

**LAW ENFORCEMENT OFFICERS PROTECTION
ACT OF 1985**

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HEARING
BEFORE THE
SUBCOMMITTEE ON CRIME
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 4 and H.R. 13

LAW ENFORCEMENT OFFICERS PROTECTION ACT OF 1985

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LAW ENFORCEMENT OFFICERS PROTECTION ACT OF 1985

THURSDAY, MAY 9, 1985

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 2:15 p.m., in room 2141, Rayburn House Office Building, Hon. William J. Hughes (chairman of the subcommittee), presiding.

Present: Representatives Hughes, Mazzoli, Staggers, McCollum, Shaw, and Gekas.

Staff present: Hayden W. Gregory, counsel; Eric E. Sterling, and Edward O'Connell, assistant counsel; Charlene Vanlier Heydinger, associate counsel; Theresa Bourgeois, staff assistant; and Phyllis Henderson, clerk.

Mr. HUGHES. The Subcommittee on Crime will come to order.

The Chair has received a request to cover this hearing in whole or in part by the television broadcast, radio broadcast, still photography or by other similar methods. In accordance with committee rule 5(a), permission will be granted unless there is objection. Is there objection?

Hearing none, such permission is granted.

This afternoon, the subcommittee is examining the two versions of the Law Enforcement Officers Protection Act of 1985, H.R. 4 and H.R. 13. Armor-piercing ammunition is a special threat to the lives and safety of our Nation's police and we must take every reasonable step to protect the lives of those who protect our lives.

Armor-piercing ammunition has no sporting purpose whatsoever. It is not used by hunters or sportsmen or target shooters. This ammunition has principally a military or offensive purpose to penetrate armor. This ammunition should not be sold without reasonable controls to assure that it is not used in the commission of crime.

There are some who see this proposal as banning ammunition or in some incomprehensible way as the equivalent to taking guns. Let's keep a degree of reason focused on the problem. The bills specifically exempt from coverage all ammunition which is primarily intended to be used for sporting purposes. If the ammunition has a sporting purpose, it remains outside the controls of these bills. Nothing is taken away from the sportsman.

We know that at least 13 million rounds of armor-piercing ammunition were imported into this country in the last decade. It has

been conceded by the administration and by the National Rifle Association, among others, that to protect our Nation's police, it is necessary to limit the manufacture and importation of this ammunition, but so far, they have parted company with the Nation's police who insist that the sale of this ammunition should be also so limited. An apt analogy, in my judgment, to what has been the NRA position, would be to prohibit importing and manufacturing cocaine, but permit the sale of cocaine to anyone who wants to buy it. That position doesn't make sense, especially when 13 million rounds have already come into the country.

The danger police face is not that legitimate manufacturers of armor-piercing ammunition will renege on their arrangement not to sell it and risk prosecution for doing so. The danger is from the armor-piercing ammunition now on the shelves of dealers around the country.

Today, we are getting closer to placing an effective law on the books that will protect law enforcement officers from armor-piercing ammunition designed to penetrate the protective armor they wear.

The primary issue today is to take every reasonable step to protect the lives of police officers from cop-killer bullets. The other issues, in my judgment, are secondary.

At this time, the Chair recognizes the gentleman from Florida. Mr. McCOLLUM. Thank you, Mr. Chairman.

No one deserves this committee's assistance more than the law enforcement officers who risk their lives daily to protect the citizens of this country from crime. These dedicated public servants have placed the protection of others above their own personal safety by their career choice. For this valor, we must show our appreciation. We must also do everything in our power to reduce the risk of harm to police as they perform their duties.

This was the motivation behind the development of the bullet-resistant vest. It is also our motivation as we seek to eliminate bullets designed to pierce solid armor.

These dangerous projectiles cannot be stopped by the bullet-proof vest and pose a danger to our law enforcement officers. Today's hearings will provide the testimony on which we can craft an armor-piercing bullet ban that can be promptly enacted and signed into law.

I welcome the witnesses and thank them for their assistance in this important endeavor.

Thank you, Mr. Chairman.

Mr. HUGHES. Thank you.

The Chair has just received some statements from other groups that want to submit testimony, and it is the intent of the Chair, unless there is objection, to receive those statements for the record.

It may very well be that if, in fact, additional issues are raised by this hearing, that the Chair might entertain a request for additional hearings. However, it is our hope that we can move any legislation expeditiously, but I just want to assure those that have submitted statements that those statements will be seriously considered by the committee. They will be made a part of the hearing record and if, in fact, additional issues are raised in the context of

those statements or other testimony today, we certainly will look at the possibility of additional hearings.

Our lead-off witness today is Congressman Jack Brooks, who represents the 9th District of Texas. Jack Brooks has had an extensive and profoundly distinguished legislative career, first in the Texas Legislature and now in the U.S. House of Representatives, where he is presently serving his 17th term.

He is the ranking democrat on the full House Judiciary Committee. He is the chairman of the House Government Operations Committee and chairman of the Subcommittee on Legislation and National Security. Jack is the author of H.R. 13, one of the bills presently pending before the House.

We are just delighted to have you with us, Mr. Chairman. We have your statement which, without objection, will be made a part of the record in full and you may proceed as you see fit. Welcome.

**STATEMENT OF HON. JACK BROOKS, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TEXAS**

Mr. BROOKS. I want to thank you very much, Mr. Chairman, and tell you how much I appreciate the opportunity to testify before you today. The bill that I introduced is the same as last year. As you recall, the bill was the product of extensive efforts, really the combined effort of the various law enforcement agencies and some private groups and the administration to draft legislation to protect law enforcement officers.

The soft body armor is credited with saving the lives of many law officials and the provisions of my bill will help ensure the continued utility of these live-saving vests by deterring the availability and the use of ammunition designed specifically to penetrate them and to injure them.

The bill I introduce again this year, with the support of over 130 cosponsors, will amend title 18 of the United States Code to prohibit the manufacture and importation of armor-piercing ammunition except for law enforcement and military or export purposes.

Further, the manufacture or importation for these permissible uses is regulated through the application of licensing and annual fee provisions. The bill also provides a mandatory 5-year prison sentence for possession or use of armor-piercing ammunition during the commission of violent felonies.

I note that provisions in the Comprehensive Crime Control Act passed last year provides such mandatory penalty for persons who commit Federal crimes of violence while carrying or using a handgun loaded with AP ammunition.

My bill would extend those existing provisions beyond situations involving handguns to all instances when AP ammunition is carried during the commission of a violent crime.

I think that the bill is succinct and effective and enforceable and that it addresses the concerns of both law enforcement personnel and law-abiding citizens who uphold the right to bear arms. I look forward to working with this subcommittee to see that legislation addressing this problem is passed successfully this session.

Again, Mr. Chairman, let me tell you how grateful I am for your willingness to let me state my concerns and for your open-minded-

ness in trying to resolve and develop a bill that we can pass that will do the job we all want done.

Thank you very much.

