most egregious cases, why, and not fritter away our assets on monitoring everything, that will be probably most productive.

I thank the Chairman very much.

Mr. HUGHES. I thank the gentleman.

Thank you very much for your testimony on this important piece of legislation. As I indicated at the outset, it is probably one of the most dramatic new tools provided to further law enforcement. We need your help, since we want to make it effective, not too burdensome, but effective. With your help, we will do that.

Again, thank you very much. We appreciate your contributions. Once fully implemented, I think the law is going to be a dynamic tool.

That concludes the testimony. I want to thank the staff for doing a very good job of putting the hearing today. That concludes the testimony.

The hearing is concluded and the select committee stands adjourned.

[Whereupon, at 2:22 p.m., the committee adjourned, subject to the call of the chair.]

PREPARED STATEMENTS

OPENING STATEMENT OF CONGRESSMAN WILLIAM J. HUCHES CHAIRMAN, SUBCOMMITTEE ON CRIME

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL HEARING ON "ASSAULT WEAPONS, PRECURSOR CHEMICALS, AND DRUG CONTROL IN THE ANDES" NOVEMBER 1, 1989

GOOD MORNING AND WELCOME TO THE HEARING OF THE SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL ON THE ISSUE OF "ASSAULT WEAPONS, PRECURSOR CHEMICALS AND DRUG CONTROL IN THE ANDES." I AM PARTICULARLY PLEASED TO BE CHAIRING THIS HEARING BECAUSE OF THE PRESSING NATURE OF THE TOPIC BEING ADDRESSED. OUR DISTINGUISHED CHAIRMAN, CHARLIE RANGEL, IS UNFORTUNATELY INVOLVED IN A CONFERENCE ON THE BUDGET. WHILE HE HOPES HE MAY BE ABLE TO BREAK AWAY AND JOIN US, IN CASE HE CANNOT DO SO, HE WANTED ME TO EXPRESS HIS THANKS TO ALL THE WITNESSES HERE TODAY.

WE ART ALL TOO AWARE OF THE ESCALATING BATTLE ---- AND TRAGIC RESULTS --- OCCURRING IN THE ANDEAN NATIONS WHEN CHEMICALS, CRITICAL TO CREATING ILLEGAL DRUGS, <u>PLUS</u> POWERFUL WEAPONS MERGE IN THE POSSESSION OF DRUG TRAFFICKERS.

MUCH OF THE IMPETUS FOR TODAY'S HEARING WAS THE RECENT VISIT OF COLOMBIAN PRESIDENT VIRGILIO BARCO TO THIS COUNTRY. DURING A MEETING WITH THE HOUSE LEADERSHIP, PRESIDENT BARCO STRESSED THAT COLOMBIA'S ANTI-DRUG ACTIVITIES ARE SERIOUSLY UNDERMINED BY THE FLOW OF AMERICAN WEAPONS AND PRECURSOR AND ESSENTIAL CHEMICALS INTO HIS COUNTRY. HE URGENTLY REQUESTED OUR HELP IN CURTAILING THIS DEVASTATING SITUATION.

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I UNDERSTAND THE FRUSTRATION THAT PRESIDENT BARCO EXPRESSED. WE ARE FREQUENTLY TOLD THAT IT IS THE AMERICAN DEMAND FOR ILLEGAL DRUGS WHICH NOURISHES THE DRUG ENTERPRISES FLOURISHING IN THE SOURCE COUNTRIES. THAT CONCERN, HOWEVER, HAS BEEN HEARD FAR MORE FREQUENTLY THAN THE MESSAGE CONVEYED BY PRESIDENT BARCO. IT IS IMPORTANT FOR US TO REALIZE THAT COLOMBIA'S BATTLE AGAINST THE DRUG TRAFFICKERS IS EXACERBATED NOT SOLELY BY THE DEMAND FOR ILLEGAL LAUGS. IN AN EVEN MORE IMMEDIATE AND VISIBLE WAY, UNITED STATES CHEMICALS FLOW INTO THE JUNGLE LABS IN COLOMBIA AND OTHER ANDEAN NATIONS. UNITED STATES-MADE GUNS PROTECT THE DRUG CARTELS.

PRESIDENT BARCO IS NOT ALONE IN HIS CONCERN THAT THESE CHEMICALS CRITICAL FOR DRUG PRODUCTION, AND WEAPONS USED FOR PROTECTING DRUG ENTERPRISES, ARE INFILTRATING HIS COUNTRY. IT WAS <u>PRECISELY</u> THIS KIND OF CONCERN WHICH MOTIVATED THE SUBCOMMITTEE ON CRIME, WHICH I CHAIR, TO WRITE THE "CHEMICAL DIVERSION AND TRAFFICKING ACT," WHICH WAS ENACTED AS PART OF THE 1988 ANTI-DRUG ACT.

AS IT'S DESIGNED, THE "CHEMICAL DIVERSION AND TRAFFICKING ACT" CONTAINS STRICT RECORD KEEPING PROVISIONS FOR CHEMICAL MANUFACTURERS AND DISTRIBUTORS WHO ARE ALSO REQUIRED TO REPORT TO THE ATTORNEY GENERAL ANY TRANSACTION INVOLVING AN EXTRAORDINARY QUANTITY OF ANY OF THE CHEMICALS IDENTIFIED IN THE ACT. THESE ARE JUST TWO OF THE PROCEDURES DESIGNED FOR CURTAILING THE

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ABILITY OF ILLEGAL DRUG MANUFACTURERS TO OBTAIN THE CHEMICALS NEEDED FOR THEIR OPERATIONS.

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ALTHOUGH THE ACT'S REGULATIONS ONLY WENT INTO EFFECT IN LATE AUGUST --- WITH THE REPORTING REQUIREMENTS GOING INTO EFFECT JUST YESTERDAY --- I AM VERY ENCOURAGED ABOUT THE PROSPECTS FOR ITS EFFECTIVENESS AS A TOOL IN FIGHTING THE DOMESTIC AND FOREIGN DRUG PROBLEMS.

THE LEGISLATION HAS ALREADY BEGUN TO SHOW POSITIVE RESULTS. ON AUGUST 30TH, TWO DALLAS-BASED OWNERS OF "ROGUE" CHEMICAL COMPANIES WERE INDICTED FOR ALLEGEDLY SELLING PRECURSOR CHEMICALS TO PEOPLE WHOM THEY KNEW, OR SHOULD HAVE KNOWN, WERE GOING TO USE THE CHEMICALS FOR MANUFACTURING "SPEED". NOT ONLY WERE THE OWNERS INDICTED, BUT THE COMPANIES' INVENTORIES ---- VALUED AT OVER \$100,000 FOR EACH COMPANY --- WERE SEIZED, ALONG WITH A TOTAL OF \$30,000.00 IN CASH FROM THE COMPANIES.

I AM GRATIFIED THAT THE ACT IS ALREADY PROVING SO USEFUL AND BELIEVE THAT THIS BODES WELL FOR ITS FUTURE SUCCESS IN STEMMING THE FLOW OF THESE CHEMICALS OUT OF THIS COUNTRY AND INTO THE WRONG HANDS. LET ME ALSO ADD THAT I AM HAPPY TO LEARN THAT THE LEGITIMATE CHEMICAL MANUFACTURERS ARE DEVELOPING THEIR CCMPLIANCE PROGRAMS IN ORDER TO FULFILL THEIR OBLIGATIONS UNDER THIS ACT --- THE DEVELOPMENT OF THE ACT WAS, I MIGHT NOTE, ENHANCED BY THE TRULY OPEN AND PRODUCTIVE DISCUSSIONS AMONG THE CHEMICAL INDUSTRY, THE DRUG ENFORCEMENT ADMINISTRATION, AND MY SUBCOMMITTEE. WE WILL RECEIVE TESTIMONY THIS MORNING FROM BOTH

THOSE GROUPS CONCERNING THEIR EXPERIENCES IN IMPLEMENTING THIS ACT.

CHEMICAL DIVERSION IS, I AM AFRAID, ONLY PART OF THE PROBLEM. THIS HEARING ALSO DEALS WITH THE GRIM LINK BETWEEN CHEMICALS, WEAPONS, AND DRUGS.

DRUG TRAFFICKERS VICIOUSLY PROTECT THEIR DRUG INVESTMENTS AND OPERATIONS USING THE MOST POWERFUL WEAPONS THEY CAN GET THEIR HANDS ON. TRAGICALLY MANY OF THE WEAPONS BEING SEIZED IN COLOMBIA BY THE NATIONAL POLICE AND THE MILITARY IN THEIR NARCOTICS EFFORTS ARE FROM THIS COUNTRY.

FOR EXAMPLE, 155 WEAPONS HAVE BEEN SEIZED IN COLOMBIA, INCLUDING MANY POWERFUL ASSAULT WEAPONS. OF THE 155 WEAPONS, 135 WERE AMERICAN MADE, INCLUDING 10 RUGER MINI-14 AND 63 COLT AR15. THE DEPARTMENT OF TREASURY'S BUREAU OF ALCOHOL, TOBACCO AND FIREARMS WAS ABLE TO TRACE THE SOURCES OF SOME OF THESE AMERICAN WEAPONS. WHAT THEY FOUND WAS THAT 7 STATES FROM COAST TO COAST WERE THE SOURCES OF 52 OF THE WEAPONS.

THE HORRORS INFLICTED ON INNOCENT CITIZENS AND LAW ENFORCEMENT AND JUDICIAL OFFICERS IN COLOMBIA IS SIMPLY INTOLERABLE. THE TRAGEDY INFLICTED BY THE DRUG TRAFFICKERS IS ONLY COMPOUNDED WHEN THEY REALIZE THAT IT IS AMERICAN MADE OR DISTRIBUTED WEAPONS THAT ARE BEING USED IN THIS CARNAGE.

I FULLY UNDERSTAND PRESIDENT BARCO'S OUTRAGE AND HIS REQUEST FOR OUR HELP, AND WE MUST DO SOMETHING ABOUT THIS.

THE CHAIR RECOGNIZES THE RANKING REPUBLICAN, MR. COUGHLIN, FOR ANY STATEMENT HE MIGHT WANT TO MAKE.

DEPARTMENT OF THE TREASURY

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Statement by Phil A. Orsini Special Agent in Charge Firearms Enforcement Branch, Firearms Division

Before

Select Committee on Narcotics Abuse and Control U.S. House of Representatives

November 1, 1989

Thank you for this opportunity to testify before your committee concerning the illegal trafficking of firearms from the United States to foreign countries.

The Bureau of Alcohol, Tobacco and Firearms has been fully involved for many years in efforts to curtail such illegal trafficking through its International Traffic in Arms (ITAR) Program.

The ITAR Program is a continuing endeavor by ATF to combat the illegal movement of firearms, explosives, and ammunition in international traffic. These firearms, explosives, and ammunition are smuggled from the United States and used throughout the world to commit acts of international terrorism and to subvert restrictions imposed by other countries on their citizens, as well as being a commodity in organized crime and narcotics-related activities. The ITAR Program is an aggressive commitment and effort to neutralize the illegal movement of firearms, explosives, and ammunition out of the United States.

Though ATF has traced firearms for countries throughout the world, its investigative efforts have been centered on countries in the Caribbean, Latin America, and the Pacific rim.

<u>Caribbean</u>

With the advent of the "Jamaican posse" crime phenomenon, ATF became aware not only of the criminal acquisition and use of firearms by members of the Jamaican posses in the United States but of the trafficking of firearms to Jamaica.

Though ATF has long been aware of this trafficking, it has been difficult to establish a productive rapport with Jamaican law enforcement officials to obtain adequate information for generating investigative leads.

To remedy this, ATF has established a Headquarters operations officer position responsible for liaison with Jamaican officials and the exchange of information.

Of the traces completed for the Jamaican Constabulary, the Colt AR15 and the Smith & Wesson revolver have been shown to be the weapons of preference. Florida has been the source State for approximately 50 percent of the firearms.

Mexico

Mexico has accounted for the largest number of firearms traced for foreign governments in the past 18 months. ATF has received 291 trace requests and has successfully

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traced 211 firearms. California was the source State for 110 firearms, with Texas accounting for 35. Illinois accounted for 13, Arizona for 8, and Florida for 6. The remaining 27 firearms were purchased in 21 separate States.

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The weapons of preference have been the Ruger Mini-14 and the AKS 47.

Adequate information is still difficult to obtain from Mexican officials despite several high-level initiatives to remedy the problem.

<u>Colombia</u>

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The Bureau of Alcohol, Tobacco and Firearms (ATF) recently detailed two special agents to Bogota, Colombia, for 30 days. The purpose of the detail was to assess the extent to which American firearms are being used in crimes of violence in Colombia and to instruct the Colombian police and military officials on the proper procedure for requesting traces of recovered weapons. The agents made contact with numerous Colombian officials directly involved with firearms and explosives seizures and made inquiries with various U.S. entities in Colombia.

The agents obtained a list of 155 firearms seized in Colombia by the Colombian National Police and the military, primarily during narcotics enforcement activities. These 155 firearms represent only a small portion of the total number of firearms seized.

The following is a statistical analysis of the firearms and trace data:

-- Of the 155 firearms, traces were initiated on 90 firearms. The remaining firearms were deemed untraceable because of obviously incorrect or obliterated serial numbers.

-- 135 of the firearms were of American production, and 20 were

of foreign production.

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- -- One trace is not yet completed, 27 firearms were not traceable due to bad serial numbers or bad dealer records, and 2 firearms were determined to be stolen.
- -- Five Smith & Wesson revolvers were traced to the Government of Colombia.

Year Purchased

-- The following are the number of traced firearms purchased per year.

1971 - 2	1980 - 2
1975 - 1	1981 - 11
1976 - 1	1982 - 6
1978 - 3	1983 - 5
1979 - 3	1984 - 2
	1985 - 10
	1986 - 2
	1987 - 1
	1988 - 3

Source State

The following are source states of traced firearms:

Florida - 36 California - 6 Illinois - 2 Georgia - 2 Louisiana - 3 West Virginia - 1 Wisconsin - 2

-- One firearm was shipped directly to Ecuador, and two firearms

were shipped to Panama.

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Because the weapons traced constitute only a small proportion of the firearms seized in Colombia, the patterns described above may not be a true representation of the overall firearms pattern.

All trace data will be furnished to ATF field offices for investigation with the anticipation that investigative leads will be developed and criminal cases perfected on individuals involved in trafficking firearms to Colombia.

During the past 18 months, ATF has received 292 trace requests from Colombia, including those firearms described earlier. A total of 224 firearms were successfully traced. Of these, 10 firearms were determined to have been exported to the Panama Canal Zone, 1 to Canada, 2 to Ecuador, and 1 to Thailand. Eleven firearms were determined to be military surplus, and 21 firearms were shipped to the Government of Colombia.

Of the remaining 178 firearms, Florida was the primary source State, accounting for 127 firearms. California accounted for 18 firearms. The remaining 33 firearms were purchased in 18 States.

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The Colt AR15 was overwhelmingly the weapon of choice, accounting for 108 of the 292 firearms. The SWD/Ingram/RPB-type firearm accounted for 32, the IMI UZI accounted for 16, the Ruger Mini-14 accounted for 27, and the Smith & Wesson revolver accounted for 27.

As stated earlier, ATF recently detailed two special agents to Bogota, Colombia, for 30 days. The purpose of the detail was to assess the extent to which American firearms are being used in crimes of violence in Colombia and to instruct Colombian police and military officials on the proper procedure for requesting traces of recovered weapons.

Based on our analysis of information gathered during this assignment, we believe that a great many firearms are being exported illegally from the United States to Colombia and that these firearms are ending up in the narcotics trafficking trade and terrorist activities.

To effectively impact on this illicit activity, it is of prime importance to have accurate and up-to-date intelligence. To obtain this, ATF must maintain close liaison with Colombian law enforcement authorities and with U.S. agencies operating in Colombia.

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To accomplish these worthwhile goals, ATF is in the process of establishing a permanent presence in Colombia with the assignment of two special agents.

The agents will initially be assigned administratively to the Drug Enforcement Administration office at the U.S. Embassy in Bogota.

In addition to gathering intelligence on firearms trafficking activities, the agents will be responsible for providing firearms and explosives technological assistance and training to Colombian law enforcement officials.

Philippines

ATF has received 134 firearms trace requests from Philippine law enforcement officials. Of these, ATF traced 130 of the firearms. Forty-five of the firearms were traced directly to the Philippine Government. Of the remaining 85 firearms, California was determined to be the source State of 73 of the firearms.

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Recent investigations have disclosed a dramatic upsurge in firearms being trafficked to the Philippines. One ongoing investigation has disclosed the trafficking of approximately 800 firearms by 1 group of individuals.

Trafficking to the Philippines appears to differ from trafficking to other countries because a relatively small number of individuals are responsible for a large number of firearms being trafficked.

Of the 134 firearms in the data base, 62 are Colt .45-caliber pistols, the weapon of preference.

Cases

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The following reflect the number of ITAR defendants and cases for each of the past 4 fiscal years.

	1985	1986	1987	1988	1989
Defendants	252	277	251	402	205
Cases	183	203	175	167	83

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Comments

We believe that the weapons traced constitute only a small portion of the total firearms seized. Therefore, the patterns described may not be a true representation of the overall firearms patterns. In addition, the data base from which these statistics were drawn was created as an investigative tool to aid in the generation of investigative leads; it was not designed to capture solely statistical data.

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Statement

of

DAVID L. WESTRATE Assistant Administrator Drug Enforcement Administration

before

the

Select Committee on Narcotics Abuse and Control U.S. House of Representatives

concerning

Assault Weapons and Chemical Diversion

on

November 1, 1989

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Chairman Rangel and Members of the House Select Committee on Narcotics Abuse and Control: I appreciate this opportunity to appear before you today to discuss the domestic availability of assault weapons among international drug traffickers, and the flow of precursor chemicals from this country to nations of the Andean Region, as well as initiatives of the Drug Enforcement Administration in addressing these problems.

The Drug Enforcement Administration works closely with the Bureau of, Alcohol, Tobacco and Firearms (BATF) on narcotics investigations involving the use of assault weapons. BATF is the federal agency responsible for reducing the criminal misuse of firearms and explosives. Although BATF has no direct statutory jurisdiction over narcotics violations, they take full advantage of their unique opportunity to suppress narcotic related crimes through the enforcement of federal firearms laws.

Numerous DEA investigations involving drug traffickers based in Latin America have surfaced allegations that automatic weapons are exchanged for drugs. The most prevalent weapons mentioned are the AK-47 assault rifle, 9MM pistols, and shotguns.

A review of these allegations also indicates that most of the weapons reportedly were purchased in the United States before being smuggled to Latin America. These reports also show that weapons were usually purchased by third parties with no criminal records, or by persons using false identities. Further, the

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weapons were usually purchased from several gun shops in the same geographical vicinity in order not to arouse suspicion. The weapons were smuggled in quantities of 15 or less from the United States to Mexico by vehicles using concealed compartments and were then, in most cases, either used by Mexican traffickers or transshipped to Colombia.

A special report prepared by the El Paso Intelligence Center (EPIC) during July 1989 details several related weapons seizures in Mexico that reflect the kinds of weapons that are in demand as well as how these arms are being smuggled into South America. Significantly, EPIC reports that the seizures represent one of the few documented cases in which drugs were used to pay for the weapons. The seizures also confirmed that the Medellin Cartel was operating in Mexico on a large scale and that this cartel was smuggling weapons and ammunition through Mexico.

On January 29, 1988, for example, 95 AKS (Chinese version of the AK-47) assault rifles, three American-made versions of the AK-47, and five AR-15 rifles were seized in Agua Priesta, Mexico.

On February 4, 1988, 83 AKS assault rifles were seized and several Mexican drug traffickers were arrested in Hermosillo, Mexico.

On February 18, 1988, 180 AKS assault rifles were seized along with one ton of marijuana and one ton of marijuana seeds in

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Durango, Mexico.

BATF traced four serial numbers from the Hermosillo seizure and discovered that the weapons were bought from a gun shop in Downey, California. BATF also traced 180 serial numbers from the Durango seizure and discovered that 164 were tentatively identified as having been purchased by two individuals from a gun shop in Compton, California, which is located near Downey.

BATF found that five of the weapons seized in Hermosillo were bought from a gun shop in Santa Ana, California, in the same general area as the two other gun shops mentioned earlier. Further, five AR-15's were identified as having been purchased from a gun shop in Anaheim, California.

The BATF investigation has identified 21 purchasers and tentatively identified 14 additional suspects. Of these individuals, four had criminal records, 13 were documented in the Treasury Enforcement Communications System, and five were documented in the Narcotics and Dangerous Drugs Information System. Eighteen of the suspects are believed to be residing in the United States illegally. BATF believes that there may have been complicity on the part of the gun shops, including mismanagement of federally required paperwork.

There are numerous other reports indicating that automatic weapons are destined for drug traffickers in Latin America,

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especially Colombia. For example, on February 18, 1988, a DEA/ Riverside, California Resident Office informant reported on an arms and drug smuggling operation in Culican, Mexico. According to the informant, the proceeds from the sale of cocaine supplied by the Ochoa organization of Colombia were used to purchase weapons in the United States. The weapons were then smuggled to Culican where they were transshipped to Medellin, Colombia for the Ochoas.

In the latter part of 1988, DEA received information from the FBI that a shipment of Soviet-Bloc weapons was en route to Colombia for the Ochoa organization. The 80 tons of Soviet military assault weapons reportedly were purchased either with the profits from a 2,000 kilogram shipment of cocaine destined for Europe or by the direct exchange of weapons for the cocaine.

On January 5, 1989, Jamaican authorities seized 10 tons of Portuguese-made assault weapons. DEA's analysis of this seizure indicates that the weapons were destined for the Medellin Cartel, not the Revolutionary Armed Forces of Colombia as first reported.

On August 24, 1989, a DEA/Hermosillo Resident Office informant provided information regarding a Mexican based polydrug trafficking organization and its ability to obtain militarytype weapons. One of the individuals in the organization reportedly had several connections to employees of a weapons manufacturing firm in San Diego. The violator also reportedly

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obtained stolen weapons from American servicemen identified as young Hispanics. The trafficking organization is reportedly able to obtain M-16 assault rifles, grenades, bazookas, and grenade launchers.

Operation Alliance also has resulted in the development of intelligence on weapons smuggling as well as the seizure of weapons destined for Latin America. One of the largest seizures occurred on August 8, when an undercover investigation into the illegal exportation of assault weapons resulted in the arrest of two Mexicans and two U.S. citizens in San Diego charged with violations of federal firearms laws. The undercover agents, posing as drug traffickers, negotiated for the purchase of 100 weapons and ammunition to be sent to Mexico. Seizures from this investigation included 191 AK-47 assault rifles and over 60,000 rounds of ammunition.

To deter the criminal misuse of semiautomatic firearms in this country, President Bush proposed several measures in the Comprehensive Violent Crime Control Act of 1989, introduced as H.R. 2709. For example, assault weapons typically can be equipped with an ammunition clip or feeding device capable of holding large quantities of ammunition. This device allows the firing of a large number of rounds in a very short time and therefore can transform an ordinary rifle into what many people speak of as an "assault weapon." Accordingly, Title III of the President's bill would make it illegal to possess or transfer an

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ammunition clip or feeding device capable of holding more than fifteen rounds of ammunition. There would be an exception for such devices already lawfully possessed, but subsequent transfers would have to be registered with the BATF.

The bill also doubles the mandatory penalty from five to ten years imprisonment for using a semiautomatic firearm in the commission of a violent crime or drug felony, and provides for a mandatory penalty of at least two years imprisonment for the theft of a firearm. DEA believes that the enactment of this bill is of great importance in successfully combatting the violence associated with drug trafficking in general, and the criminal use of assault weapons in particular.

I would now like to address the second topic of concern before this committee today -- the flow of essential chemicals from this country and other industrialized nations to the Andean Region.

Although it is impossible to determine the exact percentage of United States-made chemicals that are used in the manufacture of cocaine, trade records and intelligence reports indicate that the United States is by far the largest exporter of chemicals to Latin America and that Europe has steadily increased its essential chemical exports over the last several years.

The United Nations reported that in 1986, Latin America 6. had received 80 percent of its methyl ethyl ketone (MEK) and 90 percent of its acetone from the United States. In 1987, the top three cocaine producing countries ranked second, fourth, and seventh in essential chemical imports from the United States.

It should be noted that essential chemicals used in the manufacture of cocaine have a number of legitimate uses as well. First, potassium permanganate is used as a water purifier and as a bleaching agent for wood and fibers. Second, ether and its substitutes (acetone, toluene, MEK) are used in a number of legitimate industries, such as the petrochemical, plastics, rubber, muritions, pharmaceutical, and chemical industries.

To date, there have been no known official assessments by the governments of Bolivia, Colombia, or Peru as to their legitimate need and consumption of essential chemicals.

Figures derived from seizure reports of the Colombian National Police (CNP) indicate that from January 1 to September 18, 1989, chemical seizures included more than 620,000 gallons of ether, almost 850,000 gallons of acetone, nearly 120,000 gallons of sulfuric acid, one-half million gallons of MEK and more than 165,000 kilos of potassium permanganate.

On August 9, the CNP also seized five major cocaine HCl laboratories, 1,200 kilograms of cocaine HCl, and one-half million gallons of precursor chemicals in the Magdelena Medio

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area. One entire laboratory, including a filter system that extended 30 feet into the air, was under camouflage. Six 22,000-gallon tanks were hidden under a road. This laboratory could not have been located by plane or helicopter. A 40-bed dormitory and tractor-trailer tanker also were found at the site. The huge volume of chemicals could have been used to produce an additional 125 tons of cocaine HCl, and the elaborate recycling process equipment found at the site conceivably could have quadrupled that amount.

Critical to our efforts to stem the flow of precursor chemicals to cocaine producing countries is the recently-enacted Chemical Diversion and Trafficking Act of 1988. The preparatory actions necessary for the implementation of the Act are now complete. The reporting and recording requirements of the Act for domestic transactions went into effect on August 31, 1989, and the requirement for notification to DEA for all imports and exports of listed chemicals became effective yesterday.

All U.S. importers and exporters of listed chemicals were required to submit the names of their foreign suppliers and customers for these products to DEA by August 31 so that we would be able to determine if the foreign firms were legitimate. In view of the large number of firms in Latin America which had to be verified, investigators have been sent on temporary assignment to this region to work with our local field offices. In other areas of the world, the verification is being conducted by the

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DEA office with responsibility for the country in which the firm is located.

DEA has had considerable dialogue with the U.S. chemical industry and industry trade associations since publication of the proposed regulations in February 1989. The final regulations contain a number of revisions that were made as a result of comments received from the chemical industry.

Since the publication of the final regulations on August 1, 1989, DEA has held conferences with representatives of the chemical industry in Houston, New York, and Chicago in order to discuss the impact of the law and to respond to questions regarding its implementation. A total of over 325 individuals representing both large and small chemical companies attended, and their response to both the law and the implementing regulations has been very positive. The industry recognizes that this law will change the way that they normally do business, but at the same time, they recognize the need for the legislation.

While there has been no indication that the U.S. chemical industry feels that the new legislation will unfairly impact on American business interests, a number of individuals have expressed the opinion that the governments of other chemical producing countries must be persuaded to promulgate similar legislation or the traffickers will merely go elsewhere to purchase their chemicals and their illicit activities will not be

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impeded.

Aware of this fact, DEA, in conjunction with the Department of State, is involved in a series of diplomatic initiatives with countries significantly involved in commerce with chemicals. The goals of these initiatives are to familiarize these countries with the provisions of the Act, to solicit their cooperation in its enforcement, and to encourage the enactment of similar laws and the ratification of the new Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This convention contains an article which deals specifically with preventing the diversion of essential and precursor chemicals. In addition, DEA is coordinating a conference of source, transit, and user countries to be held next spring on the chemical issue.

We are very encouraged with the level of interest in chemical control which we have found in those countries which have been visited so far. Major international organizations such as the Division on Narcotic Drugs and the European Community have been strongly supportive of chemical control measures.

Mr. Chairman, this concludes my testimony. I will be pleased to answer any questions you may have.

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DEPARTMENT OF THE TREASURY

UNITED STATES CUSTOMS SERVICE

STATEMENT by WILLIAM P. ROSENBLATT ASSISTANT COMMISSIONER (ENFORCEMENT)

Before

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

UNITED STATES HOUSE OF REPRESENTATIVES

NOVEMBER 1, 1989

TESTIMONY

MR. CHAIRMAN, I AM PLEASED TO BE APPEARING BEFORE YOU AND YOUR COMMITTEE TODAY TO DISCUSS THE ROLE OF THE UNITED STATES CUSTOMS SERVICE IN THE ENFORCEMENT OF EXPORT CONTROLS AS THEY PERTAIN TO "MUNITIONS EXPORTS TO COLOMBIA AND OTHER LATIN AMERICA NARCOTIC SOURCE COUNTRIES.

IN RESPONSE TO OUR INVESTIGATIVE AND ENFORCEMENT RESPONSIBILITIES IN THE AREA OF EXPORT ENFORCEMENT, IN 1981 CUSTOMS INITIATED OUR OPERATION EXODUS PROGRAM WHICH IS DESIGNED TO CURTAIL THE ILLEGAL MOVEMENT OF MUNITIONS AND HIGH TECHNOLOGY TO CONTROLLED DESTINATIONS. SINCE ITS INCEPTION, OPERATION EXODUS HAS EVOLVED FROM A BASIC REACTIVE OPERATION TO A HIGHLY STRUCTURED, COMPLEX, INVESTIGATIVE JURISDICTION. WE HAVE IMPLEMENTED A NATIONAL AND INTEGNATIONAL STRATEGY WHICH ATTACKS THE PROBLEM WITH A THREE PRONGED APPROACH: INTERDICTION, INVESTIGATIONS, AND INTERNATIONAL COOPERATION. OPERATION EXODUS INVESTIGATIVE RESULTS HAVE ELEVATED THE U.S. CUSTOMS SERVICE TO AN UNPRECEDENTED LEVEL OF NATIONAL AND INTERNATIONAL ENFORCEMENT PROMINENCE IN THE AREA OF EXPORT ENFORCEMENT.

IN CURTAILING ILLEGAL EXPORTS, THE CUSTOMS SERVICE PLAYS AN ESSENTIAL ROLE IN THE ENFORCEMENT OF BOTH THE <u>ARMS EXPORT CONTROL ACT</u>, WHICH REGULATES THE EXPORT OF MUNITIONS ITEMS, AS WELL AS THE DEPARTMENT OF COMMERCE'S <u>EXPORT ADMINISTRATION ACT</u> WHICH REGULATES THE EXPORTATION OF "DUAL USE" OR NON-MUNITIONS ITEMS. THE CUSTOMS SERVICE IS ALSO RESPONSIBLE FOR INVESTIGATING AND ENFORCING THE CURRENT U.S. SANCTIONS AND EMBARGOES AGAINST NICARAGUA, SOUTH AFRICA, NORTH KOREA, VIETNAM, CAMBODIA, CUBA, LIBYA, AND PANAMA. IN ORDER TO MEET OUR EXPORT ENFORCEMENT RESPONSIBILITIES, WE CURRENTLY HAVE 104 INSPECTORS, 300 AGENTS AND AN INDEPENDENT INTELLIGENCE BRANCH ASSIGNED FULL TIME TO OPERATION EXODUS. IN ADDITION, WE HAVE 5,000 OTHER INSPECTORS AND MORE THAN 2,500 ADDITIONAL SPECIAL AGENTS ASSIGNED TO OTHER DUTIES WHO CAN BE CALLED UPON AS THE NEED AND CIRCUMSTANCES ARISE.

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WE ALSO HAVE 19 ESTABLISHED OVERSEAS OFFICES IN 15 FOREIGN COUNTRIES. EACH OF THOSE OFFICES IS STAFFED WITH EXPERIENCED INVESTIGATORS WHO WORK WITH OUR COUNTERPARTS TO OBTAIN THE NECESSARY INFORMATION ON FOTENTIAL VIOLATIONS. WE HAVE ESTABLISHED SPECIALIZED EXPORT ENFORCEMENT TRAINING PROGRAMS FOR OUR INSPECTORS AND SPECIAL AGENTS IN THIS FIELD. WE HAVE ALSO INCLUDED INTRODUCTORY EXPORT ENFORCEMENT TRAINING COURSES INTO ALL OF OUR GENERAL TRAINING PROGRAMS FOR INSPECTORS, SPECIAL AGENTS, AND SUPERVISORS. SINCE 1981 THESE EFFORTS HAVE RESULTED IN OVER 1,226 ARRESTS AND 8,400 SEIZURES VALUED AT OVER \$616,000,000.

THE EXODUS PROGRAM ENCOMPASSES ALL POTENTIAL EXPORT VIOLATIONS. WE HAVE NOT DEDICATED SPECIFIC RESOURCES TO ANY ONE ASPECT OF EXPORT CONTROL, INCLUDING MUNITIONS EXPORTS TO NARCOTICS SOURCE COUNTRIES, BUT INSTEAD, WE ATTACK THE PROBLEM AS A WHOLE. WE CHOOSE TO DO THIS BECAUSE THE METHODS AND DIVERSION ROUTES USED ARE NOT UNIQUE TO ANY PARTICULAR TYPE OF MERCHANDISE BEING ILLEGALLY EXPORTED, AND THE SKILLS AND EXPERTISE THAT OUR EMPLOYEES HAVE DEVELOPED TRANSCEND ALL TYPES OF VIOLATIONS. FOR THIS REASON, SOME OF MY COMMENTS TODAY MAY NOT BE SPECIFICALLY

RELATED TO MUNITIONS EXPORTS TO NARCOTICS SOURCE COUNTRIES, BUT CONCERN THE ENTIRE EXPORT ENFORCEMENT PROGRAM. HOWEVER, I ASSURE YOU THAT ALL OF OUR EFFORTS, IN BOTH THE INSPECTION AND INVESTIGATIVE AREAS, ARE AIMED AT DISCOVERING AND PREVENTING AS MANY ILLEGALLY EXPORTED SHIFMENTS OF MUNITIONS ITEMS TO NARCOTIC SOURCE COUNTRIES AS POSSIBLE AND BRINGING THOSE RESPONSIBLE FOR SUCH ACTIONS TO JUSTICE.

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IN FURTHERANCE OF INTERAGENCY RELATIONS, OUR OPERATION EXODUS COMMAND CENTER IN WASHINGTON, D.C., PERFORMS A COMMUNICATION AND COORDINATION FUNCTION IN SUPPORT OF THE REGULATORY AND ENFORCEMENT RESPONSIBILITIES OF VARIOUS U.S. CUSTOMS SERVICE COMPONENTS INVOLVED IN EXPORT CONTROL. THE COMMAND CENTER PERSONNEL ASSIST OUR FIELD ELEMENTS ON QUESTIONS OF EXPORT REGULATIONS AND EXPORT LICENSE DETERMINATIONS FOR SPECIFIC COMMODITIES.

THE COMMAND CENTER COMMUNICATES WITH LICENSING AUTHORITIES IN THE DEPARTMENTS OF STATE AND COMMERCE THROUGH CUSTOMS OFFICERS ASSIGNED FULL-TIME TO LIAISON POSITIONS WITH THE OFFICE OF MUNITIONS CONTROL (STATE) AND THE BUREAU OF EXPORT ADMINISTRATION (COMMERCE). THE COMMAND CENTER ALSO HAS DIRECT LIAISON CONTACTS WITH THE DEPARTMENT OF ENERGY, AND THE DEPARTMENT OF TREASURY'S OFFICE OF FOREIGN ASSETS CONTROL ON LICENSING MATTERS AND INTERPRETATION OF THEIR REGULATIONS. INDUSTRY SOURCES, THE INTELLIGENCE COMMUNITY, OTHER ENFORCEMENT AGENCIES, AND VARIOUS OTHER DATA BASES ARE ALSO AT THEIR DISPOSAL. ADDITIONALLY, WE

HAVE ESTABLISHED PROJECT GEMINI, WHICH IS OUR PUBLIC AWARENESS PROGRAM DESIGNED TO INFORM INDUSTRY OF EXPORT CONTROLS AND TO SOLICIT THEIR COOPERATION IN OUR ENDEAVORS.

IN OUR CONTINUING EFFORT TO LOCATE EXPORT VIOLATORS, CUSTOMS HEADQUARTERS IN WASHINGTON MAINTAINS A LIST OF THE 10 PERSONS MOST WANTED FOR VIOLATING FEDERAL LAWS AGAINST THE ILLEGAL EXPORT OF ARMS AND CRITICAL TECHNOLOGY. THE LIST IS UP-DATED PERIODICALLY AND FORWARDED TO FIELD OFFICES OF THE CUSTOMS SERVICE AND OTHER FEDERAL AGENCIES WITH A REQUEST THAT ANY INFORMATION ON THE SUBJECTS' LOCATIONS AND ACTIVITIES BE FORWARDED IMMEDIATELY TO HEADQUARTERS. OUR EFFORTS HAVE RESULTED IN THE ARREST AND EXTRADICTION OF SEVERAL EXODUS FUGITIVES.

OUR STRATEGIC INVESTIGATIONS DIVISION ALSO SUPPORTS LIAISON OFFICERS AT THE DEPARTMENT OF STATE AND THE FBI. IN ADDITION, OUR INTELLIGENCE DIVISION PARTICIPATES WITH ALL INTERAGENCY INTELLIGENCE COMMITTEES REGARDING EXPORT CONTROLS.

FOR THE MOST PART, CUSTOMS' FOREIGN ATTACHES ENJOY PRODUCTIVE WORKING RELATIONSHIPS WITH THEIR MANY COUNTERPARTS AND OTHER ENFORCEMENT-ORIENTED ORGANIZATIONS IN THE COUNTRIES IN WHICH THEY SERVE.

THOSE COUNTRIES HAVE GENERALLY PROVIDED THE UTMOST COOPERATION IN OUR INVESTIGATIONS AND EXPRESSED WILLINGNESS TO ASSIST IN ANY MANNER. THIS REFLECTS ON THE PROFESSIONAL LIAISON PROGRAMS ESTABLISHED BY OUR INDIVIDUAL ATTACHE OFFICES AND THE MUTUAL RESPECT THAT WE HAVE SHOWN OUR COUNTERPARTS IN RETURN.

THE CONSTANT EXCHANGE OF INTELLIGENCE AND INVESTIGATIVE INFORMATION IS LIMITED ONLY BY EACH COUNTRY'S OWN LAWS AND REGULATIONS. WE HAVE ESTABLISHED CUSTOMS-TO-CUSTOMS MUTUAL ASSISTANCE AGREEMENTS WITH 12 FOREIGN CUSTOMS SERVICES, AND, ARE IN THE PROCESS OF ESTABLISHING 11 ADDITIONAL MEMORANDUMS OF UNDERSTANDING. IN ADDITION, AS MEMBERS OF THE INTERNATIONAL CUSTOMS COOPERATION COUNCIL, WHICH CONSISTS OF APPROXIMATELY 104 FOREIGN COUNTRIES, WE HAVE A NATURAL AVENUE FOR THE EXCHANGE OF INVESTIGATIVE INFORMATION AND COOPERATION.

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SPECIFICALLY REGARDING MUNITIONS EXPORT INVESTIGATIONS, THE ARMS EXPORT CONTROL ACT, AS CODIFIED IN TITLE 22 UNITED STATES CODE SECTION 2778, AUTHORIZES THE PRESIDENT TO CONTROL THE EXPORTATION OF MUNITIONS ITEMS. THE PRESIDENT IN TURN, HAS DELEGATED THE RESPONSIBILITY TO PROMULGATE REGULATIONS RELATING TO MUNITIONS EXPORTS TO THE SECRETARY OF STATE, WHO HAS DELEGATED THE ENFORCEMENT RESPONSIBILITIES TO THE CUSTOMS SERVICE. THE REGULATIONS, COMMONLY REFERRED TO AS THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS, OR <u>ITAR</u>, ARE CODIFIED IN TITLE 22 OF THE CODE OF FEDERAL REGULATIONS, SECTIONS 121 THROUGH 130. ESSENTIALLY, THE REGULATIONS IDENTIFY WHICH COMMODITIES ARE CONSIDERED TO BE LICENSED ARTICLES, AND THE PROCEDURES THAT ARE TO BE FOLLOWED IN ORDER TO LEGALLY MANUFACTURE AND EXPORT THOSE ITEMS.

THE PREVENTION OF EXPORTS OF MUNITIONS TO ILLICIT END-USERS IS A COOPERATIVE EFFORT REQUIRING THE INVOLVEMENT BY ALL THOSE CONCERNED. THE EXPORT CONTROLS CURRENTLY IN PLACE PROVIDE RESTRICTIONS HONORED BY THE LAW-ABIDING FIRMS, BUT DO NOT

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DETER THE WITTING VIOLATOR WHO SEES A HANDSOME PROFIT IF HIS GAMBLE IS SUCCESSFUL. AS RECENTLY PUBLICIZED BY THE NEWS MEDIA, THE U.S. CUSTOMS SERVICE HAS MAJOR ONGOING INVESTIGATIONS WHICH HAVE REACHED INTERNATIONAL PROPORTIONS INVOLVING THE EXPORTATION OF MUNITIONS TO NARCOTICS SOURCE COUNTRIES. I WOULD LIKE TO BRIEFLY DISCUSS A FEW OF THESE INVESTIGATIONS TO ILLUSTRATE THE DIVERSITY AND COMPLEXITIES INVOLVED, AS WELL AS OUR INVESTIGATIVE METHODOLOGY.

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DAVID CANDIOTTI AND CARLOS ENRIQUE GIL

THE UNITED STATES CUSTOMS SERVICE INITIATED AN INVESTIGATION IN MARCH OF 1988, INTO THE CLANDESTINE MUNITIONS EXPORT ACTIVITIES OF DAVID CANDIOTTI AND CARLOS ENRIQUE GIL.

THE INVESTIGATION WHICH WAS CONDUCTED IN WEST PALM BEACH, FLORIDA LED TO THE ARREST OF CANDIOTTI AND GIL WHO WERE NEGOTIATING WITH UNDERCOVER OPERATIVES FROM THE U.S. CUSTOMS SERVICE AND THE BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS TO PURCHASE FOR EXPORT TO COLOMBIA 100 POUNDS OF C-4 EXPLOSIVES, TWENTY-FIVE (25) MAC-11 MACHINE GUNS, TWENTY (20) AR-15 RIFLES, AND FIVE (5) FULLY AUTOMATIC M-60 MACHINE GUNS. DURING THE INVESTIGATION, AGENTS ALSO UNCOVERED A "SHOPPING LIST" WHICH INDICATED THAT CANDIOTTI AND GIL WERE ATTEMPTING TO ACQUIRE LAW ROCKETS, M-79 GRENADE LAUNCHERS AND M-203 GRENADE LAUNCHERS. THE AGENTS IDENTIFIED TWO (2) PREVIOUS SHIPMENTS OF MUNITIONS ITEMS INCLUDING TWENTY-FIVE (25) POUNDS OF TOVEX PLASTIC EXPLOSIVES, THIRTY (30) AR-15 CALIBER RIFLES, FIVE (5) .50 CALIBER RIFLES,

TWENTY-FIVE (25) SILENCERS FOR MAC-11 MACHINE PISTOLS, TWO (2) .308 SNIPER RIFLES AND NIGHT VISION EQUIPMENT. ALL OF THESE ITEMS WERE CLANDESTINELY EXPORTED FROM THE UNITED STATES BY WAY OF MEMORY .PRIVATE AIRCRAFT, AND DELIVERED TO AN INDIVIDUAL ALLEGED TO BE ASSOCIATED WITH THE CALL CARTEL.

DURING THE UNDERCOVER NEGOTIATIONS, CANDIOTTI AND GIL ALLEGED THAT THE MUNITIONS EXPORTS WERE TO BE USED BY CARTEL FACTIONS FOR PROTECTION, POLITICAL ASSASSINATIONS AND THE ASSASSINATION OF PABLO ESCOBAR OF THE MEDELLIN CARTEL.

IN ADDITION TO THE ARREST OF CANDIOTTI AND GIL, WHO REMAIN INCARCERATED PENDING TRIAL, THE AGENTS SEIZED \$109,000 IN U.S. CURRENCY, ONE (1) AIRCRAFT AND ONE (1) VEHICLE.

