

Mike Horowitz

May 18, 1984

MEMORANDUM FOR: CONSTANCE HORNER
FROM: JOHN MITRISIN
SUBJECT: Hearing on Armor Piercing Ammunition, House
 Judiciary Subcommittee on Crime, May 17, 1984

The Subcommittee on Crime held hearings on May 17 on armor piercing bullet legislation. Committee members present were Chairman Hughes and Congressmen Smith and Shaw. Witnesses were Senator Moynihan, Congressman Biaggi, and Treasury Deputy Assistant Secretary Powis.

Committee Views

Chairman Hughes said:

- . He was interested in reporting out a piece legislation.
- . He is aware of the Justice test approach.
- . The Administration promised to send legislation up in January, but nothing has arrived.
- . Justice and Treasury have differences.
- . OMB is bottling up the legislation, and Justice should be unmuzzled.

Congressmen Shaw and Smith emphasized:

- . This is not a gun control issue.
- . There is no legitimate use for these bullets.

Witness Views

Senator Moynihan and Congressman Biaggi felt:

- . Legislation is needed.
- . The Administration, which is anti-crime and pro-law enforcement should be for this type of legislation.
- . The NRA is completely wrong in its approach. It should agree to ban these bullets which have no sporting or other legitimate use.

- . They are willing to alter their proposal in any way to ban such bullets, as long as it carries out their desire to get rid of such ammunition.

Treasury Deputy Secretary Powis said:

- . The problem is that vests are not being worn and that there are not enough of them.
- . There are very few armor piercing bullets around.
- . The bills now before the Subcommittee are not enforceable since they required too much testing and would include ammunition which we do not want to ban.
- . The Administration shares the concern about the safety of police officers and armor piercing bullets.
- . Treasury (ATF) has already done a great deal to get these bullets off the market.
- . Treasury and Justice have been working on relevant legislation.
- . Treasury does not agree with the test approach.
- . Treasury is in favor of a materials standard.
- . The Administration will know in a week or two if it can have an acceptable bill.

Next Steps

- . Hughes plans to have markup in mid or late June.
- . Hughes plans to hire an outside consultant to help the Subcommittee draft technical specifications. He wants assistance from Treasury and Justice. Powis agreed to do this.
- . There will be Justice testimony on May 24.
- . Powis said the Administration would decide in a week or two if it had a piece of legislation.

cc: Official file - TGS
 Mr. Adkins
 Mr. White
 Greg Jones
 Mike Horowitz ✓
 Mr. Mitrisin
 JTP:TGS:J.MITRISIN:jbf 5/18/84



U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 17, 1984

MEMORANDUM

TO: James Cicconi
Special Assistant to
the Chief of Staff

FROM: Robert A. McConnell
Assistant Attorney General

Attached is Bill Hughes' opening statement at today's hearing on armor piercing bullets. Seldom does Mr. Hughes comment favorably about me although he does comment often.

I thought you would be interested. My staff tells me that Hughes was very tough on OMB, and actually quite nice to Treasury. We better have a position by the 24th when we testify, however.

Attachment

OPENING STATEMENT OF REPRESENTATIVE WILLIAM J. HUGHES
CHAIRMAN OF THE SUBCOMMITTEE ON CRIME
ON ARMOR PIERCING AMMUNITION: (H.R. 641, H.R.953, H.R. 3796
and S. 1762--§1006)

May 17, 1984

MORE THAN TWO YEARS AGO, THIS SUBCOMMITTEE HELD THE FIRST CONGRESSIONAL HEARINGS ON THE PROBLEM OF ARMOR PIERCING AMMUNITION, AND, FOR THE MOST PART, ON THESE SAME BILLS TO SAFEGAUARD OUR NATION'S LAW ENFORCEMENT OFFICERS WHILE WEARING PROTECTIVE ARMOR. AT THAT TIME JUST ABOUT EVERYONE INVOLVED AGREED THAT WE FACED SOME TOUGH TECHNICAL, DEFINITIONAL PROBLEMS THAT NEEDED TO BE SOLVED BEFORE WE COULD LEGISLATE A BAN ON HANDGUN AMMUNITION WHICH WILL PENETRATE SOFT BODY ARMOR BEING WORN BY POLICE OFFICERS. IN HIS TESTIMONY BEFORE THIS SUBCOMMITTEE, ASSOCIATE ATTORNEY GENERAL GIULIANI ACCURATELY SUMMARIZED THE PROBLEM AS ONE OF "COMING UP WITH A DEFINITION THAT WOULD INCLUDE ARMOR-PIERCING BULLETS AND EXCLUDE WHAT MIGHT BE REGARDED AS BULLETS THAT CAN BE USED FOR OTHER PURPOSES, LEGITIMATE PURPOSES." HE STATED THE JUSTICE DEPARTMENT HAD, IN WORKING WITH THE TREASURY DEPARTMENT, NOT YET BEEN ABLE TO DO THIS, BUT THAT, AND I QUOTE "WE SHOULD CONTINUE TO TRY TO DO THAT AND WE WILL." HE THEN PROPOSED WHAT HE CALLED "A STOPGAP LEGISLATIVE PROPOSAL." THIS STOPGAP MEASURE BANNED NO AMMUNITION, BUT PROVIDED ADDITIONAL PENALTIES FOR CARRYING A HANDGUN LOADED WITH ARMOR PIERCING AMMUNITION DURING THE COMMISSION OF A FELONY, MUCH IN THE SAME MANNER AS CURRENT LAW ALREADY PROVIDES ADDITIONAL PENALTIES FOR CARRYING THE GUN.

TWO YEARS HAVE PASSED, AND IT IS DISAPPOINTING HOW LITTLE VISIBLE PROGRESS HAS BEEN MADE ON THIS IMPORTANT MATTER. WHILE THE NUMBER OF INDIVIDUAL AND INSTITUTIONAL VOICES CALLING FOR PASSAGE OF LEGISLATION TO BAN "COP KILLER BULLETS" HAS GROWN DRAMATICALLY, LITTLE SEEMS TO HAVE BEEN DONE TO SOLVE THE DEFINITIONAL PROBLEMS WHICH HAVE DOGGED THIS LEGISLATION FROM ITS INCEPTION. FOR EXAMPLE, LAST FALL, WHEN MY MAIL BEGAN TO CONTAIN NUMEROUS CALLS FOR PASSAGE OF THE LEGISLATION FROM LAW ENFORCEMENT OFFICERS AND ADMINISTRATORS FROM ALL PARTS OF THE COUNTRY, I WROTE BACK DESCRIBING THE TECHNICAL PROBLEMS THAT HAD BEEN IDENTIFIED, AND INVITED RECOMMENDATIONS FOR THEIR SOLUTION. I SENT SOME THIRTY SUCH LETTERS, AND RECEIVED ONLY ONE REPLY.

THE ADMINISTRATION'S CRIME PACKAGE, PASSED BY THE SENATE EARLIER THIS YEAR, ADDRESSES THIS PROBLEM WITH THE SAME STOPGAP MEASURE ADVANCED BY THE JUSTICE DEPARTMENT TWO YEARS AGO, NAMELY MANDATORY SENTENCING.

I HAVE NOTED THAT THE DEPARTMENT OF JUSTICE PLEDGED TO WORK TOWARD A SOLUTION THAT WOULD SEPARATE BANNABLE HANDGUN AMMUNITION FROM LEGITIMATE AMMUNITION, AND I HAVE NOTED THAT, TWO YEARS LATER, WE HAVE RECEIVED NOTHING IN THIS REGARD. IT SHOULD NOT BE INFERRED FROM THESE TWO FACTS, HOWEVER, THAT THE BLAME FOR LACK OF PROGRESS LIES IN THE FAILURE OF THE DEPARTMENT OF JUSTICE TO DO ITS PROMISED WORK. THIS SUBCOMMITTEE AND OTHER MEMBERS OF CONGRESS, PARTICULARLY CONGRESSMAN BIAGGI, HAVE RECEIVED PERIODIC REPORTS OVER THE PAST SEVERAL MONTHS WHICH SUGGEST THAT PROGRESS WAS BEING MADE. MORE THAN A YEAR AGO, THE JUSTICE DEPARTMENT COMMISSIONED DEVELOPMENTAL WORK BY THE

BUREAU OF STANDARDS TO DEVELOP A TEST PROCEDURE TO MEASURE THE ARMOR PIERCING CAPACITY OF VARIOUS AMMUNITION, WHICH WOULD FORM THE BASIS OF A LEGISLATIVE PROPOSAL TO BAN CERTAIN ARMOR PIERCING AMMUNITION.