[The statement of Mr. Brooks follows:]

Statement of Congressman Jack Brooks
On H.R. 13--Law Enforcement Officers
Protection Act
Subcommittee on Crime
Thursday, May 9, 1985

MR. CHAIRMAN--THANK YOU FOR THIS OPPORTUNITY TO TESTIFY ON BEHALF OF H.R. 13--THE LAW ENFORCEMENT OFFICERS PROTECTION ACT OF 1985--WHICH I INTRODUCED THIS YEAR. MY BILL IS IDENTICAL TO ONE I INTRODUCED IN THE LAST CONGRESS.

AS YOU WILL RECALL, THAT BILL WAS A PRODUCT OF EXTENSIVE EFFORTS BY THE VARIOUS LAW ENFORCEMENT AGENCIES, INTERESTED PRIVATE GROUPS, AND THE ADMINISTRATION TO DRAFT LEGISLATION TO PROTECT OUR LAW ENFORCEMENT OFFICERS.

SOFT BODY ARMOR IS CREDITED WITH SAVING THE LIVES OF MANY LAW ENFORCEMENT OFFICERS, AND THE PROVISIONS OF MY BILL WILL HELP ENSURE THE CONTINUED UTILITY OF THESE LIFESAVING VESTS BY DETERRING THE AVAILABILITY AND THE USE OF AMMUNITION WHICH IS DESIGNED SPECIFICALLY TO PENETRATE THEM.

THE BILL THAT I HAVE INTRODUCED AGAIN THIS YEAR, WITH THE SUPPORT OF OVER 130 CO-SPONSORS, WILL AMEND TITLE 18 OF THE U.S. CODE TO PROHIBIT THE MANUFACTURE AND IMPORTATION OF ARMOR-PIERCING AMMUNITION EXCEPT FOR LAW ENFORCEMENT, MILITARY, OR EXPORT PURPOSES.

FURTHER, THE MANUFACTURE OR IMPORTATION FOR THESE PERMISSIBLE USES IS REGULATED THROUGH THE APPLICATION OF LICENSING AND ANNUAL FEE PROVISIONS.

2 2 2 2 2 2

THE BILL ALSO PROVIDES FOR A MANDATORY FIVE-YEAR MINIMUM PRISON SENTENCE FOR THE POSSESSION OR USE OF ARMOR-PIERCING AMMUNITION DURING THE COMMISSION OF A VIOLENT FELONY. I NOTE THAT PROVISIONS IN THE COMPREHENSIVE CRIME CONTROL ACT PASSED LAST YEAR PROVIDE SUCH MANDATORY PENALTY FOR PERSONS WHO COMMIT FEDERAL CRIMES OF VIOLENCE WHILE CARRYING OR USING A HANDGUN LOADED WITH ARMOR-PIERCING AMMUNITION. MY BILL WOULD EXTEND THOSE EXISTING PROVISIONS BEYOND SITUATIONS INVOLVING HANDGUNS TO ALL INSTANCES WHEN ARMOR-PIERCING AMMUNITION IS BEING CARRIED DURING THE COMMISSION OF A VIOLENT FELONY.

MY BILL IS SUCCINCT, EFFECTIVE AND ENFORCEABLE, WHILE ADDRESSING THE CONCERNS OF BOTH LAW ENFORCEMENT PERSONNEL AND LAW-ABIDING CITIZENS WHO UPHOLD THE RIGHT TO BEAR ARMS. I LOOK FORWARD TO WORKING WITH THIS COMMITTEE IN SEEING THAT LEGISLATION ADDRESSING THIS PROBLEM IS PASSED DURING THIS CONGRESS. AND, AGAIN, MR. CHAIRMAN, I APPRECIATE YOUR WILLINGNESS TO LET ME STATE MY CONCERNS TODAY.

#

Mr. HUGHES. Thank you very much, Jack.

I want to thank you, first of all, for the contributions that you have made. I really think that we are a lot closer this year. The administration, as you perhaps may know, will be testifying subsequently and their position is a lot closer to H.R. 4, although they would ban the sale prospectively. But I think the point is that we are making some progress and we are indebted to you because you have been one of the leaders in developing an initiative that has begun the dialogue which I think, hopefully, will result in legislation.

I agree with you. I think that legislation is long overdue.

I have a couple of questions of you if I might. In the last Congress, as you know, we passed the comprehensive Crime Control Act of 1984. Among the various provisions was one that would make the possession of armor-piercing ammunition subject to additional penalties. Is it your feeling that we need to go beyond what we did in sentence enhancement in the 98th Congress as part of the comprehensive Crime Control Act?

Mr. BROOKS. I think we could probably stay with that. I don't think, really, that we can solve all the problems in the world in this one piece of legislation, Mr. Chairman, and I think that if we can hammer out this one within the parameters our designs and hopes, that that would be pretty good. I don't think we ought to try and broaden it too much because you pick up additional problems.

I don't think we ought to make many changes in it. If we get an accord worked out, I think we ought to pass it like that and not try to load it up. People that want to do too much good often get nothing accomplished, so I will take a half a loaf any day.

Mr. HUGHES. I gather that your primary concern over sale has been the question of a dealer inadvertently, without willful intent, selling ammunition that he or she does not recognize as armor-piercing ammunition. Is that the thrust of your concern?

Mr. BROOKS. Basically, yes. I have not studied carefully the so-called language that the administration has sent down.

Mr. HUGHES. I just saw it myself.

Mr. BROOKS. Apparently they will testify on it today. I have not seen it. I have just heard what it is and I am sure that I would want to take a look at it pretty carefully before I would commit on it.

Certainly, down the line, there is always room for adjustment and agreement, but I want to look very carefully at what we are doing before I would make any commitment on that, Mr. Chairman.

Mr. HUGHES. I understand. I take it that the concern among others relative the sale is based on the same concern and I think it is a somewhat legitimate concern, but I also have this concern. The Bureau of Alcohol, Tobacco and Arms does send out periodic notices alerting dealers to various regulations that have been developed. It would seem to me that we could do a pretty good job of identifying armor-piercing ammunition. It would seem to me that it would be a fair inference that no dealer should be selling ammunition if he doesn't know what he is selling.

Would you agree?

Mr. BROOKS. I would want to study that a little more carefully before I get committed on the ban on sale and on the notice and on what other people ought to do and be prepared to do. Let me study that a little bit before I dig into that.

Mr. HUGHES. All right, I appreciate that.

The gentleman from Florida.

Mr. McCOLLUM. Thank you.

Mr. Brooks, it is good to have you with us today. As we have discussed very casually, I am very open-minded. I am very much in favor of banning the armor-piercing bullet as best we can to protect our police officers, but I am very open-minded about these details. I come fresh to this subcommittee and am very pleased to be ranking the subcommittee at this time.

I have a question or two that are just related to information. I gather the basic distinction that Mr. Hughes just elicited from you between past legislation has been over the sale question.

Does your bill affect persons who make their own ammunition? Does your bill—if somebody manufactures his own ammunition, would your bill affect that?

Mr. BROOKS. I am not positive, but I would think that it probably would. If you have in possession, AP ammunition, whether it came from heaven or whether you made it in the garage—

Mr. McCOLLUM. Wouldn't matter.

Mr. BROOKS [continuing]. It would still be armor-piercing ammunition with the capability of penetrating those safety vests and killing law enforcement personnel.