ENRIQUE GOBEA-RABAGO, ET AL

THE UNITED STATES CUSTOMS SERVICE INITIATED AN INVESTIGATION IN APRIL OF 1989, INTO THE EXPORT ACTIVITIES OF ENRIQUE GOBEA-RABAGO AND OTHERS. THE INVESTIGATION ULTIMATELY LED TO THE ARREST OF ENRIQUE GOBEA-RABAGO, JOSE LUIS RODRIGUEZ, MARIO LOPEZ-GUTTIERRES, AND ADAM DANIEL HAHN WHO IS A LICENSED FIREARMS DEALER DOING BUSINESS AS GUNS AND STUFF IN CALIFORNIA. THE INVESTIGATION ALSO RESULTED IN THE SEIZURE OF 191 CHINESE MANUFACTURED AKS WEAPONS, 78,000 ROUNDS OF AMMUNITION, AND SEVERAL HANDGUNS IN TWO SEPARATE-BUT-RELATED ENFORCEMENT ACTIONS IN SAN DIEGO AND IRVINE, CALIFORNIA. EVIDENCE DEVELOPED IN THE INVESTIGATION INDICATES THAT THE WEAPONS AND AMMUNITION WERE ACQUIRED FOR ILLEGAL EXPORT TO MEXICO. PRELIMINARY INVESTIGATION

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INDICATES THAT THESE WEAPONS WERE LEGALLY IMPORTED INTO THE U.S. PRIOR TO THE RECENTLY IMPOSED IMPORT RESTRICTIONS ON AK-TYPE SEMI-AUTOMATIC RIFLES.

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THIS INVESTIGATION WAS 'INITIATED BY THE CUSTOMS SERVICE AND WAS PURSUED BY CUSTOMS AND THE DRUG ENFORCEMENT ADMINISTRATION UNDER THE AUSPICES OF OPERATION ALLIANCE, AN INTERAGENCY EFFORT TO CONTROL DRUG TRAFFICKING ALONG THE SOUTHERN BORDER. ADDITIONAL INVESTIGATION IS BEING CONDUCTED BY THE OPERATION ALLIANCE GROUP, AND THE BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS.

JOSE CHECCHINI

ON APRIL 29, 1988, CUSTOMS INSPECTORS AT THE LOS ANGELES INTERNATIONAL AIRPORT EXAMINED AN EXPORT SHIPMENT DESTINED FOR CALI, COLOMBIA ABOARD AVIANCA AIRLINES. THE EXAMINATION REVEALED SIXTEEN (16) HAND GRENADES; FOUR (4) COLT AR-15 RIFLES THAT HAD BEEN CONVERTED TO FULLY AUTOMATIC; SIX (6) BULLET PROOF VESTS; AND ONE PAIR OF NIGHT VISION GOGGLES, ALL CONCEALED IN A LARGE AIR CONDITIONING UNIT.

INVESTIGATION BY CUSTOMS AGENTS REVEALED THAT A NUMBER OF THE ARTICLES WERE PURCHASED BY JOSE CHECCHINI. FURTHER INVESTIGATION DISCLOSED THAT CHECCHINI HAD CONCEALED THE MUNITIONS ITEMS IN THE AIR CONDITIONING UNIT. THE INVESTIGATION ALSO CONNECTED THIS ATTEMPTED EXPORT TO A PREVIOUS SEIZURE IN DECEMBER OF 1987, WHEN CUSTOMS'S AGENTS DISCOVERED TEN (10) AR-15'S CONCEALED IN A SHIPMENT OF STUFFED TEDDY BEARS DESTINED TO CALL, COLOMBIA.

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CUSTOMS AGENTS OBTAINED A WARRANT FOR THE ARREST OF CHECCHINI AND ON AUGUST 2, 1989, CHANNEL 7 (ABC) BROADCAST A STORY ON "LA'S MOST DANGEROUS". THE SUBJECT OF THE STORY WAS U.S. CUSTOMS: "EUGITIVE, JOSE CHECCHINI. THE FOLLOWING DAY,"CHECCHINI TELEPHONED U.S. CUSTOMS AGENTS FROM ITALY AND ATTEMPTED TO NEGOTIATE HIS SURRENDER WITHOUT REVEALING HIS EXACT WHEREABOUTS. WHILE NEGOTIATIONS BETWEEN CHECCHINI AND U.S. CUSTOMS AGENTS IN ITALY AND THE U.S. CONTINUED, THE U.S. DEPARTMENT OF JUSTICE AIDED THE U.S. CUSTOMS SERVICE IN OBTAINING A PROVISIONAL ARREST WARRANT FOR CHECCHINI.

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ON SEPTEMBER 11, 1989, CUSTOMS AGENTS WORKING IN CONCERT WITH LA GUARDIA DI FINANZA, ITALIAN CUSTOMS AND FINANCIAL POLICE, LOCATED CHECCHINI AND PLACED HIM UNDER ARREST BASED ON THE PROVISIONAL WARRANT. CHECCHINI'S EXTRADICTION TO THE UNITED STATES IS PENDING.

ALEJANDRO MALAGON, ET AL

ON APRIL 12, 1988, AGENTS FROM THE UNITED STATES CUSTOMS SERVICE SUCCESSFULLY TERMINATED A TEN (10) MONTH UNDERCOVER INVESTIGATION INTO THE CLANDESTINE EXPORT ACTIVITIES OF ALEJANDRO MALAGON, HECTOR REGALADO AND BARBARA VALDES. THE THREE SUBJECTS WERE TAKEN INTO CUSTODY WHEN THEY PURCHASED AND ATTEMPTED TO EXPORT FROM CORPUS CHRISTI, TEXAS TO EL SALVADOR, MUNITIONS ITEMS CONSISTING OF TEN (10) LAW ROCKETS, ONE (1) CASE OF HAND GRENADES, FOUR (4) MAC-10 AUTOMATIC WEAPONS, ONE (1) AR-15 SEMI-AUTOMATIC RIFLE, ONE (1) CASE OF AMMUNITION, FIVE (5) M-79 GRENADE LAUNCHERS, AND ONE (1) PISTOL.

TWO OF THE SUBJECTS WERE ALSO CHARGED WITH CONSPIRACY TO SMUGGLE 350 KILOS OF COCAINE FROM COLOMBIA TO THE UNITED STATES VIA PRIVATE: AIRCRAFT. THE SMUGGLING ENTERPRISE WAS ALSO PLANNING WEEKLY LOADS OF 1,000 POUNDS OF MARIJUANA INTO SOUTH TEXAS.

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RICARDO ANDRES PETERSSON BERNAL

IN SEPTEMBER OF 1989, AN INTENSIFIED OUTBOUND INSPECTION PROGRAM DESIGNED TO INTERCEPT AND SEIZE ILLEGAL EXPORTATIONS TO SOUTH AND CENTRAL AMERICA, WAS INITIATED IN MIAMI. THE OPERATION RESULTED IN THE ARREST OF RICARDO ANDRES PETERSSON-BERNAL FOR VIOLATION JE 'HE ARMS EXPORT CONTROL ACT AFTER HE BOARDED AN AVIANCA AIRLINE FLIGHT DESTINED TO BOGOTA, COLOMBIA.

A SEARCH OF PERTERSSON'S CHECKED BAGGAGE REVEALED TWO SEMI-AUTOMATIC RIFLES AND ONE 9MM HANDGUN HIDDEN BENEATH A FALSE BOTTOM OF A CARDBOARD BOX. FURTHER SEARCH OF THE BAGGAGE LED TO THE DISCOVERY OF OAE (1) M-18 SMOKE GRENADE, 1,000 ROUNDS OF .223 CALIBER AMMUNITION, AND ONE (1) 12 GAUGE SHOTGUN.

PETERSSON IS A FIRST LIEUTENANT IN THE COLOMBIAN MILITARY WHO WAS RETURNING TO COLOMBIA AFTER RECEIVING TRAINING AT FORT BENNING, GEORGIA, AS PART OF AN EXCHANGE PROGRAM WITH THE U.S. ARMY.

THE INVESTIGATIONS THAT I HAVE DESCRIBED ARE EXCELLENT EXAMPLES OF THE COMPLEXITY AND SENSITIVITY INVOLVED IN PURSUING INTERNATIONAL ARMS VIOLATIONS. THE INVESTIGATIONS ALSO DEMONSTRATE THE IMPORTANCE OF OUR THREE PRONGED APPROACH TO EXPORT ENFORCEMENT: INTERDICTION, INVESTIGATIONS, AND INTERNATIONAL COOPERATION.

THE CUSTOMS SERVICE HAS LONG RECOGNIZED THAT MUNITIONS ITEMS ARE "TOOLS OF THE TRADE" IN THE NARCOTICS BUSINESS, AND THE CASES THAT I HAVE PRESENTED HERE TODAY DEMONSTRATE THAT, IN ADDITION TO FIREARMS, SUCH ITEMS AS BULLET PROOF VESTS, NIGHT VISION EQUIPMENT, LAW ROCKETS, HAND GRENADES, AND PLASTIC EXPLOSIVES ARE ALSO IN HIGH DEMAND BY NARCOTICS ORGANIZATIONS.

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IN SUPPORT OF THE GOVERNMENT OF COLOMBIA IN THEIR CURRENT CRISIS WHICH WAS PRECIPITATED BY THE COURAGEOUS REACTION OF COLOMBIAN OFFICIALS AGASINT NARCO-TERRORISM OF OVERWHELMING PROPORTIONS, THE ACTING COMMISSIONER OF CUSTOMS HAS PLACED AN INCREASED EMPHASIS ON OUR EXODUS ENFORCEMENT EFFORTS.

WITHIN CUSTOMS, WE HAVE FORMED A COLOMBIAN COORDINATING COMMITTEE OR CCG WHICH SERVES AS A CLEARINGHOUSE FOR ALL INFORMATION RELATING TO THE CURRENT CRISIS IN COLOMBIA. ONCE RECEIVED, INFORMATION IS ANALYSED AND FORWARDED TO THE APPROPRIATE CUSTOMS DICIPLINE FOR ACTION.

WE HAVE ALSO PLACED EMPHASIS ON OUTBOUND SEARCHES OF AIRPLANES, VESSELS, CARGO, PERSONS, AND BAGGAGE DESTINED TO NARCOTICS SOURCE COUNTRIES. IN AN EFFORT TO INFLICT DAMAGE ON DRUG TRAFFICKERS AND THEIR ORGANIZATIONS EFFORTS ARE BEING MADE TO MAKE MAXIMUM USE OF X-RAY UNITS AND OTHER TECHNICAL EQUIPMENT.

THESE ENFORCEMENT EFFORTS ARE DESIGNED TO DISRUPT THE PIPELINES THROUGH WHICH THE CARTELS RECEIVE THE PROCEEDS FROM THE SALE OF DRUGS, THE CHEMICAL PRECURSORS NEEDED TO MANUFACTURE DRUGS, AND THE MUNITIONS ITEMS USED TO WAGE A WAR OF TERRORISM ON THE PEOPLE OF COLOMBIA.

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IN SUPPORT OF THE WAR ON DRUGS, THE CUSTOMS SERVICE, AT ALL LEVELS, WILL CONTINUE TO MAN THE FRONT TO STEM THE FLOW OF ILLEGAL EXPORTS TO NARCOTICS TRAFFICKERS.

THANK YOU

OPENING STATEMENT BY THE HONORABLE MICHAEL G. OXLEY SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL NOVEMBER 1, 1989

Thank you Mr. Chairman. I want commend you for calling this important hearing.

The flow of precursor chemicals to narcotics-producing countries clearly makes the job of local law enforcement more difficult. This job is difficult enough without illegal U.S. exports exacerbating it. So, I am pleased that the Drug Enforcement Agency has issued final regulations to monitor and regulate the flow of precursor and essential chemicals. This is a good and important step, and I would be interested to have an evaluation of these regulations in a few months.

Also Mr. Chairman, I am very interested in our discussion today of the so-called assault weapon issue. We are all too familiar with the violent cases which brought this issue to the fore. Let us make no mistake about it, semi-automatic assault weapons are dangerous and are, unfortunately, quite popular with the criminal element. We do need to address ways to stop the flow of these weapons to Colombia and other drug-torn nations. And we also need to examine ways to reduce the number of crimes committed domestically with assault weapons. For the latter, I have introduced H.R. 3322, the Assault Weapon Crime Act of 1989.

At present, a violent criminal or drug trafficker caught with a machinegun can be sentenced to 30 years in prison for a first offense. For a second offense, the criminal is sentenced to life in prison without parole. My bill would extend these same penalties to criminals using semi-automatic assault weapons in a violent or drug trafficking crime.

Mr. Chairman, my bill may not totally eliminate the transfer of assault weapons to the Andean nations, but it will send a very important message to the criminal element who use these firearms in drug related crimes. The message is simple: If you commit a drug trafficking crime while using a semi-automatic assault weapon, you are going to go to jail for a long time -- 30 years. And if you do it again, you are going to jail for good.

I would ask my colleagues to examine the Assault Weapon Crime Act and to consider cosponsoring this legislation and I look foward to today's hearing.

Thank you, Mr. Chairman.

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DARREL W. STEPHENS EXECUTIVE DIRECTOR

TESTIMONY BEFORE THE HOUSE SELECT COMMITTEE

ON NARCOTICS ABUSE AND CONTROL:

ASSAULT WEAPONS AND DRUG ENFORCEMENT

Police Executive Research Forum Darrel W. Stephens Executive Director November 1, 1989 Mr. Chairman, Members of the Committee: thank you for inviting me to speak with you about law enforcement's concerns with the proliferation of assault weapons in this country. What I have to say may not be new, but it bears repeating, for to date no adequate action has been taken to fully address the dangers that face police and those they are sworn to protect when they encounter the deadly mix of drugs and guns.

I am here today on behalf of the members of the Police Executive Research Forum (PERF), law enforcement chief executives who are dedicated to improving the delivery of police service and promoting professionalism within the field. PERF members represent some of the largest jurisdictions in the nation; collectively our membership serves more than 30% of the country's population. Accordingly, PERF members deal on a day-to-day basis with some of the worst drug problems facing our urban centers. Their regular encounters with the corrosive effects of drug abuse have become more dangerous, because drug traffickers and abusers have turned to semiautomatic assault guns as their weapons of choice. These weapons are purchased, often without a waiting period, and used against police officers making drug arrests, against other drug traffickers in turf battles, and against innocent bystanders caught in the cross fire of drug addicts whose "high" turns to violent madness.

When PERF members were surveyed on the proposed regulation of assault weapons, 96% indicated that they would support measures designed to curb the unrestricted flow of these weapons. When the Administration's ban on specific assault weapons was made public, members sent letters of thanks to President Bush and William Bennett, the director of the Office of National Drug Control Policy. For example, then New York City Police Commissioner and PERF member Ben Ward commended the President and Mr. Bennett for taking a stand against the importation of semiautomatic assault weapons, the first step in making the streets a safer place. His letter stated, "As the Chief Executive of the nation's largest police force, I am well aware of the danger posed by these weapons. In New York City, 226 assault weapons were seized during 1988 alone These weapons serve no legitimate hunting purpose and no law-abiding sportsmen will suffer by the unavailability of such weapons as the AK-47." This letter was just one of the many written by our members

that went on to urge the Administration to extend the importation ban to domestic manufacture of assault weapons as well. Until all semiautomatic assault weapons are banned, police will be caught in the bloody drug battles being waged by drug dealers against anyone that gets in the way of "good business."

How should police respond to the increased firepower being used by drug traffickers? Some reluctantly have provided their officers with 9mm semiautomatic weapons. But a domestic arms race with drug dealers and abusers is not the answer. What law enforcement needs, and what we ask for today, is your assistance in curtailing the criminal use of assault weapons. While there are endless incidents that could be related to the Committee, some of which are included below, one only needs to review the day's news to hear of another drug bust where assault weapons were seized or used. Just last month, in a joint effort between the city of Baltimore and Baltimore County, Maryland, 15 search and seizures were effected in which seven people were arrested for drug trafficking in cocaine, crack cocaine, and heroin. Not surprisingly, among the cache of weapons was a MAC 10. These are the incidents that don't make the paper – incidents in which police get lucky and the semiautomatic assault weapons have been seized before the owners turn them on police or innocent victims.

Semiautomatic assault weapons have no legitimate private use. It's that simple. Many PERF members are competitive shooters, sportsmen, and collectors, yet they recognize that the types of weapons under consideration today are not the kind that the legitimate hunter or shooter would use. They are designed and used for one purpose only – to efficiently kill *people*. How many Louisville-type tragedies does it take to show that these weapons are used by the deranged, by drug-induced madmen, and by drug traffickers, with the dealer considering assault weapons as much a tool of the trade as his beeper? The examples that follow are not isolated incidents; they are representative of the overwhelming number of encounters the police face on a daily basis.

In March of this year, Eugene Frank Thompson, a \$30-a-day cocaine user, went on a rampage in Arapahoe County, Colorado armed with a MAC-11 semiautomatic pistol. At

about 4:00 a.m. the Jefferson County Sheriff's Department received a 911 call reporting a burglary; the next voice the operator heard was that of Thompson ordering the woman to leave the house. When police arrived, the resident, Beverly Swartz, was gone and her car was missing from the garage. Her body was discovered later at the home of her husband's parents. Shortly after 6:00 a.m., Jefferson County responded to a second call from a male caller stating that he, his daughter, and wife had been shot. Janice Irene Swartz, Beverly's mother-in-law was found slain at her home.

At 7:55 a.m. the sheriff's department received a report of a house robbery. On arrival, the police learned that the resident had been sexually assaulted. Witnesses reported a suspect matching the description of Thompson provided by witnesses at the homicide scene. Next, police learned of a single vehicle accident involving a car that fit the description of Beverly Swartz's Volvo. Thompson was seen running from the accident towards an adjacent residential area. With the help of local radio and T.V. stations, police sent helicopters and officers to set up a saturation search.

At 2:00 that afternoon, two Arapahoe County Sheriff's Department deputies were fired on during their search of a residence. Sheriff's Deputy Arthur "Corky" Hilton was hit first. Arapahoe County Deputy Daniel Thomas then was injured by the flying glass at the scene and later released from the hospital where he received treatment. But the bloody incident was not over. Thompson's next victim was the 18-year old man he had taken hostage in the residence. Thompson shot the hostage four times with the MAC-11 before turning the gun on himself. Thompson died of his injuries shortly after being admitted to the hospital. He was 20 years old.

In December of 1988, officers from the Dallas Police Department were making a buy-bust drug transaction. Officer Lawrence Cadena was undercover and was supported by Sergeant C.D. McCoy, Officer Pam Nofzinger and Officer Michael Keating. During the transaction one of the suspects shot officer Cadena several times with a TEC - 9 semiautomatic. Sergeant McCoy and Officer Stout ran to assist Cadena. The suspect raised the weapon again, this time targeting Sergeant McCoy. McCoy was able to shoot the suspect in time to

secure his own safety.

A second suspect got into Officer Cadena's car in an apparent attempt to rob the wounded officer. The second suspect was also shot after he motioned for a gun. Officer Cadena was transported to a local hospital where he was pronounced dead. Since the December killing, the Dallas Police Department has served 67 narcotics warrants which resulted in the seizure of semiautomatic and automatic assault weapons found in the possession of drug dealers.

It is hard to forget the tragedy experienced by another PERF member department, that suffered by the San Diego County Sheriff's Office. Although the incident I am about to describe is only one in a too-often repeated scenario involving assault weapons used by drug abusers, it should serve to illustrate the dangers faced by law enforcement each day.

The sheriff's department received a report that a methamphetamine abuser was shooting through the walls of his apartment into an adjoining residence because he "didn't like Mexicans." Police arrested Gary Taschner and confiscated an arsenal of weapons that included a machine gun and an AK-47 assault rifle. On his release from jail, Taschner made an acquisition. He stopped at a local gun dealer and paid cash for another AK-47 and ammunition.

Taschner again began shooting through his walls, this time injuring a small baby in a crib. The police returned, thinking they must have missed a handgun in their earlier search. After failing to negotiate his surrender, the SWAT team was called upon. After six hours of negotiations and the use of tear gas, the Entry Team, wearing helmets and body armor, attempted to gain access to Taschner. They were met with semiautomatic gun fire. Taschner had built himself a "nest" from which to spray bullets at oncoming officers. His objective was met. He wounded two deputies. Lonny Gene Brewer, a member of the elite SWAT team bled to death with a severed aorta; he left a wife of one month who was also a sheriff's deputy with the department. Taschner rushed from the apartment, clad in camouflage clothing that matched attire worn by the SWAT team, all the time spraying bullets from his new AK-47. He tried to kill two other SWAT deputies that he encountered, but the AK-47 he had been shooting from his hip misfired and he was shot to death by the deputies. This is how semiautomatic assault weapons are used; not for hunting and not for sporting purposes, but for murder.

Since that incident the San Diego County Sheriff's Department has continued to be plagued by the use of semiautomatic assault weapons in drug-related cases. The department has seized 35 assault weapons since just the beginning of 1989. These seizures were made consequent to narcotics arrests, and may be due in part to the paranoia commonly exhibited by methamphetamine abusers.

What appear to be routine traffic stops can escalate into violent encounters when drugs are involved. Less than a month ago, on Sunday, October 8, 1989, a Tucson, Arizona Police Officer Marc Mardocco was working radar when a vehicle was observed speeding. Officer Mardocco pursued the vehicle until it came to an abrupt halt at the top of the exit ramp. The driver and passenger left the car and opened fire on the officer with semiautomatic weapons. The officer backed his car away and the suspects reentered their car and proceeded onto the highway. The officer continued his pursuit and relayed the information via radio. During the pursuit, the driver and passenger fired numerous rounds at the patrol car. The chase stopped at a residential street where the suspects fled, still armed. The suspects broke into a neighborhood home by shattering a rear sliding door. The occupant was taken hostage and forced to drive the suspects out of the area. Luckily, the kidnapped victim was released unharmed and contacted the police.

The suspect's car, which was recovered, contained 300 pounds of marijuana, with a local street value of \$210,000. The car had numerous bullet holes from the interior out and the back window was shot out by the suspects. Officer Mardocco did not fire any rounds during this event. The police vehicle was struck twice, with one high speed round (AR-15 or AK-47) entering the front grill and exiting the left fender, and one round (probably 9mm) hitting the left steering arm.

The suspects and the vehicle have been linked to a drug related double homicide that is

believed to have occurred shortly before Officer Mardocco made contact with the suspects. Weapons seized include an AR-15, AK-47 and UZI.

PERF members are well aware of the debate surrounding the definition of these weapons. There are others present today that can better speak to the legislative construction and technical problems involved. But as police practitioners, we fail to understand how the definitional problem can remain an obstacle to passage of effective legislation. The drug dealers seem to know which guns are assault weapons. Colt, a leading manufacturer, had no difficulty recognizing which weapons are used by criminals instead of legitimate sportsmen. And the Administration quite capably identified a class of weapons that have no "legitimate sporting purpose." It is just common sense that weapons failing to meet the importation standard, because they are not suited for sporting use, are not legitimized solely because they are the product of domestic manufacture.

While it may be too early to understand what affect the California ban and other state efforts are having on the proliferation of assault weapons, past experience tells law enforcement that no measure will be truly effective until there is a national, uniform law. Crossing state lines to buy assault weapons will surely not deter the gangs and drug dealers that police face on the street.

On behalf of the members of the Police Executive Research Forum I would like to applaud the continuing efforts of this committee to search out the truth about assault weapons. We thank you for the opportunity to present our views and appreciate your concern for the safety of law enforcement and those they protect.



ONE MILLION STRONG . . . working to keep handguns out of the wrong hands.

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TESTIMONY OF PHILLIP McGUIRE

LAW ENFORCEMENT ADVISOR FOR HANDGUN CONTROL, INC. BEFORE THE HOUSE SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

NOVEMBER 1, 1989

Handgun Control Inc., 1225 Eye Street, NW, Suite 1100, Washington, DC 20005 • (202) 898-0792 • FAX (202) 371-9615 703 Market Street, Sate 1511, San Francisco, CA 94103 • (415) 546-1884, FAX (415) 546-0895 Mr. Chairman and Members of this distinguished Committee, thank you for the opportunity to testify today. I want to commend you for your leadership in combatting the drug and drug-related violence that is plaguing our nation. Hardly a day goes by without seeing gruesome newspaper and television accounts of firearm violence stemming from the trafficking and abuse of illegal drugs. I congratulate this committee for holding this hearing which will shed additional light on the relationship between drugs and guns.

I believe we all agree that drugs are a cancer eating at the very fabric of America. Drugs have become a multi-billion dollar industry which is now taking on a corporate mantle. Law enforcement reports that drug dealers are now setting up franchises outside major cities. With the drugs comes the firepower of assault weapons -- to protect turf and escape arrest.

I recently retired from the Bureau of Alcohol, Tobacco and Firearms after 26 years of service, most recently as Associate Director for Law Enforcement. I am pleased to be here in my role as Law Enforcement Advisor for Handgun Control, Inc., a national citizens organization seeking to keep handguns out of the wrong hands.

While Handgun Control, Inc. has traditionally been involved in efforts to prevent handgun violence, the organization has taken an active role in working to stem the violence associated with semi-automatic assault weapons. The dramatic increase in the numbers and criminal use of these deadly weapons in the last three years has caused grave concern among law enforcement. These weapons threaten the public safety, and like fully automatic machine guns, have no place in civilian arsenals.

Assault weapons are a major problem both here at home and abroad. A recent study by Cox Newspapers using data from the Bureau of Alcohol, Tobacco and Firearms found that a semi-automatic assault weapon is 20 times more likely to be used in the commission of a crime than a conventional firearm. The study also found that although semi-automatic assault weapons comprise only a small percentage--0.5%--of the 200 million firearms in circulation, they show up in almost 30% of crimes involving gun trafficking, organized crime (including drug cartels), and terrorism.

A recent example of this occurred in New Jersey, when a state trooper was gunned down on the Turnpike by three crack dealers armed with a MAC 11, after he pulled them over for a routine traffic violation.

The United States has become the major assault weapon supplier to drug cartels in Central and South American nations. The Bureau of Alcohol, Tobacco and Firearms has reported that "foreign countries such as Mexico, Colombia and Jamaica give us a ciear indication that significant numbers of assault or paramilitary type rifles are smuggled out of the United States and used in crimes in foreign countries." According to ATF, of the 569 foreign firearm seizures reported to the Bureau in 1988, 540, or 95%, were assault-type rifles. I don't have to tell Members of this Committee of Colombian President Barco's repeated requests to our leaders to stem the flow of these drug guns.

These weapons are now the favorites of narcoterrorists because of their enormous firepower. When in the hands of violent criminals, their impact is devastating.

Semi-automatic assault weapons were designed for military, not sporting purposes. Distinctions can be made between semi-automatic assault weapons and semi-automatic weapons used for sport. The Bureau of Alcohol, Tobacco and Firearms has successfully made those distinctions when they barred the importation of 43 types of semi-automatic assault weapons. In fact, the Bureau of Alcohol, Tobacco and Firearms issued a report which outlines specific criteria used to determine which semi-automatic firearms to bar from importation. I believe we should apply the same criteria that ATF used for imported assault rifles.

Handgun Control, Inc. strongly supports the use of objective criteria to serve as the basis for designating semi-automatic assault weapons. ATF has applied specific criteria for imported assault rifles. And similar criteria are contained in H.R. 1190, introduced by Representative Pete Stark (D-CA). Because of the Stark bill's reliance on objective criteria, we i we actively worked for its passage. We have previously testified before Congress as to the value of using such criteria to determine the sporting use of these weapons, and we are pleased that ATF has since appropriately utilized such criteria. The criteria ATF used to determine which semi-automatic rifles to bar from import are as follows:

Ability to accept a detachable magazine.

Folding or telescoping stocks. A firearm with a folding stock sacrifices accuracy for advantages such as concealability and mobility in close combat.

Pistol grip that protrudes conspicuously beneath the action of the weapon. A pistol grip facilitates firing from the hip, allowing the shooter to spray-fire the weapon. A pistol grip also helps stabilize a firearm during rapid fire.

Ability to accept a bayonet. A bayonet enables soldiers to fight in close quarters with a knife attached to their rifles.

Flash suppressor. A flash suppressor serves no useful sporting purpose. It allows the shooter to remain concealed when shooting at night, certainly an advantage in combat but unnecessary for hunting or sporting purposes. In addition, the flash suppressor is useful in preventing barrel climb during rapid fire, helping the shooter maintain control of the firearm.

Bipods. Provides stability and support for the weapon when firing multiple rounds in rapid succession.

Grenade launcher. Allows the firearm to launch grenades.

Night Sights. These are not sporting features since it is not generally lawful to hunt at night.

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Other criteria ATF considered include whether the firearm is a semiautomatic version of a machine gun, and whether the rifle is chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.

The Stark bill also includes consideration of barrel length. A barrel length less than 22 inches sacrifices accuracy and range for mobility in close combat. Coupled with a folding stock, a shorter barrel facilitates concealability.

H.R. 1190 also includes objective criteria for designating assault pistols. For example, the Secretary of the Treasury would be required to consider the following:

Whether the pistol is capable of accepting a silencer.

Whether the pistol is equipped with a barrel shroud. A barrel shroud is designed to cool the barrel so that the firearm can shoot many rounds in rapid succession without overheating. It also allows the shooter to grasp the barrel area without incurring serious burns, during rapid fire.

Whether the ammunition magazine extends outside of the pistol grip. This is more characteristic of an assault weapon than a sporting handgun.

We commend the Administration's action on imported assault rifles and shotguns like the Street Sweeper. We are concerned that previously developed sporting criteria, which has been in place for many years, has allowed and continues to allow the import of the concealable UZI and other assault pistols. We urge Congress to correct this loophole.

The Administration has acted courageously in stopping the importation of assault rifles and shotguns. It is now up to the Congress to get imported assault pistols and domestic assault weapons off our nation's streets. We urge your support for H.R. 1190, and hope that Congress will act quickly to outlaw these weapons of war.

Thank you for the opportunity to testify today.

STATEMENT OF HAROLD E. JOHNSON

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

U.S. HOUSE OF REPRESENTATIVES

NOVEMBER 1, 1989

My name is Harold E. Johnson, and I am a consultant on small arms residing in Vienna, Virginia. I am author of the books <u>Small Arms Identification and Operation Guide--Free World</u> and <u>Small Arms Identification and Operation Guide--Eurasian Communist</u> <u>Countries</u>, both published by the Defense Intelligence Agency. After serving as an ordnance officer and instructor in the U.S. Marine Corps for the years 1944-1965, I was employed by the U.S. Army Foreign Science and Technology Center as an Intelligence Analyst in 1965 through 1982.* I was the Senior Analyst for Infantry Weapons, and among my duties were the identification and tracking of small arms as they flowed from the Communist Bloc to Third World nations and Insurgent/Terrorist groups. I continue to keep abreast of developments in the field.

In 1981, the then President of Colombia requested assistance

* In the 1960s and early 1970s, I acted as an expert witness and consultant for the predecessor to the Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury. Upon passage of the Gun Control Act of 1968, I was appointed to the Firearms Evaluation Panel which assisted Treasury in determining the criteria for importation of firearms as being particularly suitable for or readily adaptable to sporting purposes.

in identifying a large quantity of weapons that had been seized from the M19 terrorist organization. I was sent to Bogota to examine these arms, which included m/961 full-automatic rifles, 60-mm mortars, 2.36-inch anti-tank rockets and launchers, hand grenades, small arms ammunition and explosives. All had one thing in common, despite the fact that the original manufacturers and recipients were diverse--U.S., France, and Portugal--and that was the common thread of final Portuguese ownership. The approximate quantities and some of the weapons I examined are as follows:

Weapon

m/961 full automatic rifles (Portuguese)	300-400
Submachineguns (Portuguese)	40-50
M9A1 rocket launchers (United States)	6
Hand grenades (Portuguese)	500-750
Morters	6
7.62 NATO ammunition (Portuguese)	undetermined

Quantity

All the m/961 automatic rifles were manufactured in Portuguese arsenals and, in common with this particular type of rifle, were dated as to the month and year of manufacture. An analysis of the dates disclosed that all were manufactured prior to the Portuguese leaving Angola. The M9A1 rocket launchers and rockets were made in the United States and transferred to France, which in turn transferred them to Portugal.

It was obvious that, due to the hasty departure of the Portuguese from Angola, these arms were abandoned there. The obvious further conclusion was that these arms had either been given by the Cubans, who were participants in the Angolan civil war, to M19 or that the Cubans, in Angola, had acted as factors

in selling this material to M19. It should be noted that M19 was an extremely wealthy terrorist organization due to its successful series of bank robberies. There being no death penalty in Colombia, terrorist actions are not deterred by potential for capital punishment.

The above weapons were discovered and seized quite by accident. The suspicions of a young soldier were aroused when the truck in which they were concealed under coconuts was leaving Bogota, and he knew that no one would be shipping coconuts out of the city and into the country. The soldier alerted his superior, and a firefight resulted in capture of the truck. There is no way to know what tremendous supplies of Communist supplied arms have not been discovered.

This is an example of how anti-government groups obtain current weapons. The drug cartels can now obtain them in the same manner. Indeed, the m/961 type automatic rifles (also known as Portuguese G3s) are being used by drug traffickers in Colombia today. <u>See</u> Edward C. Ezell, <u>Small Arms Today</u> (1988), page 110.

Although there were no AK-47 or AKM assault rifles in the 1981 seizure which I examined, such rifles have been increasingly appearing on the scene in Colombia. The AK-47 assault rifle has been made obsolete by the AKM assault rifle. Communist bloc countries have millions of surplus AK-47 assault rifles available for transfer to interested purchasers. The more advanced AKM assault rifle has also been appearing on the Colombian scene.

Intelligence analysts rely partially on pictures and films from the media to determine specific types of weapons available to and used by terrorists and other groups throughout the world. As an example, I recently identified an AKM assault rifle seized in Colombia as of Romanian manufacture, due to its distinctive forend pistol grip. Such AKMs would have gotten to Colombia by way of Cuba.

I have generally identified many of the weapons currently shown in the media as being in the hands of the drug cartels. Their weapon of choice is the Communist Bloc produced fully automatic military AKM assault rifle followed by the U.S.produced military fully automatic M16 rifle. There is a prohibition against importation of the fully automatic AKM into the U.S., so these could not have come from here. The military M16 is a weapon whose manufacture and sales are tightly controlled by the U.S. Government. It is obvious that the military AKMs have been supplied by those countries in the area that use them: Cuba, Nicaragua and other Communist bloc satellites. The M16s are from stocks that have been captured from friendly forces supplied by the United States. The U.S. abandoned large quantities of M16s in Vietnam. I understand that the price of a military, full-automatic AKM or M16 is about \$100 in Central America or South America. Some of these weapons probably have been sold by corrupt officials.

There have been uninformed ruminations that the drug cartels obtain their weapons from United States commercial sources. This

is hard to believe. While pistols and revolvers from the United States have historically been the handguns of choice in South and Central America because of their high quality and reliability, U.S. long arms have not enjoyed such popularity.

Because of the controls imposed upon U.S. weapons, none can be exported without a license from the Munitions Control Board, U.S. State Department. Between the paper trail of arms imported into or produced in the United States since 1968 by the Bureau of Alcohol, Tobacco and Firearms and the Munitions Control Board, it should be easy to determine the origin and transfer history of any U.S. gun and to take appropriate legal action towards those who violate U.S. laws. Should it be deemed necessary, the Munitions Control Board can refuse to issue export licenses to allow guns to be sent to the drug cartel countries (as is now done in the case of South Africa). This would stop the flow of U.S. guns, and with the price difference between the expensive U.S. guns and the much cheaper locally supplied military guns, the flow of U.S. arms would be quickly curtailed.

Finally, it should be noted that firearms generally available for purchase by civilians in the United States are greatly inferior for use as offensive weapons to the full automatic military weapons easily available to drug traffickers in Colombia. In the 1960s r i early 1970s, I was a consultant and expert witness to the firearms enforcement branch of the U.S. Treasury Department. In this capacity, I examined semiautomatic rifles to insure that they were not easy to convert to full automatic.

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In 1968, I was appointed to the Firearms Evaluation Panel which assisted Treasury in formulating the criteria for importation of firearms as suitable or adaptable to sporting purposes. We approved as meeting the sporting criteria several semiautomatic rifles with a military appearance, but which were designed to be difficult to convert to full automatic and which were used for target competition and hunting. The Bureau of Alcohol, Tobacco and Firearms followed the Panel's recommendations and approved such rifles for importation as sporting firearms.

In sum, Colombia's drug traffickers have a ready source of inexpensive, full automatic, military firearms from Communist sources and from corrupt government officials. Such criminals have little use for expensive semiautomatic rifles and other firearms designed for target shooting and other sporting purposes which are available in the United States. Accordingly, U.S. policy should be directed toward curtailing the flow of weapons from Cuba and similar sources, and discouraging official corruption within the Colombian police and military.

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TESTIMONY OF JAMES JAY BAKER DIRECTOR FEDERAL AFFAIRS

NATIONAL RIFLE ASSOCIATION INSTITUTE FOR LEGISLATIVE ACTION

ON COLOMBIAN NARCOTICS TRAFFICKERS AND THE ACQUISITION OF FIREARMS

BEFORE THE SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

U.S. HOUSE OF REPRESENTATIVES

November 1, 1989

BARGE PARAME

The NATIONAL RIFLE ASSOCIATION OF AMERICA is a non-profit organization founded in 1871 and supported by the membership fees of almost three million public-spirited citizens.¹ Like almost all of America's seventy million firearms owners, the NRA membership supports strong law enforcement efforts against violent criminals who misuse firearms. These millions of lawabiding gun owners are adversely affected by proposals to limit their constitutional rights which invariably have no effect on criminals.

Today, Colombia is experiencing armed violence by political insurgents and drug traffickers. Unfortunately, that country has

1 The purposes and objectives of the Association are:

1. To protect and defend the Constitution of the United States, especially with reference to the inalienable right of the individual American citizen guaranteed by such Constitution to acquire, possess, transport, carry, transfer ownership of, and enjoy the right to use arms, in order that the people may always be in a position to exercise their legitimate individual rights of self-preservation and defense of family, person, and property, as well as to serve effectively in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens;

2. To promote the public safety, law and order and the national defense;

3. To train members of law enforcement agencies, the armed forces, the militia, and people of good repute in marksmanship and in the safe handling and efficient use of small arms;

4. To foster and promote the shooting sports, including the advancement of amateur competitions in marksmanship at the local, state, regional, national, and international levels;

5. To promote hunter safety, and to promote and defend hunting as a shooting sport and as a viable and necessary method of fostering the propagation, growth, conservation, and wise use of our renewable wildlife resources.

been wracked by violence for the last forty years. Opponents of the Second Amendment to the U.S. Constitution are using Colombia's misfortunes to advocate the disarming of law-abiding citizens of the United States.

Specifically, Colombian violence is being used to advocate prohibitions on the manufacture, importation, and even possession of firearms <u>in the United States</u>, and requirements of police approval and waiting periods for purchase of firearms by lawabiding citizens <u>in the United States</u>. <u>E.g.</u>, Mary McGrory, "How About a War on Guns?" Washington Post, Sept. 17, 1989, C1. Yet violation of the Second Amendment rights of U.S. citizens would have absolutely no effect on violence in Colombia.

The National Rifle Association of America represents lawabiding citizens of the United States, not firearms exporters. Accordingly, NRA has no objection to a prohibition on the exportation of firearms to Colombia. If it believes that the military, police and citizens of Colombia are so corrupt that exportation of arms to that country should be prohibited, then the U.S. Department of State is free to impose such a prohibition. This would have little or no effect, however, because small arms may be imported from countries other than the United States.

Literally tons of machineguns and other arms, undoubtedly obtained from covert or military sources, have recently been seized in Colombia. The Washington Post reported on Sept. 14,

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1989 at A34:

The military announced it had discovered the most powerful arsenal of modern weapons to date, along with a radio communications network.

In a video shown by the 13th Brigade on national television, the military said it had recently seized more than two tons of weapons and ammunition belonging to Jose Rodriguez Gacha, known as "the Mexican," including AK-47 and Galil assault rifles, Uzi submachine guns and 9mm pistols and hand grenades.

The weapons and communications installations, including sophisticated equipment to monitor police communications, were found on three ranches outside Rodriguez Gacha's stronghold of Pacho. The arms were buried in underground tunnels and wrapped in plastic near a safe house, the military said.

The military called the find "a great blow" against Rodriguez Gacha, believed to be one of the two principal leaders of the Medellin cocaine cartel.

It is easy to understand why the small arms seized were AK-47 assault rifles, Uzi submachineguns, and Galil fully automatic rifles. AK-47 assault rifles manufactured in Communist countries are widely available from leftist insurgents throughout Central and South America, including Colombia itself. Uzi submachineguns are imported from Israel by the Colombian government for use by the Colombian police. The Galil fully automatic rifle imported from Israel is the official service arm of the Colombian military. The Uzis and Galils were stolen or purchased by the drug traffickers from official Colombian military and police sources. The following indicates the major sources of firearms to Colombia:

MAJOR SOURCES OF FIREARMS TO COLOMBIA

Source: Edward C Stackpole Books, 1988)	2. Ezell, <u>Small Arms Today</u> (Harrig pages 110-11:	shing, Pa.:
Type	Source	Quantity
Galil automatic rifle	Israeli Military Industries	10,000 +
Uzi submachine	Israeli Military Industries	Unknown
MAC-10 submachineguns	U.S. State Dept. licenced sale for the National Police	395 (1977)
.30 M1, M2 carbines	U.S. Military Assistance Program (MAP) and U.S. Foreign Military Sales (FMS)	7,500 (pre 1968)
HK G3 automatic rifle		30,000 arly 1970s)
	"Portuguese-made G3s, from Angola via Cuba, are being used by drug traffickers."	
FAL automatic rifle	"Origin unknown; some have arriv in country via drug traffickers	ved ." Unknown
M14 automatic rifle		000 (1974) 478 (1980)
.30 M1 rifle	U.S. MAP/FMS	19,000 (pre-mid 1960s)
.38 Smith & Wesson revolver Model 10	U.S. State Dept. licensed sales: for National Police	20,000 (1985)
Kits	for assembly in Colombia	15,000 (current per annum)
	for National Police	4,900 (1977-78)
	for Ministry of Defense	1,500 (1979)
.32 cal. kits	for Ministry of Defense 4	1,500 (1979)

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.38 Ruger revolver U.S. State Dept. licensed sales 5,000 (current per annum)

.45 M1911 A1 pistol U.S. MAP/FMS

2,920 (pre-1966)

In addition to the above, Dr. Ezell further documents the flow of fully automatic machineguns from various Communist suppliers to Colombian and other Latin American insurgents. "Cuba purchased in excess of 35,000 FALs from FN, 1958-59. Some have been recovered from antigovernment forces in Chile, Colombia and El Salvador." (118.) The U.S. abandoned almost one million M16 automatic rifles in Vietnam and Cambodia in 1975. "During the past decade, the current government of Vietnam has been supplying some of these arms to allied countries and to the revolutionary and terrorist organizations in other countries, such as Chile, Colombia, El Salvador, Guatemala, Honduras, and Uruguay. . . . It is obvious that these weapons will continue to be seen around the world for the next several decades." (444.)Nicaragua has large quantities of M-16 automatic rifles left over from the Somoza regime as well as obtained from Vietnam. (282.)Again, thousands of M16s have been captured from, and lost to, antigovernment forces in El Salvador. (140.) Cuba obtains AK-47 and AKM assault rifles from the Soviets and the Warsaw Pact countries. (117.) All of the above are sources of arms to Colombian insurgents and drug traffickers.

Insurgents or drug traffickers would have no incentive to

obtain expensive sporting designs from the United States. Ά black market, full automatic AK-47, Uzi, or Galil in Colombia could be obtained free or for perhaps \$100.00. Before the recent import ban in the United States, the suggested retail for the semiautomatic AK-47 type rifle was between \$595.00 and \$675.00; for the Uzi carbine, \$698.00; and for the Galil semiautomatic rifle, \$940.00. <u>Gun Digest 1989</u>. Retail purchase entails completion of Form 4473 and identification requirements. Then the rifles would have to be exported. Moreover, these rifles are semiautomatics designed not to be convertible to full automatic according to the specifications of the Bureau of Alcohol, Tobacco and Firearms, and are thus far inferior for use as weapons to the inexpensive black market guns already in Colombia.

AK-47 assault rifles (machineguns) have been made widely available in Central and South America from sources in Cuba, Nicaragua, and various Communist countries. The guerrilla movements in El Salvador and Colombia itself are ready sources of AK-47s. Colombia's guerrillas have obtained quantities of AK-47s from Cuba, which used them in the Angolan civil war. Some of these AK-47s were manufactured in Romania.