IN OCTOBER I RECEIVED A BRIEFING ON THIS WORK, AND IT WAS OBVIOUSLY WELL UNDERWAY. IN NOVEMBER WE WERE TOLD THAT THE JUSTICE DEPARTMENT HAD RECEIVED THE RESULTS OF THE WORK, AND THAT IT HAD BEEN SENT BACK FOR WHAT SOUNDED LIKE SOME FINAL "DEBUGGING". AS ITS BEST ESTIMATE, JUSTICE AT THAT TIME TOLD US THEY FELT BOTH THE TEST PROCEDURE AND THE LEGISLATIVE PROPOSAL FOR BAN LEGISLATION COULD BE DEVELOPED, SUBJECTED TO THE USUAL REVIEW AND APPROVAL PROCESS, AND SUBMITTED TO THE CONGRESS BY EARLY 1984. ASSISTANT ATTORNEY GENERAL BOB McCONNELL NOTIFIED US, IN JANUARY, THAT THE ARMOR PIERCING BULLET PACKAGE HAD BEEN SUBMITTED TO OMB FOR APPROVAL, AND THAT HE WAS "OPTIMISTIC THAT WE HAVE NOW RESOLVED THE DEFINITIONAL PROBLEMS WHICH HAVE PLAGUED THIS LEGISLATION IN THE PAST, AND THAT WE WILL HAVE A PROPOSAL FOR SUBMISSION TO THE CONGRESS IN THE NEAR FUTURE DESPITE ACRIMONIOUS PUBLIC ATTACKS UPON OUR EFFORTS."

THESE WERE ENCOURAGING DEVELOPMENTS, FOR BOB McCONNELL IS WELL KNOWN IN THE CONGRESS FOR HIS PRAGMATISM, AND NOT KNOWN FOR FLIGHTS OF UNDUE OPTIMISM. HOWEVER, THIS APPEARS TO BE ONE OF THE FEW OCCASIONS WHERE HE WAS WRONG. FOUR MONTHS HAVE PASSED, SENATE HEARINGS ON THE SUBJECT OF ARMOR PIERCING BULLETS HAVE COME AND GONE, AND STILL THE HIGHEST ECHELONS OF THIS ADMINISTRATION HAS REFUSED TO ENUNCIATE AN ADMINISTRATION

POSITION ON "COP KILLER BULLETS", OTHER THAN TO AGAIN ADVANCE THE TEMPORARY STOPGAP MEASURE FROM TWO YEARS BACK. YESTERDAY, LESS THAN 24 HOURS BEFORE THIS SCHEDULED HEARING, WE WERE NOTIFIED THAT OMB HAD NOT TAKEN A POSITION ON THE LONG STANDING JUSTICE PROPOSAL, THAT NO POSITION WOULD BE TAKEN IN ADVANCE OF OUR HEARING, AND THAT THE DEPARTMENT OF JUSTICE WAS INSTRUCTED TO ASK FOR A POSTPONEMENT. I SUPPOSE WE COULD INSIST UPON THE APPEARANCE OF A BODY FROM THE DEPARTMENT OF JUSTICE BEFORE US TODAY, BUT IT IS THEIR RECOMMENDATIONS AND CONSIDERED OPINION WE WANT AND NEED, AND IT IS OBVIOUS THAT THE WHITE HOUSE HAS NOT AUTHORIZED JUSTICE TO PRESENT TO US THEIR PROPOSAL.

THIS IS AN IMPORTANT MEASURE, ONE IN WHICH THERE ARE CLEARLY STRONG DIFFERENCES OF OPINION WITHIN THE ADMINISTRATION, INCLUDING DIFFERENCES BETWEEN THE TWO DEPARTMENTS INVOLVED, JUSTICE AND TREASURY. UNDER THESE CIRCUMSTANCES, IT IS RARE THAT THE CONTENTS OF A PROPOSAL BEING KEPT BOTTLED UP BY OMB DO NOT LEAK OUT. IT IS RARE, AND THIS IS NOT ONE OF THE RARE OCCASIONS. GIVEN THE FACT THAT THE BASIC COMPONENTS OF THE JUSTICE DEPARTMENT STUDY AND PROPOSAL ARE KNOWN TO US, IT IS A SHAME THAT JUSTICE CANNOT BE UNMUZZLED TO PRESENT IT TO US, EXPLAIN HOW THEY ARRIVED AT IT, AND HELP US WORK TOWARD THE BEST SOLUTION. OR, IF THIS IS NOT TO BE THE CASE, THE WHITE HOUSE SHOULD MUSTER THE POLITICAL FORTITUDE TO FIGURATIVELY BITE THE BULLET, REJECT THE PROPOSAL, AND EXPLAIN TO THE POLICEMEN OF THE COUNTRY WHY THIS MEASURE OF PROTECTION SHOULD NOT BE AFFORDED TO THEM.

IN CLOSING, LET ME SAY THIS. IF THERE EXISTS THE NECESSARY SUPPORT OF THE MEMBERS OF THIS SUBCOMMITTEE, I INTEND TO MOVE FORWARD WITH LEGISLATION TO PROVIDE THE BEST POSSIBLE PROTECTION FOR OUR POLICE OFFICERS AGAINST ARMOR PIERCING BULLETS. AGENCIES OF THE EXECUTIVE BRANCH CHARGED WITH ENFORCING LAWS OF THIS NATURE HAVE A LOT OF EXPERTISE TO BRING TO BEAR ON DEVELOPING THAT PROTECTION, AND A LOT OF TIME AND TAXPAYERS MONEY HAS GONE INTO SUCH DEVELOPMENT. WE WOULD LIKE TO HAVE THE BENEFIT OF THAT EFFORT IN OUR WORK, WE THINK WE CAN PRODUCE A BETTER SOLUTION IF WE HAVE IT, AND IT WOULD BE A SHAME TO HAVE TO PROCEED WITHOUT IT, BUT IF WE MUST, WE WILL.

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NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D. C. 20036

OFFICE OF THE
EXECUTIVE DIRECTOR

April 16, 1984

(202) 828-6320

Dear NRA Member:

The anti-gunners, the news media, and the national gun control groups have hatched a gun control scheme that is dangerously close to winning approval.

They have done it by claiming that it is not a gun control scheme and by persuading many Congressmen and Senators and even some NRA members, that their proposal in no way restricts firearms or ammunition.

If ever there was a Trojan horse laid at gun owners door, it is the so called "cop killer" bullet issue. If the anti-gunners have their way, they will use the publicity surrounding the "cop killer" bullet issue to enact by the backdoor a national gun control scheme more insidious than any since the Consumer Product Safety Commission attempted to ban ammunition as a hazardous substance.

If you don't think it can happen, lets look at the facts. Armor-piercing ammunition has been around since the early 1900's and has never been a problem for law enforcement. No police officer wearing a vest has ever been killed or wounded by one of the rounds. All major ammunition manufacturers have signed agreements with the Treasury Department restricting distribution directly to police departments, or military. No citizen or dealer can purchase armor-piercing handgun ammunition. The chief federal law enforcement agencies have testified to these points before both Houses of Congress. Yet the facts do not convince the proponents of restrictive gun control and they continue trying to divide gun owners and enact backdoor gun control.

No organization is more concerned about protecting America's police officers than the National Rifle Association. America's rank and file police officers for years have known restrictive gun control schemes can not and do not work. NRA has sided with them in attempts to impose stiff mandatory jail sentences to lock up criminals and keep them behind bars. NRA instructors have trained many police officers in the shooting skills and there is a strong bond between our organization and police. The national gun control groups know this and have for years been looking for an issue to divide American gun owners by driving a wedge between law-abiding gun owners and our nation's police officers. They believe Congressman Biaggi's legislation is perfect for the job.

Restrictive gun control schemes come in many colors. The anti-gun forces have convinced many that this legislation will protect police. It will not protect police, but the Biaggi/Moynihan bills (H.R. 953/S. 555) would outlaw much high powered handgun ammunition and a good deal of rifle ammunition which can be fired in handguns, including the Winchester .30.30. Congressman Biaggi's legislation would ban many conventional handgun and rifle cartridges, despite what you read in the papers to the contrary. What the news media has neglected to tell you are the positions of the U.S. Treasury and Justice Departments on H.R. 953/S. 555 and I quote, "Many sporting rifle cartridges would end up

being restricted by this bill." Our nation's chief federal law enforcement agencies have testified in opposition to Congressman Biaggi's legislation and we fully support the positions of the Treasury and Justice Departments. Even worse, the Biaggi/Moynihan bills delegate to the Secretary of Treasury the authority to determine which bullets may be banned. If that doesn't sound familiar, I don't know what does. Every restrictive gun control scheme proposed in the last ten years has attempted to delegate authority to federal bureaucrats to decide what should be banned and what shouldn't be banned. Can you imagine what Walter Mondale's bureaucrats would do should he ever be elected president?