Mr. McCOLLUM. Your basic thoughts, from your previous analysis of your legislation versus Mr. Biaggi's and others that you have studied—again, I know you haven't and I haven't either studied the latest proposal from the administration, but there wouldn't be any real distinction in the area of the manufacture or the possession. It is in the sale area that your legislation really differs from the others.

Mr. BROOKS. I believe that is about correct, yes, sir.

Mr. McCOLLUM. I just want to thank you for your contribution to this. I think it is an extraordinarily important issue and I appreciate very much your not only taking the time today, but all you put into it. Thank you.

Mr. HUGHES. The gentleman from West Virginia is recognized for 5 minutes.

Mr. STAGGERS. Thank you, Mr. Chairman.

I don't have any questions for my distinguished colleague. I would like to applaud him for his efforts and leadership in this area. I think that combining the two interests of protecting our law enforcement personnel and also the right to bear arms of our citizens is extremely difficult sometimes and you have taken a very good leadership role in this. I think your sentence in your last paragraph of the bill is succinct, effective and enforceable. I hope that that is true and I hope that we can come to some conclusion to this.

I yield back the balance of my time.

Mr. HUGHES. Thank you.

The gentleman from Pennsylvania is recognized for 5 minutes.

Mr. GEKAS. Yes, thank you, Mr. Chairman.

I missed the oral portion of your testimony and I am reviewing the written portion as fast as I can.

Mr. BROOKS. It is pretty much the same. I have sort of paraphrased it and rolled it along a little bit faster because you all are basically familiar with the issue.

Mr. GEKAS. Yes. In the question of ultimate responsibility for sale of this ammunition, how do you view that as to the seller?

Mr. BROOKS. Well, I avoided a commitment to that already. I said that the administration is going to offer some language which I have heard about but which I haven't seen on sale. I would take a look at their language. You know, I am one of the people who want to look at every word to see what they are saying and what they are planning to do.

It may be a great step forward and a bridge between Hughes and me that will lead us all to heaven. Then, again, it may not, so I am going to read it very carefully before I make any decision on it. I have not seen it; I am not really familiar with an evaluation of what it will do, though it seems to be offered ostensibly in an effort to resolve the problem.

Mr. GEKAS. That is what I wanted to—

Mr. BROOKS. I will give them credit for good faith, but I am not going to give them credit for competence until I read it very carefully.

Mr. GEKAS. I will help you read it when the time comes and we will see if that is a passage to heaven.

Mr. BROOKS. You are pretty good at reading, I have noticed before.

Mr. GEKAS. Yes, but that is what I wanted to draw from you, no matter what we hear today—and out of all that will be worthwhile testimony, we want to see what the final proposal is with respect to sale.

Mr. BROOKS. That is right and this is just their suggestion. It is not binding either.

Mr. GEKAS. No, no. I thank the chairman and the chairman who is testifying.

Mr. HUGHES. Thank the gentleman.

The gentleman from Kentucky is recognized for 5 minutes.

Mr. MAZZOLI. Thank you, Mr. Chairman. I also missed the gentleman from Texas, our new member here from Texas, his original statement, but I have read it and I thank him for the leadership because it is not an easy subject for us to get into and there is, obviously, a lot of very strong pressure, both for and against, but I do thank the gentleman because I think it will make certainly a constructive addition to the dialogue.

I guess the one area—does the gentleman know—in his formulation, apparently the sale of existing stocks would not be prohibited. Is that essentially the case?

Mr. BROOKS. I believe that is the case.

Mr. MAZZOLI. All right. Does the gentleman have any awareness of how many or how much we are talking about? To what extent that could pose any kind of a problem or is that generally something that the gentleman feels would be—

Mr. BROOKS. The administration and the private bodies and most of the police organizations we dealt with originally did not feel that

that would pose a significant problem in controlling the use of this AP ammunition. As I have said earlier, the administration has got some other proposal, another suggestion and we will all take a look at that and maybe it is a step forward, I don't know.

Mr. MAZZOLI. I certainly thank the gentleman and commend him on his efforts.

Thank you, Mr. Chairman.

Mr. HUGHES. The gentleman from Florida, Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman.

I am pleased to see that we are revisiting this issue since the last Congress. I supported this type of legislation in the last Congress and I certainly expect to support it here.

I would like to focus on the difference between your bill and the Biaggi-Hughes bill, regarding those bullets that are actually on the shelf at this time.

Is there any estimate about what we are talking about? How many bullets are out there? I understand they are somewhat collectors' items now. I also understand they haven't been manufactured since 1981.

Mr. BROOKS. I don't have the numbers on that. I will try to furnish them for you, if I may.

Mr. SHAW. I would appreciate that. Perhaps—

Mr. BROOKS. I don't have them off the top of my head.

Mr. SHAW. Yes, sir. Perhaps one of the other witnesses might have that.

As I understand that is basically—that is the biggest difference that there is between the two bills.

Mr. BROOKS. It is really hard to get a difference between the distinguished Congressman from New York and myself. We have such close ties in our general attitude toward legislation and our appreciation of the military and appreciation of the armed services folks.

Mr. SHAW. All right.

Mr. BROOKS. My wife's ancestor was the first U.S. marshal in Oklahoma and so we all have a long background in law enforcement.

Mr. SHAW. Yes, sir, well, I know of the gentleman's thoughts in that regard and I certainly applaud you again for bringing this matter to us and delighted to have you with us.

I yield back. Thank you.

Mr. HUGHES. Jack, thank you again. We really appreciate your contributions.

Mr. BROOKS. Always a pleasure to do business with you.

Mr. HUGHES. Thank you.

Our next witness today is the Representative from New York's 19th District, Representative Mario Biaggi. His distinguished service in Congress began in 1969, after a heroic 23-year career in the New York City Police Department.

He was wounded some 10 times in the line of duty and was one of the most highly decorated officers in the department's history. He was admitted to the New York Bar in 1966 at the age of 49. He has a record of personal and professional accomplishments to fill 10 lifetimes.

His work, not just in the area of law enforcement, but in ocean policy really has just been absolutely outstanding.

Mario, we are just honored to have you with us today. We have your statement, which will be made a part of the record without objection, and you may proceed as you see fit. We are just delighted to have you.

**STATEMENT OF HON. MARIO BIAGGI, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW YORK**

Mr. BIAGGI. Thank you very much, Mr. Chairman, and let me commend you once again for your persistence and your leadership in this area. I have a full statement, as you have stated, for the record. I will give you a distilled version.

This is the fourth time since 1982 that I have testified before your subcommittee in support of my legislation to outlaw armor-piercing cop-killer bullets. With all due respect, Mr. Chairman, I hope it is the last time, and I am sure you share that same feeling.

With the help of a very competent and cooperative staff, you have taken a genuine interest in this issue, and as a result, we have been able to find answers to some very difficult questions. Progress has been slow, perhaps, but I believe we finally have a legislative product before us that we can all be proud of. The product I am referring to is H.R. 4, the Law Enforcement Officers Protection Act of 1985, a measure I was honored to coauthor with you, Mr. Chairman.