The magnitude of arms smuggling in Colombia is exemplified by the seizure of 1,000 rifles, 250 light machine guns, and 10 mortars being shipped to that country from Portugal. According to the Colombian government, forged documents said the arms were intended for the Colombian army, but the arms were actually

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destined for use by the pro-Moscow Revolutionary Armed Forces of Colombia (FARC). (Reuter Library Report, Jan. 11, 1989.)

Firearms exports must be approved by the Department of State pursuant to 22 C.F.R. Section 120.1 <u>et seq</u>. A license from the Office of Munitions Control must be obtained prior to the export. Section 123.1. It is the policy of the United States to deny export licenses to Communist countries such as Cuba, the Soviet Union and Vietnam, to South Africa, and "wherever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States." Section 126.1. If the exportation of firearms from the United States to Colombia is contrary to U.S. interests, then the State Department should deny such licenses.

A license is not required for export of firearms for carrying out any foreign assistance, cooperative or sales program authorized by law and subject to control by the President or by other means. Section 126.4. If U.S. assistance programs result in arms being transferred from corrupt Colombian military and police sources to drug traffickers, then the United States should not be supplying such arms to the Colombian government.

The Colombian government is unable to maintain any semblance of law and order in many parts of the country. Guerrilla movements and drug traffickers have for decades been able to smuggle into the country and to buy from corrupt military and police personnel tens of thousands of fully automatic

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machineguns. These guerrillas and traffickers have little need of expensive sporting rifles such as the Colt AR-15 and the semiautomatic versions of the AK-47 from the United States which are made to specifications approved by the Bureau of Alcohol, Tobacco and Firearms so as not to be easily convertible to full automatic.

The Colombian police are so riddled with corruption that 2,500 police officers were recently fired for their ties to drug lords. Despite tons of automatic arms available in Colombia and in the Central and South American market, the Colombian government has called attention to a small trickle of semiautomatic firearms coming from the United States as a cause of its problems. The article "Colombia Urges U.S. to Curb Flow of Semi-Automatic Guns," Washington Post, Sept. 8, 1989, A1, 18 states:

The Colombian government has appealed to the Bush administration for help in curbing an escalating flow of semi-automatic rifles, handguns and other weapons from U.S. gun dealers to Colombian drug traffickers . . .

National drug policy director William J. Bennett said yesterday that his office "immediately called" the Bureau of Alcohol, Tobacco and Firearms (ATF) and asked for an investigation into the arms shipments after he was told about them by Colombian Justice Minister Monica de Greiff and her aides in a meeting here Aug. 30.

But Bennett, testifying before the Senate Judiciary Committee about President Bush's new anti-drug proposal, emphatically ruled out further action by the Bush administration against the domestic manufacture of semiautomatic assault rifles similar to the ban on imports imposed in July. . .

Bennett retorted that there are "very serious

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constitutional problems" with a ban on assault weapons and the administration does not want to "interfere with the legitimate rights of gun owners and collectors and hunters.

Jack Killorin, chief of ATF public affairs, said the Colombian government has provided the agency with information about 172 rifles, handguns and shotguns seized from the cartels and leftist insurgents during an 18 month period ending Aug. 1.

ATF was able to trace 87--or more than half--of the weapons as having come from the United States. . .

John Walters, Bennett's chief of staff, said "preliminary information" he received from ATF indicates that most of the U.S. weapons the agency had been able to trace were "sold legitimately" by U.S. dealers tc South American clients and then were diverted into the hands of the cartel.

Thus, out of literally tons of arms seized--most of which are AK-47 machineguns smuggled from Cuba and other Communist countries, and Galils and Uzis stolen from or sold by members of the Colombian military and police--only 87 firearms came from U.S. dealers, and they were sold legitimately.

A Freedom of Information Act request for BATF records on the above traces reveals that many of the above firearms were sold directly to the Colombian government. For example, 23 of the firearms were Smith & Wesson Model 10 .38 cal. revolvers-hardly "assault rifles"--and almost all of these were sold directly by Smith & Wesson to Colombia, undoubtedly for police use. The Model 10 is a standard police service revolver in Colombia.

In addition, 11 of the firearms seized were Thompson .45 cal. submachineguns. Thompsons have not been manufactured since
World War II. These guns were almost without doubt sold to the Colombian government, and could have been in that country for fifty years. Other items of apparent American military surplus include several Ithaca and Remington World War II production Model 1911 .45 cal. pistols.

Other firearms included a Remington XP-100 single shot pistol, Remington Model 70 bolt action hunting rifle, and other sporting arms.

Not one semiautomatic AK-47 type rifle is on the BATF trace <u>list.</u> Drug traffickers would have little use of a sporting version, semiautomatic only rifle made to the exacting requirements of the Bureau of Alcohol, Tobacco and Firearms, and costing perhaps \$595.00 to \$675.00 when purchased in the United States. (Since the import ban, these rifles sell at \$1,000.00 to \$1,500.00). Full automatic AK-47 assault rifles are already easily available in Colombia through Communists or other underground sources either free or for as little as \$100.00.

The BATF trace list includes a Colt M-16--compliments of the U.S. military--and less than five dozen Colt AR-15 rifles. Before Colt suspended sales of the AR-15 in 1989, its suggested retail (HBAR Model) was \$869.95. Asking price is now \$2,000.00. There are also a few Uzi, Ingram, and Interdynamic pistols. Each and every one of these models have been closely scrutinized and approved by BATF so as not to be easily convertible to full automatic. The list likewise includes a few Ruger Mini 14

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rifles. These rifles are popular items used by private security forces in Colombia. They were legally exported from the United States, and may have been stolen from their legitimate Colombian owners.

In sum, a paltry 87 firearms seized over a period of a year and a half were traced to American manufacturers. These firearms were apparently legally sold in the United States and legally exported to the Colombian government itself or to private security or other authorized persons in Colombia. The diversion of this extremely small quantity of revolvers and semiautomatic firearms is insignificant compared to the tons of fully automatic firearms obtained by Colombian insurgents and criminals from corrupt Colombian government officials and military-police sources or from Communist and black market sources.

The Colombian government has chosen not to share with BATF any information concerning the enormous quantities of military firearms seized. The Freedom of Information Act request from which the above data was obtained also sought: "Records concerning M-16s, AK-47s, or other military firearms which have been seized by the Colombian government, or which may be possessed by or available to Colombian narcotics traffickers or terrorists from sources in Central or South America or elsewhere." BATF could produce no records on the subject and could only suggest, by letter dated Sept. 22, 1989, that "you should address your request to the Government of Colombia."

The violence in Colombia hardly began with the drug traffickers. "The background of violence and civil war makes Colombia unique among Latin American countries." There were 135,000 deaths from the period in Colombia lasting 1949-1958 known as <u>"la violencia"</u> (the Violence). R. Gott, <u>Guerrilla</u> <u>Movements in Latin America</u> 224 (1971). "The bulk of the assassinations and atrocities committed during the period of the <u>violencia</u> were the work of Liberals or Conservatives. . . "<u>Id</u>. at 231. The Communist insurgencies since the 1960s sprang from this tradition. <u>See id</u>. at 241-304.

The Communists who have controlled large parts of the countryside for decades have never had any problem obtaining small arms. In a well executed operation a decade ago, the M-19 leftist guerrilla group tunnelled into an army arsenal and stole 4,883 weapons. <u>See</u> "Voices from a Bogota Jail," Washington Post, June 7, 1981, D5; "Arrests Raise Torture Issue in Colombia," Washington Post, Jan. 12, 1979, A31.

Communist sources outside Colombia, including both poor socialist states desperate for hard currency as well as various movements and groups, account for most M-16 and AK-47 automatic rifles in the hands of insurgents and drug traffickers. The U.S. abandoned one million M-16s in Vietnam, which has admitted to providing some M-16s to Communist guerrillas in El Salvador. P. Brogan and A. Zarca, <u>Deadly Business</u> 182-83 (1983). Nicaragua-either the Sandinistas or the contras--could also be a ready

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source for M-16s. Plenty of M-16s are available on the international market.

The easy flow of large quantities of arms between antagonists in Latin America is further exemplified in the following recent report of weapons being sent clandestinely from Nicaragua to El Salvador's guerilla organization, FMLN. The incident was reported in "Honduras Says it Seized Arms Bound for Salvadoran Rebels," Washington Post, Oct. 20, 1989, A35:

A preliminary search of the truck found 307 rocketpropelled grenades and an undetermined number of launchers; 74 automatic rifles, including AK-47s and M16s with an undetermined amount of ammunition; explosive detonators, radios and urban guerrilla training manuals with "FMLN" stamped on them, the sources said...

Salvadoran and U.S. officials frequently have charged that the Sandinista government of Nicaragua supplies Salvadoran guerrillas with arms and ammunition, but efforts prove the charges conclusively have been disputed.

Over the years a number of arms shipments allegedly bound for the FMLN have been captured in Honduras. A large weapons shipment was seized in Comayagua, Honduras, in 1981. Another was discovered in late 1985 when a car packed with arms and ammunition had an accident on the Pan American Highway in Honduras, spilling the contents.

The most recent seizure came last summer, when about 60 AK-47s were discovered in a cache in a rural community about 50 miles north of Tegucigalpa. While the armed forces charged that the shipment came from Nicaragua and was bound for the FMLN, there was speculation it was destined for Honduras guerrillas.

The above was only one seizure out of many shipments which made it to their destinations. An indication of the large quantities of arms available from Cuban sources is set forth in the following inventory of arms found by U.S. forces in Grenada

in 1983, from Sylvia and O'Donnell, <u>Guns of Grenada</u> 40 (1984):

Soviet AK-47 Assault Rifle	1,626
Czech Model 52 Rifle	1,120
KS Rifle (Communist Bloc)	4,074
Soviet Mosin Nagant Rifle	2,432
Soviet M-1945 Submachine Gun	180
Mortars and Machine Guns (crew served)	99
Hand Grenades	1,824

The fully automatic AK-47 assault rifle is perhaps the most widely available firearm in human history. As explained by Edward C. Ezell, <u>The AK47 Story</u> 11-12 (1986):

The AK47 assault rifle, and its many variants, has become the most widely distributed and best known military shoulder weapon of the post-World War II era. Some people might argue that the United States Army's M16 rifle deserves that title. But it is the Kalashnikov that is seen nightly on the evening television news from Beirut, the Iranian desert, the jungles of El Salvador, or the mountains of Afghanistan. . .

An estimated thirty million to fifty million Kalashnikov-type rifles and light machineguns have been manufactured since the introduction of this design in 1947. At least a dozen countries have manufactured or are manufacturing versions of this weapon. At least fifty-five nations and an untallied number of guerrilla and terrorist organizations use these guns daily.

Some of the largest producers of AK-47 assault rifles are poor states in desperate need of hard currency which actively supply the international arms market. Dr. Ezell provides the following details:

In addition to the Soviet Union, the People's Republic of China, the German Democratic Republic (East Germany), Poland, Romania, Bulgaria, North Korea, Hungary, and Yugoslavia have manufactured the AK47. The People's Republic of China, the German Democratic Republic, Poland, Romania, North Korea, Hungary, Yugoslavia, and Egypt have also manufactured the AKM-type assault rifle. (181)

There are no known accurate estimates of the number of

Kalashnikov-type weapons produced to date by the Chinese. With a regular army establishment of more than three million people and reserve forces numbering between five and seven million, it probably would not be unreasonable to project a production total somewhere between ten and twenty million. This estimate seems especially reasonable in view of the Chinese material support of North Vietnam in the 1960s and 1970s, and subsequent sales and gifts of such weapons. The People's Republic of China is currently very active in the international marketplace with export sales of their light infantry weapons being carried out by the China North Industries Corporation (NORINCO). (186)

There are no reported estimates of the number of East German Kalashnikov-type weapons manufactured to date, but a reasonable guess would be between 1.5 and 2.0 million. the Germans have made substantial export sales of these weapons. (186)

The Polish small arms factories have also manufactured the AKM for domestic and export consumption. . . An estimated 1.5 to 2.0 million Polish Kalashnikovs have been manufactured to date. (189)

During the past decade the Romanians and their neighbors the Bulgarians have been very active in the international arms market. The Kalashnikov assault rifles have been among their most popular products, and it is estimated that between them the arms factories of the two nations have made one million of these weapons. (190)

It is difficult to estimate the number of Kalashnikov weapons produced by the Yugoslavian arms factory Zavodi Crvena Zastava, but it is probably in the half-a-million to one million range. Many of these weapons have been exported. (193)

It has been estimated that the [North] Korean small arms factories identified by the numbers 61 and 65 combined have been producing Kalashnikov weapons at an annual rate of about 150,000 units. It is not clear just how many years this rate has been in effect; if it has been in effect for the past twenty years that would mean that the Koreans have manufactured in excess of three million guns. This may be the reason for the recent proliferation of North Korean assault rifles in the international arms trade. (195).

With thirty to fifty million full automatic AK-47 assault rifles manufactured in the world today, it is ludicrous to focus

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on a minute number of semiautomatic rifles designed for target shooting which are available in the United States. "Assault rifles" refer to selective fire weapons which shoot fully automatically, and are thereby machineguns. By contrast, the term excludes semiautomatic rifles, which fire only one shot per trigger pull. Assault rifles such as the M-16 and AK-47 are machineguns. However, the AR-15 and the AK-47 type semiautomatic rifles are not assault rifles or machineguns. This terminology is made clear in Harold E. Johnson, <u>Small Arms Identification</u> and Operations Guide--Eurasian Communist Countries (Department of Defense Intelligence Document, Foreign Science and Technology Center, 1980) as follows:

Assault rifles are short, compact, selective-fire weapons that fire a cartridge intermediate in power between submachinegun and rifle cartridges. Assault rifles have mild recoil characteristics and, because of this, are capable of delivering effective full automatic fire at ranges up to 300 meters.

The Soviet designed Kalashnikov AK-47 assault rifle, a gas-operated, selective fire, box magazine-fed weapon, was the major infantry arm for most Eurasian Communist Countries.

In 1981, the U.S. Army Foreign Science and Technology Center sent Mr. Johnson, author of the above, to Colombia to identify the origins of some 300 to 400 fully automatic m/961 G3 rifles, 40 to 50 submachineguns, and about 750 hand grenades which Colombian authorities had seized from M-19 leftist guerrillas. Mr. Johnson determined from the markings and overall design that these machineguns and grenades were manufactured in Portugal.

The Portuguese colonialists had used and abandoned them in Angola when they were defeated by nationalist insurgents. The ordnance was then obtained by the Cubans, who were involved in the Angolan civil war. Obviously, these machineguns and grenades were taken by the Cubans from Angola and given to insurgents in Colombia.

None of the above firearms and events are remotely connected with the semiautomatic sporting rifles available on the commercial market in the United States. These rifles are not "assault rifles," and while cosmetically similar, have been designed according to BATF's exacting standards so that they are not easy to covert to full automatic. In 1963, BATF determined that the Colt AR-15 Sporter is not a machinegun. From the passage of the Gun Control Act of 1968, which imposed the sporting criteria for firearm imports (18 U.S.C. Sec. 925 (d)(3)), until 1989, BATF approved semiautomatic AK-47, HK 91, and similar rifles to be sporting rifles suitable for importation.

Colombia itself is a primary example of why gun control laws do not work. These laws apply only to law-abiding citizens. One can legally purchase firearms only with permission of the police. Many in the police and military are in league with corrupt politicians and drug traffickers. Everyone in Colombia is armed except the law-abiding citizens who cannot afford the police bribes or do not have the right connections. Civil liberties are suspended. Ironically, the Colombian government now is asking

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the United States more stringently to restrict acquisition of firearms by U.S. citizens, as if a tiny trickle of such arms to Colombia has any effect.

Leftist insurgency and drug wars in Colombia are in step with that country's earlier history in the period known as <u>la</u> <u>violencia</u>. Tons of machineguns are readily available to Colombians from Communist sources and from corrupt military and police personnel. If it determines that it would serve the national interest, the U.S. State Department could prohibit any exportation of firearms to Colombia. However, violation of the Second Amendment rights of the target shooters and other lawabiding citizens of the United States by banning semiautomatic rifles in our country would not reduce violence in Colombia in the slightest respect.

Appendix to Testimony of James Jay Baker

THE RELATIVE LACK OF CRIMINAL MISUSE OF SEMIAUTOMATIC RIFLES WITHIN THE UNITED STATES

This hearing primarily concerns the sources of supply of small arms to Colombian antigovernment forces and drug traffickers. As noted, the major sources are purchases or theft from the Colombian military and police, and transfer from Communist countries and movements. However, questions have been raised whether semiautomatic, military style rifles are disproportionatley misused by drug traffickers and other criminals in the United States itself. As the following demonstrates, such rifles are the least likely type of firearms to be misused criminally.

ATF RECORDS REVEAL THAT SEMIAUTOMATIC RIFLES ARE RARELY TRACED IN RELATION TO CRIMINAL MISUSE

Records of firearms traces conducted by the Bureau of Alcohol, Tobacco and Firearms contain little or no information of use in connecting specific firearms with specific types of crime. Such records generated in recent months are particularly unreliable in this respect, because BATF has been conducting massive numbers of "forward traces" of semiautomatic firearms to determine ownership, and not due to any criminal misuse. In fact, ATF itself, rather than local police, requests the majority of traces, and the leading reason given for the majority of traces is "miscellaneous" and not some specific crime.

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The following analysis is based on ATF records disclosed under the Freedom of Information Act. The request was for the same records disclosed to the Cox newspapers resulting in publication of its article on "assault type guns." ATF stated about that study:

In providing Cox Newspapers access to ATF's trace requests, we provided only normally disclosable information limited to the type of weapon, manufacturer, model, magazine capacity, serial number and type of crime. We do not necessarily agree with the conclusions of Cox Newspapers and need to express that all firearms trace requests submitted by law enforcement agencies are not crime guns and that the 42,000 traces examined are but a small percentage of all firearms recovered by law enforcement during the period.

According to the Cox article, the firearms traced by ATF most frequently are handguns. In order of the number traced, they are: the Raven .25 cal. pistol; Smith & Wesson Model 60 .38 cal. revolver; Smith & Wesson Model 36 .38 cal. revolver; Jennings .22 cal. rimfire pistol; and the TEC-9 9mm pistol. Total traces by type of firearm are as follows:

Firearm	No. traced	<pre>% of traces</pre>
Revolver	13,983	33%
Pistol	12,424	29%
Shotgun	5,493	13%
Rifle	5,305	128
"Assault weapon"	4,249	10%
"All others"	738	28
Derringer	581	18
-	42,818	

The Cox article states that it reviewed traces of 42,758 firearms covering the period Jan. 1, 1988 through March 27, 1989. Atlanta Journal Constitution, May 21, 1989, A1 et seq. Throughout, the article alleges that the firearms were traced "to

crimes," when in fact no crime was specified for the majority of traces.

The Cox article used the term "assault weapon" or "assault gun," apparently because the data so totally fails to suggest any disproportionate use of "assault <u>rifles</u>," and to distort the statistics by including certain pistols and shotguns.

ATF records disclosed under the Freedom of Information Act include listings of specific firearms traces, showing the requesting agency and the reason for the trace. The raw data reveals that "miscellaneous"--rather than a specific crime--is the most frequent reason for the trace; that ATF rather than local law enforcement is the most frequent requester; and that most "miscellaneous" traces are initiated by ATF. The reason appears to be that ATF has been "forward tracing" large numbers of semiautomatic firearms just to determine who purchased them and not in relation to any crime. Numerous licensed importers, manufacturers, and dealers have revealed to NRA that ATF inspectors have inspected and copied all records on purchasers of semiautomatic firearms allegedly to develop an "end user profile." Whether this program is a fishing expedition or a quasi-registration system, the "miscellaneous" traces are not suggestive of criminal misuse.

ATF has confirmed the existence of its "forward tracing" program, but refuses to disclose records about the program under the Freedom of Information Act. Indeed, ATF refused the same

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inspection rights to ATF data to NRA as it accorded to Cox newspapers based on the following: "Your request to review the same material examined by personnel from the Atlanta Journal is denied. Personnel from the Atlanta Journal had access to ATF forms because they were acting on behalf of ATF at the time of their review. . . ." This contradicts ATF's statement above that "we provided only normally disclosable information" to Cox.

A group of ATF records which exhibits the Cox-ATF mutual influence or agreement consists of listings of traces of "bad guns"--selected semiautomatic pistols, rifles, and shotguns of incomparable designs and tremendously different sporting uses, but with the common feature that Senator Metzenbaum does not like them. These are the "assault guns" discussed in the Cox article which were traced during 1988 and the first guarter of 1989.

The leading firearms traced were not rifles at all, but were respectively the M10/M11 pistol (773 traced) and the TEC-9 pistol (767 traced). By contrast, there were only 689 traces of the "AR-15/M-16"--which would include both AR-15 target rifles sold at sporting goods stores, and M-16 machineguns stolen from the U.S. military.

There was not a single trace of the Steyr AUG, one of the rifles banned from importation based on the allegation that "assault rifles" were being disproportionately misused in crime. Further, ATF records give no comparison data with ordinary revolvers, pistols, rifles, and shotguns, either in terms of

quantities produced or number of traces.

Most revealing is the reasons for the traces. For all of the "bad guns" combined--handguns and long guns together--the following are the trace categories:

<u>Reason for trace</u>	Number traced	Percentage of traces
Miscellaneous	2,137	43%
Property related	663	13%
Gun Control Act	525	118
Narcotics	1,078	22%
Homicide	348	7%
Assaults	176	48
Robbery	60	18
Arson	8	0.2%
Sex crimes	3	0.1%
Total	4,916	

As is clear, 43% of the traces were for "miscellaneous" reasons. These could have included "forward traces" just to check on purchasers, without any suggestion of wrongdoing, as well as lost, found, and abandoned guns. For instance, local police may wish to determine the owner of a found or unclaimed firearm.

"Property related" traces, 13% of the total, would include stolen firearms which have been recovered. Local police may be seeking the rightful owners in order to establish proof of burglary and similar crimes as well as to return the property.

"Gun Control Act" traces, amounting to 11% of the total, would include every suspected technical violation under the Act. A hobbyist who sold one too many collector's items at a gun show, a licensee whose entire inventory is seized because of a recordkeeping violation, or a person who gave a firearm to a

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relative who lived in a fifferent state are only some of the innocuous reasons which would prompt traces under the Gun Control Act.

"Narcotics" related traces (22% of the total traces) are difficult to interpret. Situations involving such traces could be everything from a first time offender in possession of a small amount of marijuana for personal use who happened to have a firearm in a home where he was arrested, to a major crack or heroin trafficker who is a grave danger to society. Even so, the dangerous trafficker is far more likely to prefer a pistol or revolver of the same type that the police use, than such sporting rifles such as an AR-15 or a Mini 14.

The "Homicide" category demonstrates the lack of value of the trace data. Rifles of all kinds are used in only 4% of all homicides, and military-style semiautomatic rifles have been linked to at most 1% of homicides. Of the 348 "bad guns" traced in connection with homicides, the ATF summary fails to distinguish rifles from pistols, or to give comparison data with pistols and revolvers of all kinds.

The firearms traced in the Robbery, Arson, and Sex Crimes categories are practically negligible, especially when compared with the numbers of pistols and revolvers of the types used by police.

To the extent the Cox/ATF data reveal anything regarding military-style semi-automatic rifles, it is that they are rarely

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involved in police traces of crime guns. Using data prepared by Smithsonian Institution's Edward C. Ezell regarding the number of various makes and models owned by Americans, police have requested traces on fewer than one-tenth of one percent of such rifles now owned. For example, during the 15-month period, only 105 of 126,000 AK-type semi-automatic rifles were traced in relation to the investigation of violent crimes--just nine onehundredths of one percent, or roughly one of every 2,000 AK-type semi-automatics owned by Americans.

In sum, contrary to the Cox article, very little can be concluded from ATF tracing data, except that ATF itself conducts most traces for "miscellaneous" reasons, such as checking on ordinary citizens who enjoy target shooting with semiautomatic firearms. The overwhelming majority of traces are conducted for reasons unrelated to violent crime, and the overwhelming majority of firearms used in crime are not traced.

ACTUAL CRIME DATA DEMONSTRATES THAT SEMIAUTOMATIC RIFLES ARE RARELY USED IN CRIME

The Cox study found that about 10% of the guns traced were "assault weapons" based on the definition used by the Bush Administration for the import ban and the list in the Metzenbaum bill for domestic firearms, with the number rather higher (a) in Los Angeles and South Florida, and (b) for "narcotics" and "organized crime" traces.

The study reported a 46% increase in crime use for these guns between 1987 and 1988, and that the increase was continuing

into 1989. If true, that criminal misuse is rising far slower than availability, for ATF affidavits suggest that the importation of such rifles increased 900% in the last two years, while traces less than doubled.

ATF is asked to trace only a fraction of the guns used in crime. ATF traced about 35,000 guns, although there were over ten times that many gun-related crimes reported. Clearance rates are not that low, and in fact violent crimes represent only a minority of bases for guns traced. Cox thus found less than 500 so-called "assault weapons" traced in connection with violent crimes, only one tenth of one percent of about 360,000 gunrelated violent crimes.

Even if most traces were for real crimes, there are so few traces that nothing can be learned from looking at the guns traced. There are about 180,000 gun-related aggravated assaults reported to police annually, half of which were cleared by arrests, but only 1842 assault-related firearms were traced in the 15 month period. Thus, there was a gun traced for only one percent of aggravated assaults. No one can claim the ability to project involvement of a particular type of firearm in crime based on 1% reporting. Moreover, the 1% is an exaggeration, since it would involve all guns seized from someone arrested for an assault for which traces were requested, not necessarily just the firearm used in the assault.

Cox claims that only 500,000 such guns are privately owned,

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based on defining imports as "assault weapons" if on the list of guns temporarily banned from importation and domestic if named in the Metzenbaum bill. But ATF has estimated 2-3 million, and Edward C. Ezell of the Smithsonian Institution estimates about 3-4 million. If Los Angeles' tendency to trace military lookalikes is typical of law enforcement nationally, and if Los Angeles has 19% lookalikes compared to 10% nationally, then military lookalikes account for about 1 1/2% of "crime guns." If the ATF/Ezell figures are roughly accurate, then military-style semiautos also account for about 1 1/2% of firearms owned by Americans and are not disproportionately used in crime.

It is significant that Los Angeles was the place where Cox found the highest involvement in trace guns to be the so-called "assault weapons," since Los Angeles is also the place where the police looked into guns seized to get a percentage rather than just to guns traced. So-called "assault weapons" account for 3% of crime guns, according to the Los Angeles police, so their accounting for 19% of the guns traced simply demonstrates that police are more apt to trace so-called "assault weapons." Testimony of Detective Jimmy L. Trahin, Firearms/Ballistics Unit, to Subcommittee on Constitution, Senate Judiciary Committee, May Trahin noted over 4,000 crime guns in Los Angeles, 5, 1989. while Cox noted only 2,740 guns traced in the entire state of Clearly, the Cox percentage is based primarily on California. the fact that so-called "assault guns" are more apt to be traced

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than any others--and by a substantial margin. Indeed, if Los Angeles' 3% leads to 18% of traced guns, then it is possible that the national finding of roughly 10% of trace guns suggests nationally only about 1 1/2% of crime guns.

The data suggest rifle use in crime is diminishing. In Florida, for example, between 1987 and 1988, rifle use in homicide fell from 3.9% of homicides to 2.6%, according to the Florida Department of Law Enforcement. In Washington, D.C., where drug trafficking was blamed for a 67% increase in the homicide rate between 1987 and 1988, only one homicide involved a rifle of any kind. In Chicago, 1988 saw more murderers using baseball bats than rifles.

The Columbus Police Department has reported on the firearma seized during a period of roughly one year (April 29, 1988, to April 21, 1989) during "crack" raids. The 179 firearms seized--which did not include a single semiautomatic centerfire rifle--were in the following proportions:

Revolvers	51%
Semiautomatic pistols	30%
Shotguns - long barreled, not semiauto	98
Shotguns - sawed off	48
Shotguns - semiauto	18
Rifles22 caliber, not semiauto	28
Rifles22 caliber semiauto	9.6%
Rifles - center fire, not semiauto	0.6%

Clearly, rifles of all kinds are the least desirable weapon of criminals, and semiautomatic centerfire rifles are misused far less than ordinary .22 caliber rimfire rifles.

Nationally, according to FBI reports, firearms of all kinds

accounted for just 4% of the homicides in 1987 and 1988. This represents a drop from the early 1980s, when over 1000 rifle related homicides annually were reported to the FBI. In the years 1986-88, fewer than 800 rifle-related homicides each year were reported to the FBI. The rifle-related homicide rate has dropped 30% during the 1980s, despite dramatic increases in the number of so-called "assault rifles."

STATEMENT OF JOHN R. HESS CHAIRMAN, JOHN R. HESS AND SONS AND PRESIDENT, NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS

BEFORE THE SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL U.S. HOUSE OF REPRESENTATIVES NOVEMBER 1, 1989

Mr. Chairman and Members of the Committee, I am pleased to have been invited here today to express the views of the chemical distributors on the matters being examined by the Select Committee.

My name is John R. Hess. I am Chairman of John R. Hess and Company, Inc., a chemical distributorship located in Providence, Rhode Island. I appear here today in that role, and also as President of the National Association of Chemicals Distributors (NACD).

We all know that none of us are immune to or isolated from the drug problem in our country. As recently as last month, while attending my high school re-union, a former classmate told me that her son had died of a cocaine overdose. He was a successful businessman, and no one had known of his involvement with drugs. I would venture that everyone here, particularly those charged with enforcement, knows someone who has been a victim of drugs. I wish to state clearly that we in the chemical industry, who take title to the chemicals sold, and who operate distribution facilities, want to assist the Drug Enforcement Administration (DEA) in their efforts as an ally, not as an adversary.

"Precursor" and "Essential" Chemicals

Two terms have been used in association with drugs and chemicals, and clarification of their meanings is necessary. I am referring to the terms "precursor" and "essential" chemical. The Chemical Diversion and Trafficking Act defines a precursor as a chemical which is an agent in the synthesis of the final product -- in this case, an illicit drug. Precursors become a part of and are necessary for the synthesis of the final product. An essential chemical, on the other hand, is defined under the Act as a solvent, diluent, or catalyst in the production of the end product. They are used in the manufacture as the vehicle in which the reaction takes place.

Industrial chemical distributors sell and distribute the products defined as essential chemicals under the Act. The eight essential chemicals are: acetone, potassium permanganate, hydriotic acid, acetic anhydride, methyl ethyl ketone, ethyl ether, toluene, and benzyl chloride. These commodities are regular items c⁺ international commerce, and have been sold through chemical distributors for many, many years to

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innumerable industries, long before the current drug problem existed. The essential chemicals are commodities -- and I can not emphasize that point too strongly -- which move in large volume at a very low profit margin, they are not production-controlled pharmaceutical intermediates.

The task faced by the chemical industry, the Congress, and the DEA is how to do everything possible to keep these essential chemicals from being diverted to illicit use without disrupting legitimate commerce unnecessarily. The legitimate uses of these products are numerous: paints and varnishes, coatings for fabrics like Scotchguard, water purification, detergents, medicines, cosmetics such as nail polish remover and perfumes, fiberglass, computer electronics, and food products like saccharin -- just to name a few. We all use these products every day, and the transactions necessary to fill the manufacturing requirements number in the hundreds of thousands per year.

How a Distributorship Works

It is apparent to us, who are regional chemical distributors supplying essentials to legitimate businesses in our respective territories, that a first step to control is to evaluate present distribution methods against the regulations and judge their effectiveness. The 270-odd distributors who are members of NACD have facilities inapproximately 350 cities in the

48 contiguous states. They all purchase and take under their control the chemicals which they distribute.

Distributors provide commodity chemicals to the numerous small and mid-sized businesses who are unable to deal directly with chemical manufacturers. These legitimate enterprises rely on our personalized service to supply quality goods when they are needed.

We, in turn, rely on the principles of product stewardship to maintain our business relationships. Environmental regulation, product liability, and insurance costs have driven our increasing concern about who uses our products and how they are handled. The potential for illicit diversion adds a compelling reason for increased vigilance by responsible distributors in the area of product stewardship.

The chemical distributor is a marketer to specific industries. Our sales are achieved by direct solicitation by our sales forces to specific targeted accounts. These sales forces make personal calls in assigned regions to solicit business for the sale of commodity chemicals as industrial raw materials. These calls are repetitive. The salesperson knows the end use of the product sold, and the distributor/owner has a procedure to establish the creditworthiness of the potential customer. The distributor also has a record of the purchase order, the shipping paper, and the delivery point. A request to deliver outside the distributor's

"normal" delivery area would be recognized, and questioned as a matter of policy.

Further, because of the sales force, any new or peculiar order would immediately raise questions, whether the request is for an essential chemical or something as simple as distilled water.

How the Distributors Can Help

The United States, embodied in the distributors, has a reservoir of available information, as well as a mobilized force to monitor the distribution of essential chemicals already in place. This information is available and will be supplied. Suspicious orders are already required to be reported to the appropriate agency. This is much more workable and productive than going back to square one to establish the right of purchase for a long-standing customer, as must now be done in the case of an export shipment.

Expanding on product stewardship by regularly checking quantities received from a supplier as compared to a shipping paper or invoice, and internal reviews of commodity chemical inventories and sales will add a new dimension to our existing efforts to eliminate diversion. These practices must also be followed by purchasers of these commodities to be assured no diversion exists. It is incumbent on anyone who buys and

maintains an inventory of essential chemicals that any unreasonable shortage be properly reported. With this type of cooperation and monitoring, external and internal diversion should be quickly reported.

Current Regulations

Legislatively, the Act is complete, but implementation is still in its early stages. The Act is a good law, and we are proud to have worked with Congressman Hughes, and his colleagues in the Subcommittee on Crime, during its development. But, no single law will end the sale illegal drugs. Laws set national tone and policy, but only the nationwide involvement of individuals and companies -- acting as the eyes and ears of enforcement -- will reduce the diversion of legitimate products for illicit use. That effective force must be tapped by encouraging voluntary industry assistance. Please do not discourage such activity by unreasonable regulation.

The Act is to be applauded for not extending into the huge retail market. No agency can possibly monitor and control such a large sector of the economy. It also does not assume to remove every possible source of products with illicit usefulness.

The Act is adequate as much as any act can be. It is premised on the continued, vigorous support which the chemical industry has

demonstrated of its own volition in the past. As the chemical industry has understood from the beginning, the intent is to draw industry and enforcement together without disrupting the former, while providing the latter with adequate information.

Areas of Concern to the Chemical Distributors

NACD and the Chemical Manufacturers Association (CMA) have been working with DEA to ensure that industry is clear on how certain provisions in the Act are being interpreted. Some of these provisions and their interpretations are of particular concern.

At present, DEA does not accept the highly competitive and global nature of the commodity chemical industry. This, obviously, creates problems. An understanding of the commodity chemical distribution industry is critical to workable and effective regulation.

One provision of concern is the recordkeeping requirement. This mandates the maintenance of separate records regarding both sales and receipts. The concept of recordkeeping for receipts is entirely new. It was not addressed in either the proposed or final rules, but only came to light during conversations with the agency. The information required by this provision has been compiled, and is in existing business records. Thus application of this requirement to both sales and receipts serves only

to double the already overwhelming regulatory workload. The sheer volume of required documentation will bog down enforcement efforts so that finding diversion activity in the mass of mandated files would be like finding a needle in a haystack.

Another concern is the assessment of accountability. Enforcement has stated that a vendor who makes a sale FOB, a common practice in the distribution industry, is responsible and liable for export notification should the customer -- who has both ownership and possession of the material -- decide to export it. This ratcheting back along the distribution path, and holding the distributor responsible for actions by his customers does not encourage cooperative efforts.

A third example deals with the question of "regular customer." Enforcement interprets this rule to mean that current customers do not exist until they are registered with DEA, despite the fact that a business relationship may have been in existence for decades.

With regard to export sales, the definition of a regular customer becomes even more rigid: a sales history in a specific regulated commodity is required for "regular" status. Thus, "regular customer" status is determined on a product-by-product basis. This means, that a legitimate export customer with "regular" status for one essential commodity chemical must wait 15 days -- and be granted "regular" status again -- before he can purchase a different essential chemical. Providing a "new" service to an existing customer, is not servicing an entirely new customer. This places U.S. distributors at a severe competitive disadvantage when trying to service legitimate foreign need. It also effectively prevents distributors from expanding their businesses by responding to market conditions and providing new product lines to established customers.

In addition, when a product is imported it becomes part of the domestic product pool, and as such is subject to tracking from seller to seller. By requiring pre-notification, U.S. distributors are denied the opportunity to take advantage of the foreign spot markets. This is a severe disadvantage in a market where service is key, and prompt action is a condition of sale.

The regulation also requires sellers to "obtain proof of identity," such as a driver's license or other documentation. This merely adds to the already extensive recordkeeping requirement. More importantly, this interpretation differs from the statutory language which requires sellers "to identify" (P.L.100-690, §310(a)(3)) the other party to the transaction. We hope to see a return to the statutory language on this point.

Finally, the essential chemicals are the products of choice, not requisites to illicit drug manufacture. Even if the availability of these

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commodoties to the illicit market is removed entirely, drug producers can turn to other products -- even substances as simple as gasoline and other keytones.

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Fairness of Regulations to Industry

Given this situation, NACD does not find the regulations entirely fair to the chemical distributors. There are areas where our dialogue with enforcement has produced significant results. But, certain sections, like those articulated earlier, remain cumbersome. DEA is requiring massive amounts of information -- more than they need, can use, or was intended in the law.

NACD's members are small to medium-sized companies. Correct initial implementation is vital. Frequent re-interpretations create incredible difficulties in implementation, and render the distributors less able to do business and less able to assist against diversion. This is fair to neither business nor enforcement.

Conclusion

Chemicals are the raw materials for the manufacture of innumerable products. Their deliberate misuse, however, has produced tragic consequences which require regulation. Enforcement is now responsible for regulating the chemical industry, which produces a large percentage of the gross national product, and in turn supplies nearly every other U.S. industry.

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Excessive regulation will artificially inflate commodity chemical costs by creating new overhead requirements for compliance. Similar price increases could be expected in other manufacturing sectors as raw material costs rise. Static regulation of this dynamic process is extremely difficult and a dangerous economic gamble.

But the new dynamic must be defined: our members want to cooperate, but we need to know how to comply. We wish to understand the regulations, and for the regulators to understand us. This is critical to an efficient and effective program. We make no pretentions about approving regulations, but would appreciate the opportunity to comment before they become final, and explain their potential effects on the industry.

With appropriate regulation, we can supply these commodities to legitimate users and remain alert to any diversion attempt. Making access to these materials unrealistically difficult -- by regulation or any other means -- would change more than just the chemical industry.

The National Association of Chemical Distributors stands ready and willing to work with DEA in the continued development of a meaningful

program which will provide useful information without unnecessarily burdening industry.

Thank you for your attention, gentlemen. I would be happy to try and answer any questions the Committee may have.

SUBMISSIONS FOR THE RECORD



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TESTIMONY OF THE

CHEMICAL MANUFACTURERS ASSOCIATION

BEFORE THE

SELECT COMMITTEE ON

NARCOTICS ABUSE AND CONTROL

UNITED STATES HOUSE OF REPRESENTATIVES

NOVEMBER 1, 1989

2501 M Street, NW 202-887-1100 Washington, D.C. 20037 Telex 89617 (CMA WSH)

EXECUTIVE SUMMARY

The Chemical Manufacturers Association (CMA) is pleased to respond to the House Select Committee on Narcotics Abuse and Control's invitation to testify on the diversion of legitimate chemical shipments to illicit drug production. The U.S. chemical industry has an important role in helping reduce the potential for such diversion, and the industry is committed to effective implementation of the Chemical Diversion and Trafficking Act of 1988 (CDTA).

CMA is a non-profit trade association whose member companies represent 90 percent of the production capacity for basic industrial chemicals in the United States. CMA member companies are involved in the export and import of chemical products, some of which are regulated under the CDTA. Consequently, the chemical industry is very interested in regulatory efforts which impact on legitimate business activities.

The Drug Enforcement Administration (DEA) has reported considerable data on the trade flows of precursor and essential chemicals from the United States to Latin America, particularly to the Andean countries. CMA has also conducted an analysis of the trade data, with a particular view toward unprecedented increases or decreases in the trade. CMA's analysis examines the allegations that U.S. manufacturers are responsible for a majority of the chemicals diverted to illegel drug production. The analysis shows that a comparison of export volumes, rather than percentage increases, provides a more accurate picture of the flow of chemicals to the Andean countries.

CMA is also concerned with DEA's ongoing implementation of the CDTA. In general, CMA is encouraged by the Administration's willingness to discuss particular implementation problems and seek acceptable solutions. CMA is concerned, however, that legitimate businesses may nevertheless suffer an undue burden as the CDTA is applied to their activities, without any significant benefit in preventing diversions. Specific CMA concerns include:

- The requirement to maintain receipt records, especially as it is applied to certain domestic transactions not otherwise regulated.
- o DEA's proof of identity requirements.
- o Verification of regular customer status.
- Application of the export notice requirements to Free on Board (F.O.B.) and Free Alongside (F.A.S.) transactions.
- The need for appropriate guidance from DEA to the regulated community.
- o The lack of a clear interpretation, waiver and exemption process.

I. INTRODUCTION

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The Chemical Manufacturers Association (CMA) is pleased to respond to the Committee's invitation to testify regarding diversions of legitimate chemical shipments to illegal drug manufacturing. CMA is convinced that the U.S. chemical industry can play a significant role in helping stem the production of illicit drugs, and welcomes this opportunity to comment on the effectiveness of the Chemical Diversion and Trafficking Act (CDTA) of 1988 (P.L. No. 100-690) in achieving that goal.

CMA is a non-profit trade association whose member companies represent 90 percent of the productive capacity for basic industrial chemicals in the United States. CMA and its members were actively involved in the Congressional debate leading to passage of the CDTA, and are committed to full implementation of the Act.

CMA is concerned about the implementation of the CDTA. Although the Act has only been in effect since March, 1989, and some requirements were effective only two days ago, CMA generally supports the Drug Enforcement Administration's (DEA) implementation efforts. CMA suggests, however, that certain provisions of the Act require clarification to ensure the CDTA effectively provides the means to interdict the diversion of commodity chemical shipments.

Our testimony today also responds to the Committee's specific concerns about the trade flow of precursor and essential chemicals to illegal drug production, particularly to the Andean Countries. CMA has

recently analyzed the trade flow of seven of the CDTA "essential" chemicals from the United States to South America. Our review of that data may shed some light on the magnitude of the problem of diversion to illicit drug manufacturing.

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II. Chemical Diversion and Trafficking Act

CMA and its member companies consulted with both Congress and the DEA frequently during consideration of the CDTA. Our effort grew from the long history of voluntary cooperation between CMA member companies and DEA in investigating potential diversions of chemical shipments to illicit drug production. CMA strongly supported the Act as a necessary tool in addressing the national problems arising from the abuse of drugs.

The CDTA requires persons who distribute, import, or export listed precursor or essential chemicals (and tableting and encapsulating machines), to identify their customers, maintain retrievable records, report suspicious orders, and provide advance notice to DEA of imports and exports of these chemicals. The Attorney General has been granted the authority to adopt implementing regulations, and to suspend imports and exports if he determines that a shipment may be diverted to illegal drug manufacturing. The CDTA was enacted November 18, 1989, and its record-keeping requirements went into effect March 18, 1989.

DEA proposed regulations governing the CDTA proof of identity, record-keeping and reporting provisions on February 8, 1989. 54 <u>Fed</u>. <u>Reg</u>. 6144. The final regulations were published on August 1, 1989, with the records and report sections (21 CFR Part 1310) effective
August 31, 1989. The regulations on import and exports of the listed chemicals became effective October 31, 1989.

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CMA and its members submitted extensive comments on the proposed regulations. Throughout the regulatory process, and continuing with DEA's ongoing implementation process, CMA has maintained its cooperative approach with DEA. Representatives of CMA and other associations have met frequently with DEA to attempt to resolve particular problem areas and interpretation questions. CMA appreciates DEA's willingness to discuss the effective implementation of the CDTA. We are pleased to note that considerable progress has been made in reaching mutually agreeable solutions in some specific areas.

CMA remains concerned that DEA's ongoing implementation has imposed requirements that do not prevent diversion yet create a significant burden on legitimate businesses. We are aware that business decisions in some CMA member companies are being driven not by the purposes and goals of the CDTA, but by the burden imposed by the regulations. DEA's policy of making case-by-case determinations on particular questions has also hampered complete implementation of the Act.