The NRA is fighting the Biaggi/Moynihan bill and other similar bans on armor-piercing ammunition for one reason; they (H.R. 953/S. 555) amount to gun control which would adversely impact the shooting sports in America and the right of decent, law-abiding citizens to use firearms for lawful purposes. They delegate to a federal bureaucrat the authority to determine what ammunition should be banned. They attempt to solve a non-existent problem by imposing gun control—restrictions which will only affect the law-abiding gun owner—not the criminal.

The media won't report this so your Congressman and Senator must hear it directly from you. We know, and your Congressman knows you have yet to write him on this issue. Yet the gun control groups have written him with distortions and lies about what the bill actually does. Congressman Biaggi and Senator Moynihan have even told other Senators and Congressmen their bills only ban the armor-piercing rounds and yet the Departments of Justice and Treasury have publicly testified that H.R. 953/S. 555 would ban many conventional cartridges. To stop this insidious gun control plot, you must write your Congressman and Senator and you must write now. The anti-gunners obtain thousands of dollars of free press daily. Our power to set the record straight and let Congressmen and Senators know the truth rests in your hands. You must pick up your pen and paper today and write your Congressman and Senator a letter urging him to:

1. **Oppose the Biaggi/Moynihan bills (H.R. 953/S. 555) and all similar bills attempting to ban ammunition.** Let your representatives know that (H.R. 953/S. 55) would ban many popular sporting cartridges.
2. **Ask your Congressman and Senators to support legislation which will impose mandatory sentences for use of armor-piercing ammunition during the commission of a crime.** Congressman Conte has introduced legislation (H.R. 3796) which would impose such mandatory sentences. **Ask your Congressman to support H.R. 3796.**
3. **Help us relay the truth about the issue to your Congressman and Senators and your local newspapers through letters to the editor.** In all my time in Washington, I have never seen an issue more distorted or more down right lied about than the present one. The anti-gun forces will go to any lengths to control your right to keep and bear arms. Isn't it time we set them straight?
4. **Make sure to keep an eye on your local government and state legislature and respond in a similar manner if similar bullet ban legislation is proposed in your area.**

We are asking you to put millions of letters into the United States Congress. One from each member to your Congressman and to your Senators. Let them know the truth behind the issue—why you and the National Rifle Association are outraged at the biased distorted lies they have been told.

The great inner strength of America is exactly what the founding fathers believed it to be 200 years ago, and that is the power of the individual citizen to ultimately bring the truth to light. Today we are asking you to help fight the national gun control groups and the anti-gun press. Let your Congressman and Senators know the truth and then let him know you expect him or her to stand up for the truth and defeat the Biaggi/Moynihan legislation (H.R. 953/S. 555).

We can defeat this legislation. It is really no different than the Saturday Night Special issue for as you remember all gun control proponents wanted to do was ban little old Saturday Night Specials yet their legislation would have banned just about all handguns in America.

It is really no different than the Consumer Product Safety Commission's attempt to ban ammunition as a hazardous substance.

You helped us beat those bills and you helped us report the truth. We are asking you today to send those letters and help us once again.

Our fate rests with your letters to your Congressman and Senators. We're counting on you.

Sincerely,

J. Warren Cassidy
Executive Director

P.S.

Codification of Treas. Agreement with Ammo
Manufacturers:

"Limit distribution of all handgun
ammo specifically designed & marketed
as armor piercing handgun ammunition
by the manufacturer to police &
military directly, with no distribute
to intervening FFL dealers."



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

DEPUTY ASSISTANT SECRETARY

May 11, 1984

Dear Mike:

Pursuant to our meeting on May 9, 1984, I am forwarding a revised version of an amendment to Chapter 44, Title 18 United States Code which proposes the regulation of the manufacture and importation of armor-piercing ammunition.

Our latest proposal changes the definition of "armor-piercing ammunition" in an effort to incorporate all possible hard metal substances which can or could be used in the construction of projectile cores. The definition also specifically excludes shot gun shot which is required by Federal and state environmental or game regulations for hunting purposes. There is an exclusion for frangible projectiles designed for target shooting. There is also an importation exclusion for ammunition which the Secretary of the Treasury finds is primarily intended to be used for sporting purposes.

While we had not discussed the matter of license fees at our previous meeting, I think it is important to point out that our proposed legislative amendment establishes a license fee of \$1,000 per year for those engaged in the business of manufacturing, importing and exporting armor-piercing ammunition. It is suggested that this provision is a step in the direction of making sure that firms engaged in this business are "legitimate" manufacturers and importers.

On balance we feel that our latest proposal provides a good basis for an Administration position which would ban ammunition which has been specifically designed to pierce armor and which does not have any legitimate sporting purposes. The bill is simple and testing will be held to a minimum. We strongly oppose the testing process spelled out in the Justice Department's legislative proposal and think that it would be unwise for this Administration to get involved in this process. At the risk of being repetitive, I want to spell out in some detail some of the more obvious problems with respect to attempts to enforce the Justice bill.

- a. Difficulty if not impossibility in physically identifying specific armor-piercing cartridges.
- b. Differing performance of cartridges when fired in actual firearms as opposed to being fired from a test fixture.

Copy - Greg Jones
HPM 5-11

- c. Ease with which the bill can be circumvented by deliberately mislabeling ammunition as "not for use in handguns".
- d. The statistics for determining if a certain type of ammunition is primarily rifle or handgun ammunition do not exist.
- e. Virtually all types of military surplus ammunition would have to be tested. Each time an importer applies to import surplus ammunition samples of each type will have to be tested.
- f. Variables in Kevlar itself.

In addition to the enforcement problems cited, the following information is submitted with respect to the burden which will be imposed on manufacturers who will have to test ammunition. Concerning the small manufacturer who can "piggy-back" on the "big three", since most manufacturers consider certain specifications of their products as trade secrets, the actual loading data for specific cartridges may be difficult for the small manufacturer to acquire. Additionally, the mere changing of the bullet weight or using a bullet of a harder alloy can significantly change the performance of a cartridge.

The statement is also made that a small manufacturer could invest in a chronograph to test velocity with the cost being approximately \$300.00. While rudimentary chronographs can be purchased for as little as \$300.00, there is some difference of opinion as to how much of an expenditure would be required to properly test the ammunition. A representative from the Department of Defense has stated that, based on information from the National Bureau of Standards, an expenditure in excess of \$30,000.00 would be required to properly test ammunition for compliance with the Justice proposal. The memorandum from Justice seems to ignore the fact that expensive fixtures and velocity barrels are required to perform their proposed testing.

With respect to the statement that having a ballistics laboratory test five rounds of ammunition would be approximately \$500.00; this is correct, however it is estimated that there are fewer than five truly independent laboratories in the United States who could perform this testing. The argument would be made that smaller manufacturers could engage one of the "big three" to test ammunition for them. However, it is doubtful that the major manufacturers will be interested in assisting their competitors.

I have reason to believe that gun groups will generally oppose legislation which contains an involved testing process. I also believe that law enforcement organizations will never fully appreciate a testing process which involves aluminum plates rather than actual soft body armor. I hope that we can arrive at an Administration position on this matter as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert E. Powis', written over a horizontal line.

Robert E. Powis
Deputy Assistant Secretary
for Enforcement

Mr. Michael J. Horowitz
Counsel to the Director
Office of Management and Budget
Washington, D.C. 20503

Enclosure

A BILL

To amend Chapter 44, Title 18, United States Code, to regulate the manufacture and importation of armor piercing ammunition.

1 Be it enacted by the Senate and the House of
2 Representatives of the United States of America in
3 Congress assembled, That section 921(a)(17) of Title 18
4 of the United States Code is redesignated as section
5 921(a)(17)(A), and a new subparagraph (B) is added to
6 section 921(a)(17) to read as follows:

7 "(B) The term 'armor piercing ammunition' means
8 projectile cores constructed from tungsten alloys,
9 steel, iron, brass, bronze, beryllium copper or
10 depleted uranium. The term shall not include
11 shotgun shot required by Federal or State
12 environmental or game regulations for hunting
13 purposes, frangible projectiles designed for
14 target shooting or any projectile which the
15 Secretary finds is primarily intended to be used
16 for sporting purposes."

17 SEC. 2. Section 922(a) of Title 18 of the United
18 States Code is amended by adding after paragraph (6)
19 the following:

1 "(7) for any person to manufacture or import
2 armor piercing ammunition, except that this
3 paragraph shall not apply to (A) the manufacture
4 or importation of armor piercing ammunition for
5 the use of the United States or any department or
6 agency thereof or any State or any department,
7 agency, or political subdivision thereof, or
8 (B) the manufacture of armor piercing ammunition
9 for the sole purpose of exportation."