Under the provisions of H.R. 4, it would be illegal to manufacture, import or sell armor-piercing ammunition except for government use, including military and police, testing, research or export. Armor-piercing ammunition is defined by the bill as ammunition that is composed of projectiles made from certain hard metals: tungsten alloys, steel, iron, brass, bronze, beryllium copper, or uranium.

The bill was carefully crafted and represents nearly 6 years of research, evolution, and compromise. We have come a long way, but it appears that one final point must still be debated. While it appears we have been successful in convincing a majority of our colleagues and others of the need to ban armor-piercing ammunition, there are still some who question just how total that ban should be.

Their argument goes something like this: It is all right to ban the future manufacture and importation of cop-killer bullets, but we need not concern ourselves with the armor-piercing ammunition that is already sitting on gunshop shelves.

If this were not such a serious issue, I might be amused by such logic. It is like saying we should outlaw new heroin, but any heroin that drug dealers already have can go ahead and be sold. Or how about, let's prevent any new defective automobiles from being made, but the ones already at the auto dealers can go ahead and be sold. That is nonsense and it is faulty logic.

All heroin is bad; all defective automobiles are bad and all cop-killer bullets are bad. Those opposed to a ban on sale say there are an insignificant number of armor-piercing bullets now in the marketplace so why worry? I might be swayed by that fact if it could be proven, but it cannot.

There is not one person alive today who could say with certainty just how many cop-killer bullets are already in the marketplace. I would agree that, thanks largely to this congressional effort to ban them, the supply has diminished over the past few years, but to say that an insignificant number of them now exist is stretching the point too far, especially when the lives of so many police officers are at stake.

In fact, the evidence I have collected suggests that the supply of armor-piercing bullets still in the marketplace is anything but depleted. Consider, for example, that the crazed McDonald's killer, James Huberty, fired 192 Czechoslovakian armor-piercing cop-killer bullets when he killed 21 innocent people just last July.

Three years ago, I received a report from the Bureau of Alcohol, Tobacco, and Firearms that stated 30 million rounds of those same Czech bullets used by Huberty were imported into the United States in the mid-1970's. Are we to assume, Mr. Chairman, that James Huberty bought the last couple of hundred rounds in existence? I think not.

A more recent report I received has me even more concerned about the ready availability of armor-piercing ammunition. Let me read from a communication that was sent just 1 week ago from the Drug Enforcement Administration to the U.S. Customs Service. Information from DEA indicates that the Pablo Acosta drug trafficking organization has begun to arm its members with Teflon-coated ammunition. Teflon-coated bullets are capable of penetrating body armor-type bullet-proof vests utilized by officers. This is the kind of experience that we have with this. Again, we have a bullet that goes right through both panels, front and back of a bullet-resistant vest. We have tested this time and time again and have proven that not only does it penetrate the front panel and go through the body, but it also penetrates the back panel and then penetrates one and a half telephone books. That is the awesome penetration ability that this type of bullet has.

Now, these are the same type of Teflon-coated ammunition that ripped through this bullet-resistant vest. The Pablo Acosta drug trafficking organization is a very dangerous and notorious bunch of drug smugglers with members in the United States. If we care anything at all about the lives of our law enforcement officers, how can we possibly ignore reports like this and assume that there are not enough cop-killer bullets in existence to worry about?

If more evidence of criminal use is needed, I have referenced another 15 cases in my more detailed statement. In total, we have documentation of 17 cases of criminal use or possession of armor-piercing ammunition from 1966 to 1985 and there is good reason to assume that many of the cases have simply gone unreported or undetected.

Frankly, this evidence, along with reports of law-abiding citizens being able to purchase these bullets in gunshops leads me to only one conclusion: the sale of cop-killer bullets that already exist must be legally banned.

So how do we do that? Some have argued that dealers would have difficulty identifying an armor-piercing bullet. Admittedly, there is some merit to that concern. However, H.R. 4 would address that problem. Under H.R. 4, all federally licensed firearms dealers

across the country would receive a written notice from the Treasury Department telling them exactly which ammunition is classified as armor-piercing. Specific information to be provided to the dealers would be left to the Treasury Secretary to determine, but such information should include the brand name of the bullet and any other identifying characteristics.

I have been informed that this written notification procedure is a common practice already used to alert firearm dealers about changes in law and regulations, so we would not create any undue administrative burdens for the Federal Government. Further, let me emphasize that it is not our intent to penalize gun dealers who unknowingly sell an armor-piercing bullet that is not readily identifiable based on the information provided in their notification.

The Treasury Department has been kind enough to share with me an amendment to H.R. 4 that they will propose later. Basically, they will be proposing to ban the willful sale of armor-piercing ammunition manufactured in the future, but they would still leave existing armor-piercing ammunition untouched.

The Treasury Department has acted in good faith by sharing this proposal with me and I appreciate this opportunity to comment.

Simply put, the Treasury proposal is a step in the right direction, but it falls short of the mark. In order for me to seriously consider the Treasury proposal, one major shortcoming would have to be corrected. Treasury argues that only future armor-piercing bullets, which are to be marked as such under their proposal, could be banned from sale because they would be the only ones that a gun dealer could readily identify. That is simply not true.

Mr. HUGHES. Why don't we stop right there, Mario, because that is a vote. That is the Broomfield amendment that is up. We will just break for 10 minutes and come back.

The subcommittee stands in recess for 10 minutes.

[Recess.]

Mr. HUGHES. The subcommittee will come to order.

The gentleman may proceed.

Mr. BIAGGI. Thank you, Mr. Chairman.

I was making reference to the Treasury proposal, which is a step in the right direction, but it falls short of the mark.

In order for me to seriously consider the Treasury proposal, one major shortcoming would have to be corrected. Treasury argues that only future armor-piercing bullets, which are to be marked as such under their proposal, could be banned for sale because they would be the only ones that a gun dealer could readily identify. That is simply not true.

Many existing armor-piercing bullets are already identifiable, either by their head stamp, by their packaging, or even by their unique design that is demonstrated by some of the cop-killer bullets on this display board, and there are any number of them. The latest design, which is a very unusual design, is one that is manufactured by a French munitions manufacturer that has almost a needle-like appearance. Very different. It has awesome penetrating capability. Mr. Chairman, I have heard previous testimony and I believe Treasury officials will argue that the dealers could not readily identify existing armor-piercing bullets.

I think that statement might be palatable to some high school students or to some college kids who are not in the real world yet, but those of us who know the real situation, know full well the arms dealers and the gun shop owners know all about guns. They know all about bullets; they have the capability of making bullets; they know how to make a heavy load or lighter load. They are talking about it all the time. They have all types of advertising and oftentimes the advertising clearly points out as a feature the armor-piercing capability of a particular bullet.

I have an advertisement here, for example, that says the Czech military surplus ammo is noncorrosive, near 100-percent reliable, and has a full metal jacket with an armor-piercing core. They offer that as a feature and I have a whole supply of other advertisements that I presented to the committee in the last hearing we had in the 98th Congress.

Mr. HUGHES. Where did that advertisement appear, for instance?

Mr. BIAGGI. Let's see. It is a gun magazine a couple of years ago—Paragon Sales & Services, Inc., advertisement. If the chairman would like, I would be happy to present copies of other advertisements.