As an example, companies which receive listed chemicals in domestic transactions and use them in the manufacture of other materials are not considered "regulated persons" under the CDTA. A similarly situated company that also imports a listed chemical is a "regulated person," however, and is then required to maintain receipt records for <u>both</u> the import transactions and the domestic receipts, over and above the required import notice. As another example, some process catalysts are encapsulated, and the purchase of encapsulating

machines will make the company a CDTA regulated person. Receipt of any listed chemical by that person would require the maintenance of receipt records, even for those chemicals obtained in purely domestic transactions. The difference will increase the production costs of producers subject to the record-keeping requirement, so much so that legitimate commerce in a listed chemical is affected. CMA is convinced that Congress intended no such effect in enacting the CDTA.

Some of CMA's specific concerns, which are reflected below, arise out of uncertainties in the interpretation of the CDTA. The fact that a House-Senate Conference Report on the CDTA was never published further hampers interpretation of the Act. Congress may wish to express its views on implementation and consider appropriate clarifications of the CDTA.

A. <u>Receipt Records</u>

The CDTA defines "regulated person" as one who "manufactures, distributes, imports, or exports a listed chemical." 21 U.S.C. § 802(38). "Regulated transactions" under the CDTA include, with certain stated exceptions, "a distribution, receipt, sale, importation or exportation of a threshold amount, including a cumulative threshold amount for multiple transactions ... of a listed chemical." Id., § 802(39). According to DEA's current interpretation, a company's status as a "regulated person" is not specific to particular transactions in listed chemicals, but once attained requires compliance with the CDTA record-keeping, import and export notice requirements. Conversely, the determination that a transaction is regulated under the CDTA is chemical specific, depending on whether the threshold limits have been met.

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The effect of DEA's interpretation is to extend the receipt records requirement to transactions and situations unlikely to contribute to effective interdiction of illegal diversions. For example, companies which receive listed chemicals only in domestic transactions are not required to keep receipt records; control over such shipments is achieved through records maintained by manufacturers and distributors. If a company imports a single listed chemical, however, it is required to keep receipt records for all transactions in all listed chemicals, even those previously unregulated as domestic receipts.

CMA is encouraged by recent indications that DEA will consider normal business records sufficient to meet the receipt requirement. In addition, DEA has indicated that it will consider case-by-case waivers where the imports are made infrequently, which if adopted should help reduce the number of companies subject to the receipt record requirement.

CMA believes that Congressional clarification of the receipts record is warranted. The paper trail necessary to allow effective DEA enforcement of the Act is not appreciably augmented by a requirement that receipt records be maintained for all listed chemicals simply because a single chemical is imported.

B. Proof of Identity

In CMA's opinion, DEA has made considerable progress in clarifying the CDTA's proof of identity requirements. The CDTA grants the Attorney General the authority to determine what constitutes proof-of-identity in particular regulated transactions. 21 U.S.C. § 830(a)(3).

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DEA's regulations distinguish proof of identity in transactions involving new and existing customers. New customers not involved in individual or cash purchases must have their identity established by the supplier, by maintaining on file the customer's or agent's signature, electronic password, or other identification. Once established, the regulations permit annual updates of the material on file. See 21 CFR § 1310.07(e).

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In applying the regulations, the distinction between new and existing customers has become superfluous. DEA essentially requires any and all customers to be treated as new customers, even those with whom a long-standing business relationship exists.

CMA believes that such relationships -- built on years of mutual dealing, goodwill, and commercial reasonableness -- should satisfy DEA's proof of identity requirement. We understand that DEA has well-founded enforcement reasons for requiring assurance that customers or agents are in fact who they purport to be. CMA suggests that additional recognition of established business relationships may help ease the regulatory burden imposed on the chemical industry.

C. <u>Verification of Regular Customer Status</u>

At CMA's urging, Congress included a provision in the CDTA intended to expedite "regular customer" determinations for purposes of the waiver of the 15-day export notice requirement. <u>See</u> 21 U.S.C. § 951(b)(6); 21 C.F.R. § 1313.24. Under the provision, exporters could submit their foreign customer lists by August 31, 1989, and unless otherwise notified as to individual customers, exports to those customers did not require 15-day advance notice to DEA. The 60-day review period provided an alternative to individual 15-day advance

notices for qualifying foreign customers as "regular." On shipments where the 15-day notice is waived, such notice must be received by DEA no later than the day of shipment. DEA has no authority to "approve" regular customers under this provision of the CDTA. The Administration may only disqualify certain foreign customers from waiver of the 15-day advance notice requirement.

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CMA is aware, however, that some companies who took advantage of the 60-day review opportunity are effectively being penalized by DEA's failure to complete the reviews. DEA has notified these companies that pending completion of the reviews, "regular customer" status cannot be assumed for <u>any</u> of the customers on the lists, and that 15-day notice must be given. The blanket notifications contain no indication of the time period in which DEA's reviews might be completed.

The chemical companies who took advantage of the 60-day review period did so for well-founded business reasons. Some have established elaborate computer tracking systems which rely in part on a customer's status as "regular" under the regulations. The statutory language of the CDTA requires DEA to notify companies of <u>individuals</u> not eligible for "regular customer" status, and cannot use a blanket notice to delay making determinations under the 60-day review process. DEA has had the lists since August 31, 1989, and it is difficult to imagine how the Administration's review process will be expedited by forcing a 15-day review for specific shipments.

D. Free on Board/Free Alongside Transactions

In commercial chemical contracts, delivery of the material is often stated to be Free on Board (F.O.B.) seller's plant, or Free Alongside (F.A.S.) a named vossel. <u>See</u> Uniform Commercial Code §

2-319. F.O.B. and F.A.S. are common contract terms, which are used in both domestic and export transactions. The codification of the terms F.O.B. and F.A.S. was intended to negate a line of decisions that suggested they were "merely price terms." Id., Official Comment ¶ 1. In the typical situation, where delivery is F.O.B. seller's plant, the seller bears the expense and risk of putting the goods into the possession of the carrier. In some cases, the carrier is the buyer's own vehicle. Generally, the buyer bears the risk of loss of the product once it is in the carrier's possession. Parties to a contract are free, of course, to craft different delivery terms which meet their particular needs, but in the usual F.O.B./F.A.S. contract, the buyer effectively gains possession when the material is transferred to the carrier.

For domestic F.O.B. or F.A.S. transactions which may be subsequently exported by the buyer, DEA considers the <u>seller</u> to be the exporter subject to the export notice requirements of the CDTA. This means that the seller in a F.O.B. or F.A.S. transaction, who has no control over the ultimate carriage ud delivery of the chemical, is required to file a DEA Form 486 15 days before the export. DEA's requirement assumes that the F.O.B./F.A.S. seller is aware that the material will be subsequently exported. Some foreign buyers may have U.S. purchasing agents, for example, which may limit the amount of information available to the seller.

CMA strongly recommends that DEA reassess the application of the export notice requirement to F.O.B. or F.A.S. sellers. The export notice requirement might be better applied if the party responsible for filing the necessary customs documents is also required to file a Form

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486. In the majority of F.O.B./F.A.S. cases, that party will in fact be the actual exporter -- the foreign buyer or his agent.

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E. Identification of Listed Chemicals

In the preamble to the final DEA regulations, the Administration rejected use of the commonly used chemical numbering systems as an aid in identifying listed chemicals. 54 Fed. Reg. 31657, 31658 (August 1, 1989). For the precursor chemicals identified in the CDTA, the record-keeping and reporting requirements also apply to salts and optical isomers of the chemicals. Literally hundreds of chemicals may therefore be subject to regulation as illegal drug precursors.

CMA suggests that use of a numbering system such as the Chemical Abstract Service numbers will greatly assist companies in complying with the CDTA. Although it is true that the CAS system was not specifically designed to meet the needs of the CDTA, it nevertheless represents a system in common usage throughout the chemical industry.

F. Guidance

DEA has taken a number of steps to promote full implementation of the CDTA in the regulated community. The Administration has held a series of three regional seminars to introduce the Act and the regulatory requirements. DEA continues to afford affected companies the opportunity to seek specific interpretations of the Act.

CMA believes that the Administration can take additional steps to guide the chemical industry in the application of the CDTA. A draft copy of a Chemical Handler's Manual to be published by DEA was made available to CMA in August, just as the manual was sent to the printer. The draft Manual reviews the statutory and regulatory requirements of the CDTA, and contains little in the way of practical

guidance for the industry. We are not aware of DEA's schedule for final publication of the Manual.

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Additionally, CMA submitted a set of questions to DEA on September 1, 1989 (Attachment 5). We intend to disseminate the DEA response to those questions as guidance for our member companies. We had hoped to have the responses available before the effective date of the import-export notice requirement, but to date CMA has had no written response from DEA.

CMA and its member companies have had considerable experience in statutory/regulatory implementation efforts. With many agencies, CMA has found a question and answer format useful in opening a dialogue with the regulating agency, and as a means of focusing our mutual interests in full implementation. In short, CMA looks forward to continuing its cooperative relationship with DEA, and in making available appropriate guidance materials to our member companies.

G. Lack of a Clear Interpretation, Waiver and Exemption Process

DEA has adopted a policy of interpreting the CDTA, and granting waivers and exemptions from the CDTA requirements, on a case-by-case basis. The Administration arguably has the statutory authority to adopt such a process. To date, companies desiring a DEA interpretation, or a waiver of the CDTA requirements, submit individual requests. DEA typically responds to such requests by letter, with the interpretation applicable only to the requestor. The CDTA regulations do not provide for a specific request process, and DEA is not required to make public the interpretations granted to individual companies.

CMA is concerned that such a process may result in inconsistent application of the CDTA. Regulated companies may face different

compliance burdens, depending on whether an interpretation, waiver or exemption was specifically requested. CMA suggests that the interpretation process could be made more transparent and effective if DEA adopts a specific waiver and exemption request process. Regular publication of DEA's interpretations, and of the reasons leading to individual waivers or exemptions, should materially assist the regulated community in compliance with the CDTA.

III. Flow of Precursor and Essential Chemicals

CMA and its member companies are firmly committed to the concept of product stewardship. CMA is confident that no CMA member company knowingly sells chemicals for illegal drug end-uses. Our industry's record of cooperation with Congress and the DEA in formulating and implementing the CDTA is strong testimony to that commitment. Other trade associations in the chemicals and allied products business, such as the National Association of Chemical Distributors, have also been strong supporters of the CDTA.

Evidence that legitimate chemical shipments have been diverted to illicit drug manufacturing is available, however. A study conducted by the Central Intelligence Agency in 1988 indicated that increased imports of precursor and essential chemicals were inconsistent with increases in legitimate chemical production. Reports of some diversions from legitimate trade have highlighted those concerns. DEA has also analyzed possible diversions of chemicals, and at first glance their data suggest a systematic problem with illegal diversions.

Data reported by DEA does not provide a complete picture of the flow of precursor and essential chemicals from the United States,

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particularly to South America. DEA's analysis may in fact overstate the potential for diversion, at least insofar as U.S.-origin chemicals are concerned. Although trade flow data on the chemicals subject to diversion are readily available, we have yet to see an accurate estimate of the amount actually diverted to illicit drug production. A comparison of export volumes over time may be more useful than analysis of percentage increases in chemical shipments.

DEA reports that in 1988, 59,568 metric tons (131.1 million pounds) of essential chemicals were exported from the United States to Latin America. The Administration also states that it "is likely that a large part of these chemicals ... were used in the clandestine production of cocaine." DEA, Chemical Handler's Manual 3 (Draft, August, 1989). DEA indicates that U.S. exports of methyl ethyl ketone (MEK) to Colombia have increased more than 500 percent in the last two years, and that Peru and Colombia combined for 88.7 percent of U.S. potassium permanganate exports. <u>Id</u>. DEA reports seizures of some 6,160,000 kilograms (kg) of potassium permanganate, 16,850 kg of acetone, and 6,250 kg of ethyl ether in 1988. <u>Id</u>. Although it is not clear whether these seizures reflect only those made outside the United States, the context in which the data is reported suggests these figures represent Latin American seizures of U.S.-origin chemicals.

Using data developed by the U.S. Department of Commerce, CMA has analyzed the trade flows and value of U.S. exports of eight chemicals to seven Latin American countries. Seven of the chemicals are listed as regulated, "essential" chemicals under the CDTA. Data on one chemical, methylamine, was reviewed due to its possible future listing as a CDTA chemical by DEA. Data for one listed chemical, benzyl

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chloride, was not available. With the possible exception of exports to Mexico, the data should be fairly representative of total U.S. exports of the chemicals to South America. A summary of our analyses is attached to this testimony (Attachments 1 and 2).

U.S. exports of the eight chemicals totaled 68.9 million pounds in 1988, or 15 percent of total exports of the chemicals by volume. The shipments were valued at \$28.4 million in 1988, or 13 percent of the value of U.S. world exports in these chemicals.

The United States is the major supplier of the chemicals to South America, largely for geographic and economic reasons. The 1988 figures represent a significant decline in exports over the previous three years. The decline can be attributed primarily to increased local production of these chemicals and the availability of fungible substitutes.

CMA's analysis provides an interesting back-drop to the potential for diversion of these chemicals. MEK is the highest volume export of the eight chemicals reviewed. Colombia and Venezuela are the two largest recipients of U.S.-origin MEK, with 12.8 and 8.69 million pounds respectively in 1988. Acetone and toluene are also significant exports to South America. Exports of the remaining five chemicals are negligible. Colombia and Venezuela received nearly 65 percent of the essential chemicals shipped to the seven countries; Brazil received 18 percent of these exports. Peru and Bolivia imported the least of the seven countries analyzed.

Contrary to the 500-percent increase in exports of MEK to Colombia reported by DEA, CMA's analysis of the data shows that exports have remained fairly stable since 1986. (See Attachment 3). Colombia

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imported 13.9 million pounds of U.S.-origin MEK in 1986, 11.5 million pounds in 1987, and 12.8 million pounds in 1988. U.S. exports of MEK peaked in 1987. 1988 saw a 43-percent decline in total U.S. MEK exports to the world, to 57 million pounds.

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Although Peru and Colombia may be the largest recipients of U.S. potassium permanganate, there is only one U.S. manufacturer of the chemical. Total 1988 potassium permanganate exports to Colombia were 19,845 pounds, with Brazil the recipient of 37,485 pounds. The companies which receive U.S. potassium permanganate have had long-established business relationships with the U.S. supplier. Exports of all potassium compounds (including permanganate) to the seven Latin American countries that CMA reviewed were 1.21 million pounds.

DEA suggests that 6.161 million kg (12.5 million pounds) of potassium permanganate were seized in 1988. Assuming DEA's figures only relate to foreign seizures of permanganate, the U.S. industry cannot be the sole source of the chemical. CMA's analysis also indicates that little ethyl ether was exported to the seven countries (3,000 pounds to Colombia in 1988), and that U.S. exports of that chemical worldwide totaled only 460,000 pounds. The highly flammable nature of ethyl ether and its relatively simple production process make large volume exports uneconomical and unnecessary. DEA's focus on percentage increases in exports tends to overemphasize the importance of volumes that in some cases total less than a thousand pounds.

CMA has also compiled some general information regarding precursor and essential chemical end-uses. See Attachment 4. Although we have not assessed the volume of legitimate uses in Latin America, the

current export levels of essential chemicals appear largely consistent with legitimate end-uses. Overall, the trade data tend to indicate that smaller volumes of U.S.-origin essential chemicals are being shipped to Colombia, and therefore are not generally a source of the problem within that country.

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CMA has analyzed this data to provide a more accurate picture of potential chemical diversions. CMA and its member companies recognize that a problem with diversions exists. Our review is simply intended to prompt two fundamental inquiries: how much does the U.S. chemical industry actually contribute in terms of diverted chemicals, and, whether given that contribution, does the Chemical Diversion and Trafficking Act constitute an effective control measure?

IV. Conclusion

The U.S. chemical industry is committed to doing its part in helping eliminate illicit drugs at their source. CMA views this cooperative effort as an additional tool in addressing the national drug abuse problem.

CMA has identified a number of specific concerns in the implementation of the CDTA. We are confident that DEA and CMA will continue to cooperate to resolve these problems. For its part, CMA looks forward to a continuing, open dialogue with both DEA and the Congress on diversion issues.

DEA's data on the contribution of the U.S. chemical industry to illegal drug manufacturing has been somewhat overstated. Indeed, CMA's analysis of trade data suggests that U.S. essential chemical exports to Latin America are largely consistent with legitimate end uses.

Attachment 1

1988 United States Dollar Exports by Country (in millions)

Chemical	Panama	Brazil	Chile	Columbia	Venezuela	Peru	Bolivia	World
m-1	<u>^</u>	60 Å	60.2	<u>^</u>	<u>63 0</u>	e1 0	\$0.0	\$61.2
Toluene	\$0.3	\$0.0	\$0.2	\$0.0	\$2.9	\$1.0		
Ethyl Ether	0.0	0.0	0.0	0.0	0.0	0.0	0.0	\$0.6
Acetone	0.2	1.7	0.3	1.0	1.7	0.0	0.0	\$44.0
Methyl Ethyl Ketone	0.3	1.9	1.1	5.7	4.3	0.2	0.0	\$27.3
Acetic Anhydride	0.0	0.0	0.0	. 0.0	0.0	0.0	0.0	\$0.0
Potassium Compounds	0.0	0.4	0.3	0.1	0.1	0.2	0.3	\$39.9
Methylamine	0.0	0.3	0.1	0.3	0.4	0.0	0.0	\$10.4
Benzyl Chloride	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Hydriodic Acid	0.0	0.9	0.0	0.2	1.7	0.0	0.0	\$32.9
Total	\$0.8	\$5.3	\$2.0	\$7.4	\$11.1	\$1.4	\$0.3	\$216.3

Total for Seven Countries \$28.4 Percent of Seven Countries to World 13.1%

1988 United States Quantity Exports by Country (in millions of pounds)

	Panama	Brazil	Chile	Columbia	Venezuela	Peru	Bolivia	World	
Chemical									
Toluene	1.73	0.02	2.12	0.00	5.30	1.10	0.02	75.97	
Ethyl Ether	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.46	
Acetone	0.62	7.85	1.82	4.67	8.89	0.09	0.03	220.98	
Methyl Ethyl Ketone	0.08	4.12	2.47	12.80	8,69	0.33	0.00	56.93	
Acetic Anhydride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Potassium Compounds	0.00	0.33	0.26	0.10	0.04	0.04	0.44	26.18	
Methylamine	0.00	0.24	0.12	0.69	0.32	0.00	0.00	17.24	
Benzyl Chloride	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
Hydriodic Acid	0.07	0.39	0.02	0.21	2.83	0.02	0.00	64.96	
Total	2.49	12.95	6.81	18.49	26.07	1.58	0.48	462.70	

Total for	Seven Countries	68.9
Percent of	f Seven Countries to World	14.92

Compiled 10/20/89

Attachment 2

1988 United States Dollar Exports by Country Percent to World Total

Chemical	Panama	Brazil	Chile	Columbia	Venezuela	Peru	Bolivia
Toluene	0.5%	0.12	0.4%	0.02	4.8%	1.7%	0.02
Ethyl Ether	0.0%	0.0%	0.0%	1.5%	0.0%	0.8%	0.0%
Acetone	0.47	3.9%	0.8%	2.3%	4.0%	0.1%	0.0%
Methyl Ethyl Ketone	1.17	7.1%	4.0%	21.0%	15.6%	0.6%	0.0%
Acetic Anhydride	0.0%	0.02	0.02	0.02	0.0%	0.0%	0.0%
Potassium Compounds	0.0%	0.9%	0.7%	0.3%	0.2%	0.4%	0.7%
Methylamine	0.0%	3.3%	0.6%	3.2%	3.7%	0.0%	0.02
Benzyl Chloride	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Hydriodic Acid	0.12	2.9%	0.12	0.6%	5.1%	0.02	0.0%

1988 United States Quantity Exports by Country Percent to World Total

	Panama	Brazil	Chile	Columbia	Venezuela	Peru	Bolivia
Chemical							
Toluene	2.3%	0.0%	2.8%	0.02	7.0%	1.4%	0.0%
Ethyl Ether	0.0%	0.0%	0.0%	0.6%	0.4%	0.27	0.0%
Acetone	0.3%	3.6%	0.8%	2.12	4.0%	0.0%	0.0%
Methyl Ethyl Ketone	0.12	7.2%	4.32	22.5%	15.3%	0.6%	0.0%
Aceric Anhydride	0.0%	0.0%	0.02	0.0%	0.0%	0.0%	0.0%
Potassium Compounds	0.0%	1.3%	1.0%	0.4%	0.2%	0.2%	1.7%
Methylamine	0.0%	1.4%	0.7%	4.0%	1.8%	0.0%	0.0%
Benzyl Chloride	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Hydriodic Acid	0.12	0.62	0.02	0.3%	4.4%	0.0%	0.0%

Compiled 10/20/89

Attachment 3 Exports of Precursor Chemical Quantities (all numbers in millions)

United States Exports - To the World

	Taluene	Pct Chọ	Ethyl Ether	Pct Chg	Acetone		Nethyl Ethyl Ketone		Acetic Anhydride		Nethylanine		Potassium Permanganate		Hydriadic Pct Acio Chg
1984	40.5		3.7		83.7		62.8		34.8		n/a		n/a		46.9
1985	28.2	-38.4%	1.2	-67.6%	08.1	5.3%	77.5	25.8	L 11.3	-67.5%	L n/a		n/a		43.4 -7.
1986	26.8	-5.8%	1.7	41.72	84.1	-4.5%	95.8	22.61	. 9.8	6.02	L n/a		n/a		47.8 14.
1987	134.0	483.8%	8.6	-64.72	259.7	208.8%	180.8	6.17	8.8	0.92	5.7		55.8		48.1 -3.
1988	76.0	-43.62	8.5	-16.72	221.0	-14.9%	57.8	-43.5	6.8	8. 87	17.2	201.8	1 26.2	-52.4	X 67.8 39.

United States Exports - To Columbia

	Toluene	Pct Ch <u>o</u>	Ethyl Ether	Pct Chg	Acetone	Pct Chg	Methyl Ethyl Ketone	Pct Chg	Acetic Anhydride	Pct Chg	Kethylamine	Pct Chg	Potassium Permanganate		Hydriadic Pct Acid Chg
1984	8.698		8.881		3.9		7.8		8.324		n/a		n/a		8.143
1985	9.888		8.829	2888.91	3.3	-15.47	7.5	-3.8	2 0.043	-96.71	L n/a		n/a		8.815 -89.52
1986	8.803		0,001	-96.6%	3.5	6.17	13.9	85.3	Z 8.080	6.87	L n/a		n/a		8.836 148.8X
1987	8.686	-188.67	8.882	108.92	3.4	-2.92	11.5	-17.3	Z 8.000	8.82	8.495		8.884		8.874 185.62
1988	8.882		8.883	59.9%	4.7	38.27	12.8	11.3	Z 8.888	8.8)	L B. 694	48.2	2 9.101	28.2	8.212 184.5%

Legitimate Uses for Precursor and Essential Chemicals Regulated by the Chemical Diversion and Trafficking Act

Listed Precursor Chemicals

Chemical

Anthranilic acid and its salts

Benzyl cyanide

Ephedrine, its salts, optical isomers, and salts of optical isomers

Ergonovine and its salts

Erogotamine and its salts

N-Acetylanthranilic acid and its

Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers

Phenylacetic acid and its salts

Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers

Piperidine and its salts

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Pseudoephedrine, its salts, optical isomers, and salts of optical isomers

3,4-Methylenedioxyphenyl-2-propanone

Legitimate Uses

Dyes, drugs, perfumes and pharmaceuticals.

Organic synthesis.

Medicine.

None.

None.

Chemical.salts

Medicine.

Perfume, medicine, manufacture of penicillin, fungicide, plant hormones, flavoring, laboratory reagent.

Medicine.

Solvent and intermediate, curing agent for rubber and epoxy resins, catalyst for condensation reactions, oils and fuels, complexing agent.

Medicine.

Listed Essential Chemicals

Import and Export Distribution

Acetic anhydride

Acetone

Benzyl chloride

Ethyl ether

如果这些不要不是不是这个是不能的。""我们就是这些这个,我们就是是不是这些是不是这些是不是是我们就是我们就是我们就是我们也没有不能能是我们的,我们就是我们就能够能能。 第二章

Hydriodic, acid

Potassium permanganate

Cellulose acetate fibers and platics, vinyl acetate, pharmaceuticals, dyes, perfumes, exploxives, etc., aspirin, esterfying agent for food starch.

Chemicals, paint, varnish and lacquer solvent, cellulose acetate, solvent for potassium iodide andpermanganate, delusterant for cellulose acetate fiber, specification testing of vulcanized rubber products.

Dyes, intermediates, benzyl compounds, sythetic tannins, perfumery pharmaceuticals, manufacture of photographic developer, gasoline gum inhibitors, penicillin precursors, quaternary ammonium compounds.

Manufacture of ethylene and other chemical synthesis, industrial solvent, analytical chemistry, anesthetic, perfumery, extractant.

Perparation of iodine salts, organic preparations, analytical reagent, disinfectant, pharmaceuticals.

Oxidizer, disinfectant, deodorizer, bleach, dye, tanning, radioactive decontamination of skin, reagent in analytical chemistry, medicine, manufacture of organic chemicals, air and water purification.

(methyl ethyl ketone)

Toluene

2-Butanone

Solvent in nitrocellulose coatings and vinyl films, "Glyptal" resins, paint removers, cements and adhesives, organic synthesis, manufacture of smokeless powder, cleaning fluids, printing catalyst carrier, lube oil dewaxing, acrylic coatings.

Aviation gasoline and high-octaine blending stock; benzene, phenol, and caprolactam, solvent for paints and coatings, gums, resins most oils, rubber, vinyl, organosols; diluent and thinner in nitrocellulose lacquers; adhesive solvent; chemicals; source of toluenediisocyanates; explosives; toluene sulfonates; scintillation counter.

Source: <u>The Condensed Chemical Dictionary</u>, Ninth Edition. Gessner G. Hawley (editor). Van Nostrand Reinhold Company, New York, 1977.

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Attachment 5



CHEMICAL MANUFACTURERS ASSOCIATION

Robert A. Roland President September 1, 1989

Hr. John C. Lawn Administrator Drug Enforcement Administration Washington, D.C. 20537

Dear Mr. Lawn:

I wanted to take the opportunity to propose a specific follow up to our meeting. The Chemical Manufacturers Association (CMA) believes that the next step in our effort with the Drug Enforcement Administration is to work on implementing the final regulations under the Chemical Diversion and Trafficking Act (CDTA) (54 Fed. Reg. 31657, August 1, 1989). Although DEA has adopted several positive amendments in the final regulation, important aspects must still be resolved in order to have an effective regulatory program for preventing diversion. DEA and CMA should jointly address these concerns, and recent meetings between our staffs have produced a general agreement that guidance from DEA is necessary.

In reviewing the final regulations, CMA has noted three types of concerns with certain requirements. First, some of the requirements are unclear, and companies are not certain about what steps to take for compliance. Second, other requirements are clear but would be unnecessary in preventing diversion and are probably unintentional. Third, there are other requirements that, regardless of clarity, are not authorized by the Act. We suggest that where these requirements are useful in preventing diversion, they should be incorporated into a voluntary program.

To begin resolving questions about the final rule, I have enclosed a set of questions on specific sections of the rule. We hope that these questions are a useful start to a CMA-DEA program for diversion control through effective implementation of the CDTA. CMA will distribute DEA's responses to our membership.

Simple, clearly explained guidance for the regulated industry is particularly important. CMA would like to help develop such guidance. DEA must make clear what is required to comply with the law, and in doing so will greatly improve the information provided to DEA under the Act. Effective interdiction of chemical diversions depends on industry's ability to comply fully with the CDTA.

2501 M Street, NW, Washington, DC 20037 202-887-1106 Telex 89617 (CMA WSH)

Mr. John C. Lawn September 1, 1989 Page 2

It would be good to have CMA and DEA staff sit down together and discuss the enclosed questions. Please contact Garrity Baker (887-1338) to set up a meeting.

Sincerely, 1 Robert A. Roland

President

Enclosure

cc: R. Buzzeo (DEA) J. Cook (NACD) T. Gitchel (DEA) G. Haislip (DEA) QUESTIONS ON THE DRUG ENFORCEMENT ADMINISTRATION'S FINAL RULE IMPLEMENTING THE CHEMICAL DIVERSION AND TRAFFICKING ACT 54 Fed. Reg. 31657 (August 1, 1989)

Questions raised by the Chemical Manufacturers Association on DEA's final rule, "Records, Reports, Imports and Exports of Precursor and Essential Chemicals, Tableting Machines and Encapsulating Machines".

- Sec. 1310.01(f)(1)(i) excludes "domestic lawful distributions" from the definition of the term "regulated transaction" if the distribution occurs "... in the usual course of business between agents or employees of a single regulated person." The definition further states that this is limited to "individuals under the direct management and control of the regulated person..." Using these definitions, is it a regulated transaction when a company transfers a listed chemical to or from a warehouse or storage terminal? Are warehouses or storage terminals not under the direct management and control of the regulated person to be differentiated from those that are?
- 2. Sec. 1310.06(a)(5) requires a seller to keep records of "the type of identification used by the purchaser and any unique number on that identification." The CDTA (P.L. No. 100-690), however, does not contain such a requirement. What purpose will this recordkeeping requirement serve in preventing the diversion of listed chemicals?
- 3. Sec. 1310.07(a) requires a purchaser to "present documents which would varify the identity" of the purchaser "at the time the order is placed." Does this requirement to document identity preclude telephone orders? Can telephone orders made with an appropriate password constitute a permissible transaction?
- 4. Sec. 1310.07(b) requires a seller to "verify the existence and apparent validity of a business entity." Do the usual credit and business checks conducted by a seller meet this requirement?
- 5. What process will DEA use in notifying regulated persons that their records will be subject to inspection? What documents can a regulated person demand and inspect prior to such an inspection?
- 6. Sec. 1310.05 requires regulated persons to report unusual or excessive losses. Some of the listed chemicals are shipped in bulk, and differences between the amount shipped and received are not uncommon. Will DEA establish a national policy on acceptable losses, including ranges?

- 7. Is it DEA's intent in Sec. 1310.07 to require that signatures be kept on file for existing customers, which then must be updated annually?
- By its terms, Sec. 1310.07 contains a number of ambiguities. Please clarify DEA's intent regarding proof of identity, particularly regarding new and existing customers, and electronic transactions.
- 9. CMA is aware that DEA field offices are conducting surveys of potentially regulated persons. What steps can regulated persons with multiple sites take to assure consistent responses?
- 10. The CDTA requires DEA to consult industry in establishing the threshold limits for listed chemicals. What process did DEA employ in consulting industry on the current threshold values? How will the process be continued or amended for additions to the list of essential or precursor chemicals?
- Does DEA recommend any additional steps, such as annotation of records, for customer identities verified by phone or other means?
- 12. Sec. 1313.02(j) defines the term "established business relationship with a foreign customer," and includes a list of information to be reported for the 15-day advance notice waiver. For customers with no fixed street address, will the mailing address or destination for delivery purposes suffice?
- 13. Sec. 1313.02(j) further requires reporting of the duration of the business relationship, the frequency and number of transactions during the preceding 12-month period, and the quantity of chemicals involved in regulated transactions.
 - A. Is DEA conditioning "regular customer" status on the provision of such information?
 - B. Sec. 1313 does not go into effect until October 30, 1989. Therefore, there will be no "regulated transactions" until that time. Does DEA desire reporting of quantities for transactions prior to the effective date and if so, over what period of time?
 - C. How will DEA assess legitimate changes in customer needs which change listed chemical use patterns? What type of information does DEA expect in such instances?
- 14. Secs. 1313.12(a) and 1313.21(a) require notice to DEA "not later than 15 days before the transaction is to take place." Secs. 1313(b) and 1313.21(b) state the DEA must receive a Form 486 not later than 15 days prior to the import or export. Does DEA want the import notice 15 days before the transaction or before the actual shipment?

-2-

- 15. Section 1313.15(a) calls for the reporting of regular suppliers by August 31, and then review by DEA for two months ending on October 30, 1989. Sec. 1313.15(c) states that foreign suppliers identified on Form 486 after October 30 (and after a 15-day wait) will qualify as regular suppliers. Are imports of listed chemicals between August 31 and October 30, 1989 to be reported?
- 16. In Sec. 1313.02(a), chemical export is defined to mean "transferring ownership or control, or the sending or taking of listed chemicals out of the United States..." In Sec. 1313.02(b), chemical exporter is defined as the person who "as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending... out of the United States." When an export broker is used to handle a shipment and does not actually take title (ownership) of the listed chemicals, which party is responsible for filing the required notice as the "chemical exporter"? Are freight forwarders and customs brokers generally subject to the Act?
- 17. Sec. 1313.21(d) bans "knowingly or intentionally" exporting a listed chemical in violation of importing country laws, and when the regulated person has "reasonable cause to believe..." the shipment may be diverted. How will exporters be certain what importing country laws are in existence?
- 18. The CDTA provides DEA the authority to suspend certain shipments. What criteria will DEA apply in determining what shipments to suspend? To what extent will suspensions depend on information under the control of persons in foreign countries?
- 19. DEA has the authority to notify a regulated person of a change in a "regular customer's" status. What criteria will DEA apply in making these determinations?
- 20. Do the regulations apply to export shipments between a U.S. company and its foreign parent or subsidiary?
- 21. Hust "regular customer" status be obtained for each chemical shipped to a given purchaser, or will regular customer status apply to all shipments of listed chemicals to a purchaser?
- 22. In the preamble to the CDTA regulations DEA states that it rejected use of CAS (Chemical Abstract Service) numbers as a means of assuring identification of listed chemicals. Is DEA prepared to adopt some system other than the nomenclature contained in the regulations to promote compliance with the Act?
- 23. Many chemical exporters file Shipper Export Declarations electronically with U.S. Customs. Will it be possible to file Form 486 in a similar manner in order to reduce the paperwork burden on the regulated community?
- 24. Some data, such as telephone members, are not routinely available from the other party in a transaction. How will DEA handle reports and records which do not contain this information?

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STATEMENT OF WILLIAM A. DAVIS PRESIDENT, VALLEY SOLVENT COMPANY, INC. FOR THE SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL U.S. HOUSE OF REPRESENTATIVES NOVEMBER 1, 1989

My name is William A. Davis. I am President of Valley Solvent Company, Inc., a wholesale chemical distributor in Combes, Texas, near the Mexican border. Our company was established in 1952, and currently employs approximately 50 people. We distribute commodity chemicals and solvents to commercial, government, and industrial users. We distribute hundreds of chemicals, including the essential chemicals now regulated by the Chemical Diversion and Trafficking Act of 1988 (CDTA).

A significant segment of our business is distributing chemicals to customers in Mexico. An important part of this export market is the maquiladora, or twin plant industries. The maquiladoras are primarily U.S. firms with plants on both sides of the border. Their purpose in locating here is to utilize the Mexican labor force in labor-intensive assembly operations. Currently there are over 1,600 maquiladora plants along the border. These plants provide thousands of jobs on both sides of the border, and utilize large quantities of raw materials from U.S. firms like ours. In addition to supplying maquiladora industries, we export to Mexican distributors and manufacturing firms.

We are confident that the essential chemicals we sell are used in legitimate industrial applications. We know this because of the contacts we build with our customers prior to a sale. We maintain regular personal contact with our customers, and conduct thorough investigations of their buying histories and creditworthiness as a matter of course.

Although we agree fully with the concept of the CDTA, there are several provisions which are unnecessary, burdensome, and fail to achieve the desired results. These provisions place U.S. firms, such as ours, at a decisive disadvantage in the world market. The provisions which affect Valley Solvents most are those regarding import and export activities.

The Act defines a "regular" customer for export purposes as one who has a sales history in a specific regulated chemical. This interpretation is too rigid because "regular" status is unavailable until an order is placed for a regulated chemical for which that customer is not registered, and a 15-day waiting period has elapsed. This delay, in an industry where responsiveness and service are the foundation of business, will surely cause lost sales to foreign competitors, who are not regulated by DEA and can provide a faster response time.

The Act requires a 15-day pre-notification for imported chemicals as well. Since import purchases become a part of the domestic product pool, and are thus subject to regulation upon re-sale, and since pre-notification is not required for domestic transactions, this provision serves no useful purpose. It instead effectively denies U.S. distributors the opportunity to participate in foreign spot markets when there are sudden shifts in price or supply. Again, this places us in an uncompetitive situation and results in lost business opportunities.

There are other troublesome provisions, such as requiring sellers to obtain a "signature on file" for individuals who place orders. Since most orders are placed by telephone, checking signatures is impossible. This provision only creates additional paperwork, while providing no additional safeguard to the Act.

Because of provisions like these, we are concerned about our ability to compete in the export market, especially since that is a significant portion of our business.

The Act will not effectively control the flow of essential chemicals to Central America. It will only control the flow of chemicals produced and distributed by U.S. companies to legitimate export markets.

We are willing to, and desire to aid DEA in their efforts to win the war on drugs -- we share their goals. However, we have serious concerns over the regulations that have rendered us uncompetitive in legitimate commerce, and yet have little effect on the movement of illegitimate transactions.



Report and Recommendation of the A T F Working Group on the Importability of Certain Semiautomatic Rifles



DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS WASHINGTON, D C. 20226

JUL 0 6 1989

MEMORANDUM TO: Director

FROM: Associate Director (Compliance Operations)

SUBJECT: Report and Recommendation on the Importability of Certain Semiautomatic Rifles

The working group has completed its evaluation of the semiautomatic rifles whose importation was suspended pending a determination as to whether these weapons are, as required by 18 U.S.C. § 925(d)(3), of a type "generally recognized as particularly suitable for or readily adaptable to sporting purposes."

Attached for your review and approval is the report and recommendation on the importability of these rifles.

Same K

Daniel R. Black

Attachment

Tephen E. Linggin 1/4/89 Approver Disapprove:_

REPORT AND RECOMMENDATION OF THE ATF WORKING GROUP ON THE IMPORTABILITY OF CERTAIN SEMIAUTOMATIC RIFLES

SUSPENSION OF ASSAULT-TYPE RIFLE IMPORTATIONS

On March 14, 1989, ATF announced that it was suspending, effective immediately, the importation of several makes of assault-type rifles, pending a decision as to whether these weapons meet the statutory test that they are of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The announcement stated that ATF would not approve, until further notice, the importation of AKS-type weapons, Uzi carbines, FN/FAL-type weapons, FN/FNC-type weapons and Steyr Aug semiautomatic weapons. On April 5, 1989, the suspension was expanded to include all similar assault-type rifles.

For purposes of this suspension, assault-type rifles were rifles which generally met the following criteria:

- a. military appearance
- b. large magazine capacity
- c. semiautomatic version of a machinegun

Based on these criteria, ATF suspended action on pending applications and suspended outstanding permits covering Certain firearms listed in Attachment 1. These included both centerfire and .22 rimfire caliber firearms. At that time, ATF indicated that the reexamination of these weapons would take approximately 90 days.

This ATF working group was established to conduct the reevaluation of the importability of these semiautomatic rifles. This report represents the findings and recommendations of the working group.

BACKGROUND

Section 925(d)(3) of Title 18, United States Code, as amended, provides in pertinent part that:

The Secretary shall authorize a firearm. . .to be imported or brought into the United States . . if the firearm . . .

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms. .

This provision was originally enacted by Title IV of the Omnibus Crime Control and Safe Streets Act of 1968, and was also contained in Title I of the Gun Control Act of 1968, which amended Title IV later that year. According to the Senate Report on Title IV, this provision was intended to "curb the flow of surplus military weapons and other firearms being brought into the United States which are not particularly suitable for target shooting or hunting." S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2112, 2167.

Moreover, there is legislative history which indicates that Congress intended the standard to allow the importation of traditional sporting rifles, while excluding military-type rifles. The Senate Report on the Gun Control Act observed that the importation standards ". . are designed and intended to provide for the importation of quality made, sporting firearms, including . . rifles such as those manufactured and imported by Browning and other such manufacturers and importers of firearms." S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968). Significantly, the rifles being imported by Browning at that time were semiautomatic and manually operated traditional sporting rifles of high quality.¹

An explanation of the effect of this section by one of the sponsors of the bill specifically stated that military firearms would not meet the "sporting purposes" test for importation. The mere fact that a military firearm may be used in a sporting event does not make it importable as a sporting firearm.²

There is a reference in the Senate Report on Title IV which notes that the importation prohibition •. . . would not interfere with the bringing in of currently produced

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firearms, such as rifles . . . of recognized quality which are used for hunting and for recreational purposes, or for personal protection." S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2112, 2167. However, this language is not inconsistent with the expressed purpose of restricting importation to firearms particularly suitable for target shooting or hunting since firearms particularly suitable for those purposes can obviously be used for other purposes such as recreational shooting and personal protection.

The determination of a weapon's suitability for sporting purposes "rest[s] directly with the Secretary of the Treasury." 114 Cong. Rec. 27465 (1968) (Statement of Sen. Murphy). While the legislative history suggests that the term "sporting purposes" refers to the traditional sports of target shooting, trap and skeet shooting, and hunting, the statute itself provides no criteria beyond the "generally recognized" language of section 925(d)(3). S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2167. The Senate Report on the Gun Control Act stated:

The difficulty of defining weapons characteristics to meet this target [of eliminating importation of weapons used in crime] without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition.

S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

Following enactment of the Gun Control Act in 1968, the Secretary established a Firearms Evaluation Panel to provide guidelines for implementation of the "sporting purposes" test of section 925(d)(3). This panel was composed of representatives from the military, law enforcement, and the firearms industry. The panel focused its attention on handguns and recommended the adoption of factoring criteria to evaluate the various types of handguns. These factoring criteria are based upon such considerations as overall length of the firearm, caliber, safety features, and frame construction. An evaluation sheet (ATF Form 4590) was developed thereafter by ATF and put into use for evaluating handguns pursuant to section 925(d)(3). Attachment 2.

The 1968 Firearms Evaluation Panel did not propose criteria for evaluating rifles and shotguns under section 925(d)(3). Other than surplus military firearms which

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Congress addressed separately, longguns being imported prior to 1968 were generally conventional rifles and shotguns specifically intended for sporting purposes. Thus, in 1968, there was no cause to develop criteria for evaluating the sporting purposes of rifles and shotguns. Until recently, all rifles and shotguns were approved for importation so long as they were not otherwise excluded by section 925(d)(3). Only rifles and shotguns covered by the National Firearms Act (NFA), 26 U.S.C. § 5845(a) (for example, machineguns and short-barreled rifles and shotguns had been denied importation.

The Firearms Evaluation Panel did briefly comment on whether a model BM59 Beretta, 7.62mm NATO Caliber Sporter Version Rifle was suitable for sporting purposes. Minutes of the Firearms Advisory Panel, December 10, 1968. Attachment 3. It was the consensus of the Panel that this rifle did have a particular use in target shooting and hunting. Accordingly, it was recommended that importation of the Beretta BM59, together with the SIG-AMT 7.62mm NATO Caliber Sporting Rifle and the Cetme 7.62mm NATO Caliber Sporting Rifle, be authorized for importation. (The Beretta BM59 and the Cetme, the predecessor to the HK91, are two of the rifles whose importation has been suspended. The SIG-AMT is no longer being produced.) However, the Panel recommended that importation of these weapons should include the restriction that they not possess combination flash suppressors/grenade launchers.

The working group found the Panel's consideration of these rifles to be superficial and unpersuasive. The vast majority of the work of the 1968 Panel was devoted to handguns and the establishment of the factoring criteria for the importation of handguns. Indeed, we found compelling evidence that these rifles are not generally recognized as particularly suitable for sporting purposes.

The first time that ATF looked beyond the restrictions on NFA and surplus military rifles and shotguns and undertook a meaningful analysis under the "sporting purposes" test At that time, ATF was faced with a new breed was in 1984. of imported shotgun. It was clear that the historical assumption that all shotguns were sporting was no longer viable. Specifically, ATF was asked to determine whether the Striker-12 shotgun was suitable for sporting purposes. This shotgun is a military/law enforcement weapon initially designed and manufactured in South Africa for riot control. When the importer was asked to provide evidence of sporting purposes for the weapon, ATF was provided information that the weapon was suitable for police/combat style competitions. ATF determined that this type of competition did not constitute "sporting purposes" under

the statute, and that this shotgun was not suitable for traditional sporting purposes, such as hunting, and trap and skeet shooting. Accordingly, importation was denied. Attachment 4.