10 SEC. 3. Subparagraph (A) of section 923(a)(1)
11 of Title 18 of the United States Code is amended to
12 read as follows:

13 "(A) of destructive devices, ammunition for
14 destructive devices or armor piercing ammunition,
15 a fee of \$1,000 per year;"

16 SEC. 4. Subparagraph (C) of section 923(a)(1) of
17 Title 18 of the United States Code is amended to read
18 as follows:

19 "(C) of ammunition for firearms, other than
20 ammunition for destructive devices or armor
21 piercing ammunition, a fee of \$10 per year."

22 SEC. 5. Subparagraphs (A) and (B) of section
23 923(a)(2) of Title 18 of the United States Code is
24 amended to read as follows:

1 "(A) of destructive devices, ammunition for
2 destructive devices or armor piercing ammunition,
3 a fee of \$1,000 per year; or

4 "(B) of firearms other than destructive devices
5 or ammunition for firearms other than destructive
6 devices, or ammunition other than armor piercing
7 ammunition, a fee of \$50 per year."

8 SEC. 6. Section 924(c) of Title 18 of the United
9 States Code is amended (a) by striking the period at
10 the end of paragraph (2) and adding in lieu thereof a
11 comma and the word "or" and (b) by adding a new
12 paragraph (3) to read as follows:

13 "(3) during and in relation to the commission of
14 a felony uses or carries a firearm loaded with
15 armor piercing ammunition shall, in addition to
16 the punishment provided for the commission of such
17 felony, be sentenced to a term of imprisonment
18 for not less than five years. Notwithstanding
19 any other provision of law, the court shall not
20 suspend the sentence of any person convicted of a
21 violation of this subsection, nor place him on
22 probation, nor shall the term of imprisonment run
23 concurrently with any other terms of imprisonment
24 including that imposed for the felony in which

1 the armor piercing ammunition was used or
2 carried. No person sentenced under this
3 subsection shall be eligible for parole during
4 the term of imprisonment imposed herein."

5 SEC. 7. The amendments shall take effect on the
6 date of enactment of this Act, except that sections 3,
7 4, and 5 shall take effect on the first day of the
8 first calendar month which begins more than 90 days
9 after the date of the enactment of this Act.



U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 11 1984

M E M O R A N D U M

TO: Michael J. Horowitz
Counsel to the Director
Policy Analysis and Law
Office of Management and Budget

✓ James W. Cicconi
Special Assistant to the President
Office of the Chief of Staff
The White House

Constance Horner
Associate Director
Economics and Government
Office of Management and Budget

Robert E. Powis
Deputy Assistant Secretary, Enforcement
Department of the Treasury

C. A. Howlett
Special Assistant to the President
for Intergovernmental Affairs
The White House

FROM: Robert A. McConnell
Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs

SUBJECT: May 8 Treasury Armor-Piercing Bullet Bill

We have reviewed the May 8 Treasury draft bill and have received reports of the May 9 meeting. The purpose of this communication is two-fold. First, we are prepared to work to carry out the decision of the Administration. Before a final decision is made, however, we want our second point considered very carefully. Our point is that the draft is not a good piece of legislation. For the reasons set out below, the Department of

Justice believes the May 8 draft as amended at the May 9 meeting, is unacceptable and indefensible. In fact, we would very much want to disassociate ourselves from that draft out of concern for our present and future relations with other law enforcement agencies.

In fairness to the Department of the Treasury, we would note that its original May 8 draft was reasonably effective in that it would have given the Secretary broad discretion to ban bullets made of any substance "similar" to the listed metals and metal alloys thereby providing a means of frustrating efforts to circumvent it. To remove this flexibility, however, renders the proposal virtually worthless.

Our principal objections to the May 8 draft bill are as follows:

1. The May 8 Draft */ Is Inconsistent with Prior Administration Statements on the Issue. For almost two and one-half years, representatives of the Departments of Justice and Treasury have observed in correspondence, public statements, and testimony before House and Senate Committees that the problem of defining armor-piercing bullets is an extremely difficult technical issue. Now, after 30 months of effort, study and research, we are considering announcing that armor-piercing bullets are simply those with projectiles made of tungsten alloys, steel, iron, brass or bronze. A prediction that this will result in public ridicule would not be out of hand.

2. If Offers No Meaningful Protection to Law Enforcement Officers. There are a host of metals, metal alloys, and other substances (e.g. ceramics), hundreds if not thousands of which could be used to penetrate soft body armor. To attempt to list all such substances is unrealistic.

Any listing of prohibited projectile components will be readily subject to circumvention. Even if all dangerous projectile components could be identified and listed, projectile hardness is only one factor in penetration capability of ammunition. Velocity is a major factor in penetration capability. Projectile conformation also affects penetration capability. It is for these reasons that we long ago rejected the design approach.

*/ This and future references to the May 8 draft are to the May 8 Treasury draft bill as amended at the May 9 meeting to remove the discretion which is essential to this method of banning armor-piercing bullets.

3. The May 8 Draft Lends Itself to Charges of Misrepresentation. In commenting upon the Justice draft bill, Treasury has suggested that it will mislead the law enforcement community into believing that our bill promises more than it actually delivers in terms of protection for police officers. Because the very narrow May 8 draft does much less than our bill, such a criticism obviously must apply to the Treasury draft with even greater force. At the same time we must state that we believe our draft bill makes a sufficiently significant contribution to police safety so that we can rebut any claim that the Justice bill is misleading.

In this regard, for more than two years we have sought to develop an objective procedure for distinguishing legitimate from unreasonably dangerous handgun ammunition without conferring broad discretion upon government officials. Based upon the test procedure developed by the National Bureau of Standards, we believe we have proposed a bill that takes us forward. Not only would our bill ban the few types of unreasonably dangerous handgun bullets that exist in 1984 (all of which are admittedly rare) our bill would protect against the introduction of similar or even more dangerous bullets which may be forthcoming in 1985 or 1995. Even more important, our bill establishes a benchmark which can be used by armor technicians in research and development. In short, enactment of our bill would tell researchers and manufacturers that development of body armor equivalent in penetration resistance to seven plates of aluminum (equivalent to our new Type III-A Armor Standard) will equal development of body armor capable of protecting against any lawfully manufactured handgun bullet. Such a penetration ceiling would at last -- in the area of handgun bullets available to private civilians -- stop the vicious circle of advances in defensive armor which are then overcome by advances in offensive weapons.

Concerns Impeding a Proper Analysis of the Justice Bill.

We understand that movement toward Treasury's "design" approach to the armor-piercing bullet problem and away from our objective "performance" approach is based upon three concerns which we believe to be without foundation.

1. Testing Against Aluminum Plates. There seems to be an abiding concern that something is basically wrong with testing ammunition by firing it from test fixtures (which yield predictable and uniform results) at aluminum plates (which have predictable and uniform resistance to penetration). We believe, however, that such a test procedure is eminently defensible. As the attached list of Type II body armor demonstrates, soft body

armor worn by real world police officers varies widely in composition (from 11 to 26 Layers of Kevlar for Type II vests). Moreover, these vests all protect against the threat specified in the Department of Justice armor standard, but in reality each has a built-in safety margin which varies from manufacturer to manufacturer. Thus there is no "Type II" vest -- rather, there are as many Type II vests as there are manufacturers. Similarly, there is no such thing as a "layer of Kevlar." Kevlar varies from weaver to weaver. To test bullets against either body armor as we know it in 1984 or against "Kevlar" as we know it in 1984 is to suggest that we test against something that will soon be obsolete in any event.

In short, we believe we can demonstrate effectively that, not only does testing against aluminum plates make sense, but that testing against "Type II" body armor or "layers of Kevlar" would be ludicrous. The National Bureau of Standards has determined that our test procedure correlates closely to our new Type III-A armor standard. Although we cannot guarantee that the world will beat a path to our door, anyone familiar with simulated laboratory testing of products ranging from motorcycle helmets to automobiles will accord our test procedure the serious consideration it deserves. Again, the test procedure itself was developed by the National Bureau of Standards which specializes in such matters.

2. Terrorism Concerns. For the first time, it was suggested at the May 9 meeting that Defense Department concerns about terrorism necessitate a move away from banning handgun ammunition to a bill that would ban handgun and rifle ammunition. Based upon information provided by the Defense representative at the May 9 meeting, however, their concerns are identical to ours. Military and diplomatic personnel overseas use the same types of soft body armor and other protective apparel that police use and are primarily threatened by the same types of weapons (readily concealable handguns) most often used against law enforcement officers.