Mr. HUGHES. I think that could be very helpful.

Without objection, the record will remain open so that the gentleman can submit for us some of the advertisements that are carried in magazines or articles.

Mr. BIAGGI. Very colorful advertisements, Mr. Chairman, and the one that surprised me was this French bullet. We are talking about banning armor-piercing bullets which seem to be traditional in shape and size and yet we have a new one, the French bullet, which has a point like a hyperdermic needle. They are out there. They are all competing for the business, and not just to sell to cops and military people.

By the way, you posed the question early on, what would you do with the ammunition out there on the shelves? One, if the arguments we have heard by the opponents, which State that these bullets were only to be sold to cops and military, well, then, what is the problem? But I would suggest that is a specious argument in the first place. I have always rejected it because that is not where the problem is, but in order to make it easier for the arms dealer or for the gunshop owner not to lose any money, we had a provision in the original bill that would have provided some relief for them but objections were raised and that provision was deleted. They can still sell it though to police; they can still sell it to the military; they can still sell it for research and testing; and they can export it. There is no ban on them exporting whatever ammunition they have. It is only the importation that will come under the ban and laws of the United States, so I do not feel the gun dealers would face any distress under H.R. 4.

Now, I don't know what the numbers are. One individual or one group recommends that there are only a few of them out there. I would suggest there is an abundant supply out there, but in any event, the gun dealers do have recourse.

When you are talking about the Teflon-coated KTW bullet, well, we have one here, the "green apple," as some call it, and it is clearly stamped "KTW."

With the notification requirements contained in H.R. 4, I see no reason why the Treasury's proposed ban on sale could not cover readily identifiable existing armor-piercing ammunition, as well as any new bullets that are made. That is precisely the intent of H.R. 4, but if Treasury feels the sales provision needs clarification, then I would have no objection.

However, let me repeat, Mr. Chairman, that I would be opposed to any amendment to H.R. 4 that would ban the sale of new armor-piercing ammunition without also banning the sale of existing armor-piercing ammunition that is readily identifiable.

Another factor: What we have learned is that since our activity against these bullets, there are only three manufacturers producing about 200 rounds a month now, so the real thrust here is the ammunition that is already on the shelves. Now, we don't know what else would be imported in the future, what else would be manufactured in the future. I commend Treasury for at least taking this step forward, Mr. Chairman. They have helped us to come a long way in resolving some basic problems, such as definition. Now we are talking about sale.

Initially, there was opposition to the banning of sale. Now they are halfway home. They would like to ban the sale prospectively. Well, if you can justify banning prospective sales, how can you not justify banning the sale of those already in the market, where there is the large quantity, where there is the problem? How do you make the distinction between a bullet that was sold or manufactured last year and one manufactured next year? That would be a real problem.

As we sit here, Mr. Chairman, discussing changes, one thought is worth remembering. The law enforcement community has already made many concessions in order to help expedite the passage of a Federal ban against cop-killer bullets, but enough is enough. To ask them to agree to a bill without a meaningful ban on sale would be asking too much.

Let's listen to the collective voice of nine of our Nation's law enforcement groups. In a January letter to President Reagan, they fully endorsed H.R. 4, saying in part:

The essential issue is that not only must manufacture and importation of armor-piercing ammunition be controlled, but sale should also be limited. Earlier proposals that did not address the problem of sale, did not provide the law enforcement community with a crucial element of protection against armor-piercing ammunition.

Mr. Chairman, this hearing appropriately comes just a few days before the start of National Police Week, a time to pay tribute to those brave men and women who have made the supreme sacrifice in the name of public safety, and to salute those who continue to protect us. During the past 10 years, some 1,600 law enforcement officers have lost their lives in the line of duty. I don't mean to imply that they lost their lives because of armor-piercing bullets, but clearly, the potential is there.

In my opinion, there is no better way to honor those fallen heroes and help to prevent future senseless tragedies than to enact the Law Enforcement Protection Act of 1985 without any weakening amendments.

Thank you, Mr. Chairman.

[The statement of Mr. Biaggi follows:]



FROM CONGRESSMAN

NEWS

MARIO BIAGGI

19TH CONGRESSIONAL DISTRICT, N.Y.

BRONX AND YONKERS

May 9, 1985

TESTIMONY IN SUPPORT OF H.R. 4,
LAW ENFORCEMENT OFFICERS PROTECTION ACT OF 1985
PRESENTED BEFORE THE HOUSE SUBCOMMITTEE ON CRIME
BY U.S. REP. MARIO BIAGGI

Mr. Chairman, this is the fourth time since 1982 that I have been privileged to testify before your Subcommittee in support of legislation to outlaw armor-piercing "cop killer" bullets. During that time you and your Subcommittee--with the help of a very competent and cooperative staff--have taken a genuine interest in this issue and, as a result, we have been able to find answers to some very difficult questions. Progress has been slow, perhaps, but I believe we finally have a legislative product before us that we can all be proud of. The product I am referring to is H.R. 4, the Law Enforcement Officers Protection Act of 1985, a measure I was honored to co-author with you, Mr. Chairman.

Under the provisions of H.R. 4, it would be illegal to manufacture, import, or sell armor-piercing ammunition, except for Government use (including military and police use), testing, research or export. Armor-piercing ammunition is defined by the bill as ammunition that is composed of projectiles made from certain hard metals: tungsten alloys, steel, iron, brass, bronze, beryllium copper or uranium.

This bill was carefully crafted and represents nearly six years of research, evolution and compromise. Many helped get us to the point where we are today. The law enforcement community, which originally requested this legislation and has lobbied so fiercely for its passage ever since. The media, which has helped raise the public consciousness about this problem. The more than 125 Members of the House who have cosponsored H.R. 4. The Administration, which has provided valuable technical expertise and helped us to overcome the definitional problems that plagued this legislation for so long. Even our adversaries helped in the fine tuning of this legislative product by focusing some useful attention on the technical flaws that existed along the way.

The process has been frustrating, even exasperating at times, but the cause has made all this effort worthwhile. Simply put, a federal ban against armor-piercing ammunition would save police lives, without infringing in any way on the rights of legitimate gun users--rights I fully support.

More than half of our nation's 570,000 law enforcement personnel wear bullet resistant vests for protection. According to DuPont (the company that makes Kevlar, the bullet resistant fiber these vests are made from), "There have been between 500 and 600 documented reports of law enforcement officers who have been saved from death or serious personal injury by wearing vests" since they first became available around 1973.

Yet, while these vests will stop even the most powerful of the conventional handgun bullets, they are totally useless against any of the so-called "cop killer" bullets that H.R. 4 seeks to outlaw. In fact, the Teflon-coated KTW bullet, which is generally regarded as the most powerful of the armor-piercing bullets, can penetrate the equivalent of four bullet resistant vests (or 72 layers of Kevlar) in a single shot; one and one-half inches of cold-rolled steel; or, in one test, the KTW bullet penetrated the front of a house, three interior walls, the back wall, "and kicked up dust 50 yards beyond."