Thereafter, in 1986, the Gilbert Equipment Company requested that the USAS-12 shotgun be classified as a sporting firearm under section 925(d)(3). After examination and testing of the weapon, ATF found that it was a semiautomatic version of a selective fire military-type assault shotgun. In this case, ATF determined that, due to its weight, size, bulk, designed magazine capacity, configuration, and other factors, the USAS-12 was not particularly suitable for or readily adaptable to sporting purposes. Again, ATF refused to recognize police/combat competitions as a sporting purpose under section 925(d)(3). The shotgun was reviewed on the basis of its suitability for traditional shotgun sports of hunting, and trap and skeet shooting and its importation was denied. Attachment 5. This decision was upheld by the United States District Court in <u>Gilbert Equipment Company</u>, <u>Inc. v. Higgins</u>, 709 F. Supp. 1071 (S.D. Ala. 1989). The case is currently on appeal to the Eleventh Circuit.

These two cases involving shotguns represent ATF's first thorough examination of the suitability of certain combat-type weapons for sporting purposes. In these cases ATF adopted an interpretation of sporting as being limited to certain traditional sports and not simply any lawful activity in which the weapons might be employed.

ANALYSIS

A. Defining the type of weapon under review.

As noted above, section 925(d)(3) expressly provides that the Secretary shall authorize the importation of a firearm that is of a <u>type</u> that is generally recognized as particularly suitable for sporting purposes. The legislative history also makes it clear that the Secretary shall scrutinize types of firearms in exercising his authority under section 925(d). Specifically, in its explanation of section 925(d)(3), the Senate Report on the Gun Control Act stated:

This subsection gives the Secretary authority to permit the importation of ammunition and certain <u>types</u> of firearms--(1) those imported for scientific or research purposes or for use in competition or training under chapter 401 of title 10 of the United States Code; (2) an unserviceable firearm other than a machinegun; (3) those firearms not coming within the purview of the National Firearms Act (26 U.S.C. 5801, <u>et</u>

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seq.) and suitable for sporting purposes (in the case of surplus military weapons this type is limited to shotguns and rifles) and those taken out of the United States. (Emphasis added.)

S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

In light of the statutory mandate that types of firearms be scrutinized, the working group first attempted to determine whether the semiautomatic rifles suspended from importation fall within a type of firearm.

The working group determined that the semiautomatic rifles in question are generally semiautomatic versions of true selective fire military assault rifles.³ As a class or type of firearm they are often referred to as "assault rifles," "assault-type rifles," "military style rifles," or "paramilitary rifles."⁴ Since we are only concerned with semiautomatic rifles, it is somewhat of a misnomer to refer to these weapons as "assault rifles." True assault rifles are selective fire weapons that will fire in a fully automatic mode.⁵ For the purposes of this paper, it was necessary to settle on one term that best describes the weapons under consideration, and we will refer to these weapons as "semiautomatic assault rifles." They represent a distinctive type of rifle distinguished by certain general characteristics which are common to the modern military assault rifle. The modern military assault rifle, such as the U.S. M16, German G3, Belgian FN/FAL, and Soviet AK47, is a weapon designed for killing or disabling the enemy and, as described below, has characteristics designed to accomplish this purpose.

We found that the modern military assault rifle contains a variety of physical features and characteristics designed for military applications which distinguishes it from traditional sporting rifles.⁶ These military features and characteristics (other than selective fire) are carried over to the semiautomatic versions of the original military rifle. These features and characteristics are as follows:

1. Military Configuration.

a. Ability to accept a detachable magazine. Virtually all modern military firearms are designed to accept large, detachable magazines.⁷ This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable magazines are not limited to military firearms, most traditional semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity. In addition, some States have a limit on the magazine

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capacity allowed for hunting, usually 8 rounds or less.⁸ That a firearm is designed and sold with a large capacity magazine, <u>e.g.</u>, 20-30 rounds, is a factor to be considered in determining whether a firearm is a semiautomatic assault rifle.

b. Folding/telescoping stocks. Many military firearms incorporate folding or telescoping stocks.⁹ The main advantage of this item is portability, especially for airborne troops. These stocks allow the firearm to be fired from the folded position, yet it cannot be fired nearly as accurately as with an open stock. With respect to possible sporting uses of this feature, the folding stock makes it easier to carry the firearm when hiking or backpacking. However, its predominant advantage is for military purposes, and it is normally not found on the traditional sporting rifle.

Pistol grips. The vast majority of military c. firearms employ a well-defined pistol grip that protrudes conspicuously beneath the action of the weapon.¹⁰ In most cases, the "straight line design" of the military weapon dictates a grip of this type so that the shooter can hold and fire the weapon. Further, a pistol grip can be an aid in one-handed firing of the weapon in a combat situation. Further. such grips were designed to assist in controlling machineguns during automatic fire. On the other hand, the vast majority of sporting firearms employ a more traditional pistol grip built into the wrist of the stock of the firearm since one-handed shooting is not usually employed in hunting or competitive target competitions.

d. Ability to accept a bayonet. A bayonet has distinct military purposes.¹¹ First, it has a psychological affect on the enemy. Second, it enables soldiers to fight in close quarters with a knife attached to their rifles. We know of no traditional sporting application for a bayonet.

e. Flash suppressor. A flash suppressor generally serves one or two functions. First, in military firearms it disperses the muzzle flash when the firearm is fired to help conceal the shooter's position, especially at night. A second purpose of some flash suppressors is to assist in controlling the "muzzle climb" of the rifle, particularly when fired fully automatic.¹² From the standpoint of a traditional sporting firearm, there is no particular benefit in suppressing muzzle flash. Those flash suppressors which also serve to dampen "muzzle climb" have a limited benefit in sporting uses by allowing the shooter to reacquire the target for a second shot.

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However, the barrel of a sporting rifle can be modified by "magna-porting" to achieve the same result. There are also muzzle attachments for sporting firearms to assist in the reduction of muzzle climb. In the case of military-style weapons that have flash suppressors incorporated in their design, the mere removal of the flash suppressor may have an adverse impact on the accuracy of the firearm.

f. Bipods. The majority of military firearms have bipods as an integral part of the firearm or contain specific mounting points to which bipods may be attached.¹³ The military utility of the bipod is primarily to provide stability and support for the weapon when fired from the prone position, especially when fired fully automatic. Bipods are available accessory items for sporting rifles and are used primarily in long-range shooting to enhance stability. However, traditional sporting rifles do not come equipped with bipods, nor are they specifically designed to accommodate them. Instead, bipods for sporting firearms are generally designed to attach to a detachable "sling swivel mount" or simply clamp onto the firearm.

g. Grenade launcher. Grenade launchers are incorporated in the majority of military firearms as a device to facilitate the launching of explosive grenades.¹⁴ Such launchers are generally of two types. The first type is a flash suppressor designed to function as a grenade launcher. The second type attaches to the barrel of the rifle either by screws or clamps. We are not aware of any particular sporting use for grenade launchers.

h. Night sights. Many military firearms are equipped with luminous sights to facilitate sight alignment and target acquisition in poor light or darkness.¹⁵ Their uses are generally for military and law enforcement purposes and are not usually found on sporting firearms since it is generally illegal to hunt at night.

2. Whether the weapon is a semiautomatic version of a machinegun.

The vast majority of modern military firearms are selective fire, <u>i.e.</u>, they can shoot either fully automatic or semiautomatic. Since machineguns are prohibited from importation (except for law enforcement use) the manufacturers of such weapons have developed semiautomatic versions of these firearms.¹⁶

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3. Whether the rifle is chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.

Modern military assault rifles and submachineguns are generally chambered to accept a centerfire cartridge case of 2.25 inches or less.¹⁷ On the other hand, while many traditional sporting rifles will fire a cartridge of 2.25 inches or less, such firearms usually do not have the other military features outlined in Items la-h.

These features and characteristics are not usually found on traditional sporting firearms.¹⁸ This is not to say that a particular rifle having one or more of the listed features should necessarily be classified as a semiautomatic assault rifle. Indeed, many traditional sporting firearms are semiautomatic or have detachable magazines. Thus, the criteria must be viewed in total to determine whether the overall configuration places the rifle fairly within the semiautomatic assault rifle category.

Using these criteria, we determined that, on balance, all of the firearms on the original suspension list are properly included in the semiautomatic assault rifle category, with the exception of the .22 rimfire caliber rifles and the Valmet Hunter. While the .22 rimfire caliber rifles bear a striking resemblance to the true assault rifle, these rifles employ, by and large, conventional .22 rimfire caliber semiautomatic mechanisms.¹⁹ Moreover, they are not semiautomatic versions of a machinegun and contain only a few of the other relevant characteristics. Further, the working group determined that, in general, .22 caliber rifles are generally recognized as suitable for small game hunting. The Valmet Hunter, while based on the operating mechanism of the AK47 assault rifle, has been substantially changed so that it is now akin to a traditional sporting rifle and does not properly fall within the semiautomatic assault rifle category. More specifically, its receiver has been modified and its pistol grips, bayonet, and flash suppressor have been removed. The trigger mechanism has been moved to the rear of the modified receiver to facilitate its use with a traditional sporting stock. Also, its military-style sights have been replaced with traditional sporting-style sights. See Attachment 6.

B. Scope of "Sporting Purposes."

The second step of our process was to determine the scope of "sporting purposes" as used in the statute. This is a critical aspect of the process. The broadest interpretation could take in virtually any lawful activity or

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competition which any person or groups of persons might undertake. Under this interpretation, any rifle could meet the "sporting purposes" test. A narrower interpretation which focuses on the traditional sports of hunting and organized marksmanship competition would result in a more selective importation process.²⁰

To determine the proper interpretation, we consulted the statute itself, its legislative history, applicable case law, the work of the original Firearms Evaluation Panel, and prior interpretations by ATF. In terms of the statute itself, the structure of the importation provisions would suggest a somewhat narrow interpretation. In this regard, firearms are prohibited from importation (section 922(1)) with certain specific exceptions (section 925(d)(3)). A broad interpretation which permits virtually any firearm to be imported because someone may wish to use it in some lawful shooting activity would render the statute meaningless.

As discussed earlier, the legislative history suggests a narrow meaning and indicates that the term "sporting purposes" refers to the traditional sports of target shooting, skeet and trap shooting, and hunting. Moreover, the history discussed earlier strongly suggests that Congress intended the provision to allow the importation of traditional sporting type rifles while excluding military type rifles. There is nothing in its history to indicate that it was intended to recognize every conceivable type of activity or competition which might employ a firearm. To the contrary, the history indicates that mere use in some competition would not make the rifle a sporting rifle.

Finally, the 1968 Firearms Evaluation Panel specifically addressed at least one informal shooting activity and determined that it was not a legitimate sporting purpose under the statute. The panel addressed what is commonly referred to as "plinking" (shooting at randomly selected targets such as bottles and cans). It was the Panel's view that "while many persons participated in this type of activity and much ammunition was expended in such endeavors, it was primarily a pastime and could not be considered a sport for the purposes of importation. . ."

Based on the above, the working group determined that the term "sporting purpose" should properly be given a narrow reading. It was determined that while hunting has been a recognized rifle sport for centuries, and competitive target shooting is a recognized rifle sport, the so-called activity of plinking is not a recognized sport. Moreover, we believe that reference to sporting purposes was intended also to stand in contrast to military and law enforcement applications. Consequently, the working group does not

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believe that police/combat-type competitions should be treated as sporting activities. This position is supported by the court's decision in <u>Gilbert Equipment Company</u>, Inc., <u>v Higging</u>, 709 F. Supp. 1071 (S.D. Ala. 1989) and is consistent with prior interpretations of ATF as noted on pages 4 and 5 in discussing the Striker-12 shotgun and USAS-12 shotgun.

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c. Suitability.

The final step in our review involved an evaluation of whether semiautomatic assault rifles are a type of rifle generally recognized as particularly suitable for or readily adoptable to the traditional sporting applications discussed above.

The criminal misuse of semiautomatic assault rifles is a matter of significant public concern and was an important factor in the decision to suspend their importation. Nevertheless, the working group did not consider criminal misuse as a factor in its analysis of the importability of this type of rifle. Instead, the working group confined its analysis to the question of whether this type of rifle meets the test provided in section 925(d)(3).

Rather than criminal misuse, our comprehensive examination of this issue focused on the legal analysis and technical assessment of these firearms discussed earlier. In addition, the working group used the information gathered under Items 1-7 outlined in the next section in determining whether this type of firearm is generally recognized as particularly suitable for sporting purposes. These items take into account technical and marketing data, expert opinions, the recommended uses of the firearms, and data on the actual uses for which the weapons are employed in this country.

In evaluating these firearms, we believe that all rifles which are fairly typed as semiautomatic assault rifles should be treated the same. Therefore, the fact that there may be some evidence that a particular rifle of this type is used or recommended for sporting purposes should not control its importability.²¹ Rather, all findings as to suitability of these rifles as a whole should govern each rifle within this type.

This is consistent with the approach taken with respect to handguns since 1968. Although certain handguns may be used or recommended for sporting purposes, they may fall within the type of easily concealable handguns barred from importation by the administrative factoring criteria used

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by ATF to determine the importability of handguns. Furthermore, a pistol specifically designed for target shooting, but lacking a safety as required by the factoring criteria, would be a type of handgun prohibited from importation as not particularly suitable for sporting purposes for this reason. Finally, just as ATF allows handguns to be modified so as to meet the factoring criteria, a semiautomatic assault rifle could be modified into a sporting configuration and be importable, as was done in the case of the Valmet Hunter referred to earlier.

D. Evaluation of Information from Outside Sources

As part of our comprehensive analysis as to whether semiautomatic assault rifles meet the statutory criteria for importation, the following sources of information were also considered:

- How has the weapon been advertised, marketed and categorized by the manufacturer and/or importer?
- 2. How has the use of the rifle been described by firearms technical writers?
- 3. What is the rifle's reported use by importers?
- 4. Do hunting guides recommend the rifle?
- 5. Do editors of hunting magazines recommend the rifle?
- 6. Is the rifle used in target shooting competitions?
- 7. Do State game commissions allow the use of the rifle to hunt?

Items 1-6 focus upon how the rifles are marketed, advertised, and recommended for use. Item 7 addresses the legal restrictions pertaining to the use of the weapons for sporting purposes.

The working group reviewed the advertising and marketing literature concerning each of the weapons (Item 1) and reviewed evaluations of the firearms by technical writers (Item 2). In addition, the working group solicited information from the importers of the weapons and other knowledgeable sources (Items 3-6).

Questionnaires were drafted and sent out to licensed hunting guides, State game and fish commissions, local hunting associations, competitive shooting groups, and hunting/shooting magazine editors to determine the extent to which the weapons are used for sporting purposes or recommended for such use. The working group believed that the actual uses of the weapons for sporting purposes

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would be a factor to be considered in determining whether this type of rifle meets the sporting purposes test.

The review of advertising and marketing literature indicates that these rifles are not generally marketed for hunting or competitive shooting. The review of the technical evaluations revealed that these rifles are not regarded as suitable for these sporting activities.²²

To the extent that the technical evaluations made recommendations with respect to the use of the rifles suspended from importation, the majority recommended them for law enforcement or military use or for activities such as collecting, plinking, home and self-defense, and combat target shooting. Only 5 of over 50 evaluations reviewed contained recommendations for the use of these firearms for hunting purposes.

The importers were asked to submit information conterning the sporting uses of the semiautomatic rifles they import. Thirty-nine importers were asked to submit this information and 19 responded. In general, their comments were conclusory and stated that their weapons could be used for sporting purposes. A small number of importers, <u>e.g.</u>, Gun South, Inc., and Heckler & Koch, Inc., provided more specific data showing the sporting uses made of their firearms by their customers.

Of 3 hunting associations to whom questionnaires were sent, 2 responded. They stated that they place no restrictions on the use of semiautomatic rifles by their members, on the minimum caliber of ammunition used to hunt large game, or on the number of rounds allowed in semiautomatic rifle magazines. However, over 1,800 hunting guides were sent questionnaires and, of these, 706 responded. Over 73 percent of those responding indicated that their patrons used either bolt or lever action rifles for hunting. Only 10 of the 706 guides indicated that their patrons had used any of the rifles whose importation had been temporarily suspended.

Cf the 20 hunting/shooting editors to whom questionnaires were sent, 14 responded. Nine of the fourteen editors recommended semiautomatic rifles for use in hunting large game, including 5 who recommended use of any of the rifles subject to the temporary suspension. Eleven of the fourteen editors recommended semiautomatic rifles for target competitions, including 7 who recommended semiautomatic assault rifles for such use.

The recommendations of editors were contradictory. One editor pointed out that what made the assault rifle successful as a military weapon made the semiautomatic

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version totally unfit for any other use. On the other hand, another editor stated that semiautomatic rifles had certain advantages over conventional sporting rifles especially for the physically disabled and left-handed shooters. While this may be true, there appears to be no advantage to using a semiautomatic assault rifle as opposed to a semiautomatic sporting rifle.

A total of 54 competitive shooting groups were sent a questionnaire and 53 groups responded (some of the responses were from unsolicited groups). Fifty of these groups indicated that they sponsor high power rifle competition events. While none of the groups prohibited the use of the semiautomatic assault rifles in their competitions, none stated that any of the rifles covered by the temporary suspension were used in a specific event.

Finally, the information gathered under Item 7 reveals that most of these weapons could legally be used in most States for most hunting purposes.

The working group reviewed all of the information gathered under Items 1-6 and determined that while these weapons may legally be used for sporting purposes in most States, the evidence was compelling that, as a type of firearm, the semiautomatic assault rifle is not generally recognized as particularly suitable for sporting purposes. The working group found persuasive the technical and expert evaluations of these firearms which generally did not recommend them as particularly suitable for sporting purposes. The group was also impressed by the comments of the hunting guides which showed that these rifles were not widely used for hunting purposes. The comments of the hunting guides are consistent with the opinion of the technical experts who generally do not recommend the rifles for hunting purposes.

The opinions of the editors were fairly divided with respect to the sporting uses of these rifles. The importers generally recommended their own weapons for such uses. The competitive shooting groups indicated that the rifles could be used in certain shooting events. Thus, while there was some evidence that these rifles could be used for hunting and target shooting, there was no evidence of any widespread use for such purposes. The mere fact that they are not generally prohibited from use for sporting purposes does not mean that the rifles meet the test for importation.

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CONCLUSIONS

The working group has dealt with a complex issue, the resolution of which has required the group to take into account interpretations of law, technical assessments of firearms and their physical characteristics, marketing data, the assessment of data compiled from responses to questionnaires and, finally, Bureau expertise with respect to firearms. We fully recognize that particular findings as well as the results will be controversial.

From the cross section of representation within ATF, we have brought to bear our technical, legal, and administrative expertise to resolve the issues in what we believe to be a fair manner, taking into consideration all points of view. While some of the issues were difficult to resolve, in the end we believe that the ultimate conclusion is clear and compelling. These semiautomatic assault rifles were designed and intended to be particularly suitable for combat rather than sporting applications. while these weapons can be used, and indeed may be used by some, for hunting and target shooting, we believe it is clear that they are not generally recognized as particularly suitable for these purposes.

The purpose of section 925(d)(3) was to make a limited exception to the general prohibition on the importation of firearms, to preserve the sportsman's right to sporting firearms. This decision will in no way preclude the importation of true sporting firearms. It will only prevent the importation of military-style firearms which, although popular among some gun owners for collection, self-defense, combat competitions, or plinking, simply cannot be fairly characterized as sporting rifles.

Therefore, it is the finding of the working group that the semiautomatic assault rifle is not a type of firearm generally recognized as particularly suitable for or readily adaptable to sporting purposes and that importation of these rifles should not be authorized under 18 U.S.C. § 925(d)(3).

Based on our evaluation, we recommend that the firearms listed on Attachment 7 not be authorized for importation. For the reasons discussed in this report, we recommend that the firearms listed on Attachment 8 be authorized for importation. These are the .22 rimfire caliber rifles and the Valmet Hunter which we do not believe are properly included in the category of semiautomatic assault rifles. Attachment 9 is a compilation of the responses from the questionnaires. Attachment 10 combines the criteria for

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identifying semiautomatic assault rifles and the items considered in assessing suitability. Attachments 11 and 12 contain the data compiled for each of the criteria listed in Attachment 10. Finally, Attachment 13 contains the source materials used in locating persons and organizations who were sent questionnaires.

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DRUG ENFORCEMENT ADMINISTRATION FIREARMS SEIZURE REPORT FY89-MAR.

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DIVISION	NUMBER - OF CASES	ARMED	AUTOMATIC WEAPONS	RIFLES	SEMI- AUTOMAT RIFLES	IC SHOTGUNS	SEMI- AUTOMATIC		SEMI- AUTOMATIC	
					- Millio	30010003	SHOTGUNS	HANDGUNS	HANDGUNS	TOTAL
Atlanta	29	14	0	8	5	- 13		22		
Boston	20	7	2	23	13	23		33	17	80
Chicago	28	-20	2	6	<u>در</u>	- 5	10	16	29	116
Dallas	38	26	5	18	, 9	22	. 0	48	23	85
Denver	40	32	4	. 9			8	47	31	140
Dutroit	28	13	-		2	- 11	- 4	26	26	82
Houston	68	46	2	22	8	19	2	46	13	112
Los Angeles	38		5	34	13	- 38	. 1,	82	56	- 229
Miami	76	24	12	12	11	19	0	32	40	126
Newark	10	30	1	27	9	28		61	54	181
New Orleans		3	. 5	5	1	3	4	4	2	24
New York	31	34	I	16	9	13	1	46	27	113
Philadelphia	56	43	. 19	4	2	2	2	57	41	11,7
Phoenix	13	3	2	9	0	5	2	15	16	
	31	- 34	. 3	59	10	12	2	51	37	49
San Diego	136	56	11	182	22	113	4	105		174
San Francisco	76	- 55	15	74	41	39	8	79	139	576
Scattle	30	26	3	60	13	38	. 0		85	341
St. Louis	17	23	0	1	1.5	3		52	54	220
Washington, D.C.	15	9	6	2	1 0	_	2	13	17	37
•		· ·	Ū	4	U	6	0	7	. 4	25
TOTAL	780	498	9B	571	170	412	. 55	820	711	2,837







United States Department of State

Washington, D.C. 20520

October 31, 1989

Select Committee on Narcotics Abuse and Control Wednesday, November 1, 1989 10:00 a.m.

Exports of Assault Weapons

Section 38 of the Arms Export Act (22 U.S.C. \$2778) authorizes the President to control the export of defense articles and defense services from the United States. This authority has been delegated to the Secretary of State pursuant to Executive Order 11958, as amended. It is exercised by the Office of Munitions Control in the Bureau of Politico-Military Affairs of the Department of State in accordance with the International Traffic in Arms Regulations (the ITAR)(22 C.F.R. Parts 120-130).

Part, 121 of the ITAR consists of the U.S. Munitions List. It enumerates the articles that are subject to the export controls of the Department of State. Included in this list are nonautomatic, semi-automatic and fully automatic firearms, to caliber .50 inclusive, and insurgency-counterinsurgency type firearms or other weapons having a special military application, regardless of caliber, as well as components and parts for such firearms.

The export of any item on the U.S. Munitions List requires an export license or other approval from the Office of Munitions Control (with certain narrow exceptions, such as exports by U.S. Government agencies of weapons for their own use). The ITAR contains the detailed rules that govern the furnishing of export licenses. For example, applications for licenses to export defense articles must be accompanied by an order from the foreign customer stating the specific end use and end user of the articles to be exported. In many cases, an import certificate issued by the recipient foreign government must also be provided. The cfice of Munitions Control takes into account whether the end use and end user of the articles are acceptable. The bone fides of a transaction can often be confirmed by our U.S. diplomatic missions abroad. Licenses can be disapproved on various grounds. For example, licenses may be denied if to do so is deemed to be in furtherance of U.S. national security or foreign policy (including our foreign policy concerns regarding narcotics). Section 126.1 of the ITAR contains a list of proscribed countries (i.e., the countries which are subject to U.S. arms embargoes). Section 126.7 of the ITAR enumerates the general reasons for which licenses may be denied on a case by case basis.

Various weapons are subject to additional constraints. For example, it has been the long established policy of the Office of Munitions Control to approve exports of automatic firearms only if the end user will be a foreign government. It is also the policy of the Office of Munitions Control to deny all requests for licenses to export silencers for firearms.

When appropriate, the Office of Munitions Control approves special procedures to govern exports to particular countries. For example, our Ambassador to Colombia contacted the Office of Munitions Control in May of this year to discuss enhancing export controls on defense articles destined for Colombia. Department of State suggested that the Colombian Government ጥክል adopt the practice of some countries, such as Mexico, of establishing a standard import certificate that would be issued by a single organization within their government (such as the Ministry of Defense). The Office of Munitions Control does not grant an export license in such cases unless such a certificate This practice has assisted the licensing process is furnished. by ensuring that the foreign government concerned has taken appropriate steps to ensure that the end use and end user are If the Government of Colombia agrees, we will legitimate. establish such a procedure with respect to Colombia.

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Assault Guns Move to Front Lines of Crime

From Page AI

From Page A1 Inited States, just 10 of them – sit members of the so-fulled assist ion family – accounted for 124 percent of the nation family – accounted for 124 percent of the nation of the source claim of the source information of the source claim of the source of the finding came from a comprehensive examina-tion of 4275 gain frace requests submitted to the foder of the source of the source of the source of the source of the burges approval. The Atlanta Journal for the source of the source of the crime of the source of the source of the source of the crime of the source of the source of the source of the crime of detailed that the burges of the source of the crime of the source of the source of the source of the crime of the source of the source of the source of the source of the crime of the source of the the source of the crime of the crime of the source of the source of the crime of the crime of the source of the source of the crime of the crime of the source of the the source of the source of the crime of the source of the

Miami Figures: Twice the National Average

Miami Figures: Twice the National Average For purposes of the study, assault guns were de-ministration's temporary import ban on foreign-manu-domestically produced semialumnatike detailed in Semial Study and State and State and State (too lists totaled 64 individual weapon models. Among the study's other chief Indinas: The use of assault weapons in crume rose more than 76 percent in 1983 over 1987. Figures for the first una continues to grow. with 10 assault gun models accounted for 90 per-ent of the crumes involving ansult guns. One of every five of those was a weapon known as a TEC-3. The gun, and gun laws are hay, assault guns. Doe of every five of those was a weapon known as a TEC-3. The gun, and gun laws are hay, assault guns. Doe of every five of those was a weapon known as a TEC-3. The gun, and gun laws are hay, assault guns. Doe of every five of those was a weapon known as a TEC-3. The gun, and gun laws are hay, assault guns. Doe of every five of those was a weapon known as a fact on one shy twice the national average. In Los Angeles, the frequen-ty of assault gun set nor ime was also about twice the national average. In Los Angeles, the frequen-saties and the first of the first assault first. Does assault rifles, however, are not covered and thus are assault rifles, however, are not covered and thus are as for the or a shard purp the furct on particent in the assault filst. Bore and furct on particent in the first one of the student purpose and for the first one of the student purpose and be the fore one party the national average. In the first one fore the first one party is a student the first one party and the first one party and the first one fore the first one of the first one fore the first one party and the first one first one first one party and the first one party and the first one first one first one party and the first one party one party and first one party and the first one party and t

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we of trace requests on that type of weapon 4 Chicage Dallas Detro 9% 11% U.S. AN 17 ñ Type of gun Assault weapon (4,249) Pistol (12,424) Deninger (581) # H "# Y. 20 9% 33% 10 1 19% 13% 26% J% 39% 35% 31% 26% 24% 271 463 35% 11% 13 15 33% 30% 12% 39 325 Revolver (13 983) Rifle (5.305) 20% 31% 7% 9% 3% 12% 7 195 9% 15% 10% 4%
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ATF Lacks Funds to Do Own Computer Analysis

ATF Lacks Funds to Do Own Computer Analysis The gun trace forms reviewed for this article were the second second second second second second second firmines Training Center in Landover, Md. by eity, alite and federal police departments from all 50 Sutes: a handful were submitted by foreign agencies. The ATP, an am of the Treasury Department is the federal agency responsible for enforcing U.S. firearms regula-tions, lis Landover center acis as a clearingflows to and police by iracing the ownership of guns used in crimes. The ATP were is observed to a second second second to some the second second second second second to some the second second second second second to some the second second second second second second to some the second second second second second second to some the second second second second second second second to some the second second second second second second second to some the second second second second second second second to some the second second second second second second second to some the second second second second second second second the priorities on money changed and, unfortunate-tered is completeries to data. The ATP agreed. Microbiolistic second and the forms are "mortally the second second second second second second second traditional to a second second second second second traditional to a second second second second second the second second second second second second second second the second second second second second second second second the second s

ask for traces, according to Thomas M. Gerrity, the cen-ter's director. The requests do, however, represent a "significant const fit tion" of Thream-related crime, M. Gerrity salanti, "he staid. For example, in 1987 – the last year for which full records are available – the FBI's Uniform Crime He-porting Sections documented 13 million crimes report-ed against individuals Of loose, 361,000 involved a fire-arm. The same year, the ATT received 32,000 eraponas trace equests, about one for every 10 gan crimes reported.

Slayings of Schoolchildren Spur Debate

Assault weapons have been the focus of an increas

Assault weapons have been the focus of an intreas-ingly motional debate since damasry, when Patrick Ed-berg and a teacher in a Stockion, Calif, Schobjard Other and a teacher in a Stockion, Calif, Schobjard The killings prompled a wave of national and state legislation, unparalleled since the assaultations of Robert F. Kennedy and Marin Luther King Jr led to legislation and the Sid Gun Cantrol Act Twenty-here state legislation, university of the state of the state of the state of the side of the state of the state of the legislation, university of the state of the state of the legislation while Sid Gun Cantrol Act Twenty-here state or restrict the use of specified assault guns. In Con-gress, two bills are pending before the Senate Judiciary tommutice while four are working their way through the House

Two problems have hampered advocates of revised

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2% 3% In trace requests submitted

uched - as namp popular hunting and sporting weap-ons not largeled for restriction. They would leave it to the ATP and a board of advices to narrange to the the ATP and a board of advices to narrange provided saul Table is a board of advices to narrange provided the the ATP and a board of advices to narrange provided and the second problem deals with the actual number of assuid groups owned by Americana and how many for these weapons have been involved in a time - verying summark ATP Associate Unrecent Danner M. Hannett esti-mated that Americans wome between 2 million and 3 mil-tion semationatic firerams that could be closed to assuid group. How the second state of the second state of assuid groups of the close to 1 million. Mrt Hill said the estimate was based on the sec-tion's dimensional the close and the second state of the produced weapons. The number of assault grans traced last year sur-greed officials because there are so for women in the correct gran population. Number of assault grans traced last year sur-greed officials because there are so for women in the and the produced weapons. Number of assault grans traced last year sur-greed officials because there are so for women in the correct gran population. Number of assault grans traced last year sur-ment of the codds there publis style with sub-maching-gran looks, and one shougun model, the lialian-made SPAS 12.

machine effort locks, and one strought notice, the terminal and SPAS1 and types of weapons, the top five criminal gains were WPS2 a 25-scheder semiautomatic postol shuffarumed by Raten Arms in City of Industry. Calif, with an average relaid price of SS3 The Model 60, a standles-sited 38-caliber revolv-er produced by Smith & Wesson of Springfield. Mass, priced at SS03 3 The Model 38, a slightly plainer 38-revolver also made by Smith & Wesson, and one of the world's most popular handprus Its estimated relaid price is S200. 4 The 122, a 22-caliber semiautomatic pustol made by Jonning Pricarms of Chuno. Calif, known for its small size, low price and notorious insecuracy. It sells for 545

by Jennings Firearnis of Chino Calit, known for his small ster. Ow price and notprives unaccuracy II selfs for 345. 3 The TEC'9, which ranked no better than fifth among assuit guns alone in 1686 but is randuly moving the sate state of the the the state of the the Massate state of the the the state of the the mission of the the the state of the the terms targed on the West Costs. that frequency jumped to 21 percent, and in Artiona to 386 percent. In addition to the standard terms categories traced, the government also tracks firearms involved in investi-gations of organized erring Assoult guns amounted to nearly one of every three guns in that calegory

How the Study Was Done

For purpose of this article, assuit purs are defined as all 49 weapons identified in the March Is and April 59 While House annumerements term parativy suspending importation of specified lor-egymoda semanionalic weapons. Also included are the IS additional domestically produced are the IS additional domestically produced an introduced by Sen. Howard M. Mettenbaum (D-hon).

Ohioi In all 42.758 Firearms Trace Request forms filed at the U.S. Bureau of Alcohol, Tobacco and Firearms (ATF) Tracing Center in Landover. Md., were examined. The forms rover the period from Jan 1, 1968, to March 27, 1989

Information from the forms was entered into computers by Allanta Journal-Constitution Wash-ington Bureau Peorters and clears and tabulated by Data Tabulating Service Inc of Allanta. The information from each form included the date of the request. Its identity of the requesting agency, the state where the request organized the manufacturer. Upeo di vezoon, model, caliber, matzianic expansity, serail number and country of origin, the type of erme unvolved. The presence, jany of organized erme and code for num por metropolita areas specieted by the reporters Information on the (ontw sear supplied by the

jor metropolitan areas selected by the reporters information on the (orms was supplied by the law enforcement officer making the request Robert J Barres of Teartana, Ark, served as a technical adviser for this article. A licensed fire-arms consultant, Mr Barres is the ATF's former senor tirearms enforcement officer



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Gun Facts, Fiction

FICTION: Assault weapons fire thousands of

OULD PACUS, PICTACH DeGTONE ALSSUIT VERPONS for thousands of PACTS MEMBER FACTS in the sepons for a such a high rate. That is true whether the vespons is a semi-sutomatic one, which fires one builts for each pull of the trigger, or a hily automatic milary ri-depressed. The most a semiautomatic vespon can handle is between 60 and 60 rounds a minute, assuming the firer changes magaines rapidly FIGTON: There is JOIN FIGTON: There is JOIN The semi-line state of the first immediate the criminals prefer to use semiautomatic rifler, available on criminatis firerams preferences indicates justic for itiggs purposes. In fact, data available on criminatis firerams preferences indicates justic for itiggs purposes. In fact, data available on criminatis firerams preferences microse the opposite. — "Semi-Auto Firerams," a pamphiet published by the Natoma fille Association. TACT: Whatever past tends may have shown, hal's not the case today for the first time since police began categoriting weapond by tip; semi and March 27, 109, semiautomatic models moved slightly ahead of revolvers, (4.130 to 13263. That slim margin appears to be explosing. Chall, certify-subcommittee on Yong the first singe particing of rounds are casable of prenetring better valis. TACT: The TSUS, MACI van dur use push ammunition and have on more prenetring poer the most build. Hiftes, such as the AK-47 and the AK-15, fails in the same category as most com-man deer guna.



ONE MILLION STRONG . . . working to keep handguns out of the wrong hands.

ASSAULT WEAPON QUESTIONS & ANSWERS

What is an assault weapon?

It is an automatic or semi-automatic rifle, pistol or shotgun designed to be spray-fired in combat. Such weapons include the AK-47, Uzi, AR-15, MAC-10 and TEC-9.

What is the difference between an automatic and a semi-automatic weapon?

An automatic weapon (machine gun) will continue to fire as long as the trigger is depressed (or until the ammunition magazine is emptied). A semi-automatic weapon will fire one round and instantly load the next round with each pull of the trigger. This means that a semi-automatic fires a little more slowly than an automatic, but not much more slowly. When San Jose police test-fired an Uzi, a 30-round magazine was emptied in slightly less than two seconds on full automatic while the same magazine was emptied in just five seconds on semi-automatic.

Is a slide-action gun considered semi-automatic?

No. Slide-action, bolt-action, lever-action, and of course, single shot firearms are not semiautomatics because they require an additional manual operation before the trigger can be pulled again. In addition, revolvers are not considered semi-automatic weapons.

What type of gun was used by Patrick Purdy?

On January 17, Patrick Purdy killed 5 small children, wounded 29 others and one teacher at the Cleveland Elementary School in Stockton, California, using a semi-automatic version of the AK-47 assault rifle imported from the People's Republic of China. That weapon was equipped with a 75-round "drum" magazine. Purdy shot 106 rounds in less than 2 minutes.

How are assault weapons treated under current federal law?

In 1934, Congress voted to require that all fully-automatic weapons be registered. Transferees must undergo thorough FBI criminal record checks and a \$200 transfer tax is imposed. In 1986, Congress outlawed the manufacture and importation of new automatic weapons for sale to civilians. However, under federal law, semi-automatic assault weapons can be ourchased instantly.

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How are assault weapons treated under current state law?

Most states have no restrictions at all on semi-automatic assault weapons. In all but 5 states, semi-automatic assault <u>rifles</u> and <u>shotguns</u> can be purchased cash-and-carry by simply providing identification and signing an unverified statement that the purchaser is not a convicted felon, minor, illegal alien, or drug addict and has never been adjudicated mentally incompetent. Only 23 states have some kind of waiting period or background check for <u>handgun</u> purchases, which also apply to assault pistols. One reporter found it took less time (5 minutes) to buy an Uzi than to buy a quart of milk.

Will all semi-automatics be banned if assault weapons are restricted?

No. Despite NRA claims that legislation is aimed at banning all semi-automatic weapons, the truth is that only semi-automatic <u>assault</u> weapons, not semi-automatic hunting rifles such as the Browning and Remington, will be affected by such legislation. In addition, most of the legislation proposed on the federal and state levels exempt .22 caliber rimfire rifles and permit current lawful owners of assault weapons to keep their guns.

How is it possible to distinguish semi-automatic hunting rifles from semi-automatic assault weapons?

Sporting rifles and assault weapons are two distinct classes of firearms. While semiautomatic hunting rifles are designed to be fired from the shoulder and depend upon the accuracy of a precisely aimed projectile, semi-automatic assault weapons are designed to maximize lethal effects through a rapid rate of fire. Assault weapons are designed to be spray-fired from the hip, and because of their design, a shooter can maintain control of the weapon even while firing many rounds in rapid succession.

Because assault weapons were designed for military purposes, assault weapons are equipped with "combat hardware," such as silencers, folding stocks and bayonets, which are not found on traditional sporting guns. While opponents of legislation restricting semi-automatic assault weapons argue that such weapons only "look scary," there is a good reason why these features on assault weapons should frighten the public. Assault weapons are commonly equipped with some or all of the following combat hardware:

- Large-capacity ammunition magazine, enabling the shooter to continuously fire dozens of rounds without reloading. Standard hunting rifles are equipped with 3 or 4-shot magazines.
- Folding stock on a rifle or shotgun, which sacrifices accuracy for advantages such as concealability and mobility in close combat.
- Barrel length less than 22 inches on a rifle or shotgun, which sacrifices accuracy and range for mobility in close combat. Coupled with a folding stock, a shorter barrel facilitates concealability.

- Pistol grip on a rifle or shotgun, which facilitates firing from the hip, allowing the shooter to spray-fire the weapon. A pistol grip also helps stabilize the firearm during rapid fire.
- Barrel shroud which is designed to cool the barrel so the firearm can shoot many rounds in rapid succession without overheating. It also allows the shooter to grasp the barrel area, without incurring serious burns, during rapid fire.
- Threaded barrel designed to accommodate a flash suppressor, which serves no useful sporting purpose. The flash suppressor allows the shooter to remain concealed when shooting at night, an advantage in combat but unnecessary for hunting or sporting purposes. In addition, the flash suppressor is useful in preventing barrel climb during rapid fire, helping the shooter maintain control of the firearm.
- Threaded barrel designed to accommodate a silencer, which is useful to assassins but has no purpose for sportsmen.
- * Ammunition magazine on a pistol, outside of the pistol grip, which is more characteristic of an assault weapon than a sporting handgun.
- * Barrel mount designed to accommodate a bayonet, which obviously server no sporting purpose.

How many semi-automatic assault weapons are there in the U.S.?

According to the Bureau of Alcohol, Tobacco and Firearms (BATF), there are between 2 and 3 million semi-automatic assault weapons currently in circulation. At least 167,849 were imported into the United States in 1986-87. While there is no publicly available data, it is estimated that most semi-automatic assault weapons are manufactured in the United States.

What action did the Bush Administration recently take to limit the importation of assault weapons?

Under the 1968 Gun Control Act, the Bureau of Alcohol, Tobacco and Firearms (BATF) is empowered to prevent the importation of guns which are not "particularly suitable for or readily adaptable to sporting purposes." The BATF announced a temporary suspension of import licenses for 29 types of semi-automatic assaul: weapons. This means that requests for the importation of 926,000 assault weapons are currently suspended while BATF studies whether these weapons are primarily being used by drug gangs or are suitable for sporting purposes.

Can the BATF ban the domestic manufacture or sale of assault weapons?

Under current law, the BATF has no authority to act against domestic semi-automatic assault weapons. It will require the passage of new legislation for the BATF to obtain that authority.

What action did Colt Industries take?

In response to the Bush Administration's importation action, Colt Industries voluntarily halted the sale of its domestically-produced AR-15 assault rifle, which is a semi-automatic version of the military's M-16 rifle. In addition, another large manufacturer, Sturm, Ruger & Company, halted the shipment of the folding-stock version of its Mini-14 rifle and ammunition magazines in excess of 5 rounds.

What if only the importation of assault weapons is banned?

If we do not prohibit domestic production, American manufacturers will make assault weapons in even greater quantities and likely copy the designs of previously imported assault weapons. After BATF outlawed the importation of a South African riot-control shotgun called the Striker-12 in 1986, American manufacturers subsequently marketed copies of the Striker-12, boasting that it was barred from importation.

How much of a crime problem are semi-automatic assault weapons?

While there is no reporting requirement on assault weapon incidents, police across America report that semi-automatic assault weapons have quickly become the "weapons of choice" for drug traffickers, street gangs and paramilitary extremist groups. In Oakland, California, law enforcement authorities report that in 1986 they confiscated only 56 assault weapons from criminals. In 1987, they seized 113, and in 1988 police confiscated 214 assault weapons. According to Oakland police, only 12 percent of the assault weapons seized in 1988 were obtained illegally; the others were bought legally over-the-counter.

The NRA argues that the real problem isn't assault weapons. It's courts that let criminals go free. The NRA says mandatory sentences for criminals who use guns is the answer. What do you think?

We have always supported tongh mandatory sentencing. However, that is only part of the answer. We need preventive measures. The use of assault weapons in crime has been growing at an alarming rate. Why should weapons that are designed solely for use in combat be made freely available to criminals? Law-abiding citizens have no need for weapons of war.

Won't criminals always be able to get assault weapons even if they're banned?

Stopping the domestic manufacture and import of semi-automatic assault weapons would dry up the pool of available weapons. The 1986 ban on new machine guns has already begun to diminish the supply of fully automatic firearms. The Drug Enforcement Administration (DEA) reports that in 1987-88 machine gun seizures declined while seizures of all other weapons increased. Further, the BATF reports that most of the semi-automatic assault weapons used in crime are originally purchased over-the-counter. Right now, U.S. gun stores are even supplying assault weapons to drug traffickers in other countries. Drug sweeps in Mexico, the Philippines, Jamaica and South and Central America have turned up weapons originally purchased in the U.S. According to one BATF official, a drugs-forguns connection exists; as one BATF agent said, "it's drugs in, guns out."

What do law enforcement officials think we should do about assault weapons?

A number of national law enforcement organizations support legislation to outlaw assault weapons, including the National Sheriffs' Association, International Association of Chiefs of Police, National Association of Police Organizations, and the Police Executive Research Forum.

Will a ban on assault weapons affect the use of these weapons by the military or police?

No. The legislative proposals to ban assault weapons exempt law enforcement agencies and the military.

What legislative action has been taken so far to restrict semi-automatic assault weapons?

Several bills have been introduced in Congress to ban the future manufacture and importation of semi-automatic assault weapons, most notably S. 386 by Senator Howard Metzenbaum (D-OH) and H.R. 1190 by Congressman Pete Stark (D-CA). These bills would also limit the size of ammunition magazines. More than a dozen states are considering similar legislation including New York, Florida, Illinois and Texas. Virginia and Maryland passed laws requiring background checks for assault weapon purchasers, and in California, both the Senate and Assembly have approved bills to ban assault weapons. Several cities, including Los Angeles and Cleveland have recently banned the possession of assault weapons.

Do sportsmen need large-capacity ammunition magazines?