The Department of Defense is no more concerned than we are about armor-piercing rifle ammunition. The most common forms of rifle ammunition, the .30-06 for example, will penetrate any Type I, IIA, II or IIIA soft body armor without regard to whether the ammunition used is armor-piercing or sporting. Similarly, Type III or IV hard body armor will defeat .30-06 ammunition without regard to whether the ammunition is sporting or armor-piercing.

In short, the terrorism concern does not undermine our position. Rather, concern about terrorism supports our position of trying to do something meaningful in this area.

3. Regulatory Burden. Treasury suggests in its May 8 letter that our performance test procedure will involve greater "regulatory" activity than a "design" approach. We disagree. Our precise and objective test procedure would make the bullet ban largely self-enforcing with only occasional spot checks required by the Government. The May 8 draft bill, however, will require interpretations as it is far less objective and precise than our approach. For example, there is no such thing as absolutely "pure" lead or copper -- all metals contain impurities. To the extent that projectiles contain such impurities, at what point does "copper" become "brass" (which is roughly 90% copper and 10% tin)? Our technicians contend that terms such as "iron", "steel", and "brass", are far from being technically precise.

In short, our bill most effectively minimizes the regulatory burden on manufacturers and importers (see pages 4 and 5 of our April 10 memorandum). At bottom, the difference between our approach and the approach of the May 8 draft bill can be illustrated by a hypothetical. If we were asked to describe a "heavy-duty construction crane", we would suggest that the definition should be a construction crane capable of lifting 50 tons. The Treasury design approach, by contrast, would be to suggest that a "heavy duty construction crane" is one which has a crane "made of six-inch or greater steel I-beams, using one-inch steel cable, etc." As between the two, it should be obvious which involves the greater regulatory burden.

Recommendations. (1) We recommend approval of the draft bill we submitted on May 3 revised to incorporate an exemption provision the terms of which may be drafted in any way you see fit (see Appendix B to my May 3 memorandum).

(2) If a decision is made to pursue the design approach, Treasury must be given ample discretion to avoid easy circumvention. A design bill with no discretion in the Secretary is probably worse than no bill at all.

Attachment

cc: D. Lowell Jensen
Associate Attorney General

VARIATIONS OF SOFT BODY ARMOR CONSTRUCTION

Federal standards for body armor are performance rather than design standards, i.e. they prescribe specific threat levels which armor must protect against rather than detailing how armor is to be manufactured. This performance approach is preferable to a design approach as it encourages technological innovation and advancement.

Because of the performance nature of federal armor standards, armor manufacturers are permitted total freedom in determining how and of what materials to manufacture body armor, and purposely so. In retrospect, the decision to permit such latitude was a wise one because penetration resistance of Kevlar and other fabrics varies depending upon tightness of weave, special treatments to which the fabrics are subjected in the manufacturing process, methods of bonding layers of fabric together and other factors. Another factor contributing to variations in body armor is that different manufacturers build different "margins of safety" into body armor.

The following list of Type II soft body armor demonstrates the variability which exists in the real world. Bear in mind, however, that all of these models of body armor have one thing in common: they are all in full compliance with the federal standard for Type II armor:

<u>Model and Manufacturer</u>	<u>Composition</u>
1. A & B Industries, Inc. Models 300 and 302	26 layers of Kevlar
2. American Body Armor and Equipment Co. Models K27-HD and K15	16 layers of Kevlar, 2 layers of Nylon
3. Armour of America Model Armor-hide-P	17 layers of Kevlar
4. Burlington Industries, Inc. Model 26018/5328	21 layers of Kevlar, 18 layers of Plastic and 2 layers of Nylon
5. International Protectors, Inc. Model - "Mini Protector"	20 layers of Kevlar
6. Magnum Armor Model 2000	18 layers of Kevlar
7. Point Blank Body Armor Model 20	16 layers of Kevlar

8. Progressive Apparel Co.
Model ES23 23 layers of Kevlar
9. Protective Apparel Corp. of
America
Model PGC-20, 22 and 1 The three models of
Type II armor manu-
factured by this firm
contain 20, 22 and 27
layers of Kevlar
respectively
10. Protective Materials Co., Inc.
(No Model Designation) 19 layers of Kevlar
11. Safariland Ballistics, Inc.
Models M2A-2W and M3-2W 26 layers of Kevlar
and 8 layers of
Plastic
12. Second Chance Body Armor, Inc.
Model Z 26 layers of Kevlar
13. Technipol International Corp.
Model KXX-1 18 layers of Kevlar
14. Bite the Bullet Co.
Model 4022-11 11 layers of coated
Kevlar plus 1/2 inch
foam trauma pack
15. American Body Armor and
Equipment, Inc.
Model K-88 5 layers of treated
Kevlar plus 11 layers
of untreated Kevlar



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

DEPUTY ASSISTANT SECRETARY

May 8, 1984

Dear Mike:

Enclosed you will find the latest version of a Treasury bill which seeks to prohibit the manufacturer and importation of armor-piercing ammunition.

This bill defines "armor-piercing ammunition" as projectiles or projectile cores constructed from tungsten alloys, steel, iron, brass, bronze or similar materials as the Secretary may by regulations designate. The definition goes further by indicating that the term "armor-piercing ammunition" shall not include any projectiles which the Secretary finds is primarily intended to be used for sporting purposes. We think that this definition provides a double test that involves both the composition of the projectile or projectile core and the so-called sporting purposes test. This definition will readily allow for the banning of ammunition such as KTW, Arcane, Black Steel, Winchester, Western and several other specifically designed armor-piercing cartridges. These types of ammunition fail both the composition and the sporting purposes tests.

The enclosed legislative proposal would allow for the manufacture of ammunition such as .44 Magnum, .41 Magnum, .357 Magnum, 9mm and other similar rounds, which were not designed to be armor-piercing. Cartridges of this caliber would only be banned if the composition of the projectile or projectile core was to be constructed from the metals listed in the armor-piercing ammunition definition.

You will note that our legislative proposal does not contain a performance test. We do not believe that the testing procedure proposed in the Justice legislation should be supported by this Administration. In our view this test would create a cumbersome and unwieldy regulatory procedure. The Treasury proposal will not require such a testing mechanism.

You will also note that our legislative proposal contains a mandatory sentence provision which deals with an individual who uses or carries armor-piercing ammunition during and in relation to the commission of a felony. This is much broader than previous proposals in that it would apply to both Federal and State felonies. It is submitted that this broad coverage would show a greater concern for the lives of police officers than other proposals.

I look forward to discussing this proposal with you during our meeting on May 9, 1984.

Sincerely,



Robert E. Powis
Deputy Assistant Secretary
for Enforcement

Mr. Michael J. Horowitz
Counsel to the Director
Office of Management and Budget
Washington, D.C. 20503

Enclosure

Legis -
May 16 =
call Cong de la Garza =

Refugee Paper

call FW
Event
Purchall

A BILL

Equal Access = up M or T in House

WH activity: need GOP help -
need to see active lobbying

Meeting w/ Evangelicals:

STAB prefers they meet w/ Casalt
= but, they won't come if they
can't meet w/ Pres.

Holladay = 10 of ldrs in w/ Pres
200 in for briefing w/ Pres's deputy

To amend Chapter 44, Title 18, United States Code,
to prohibit the manufacture and importation of armor
piercing ammunition.

1 Be it enacted by the Senate and the House of
2 Representatives of the United States of America in
3 Congress assembled, That section 921(a)(17) of Title 18
4 of the United States Code is redesignated as section
5 921(a)(17)(A), and a new subparagraph (B) is added to
6 section 921(a)(17) to read as follows:

7 "(B) The term 'armor piercing ammunition' means
8 projectiles or projectile cores constructed from
9 tungsten alloys, steel, iron, brass, bronze or
10 similar materials, as the Secretary may by
11 regulations designate. The term shall not
12 include any projectile which the Secretary finds
13 is primarily intended to be used for sporting
14 purposes."

15 SEC. 2. Section 922(a) of Title 18 of the United
16 States Code is amended by adding after paragraph (6)
17 the following:

handwritten only
text

1 "(7) for any person to manufacture or import
2 armor piercing ammunition, except that this
3 paragraph shall not apply to (A) the manufacture
4 or importation of armor piercing ammunition for
5 the use of the United States or any department or
6 agency thereof or any State or any department,
7 agency, or political subdivision thereof, or
8 (B) the manufacture of armor piercing ammunition
9 for the sole purpose of exportation."