(more)

Ironically, armor-piercing handgun ammunition was first made around 1940 to help police, particularly when shooting at criminals fleeing in automobiles. While it is unclear just how much these bullets were used by police during those early years, the law enforcement community has long shunned them, because they have proven to be far too dangerous.

Yet, despite the fact that police departments across the country prohibit their officers from using armor-piercing handgun ammunition, the bullets continue to be legally made and sold in all but 14 states around the country. As a 23-year New York City police veteran, I am outraged over this obvious lack of concern for police safety, and I deeply resent those who have slowed the passage of a "cop killer" bullet ban by arguing it is somehow a move toward gun control, not police protection. Nothing could be farther from the truth.

The facts clearly show that armor-piercing ammunition is not used for any legitimate purpose. In fact, according to a July 22, 1983, Bureau of Alcohol, Tobacco and Firearms report I received, "Most State game laws . . . preclude the legitimate use of armor-piercing bullets," largely because these bullets tend to wound rather than kill the animals, resulting in inhumane suffering. I find it interesting, Mr. Chairman, that our laws, at least in this case, appear to be more concerned about animal welfare than about police welfare.

Let me point out, too, that under H.R. 4, "ammunition . . . primarily intended to be used for sporting purposes" would not be affected in any way.

H.R. 4 would only restrict a very small class of specially made bullets--most of which come from foreign countries. In fact, the U.S. Treasury Department has stated that the armor-piercing ammunition H.R. 4 seeks to ban "represents less than one percent of all existing types of ammunition." Yet, while the number of these bullets is relatively small, the risk they pose to the law enforcement community is great.

Mr. Chairman, during the course of this legislative effort some have argued that voluntary efforts are enough to keep armor-piercing ammunition away from the criminal element. Others have said that it is alright to ban the manufacture and importation of "cop killer" bullets, but not their sale. Quite frankly, Mr. Chairman, these arguments just won't work.

Consider, for example, that one of the creators of the notorious KTW armor-piercing bullet came before this Subcommittee three years ago and said that since 1968, when the KTW bullet was first marketed, voluntary restrictions have made it available only "to police and military users." Well, in 1976 two police officers were shot and killed in Broward County, Florida, by these same KTW bullets. Their murderers were arrested shortly after the shooting carrying several boxes of the KTW bullets. So much for the effectiveness of voluntary restrictions.

Or, consider the 1983 case of Louisiana v. Catchings. A summary of this case I have received from the Congressional Research Service shows that the defendant "was apprehended on suspicion of attempted murder whereupon his firearm was seized. It was found to contain Teflon-coated ammunition"--the same Teflon coating that is unique to the KTW armor-piercing bullets. The summary goes on to say that "testimony by an expert witness had been received to the effect that 'this ammunition could penetrate a bullet-proof vest, and that it was the most dangerous ammunition on the market today.'"

Let me add, Mr. Chairman, that I have received numerous other reports of civilians who were able to purchase KTW ammunition at gun shops across the country, despite the fact that a "voluntary" policy was supposedly in effect prohibiting the availability of these bullets to anyone but police and the military. I want to emphasize that I am not questioning the intent of the KTW marketing practices--I believe they were honorable. However, I am trying to show that voluntary efforts, no matter how well intentioned, are simply not enough, especially when the lives of our nation's law enforcement officers are at stake.

Mr. Chairman, at this time, I would like to submit for the record a copy of the November 27, 1984, report I received from the Congressional Research Service summarizing 13 court cases that took place between 1966 and 1983 in which the defendant either used or possessed armor-piercing ammunition. This document clearly refutes the claims by some that armor-piercing ammunition has not been available to criminals, nor has it been used by criminals. However, this report is not all inclusive. Even the author of this report, Kent. M. Ronhovde, concedes that "it is, of course, impossible to know how many cases have involved such ammunition but have not resulted in specific reference to armor-piercing capability in a written opinion."

Two cases that are not included in the CRS report, for instance, involved a Federal Protective Service Officer who was wounded in 1974 by an armor-piercing bullet that penetrated the bullet resistant vest he was wearing at the time; and a Nassau County (NY) bank robbery suspect, who was arrested in September 1983 at his home, where police found a variety of 32 armor-piercing bullets. At this time, Mr. Chairman, I would like to submit for the record a copy of the Nassau County Police Department report discussing this incident in more detail.

Fortunately, these and other facts have served to convince some who originally were reluctant to support a legislative ban against armor-piercing ammunition. Among those are the Administration and the National Rifle Association, who last June formally endorsed a legislative proposal that is virtually identical to H.R. 4, except for one very significant difference. Unlike H.R. 4, the Administration/NRA-backed proposal does not contain a ban on the sale of armor-piercing ammunition that is already in the marketplace.

Frankly, Mr. Chairman, I just cannot understand the logic of banning future armor-piercing bullets from coming into the marketplace but not concerning ourselves with the "cop killer" bullets that are already there. Existing armor-piercing ammunition is certainly more dangerous to police than bullets that have yet to be made.

I am aware of only two arguments that have been made against a ban on sale, and I believe both can be easily addressed. The arguments are: 1) there are an insignificant number of these bullets in the marketplace; and 2) dealers would have difficulty identifying an armor-piercing bullet.

Let me simply say that if there is even just one "cop killer" bullet in the marketplace, it is one too many. But, that logic need not even be debated because evidence indicates a far greater number of these bullets are sitting on gun shop shelves around the country. Nobody knows the precise figure, but whether in the hundreds, thousands or millions, the number may not be significant to some, but it certainly is to police.

If this logic escapes some, consider this. On July 1984, a deranged individual named James Huberty walked into a crowded McDonald's restaurant in San Ysidro, California, and killed 21 people with the three firearms he carried with him. A report I later received from the Chief of the San Diego Police Department indicated that of the 245 bullets Huberty fired during his reign of terror, 192 were armor-piercing "cop killer" bullets imported from Czechoslovakia. Huberty is thought to have stocked his arsenal of destruction in Ohio, one of more than 30 states where armor-piercing ammunition is still legally available.

Let me emphasize that the many police officers who rushed to the scene of Huberty's siege were wearing bullet-resistant vests. We may never know if Huberty's use of armor-piercing ammunition may have resulted in more deaths and injuries than actually occurred, but one thing is certain. The lives of the police officers on the scene were in far greater danger--and needlessly so--they would have been if Huberty had used conventional ammunition. To further bolster the case against sale, the Bureau of Alcohol, Tobacco and

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Firearms reports that 30 million rounds of the same Czechoslovakian armor-piercing bullets used by Huberty were imported into the U.S. in the mid-1970's, and have been sold domestically ever since. How many remain? Nobody knows for sure, but obviously James Huberty would have no problem finding an ample supply. At this time, Mr. Chairman, I had no problem finding an ample supply. At this time, Mr. Chairman, I would like to submit for the record, a copy of the September 7, 1984; report on the Huberty shooting that I received from the San Diego Police Department.