Large-capacity ammunition magazines are unnecessary for hunting or sporting purposes. In fact, federal laws limit to three the number of rounds which can be used with a shotgun for hunting migratory birds. Many states further restrict the number of rounds hunters may use with their semi-automatics or shotguns. Such a listing is attached.

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AMMUNITION MAGAZINE SIZE LIMITS FOR HUNTING

Federal law: No person shall take migratory game birds with a shotgun capable of holding more than three shells (one in the chamber and two in the magazine) unless the magazine is plugged with a one-piece filler which is incapable of removal without disassembling the gun.

States with additional limits on magazine size while hunting game other than migratory game birds are as follows:

Shotguns				
(not including	one	round	in	chamber)

AL	N/A
AK	N/A
AZ	2 for all game
AR	N/A
CA	2 for all game
CO	2 for small game
CT	2 for deer
DE	2 for all game
FL	N/A
GA	4 for deer/2 for all other game
HI ID	N/A
iL	N/A
IN	2 for all game N/A
IA	N/A
KS	N/A
ΚY	2 for small game/10 for deer
LA .	2 for all game
ME	5 for all game with semiautos
MD	2 for all game except deer
MA	N/A
MI	5 for all game
MN	N/A
MS	N/A
мо	2 for all game except deer
MT	N/A
NE	N/A
NV	N/A
NH	5 for all game
NJ	2 for all game
NM	N/A
NY	5 for all game
NC ND	N/A
OH	N/A
OK	N/A N/A
OR	N/A N/A
PA	2 for small game
RI	2 for all game
SC	N/A
SD	N/A
TN	N/A
TX	N/A
UT	N/A
VT	N/A
VA	2 for all game
WA	N/A
wv	N/A
WI	N/A
WΥ	N/A

Contraction of the second s

Rifles (semiautomatic centerfire) N/A N/A N/A 5 for all game N/A 5 for big game N/A N/A 5 for cll game N/A 5 for all game 8 for deer N/A N/A 5 for all game N/A N/A 11 for deer N/A N/A N/A S for all game 3 for all game N/A 5 for all game N/A N/A 8 for big game N/A N/A 5 for all game No hunting with semiautos No hunting with rifles No hunting wit N/A 5 for big game N/A N/A N/A N/A N/A N/A N/A N/A N/A N/A



SHORT BIOGRAPHIES OF POPULAR SEMIAUTOMATIC ASSAULT WEAPONS

(Retail prices are listed as of January 1989. Since that time, prices have skyrocketed due to short supply and high demand.)

AVTOMAT KALASHNIKOV Developed in 1947 in the U.S.S.R., the AK is named for its designer, Mikhail T. Kalashnikov. It is currently manufactured in many communist countries. The Kalashnikov-type is the most widely-used assault rifle in the world. It has been the standard rifle of the Soviet military since the early 1950s and it has become the weapon of all the Eastern Bloc countries and most communist countries, as well as practically all communist-inspired guerrilla and nationalist movements. The original AK-47 has been modernized many times and its progeny include the AKM, AK-74, and AKS. It has been estimated that between twenty and fifty million of these rifles have been produced. The semiautomatic versions recently so popular and available in the United States were manufactured in communist China (Norinco and Poly Technologies) and Yugoslavia (Mitchell) and were used by those governments to obtain hard currency for foreign purchases. Those rifles come standard with a 30-shot magazine, but any size from 5 up to 100 rounds is available. Retail: Approximately \$350.

UZI In 1949, work was started on the Uzi by Lieutenant Uziel Gal of the Israeli Army. It is currently manufactured in Israel and imported solely by Action Arms. The Uzi was designed as a submachine gun, intended for use by all branches of the Israeli armed services. It is also used by armed forces in many other countries including West Germany and the Netherlands as well as the U.S. Secret Service. The semiautomatic Uzi comes standard with a 20-shot magazine, but 25 and 32 round magazines are available. The semiautomatic carbine version was first introduced to the U.S. market in 1980. The pistol version was made available in 1984. Retail: Approximately \$700 carbine, \$575 pistol.

GALIL After the 1967 Arab-Israeli war, Israeli Military Industries started work on the Galil rifle. It is currently manufactured in Israel and imported solely by Action Arms. The Arabs had used AK-47s during the Six Day War and the Israeli army decided to model its new rifle after the AK to create a lighter and handier rifle than the FN-FAL which they had previously used. The Galil fills the roles of a submachine gun, assault rifle and light machine gun. It can also be used to shoot anti-tank and anti-personnel grenades. The semiautomatic version was first sold in the U.S. in 1982 and it comes standard with a 25-shot magazine. Retail: Approximately S800.

BERETTA AR-70 In early 1968, Pietro Beretta started an initial survey for a new assault rifle, the AR-70, to supplement the highly-successful BM-59 series of military rifles. It is currently manufactured in Italy. In designing the AR-70, Beretta studied several modern 5.56 mm infantry systems, including the AR-15. The AR-70 is used by armed forces in a number of countries including Italy, Jordan and Malaysia. The semiautomatic version was introduced in the U.S. in 1984. It comes standard with 8 and 30 shot magazines. Retail: Approximately \$800.

Short Biographies of Popular Semiautomatic Assault Weapons Page 2

AR-15/CAR The AR-15 was developed by Eugene Stoner in 1956 to a U.S. Army specification for Armalite, Inc. Production of this rifle was licensed to Colt Firearms in July 1959. It was manufactured in the United States until Colt announced a suspension in early 1989. The military version of the AR-15, the M-16, replaced the M-14 in Vietnam and has since served as the standard rifle of the U.S. armed forces. It is also used by many other nations' armies. Several million fully automatic and several hundred thousand semiautomatic versions have been manufactured over the past 30 years. The CAR is a carbine version of the AR-15. The semiautomatic AR-15 came standard with the same 20-shot magazine used in Vietnam, but with a removable plug which could be used to limit capacity to 5 rounds. Retail: Approximately \$750.

FN-FAL This rifle, by Fabrique Nationale (FN) of Belgium, first appeared in 1950. It is currently manufactured in many countries around the world, including the United States: The FAL, which is also called the LAR for "light automatic rifle," has been adopted by the armed forces of more than 90 countries all over the world including Belgium, Canada, Chile, Ecuador, Ireland, Libya, and Venezuela. The semiautomatic version comes standard with a 20-shot magazine. Retail: Approximately \$3,200 for a Fabrique Nationale model, \$900 for copies.

FNC The FNC is Fabrique Nationale's light carbine. It is manufactured in Belgium. The FNC originated in the mid-70's, was withdrawn by the manufacturer because of various design problems, and reappeared in 1979. It is intended for use by infantry who are operating without continuous logistical support, or who are in the jungle, mountainous or other difficult country. The semiautomatic version was introduced in the U.S. in 1981 and comes standard with a 30-shot magazine. Retail: Approximately \$2,200.

MAC-10/MAC-11 The MAC-10 submachine gun, a/k/a M-10, was developed in 1970 by Gordon Ingram for the Military Armament Corporation (MAC). It is currently manufactured in the U.S. and used by several armies including Chile and Yugoslavia. After returning to the United States following World War II, Ingram designed a series of submachine guns focusing on simplicity and reliability. The MAC-11 is of the same basic design but differs slightly in weight and length. Both models are externally threaded at the muzzle to take the MAC suppressor. MAC went out of business in 1978 and the rights to the MAC-10 passed to a Stephensville, Texas company which took the Military Armaments Corporation name. Rights to the MAC-11 now belong to S.W.D., operated by Sylvia and Wayne Daniels of Smyrna, Georgia who advertise their pistol, the Cobray/M-11, as "the gun that made the 80's roar." The semiautomatic MAC-11 comes with a 32-shot magazine. Retail: Approximately \$400. Short Biographies of Popular Semiautomatic Assault Weapons Page 3

STEYR AUG Developed by the prestigious Steyr-Daimler-Puch company in conjunction with the Austrian Army, the first production models were made in 1978. Since then the rifle has been extensively adopted by armies in various parts of the world. It is currently manufactured in Austria. AUG stands for Armee Universal Gewehr, which translates to Universal Army Rifle. The AUG is a bullpup design, that is, its magazine is located behind the trigger guard and its barrel and action are brought rearward into the buttstock. This design compresses the rifle's overall length, while maintaining normal barrel length. The intention behind this weapon is to have a light, handy gun with particular emphasis on use in and from vehicles. It has been the weapon of the Austrian army for over 10 years. It is also used by the armed forces of Malaysia, several Middle East countries, and select armed forces and police groups in the U.S. and Great Britain. The semiautomatic version was made available in the U.S. in 1983 and it comes standard with 30 or 40-shot magazines.

TEC-9 The prototype for the TEC-9 assault pistol was originally designed for the South African government in one of their firearms research laboratories. It was refined in Sweden and first produced by a Miami company called Interdynamics of America in 1981. The original pistol, called the KG-9, fired from an open bolt, and because it was so easily convertible to full-auto, the BATF reclassified it as a machine gun in 1982. In response, the gun was redesigned to fire from a closed bolt and renamed the KG-99. Although the name of the producer changed from Interdynamics to Intratec, U.S.A. in 1984 and then Navigar, Inc. in 1988, and the gun's name changed from KG-9 to KG-99 and then TEC-9 in 1984, both the manufacturer and the weapon have remained pretty much the same. The TEC-9's Owners Manual says it is "designed to deliver a high volume of firepower," and for that reason it is the number one favorite of drug dealers. According to a Cox Newspaper analysis of BATF firearm tracing data, one of every five assault weapons traced from a crime is a TEC-9. It comes standard with a 36-shot magazine and 20-shot magazines are also available. Retail: Approximately \$225.

STRIKER 12 This shotgun was designed and developed in South Africa as a military and police riot gun in 1983. It is currently manufactured in South Africa and the United States. The Striker is fairly lightweight so it can be fired with one hand as a pistol, from the hip with the aid of a front grip, or from the shoulder. With its revolving-cylinder magazine, it can fire twelve 12-gauge shotgun shells in less than 3 seconds. When the South African manufacturer tried to import the Striker, the BATF denied an import license. As a result, a domestic manufacturer began production in 1986 and this shotgun now can be bought from two competing companies as the "Striker 12" or the "Street Sweeper." Retail: Approximately \$725.



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LOOSE CANNONS

Self-Inflicted Wounds at the National Rifle Association

PATRICK B. MCGUIGAN

A fter several years of political invulnerability, the National Rifle Association (NRA) is on the defensive in protecting the constitutional right of law-abiding citizens to keep and bear arms, Legislation to ban semiautomatic weapons, including some of the favorite rifles of hunters and sportsmen, is proliferating in states such as California that have historically opposed gun control. U.S., Representative Fortney (Pete) Stark of California has introduced national legislation that would impose a \$200 tax on future purchases of certain semiautomatic weapons and require FBI background checks of these purchasers. Senator Howard Metzenbaum of Ohio hav proposed legislation that would require lengthy background checks of current owners. Media coverage emphasizes gun control as a solution to drug-related -as if making semiautomatics illegal would limit violence weapons for dealers already trafficking in illegal substances.

Many of the NRA's current difficulties are the result of self-inflicted wounds. During the past few years, the organization has refused to play coalition politics with its natural allies in the conservative movement, including, most especially, elements of organized law enforcement. A go-it-alone approach and a refusal to compromise on less than critical issues is jeopardizing the NRA's effectiveness in winning political support on those issues that it considers most important. Fortunately, there are now indications that the NRA is beginning to take the concerns of other potential coaliton partners more seriously, helping shift the gun-control debate back to where it really belongs: the apprehension and putlishment of those who misuse firearms.

Antagonizing the Police

At a press conference this March, NRA president Joseph Foss explained that there is no reason police officers and the NRA cannot cooperate on many issues. A decade ago, in fact, the average policeman considered the NRA an ally in the promotion of safe and responsible gun ownership. Today, policemen think of the NRA as a n enemy of law enforcement—to the detriment of the conservative coalition, which ought to include both gun owners and cops. In a battle lasting from 1981 to 1986, the NRA initially resisted legislation banning armor-piercing bullets. This issue was of minor concern for hunters or sportsmen, but of serious concern for law enforcement officers. Although the NRA eventually supported some restriction on access to these bullets, it needlessly antagonized the cops. The battle lines were drawn again last year, when the NRA fought tooth and nail against a push by policemen for a seven-day waiting period for gun purchases. The police were probably wrong to push this on the merits; waiting period wor't reduce crime. Even so, since a short waiting period doesn't prevent anyone from owning guns, the NRA was foolish to oppose something its natural allies on the beat consider so important.

Police officials bear part of the blame as well for the fragmentation of the coalition. For example, my good friend Dewy Stokes, national president of the Fraternal Order of Police, endorsed Howard Metzenbaum last year merely because of his restrictive gun control position, even though he has generally opposed legislation that would enhance law entorcement. But over the last decade, the NRA seems to have picked too many unnecessary fights with the cops. A more effective strategy would have been to make common cause with law enforcement on anti-crime issues in exchange for greater police support for the right of law-abiding citizens to bear arms.

Bennett Quick On the Draw

NRA political calculations too often have been based on temporary expediency rather than on the nurturing of coalitions that could be more effective over the longer term. In California last fall, the NRA authorized a late mailing on behalf of a liberal Democrat, Willard Murrav, in his race against conservative Republican state assemblyman Paul Zeltner, even though Zeltner was a strong opponent of gun control. The district was Democratic-leaning, and the NRA apparently thought Murray, whom it considered acceptable on gun issues.

PATRICK B. MCGUIGAN is editor of the Free Congress Foundation's Family, Law and Democracy Report. His memour of the Bork battle, The Ninth Justice, will be published this fall

Policy Review

- advocacy programs like that run by the North American Council on Adoptable Children's New York chapter to show minority-group members how to deal with the adoption bureaucracy;
- greater flexibility in home study requirements, to make adoption more affordable;
- make adoption into a moto and table, a relaxation of taboos against adoptions by older people, singles, and the handicapped, and more "cultural sensitivity" to lower-class people who would like to adopt;
- directive "counseling for young pregnant women that in a non-coercive fashion gives them complete information and makes clear that adoption is an alternative that will let them give the gift of life without ruining their own lives;
- more maternity homes and support programs for pregnant women;
- stronger legal safeguards for adoption finality; clear cutoff dates for fathers to assert their rights and confidentiality safeguards for adoption documents to ensure that adult contacts between birthmothers and their children will remain strictly voluntary; and
- a national campaign to find adoptive homes for all 36,000 special-needs children.

The most important and difficult change of all is a change of attitude toward adoption—that people will come to see that, although emotionally hard on the birth-mother, it is the noble, right way for her to treat the small human being she carries in her body but does not have the resources to raise right now. It is not "abandonment"—it is the way society ought to care for its members, assuring each a home.



Leo Strauss With a new Foreword by Allan Bloom

"In a time when the very meaning of 'liberalism' and 'liberal education' has become a matter of doubt and controversy. Straus's theoretical regrounding of liberalism in clossical political philosophy should be of the greatest significance for thoughtful liberals everywhere."

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Liberal democratic thought in the twentieth century is composed of two strands: the classical (preserved in the term "liberal education"), which emphasizes human excellence, and the modern, which emphasizes individual freedom and social equality. Though these two intellectual tendencles may complement each other, they canand do—also conflict with each other. In this collection of essays, originally published in 1968. Strauss examines the ambiguous relationship between these tendencies, seeking to illuminate the democratic discourse of that time. His results are as pertinent, insightful, and timely today as they were twenty years ago.

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Summer 1989

would win. The NRA won the seat, but the tactic may have backfired. Its endorsement of Murray made California GOP assemblymen much less eager to support the NRA in the legislative battles over semiautomatics that it lost this spring.

Also this spring. Also this spring, in retaliation for drug chief Bill Bennett's quick-on-the-draw ban on semiautomatic im-ports, the NRA and other gun-owners' groups con-tributed significantly to the GOP's loss of the Indiana congressional seat once held by Dan Quayle and its near-loss of Dick Cheney's Wyoming seat. The NRA withheld a key mailing for the Indiana Republican, Dan Heath, and, then, having already made its point, sat out the Wyoming election, even though it had no objections to the Republican candidate Craig Thomas. (Gun Owners of America actually endorsed the Democrat, John Vinich.) This double punishment of the GOP probably served a useful purpose—encouraging the Bush administration to refocus its drug strategies more on crime control than on gun control. But it also weakened the party that has been most sympathetic to the NRA overall, and showed a spitefulness toward the Bush administration, with which it probably should be cooperating not fighting.

80 Percent Is Not Enough

The NRA also refused to cooperate with conservatives during one of the most important fights of the last decade: the Bork nomination. As one of the strategists who sought to secure Bork's confirmation. I know we badly needed the NRA's help and didn't get it. When Richard Gardiner and Dave Connover, the

NRA staffers who used to attend the 721 Group (an anti-crime/pro-judicial reform coalition that I chair), told me early in the battle that their leadership would not be supporting Bork, I researched the judge's record

Today, policemen think of the NRA as an enemy of law enforcement-to the detriment of the conservative coalition, which ought to include both gun owners and cops.

on Second Amendment questions. I found decisions in which Bork had ruled in favor of the rights of gun owners. In fact, in one case Judge Bork ruled in favor of the NRA itself, in a suit concerning the use of a gun stolen from the NRA's national headquarters in Washington But, of course I did not find evidence of an overly broad seading of the Second Amendment on the

Summer 1989



The NRA sat out the Bork battle because it feared he would modify the exclusionary rule.

part of the judge. Dan Casey of the American Conservative Union (my "outside" conservative groups) and I received multiple indications that the NRA opposed Bork because of his concerns about the excessive reach of the judicially created exclusionary rule. It was feared that Bork would be unwilling to suppress evidence gained during invesugations and searches of, among others, the owners of firearms stores. (More recently, NRA political director Wayne LaPierre Jr. said that the Reagan White House pleaded with the NRA not to come out early for Bork.)

On September 8, 1987, after Casey and I determined that our own efforts to bring the NRA back into the judicial reform coalition had failed, my colleague Paul Weyrich at Coalitions for America asked Senator James McClure of Idaho, a favorite of the NRA, to intervene, McClure communicated with every member of the NRA board of directors, which was slated to meet in Washington during the Bork hearings. A major confrontation ensued, in which those who wanted the organization to stay out of the battle prevailed.

By contrast, both the National Right to Work Com-mittee and the National Right to Life Committee immittee and the reasonal toght to the sound toght to the sound toght to the sound toght they had reasons to believe Bork might be an "80-percenter" and not a purist on their issues. But they understood the importance of the Bork battle to the coalition they are a part of, and devoted substantial resources to the confrontation.

ACLU-Style Absolutism

The Bork battle also brought out another source of strain in the conservative coalition: the NRA's insistence on an absolutist interpretation of the Second Amendment. Most conservatives who are fighting ACLU ab-solutism on issues like pornography, school discipline,



Fraternal Order of Police president Dewey Stokes endorsing Howard Metzenbaum—a sign of hostility between the NRA and law enforcement.

and school prayer are troubled by assertions from the NRA that any new regulation of citizen access to firearms would violate a fundamental constitutional right.

Few conservatives would argue against a generous reading of the right to keep and bear arms. But surely

The NRA is helping to shift the gun-control debate back where it belongs: the apprehension and punishment of those who misuse firearms.

the Second Amendment does not require that courts strike down all regulations on gun use or ownership, any more than the First Amendment prevents reasonable regulations of speech. As Justice Oliver Wendell Holmes said, there is no constitutional right to stand up in a crowded theater and yell "Fire" when there are no flames. Similarly, gun registration seems no more an infringement on the right to bear arms than the need to get a parade permit is an infringement on free speech.

Ordinary citizens have no right to own machine guns, or bazookas, or surface-to-air missiles—indeed the National Rifle Association seems to have acquiesced in these restrictions. Why, then, is requiring a purchaser of firearms to undergo a background check, or to wait seven days to receive his weapon, or to go without certain bullets necessarily unconstitutional? By failing to admit the possibility of regulations that do not limit the basic right to bear arms, the NRA is cutting itself off from a broader movement of judicial reform.

Anti-Crime Coalition

There are now indications that the NRA may be moving away from its single-issue myopia, and even taking the initiative in supporting broader anti-crime legislation that would protect the rights of law-abiding gun owners. In a recent interview, Chuck Cunningham, central state liaison for the NRA's Institute for Legislative Action, said the NRA would be supporting efforts to strengthen punishment of juveniles, expand prison capacity, speed up trials, and reform sentencing procedures so as to reduce plea bargaining—all measures that could keep criminals off the streets.

The NRA also supported a Virginia bill signed into law this February requiring an "instant" criminal background check on purchasers of semiautomatic weapons that hold more than 20 rounds of ammunition and handguns with barrels less than five inches, Instantaneous checks of criminal records will soon be feasible, thanks to data at the National Crime Information Center. The technology, not completely in place yet, is roughly analogous to the credit and theft checks conducted when credit card users make purchases.

Similarly, in California, the NRA has endorsed a bill by state assemblymen Tom McClintock and Richard Mountjoy to establish a statewide system to check mental health and criminal records, and "prohibit possession, purchase, or transfer of weapons to all felons, all drug abusers convicted of violating health and safety codes, anyone convicted of a violent misdemeanor, and all people judged by a court to be a danger to themselves or others." Last year, the NRA supported congressional passage of the McCollum-Staggers amendment, calling on the Justice Department to study possible implementation of a national electronic system for checking criminal backgrounds.

America's voters will give strong support to a political coalition that can push through reform measures to keep dangerous offenders off the streets. The NRA can play a very important role in this coalition, and in so doing channel gun control into its proper direction—keeping weapons out of the hands of criminals by putting criminals behind bars.

Policy Review



FRIDAY, SEPTEMBER 8, 1989

Colombia Urges U.S. to Curb Flow of Semi-Automatic Guns

Drug Cartels Said to Be Hoarding Weapons

ation Exodus, a Miami-based U.S.

day I'm opening up a new

investigation. . . . Almost anything

that shoots is something they're

National drug policy director Wil-

liam J. Bennett said yesterday that

his office "immediately called" the

Bureau of Alcohol, Tobacco and

Firearms (ATF) and asked for an

investigation into the arms ship-

ments after he was told about them

interested in."

By Michael Isikolf Washington Part Malt Winter

The Colombian government has appealed to the Bush administration for help in curbing an escalating flow of semi-automatic tilles, handguns and other weapons from U.S. gun dealers to Colombian drug traffickers, administration officials said yesterday.

Law enforcement officials report growing evidence that agents of the cartels operating in the United States have maile major new efforts to purchase large caches of semiautomatic weapons-including AR-15 and Uzi assault guns-since the Aug. 18 assassmation of Colombian presidential candidate Luis Carlos Galan.

a Colombian president meets opposition to his drug measures. Page A19



.... asked for probe of arms shipments

by Colombian Justice Minister Monica de Greilf and her aides in a meeting here Aug. 30.

But Bennett, testifying before the Senate Judiciary Committee about President Bush's new antidrug proposal, emphatically ruled out further action by the Bush administration against the domestic See GUNS, A18, Col. 4

Colombia Asks U.S. to Curb Gun Flow

GUNS, From A1

manufacture of semi-automatic assault rifles similar to the ban on imports imposed in July. About threefourths of the semi-automatic weapons in the hands of U.S. citizens were made in the United States. ATF estimates.

The national drug strategy that Bush unveiled Tuesday night does not refer to the gun issue. Sen. Edward M. Kennedy (D-Mass.) sharply criticized the omission during vesterday's hearing, saving that semi-automatic assault weapons have become "weacons of choice of ... thugs and mobsters on the streets" and are now being exported and used to "gun down members of the Colombian ludiciary."

But Bennett retorted that there are "very serious constitutional problems" with a ban on assault weapons and the administration does not want to "interfere with the legitimate rights of gun owners and collectors and hunters."

The issue has taken on new urgency in recent days because of developments in Colombia, law enforcement officials said.

lack Killorin, chief of ATF public affairs, said the Colombian government has provided the agency with information about 172 rifles, handguns and shotguns seized from the cartels and leftist insurgents during an 18 month period ending Aug. 1.

ATF was able to trace 87-or more than half-of the weapons as having come from the United States, including 59 that were sold in Florida, six in California and 12 scattered among the remaining states. The remaining weapons were classified as of "unknown" origin.

During that same period, Killorin said. ATF has made cases in the United States against individuals seeking to illegally ship 157 weapons to Colombia. This includes one case earlier this year in which 37 AR-15 assault rifles manufactured in Indiana were concealed in pool tables bound for Colombia from Miami International Airport. In an earlier case. ATF was able to trace the guns used in the cartel-sponsored attack on the Colombian Palace of Justice in 1985 to the United States.

Since Aug. 1, the Colombians have asked ATF to trace an additional 155 weapons seized by the Colombian armed forces and military, Killorin said.

John Walters, Bennett's chief of staff, said "preliminary information" he received from ATF indicates that most of the U.S. weapons the agency had been able to trace were "sold legitimately" by U.S. dealers to South American clients and then were diverted into the hands of the cartel.

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But Killorin and Prager said most of the U.S. assault weapons were illegally purchased by agents of the cartel, taking advantage of lax gun control laws in Florida and other states, and then smuggled out of the country.

In many cases, they said, the cartel agenta employ "straw purchasers" to buy large caches of guns. from legitimate dealers-an especially easy exercise since Florida. like Virginia, has no waiting periods on gun ourchases.

"What we have is a constant flow of guns coming out of the country using the same trail that drugs are coming into the country," Kilkurin said. "The cocaine traffickers are not going back empty-handed."



Cartels prefer submachine guns

By Bill Genz

Larke arsenals of automatic weapons and other sophisticated arms have made Culombia's drug lords formidable enemies in the in-

lords formidable enemies in the in-ternational battle against narcotics trafficking, according to experts fa-miliar with cartel activities. But some experts dispute the por-trayal of drug cartel firprover as reacting the level of "private stiedeling and Calc cartels - Adom-hias most powerful drug groups —

operate more like traditional organ-tical crime syndicates or terrorists that is not explored or terrorists According to one Latin American afforts specialist who has taken part in operations against drug traffick-ers. Colombian drug barons have larke arcsenals of semiautomatic m-fles, machine guns and pisols at their disposal.

their disposal. The weapons are used to protect cocaine production facilities, ship-ping routes and drug leaders against an array of threats, including leftist guerrilas and government troops. The arms have been employed in

the campaign of assassinations against government and public fig-ures seeking tougher measures against Colombian drug traffickers, who by most estimates provide up to 80 percent of the cocaine that enters the United States.

The water of the states. "The weapons they use are semi-automatics, and such guns as the MAC-10 and U2i (submachine guns) that are bought on the arms market in the United States." said the spe-cialist, who sked not to be named. Colombian authorities have

see LORDS, page A8

LORDS From page A1

senzed arsenals containing Chinese-made versions of the AK-47, U.S.-made M-16 and the European-made G-3 semiautomatic rifles, experts

made versions of the AK-47, U.S. made AI-l6 and the European-made G-J semiautomatic rifles, experts say. Experts have described the MAC-10 as the "wespon of choice" for Colombian assassing because the small submachine gun fires power-ful .45 caliber ammunition at a rate undreds of rounds per minute. The Israel made Uti also is a said to active and the submachine state the active state of the same state and submachine gun fires and the active state of the same state and submachine state in the same state the active state state state state and state sta

Candinate Lobis Carlos Galandor ru-Autorney General Dick Thom-horehs and the assassmantion of Mr. Galan had "an aura of terrorism." Tather than of an organized crime htt. White House National Security Javiser Brent Scowcroft said Satur-day that the Colombian government was facine a serve problem of drug hords with "private armites" operat-ing in the country. Edward Ezell, a weapons special-ty with the Smithsonian Institution,

ist with the Smithsonian Institution. and a shiphoad of weapons seized by Jamaican authorities in January was believed destined for either the Medellin cartel or Colombian guer-

rillas The shipment included 1,000 semiautomatic G-3 rifles -- guns used by NATO forces, 250 HK-21 machine guns and ten 60mm mortars with 600 rounds of ammunition, he said. It was the first of three planned arms

rounds of ammunition, he said. It was the first of three planned arms subments. "That's an infantry battalion". Mc Feell said. "It hink you can safely say the drug cartels! are armed with the basic weapons comparabile to the armed forces of the country they go up against" three carelistic of mortars by the druc cartels is a sign that the dealers of true carelis as sign that the dealers were preparing to go beyind the de-lease of their cocanie-production camps or the protection of cartel eadership. Make we have tradition-ally seen in organized crime type of operations. The safe on yo declarions the safe of the safe. The example, if the US, military ered is a mean to the the single of the tradition-tion of the safe.

ment" For example, if the U.S. military sends in more helicopters to aid the Colombian police or military forces, the drug barons have enough money to purchase Stinger anti-arcraft missiles, which are said to be avail-able on the internotional black mar-

Nexican," and patrolled by army office ket, he said. The drug arms from corrupt mil-tary officers in some of the Latin and Central American countries. Me Exell said. They have everything from small arms to helicopters. Mr. Geldard und and said Colombias drug Inrds are very well-equipped. They have everything from small arms to helicopters. Mr. Geldard arms to helicopters. Mr. Geldard they are an army in all but name. The tarm specialist, however, said trug cartels are "very intangi-cation to location by helicopter or armored automobile. The tarm specialist, however, said capable of moving rapidly from lo-armored automobile. The tart is nothing solid Theres no command past that ynu carten to location by helicopter or armored automobile. The tarm specialist, however, said that the said that the said. The tarm specialist, however, said the said that the said. The said that the said. The said that the said that ynu carten to passants in various loca-tion around the country. The groups, norwally no larger than 10 persons, have been given morey and material i items from the drug that the said.

groups.

groups. In return they, are equipper, machine guns and are called ut carry out assassinations and violence against the cartet's nents, the specialist said.

nents, the speculits said. As assassin can be hirred ' luttle as \$30, he said. Most assa tions have been carried ou attackers riding molorcycles yeeps who corner theur tarke then shoot him. Besides the major drug cc about 300 small narrotics tra about 300 small narrotics tra about 300 small narrotics tra standing avarrage of 100 pour occure annually.

cocaine annually.

cocaine annually. Some shipments of the dru flown into the United States b craft, and other shipments are by ship through third coun such as Japan, the speculist Mexican drug organizations purchase. Colombian cocaine ship it through the U.S. Me border, he said.

 James Mornson . unternut this report



Lax laws, drug trade make Florida tops in gun exports

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Associated Press

WEST PALM BEACH — Florida's lax gun laws and far-reaching drug networks have made it the country's largest provider of guns to such places as Colombia, the Philippines and the Bahamas, federal agents say.

Since January, federal agents have confiscated 162 guns that were bought in Florida and shipped but of the country. Most were to be used by drug operations in Latin America, where most countries have banned handguns.

"It's dope in and guns out," Jaid Bruce Snyder, spokesman for the U.S. Bureau of Alcohol, Tobacco and Firearms in Miami. "If you're in the drug business, you've got to have guns. A gun can get you niore coke in Colombia than dollars can."

A person without a felony record who holds a Florida driver's license can buy a \$625 semiautomatic gun in Florida, convert it to an automatic weapon and attach a gulencer.

If that person has the right connections, he can sell it for more than four times its original price in countries where handguns are illegal. Foreign buyers consider it a bargain, Snyder said.

Guns also are in high demand in other states with tougher gun hws.

The bureau's most recent seigure came last month when four Brooklyn men were caught with 106 handguns. Snyder said the men had already delivered 68 guns to Brooklyn when authorities found them "running around the Tampa area buying guns."

Snyder said those guns probably were going to street-level drug dealers who can't buy handguns in their home state.

Only six Florida counties including Pinellas, Pasco and Citrus — have 48-hour "cooling-off" periods for gun purchases. Although gundealers are required to the la authorities when someone

buys more than one gun in a seven-day period, finding others to make individual purchases is easy.

"Often, they'll pay a person a guy off the street" to buy the guns, Snyder said.

Florida ranks ahead of Texas — where guns are smuggled to Mexico in connection with drug trade there — in the number of illegal gun shipments, Snyder said. More than 11,000 people are licensed to sell guns in Florida. Bob Saad, owner of the Shoo-

Bob Saad, owner of the Shootin' Shack in Riviera Beach, said that if it were not so hard to buy guns in other states, criminals wouldn't come to Florida for weapons.

"I'm certainly well aware that too many guns are in illegal hands," Saad said. "Just as there are too many cars in the hands of people who don't know how to drive."

Don Jones, owner of Sportman's Attic in New Port Richey, said reputable dealers can recognize a "straw deal" when a Fiorida resident wants to buy a gun for an out-of-stater and won't make the sale.

"There's at least one person that comes in every day and I won't sell to them," Jones said.

Snyder said large gun shipments have been smuggled out of the state in scuba tanks, washing machines ind clothes dryers. Three years ago, agents broke up what they dubbed the "Bananas to Brooklym" caper — 300 Florida guns were hidden in the middle of a shipment of bananas bound for New York.

He said the most popular weapons are 9mm pistols that can fire up to 16 shots before reloading. Many police departments now issue those guns to their officers.

"We don't have any Saturday night specials," Snyder said, "Everybody equips themselves with high-quality firearms."

- Staff writer Keren Datko contributed to this report
U. 156.644-S. 292.798 FT. LAUDERDALE METROPOLITAN AREA

MAY 21 19B

EXPORTS IN VIOLENCE Lax laws make Florida a gun-buyer's dream

By W.LLIAM E. GIBSON and KEN CUMMINS Washington Bureau

WASHINGTON - Vivian Blake auspected of being the mastermind of the Jamaican Shower Posse, got guns for his murderous drug gang by hiring young women with Flori-da tdentifications and sending them off on shopping sprees, federal officials say.

Florida ID's are an admission ticket to a vast markelplace of high-caliber gun wares. With Identitication in hand, the Shower Possenal at gun shops in Broward and Dade counties.

Angela McKenzie Wiley, an lilegal alien, somehow got a Fiorida driver's license, bought at least 14. semiautomatic handguns in il- i censed shops and further them over to the Shower Posse, a gang that gol its name by showering victims with bullets.

Most of those guns ended up in cocaine "crack houses" in New York and Washington, Wiley ended up in prison.

Blake, named in a 62-count indictment, remains at large. Florida's gun laws and the ease

of obtaining ID's combine to make the state a buyer's dream for a man such as Blake, local and federal enforcement officials say, Federal agents refuse to be

drawn into gun-control debates but are pulck to hole evidence that the gun-buying climate in slates such as Florida and Texas makes them havens for criminal custom-

"It's not our role to comment on the state of Florida's laws and

whether they work for anybody." ald Robert Creighton, special igent in charge in Florida for the 'S. Bureau of Alcohol, Tobacco ind Firearms. "But then again, we ee the trend. The trend has been a one standing trend. Guns come at of Florida, and the reason they to is because of difference of

Hew York City, the District of



Special agent Scott Balman of the U.S. Cus- M.A.C-10 automatic machine gun on a shoottoms Service demonstrates the shooting of a ing range.

American and Caribbean nations fles. have enacted tough gun-control laws, virtually banning over-thecounter sales. The main source of their guns are states with less-restrictive laws, such as Florida, rifles to get similar rapid-fire re- seven days for buying handguns.

A buyer in New York City, for sulis. example, must be photographed, fingerprinted, endure a lengthy Any buyer must fill out a federal criminal background check and form attesting he is not a criminal.

show a clear need for a gun, a pro-though in Florida no background ceas generally restricted to police check is required to see whether be officers and security guards. is telling the truth.

Virginia, Texas and Ohio

In Florida, a buyer needs only Dealers must send a federal Identification, such as a Florida 1D multiple-sale form to ATF when card or driver's license, to get as somebody buys more than one many weapons as he wants. Some handgun, but the requirement does counties - including Palm Deach, not apply to high-caliber assault that would ban sale and transfer of Broward and Dade -- have im- ritles And the dealer can notify cheap low-caliber handguns, pred a three day waiting period ATF by mail, which means the known as "Salurday Night Spein huy handguns but no such to- buyer often is long gone by the cials." Several other members of while fostering a black market striction applies to long guns, in- timesuspicious agents investigate. Congress have introduced bills

Columbia, Canada and most Latin cluding semiautomatic assault ri- Appalled by recent acts of vio-· lence, some Florida legislators are Federal law hans purchase of trying to restrict gun purchases. Proposed state legislation fully automatic wespons - ma- Proposed state legislation chine gues that fire a burst of bul- would bapiales of semiautomatics lets with one pull of the trigger - or limit the number of rounds they but agents say criminals easily can carry. Another proposed bill can convert their semiautomatic would extend the waiting period to

> On the federal level, some members of Congress are seeking uniform restrictions to prevent criminals from taking advantage of the wide range of state laws.

a Drug Enforcement Administra-"The bottom line is, you can't have guns on demand," said U.S. tion agent. "I think first and foremost, you have to control the Rep. Larry Smith, D-Hollywood, dins '

Smith has introduced legislation Opponents say attempts to control over-the-counter purchases at gun shops would only inconvenience law-abiding customers that supplies cruninals.

Statt sheke/ SOF BLITS F

GUN LAWS How gun-purchase laws in New York City and South Florida compare: NEW YORK CITY SOUTH FLORIDA Over the counter sales legal Ban on over-the-counter sales Permit required for possession No permit needed to 6wn; tilast only Florida ID needed to buy. of each own. 6-month waiting period to obtain permit. 3-day waiting period for purchase. Criminal background check, No criminal background check with lingerprinting and photo. Must demonstrate clear need No special need required, 1 103 for pure 59 S 10 S 10 S 10 M "Let's not punish the good guys because of the actions of the bad

that would sharply limit the sale of semiautomatics. Police groups lend to support these reforms, while many other

posed them.

ready flourishes.

crimes

could help police solve major

"I've been in too many situa-

purchased legally," said Bill Yout,

guys," sald state Rep. Al Ostman R-Miami. "The criminals would love for law-solding citizens to not groups concerned with protecting possess guns, and we'd all;be in the right to bear arms have opdeep trouble.

"In Cuba, the first thing bey did Neither side suggests that gun was take away your gun, and then they took away your freedom," control will dry up the market for criminals, Some other nations Gutman sald. could fill a void created by greater restrictions on U.S. gun sales, and

a visi

Law enforcers say that even current federal laws lead to occaan international black market alsional arrests of tilegal boyers and, perhaps more importantly, create a paper trail of records that The debate centers on whether

tougher gun laws in the United States would limit the possibilities help bast criminal enterprises, such as the Shower Posse Gunfor illegal buyers, apprehend at control reformers think tighter releast a few of them, steer their viostrictions would increase those lent enterprises elsewhere and possibilities. art a's 135 provide investigative tools that

"I would like to see it made a little more difficult for dishonest

people, people with a criminal in-tent, to acquire these guna," said Larry McClure, former chief prostions where shootings have taken place, and each time the gun was ecutor in Bergen County, N.J.

McClure said that all too often, he prosecuted violent cases in which guns from Florids and elsewhere were used to shoot people in New Jersey.

"It aikls furt to criminal conduct, the ability to sequire weap-ons in other jurisdictions," Mc-Clure said "Let's throw a few readblocks up to them."



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Special Agent Bruce Snyder checks out a vault with confiscated weapons at the ATF Miami office

Arms smuggled abroad end up helping drugs get into the U.S.

By WILLIAM E. GIBSON and KEN CUMMINS Westington Bureau

Washington Evress WASHINGTON - Florida, a gun buyer's paradise, supplies the fire-power for a vicious circle of drugs and violence in the Caribbean Basin that comes back to wound the state and na-tion.

Firearms investigations show that licensed South Florida gun dealers un-knowingly supply arms to drug gangs.



First of two parts. Florida is a gun-buyer's dream. 17A

narco-terrorists and political assas-sins in Colombia, Jamaica and other drug-producing nations. Taking advantage of hassle-free gun laws in Florida and a few other states, crunicals routinely by bigh-caliber weapons and smuggle them abroad to intimidate foreign govern-ments and shoot down drug-enforce-ment campaigns.

ments and shoot nown argenuorce-ment campaigns. The vicious circle is completed when cocaine shipments, well guard-ed with Florida guns, flow into the United States. The drugs, and more guns purchased in South Florida, thea move to other states, where they lurn

GUN ROUTES Guns and drups silver the same paths, Guns and drups silver the same paths, Guns for from the United States, especially South Fonda, to South America and the Catibbean, while drups for north:



Surinama

Jemeics, 1955-59; Political violence with assault rifles relayed from Florida. Bernsnquitta, Colombia: Continual flow of AR-15 assault rifles smuggled from South Florida to Colombian drug cartels.

Texas to Mexico: Continual flow of Chinese AKS-47 rifles.

Staff graphic/LYNN G. OCCHIUZZO up in violent crimes.⁴ "It's like Florida is the hub — it all goes out from here, the guns to Jamai-ca and the guns to New York," said Capt. Al Lamberti of the Broward Sheriff's Office. "They just go up I-95.

When the drugs go up, so do the guns." While U.S. officials berate other na-tions for failing to halt the flow of drugs, those same nations are fighting SEE GUNS / 16A

EXPORTS IN VIOLENCE CENC

Guns sold in state begin a vicious circle

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"It's like Florida is the hub — it all goes out from here, the guns to Jamsica and the guns to New York." - Capi Al Lamberu of the Broward Shen. 3 Office.

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Gun exports cause concern

alloceneral allicials is Colombia, Ja-ca and Measor are deeply concerned or the proliferation of U.S. mare's id ported guna, particularly from Torr-ind Texas, said George Hopgood, for-gread of international operations for



mine. B POWERPUS, EABLY A VAR.ABLE AMERICATIONS Light of the entry 5-methode or 223-cabbe ammunition. Both rounds are in indepresed use around the send and have been soloted by new simed torget. ILANGE -CAPACITY MARAZINES Cape for the



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Employees at Colombia's Palace of rebels --- using weapons from S Justice were led away in 1985 after Florida --- stormed the palace

this is a transfurgment area for arms to Latis America. "Jasses said. This is be morting place, the Gaussian Carlos of the for This is where the contacts are made and the moory it." "What they need in South Florida is the conduit, the mass with eccertions to South America. We modifierman the tra-

n of foreign pro-forces officials learn about them oversionits ask them to tra-wised in crimical sivestij

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A threat to U.S. citizens

We traced all the guns involved they burned the Colombian ministry killed all the judget and hilled the ju-minister down there — all those came from South Florida. Laid Vinc AFR of Ministry A field is any appropriate the second second

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Texas export: high-caliber handguns for criminals



Easy to buy under loose law, they're smuggled to other states

By Howard LaFranchi Staff writer of The Christian Science Monitor

Austin, Texas

In Texas, it takes only \$40 and a driver's license to purchase a semiautomatic handgun. With the legal purchase of a similar gun in New York City requiring a waiting period and background check, a New York drug dealer considers the smuggled Texas weapon a bargain – even at four times the original price.

As a result, guns purchased in Texas are surfacing on the streets of New York and other American cities – and some foreign countries – where laws make such soughtafter weapons difficult to come by.

Federal officials say Texas is now the second most important "source state," after Florida, for a booming weapons trade. In recent cases hundreds of Texas guns have turned up in New York, with others surfacing in Washington, Los Angeles, Jamaica, and the Philippines.

The state's relatively lax gun laws are part of the explanation, officials say. But an increase in drug trafficking through Texas following stepped up anti-drugtrade efforts in Florida may also have created new interest in Texas guns.

"Recently we're seeing more organizations come down here to get their drugs," says Phillip Chojnacki, Pease sos GUNS next page

A Texas gun dealer displays a Smith & Wesson 9 mm. semiautomatic platol; will this gun show up in New York?

He was simply setting record

NOW warns Democrats on women's issues

By Donald L. Rheem Staff writer of the Christian Science Monitor Washington

The women's movement has fired a



groups. People want to know who is driving the train here, is it interest groups or is there some core set of Sprinciples that animates the party "

THE CHRISTIAN SCIENCE MON

NATIONAL

GUNS from preceding page

special agent in charge of the Houston office of the federal Bureau of Alcohol, Tobacco, and Firearms (ATF), "Perhaps while they're down here doing that kind of business. it's just very convenient to pick up the firearms they need at the same time."

Convenient, and profitable for gun smugglers, who can realize a 300-to-400 percent profit by driving, busing, or flying high-powered weapons to eager markets.

In one case last year, a cache of 18 guns pur-In one case last year, a cache or to guns pur-chased in Dallas was stopped at Los Angeles International Airport. ATF investigators believe the semiautomatic handguns were destined for the city's violent street gangs. This year, federal agents broke up an international heroin ring that operated between New York and Hong Kong - and which purchased much of its firepower in Texas.