10 §EC. 3. Subparagraph (A) of section 923(a)(1)
11 of Title 18 of the United States Code is amended to
12 read as follows:

13 "(A) of destructive devices, ammunition for
14 destructive devices or armor piercing ammunition,
15 a fee of \$1,000 per year;"

16 SEC. 4. Subparagraph (C) of section 923(a)(1) of
17 Title 18 of the United States Code is amended to read
18 as follows:

19 "(C) of ammunition for firearms, other than
20 ammunition for destructive devices or armor
21 piercing ammunition, a fee of \$10 per year."

22 SEC. 5. Subparagraphs (A) and (B) of section
23 923(a)(2) of Title 18 of the United States Code is
24 amended to read as follows:

1 "(A) of destructive devices, ammunition for
2 destructive devices or armor piercing ammunition,
3 a fee of \$1,000 per year; or

4 "(B) of firearms other than destructive devices
5 or ammunition for firearms other than destructive
6 devices, or ammunition other than armor piercing
7 ammunition, a fee of \$50 per year."

8 SEC. 6. Section 924(c) of Title 18 of the United
9 States Code is amended (a) by striking the period at
10 the end of paragraph (2) and adding in lieu thereof a
11 comma and the word "or" and (b) by adding a new
12 paragraph (3) to read as follows:

13 "(3) during and in relation to the commission of
14 a felony uses or carries a firearm loaded with
15 armor piercing ammunition shall, in addition to
16 the punishment provided for the commission of such
17 felony, be sentenced to a term of imprisonment
18 for not less than five years. Notwithstanding
19 any other provision of law, the court shall not
20 suspend the sentence of any person convicted of a
21 violation of this subsection, nor place him on
22 probation, nor shall the term of imprisonment run
23 concurrently with any other terms of imprisonment
24 including that imposed for the felony in which

1 the armor piercing ammunition was used or
2 carried. No person sentenced under this
3 subsection shall be eligible for parole during
4 the term of imprisonment imposed herein."

5 SEC. 7. The amendments shall take effect on the
6 date of enactment of this Act, except that sections 3,
7 4, and 5 shall take effect on the first day of the
8 first calendar month which begins more than 90 days
9 after the date of the enactment of this Act.



Office of the Assistant Attorney General

Washington, D.C. 20530

8 MAY 1984

M E M O R A N D U M

TO: Michael J. Horowitz
Counsel to the Director
Policy Analysis and Law
Office of Management and Budget

James W. Cicconi
✓ Special Assistant to the President
Office of the Chief of Staff
The White House

Constance Horner
Associate Director
Economics and Government
Office of Management and Budget

Robert E. Powis
Deputy Assistant Secretary, Enforcement
Department of the Treasury

C. A. Howlett
Special Assistant to the President
for Intergovernmental Affairs
The White House

FROM: Robert ~~McConnell~~
Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs

SUBJECT: Suggested Options for Armor-piercing Bullet
Legislation

With further reference to the April 18 meeting, this is to provide suggested options for armor-piercing bullet legislation. After consultations with Treasury officials, we would suggest three alternatives for review by policy makers.

First, we have discussed with Treasury methods of adding further objective criteria to its definition of armor-piercing ammunition. Treasury will be submitting a revised bill to you shortly.

Second, we continue to believe that only a performance test procedure can provide the objectivity and precision necessary to the task at hand while at the same time taking into account all of the ammunition characteristics which affect penetration capability (velocity, projectile hardness and projectile conformation). We thus urge consideration of our bill which is based on the aluminum plate test developed by the National Bureau of Standards. A copy of our draft bill and section-by-section summary is attached as Appendix A; this is a slightly revised version of the bill circulated on April 10, modified to place enforcement jurisdiction in the Department of the Treasury rather than the Department of Justice.

Third, we suggest consideration of a consolidated Justice-Treasury bill which would ban ammunition which fails our aluminum plate test but which would authorize the Secretary, in his sole discretion, to exempt ammunition from the ban if he finds that it is not "armor-piercing" when considered in the light of the Treasury definition. This approach would preserve the objectivity and precision of our test procedure while leaving the Secretary ample discretion to exempt ammunition from the ban in the event the test procedure would otherwise ban legitimate ammunition. The Secretary's discretion could thus be used only to save ammunition from the ban, not to ban ammunition. Attached as Appendix B is page 3 of our draft bill revised to show how the Justice and Treasury concepts can be blended together.

Of course, we trust that the attached materials, together with the revised bill you will be receiving from Treasury, will provide a series of options consistent with the directions given to Justice and Treasury representatives at the April 18 meeting. As the House Subcommittee on Crime has scheduled a May 17 hearing on armor-piercing bullets, an early resolution of this issue would be highly desirable so that we can present a detailed Administration position at the May 17 hearing.

Attachments

A BILL

To amend title 18, United States Code, to establish criminal sanctions for the manufacture, importation or criminal use of certain handgun ammunition.

Be it enacted by the Senate and House of Representatives of United States of America in Congress assembled, That this Act may be cited as the "Peace Officer Protection Act of 1984."

Sec. 2. (a) Chapter 44 of title 18 of the United States Code is amended by adding a new section 929 as follows:

"§ 929. Prohibited armor-piercing handgun ammunition

"(a) Whoever knowingly manufactures or imports armor-piercing handgun ammunition shall be punished by a fine of not more than \$50,000, or imprisonment for not more than five years, or both.

"(b) The provisions of this section do not apply to the manufacture or importation of armor-piercing handgun ammunition for sale to a Federal intelligence agency or a Federal, State or local law enforcement agency for use by officers thereof authorized to carry firearms, for sale to a component of the Armed Forces of the United States for use by the members thereof, or for research activities authorized by the Secretary, provided that the manufacture or importation of the handgun ammunition is pursuant to a written order submitted by such law enforcement agency or component of the Armed Forces.

"(c)(1) Any armor-piercing handgun ammunition in the care, custody, or control of a manufacturer or importer shall be subject to forfeiture to the United States, except in cases where

the handgun ammunition has been manufactured or imported for the purpose specified in subsection (b) of this section.

"(2) The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Secretary.

"(d) Whenever there is reason to believe that any person is engaged or is about to engage in the manufacture or importation of armor-piercing handgun ammunition, the Secretary may initiate a civil proceeding in a district court of the United States to enjoin such manufacture or importation. The court shall proceed as soon as practicable to the hearing and determination of such an action and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action as is warranted to prevent a continuing and substantial danger to the public. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an

indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

"(e)(1) As used in this section and section 930, the term 'handgun ammunition' means ammunition manufactured or imported primarily for use in a pistol, revolver or other firearm originally designed to be fired by the use of a single hand. The Secretary shall publish a list of the various types of handgun ammunition. If his review indicates that there are in the United States more privately held handguns than longguns chambered for such ammunition, he shall designate such ammunition as 'handgun ammunition' for purposes of this section. Ammunition manufactured primarily for use in longguns or handguns other than revolvers or selfloading pistols shall be considered longgun ammunition for purposes of this section.

"(2) As used in this section, the term 'armor-piercing handgun ammunition' means that handgun ammunition which, when tested in accordance with the procedure specified in NIJ Report 100-84, perforates

"(A) five (5) or more plates of the test target if the ammunition is of nominal 3550 caliber (nominal 9mm) or less;
or

"(B) seven (7) or more plates of the test target if the ammunition is of greater than nominal 3550 caliber.

"(f) The detection and investigation of offenses in violation of this section shall be the responsibility of the Secretary and persons designated by him.

"(g) Any state law or local ordinance purporting to restrict the manufacture, importation, sale or possession of handgun ammunition based upon its penetration capability and which is inconsistent with the provisions of this section shall be null and void."

(b) The table of sections for chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 929. Prohibited armor-piercing handgun ammunition."

Sec. 3. (a) Chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 930. Criminal use of high-power handgun ammunition

"(a) Whoever, during and in relation to the commission of a Federal crime of violence including a crime of violence which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device for which he may be prosecuted in a court of the United States, uses or carries any handgun loaded with high-power handgun ammunition as defined in subsection (b), shall, in addition to the punishment provided for the commission of such crime of violence be sentenced to a term of imprisonment of not less than five nor more than ten years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this subsection, nor place him on probation, nor shall the term of imprisonment run concurrently with any other terms of imprisonment including that imposed for the felony in which the armor-piercing handgun ammunition was used or carried.

No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

"(b) For purposes of this section --

"(1) 'high-power handgun ammunition' means handgun ammunition which, when tested in accordance with the procedure specified in NIJ Report 100-84, perforates one (1) or more plates of the test target; and

"(2) 'crime of violence' means --

"(A) an offense that has as an element the use, or threatened use of physical force against the person or property of another, or

"(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

(b) The table of sections for chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

"930. Criminal use of high-power handgun ammunition."