While it may be true that gun dealers might have some difficulty identifying an armor-piercing bullet, that problem is easily remedied. Under H.R. 4, all federally licensed firearms dealers across the country would receive a written notice from the Bureau of Alcohol, Tobacco and Firearms telling them exactly which ammunition is classified as armor-piercing. I have been informed that this is a common procedure already used by BATF to alert firearms dealers to changes in laws and regulations, so it would not require any undue administrative burdens for the federal government. If any firearms dealers are still unsure of what type of ammunition they are selling after this notification process, well, then perhaps they have no business selling firearms to begin with.

Let me add that without a ban on sale, there is nothing to stop the unscrupulous munitions manufacturer or importer from simply channeling their armor-piercing bullets to a licensed firearms dealer for sale to the general public. At that point, it would be very difficult to prove whether the dealer obtained the armor-piercing ammunition before or after a federal "cop killer" bullet ban was enacted.

Mr. Chairman, prior to introducing H.R. 4 this Congress, we met with the major national law enforcement organizations who have lobbied so hard against the continued availability of "cop killer" bullets. We all agreed that certain concessions would have to be made in order to get a bill approved by the Congress. So, we gave up certain provisions, such as some strengthening language in the definition section of the bill; the buy-back clause, which would have helped dealers more easily dispose of any supplies of armor-piercing they might have; and certain identification and notification responsibilities of the Treasury Secretary. These provisions would have helped to better protect police against armor-piercing bullets, but they also threatened the passage of any legislation on this issue.

But enough is enough. The history of this legislation is typical of the law enforcement officers' plight in general--they are always asked and expected to sacrifice more than their fair share. The bill all the major national law enforcement organizations have endorsed--H.R. 4--represents the minimum amount of protection against "cop killer" bullets that they are willing to accept. It includes a ban on sale, and virtually nothing more than what was proposed by the Administration and endorsed by the National Rifle Association. To ask them to agree to a bill without a ban on sale provision would be asking too much.

At this time, Mr. Chairman, I wish to insert a letter signed by nine of our nation's major police organizations clearly stating their full support of H.R. 4. Those organizations include the Federal Law Enforcement Officers Association; the International Association of Chiefs of Police; the International Brotherhood of Police Officers; the International Union of Police Associations/AFL-CIO; the National Association of Police Organizations; the National Sheriffs' Association; the National Troopers' Coalition; the Police Executive Research Forum; and the United Federation of Police. I would also like to note that the Fraternal Order of Police has subsequently expressed their total endorsement of H.R. 4.

Mr. Chairman, this hearing appropriately comes just a few days before the start of National Police Week, a time to pay tribute to those brave men and women who made the supreme sacrifice in the name of public safety, and to salute those who continue to protect us. During the past 10 years, some 1,600 law enforcement officers have lost their lives in the line of duty, with 142 of those deaths occurring in 1984. In my opinion, there is no better way to honor those fallen heroes and help to prevent future senseless tragedies than to enact the Law Enforcement Officers Protection Act of 1985, without any weakening amendments.

Mr. HUGHES. Thank you very much, Mario, for a very incisive and comprehensive statement. Your full statement was excellent and it is a part of the record. We appreciate your effort to summarize what is contained in your full statement.

As I understand it, the arguments made by the critics of H.R. 4 fall into several categories, two main categories. One is that there really isn't a very large supply of armor-piercing ammunition out there on the shelves. That seems to be the one argument.

I have a couple concerns with that. First of all, if there is not that much out there, then it shouldn't present a problem to very many dealers. That is the one sentiment that I have.

The second sentiment is, it only takes a few rounds of that ammunition to kill a police officer, and in the final analysis, why shouldn't we take those steps to protect lives? If we save one life, it will have been worth the effort.

Do you want to comment on my own observations relative to supply?

Mr. BIAGGI. Sure.

Mr. HUGHES. Of course—before I invite you to comment—of course, I don't frankly know what supply is out there and I am not sure ATF knows or that anybody knows and I am not sure it would be an easy task to try to find out what is available in a reasonable period of time.

Mr. BIAGGI. Let's assume the contention that there are only a few rounds out there is accurate, and I don't—only for the purpose of discussion, let's assume that that is accurate. Then why would anyone want to resist the enactment of this legislation? If it provides nothing else, it provides symbolic recognition of the fact that police officers are exposed to this peril.

It would be a heartening piece of legislation. We in the Congress oftentimes enact resolutions, simple resolutions developing a sense of the Congress to assure one group or another the sentiments of the Congress. Those resolutions have no real effect in law, but it is encouraging; it is symbolic; it is inspirational.

That is the very least that can be said. That is the most that can be said about that argument, and I don't think it is worthy of consideration. But on the other side, dealing with reality, the Treasury has testified, and the records indicate, that in the 1970's, there were 30 million rounds of Czechoslovakian armor-piercing bullets coming to America. Clearly, I don't think anyone for a minute believes that those 30 million rounds have been spent.

Just last July, one man fired 192 rounds of those Czechoslovakian bullets. To think that that might be the last 192 bullets of Czech origin defies credibility, really.

The fact is, we have a problem. We have a problem and it should be met. The Acosta gang is just the tip of the iceberg. The felons are out there wearing bullet-proof vests, Mr. Chairman. This is very interesting. It is ironic, but this is the scenario that is developing. One, the felons are aware of the armor-piercing bullets and the bullet-resistant vests, and they make a very studied effort to obtain them and they have been found with them. I think there were some 50 arrests in the New York area of criminals wearing bullet-resistant vests, so now you have a new scenario developing.

You have the felon wearing a bullet-proof vest and the policeman wearing a bullet-proof vest. The police officer is using a traditional bullet and the felon is using an armor-piercing bullet. They exchange fire. You know what the results are. The police officer dies; the felon escapes; he survives. That is what is coming down the pike.

Mr. HUGHES. I think the gentleman makes an extremely important point and I have a copy of the message that was sent through the El Paso Intelligence Center dealing with this particular gang, the Pablo Acosta drug trafficking organization, and it does point out that there is a general familiarity with the potential for this particular ammunition. We kid ourselves if we are led to believe that there are not organizations around this country and throughout the world that are acquainted with the potential for this ammunition and are bent on using it.

It would be interesting—I am going to ask, when we get Treasury before us, how in the world we ever imported so much Czechoslovakian ammunition. As I understand the law that existed during that period of time, it was that we would not import ammunition that did not have some sporting value. I haven't heard anybody suggest that that ammunition had any sporting value, so it will be interesting to see how that was imported under the law at that time.

Be that as it may, the second argument that is used is that basically it would be very hard for a dealer to identify armor-piercing ammunition. Now that seems to be the second major argument that we have heard in this particular round of debate.

I have a number of different concerns about that argument. First of all, a basic one, I am not sure anybody should be in the position of selling ammunition, or for that matter, much of anything else, if they don't know what they are selling. I can't believe, as you suggest, that dealers don't know what type of ammunition they are selling. They know ammunition fairly well, but even if you accept that as a premise, under existing law, every dealer, every licensed dealer throughout this country is required to keep a record of all ammunition that they acquire, that ends up in their inventory or that they sell.

Under the law, they have got to keep a record that has to show the name of the manufacturer, the transfer, the type, the caliber or gauge, the quantity of the ammunition. It is a detailed description of the ammunition.