In another recent case, three New York resi-dents and a Dallas-area resident were charged with snuggling 131 handguns from Texas to a Brooklyn drug ring. ATF investigators believe some of the guns were used by juvenile lookouts posted at New York heroin "shooting galleries."

"Texas has always been a source state (for guns turning up in New York)" says Bob Creighton, special agent in charge of the ATF bureau in New York. "But we're definitely seeing an increase to it. It's becoming routine now for us to work with our Dallas and Houston offices."

Guns purchased in Texas are "turning up ev-erywhere," Mr. Creighton says. "We're finding them with the drug organizations, youth gangs, muggers, and robbers. These are

guns that are getting into the hands of criminals."

Texas law requires a gun pur-chaser to show proof of legal age and residency. A federal "multiple sales" form must be filled out if more than one handgun is purchased. Gun smugglers easily circhased. Gun singly the flag, however, by sending "straw purchasers"

of setting straw purchasers into many gun shops to buy one gun at a time. "Often it's a woman, alone or with a baby, who agrees to do the buying for a price," says Richard Gamer, Dallas ATF special agent in charge.

Some 800 purchases of weapons in the Dallas area over the past year have been linked to Jamai-can crime gangs or "posses," as they are known. "Four or five years ago we had no Jamaican drug trafficking problem in the Dallas-Fort Worth area," says Mr. Garner, "but now there are esti-mated to be more than 500 posse members here."



This Texas-sold handgun was seized in an arrest

The presence of Jamaican posses in Dallas also explains why guns bought in Texas have surfaced in Jamaica. Last year 55 Jamaicans were arrested on drug-trafficking charges, "and 27 of them were either armed or had weapons close by," Garner notes. "We're finding them armed with a much better, more powerful type of weapon," he adds. "They're staying away from the so-called Saturday-night specials in favor of the high-quality, high-caliber semi automatic pistols.

Federal officials in California say they have not witnessed an infinx of Texas guns on the order of what New York is experiencing. One explanation is that California's strict laws on handgun purchases are simply turning drug traders to assault rifles and shotguns - often equipped with a pistol grip - that are not covered by the law,

"You only have to be 18 to buy a rifle, and there's no waiting period, so that's what they're using to protect their operations here," says Michael C. Huckaby, ATF special agent in charge in Los Angeles.

Federal officials in California and Texas note that their states remain an important source of weapons for narcotics traffickers in Mexico, where gun laws are very strict. "What you have is a lot of bartering of drugs for guns," Dallas's Garner says. "It's a very profitable exchange.

'Often it's a woman with a baby who agrees to buy [guns] for a price.' - Agent Richard Gamer



Lax laws in Texas dilute gun control in other states

DALLAS, TX TIMES-HERALD 272,900 - 5 360,400 CA-- LE -T WORTH METROPOLITAN APEN 14.8.

By Scott Ard OF THE TIMES HERALD STAFF

-7-

Djelacijn Ukperaj and Demir "Den-y" Deskaj, both Yugoslavian nationn١ als, were regular customers at the Gun Gallery in Carrollton. Six times in 1987, federal agents say, they paid cash for small-caliber, semiautomatic pistols - more than 120 in all.

Some of the guns ended up in New York C.:y, where they were sold for up to \$150 each, about three times the purchase price, federal agents say. In March, the men were accused of violating federal firearms laws following a seven-month investigation by the U.S. Bureau of Alcohol, To-bactor and Firearms. Three other peo-pla, none connected to the gun store, also were indicted.

ATF agents are conducting a growing number of such investigations. Because of Texas lax gun laws, sus-pected black marketeers can easily buy carloads of guns, ship them to states or countries with tougher stan-dards and sell them for handsome profits.

From cheap handguns to expensive semiautomatics, several hundred weapors purchased in Dallas and elsewhere in Texas have shown up in New York; Washington, D.C.; Kings-ton lumping the Public purchased and ton, Jamaica; the Philippines and oth-er places in the last two years. ATF agents say. More and more, agents ay, guz.-running is a sideline to drug dealing — a way to boost profits and protect investments. "As the narcotics business contin-

ues to get more violent, the need for firearms will increase," said James Wooter, an agent in the Dallas ATF office, "Now Dallas has been identified as a supplier."

Please see GUNS, A-16



GUNS

Frem A-1

To combat the problem, 48 agents were added to the ATF of feer in Dallas over the last two verse a di-percent increase in viating. The other increasing dila wayons ease tast vers, in chalog one that resulted in a 30 count indictment charging these men with the ideal purchase of 126 meets pewerfol, an in locking bandgion. In 1866 the

other builderf (D. us. a) surveys easies. This sizes ago this securited yeary solitom and fewer guins were movied, Worden said. Agents in Dallas and New York agree that To asis the Ne Sonnay training Elocida of the kinetic process the Ne Sonnay training Elocida of the kinetic process No. Vorkwhich has strict guin laws. Archis.

of weapons for the heavily armed and notoriously ruthless Jamai can drug gangs, called posses In 1987, suspected Jamaican drug dealers bought hundreds of

gins in Dalas, sud Richard Garier, special agent in charge of the Dalas. ATF office: Some remanned in the state but most were resold in New Yurk and Jamarca, he said Of the 55 Jamaicans arrested by local authorities during rads in Dallas last year, more than half were armed or had a gun nearby. Garner soid

"They have shown they have absolutely no regard for human hite," Garner said of the Jamasean posses, "And guns are very much a part of their life."

Some passe members employ "straw parchasers" to obtain weapone, Garrier sant A woman,

I he Jamaicans are buying the quality items. They are buying them for their defensive capabilities.'

possibly carrying a child, is paud as much as \$25 to purchase a weapon from a dealer for a posse member The posses prefer Brim and 45 calibler handguus for their frepriver and resale value: a gun purchased in Dallas for \$300 can 6 tch more than \$1,000 to Kungston, Garner said

"The Januarans are buying the quality densy," and ATF ogent Chais Nelson, "They are buying them for their defensive capabilties."

Anyone with a Texas druer's license, or other proof of residency such as military identification or a lease agreement, can purchase finearms — in virtually untimuted quantities. People who hay more than one gun in five days are required to fill out a "multiple sales form," affirming they are U.S. citherns and have not be ;n convicted of a felony But the law is easily dodged.

ATF sgents mainkin, for instance, that Ukperaj simply used a Texas driver's license issued in liss fornier roommate, Edwin Maldonado, to buy guns. Agents believer Maldonado, wanted by authorities, sold some of the guns at a 300 percent markup in New York ('ity, others were used to norder Licenton "shouling galler



An agent with the Dallas ATF office holds an M-16 as he scans a row of confiscated weapons.

ies," places where addicts gather to inject the drug, Woolen said. The ATE gniered the case

when several handguns purchased by Ukperaj and Deskaj were recovered by New York City police, some within 11 days of their purchase, according to a federal affidavit.

Using sales records, the ATF learned that the weapons were bought at the Gun Gallery and contacted the store Paul Resenlerg, who legally sold the guns

to the men, told agents he had received a phone call from Deskal, who said "some friends from New York had just come into town and wanted to buy some handguns," according to the affidavit.

ATF agents set up surveillance at the Gun Gallery. In Sept 8, Ukperaj, accompanied by Deskaj, went to the store and bought five inexpensive handgurs. Ukperaj told an agent posing as a clerk he was "going not of lown the toet

day in order to take care of business," the affidavit says. They then carried the guns to their 1986 Thunderbird.

After several months of examining sales records and watching the defendants in New York and Dallas, the ATF obtained a federal grand jury indictment charging Ukperaj, Deskaj, Maldonado and two others with violations of j federal gun statutes, including purchasing guns with false idenutheation. Nelson of the ATF doer not blame gun slop owners for selling weapons by the serve. The dealers are caught in the middle on this thing," he said "He gets (the larger's) ID, he would in his multiple sales form 'They know what there obligation is."

But gun-control advocates ar gue that the state should tougher its standards.

"Its very easy in Texits to pet-z gen," said John Jagger, a former professor at University of Texa at Dalka and memberly of Wash ington, D.C.-based Blandgur Control Inc Jagger would like Texas to require the Incensing o gun owners and to impose inandiatory waiting period be tween purchase and possession of a wrappon That would allow authorities to check the gun bay er's background

Jagger concedes there is still opposition to stronger gun law in Texas and elsewhere. Dave Conover, a spokesman with the National Rifle Association, calls. waiting period "ludi-rous" and says Texas gun laws are appropriate.

"The tools exist. What needs to be beefed up is the enforce intent," for such



ABA chief wants end to exports

By Debbie Howlett USA TODAY

The American Bar Associathe American bar Associa-tion president is urging Presi-dent Bush to "respond swiftly and affirmatively" to Colom-bia's plea that he curb the export of U.S.-made semiautomatic weapons. "The availability of milifary

assault weapons is a funda-mental obstacle in the fight against drugs," ABA president L Stanley Chauvin said in a let-ter dated Monday,

ABA spokesman Bruce ABA spokesman Bruce Nicholson admits Colombia's request offers a new pitch in seeking a ban on the weapons,

seeking a ban on the weapons, White House spokesman Marlin Fitzwater says Colom-bia's plea "certainly points out a problem we'd like to find some way to deal with." More than 50 percent of weapons seized in Colombia in the past 18 months were U.S.-made, the Bureau of Alcobol, Tobacco and Firearms says

Tobacco and Firearms says.

Drug traffickers hire people with clean records to buy gurs for them, officials say. Buyers working several stores can quickly build a fair-size cache.

Elsewhere in the drug wars: ▶ The Senate subcommittee on investigations releases a 12month study of Colombian drug cartels today. The report — detailing operations of the two major Colombian cartels — concludes with a call for greater coordination by feder-al law enforcement agencies of intelligence inforcement

Iroduce legislation increasing next year's anti-drug spending by \$3.9 billion, funding it with 0.6 percent cuts in domestic and defense programs. ▶ FBI Director William Ses-sions says all 9,700 agents will

get semiautomatic 10mm

 Beinautomatic tumm
 handguns to meet the threat of heavily armed drug dealers.
 President Bush takes his anti-drug message into the schools today, with a broadcast to be carried on all three networks and on closed-circuit TV at 12:15 p.m. (EDT). > In Colombia, cartels con-tinued random violence in re-

taliation for the government's crackdown, assassinating the former mayor of Medellin who crusaded to oust drug cartels from the city, the cocaine cen-tar of Colombia.

The Washington Post

AN INDEPENDENT NEWSPAPER

The Firepower of Drug Lords

ORLD WARS are not waged without weaponry, and today's global drug wars are no exception: the enemy is loaded. Any serious defeat of the world's narco-terrorist cartels must include the severing of weapon supply lines. That mission starts right here, in the White House and Congress, with decisive action to eliminate the marketing of semiautomatic assault-style weapons deemed to have no serious, legitimate recreational uses. President Bush began this process with a ban on imports of certain weapons so designated by the Bureau of Alcohol, Tobacco and Firearms, the organization that continue's to play an expert lead role in tracking the firearms of the drug underworld and in enforcement under tough federal firearms statutes. But this important mission will be pointless if domestic versions of these same weapons continue tr. be legally available.

You don't try to fight a war while you're a major supplier of arms to the enemy. This is why every major law enforcement organization in the country supports a ban on domestic versions of these same weapons that have no legitimate purposes.

The rights of gun owners are not at stake here. It is not a matter of telling Americans that they cannot have guns for their protection, for sporting purposes or for collections. More and more gun owners, firearms experts and sportsmen are concluding on their own that distinctions can be made, that they and fellow Americans share the concerns of their police and others who are on the front lines and who seek support.

Gun owners in this country as a whole are not mindless, trigger-happy zealots. But the largest organizations purporting to speak for them still fail to make vital distinctions based on public safety, common sense and the patriotism that rejects any abetting of a clear and dangerous enemy. Congress has legislation to do something about this, and the sooner Congress acts, the better off their constituents will be.

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The Son Diego Maion Southern California is swiftly becoming a haven for gun runners and drug traffickers. The latest evidence is the seizure of nearly 200 semi-automatic rifles and 80,000 rounds of ammunition in San Diego and Irvine.

Federal authorities believe the \$285,000 cache of AK-47s, a Chinese-made copy of the Russlan rifle, was destined for sale to drug dealers in Mexico. But these weapons are becoming increasingly commonplace among drug traffickers in San Diego as well.

During the last eight months, no fewer than 358 AK-47s have been confiscated in the course of narcotics raids throughout the city. This has prompted Police Chief Bob Burgreen to increase the firepower of officers who patrol San Diego's toughest streets. Similarly, federal Drug Enforcement Administration agents are carrying semi-automatic weapons to defend themselves against neavily armed narcotics dealers. To its credit, California has already banned the manufacture, sale and unregistered possession of more than 25 types of semiautomatic weapons. The ban, which will become effective next year, has also spurred congressional action to enact a nation-

wide prohibition against these

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potent firearms. The case for a federal law is convincing. There are approximately 3 million semi-automatic weapons in this country. The Bush administration's permanent ban on the importation of 43 types of semi-automatics is virtually meaningless because most purchased in this country are American-made. In fact, the partial prohibition amounts to little more than trade protectionism for U.S. gun manufacturers.

 The Senate Judiciary Committee is considering a bill by Sen. Howard Metzenbaum, D-Ohio, to ban the manufacture and sale of 25 types of assault weapons, which are designed to kill human beings. Owners with valid registration papers could either keep their guns or sell them. But all sales would be strictly regulated to include a two-week background investigation of prospective buyers.

A companion proposal by Rep. Henry Waxman, D-Calif., would ban 11 kinds of semi-automatics. It would also require purchasers of existing weapons to undergo rigorous background checks, obtain approval from local law-enforcement agencies, pay \$200 transfer fees and register their guns with the U.S. Bureau of Alcohol, Tobacco and Firearms.

Both bills reflect a growing national consensus that the constitutional right to bear arms does not include semi-automatics capable of firing more than 30 rounds in a single clip. Congress should follow California's lead by banning these weapons and denying drug traffickers their weapon of choice.

Can Diego Union

F-19-59 Correction D-10

A Wednesday editorial incorrectly stated that \$58 AK-47 semi-automatic assault rifles have been selred in San Diego during the last eight months. The actual total is less than 150.

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Monday, May 22, 1989 25 cents

Guns bought in state sweep across nation to trigger crime wave

By KEN CUMMINS and WILLIAM E. GIBSON Washington Bureau

WASHINGTON — Guns bought at a Homestead gasoline station last year quickly ended up in the hands of crimi-nals in New York City. One of them, an Uzi mini-carbine, semi-automatic pistol, was used in the attempted murder of a New York City. police officer. Abother, a Browning 3-mm pistol, was used in the drug-related killing of a Queens man. Two Hungardan-made 9-mm hand.

im pistol, was used in the drug-related stilling of a Queean ma. Two Hungarian-made 9-mm hand-guns from the same batch turred up in an attempted murder in the Broat. Two MAC 11 semi-automatic platists, with si-bencers, were seized along with 1.086 pounds of cocaine, §1 million in cash and five South American drug dealers. Another Browning 9-mm from the Homestead haul was found aboard a "war wagon," a van full of armaments and bulletproof vesits that rolled through New York City streets as part of a drug dealer's security operation. New York, despite having one of the forgest gun laws in the nation, suf-ered the havoe wrough by these wap-ons, but Florida provided the gun-bay-ons, but Florida provided the gun-bay-cheso and easy. "Fordia has always been a major States because of the ease with which



Second of two parts. M Nation's capital is end of the line for drugs. 7A

you can get weapons there," said Leon Kellaer, former U.S. attorney for the Southern District of Florida. Just as Florida supplies direower for drug-smuggling cartels in Latia Ameri-ca, the state's gun shops are a favorite source of weaponty for drug gangs and criminals operaling in major cities in the United States. A major boon to Florida's gun indu-try has been the emergence of the vio-lent Jamaican "poser" drug gangs na-tionvide. Federal law enforcement officials asy the poses form the largest cocaine and crack smuggling networks in this country and they have been rely-ing on Florida guns to enforce discipline in their operations.

SEE GUNS /74

EXPORTS IN VIOLENCE

Nation's capital is end of the line for drugs

KEN CUMMINS

TON - The violence in a South Florida a decade use a few high-powered man resorted to the m

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State is key source of weapons used in U.S. crime

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of the graw used in those tillings and in Florida. ught in Florida come back to inforcement officials who con-forestingly violed drug trade is up the coast to New York.

ter, an agent Administra-

re pomeening a firearm without infrequi-dortement officials tell me that (jo 13 percent of the guas mas-is the United States that end up is market are out of Forda," lep. Larry Smith, D-Hollywood, st of tougher gua laws and a pod of one to two weeks before

M. not every state where you can not every state where you can not awork's and buy a gun," and, or into a service station soce Komestead Plane Exiton, where a light dealer sold the fateful weap-

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ida, the new arrivals of orsits identification to be our charted equils for



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"It's not every state where you can walk into a Woolworth's and buy a gun." - U.S. Rep. Larry Smith, D-Hollywood We're finding that a

significant percentage of them [illegal aliens] are coming in with criminal backgrounds or are coming in with criminal intent."

Daniel Cadman the U.S. Immigra

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takes an AR-15 from a shelf in the vault as office in Mismi

HANDGUN CONTROL

ONE MELION STRONG . . . working to keep handguns out of the wrong hands.

SEMI-AUTOMATIC ASSAULT WEAPON LEGISLATION (101st Congress)

SIDE-BY-SIDE

PROVISION	S. 386 METZENBAUM	S. 747 Deconcini substitute	S. 733 / H.R. 1154 MOYNIHAN/GIBBONS	H.R. 1130 STARK	H.R. 662 Berman	H.R. 825 TORRICELLI
PURPOSE	Bans the domestic manufacture, sale, and importation of <u>new</u> semi- automatic assault weapoes,	Bans the domestic manufacture, sale, and importation of <u>new</u> semi- automatic assault weapons.	Bans the importation of semi-automatic assault weapons and large-capacity ammunition magazines and	Bans the domestic manufac- ture, sale, and importation of <u>new</u> semi-automatic assault weapoos and parts. Probibits	Prohibits the transfer or possession of semi-automatic assault weapons and parts.	Prohibits possession or transfer of certain semi- automatic shorguns and rifles determined to be unsuitable
	and of large-capacity detachable magazines and ammunition belts.		ammunition belts.	<u>new</u> large-capacity ammuni- tion feeding devices. Applies same restrictions to existing semi-automatic assault weapons applied to machine		for lawful recreational purposes.
·				guns under current law.		
SEMI- AUTOMATIC FIREARMS LISTED	Avtornat Kalashnikov; Uzi; M-10 or M-11; TEC-9 and TEC-22; Ruger Mini 14; AR- 15; Beretta AR 70; FN-FAL or FN-FNC; Steyr AUG;	Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models); Action Arms Israeli Military Industries Uzi and Galili:	Avtomat Kalashnikov; Uzi; M-10 or M-11; TEC-9 and TEC-22; Ruger Mini 14; AR- 15; Beretta AR 70; FN-FAL and FN-FNC: Stevr AUG;	Any type of Avtomat Kalashnikov, Uzi, Ingram M- 10 or M-11, Intratec TEC-9 or TEC-22, Ruger Mini-14, Colt AR-15, Beretta AR 70,	Any Uzi carbine or pistol; Ingram MAC-10 or 11 pistol or carbine; military-style semi-automatic rifle known as Avtomat Kalashnikov;	To be determined by Secretary of Treasury. Requires Secretary to establish seven-member Firearms Evaluation Pagel
	USAS 12 shotgun; shotguns with a revolving cylinder such as Street Sweeper and Striker 12; Heckler & Koch HK	Beretta AR 70 (SC-70); Colt AR-15 and CAR-15; Fabrique Nationale FN-FAL, FN-LAR, and FN-FNC;	Heckler & Koch HK91, 93 and 94; USAS 12 shorgun; Street Sweeper and Striker 12 revolving cylinder	FN-FAL or FN-FNC, Steyr AUG, USAS 12 shotgun, shotguns with a revolving cylinder such as Street	shotgun of type known as a Street Sweeper; any parts designed or intended to convert a fitr-arm into a	responsible for recommending standards to be used by Secretary in determining suitability of
•	91A3 (.308 cal.), HK 93A-2 (.223 cal.), HK 94A-2 (9mm) and HK 94A-3 (9mm); Galil 5,56mm and 7.62mm; Spingfield Armory SAR-48	MAC-10 and MAC-11; Steyr AUG; Intratec TEC-9; Street Sweeper and Striker 12.	shotguns; any other semi- automatic firearm with fixed magazine capacity over five rounds (H.R. 1154);* any other abotgun with fixed	Sweeper and Striker 12, semi-automatic weapons fed by ammunition belt or feed strip, semi-automatic shotguns with magazine,	weapon desc foed in bill; any semi-automatic centerfire rille that accepts a detachable magazine with capacity of 20 or more rounds; any shotgun	semi-automatic rifles and shotgans for lawful tecreational purposes.
	(.308 cal.) and variations; SIG 550/551 Assault Rifle in .223 cal.; Coiray SWD 9mm and variations; FA MAS in 5.56mm (.223 cal.); Mossberg		magazine, cylinder or drum capacity over 6 rounds.	cylinder or drum. capacity over 6 rounds, any weapon designated as a semi- automatic assault weapon by the Secretary of the Treasury	with barrel less than 19 inches and a folding stock or magazine capacity of more than 6 rounds; any firearm with a barrel less than 12	
	Model 500 Bullpup 12 shotgun; Feather AT-9 centerfire semi-automatic in 9mm; Valmet M76 and M78 (308, 223, 7.62 x 39mm);		 S. 733 bans importation of semi-automatic fircarms with fixed magazine capacity exceeding 10 rounds. 	using criteria listed below,	inches that is a modification of semi-automatic centerfire rifle that accepts detachable magazine with capacity of 20 or more rounds; or that is	
	(most must sup a panel)		Contraction of the contract		er mere romme, bi stat is	

Handgun Control Inc., 1225 Eye Street, NW, Suite 1100, Washington, DC 20005 • (202) 898-0792 • FAX (202) 371-9615 703 Market Street, Suite 1511, San Francesco, CA 94103 • (415) 546-1884, FAX (415) 546-0895

		PROVISION	S. 386 METZENBAUM	S. 747 DECONCINI SUBSTITUTE	S. 733/H.R. 1154 MOYNTHAN/GIBBONS	H.R. 1190 STARK	H.R. 69 BERMAN	H.R. 825 TORRICELLI
		SEMI- AUTOMATIC FIREARMS LISTED	Mark 6 Sterling Carbine (9mm); Dragunov Soiper tille (7.62 x 39mm); AP 9, 9mm assault pistol; Thompson		·		a semi-automatic weapon originally designed to accept magazine with a capacity of 20 or more rounds.	
		(Cont.)	Ordnance Mi (.45 cal.); Franchi SPAS 12 shotgun; All other models by the same manufacturer with same					
			design which may have slight modifications and any other firearm with action design identical or nearly identical					
			to assault weapons specified in bill,					
		TREATMENT OF EXISTING WEAPONS	Permits lawful possession and transfer of semi-automatic assault weapons lawfully possessed before effective date of Act, subject to restrictions listed below,	Permits tawful possession and transfer of semi-automatic assault weapons lawfully possessed before effective date of Act, subject to restrictions listed below.	No comparable provision,	Permits lawful possession and transfer of semi-automatic assault weapons lawfully possessed before effective date of Act, subject to restrictions fisted below.	Possession unlawful 30 days after enactment.	Does not apply to presession of semi-automatic shotguns or rifles possessed before effective date.
		AUTHORITY TO DESIGNATE ADDITIONAL FIREARMS AS SEMI-	New assault weapons may be added to firearms specified in Act only by legislation, Secretary of Treasury may issue emergency order	The Secretary of Treasury may recommend for approval by Congress additional firearms to be designated as assault weapons.	The Secretary of Treasury shall designate a semi- automatic firearm as an assault weapon if the firearm was primarily designed as	The Secretary of Treasury shall publish a list of firearms designated semi-automatic assault weapons within 60 days of enactment. Addi-	No comparable provision. All firearms within bill's definition of assault weapons would be banned.	No comparable provision Presumably the Secretary of Treasury will make deter- minations on suitability of firearms for lawful
		AUTOMATIC ASSAULT WEAPONS	(subject to rescission by Congress) barring cale of new assault weapons for up to one year.	anani internet	military or law enforcement armament. Requires Secretary to periodically publish list of banned	tional weapons may be added to list based on following criteria:		recreational purposes based on panel recommendations.
					imported weapons. Author- izes Secretary to issue emergency orders barring imports for up to 90 days.	 Design features: Rifles and shorguns with folding or collapsible stock, pistol grip facilitating firing 	ал В	
						from non-shoulder position, barrel length 22° or less; pistols with ammunition magazines outside the pistol grip;		

AUTHORITY TO DESIGNATE ADDITIONAL FIREARMS AS AUTOMATIC ASSAULT WEAPONS

PROVISION

(Cont.)

S. 386 METZENBAUM

S. 747 DECONCINE SUBSTITUTE

S. 733/H.R. 1154 MOYNHIAN/GIBEONS

H.R. 669 BERMAN



Any weapon with threaded barrel to accommodate flash suppressor or silencer, with bayonet mount, or with barrel shroud; -

<u>ILR. 1190</u> STARK

(2) Whether weapon originally designed or used for military or law enforcement purposes;

(3) Degree to which weapon is similar in design to any weapon listed in bill;

(4) Whether weapon was originally designed for fully automatic fire;

(5) In case of rifle/pistol, whether manufacturer sells or distributes a magazine with capacity of 11 rounds or more, produced specifically for use with such a weapon;

(6) Whether a kit is available to convert weapon to fully automatic.

Requires Secretary of Treasury to designate as semi-automatic assault weapons facsimiles of semiautomatic firearms specifically listed in bill.

			PROVISION	<u>s. 386</u> Metzenbaum	S. 747 DECONCINI SUBSTITUTE	S. 733/H.R. 1154 MOYNTHAN/GIBBONS	11.8. 1120 STARK	<u>ILR. 669</u> BERMAN	ILE. 825 TOBRICTIAL
			FIREARMS SPECIFICALLY EXEMPTED	No comparable provision.	No comparable provision,	Any weapon that does not use fixed ammunition; was manufactured before 1899; operates manually by bolt,	Any single shot weapon; any weapon which does not use fixed ammunition; was in production before calendar	Any weapon that does not use fixed ammunition; was manufactured before 1898; may only be operated by bols	No comparable provision.
						lever, slide or similar action; is a single-shot weapon; is a multiple barrel weapon; is a weapon,other than a shotgun,	year 1899; may only be operated manually by bolt, slide lever or similar action; is a pistol or rifle with an	or slide lever action; has multiple barrels; has a revolving cylinder and is not semi-automatic; has a fixed	
						having a revolving cylinder; has a fixed magazine capacity of 5 rounds or less (H.R. 1154);* cannot employ detachable magazine or belt	ammunition feeding capacity of 10 or fewer rounds; uses rimfire ammunition and employs a tubular magazine; uses .22 cal. rimfire	magazine capacity of 10 rounds or less; short barreled shotgun or short-barreled rille used solely as prop in film or T.V. production; uses	
					-	with more than 5 rounds (H.R. 1154):** is modified so as to render it permanently unserviceable or to make it	ammunition (other than TEC-22 type).	.22 cal. rimfire ammunition; any semi-automatic weapon that uses exclusively Manolicher style clips. Any	
						permanently a device which may not appropriately be designated as an assault weapon.		semi-automatic weapon manufactured before 1954. Any rimfire weapon that employs tubular magazine.	
						 S. 733 — fixed magazine capacity of 10 rounds or less. 			
						** S. 733 ~ cannot employ detachable magazine or ammunition belt with capacity greater than 10 rounds.			
			AMMUNITION FEEDING DEVICES	Prohibits future sales of detachable magazines with a repacity in excess of 20 rounds.	No comparable provision.	Bans importation of large- capacity magazines and ammunition belts which hold more than § rounds (11.R.1154).*	Prohibits possession or transfer of large capacity ammunition feeding devices and parts with a capacity of more than 10 rounds.	No comparable provision.	No comparable provision.
						• 5.733 Bans importation of large-capacity magazines and ammunition belts which hold mure than 10 rounds.			
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HR. 82 TORRICELLI	No cumpurable provosion.	No compatible provision.	No comparable provision.
LLR. 602 DERMAN	No comparable provision.	Na comparable provision.	No comparable provision.
H.R. 1150 STARK	Requires owners of seni- rationatic astault weapons owned at lime controls become (fictive (obh day her rateinerol) to reguler fireturn with Secretary of Treatury	No comparable provision.	Requires purchases of semi- austonatics a stand weapons oward on or before effective due to undergo effective record check. XXXI transfer for imposed.
S. 713/1/R. 115 MOYNII/AN/GIBBONS	No comparable provision.	No computable provision.	No coapurable provision.
S. 247 DECONCINI SUIISTITUTE	Na regiutation requirement.	Requires current owners of stauth wreptow which wre purchade prior to 10.6 A(3). differire date to request documentary proof of coversible (form 44) or coversible (form 44) or documentary for a dock. Teausts mode with \$2 dock freezend and a dock. Teausts mode with \$2 dock freezend and a dock. Teausts and a dock a dock freezend a dock a dock a dock freezend a dock a dock a dock freezend a dock a dock a dock a dock freezend a dock a dock a dock a dock freezend a dock a dock a dock a dock a dock freezend a dock a dock a dock a dock a dock a dock freezend a dock a dock freezend a dock a	For transdoas involving non-defar, requires bolt he edier and purchaser of an austra vegon which was owed prior to the Art's effective date to fill out and referine date to fill out and requiredent.
S. 286 METZENBAUM	No registration requirement.	Requires owners of werpons owned no trebfore date of restatment is have or obtain decumentary proof of ownership (fourn 4473 or equivalent).	For transfer of weapons owned on the fore date of remained, required 14 day waining priori and optional background check only transferer by local law enforcement. Information formation for the check much destrupted by haven forent within 20 by . Transferers much check much within 20 by . Transferers much check much within 20 by . Transferers the whom they cell the version
ROVISION	REGISTRATION	PROOF OF OWNERSHIP	TRANSFER

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	PROVISION	S. 386 METZENBAUM	S. 747 DECONCINE SUBSTITUTE	S. 733/ILR. 1154 MOYNIHAN/GIBBONS	H.R. 1120 STARK	HLR. 669 BERMAN	11.R. K25 TORRICE111
	EXCEPTIONS	Restrictions do not apply to weapons intended for use by federal, state, or local government agency. Secretary of Treasury has discretion to grant exemptions from Act	Restrictions do not apply to weapons intended for use by federal, sinte, or local government agency.	Import ban does not apply to weapons imported under suthority of federal, state or local government agency.	Restrictions do not apply to weapons intended for use by federal, state or local government agency.	Ban on transfer, possession does not apply to surrender of assault weapon to federal, state, or local law enforcement.	Ban on transfer or presession does not apply to surrender of semi-automatic shotgun or rifle to federal, state or local law enforcement or return of stolen semi-automatic rille,
		for use of semi-automatic assault weapons in firearms research, exhibition, or motion picture or television production.					sholgun to rightful owner.
	PROSCRIBED	Sats ownership of firearm by persons convicted of violent middemeanor involving use of a firearm or involving illegal drugs.	Adds to the list of persons prohibited from transporting or receiving firearms or ammunition in interstate or foreign commerce anyone who violates record keeping requirements of bill.	No comparable provision.	No comparable provision,	No comparable provision.	No comparable provision.
	PENALTIES	Penaltics for basic firearms violations of the Gun Control Act of 1968 (18 U.S.C. 15 922-925) apply: Felony subject to maximum impri-	Penakies for basic firearms violations of the Gun Control Act of 1968 (18 U.S.C. § 922-925) apply: Feloay subject to maximum impri-		Penaltics for basic ficearms violations of the Gun Control Act of 1968 (18 U.S.C. 19 922-925) apply: Felony subject to maximum impri-	Penalties for basic firearms violations of the Gun Control Act of 1968 (18 U.S.C. 11 922-925) apply: Felony putject to maximum impri-	Penakies for basic firearms violations of the Gun Control Act of 1968 (18 U.S.C. 14 922-925) apply: Felony subject to maximum impri-
		sonment of 5 years (or 10 years for violation of machine gun transfer/ possession provision, 18 U.S.C. § 922(0)), a fine of up to \$250,000 (\$500,000 if an organization), or both.	sonment of 5 years (or 10 years for violation of machine, gun transfer/ possession provision, 18 U.S.C. § 922(0)), a fine of up to \$250,000 (\$500,000 if an organization), or both.		somment of 5 years (or 10 years for violation of machine gun transfer/ possession provision, 18 U.S.C. § 922(0)), a fine of up to \$250,000 (\$500,000 if an organization), or both.	somment of 5 years (or 10 years for violation of machine- gun transfer/ possession provision, 18 U.S.C. § 922(0)), a line of up to \$250,000 (\$500,000 if an organization), or both.	somment of 5 years (or 10 years for violation of machine gun transfer/ possession provision, 18 U.S.C. 1 922(0)), a fine of up to \$250,000 (\$500,000 if an organization), or both.
		Penaltics for violations of National Firearms Act of 1934 (26 U.S.C. 11 S801- 5872) apply: Felony subject			Penalties for violations of National Firearms Act of 1934 (26 U.S.C. 15 S801- 5872) apply: Felony subject		
		to maximum imprisonment of 10 years, a line of up to \$250,000 (\$500,000 if un organization), or both, firrarms osubject to furfeiture.			to maximum imprisonment of 10 years, a fine of up to \$250,000 (\$500,000 if an organization), or both.		

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PROVISION	S. 386 METZENBAUM	S. 747 DECONCINI SUBSTITUTE	S. 733/H.R. 1159 MOYNTHAN/GIBBONS	H.B. 1199 STARK	H.R. 669 BERMAN
PENALTIES (Cont.)	Enhanced penaltics for use of firearm in commission of certain federal crimes also apply.	Enhanced penalties for use of firearm in commission of certain federal crimes also apply.		Enhanced penalties for use of furearm in commission of certain federal crimes also apply.	
	Bill clarifies that knowing violations of the record- tecping provisions are subject to penalics of up to ix months in prison, 51,000 fine, or both. Creates new penalty for violation of provision barring sale of large magazines of 2 years imprisonment, 51,0000 fine, or both. For use of an assault weapon in commission of factor at violent	Bill clarifics that knowing violations of the record- teeping provisions are subject to penalics of up to 6 months in prixon \$1,000 fac, or both. For use of an asta ult weapon in commission of fadral violent erime or drug traffiching crime, bill creates new mandatory enhanced penality of 10 yean imprisonment.		Bill clarifies that use of semi- automatic assault weapon in commission of federal violent erime or drug trafficking erime subject 10 same enhancement penaltics as apply to methone gues (30 years imprisonment for first offense. It de imprisonment for thost release for second offense). Semi-automatic assault wrapons subject to same penalties currently	
	crime or drug trafficking crime, bill creates new mandatory enhanced penalty of 10 years imprisonment.	Creates cabanced criminal penaltics (10 years maximum imprisonment, fines, or both) for smuggling or importing a		 applied to machine guns for transfer or possession violations (10 years imprisonment). 	

<u>II.R. 825</u> TORRICELLI

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penaltics (10 years maximum imprisonment, fines, or both) for smuggling or importing a firearm into the U.S. with the intent to commit a drug trafficking or violent crime.

Imposes criminal penalties (2-10 years imprisonment and fines) for theft of a firearm.

Provides for mandatory revocation of Federal supervised release for persons possessing a firearm in violation and prior to expiration of the supervised release.

INR. 825 TORRICTILL	No comparable provision.	No comparable privisuir.	Date of enactment.
H.R. 609 HERMAN	No cumparable provision.	No comparable provision.	Date of coadment.
118.1120 SIASS	No comparable provissive	No comparable provision.	(0 days after enartment
S. TIJILE, 1151 MOYNIIAN/GIBBONS	No comparable provision.	No comparable provision.	30 days after coactocol.
S. 247 DECONCINI SUISTITUTE	Directs the Justice Department to condust an Demonth study and report to the Senate on the Art's impact on durg, trafficing and violent erime.	Repeals the Act (with the exception of the firearm penalty provisicas) three years alter the effective date.	30 days after enactment. The Scorelary of Treasury is required to issue record- keeping requirements within 90 days after enactment.
N. 196 METZENRALIK	No comparable provision.	No comparable provision.	30 days alter enatment.
NOISION	Study	sunser	EFFECTIVE DATE

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ORGANIZATIONS THAT HAVE ENDORSED A BAN ON ASSAULT WEAPONS

- * A.F.S.C.M.E.
- * AFL-CIO, Public Employee Department
- American Academy of Pediatrics
- * American Academy of Physical Medicine and Rehabilitation
- American Association of Retired Persons (AARP)
- American Bar Association (ABA)
- * American Congress of Rehabilitation Medicine
- * American Federation of Teachers (AFT)
- * American Jewish Committee
- American Jewish Congress
- * American Medical Student Association
- * American Public Health Association
- * Americans for Democratic Action (ADA)
- * Anti-Defamation League of B'nai B'rith
- * B'nai B'rith Women
- * Church of the Brethren, Washington Office
- Emergency Nurses Association Fraternal Order of Police (FOP)
- Gray Panthers
- * International Association of Chiefs of Police (IACP)
- * International Ladies' Garment Workers' Union
- * Mennonite Central Committee, Washington Office
- * National Association of Counties (NACO)
- National Association of Police Organizations (NAPO)
- * National Council of Jewish Women
- * National Council of Negro Women, Inc.
- National Education Association (NEA) National Organization of Black Law Enforcement Executives (NOBLE) National Sheriffs' Association (NSA)
- * National Urban Coalition Police Executive Reserch Forum (PERF)
- * Religious Action Center of Reform Judaism
- * The Episcopal Church, Washington Office
- * The U.S. Conference of Mayors
- * United Church of Christ, Office for Church in Society

(* = Groups specifically endorsing S. 747)

CENTER TO PREVENT HANDGUN VIOLENCE

MEMORANDUM

FROM:	Dennis A. Henigan, Esq. Director Legal Action Project
DATE:	July 1989
Re:	Constitutionality of proposed assault weapon legislation

Issue

Is the Second Amendment a Constitutional impediment to a federal law which bans domestic manufacture of semi-automatic assault weapons and regulates their domestic resale?

Short Answer

No. The courts have consistently upheld regulation of possession and use of military-type weapons.

Analysis

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The Second Amendment provides:

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.

The Supreme Court's most recent decision on the Second Amendment is <u>U.S. v. Miller</u>, decided fifty years ago. 307 U.S. 174 (1939). In that case, the defendant was indicted under the National Firearms Act for transporting an unregistered sawed-off shotgun in interstate commerce. <u>Id.</u> at 175. Declaring the Act unconstitutional, the trial court dismissed the charge, but the

This Memorandum was prepared with the assistance of Robert J. Morris, Esq. of the law firm of Foley & Lardner.

1225 Eye Street, NW, Suite 1100, Washington, DC 20005 • (202) 289-7319 • FAX (202) 371-9615 703 Market Street. Suite 1511 San Francisco. CA 94103 • (415) 546-9189

Supreme Court reversed. According to the Supreme Court, the "obvious purpose" of the Second Amendment was to preserve the effectiveness and assure the continuation of the state militia. <u>Id.</u> at 178. Interpreting and applying the Amendment with that end in view, the Court observed:

In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.

Id. Accordingly, the Supreme Court held that the trial court's dismissal of the indictment against Miller on Second Amendment grounds was improper. Id. at 83.

Significantly, "the Court did not hold . . . that the Second Amendment is an absolute prohibition against all regulation of the manufacture, transfer and possession of any instrument capable of being used in military action." <u>United States v. Warin</u>, 530 F.2d 103, 106 (6th Cir.), <u>cert. denied</u>, 426 U.S. 948 (1976). <u>See Cases</u> <u>v. United States</u>, 131 F.2d 916, 922 (1st Cir. 1942), <u>cert. denied</u> <u>sub nom. Velazquez v. United States</u>, 319 U.S. 770 (1943). Rather, instead of formulating a general rule for Second Amendment decisions, <u>Miller</u> "merely dealt with the facts of that case." <u>Warin</u>, 530 F.2d at 106. <u>Accord Cases</u>, 131 F.2d at 922. After all, the Supreme Court clearly could not have intended to hold in <u>Miller</u> that Congress may not regulate "any weapons except antiques 'such as a flintlock musket or a matchlock harquebus.'" <u>Warin</u>, 530 F.2d at 106, <u>guoting Cases</u>, 131 F.2d at 922.

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Thus, since Miller, the federal courts have decided Second Amendment cases on their own facts, regularly upholding laws regulating possession and use of military-type weapons. In Warin, for example, the Sixth Circuit unanimously upheld a statute which regulated possession of submachine guns. Even though the defendant in Warin was subject to enrollment in the Ohio militia, the Court held that the Second Amendment did not confer upon him the right to possess a submachine gun. 530 F.2d at 106. In the Sixth Circuit's view, "there is absolutely no evidence that a submachine gun in the hands of an individual 'sedentary militia' member would have any, much less a 'reasonable relationship to the preservation or efficiency of a well regulated militia.'" Id. guoting Miller, 307 U.S. at 178. The Tenth Circuit has also upheld a federal statute regulating possession of machine guns. See United States v. Oakes, 564 F.2d 384 (10th Cir. 1977). In that case, the Tenth Circuit declared:

> To apply the amendment so as to guarantee appellant's right to keep an unregistered firearm which has not been shown to have any connection to the militia, merely because he is technically a member of the Kansas militia, would be unjustifiable in terms of either logic or policy.

Id. at 387.

Despite their military character, privately-owned machine guns are not reasonably related to the preservation or efficiency of the state militia. Accordingly, the courts have regularly sustained federal regulations of such weapons. There is no reason that the courts should treat military-style semi-automatic assault weapons any differently. Therefore, a federal statute which regulates possession, use, and manufacture of such assault weapons will clearly pass muster under contemporary Second Amendment doctrine.

----- Sarah Bradv-

September 1, 1989

The Honorable Fortney H. Stark 1125 Longworth H.O.B. U.S. House of Representatives Washington, DC 20515 Attn: John Edgell

Dear Representative Stark:

As you know, I have been working hard in support of legislation (H.R. 1190) to ban the importation and domestic manufacture of semi-automatic assault weapons. I sincerely appreciate your efforts to get these deadly firearms off of our streets.

As the enclosed newspaper articles document, the Colombian drug cartels are purchasing assault weapons in the U.S. which they are using to wage their war against Colombian public officials. Over the last 18 months, the Bureau of Alcohol, Tobacco and Firearms has traced 158 guns at the request of the Colombian government. Of those traces, eighty five guns--or 54%-came from Florida, a State in which semi-automatic assault guns can be purchased over-the-counter without a waiting period or background check. In the last fiscal year, the U.S. Customs Service seized over 33,000 weapons marked for illegal export, over 28,000 of them from the southeastern region.

The <u>Washington Times</u> notes that the drug lords and their hired assassins favor assault weapons such as the MAC 10 and the UZI because of their high rate of fire, concealability, and large-capacity magazines. Experts acknowledge that the drug cartels are armed with sophisticated weapons comparable to the armed forces of the country they are fighting against.

Your leadership in support of H.R. 1190 will help curb the flow of U.S. arms to international drug organizations. It will also prevent the domestic drug violence which has become all too prevalent in our nation's streets. Our own law enforcement officers are now the targets of these violent drug traffickers. For example, on August 22, a New Jersey State Trooper was gunned down by three crack dealers armed with a MAC 11 after he pulled them over for a routine traffic violation.

President Bush's permanent import ban has closed our borders to foreign-made assault weapons. It is important that Congress act to end the domestic manufacture of these drug guns. We must stop supplying narcotic traffickers with assault weapons in their escalating drug war, both at home and abroad.

I hope that you will urge your colleagues to get tough on these drug traffickers by voting for H.R. 1190. Thank you for all of your help.

Sincerely.

(anal)

Sarah Brady

Enclosures

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Cartels prefer submachine guns

By Bill Genz

Large ersenals of automatic weapons and other sophisticated arms have made Colombia's Jrue jords formulable enemies in the in ternational battle against narrouic-trafficking according to experts fa Milar with cartel activities But some experts obspute the por-tranal of any cartel trepower as-romies. They ag such groups at the Medellin and Cale cartels – kolom-bas most powerful drug groups –

operate more like traditional organ-ized crime syndicates or terrorisis than as private military machines According to one Latin American fatir - specialism who has taken part a operations against drug traffick-ers. Commerand drug barons have orga crivenals of semiautomatic m-fles, machine guns and pistols at their disposal

The weapons are used to protect cosine production facilities, ship-ping mutes and drug leaders against an array of threats, including leftist guerrillas and government troops The arms have been employed in

the campaign of assassinations against government and public fig-ures seeking toughet measures against Colombian drug traffickers, who hy most estimates provide up to dip percent of the cocanie that enters the United States.