Sec. 4. The analysis at the beginning of chapter 44 of title 18 is amended by adding at the end thereof the following:

"929. Prohibited armor-piercing handgun ammunition.

"930. Criminal use of high-power handgun ammunition."

Sec. 5. Section 927 of title 18 is amended by striking out the phrase: "No provision of this chapter" where it appears at the beginning thereof and inserting in lieu thereof: "Except as provided in section 929 with respect to the manufacture or importation of handgun ammunition, no provision of this chapter".

Section-by-Section Summary

Section 1. This section provides that this bill may be referred to as the "Peace Officer Protection Act of 1984" reflecting that the sole purpose of the proposal is to protect law enforcement officers who wear soft body armor.

Section 2. This section creates a new section 929 of title 18 setting out the ban on manufacture or importation of armor-piercing handgun ammunition and incorporates by reference the test procedure developed by NIJ and NBS.

The bill provides felony sanctions of imprisonment for up to five years and a fine of up to \$50,000 for the manufacture or importation of handgun ammunition which the manufacturer or importer knows exceeds the penetration limits of the test standard. This is not to say that manufacturers and importers are entitled to operate without bothering to test the ammunition they are making or importing which has penetration characteristics that approach the limits in the bill. On the contrary, the testing of ammunition and the application of established quality control standards are important and persons engaged in the business of manufacturing or importing ammunition must adhere to such procedures as a cost of doing business. It is anticipated that the provisions of NIJ Standard 100-84 and acceptable standards concerning sampling will be published in the Federal Register and made available to manufacturers and importers by the Department of the Treasury. ^{1/} A showing that a particular manufacturer or importer had received a copy of the test and sampling standards but had not followed them would constitute strong evidence that the violation was "knowing."

^{1/} We anticipate that the test and sampling standards will provide in essence that ammunition is not in violation if:

(1) a random sample of the ammunition in question was tested pursuant to the procedures set out in NIJ Report 100-84 and that no more than ten percentum of the rounds tested exceeded the penetration limitations of 18 U.S.C. 929; or

(2) the ammunition, although not from a lot tested for penetration, was

(A) manufactured pursuant to written specifications identical to those governing the manufacture of ammunition which has been tested and found not to exceed the limitations of 18 U.S.C. 929, and

(B) standard velocity tests of such ammunition yielded results averaging not more than ninety feet per second greater than for the lot which was tested for penetration.

On the other hand, quality control in ammunition manufacture is such that an occasional "hot" round will be produced or imported, the velocity, and hence the penetration characteristics of which, will be significantly greater than normal. It is not the intention of the legislation to require any changes in ammunition manufacturing or quality control procedures or to penalize the manufacturer or importer of such a "hot" round under the new section provided the bullet can be shown to have come from a lot tested or sampled according to the standard published by the Department of the Treasury.

Subsection (b) sets out an exemption from the Act for ammunition produced for intelligence, military, law enforcement or research use.

Subsection (c) sets out a procedure by which handgun ammunition that exceeds the penetration limitations of NIJ Standard 100-84 in the care, custody, or control of manufacturers or importers can be civilly forfeited to the United States. The forfeiture provision would apply whether or not the manufacturer or importer knew the bullets in question exceeded the NIJ Standard. The purpose of section 929 is to protect law enforcement officers and others who wear body armor. From the officers' perspective, an armor-piercing round is just as much of a threat if produced or imported accidentally or without knowledge that it was prohibited as is a round produced or imported in deliberate defiance of the NIJ Standard. Consequently, the forfeiture subsection is designed to prevent armor-piercing bullets from entering the channels of commerce. It should, however, be underscored that the forfeiture provisions, like the rest of the section, only apply to manufacturers and importers, not to individuals or dealers. Nothing in the section makes it illegal for any individual to possess or even sell an armor-piercing round nor could the United States seize such a round from anyone other than a manufacturer or importer. Rather, the criminal penalty and civil forfeiture provisions of the section are both designed to prevent additional armor-piercing handgun ammunition from coming onto the market and becoming readily available to criminals.

As for the forfeiture provision itself, subsection (c) provides that the procedures applicable under the customs laws are equally applicable here with the provision that the Department of the Treasury may designate persons to fulfill seizure and forfeiture responsibilities instead of customs officers. An important feature of the customs forfeiture provisions which is carried into subsection (c) is the ability of persons (here the manufacturers or importers) whose property has been seized to file a petition for remission or mitigation of the forfeiture. Such petitions are filed with the Secretary. The decision to grant or reject a petition is based on whether the person whose property has been seized intended to violate the law and on his degree of care in trying to comply. For example, a manufacturer

who made a good faith effort to comply but who had nevertheless produced rounds that exceeded the penetration limits could well have the ammunition returned to him if he could show that it would be segregated from his other stock and sold only to police and military departments.

Subsection (d) authorizes the Secretary to seek an injunction to prevent the manufacture or importation of prohibited ammunition. This authority could be exercised in circumstances where there is no "knowing" violation of the Act.

Subsection (e) defines the terms "handgun ammunition" and "armor-piercing handgun ammunition". The term "handgun ammunition" is defined as that ammunition manufactured for use in firearms originally designed to be fired by the use of a single hand. Because some ammunition can be fired either from handguns or rifles, the definition provides that the Secretary shall publish a list of handgun cartridges; this list will include all common handgun calibers (e.g., .25 auto, .32 auto, .38 special, 9 mm .357 and .44 magnum, etc.) so that the list itself will not be of aid to the criminal element by identifying which ammunition is armor-piercing. It will, however, provide notice to manufacturers and importers as to what is "handgun" ammunition as opposed to rifle ammunition. In case of dispute, the Secretary should refer to the best available statistics on private firearms in this country; if he concludes that there are more handguns than rifles chambered for a particular type of ammunition, that ammunition shall be deemed "handgun" ammunition for purposes of this section. The definition of "armor-piercing handgun ammunition" specifies the number of aluminum plates which correspond to the resistance of the new Type III-A armor standard.

One anomaly with which we have tried to deal is that there are some few high-velocity, small-bore handgun bullets manufactured for use in long-barrel target pistols. These types of bullets will penetrate body armor but are not a significant threat to law enforcement officers as they can only be fired from specialized handguns which are not appealing to criminals as they are normally single-shot weapons with large frames and long barrels which make them difficult to conceal. We propose to treat these small-bore specialty bullets in the same fashion as longgun bullets.

Subsection (f) provides for enforcement of this Act by the Department of the Treasury. It is anticipated that no increase in resources will be required for this enforcement role as the Act will be largely self-policing. Major American manufacturers, for example, have demonstrated a highly responsible approach to this problem and in 1982 voluntarily ceased production of armor-piercing handgun rounds. Occasional "spot checks" of domestic manufacturers and importers will, we believe, be sufficient to achieve compliance with the ban. To the extent that the ban

applies to "handloaders", past experience does not give us reason to expect a significant enforcement problem and no effort to "spot check" handloaders is contemplated. Rather, we would expect to investigate individual handloaders only to the extent that information comes to our attention evidencing that a particular individual is producing prohibited ammunition.

Subsection (g) makes clear that this statute would supersede State laws purporting to ban the manufacture, importation, or sale of handgun ammunition based on penetration capability. State laws now in existence are ineffective. Some lack a meaningful definition of what is prohibited and thus may fail to give manufacturers, importers, dealers and users adequate notice as to what is prohibited. Others attempt to ban ammunition based upon the composition of the projectile used in the ammunition, thus reaching only one of the combination of factors affecting penetration.

In short, this area is such a narrow one and the need for uniformity so great that any federal legislation in the area must be applied to the exclusion of inconsistent state or local laws. Because existing state laws on the subject are defective in any event, superseding them with this statute will not have any adverse effect upon law enforcement or the safety of law enforcement officers. It will, however, free legitimate manufacturers and dealers from a host of conflicting and vague state and local regulations. Of course, this provision would not apply to state or local laws designed to regulate firearms or ammunition on some basis other than armor-penetration capability and is not intended to take any position with respect to state or local laws such as that involved in Quilici v. Village of Morton Grove, 695 F.2d 261 (7th Cir. 1982). Moreover, this provision would not prevent states or local governments from passing laws consistent with the federal law, e.g., establishing state or local sanctions for the manufacture, importation, sale or possession of ammunition which is banned by federal law.

Section 3 of the bill would add a new § 930 to title 18 to establish a minimum-mandatory sentence of five years for the use of certain armor-piercing ammunition during the course of a federal crime of violence. While the ban on production and importation in § 929 conforms to the new Type IIIA armor standard now being developed -- the heaviest soft body armor -- we propose that minimum-mandatory sentences be imposed for criminal use of handgun ammunition capable of penetrating Type I armor -- the lightest soft body armor, i.e. ammunition capable of penetrating one plate when tested pursuant to NIJ Report 100-84. In essence, § 930 would punish the criminal use of high-power handgun ammunition which has legitimate uses but which constitute a serious threat to the safety of law enforcement officers when used during the course of a crime. The proposed § 930 is similar

to Part E, Title XIV of the President's Comprehensive Crime Control Act of 1983 except that it draws the line, for purposes of imposition of minimum-mandatory sentences, at the Type I rather than Type IIA level and provides for testing against aluminum plate rather than soft body armor. We believe this new section 930 will serve to deter the use of high-power handgun ammunition during the course of federal crimes of violence.

Section 4 conforms the analysis at the beginning of Chapter 44, title 18, to reflect the two new sections.

Section 5 conforms section 927 of title 18 to reflect the addition of the two new sections.

In conclusion, it should be noted that consideration was given to expanding proposed new section 929 to include a ban on sales or simple possession of armor-piercing handgun ammunition. Such coverage was rejected, however, as dealers and users have no means of assessing the penetration characteristics of ammunition. Moreover, because bullets do not bear individual serial numbers, any attempt to ban the sale or simple possession of armor-piercing bullets would be virtually unenforceable. Finally, because ammunition exceeding the penetration levels of the new standard are in existence and were legal when manufactured or imported, any effort to ban the sale or possession of such ammunition would raise questions as to the rights of owners, under the Due Process Clause, to reimbursement for financial losses that would result from banning the sale or possession of such ammunition which was lawful when manufactured or imported. Again, in view of the fact that we are unaware of any instance in which an armor-clad officer has been attacked with armor-piercing handgun ammunition, we believe that the ban on manufacture and importation, together with the minimum-mandatory sanctions for criminal use during the course of a federal crime of violence, constitute a prudent and effective response to the problem facing us.

indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

"(e)(1) As used in this section and section 930, the term 'handgun ammunition' means ammunition manufactured or imported primarily for use in a pistol, revolver or other firearm originally designed to be fired by the use of a single hand. The Secretary shall publish a list of the various types of handgun ammunition. If his review indicates that there are in the United States more privately held handguns than longguns chambered for such ammunition, he shall designate such ammunition as 'handgun ammunition' for purposes of this section. Ammunition manufactured primarily for use in longguns or handguns other than revolvers or selfloading pistols shall be considered longgun ammunition for purposes of this section.

"(2) As used in this section, the term 'armor-piercing handgun ammunition' means that handgun ammunition which, when tested in accordance with the procedure specified in NIJ Report 100-84, perforates

"(A) five (5) or more plates of the test target if the ammunition is of nominal 3550 caliber (nominal 9mm) or less;
or

"(B) seven (7) or more plates of the test target if the ammunition is of greater than nominal 3550 caliber.

"(f) The detection and investigation of offenses in violation of this section shall be the responsibility of the Secretary and persons designated by him.

"(3) Notwithstanding the performance of ammunition in the test procedure set out in paragraph (2), the Secretary may, in his sole discretion, exempt a particular type of ammunition from this section if he determines that [insert core of Treasury draft bill here as an exception to the ban.]



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

April 20, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

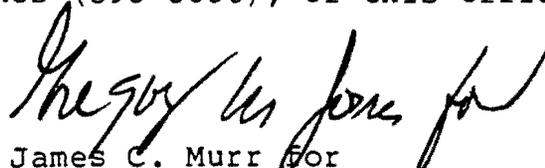
Department of Justice

SUBJECT: Treasury letter/draft bill on armor-piercing bullets

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

No Reply Needed. To be discussed at April 24 meeting in Mr. Horowitz' office.

Direct your questions to Gregory Jones (395-3856), of this office.


James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: C. Horner
M. Horowitz
J. Cicconi
C.A. Howlett
K. Collins/J. Mitrisin



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

DEPUTY ASSISTANT SECRETARY

APR 17 1984

Dear Mike:

Enclosed is a very rough draft of legislative and regulatory proposals which attempt to codify a ban on armor-piercing ammunition which are presently being restricted by voluntary agreements with the manufacturers. This proposal needs a lot more study and a lot more refinement.

The enclosed proposal is overshadowed by serious if not insurmountable enforcement problems. Among them are the following:

1. It will place a severe burden on ATF with respect to the classification of armor-piercing ammunition. This will require the hiring of at least six additional ballistics experts.
2. Enforcement of the amendments will require a tremendous outlay of manpower and fiscal resources. An undetermined but significant additional number of Special Agents and Inspectors would be necessary to ensure any degree of compliance, as well as the enforcement of the mandatory penalty provisions.
3. The proposed regulation (178.28, Armor-Piercing Ammunition Determination) must have a degree of subjectivity or we will be outlawing much sporting ammunition which can penetrate Kevlar soft body armor.
4. There can be expected attempts by certain parties to circumvent the amendments by purposely misrepresenting and/or mislabeling ammunition which is in reality armor-piercing. Conversely, there can be expected attempts by some interest groups to have certain sporting cartridges, primarily handgun ammunition, determined to be armor-piercing based solely on its use in handguns and its ability to penetrate soft body armor.
5. The amendments provide no exemption for gun/cartridge collectors to acquire this type ammunition.
6. The amendments would not permit thousands of unlicensed handloaders to produce this ammunition.

7. The amendments would require a constant re-examination and reclassification of newly designed domestic and foreign ammunition.
8. The importation of unknown types of surplus military ammunition would have to be constantly monitored to ensure that no armor-piercing ammunition is permitted into the country.
9. This proposal will require some testing by ATF although it will not be on the order of magnitude of the testing required by the Justice Department legislative proposal.

Because of the enforcement problems described above, however, we do not recommend adoption of this legislative proposal. This draft represents an honest effort to codify our voluntary agreements pursuant to your request.

Sincerely,

/s/ Robert E. Powis

Robert E. Powis
Deputy Assistant Secretary
for Enforcement

The Honorable
Michael J. Horowitz
Counsel to the Director
Office of Management and Budget
Washington, D.C. 20503

Enclosure

ARMOR PIERCING AMMUNITION LEGISLATION

Section 921(a), Chapter 44, Title 18, USC (Title 1 of the Gun Control Act)

Add the following new section:

sub section 921(a)(18):

Armor piercing ammunition means cartridges or projectiles designed, manufactured, advertised or sold to defeat any physical protective covering designed to protect personnel or equipment against projectiles or fragments.

Section 922, Chapter 44, Title 18, USC, add the following new section:

(a) It shall be unlawful--

(7) for any person to manufacture or import armor piercing ammunition.

Section 923, Chapter 44, Title 18, USC, amend the following section:

subsection 923(a)(1):

If the applicant is a manufacturer--

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of \$1000.00 per year.

sub section 923(a)(2):

If the applicant is an importer--

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of \$1000.00 per year.

Section 924, Chapter 44, Title 18, USC, add the following new subsection

Subsection 924(c)(3)

Whoever, during and in relation to the commission of a felony uses or carries a firearm loaded with armor piercing ammunition shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than five years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this subsection, nor place him on probation, nor shall the term of imprisonment run concurrently with any other terms of imprisonment including that imposed for the felony in which the armor piercing ammunition was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

Section 925, Chapter 44, Title 18, USC, add the following new section:

sub section 925(a)(6):

The provisions of Section 922(a)(7) shall not apply to the manufacture or importation of armor piercing ammunition for the use of the United States or any department or agency thereof or any State or any department agency, or political subdivision thereof, **OR TO THE MANUFACTURE OF ARMOR PIERCING AMMUNITION FOR THE SOLE PURPOSE OF EXPORTATION.** Section 925, Chapter 44, Title 18, USC, amend the following sections:

sub section 925(d)(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 and armor piercing ammunition or,
sub section 925(d)(4):

was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition, excluding armor piercing ammunition.

PART 178. TITLE 27, CODE OF FEDERAL REGULATIONS

Part 178, add new sub section 178.28

178.28 Armor Piercing ammunition Determination

The Director shall determine in accordance with 18 U.S.C. 921(a)(18)((new section)) whether a cartridge or projectile is excluded from the definition of armor piercing ammunition. A person who desires to obtain a determination under that provision of law for any cartridge or projectile which he believes is not armor piercing shall submit a written request, in triplicate, for a ruling thereon to the Director. Each such request shall be executed under the penalties of perjury and contain a complete and accurate description of the cartridge or projectile, the name and address of the manufacturer or importer thereof, the purpose of and use for which it is intended, and such photographs, drawings and samples as may be necessary to enable the Director to make his determination. The Director shall publish a listing of all cartridges and projectiles which have been tested and determined to be armor piercing.