The context states. The weapons they use are semi-automatics and such guns as the MAC 10 and Use submachine guns) that are bought on the arms market in the United States? said the spe-calist, who asked not to be named. Colombuo, authorized, have Colombian authorities have

see LORDS, page A8

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suized arsenals containing Chinese-made versions of the AK-47, US-made M-16 and the European-made G-3 semiautomatic rifles, experts

G-3 semiautomatic rifles, experts su Exports have described tha MAC 10 as the "weapon of choice" for Colombian assassing because the small submachine guin first power-ful 45 caliber ammunition at a rate of the semialer and but also is used by bodyguards of drug kingpins and is an easity concealed weapon that can spray large volumes of bullets, experts su.

ican appay large volumes of bullets, where say: Also, according to the Latin af-farrs specialist, the Medellin cartel has hired "soldlers of fortune," in-cluding former Israeli mercenaries, who have provided the drug king-sing sources and singer rifles with night-viewing scopes. By contrast, most of the Colom-bian police force is equipped with eight shot M-1 carbines. World War II-era weapons. Hundreds of Colombian public figures, including the government's bog law enforcement official. have been gunned down in recent months und rug related killings. Reports de scribing the deaths invariably use the term 'hail of bullets'. The rapid firing of an advanced mathema by a lossing y-dudble on morder of Colombian presidential and date Louis Carlos Galanon Fri-day. Antorney General Dick Thorn-

day. Attorney General Dick Thorn-burgh said the assassination of Mr. Galan had "an aura of terrorism," rather than of an organized crime

rather than of an organized crime bit. White House National Security dayiser Brent Scowcroft said Satur-day that the Colombian government us facing a severe problem of drug lords with "private armies" operat-ing in the country. Edward Ezell, a weapons special-ist with the Smithsonian Institution, and a shiphoid of weapons sciently was beliaved destimed for either the

was believed destined for either the Medellin cartel or Colombian guerrillas.

ritias. The shipment included 1,000 sem-tautomatic G-3 rifles — guns used by NATO forces, 250 HK-21 machine



A bathroom lined in Italian marble is one of the luxuries of a residence confiscated from accused Medellin Cartel leader Jose Rodnguez Gacha alias "The Mexican," and patrolled by army officers yesterday.

guns and ten 60mm mortars with 600 rounds of ammunition, he said. It was the first of three planned arms

rounds of ammunition, he said. If was the first of three planned arms shipments. "That's an infantry battalion," Mr. Erail said. Think you can said y say the basic wasping comparable to the armed forces of the country they go a ganas." The acquisition of mortars by the drug cartels as sign that the dealers were preparing to go beyond the de-ense of their cocanne-production camps or the protection of cartel leadership, he said. "These organizations are better armed than what we have tradition-ally seen in organized-crime type of operations". He said "And they have the money to match any escalations For example, if the U.S. military." For example, if the U.S. military and the the said they bare the said the said the said they have the money to match any escalations are better that we might propose or imple-ment."

ment." For example, if the U.S. military sends in more helicopters to aid the Colombian police or military forces, the drug barons have enough nioney to purchase Stinger anti-arcraft missiles, which are said to be avai-able on the international black mar-

Nextean?: and patrolled by army office ket, he said. The drug lords also have obtained top-quality arms from corrupt mil-tary officers in some of the Latin and Central American countries. Mr. Exell said. They have very well-equipped. "They have very thing from small arms to helicopitrs." Mr. Geidard girds are very well-equipped. They have every thing from small arms to helicopitrs." Mr. Geidard helicopitrs." Mr. Geidard the drug cartels are 'very intag ble" entities that are secretive and capable of moving rapidly from lo-cation to location by helicopiter or armored automobile. "The least hat are secretive and capable of moving rapidly from lo-cations to location by helicopiter or armored automobile. "The cartel is nothing solid. There's no command post that you can send troops against? the said. They Medeline cartel. Colombias for second with or burger than 10 groups of peasants in various lite-tions around you benef than 10 groups of peasants in various lite for second with or burger than 10 groups against. The more than 10 groups have been given money and material items from the drug

groups. In return they, are equipped with machine guns and are called upon to carry out assistinations and other violence against the cartel's oppo-nents, the specialist said.

As assassin can be hired for as little as \$30, he said. Most assassina-tions have been carried out by

tions have been carried out by attackers riding motorcycles or in jeeps who corner their target and then shoth him. Besides the magned drug carrels, about 300 small narcoules traffick-ers operate in Colombia, the special-sit suit. Bach trafficker exports about an avange of 100 pounds of cocine annually.

cocaine annually. Some shipments of the drug are flown into the United States by an craft, and other shipments are made by ship through third countres such as Japan, the specialist said Mexican drug organizations ai-purchase Colombian cocaine ard ship it through the US Mexicar border, he said

 James Morrison contributes this report.

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One comment stated that DEA does not have the authority to disqualify a regular customer. Section 1018(c)[1] of the Act states specifically that the Attorney General "may disqualify any regular customer" as specified in the Act.

Act. Two comments stated DEA had no authority to limit the 15-day advance notice waiver for listed precursor chemicals based on the Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances. Section 1312.24(1) has been deleted from the final regulations.

Transshipment and In-Transit Shipment of Precursors and Essential Chemicals

Advance Notice of Importation for Transshipment or Transfer (§ 1313.31)

Five comments were received addressing this section. Two comments asked for clarification of "regulated person" as it relates to transhipments that originate from foreign countries. The party who caused the transshipment or transfer is responsible for notification.

Two comments discussed the need for Two comments discussed the need for waiver requirements. Providing a waiver of the reporting requirements would only encourage diversion into the illicit market. To prevent the United States from having its borders facilitate the transfer of chemicals for illicit operations, the United States needs the time to determine the legitimacy of the customer.

Suspension of Shipments (§ 1313.41)

One comment requested clarification on how this authority will be exercised. on now this authority will be exercised. The comment also pointed out that the Act states the "legal and factual basis" for suspension must be provided by the Administrator. The Act specifies the requirements for the suspension of a shipment and the wording of the regulation has been changed to parallel the language of the Act the language of the Act.

Request for Hearing (§ 1313.54)

Two subsections have been added to clarify the procedures governing hearings.

Miscellaneous

Two comments requested DEA to include in the regulations the penalties pertaining to noncompliance with the Act. Regulations are not the appropriate form for histing penalties; they are clearly set forth in the Act. The Piperkidne Report (DEA Form 420), OMB approval 1117-6017, is

eliminated. The Administrator of the Drug

Enforcement Administration hereby contifies that this final rule will have no

significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 661 et seq. This rule is not a major rule for purposes of Executive Order (E.O.) 12231 of February 17, 1963. Pursuant to sections 3(c)(3) and 3(c)(2)(C) of E.O. 12391 and section 6653(b) of Pub. L. 100-690, this rule has been reviewed by the Olfice of Management and Budget. The information collection requirements in the proposed rule were approved by the Office of Management and Budget of the information collection requirements, set information collection requirements, set information collection requirements, set significant impact upon entities whose forth in this final rule, were approved on

July 19, 1989. This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1310

Drug enforcement administration, Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1313

Drug enforcement administration, Drug traffic control, Exports, Imports, Reporting requirements.

For reasons set out in the preamble, Chapter II, Title 21, Code of Federal Regulations is amended as follows.

1. Part 1310 is revised to read as follows:

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES

1310.01

- Definitions. Substances covered. Persons required to keep records 310.02 1310.03
- and file reports. 1310.04 Maintenance of records. 1310.05 Reports.
- 1110.08
- Content of records and reports. Proof of identity. 1310.07
- Authority: 21 U.S.C. 802, 830, 871(b).

§ 1310.01 Definitions.

As used in this part, the following terms shall have the meanings specified: (a) The term "Act" means the

(84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Act, as amended Export Act, as amended [84 Stat. 1265;

LXDORT ACI, 85 amenueu (or Stat. 1220, 21 U.S.C. 951).
 (b) The term "listed chemical" means any listed precursor chemical or listed essential chemical.

(c) The term "listed precursor chemical" means a chemical specifically

designated by the Administrator in § 1310.02(a) that, in addition to legitimate uses, is used in manufacturing a controlled substance in violation of this title and is critical to the creation of

(d) The term "listed essential chemical" means a chemical specifically designated by the Administrator in § 1310.02(b) that, in addition to legitimate uses, is used as a solvent. reagent, or catalyst in manufacturing a controlled substance in violation of this title.

(e) The term "regulated person" means any individual, corporation, partnership, association, or other legal entity who manufactures, distributes, Imports, or exports a listed chemical, a tableting machine, or an encapsulating machine.

(f) The term "regulated transaction" means: (1) A distribution, receipt, sale,

importation or exportation of a threshold amount as determined by the Administrator which includes a cumulative threshold amount for multiple transactions of a listed chemical, except that such term does not include:

(i) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person; in this context, agents or employees means individuals u the direct management and control of

the regulated person: (ii) A delivery of a listed chemical to (ii) A delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this paragraph does not relieve a distributor, importer, or exporter from compliance with this part

relieve a distributor, importer, or exporter from compliance with this part of Part 1313 of this chapter; (iii) Any category of transaction specified by regulation of the Administration as excluded from this definition as unnecessary for enforcement of the Act;

(iv) Any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act; or (v) Any transaction in a chemical

mixture

(2) A distribution, importation, or exportation of a tableting machine or encapsulating machine except that such.

term does not include a domestic lawful distribution in the usual course of distribution in the usual course of business between agents and employees of a single regulated person; in this context, agents or employees means individuals under the direct individuals under the direct management and control of the regulated person. (g) The term "chemical mixture" means a combination of two or more

chemical substances, at least one of which is not a listed precursor chemical or listed essential chemical, except that or issed essential chemical, except that such term dues not include cay combination of a listed precursor chemical or a listed essential chemical with another chemical that is present solely as an impurity or which has been created to evade the requirements of the Act

(h) The term "retrievable" means that (h) the term "retrievable" means that records required by this section are kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that they can be readily retrieved and separated out from all other records in a reasonable time and/or records are kept reasonable time and/or records are kept on which the listed chemicals, tableting, machines, and encapsulating machines are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records or the mainiained separate from vill other score

all other records. (i) The term "tableting machine" means any manual, semi-automatic, or fully automatic equipment which may be used for the compaction or molding of powdered or granular solids, or semi-solid material, to produce coherent solid tablete

(i) The term "encapsulating machine (i) the term encapsulating interime means any manual, semi-automatic, or fully automatic equipment which may be used to fill shells or capsules with any powdered, granular, semi-solid, or liquid material.

(k) Any term not defined in this section shall have the definition set forth in section 102 and 1001 of the Act [21 U.S.C. 802 and 951] and \$ 1301.02 of this chapter.

§ 1310.02 Substances covered.

§ 1310.2 Subtances covered. The following chemicals have been specifically designated by the Administrator of the Drug Enforcement Administration as the listed chemicals subject to the provisions of this part and Part 1313 of this chapter. (a) Listed Precursor Chemicals: (1) Anthranilic acid and its salts. (2) Benzyu (wande)

Aninfrantile acid and its saits.
 Enzyl cyanide
 Ephedrine, its saits, optical isomers, and saits of optical isomers.
 Engonovine and its saits
 Ergotamine and its saits
 N-Accetylanthranilic acid ond its salts

(7) Norpseudoephedrine, its salts, optical isomers, and salts of optical

- isomers
- (8) Phenylacetic acid and its salts
 (9) Phenylacetic acid and its salts, optical isomers, and salts of optical Isomers
- (somers (10) Piperidine and its salts (11) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers (12) J.4-Methylenedioxyphenyl-2-
- propanone (b) Listed Essential Chemicals:
- Acetic anhydride Acetone Ìzí
- Aceione Benzyl chloride Ethyl ether Hydriodic acid

- (8) Potassium permanganate (7) 2-Butanone (or Methyl Ethyl Ketone or MEK)
- (8) Toluene

(c) The Administrator may add or delete a substance as a listed chemical by publishing a final rule in the Federal Register following a proposal which shall be published at least 30 days prior to the final rule.

(d) Any person may petition the Administrator to have any substance added or deleted from paragraphs (a) or (b) of this section.

(a) Any petition under this section
 shall contain the following information:
 (1) The name and address of the

(2) The name of the chemical to which

(3) The name of the chemical to the petition pertains: (3) The name and address of the manufacturer(s) of the chemical (if known);

(4) A complete statement of the facts which the petitioner believes justifies the addition or deletion of the substance from paragraphs (a) or (b) of this

(5) The date of the petition. (1) The Administrator may require the petitioner to submit such documents or

petitioner to submit such documents or written statements of fact relevant to the petition as he deems necessary in making a determination. [g] Within a reasonable period of time after the receipt of the ~stition_the Administrator shall r jy the petitioner of his decision and U , eason therefor. The Administrator need not accept a petition if any of the rewirements The Administrator need not accept a petition if any of the requirements prescribed in paragraph (e) of this section or requested pursuant to paragraph (f) of this section are lacking or are not clearly set forth as to be readily understood. If the petitioner desires, he may amend and resubmit the petition to meet the requirements of paragraphs (e) and (f) of this section. (h) If a petition is granted or the Administrator, upon his own motion, proposes to add or delete substances as

listed chemicals as set forth in paragraph (c) of this section. he shall issue and publish in the Federal Register a proposal to add or delete a substance as a listed chemical. The Administrator as a listed chemical. The Administrator shall permit any interested person to file written comments regarding the proposal within 30 days of the date of publication of his order in the Foderal Register. The Administrator will consider any commonts filed by interested persons and publish a final rule in accordance with his decision in the matter. the matter.

§ 1310,03 Persons required to keep records and file reports.

Each regulated person who engages in a regulated transaction involving a listed chemical, a tableting machine, or an encapsulating machine shall keep a record of the transaction as specified by 1310.04 and file reports as specified by § 1310.04 § 1310.05.

§ 1310.04 Maintenance of records.

(a) Every record required to be kept subject to \$ 1310.03 for a listed precursor chemical, a tableting machine, or an encapsulating machine shall be kept by the regulated person for four years after the date of the transaction.

(b) Every record required to be kept subject to \$ 1310.03 for a listed essential chemical shall be kept by the regulated person for two years after the date of the transaction.

(c) A record under this section shall (c) A record under this sections shall be kept at the regulated person's place of business where the transaction occurred, except that records may be kept at a single, central location of the regulated person if the regulated person has notified the Administration of the intention to do so. Written notification must be submitted by registered or certified mail, return receipt requested, to the Special Agent in Charge of the DEA Divisional Office for the area in which the records are required to be kept.

(d) The records required to be kept under this section shall be readily retrievable and available for inspection and copying by authorized employees of the Administration under the provisions of 21 U.S.C. 880.

(e) The regulated person with more than one place of business where records are required to be kept shall records and required to be kept shall devise a system, to detect any party purchasing from several individual locations of the regulated person thereby seeking to avoid the application of the cumulative threshold or evading e requirements of the Act.

(f) The quantitative threshold or the cumulative amount for multiple

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transactions within a calendar month to be utilized in determining whether a

receipt, sale, importation or exportation is a regulated transaction is as follows:

(1) Listed Precursor Chemicals:

Chemical	Threshold by base weight
10) Bency figuride 10) Security (spinice 10) Security (sp	30 kilograms, 1 kilogram, 1 kilogram, 10 grams, 20 grams, 20 grams, 20 grams, 20 kilograms, 500 grams, 500 grams, 500 grams, 20 kilograms,

(2) Listed Essential Chemicals:

(i) Imports and Exports

Chemical	Threshold by volume	Threshold by weight
(6) Accione (c) Benzyl chloride (c) Benzyl chlorid (c) Benzyl chloride (c) Benzyl chloride (c) Benzyl	N/A	1,500 kilograms. 4 kilograms. 1,364 kilograms. 22.8 kilograms. 500 kilograms. 1,455 kilograms.

(ii) Domestic Sales

Chemical	Threshold by volume	Threshold by weight
(B) Actiona		135.8 kilograms. 5.7 kilograms. 55 kilograms.

(iii) The cumulative threshold is not applicable to domestic sales of Acetone, 2-Butanone (MEK), and Toluene.

§ 1310.05 Reports.

(a) Each regulated person shall report to the Special Agent in Charge of the DEA Divisional Office for the area in which the regulated person making the report is located, as follows:

(1) Any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of this part.

(2) Any proposed regulated transaction with a person whose description or other identifying characteristic the Administration has

previously furnished to the regulated person.

(3) Any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated responsible for reporting a loss in-transit is the supplier.

(4) Any domestic regulated transaction in a tableting machine or an

(b) Each report submitted pursuant to paragraph (a) of this section shall, whenever possible, be made orally to the DEA Divisional Office for the area in which the regulated person making the report is located at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved and as much in advance of the conclusion of the transaction as possible. Written reports of transactions listed in paragraphs

(a)(1), (a)(3) and (a)(4) of this section will subsequently be filed as set forth in § 1310.06 within 15 days after the regulated person becomes aware of the circumstances of the event. A transaction may not be completed with a person whose description or identifying characteristic has previously been furnished to the regulated person by the Administration unless the transaction is approved by the Administration.

§ 1310.06 Content of records and reports, (a) Each record required by § 1310.03 shall include the following:

(1) The name and address of each party to the regulated transaction. (2) The date of the regulated

transaction.

(3) The name, quantity and form of packaging of the listed chemical or a description of the tableting machine or

encapsulating machine (including make, model and serial number). (4) The method of transfer (company

(5) The type of identification used by the purchaser and any unique number on that identification.

(b) For purposes of this section, (i) for purposes of this section, normal business records shall be considered adequate if they contain the information listed in paragraph (a) of this section and are readily retrievable from other business records of the

from other business records of the regulated person. (c) Each report required by § 1310.05 shall include the information as specified by § 1310.06(a) and, where obtainable, the telephone number of the to \$ 1310.05(a)(1) or (a)(3) must also include a description of the include a description of the circumstances leading the regulated person to make the report, such as the reason that the method of payment was uncommon or the loss unusual. If the report is for a loss or disappearance under § 1310.05(a)(3), the circumstances of such loss must be provided (In-transit, theft from premises, etc.). (d) A suggested format for the reports is provided below;

Supplien
Name
Business Address
City
State
Zio
Zip
Purchaser: Name ————————————————————————————————————
Business Address
City
Ciale
7in
Zip
Identification
Shipping Address (if different than purchaser
address):
Street
City
State
Zip
Date of Shipment-
Name of Listed Chemical(s)
Name of Listed Chemical(s) Quantity and Form of Packaging
Make:
Model:
Serval #
Method of Transfer
If Loss or Disappearance:
Dale of Loss
Type of Loss
Description of Circumstances

Public reporting burden for this collection of information is estimated to average ten minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this

collection of information, including suggestions for reducing this burden, to the Drug Enforcement Administration, Records Management Section, Washington, DC 20537; and to the Office Washington, DC 20537 and to the Office of Management and Budget, Paperwork Reduction Project No. 1117–0024, Washington, DC 20503.

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§ 1310.07 Proof of Identity.

(a) Each regulated person who engages in a regulated transaction must identify the other party to the transaction. For domestic transactions, this shall be accomplished by having the other party present documents which would verify the identity of the other party to the regulated person at the time the order is placed. For export the order is placed. For export transactions, this shall be accomplished by good faith inquiry through reasonably available research documents or publicly available information which would indicate the existence of the foreign customer. No proof of identify is required for foreign suppliers.

suppliers. (b) The regulated person must verify the existence and apparent validity of a business entity ordering a listed chemical, tableling machine. For domestic transactions, this may be accomplished by such methods as checking the business of threater the last method telephone directory, the local credit bureau, the local Chamber of Commerce bureau, the local Chamber of Commerce or the local Better Business Bureau. For export transactions, a good faith inquiry to verify the existence and apparent validity of a foreign business entity may be accomplished by such methods as verifying the business telephone listing through international telephone inform the functional telephone information, the firm's listing in international or foreign national chemical directories or other com chemical directories or other commerce directories or trade publications. confirmation through foreign subsidiaries of the U.S. regulated person, verification through the country of destination's embassy Commercial Attache, or official documents provided by the purchaser which confirm the existence and apparent validity. (c) When transacting business with a new representative of a firm, the resulated person must verify the claimet merce

new representative of a inm, the regulated person must verify the claimed agency status of the representative. (d) For sales to individuals or cash purchasers, the type of documents and other evidence of proof must consist of at least a signature of the purchaser, a driver's license and one other form of identification. Any exports paid in cash are suspect and should be handled as such. For such exports, the regulated person shall diligently obtain from the purchaser or independently seek to

confirm clear documentation which contra clear documentation which proves the person is properly identified such as through foreign identity documents, driver's license, passport information and photograph, etc. Any regulated person who fails to adequately prove the identity of the other party to the transaction may be subject to the specific penalties provided for violations of law related to regulated transactions in listed chemicals.

(e) For a new customer who is not an (c; For a new customer who is not an individual or cash customer, the regulated person shall establish the identity of the authorized purchasing agent or agents and have on file that person's signature. electronic password, or other identification. Once the authorized purchasing agent has been established, the agent list may be updated annually rather than on each order. The regulated person must ensure that shiroments are not made unless the that shipments are not made unless the order is placed by an authorized agent of record.

 (f) With respect to electronic orders, the identity of the purchaser shall consist of a computer password, identification number or some other means of identification consistent with electronic orders and with § 1310.07(e).

For reasons set out in the preamble, Title 21, Code of Federal Regulations, Part 1313 is added to read as follows.

PART 1313—IMPORTATION AND EXPORTATION OF PRECURSORS AND ESSENTIAL CHEMICALS

1313.01 Scope. 1313.02 Definitions.

- Importation of Procursors and Essential Chemicals
- 1313.12 Requirement of authorization to
- 1313.12 Requirement of authorization to import.
 1313.13 Contents of import declaration.
 1313.14 Distribution of import declaration.
 1313.15 Waiver of 15-day advance notice for chenical importers.

Exportation of Precursors and Essential Chemicals

- 1313.21 Requirement of authorization to

- 1313.21 Requirement of autonization to export. 1313.22 Contents of export declaration. 1313.23 Distribution of export declaration. 1313.24 Waiver of 15-day advance notice for chanical exporters.

1313 25 Foreign import restrictions.

Transshipment and In-Transit Shipment of Precursors and Essential Chemicals

1313.31 Advance notice of importation for transshipment or transfer. 1313.41 Suspension of shipments.

Heatings

1313.51 Hearings generally. 1313.52 Purpose of hearing. 1313.53 Waiver of modification of rules.

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Sec. 1313.54 Request for hearing. 1313.55 Burden of proof. 1313.56 Time and place of hearing. 1313.57 Final order.

Authority: 21 U.S.C. 602, 630, 871(b), 971.

§1313.01 Scope.

Procedures governing the importation, exportation, transshipment and in-transit shipment of precursors and essential chemicals pursuant to section 1018 of the Act (21 U.S.C. 971) are governed generally by that section and specifically by the sections of this part.

§ 1313.02 Definitions.

(a) The term "chemical export" means transferring ownership or control, or the sending or taking of threshold quantities of listed chemicals dut of the United States (whether or not such sending or states (whether or hat such sending or taking out constitutes an exportation within the meaning of the Customs and related laws of the United States).

related laws of the United States). (b) The term "chemical exporter" is a regulated person who, as the principal party in interest in the export transaction, has the power and respont; billity for determining and controlling the sending of the listed chemical out of the United States. (c) The term "regulated person" means any individual, corporation, partnership, association, or other level

partnership, association, or other legal entity who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine

(d) The term "regulated transaction" means:

(1) A distribution, receipt, sale, importation or exportation of a threshold amount as determined by the Administrator which includes a cumulative threshold amount for multiple transactions of a listed chemical, except that such term does not include:

(i) A domestic lawful distribution the usual course of business between agents or employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person; (ii) A delivery of a listed chemical to

or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this paragraph does not relieve a distributor. Importer, or

exporter from compliance with this part of Part 1310:

(iii) Any category of transaction specified by regulation of the Administration as excluded from this definition as unnecessary for enforcement of the Act;

(iv) Any transaction in a listed chemical that is contained in a drug that chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act; or (v) Any transaction in a chemical mixture.

mixture. [2] A distribution, importation, or exportation of a tableting machine or encapsulating machine except that such term does fot include a domestic lawful distribution in the usual course of business between agents and employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person. (e) The term "chemical import" means

(e) The term "chemical import" means with respect to a listed chemical, any bringing in or introduction of such listed chemical into either the jurisdiction of the United States or into the Customs territory of the United States (whether beneficial beneficial to a state of the distribution) or not such bringing in or introduction constitutes an importation within the meaning of the tariif laws of the United

(I) The term "chemical importer" is a regulated person who, as the principal party in interest in the import party in interest in the import transaction, has the power and responsibility for determining and controlling the bringing in or introduction of the listed chemical into the United States.

(g) The term "regular customer" means a person with whom the regulated person has an established business relationship for a specified listed chemical or chemicals that has been reported to the Administration subject to the criteria established in

subject to the criteria established in § 1313.02[]). (h) The term "regular supplier" means a supplier with whon: the regulated person has an established business relationship that has been reported to

relationship that has been reported to the Administration subject to the criteria established in § 131.02(i). (i) The term "established businesis relationship with a regular supplier" means the regulated person has purchased a listed chemical from a foreign supplier at least once within the past twelve months, or twice within the past twelve months, the term also means that the regulated person has novided that the regulated person has provided the Administration with the following information in accordance with the Waiver of 15-day advance notice requirements of § 1313.15:

(1) The name, street address, telephone number, telex number and, where available, the facsimile numbe ber of the chemical importer and of each

the chemical importer and of each regular supplier, and (2) The frequency and number of transactions occurring during the preceding 12-month period. (1) The term "estabilished business" relationship with a foreign customer" means the regulated person has exported a listed chemical at least once within the past is months, or twice within the past is months, or twice within the past twelve months to a foreign manufacturer, distributor, or end user of the chemical that has an established business in the foreign established business in the foreign country with a fixed street address. A country with a fixed street address. A person or business which functions as a broker or intermediary is not a customer within the meaning of this section. The term also means that the regulated person has provided the Administration with the following information in accordance with the Waiver of 15-day advance notice requirements of \$ 1313.24 \$ 1313.24:

(1) The name and street address of the chemical exporter and of each regular customer;

(2) The telephone number, telex number, contact person, and where available, the facsimile number for the chemical exporter and for each regular customer;

(3) The nature of the regular customer's business (i.e., Importer, exporter, distributor, manufacturer, etc.), and if known, the use to which the listed chemical or chemicals will be applied;

(4) The duration of the business relationship; (5) The frequency and number of

 (s) The requercy and number of transactions occurring during the preceding 12-month period;
 (6) The amounts and the listed chemical or chemicals involved in regulated transactions between the chemical exporter and the regular customer;

(7) The method of delivery (direct shipment or through a broker or forwarding agent); and (8) Other information that the

chemical exporter considers relevant for determining whether a customer is a

regular customer. [k] The term "Customs territory of the United States" means the several states, the District of Columbia, and Puerto Ríco

(I) The term "jurisdiction of the United States" means the Customs territory of the United States, the Virgin Islands, the Canal Zone, Cuam, American Samoa, and Palau.

(m) Any term not defined in this section shall have the definition set

forth in sections 102 and 1001 of the Act (21 U.S.C. 802 and 951), and \$1301.02 and \$ 1310.01 of this chapter.

Importation of Precursors and Essential Chemicals

§ 1313.12 Requirement of authorization to

(a) Each regulated person who imports a listed chemical that meets or exceeds the threshold quantities identified in § 1310.04(f) of this chapter shall notify the Administrator of the importation not

the Administrator of the importation not later than 15 days before the transaction is to take place. (b) A completed DEA Form 488 must

be received at the following address not later than 15 days prior to the importation:

Drug Enforcement Administration, P.O. Box 28348, Washington, DC 20038.

A copy of the completed DEA Form 486 may be transmitted directly to the Drug Enforcement Administration, Drug Control Section, through electronic facsimile media not later than 15 days prior to the importation.

Control Section, inrough electronic facsimile media not later than 15 days prior to the importation. (c) The 15-day advance notification requirement for listed chemical imports may be waived for any regulated person who has satisfied the requirements for reporting to the Administration an established business relationship with a foreign supplier. For such imports, the Drug Enforcement Administration. Drug Control Section on or before the date of importation through use of the mailing address listed in § 1313.12(b) or through use of electronic facsimile media.

§ 1313.13 Contents of Import declaration.

(a) Any precursor or essential chemical listed in § 1310.20 of this chapter may be imported if that chemical is necessary for medical, commercial, scientific, or other legitimate uses within the United States, Chemical importations into the United States for immediate transfer/ transshipment outside the United States must comply with the procedures set forth in § 131.31.

(b) Any regulated person who desires to import a threshold or greater quantity of a listed chemical shall notify the Administration through procedures set forth in § 1313.12 and distribute three copies of DEA Form 486 as directed in § 1313.14.

§ 1313.14. (c) The DEA Form 486 must be executed in triplicate and must include the following information: (1) The name, address, telephone number, telex number, and, where

(1) The name, address, telephone number, telex number, and, where available, the facsimile number of the chemical importer, the name, address, telephone, telex, and where available.

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the facsmile number of the broker or forwarding agent (if any): and [2] The name and description of each

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(2) the tanke and description of each listed chemical as it appears on the label or container, the name of each chemical as it is designated in 1310.02 of this chapter, the size or weight of container, the number of containers, the net weight of each listed chemical given in kilograms or parts thereof; and the gross weight of the shipment given in kilograms or parts thereof; and

(3) The proposed import date, the foreign port of exportation and the first U.S. Customs Port of Entry; and

(4) The name, address, telephone number, telex number, and, where available, the facsmile number of the consignor in the foreign country of exportation.

§ 1313.14 Distribution of Import declaration.

The required three copies of the precursor and essential chemical import declaration (DEA Form 486) will be distributed as follows:

(a) Copy 1 shall be relained on file by the regulated person as the official record of Import. Import declaration forms involving a listed precursor chemical must be retained for four years: declaration forms for listed essential chemicals must be retained for two years.

(b) Copy 2 is the Drug Enforcement Administration copy used to fulfill the notification requirements of Section 6053 of the Chemical Diversion and Trafficking Act of 1988, as specified in § 1313.12.

(c) Copy 3 shall be presented to the U.S. Customs Sevice along with the customs entry. If the import is a regulated transaction for which the 15day advance notice requirement has been waived, the regulated person shall declare this information to the U.S. Customs Service Official by checking the block on the DEA Form 406 designated for this purpose.

§ 1313.15 Walver of 15-day advance notice for chemical importers.

(a) Each regulated person shall provide to the Administration the identity of any regular supplier of the regulated person not later than August 31, 1989, along with the information required by \$1313.02[1] for documenting an established business relationship with a regular supplier.

(b) Not later than October 30, 1989, each regular supplier so identified in notifications made under paragraph (a) of this section shall be a regular supplier for purposes of waiving the 15-day advance notice requirement, unless the regulated person is otherwise notified in writing by the Administration. (c) A supplier identified on an initial

(c) A supplier identified on an initial DEA Form 486 submitted after October 30. 1989, shall, after the expiration of the 15-day period, qualify as a regular supplier, unless the Administration otherwise notifies the regulated person in writing.

(d) All chemical importers shall be required to file a DEA Precursor and Essential Chemical Import/Export Declaration (DEA Form 486) as required by § 1313.12.

Exportation of Precursors and Essential Chemicals

§ 1313.21 Requirement of authorization to export.

(a) No person shall export of cause to be exported from the United States any chemical listed in § 131002 of this chapter, which meets or exceeds the threshold quantities identified in § 131004(f) of this chapter until such time as the Administrator has been notified. Notification must be made not later than 15 days before the transaction is to take place. In order to facilitate the export of listed chemicals and implement the purpose of the Act, regulated persons may wish to provide notification to the Administration as far in advance of the 15 days as possible.

(b) A completed DEA Form 488 must be received at the following address not later than 15 days prior to the exportation:

Drug Enforcement Administration, P.O. Box 28346. Washington. DC 20038.

A copy of the completed DEA Form 486 may be transmitted directly to the Drug Enforcement Administration. Drug Control Section. through electronic facsimile media not later than 15 days prior to the exportation.

(c) The 15-day advance notificition (c) The 15-day advance notification requirement for listed chemical exports may be waived for any regulated person who has satisfied the requirements of \$ 1313.24 for reporting to the Administration an established business relationship with a foreign customer as defined in \$ 1313.02(f). A DEA Form 486 export declaration to a foreign customer must be received by the Drug Enforcement Administration. Drug Contral Section, on or before the date of exportation through use of the mailing address listed in \$ 1313.21(b) or transmitted directly through use of electronic facsimile media. (d) No person shall knowingly or

(d) No person shall knowingly or intentionally export or cause to be exported a listed chemical in violation of the law of the country to which the chemical is exported. Likewise, no

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person shall export or cause to be person shall export or cause to be exported any listed chemical when that person has reasonable cause to believe the regulated transaction is in violation of the law of the country to which the chemical is exported. The Administration will publish a notice of foreign import restrictions for listed chemicals of which DEA has knowledge as provided in § 1313.25.

§ 1313.22 Contents of export declaration.

(a) Any precursor or essential chemical listed in § 1310.02 of this chapter which meets or exceeds the quantitative threshold criteria established in § 1310.04(f) of this chapter may be exported if that chemical is

may be exported if that chemical is needed for medical, commercial, scientific, or other legitimate uses. (b) Any regulated person who desires to export a threshold or greater quantity of a listed chemical shall notify the Administration through procedures cullined in § 131.3.21 and distribute three copies of DEA Form 486 as directed in § 131.3.2 § 1313.23. (c) The DEA Form 486 must be

[c] The DEA Form 488 must be executed in triplicate and must include all the following information:

 (1) The name, address, telephone number, telex number, and, where available, the facsimile number of the chemical exporter, the name, address, telephone number, telex number, and, where available, the facsimile number of the export broker, if any;
 (2) The name and description of each listed chemical as it appears on the label or container, the name of each listed chemical as its appears on the label or container, the name of an each label or container, the name of each listed chemical as its appears on the label or container, the name of an each listed chemical as its appears on the label or container.

listed chemical as it is designated in § 1310.02 of this chapter, the size or weight of container, the number of containers, the net weight of each listed chemical given in kilograms or parts thereof, and the gross weight of the shipment given in kilograms or parts thereof;

(3) The proposed export date, the U.S.

 (a) the proposed exportation, and the foreign port of exportation, and the foreign port of entry; and
 (4) The name, address, telephone, telex, and where available, the facsimile number of the consignee in the country where the chemical shipment is destined; the name(s) and address(es) of

destined; the name(s) and address(es) or any intermediate consignee(s). (d) Notwithstanding the time limitations included in paragraph (b) of this section. a regulated person may receive a waiver of the 15-day advance notification requirement following the procedures outlined in § 1313.24. (e) Declared exports of listed chemicals which are refused related

chemicals which are refused, rejected, or otherwise deemed undeliverable may be returned to the U.S. chemical exporter of record. A brief written notification (this does not require a DEA Form 486) outlining the circumstances must be sent to the Drug Enforcement Administration, P.O. Box 28340, Washington, DC 20038, following the return within a reasonable time. This return within a reasonable time. This provision does not apply to shipments that have cleared foreign customs, been delivered, and accepted by the foreign consignee. Returns to third parties in the United States will be regarded as imports.

§ 1313.23 Distribution of export declaration.

The required three copies of the precursor and essential chemical export

precursor and essential chemical export declaration (DEA Form 466) will be distributed as follows: [a] Copy 1 shall be retained on file by the chemical exporters as the official record of export. Export declaration forms involving a listed precursor chemical must be retained for four years; declaration forms for listed essential chemicals must be retained for

(b) Copy 2 is the Drug Enforcement Administration copy used to fulfill the notification requirements of Section 6053 of the Chemical Diversion and Trafficking Act of 1988, as specified in § 1313.21

(c) Copy 3 shall be presented to the U.S. Customs Service at the port of exit along with the Shippers Export Declaration for each export of a listed chemical or chemicals.

§ 1313.24 Waiver of 15-day advance notice for chemical exporters.

(a) Each regulated person shall provide to the Administration the identity and information listed in

identity and information listed in § 1313.02(1) for an established business relationship with a foreign customer not later than August 37. 1989. (b) Not later than October 31. 1989, each regular customer so identified in notifications made under § 1313.24(a) shall be a regular customer for purposes of waiving the 15-day advance notice requirement, unless the regulated person is otherwise notified in writing by the Administration. Administration.

Administration. [c) Each foreign customer identified on an initial DEA Form 486 submitted after the effective date of the implementation of Part 1313 shall, after the expiration of the 15-day period, quality as a regular customer, unless the Administration otherwise notifies the regulated person in writing. (d) The Administrator may notify any

chemical exporter that a regular customer has been disqualified or that a new customer for whom a notification has been submitted is not to be accorded the status of a regular customer. In the event of a

disqualification of an established regular customer, the chemical exporter will be notified in writing of the reasons for such action.

Public reporting (one-time) burden for this collection of information is this collection of information is estimated to average four hours per response, including the time for reviewing instructions, searching existing date sources, guthering and maintaining the data needed, and completing and reviewing and collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including succestions for information, including suggestions for information, including suggestions for reducing this burden to the Drug Enforcement Administration, Records Manugement Section, Washington, DC 20537; and to the Office of Management and Budget, Paperwork Reduction Project No. 1117-0025, Washington, DC 20503.

§ 1313.25 Foreign import restrictions.

Any export from the United States in violation of the law of the country to which the chemical is exported is subject to the penalties of Title 21 United States Code 960(d).

§ 1313.31 Advance notice of Importation for transshipment or transfer.

(a) A quantity of a chemical listed in § 1310.02 of this chapter that meets or exceeds the threshold reporting requirements found in § 1310.04(1) of this chapter may be imported into the United States for transshipment, or may be transferred or transshipmed within the United States for immediate exportation, neurided the advance notice is given by provided that advance notice is given to the Administration.

the Administration. (b) Advance notification must be provided to the Drug Enforcement Administration, P.O. Box 28340, Washington, DC 20038, not later than 15 days prior to the proposed date the listed chemical will tranship or transfer through the United States. The written notification (not a DEA Form 486) shall contain the following information: (1) The date the notice was executed;

(2) The complete name and description of the listed chemical as it appears on the label or container.

(3) The name of the listed chemical as designated by \$ 1310.02 of this chapter.
 (4) The number of containers and the size or weight of the container for each

listed item;

(5) The new weight of each listed chemical given in kilograms or parts thereof:

(6) The gross weight of the shipment given in kilograms or parts thereof;
(7) The name, address, telephone number, telex number, business of the

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foreign exporter and, where available, the facsimile number:

(8) The foreign port of exportation;
 (9) The approximate date of

exportation; (10) The complete identification of the exporting carrier. [11] The name, address, business,

telephone number, telex number, and, where available, the facsimile number of the importer, transferor, or transhipper,

 (12) The U.S. port of entry;
 (13) The approximate date of entry;
 (14) The name, address, telephone number, telex number, business of the consignee and, where available, facsimile number of the consignee at the

foreign port of entry; (15) The shipping route from the U.S. port of exportation to the foreign port of

entry at final destination: (16) The approximate date of receipt by the consignee at the foreign port of

by the consignee at the foreign port of entry; and (17) The signature of the importer, transferor or transshipper, or his agent, accompanied by the agent's title. (c) Unless notified to the contrary prior to the expected date of delivery, the importation for transshipment or transfer is considered approved. (d) No waiver of the 15-day advance notice will be given for imports of listed chemicals in quantilies meeting or

chemicals in quantities meeting or exceeding threshold quantities for transshipment or transfer outside the United States

§ 1313.41 Suspension of shipments.

§ 1313.41 Suspension of shipments. (a) The Administrator may suspend any importation or exportation of a chemical listed in § 1310.02 of this chapter based on evidence that the chemical proposed to be imported or exported may be diverted to the clandestime manufacture of a controlled substance. If the Administrator so suspende he shall provide written suspends, he shall provide written

suspends, he shall provide written notice of such suspension to the regulated person. Such notice shall contain a statement of the legal and factual basis for the order of suspension, the regulated person to whom the order applies under paragraph (a) of this section must, if he desires a hearing, file a written request for a hearing pursuant to §§ 1313.51-1313.57.

Hearings

§ 1313.51 Hearings generally,

In any case where a regulated person requests a hearing regarding the suspension of a shipment of a listed chemical, the procedures for such hearing shall be governed generally by the procedures set forth in the Administrative Procedure Act (5 U.S.C. 551-559) and specifically by section 6053 of the Chemical Diversion and Trafficking Act (Pub. L. 100–690), by 21 CFR 1313.52–1313.57, and by the procedures for administrative hearings under the Controlled Substances Act set forth in §§ 1316.41–1316.67 of this chapter.

§ 1313.52 Purpose of hearing.

If requested by a person entitled to a hearing, the Administrator shall cause a hearing to be held for the purpose of receiving factual evidence regarding the Issues involved in the suspension of shipments within 95 days of the date of the request, unless the requesting party requests an extension of time.

§ 1313.53 Walver of modification of rules.

The Administrator or the presiding The Administrator or the presiding officer (with respect to matters pending before him) may modify or waive any rule in this part by notice in advance of the hearing. If he determines that no party in the hearing will be unduly prejudiced and the ends of justice will thereby be served. Such notice of modification or waiver shall be made a net of the second of the hearing. part of the record of the hearing.

§ 1313.54 Request for hearing.

(a) Any person entilled to a hearing pursuant to § 131.3.2 and desiring a hearing shall, within 30 days after receipt of the notice to suspend the shipment, file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter.

(b) If any person entitled to a hearing or to participate in a hearing pursuant to § 1313.41 fails to file a request for a § 1313.41 fails to file a request for a hearing or a notice of appearance, or if he so files and fails to appear at the hearing, he shall be deemed to have waived his opportunity for the hearing or to participate in the hearing, unless he shows good cause for such failure. [c] if all persons entitled to a hearing or to participate in a hearing waive or are deemed to waive their conctunity.

or to participate in a nearing waive or are deemed to waive their opportunity for the hearing or to participate in the hearing, the Administrator may cancel the hearing, if scheduled, and issue his final order pursuant to § 1313.57.

§ 1313.55 Burden of proof.

At any hearing regarding the suspension of shipments the Agency shall have the burden of proving that the requirements of this part for such suspension are satisfied.

§ 1313.56 Time and place of hearing.

(a) If any regulated person requests a hearing on the suspension of shipments, a hearing will be scheduled no later than 45 days after the request is made, unless the regulated person requests an extension to this date.

(b) The hearing will commence at the place and time designated in the notice given pursuant to paragraph (a) of this section but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement thereof by the presiding officer at the hearing.

& 1313.57 Final order

As soon as practicable after the As soon as practicable after the presiding officer has certified the record to the Administrator, the Administrator shall issue his order regarding the suspension of shipment. The order shall include the findings of fact and conclusions of law upon which the order is based. The Administrator shall serve one copy of his order upon each party in the bearing. the hearing.

John C. Lawn

Administrator, Drug Enforcement Administration.

Date: July 7, 1989.

[FR Doc. 89-17837 Filed 7-31-89; 8:45 am] BILLING CODE 4410-09-M

21 CFR Part 1316

Exemption From Civil Prosecution for Investigative and Law Enforcement Personnel of the Drug Enforcement Administration

AGENCY: Drug Enforcement Administration (DEA). ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to Enforcement Administration (DEA) to implement a provision of the Chemical Diversion and Trafficking Act of 1988 which exempts certain employees of the DEA from civil prosecution in the event that they make an unauthorized disclosure of information referred to in paragraph (c)(1) of Section 310 of the Controlled Substances Act (21 U.S.C. 830).

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, State and G. Inomas Gitchel, Chief, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20337, Telephone: (202) 307-7297.

SUPPLEMENTARY INFORMATION: On SUPPLEMENTARY INFORMATION: On January 25, 1989. in a notice of proposed rulemaking published in the Federal Register [54 FR 3022) the Administrator of the DEA proposed to clarify a provision of the Chemical Diversion and Trafficking Act which specifies that.

27-179 (292)