I am going to ask Treasury about this when they testify. It would seem to me that Treasury should be able to identify what ammunition really is armor-piercing ammunition. It should be a fairly easy task by memo or notice to alert dealers to what ammunition is proscribed by statute if, in fact, we do enact legislation. It seems to me it would be fairly easy for ATF, in the event of question, to set up a hot line for dealers to communicate with ATF.

If there is some question beyond that; if there is a commingling of ammunition, which I understand does happen occasionally, I don't know that it would present any major problems for ATF to provide laboratory services in the event of some question about ammunition, if a dealer conscientiously, and we hope they would all

be conscientious, attempted to find out if ammunition really does fall within any ban.

What is your observation with regard to some of these issues which I think go to the heart of the question of sale and ability to identify?

Mr. BIAGGI. There are three areas that you have touched on, Mr. Chairman. One is that I couldn't agree with you more and I thought I had made it clear in my previous presentation. The gun dealers are experts. They are experts. I just don't understand what notion is trying to be portrayed here.

A gun dealer is not a saleslady or a salesman in the lingerie department. The gun dealer is an expert. They can take a gun apart and put it back together. Many of them can do it in the dark. They can make their own bullets with just the proper amount of powder to satisfy a customer's requirement. They know what the guns are. I mean it boggles my mind to think that someone is trying to sell us a bill of goods that the dealers are not in a position to identify the bullets they sell. That argument is out of touch with complete reality, No. 1.

No. 2, dealers have magazines and literature sent to them every day, every day, with advertisements and articles about the special features of this gun, that bullet, whatever, whatever has to do with sporting and law enforcement and other gun users. Every day. So they are thoroughly informed. They are probably more informed than many of the people who work for government. I don't know if people who work for the Government can make bullets properly and can do what these experts can do with guns.

You made reference to those 30 million rounds that came in. I don't know what the history was, but at the time they came in, there wasn't a problem. We didn't have the bulletproof vest. This problem only developed with the advent of the bulletproof vest. They were provided for the purpose of protecting police officers and clearly they were on a collision course with the armor-piercing bullets and that is where we are today.

Now, the NRA has been critical of our effort, yours, and mine, other Members of the Congress and others who have to waged this fight. They say, "Well, by making this a fight, we have informed the criminals what is out there." Well, to begin with, I don't think it is necessary for me to repeat my background, but I have been in the street long enough to know that those criminals know what is out there before most law enforcement officials know what is out there. To a large extent, they are responsible for what is out there. They have a communications system that defies belief.

Mr. HUGHES. I just want to say to my colleague that I don't really attach too much significance to that statement. I mean, it is almost offensive. When I read that statement, my first reaction was one of anger. I mean, if we were to accept that as a basic premise, we wouldn't be talking about the problems of cocaine, money laundering, computer crime, credit card fraud. I could go on and on, and provide a litany of new or updated criminal offenses that this subcommittee reported out last year. I look at that argument as not just shallow, but almost offensive.

Mr. BIAGGI. I point to the advertising. They know. The NRA gets all the literature and oftentimes they provide assistance in the prepa-

ration. They get all of the literature. They are in all the magazines, all the gun clubs, all the hunting lodges. They know all of this and they know there has been advertising going on for years and years and years. That is part of that whole structure and I don't fault it. It is a business. Out of that business developed the problem with the advent of the bullet-proof vest. Now we are trying to resolve it. That is all. It is as simple as that.

Mr. Chairman, you have been very patient and I appreciate that and you have been most helpful in our mutual efforts to get this bill toward enactment. I would exhort the Treasury Department inasmuch as they have come this far, to support a ban on sale. They have called for a ban on importation and manufacture, and that is a substantial step forward; and also to ban the sale prospectively, a very substantial step forward. But, I don't think it has the full meaning that a total ban would provide. I would suggest that they review their position.

Obviously they have given this a lot of thought. Clearly they are as concerned as we are. They may have had some questionable positions at the outset. Happily they are not intractable. I know in the end they would like to provide the same kind of protection to law enforcement as you and I and other members of this committee would.

Mr. HUGHES. Thank you.

The gentleman from Florida.

Mr. McCOLLUM. Thank you, Mr. Chairman.

Mr. Biaggi, I am one of the early cosponsors of your legislation, but I must admit I wasn't sitting in this seat so I didn't have the privilege of hearing the testimony last time and I am very fascinated by it.

I have had the opportunity to look at the Administration's testimony that is going to be given later today and it triggers some questions that I very briefly would like to ask you. They do talk in here about the questions that were raised of identification and knowledge and so on in terms of whether a dealer would know it or not, and I certainly respect your opinion that most dealers are expert.

Looking at this from the standpoint of trying to reach some middle ground, if you will, I think I might be going in the direction—I am going to listen to what they have to say—of being with you on the idea that what is on the shelf ought to be banned, whether it has been manufactured or not, but there is an element of willfulness or knowingness or whatever that pervades their testimony that makes some sense to me.

I am wondering if maybe there could be an amendment to the legislation which just sticks in a couple of words, knowingly or recklessly or something like that? As you know, in the criminal law, at each stage you have a different standard, and this is pretty much a strict liability statute now in the sense that if you make the transfer after the notice went out, you lose your license and whatever else happens to you happens.

What do you think of putting in a—not necessarily as high-level as "intentional," but a word like knowingly or recklessly to modify the word "transfer," or something of that nature that could give

some help to the administration and still not go as far as they want to go?

Mr. BIAGGI. Right. I appreciate your concern. I share that concern. It is not our intent to unfairly penalize a dealer who really is ignorant of the fact that a bullet may or may not be armor-piercing. The occasion may develop. A member of the family may be at the store at the time and not the expert. All of these possibilities are there and I appreciate that.

If we are talking about the same thing, sure, language could be crafted to deal with our concern. It is a mutual concern.

Mr. McCOLLUM. I just was curious. I know we are all going to have to run to vote. I have a broad question that I am going to ask very quickly.

In the administration's testimony, they draw a technical distinction with regard to the definition in H.R. 13 and the definition that you have in your bill of an armor-piercing bullet, and express some concern—that your definition would not encompass the unput-together projectile, the one that might come in parts or in pieces. I don't completely follow that, so I am going to wait their testimony—

Mr. BIAGGI. I don't follow—

Mr. McCOLLUM. Have you examined that—

Mr. BIAGGI [continuing]. It, either.

Mr. McCOLLUM. OK. Well, I am sure you will be like me, open-minded about any refinement that—

Mr. BIAGGI. Absolutely.

Mr. McCOLLUM. Apparently what they are suggesting is their language would be a stricter ban and I would think, based on—if it is true, I am sure you would want to go along with the toughest one in this case—

Mr. BIAGGI. Of course.

Mr. McCOLLUM. Whatever it is.

Mr. BIAGGI. Whatever is better.

Mr. McCOLLUM. I am not going to get into the rest. If I had any other questions, I don't want to belabor the point. The main I wanted to ask, I have asked, and I appreciate very much what all you have put into this.

Thank you very much, Mr. Chairman.

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

Mr. HUGHES. I just want to say—before we recess to catch this vote—I really think that the administration has misread the bill because H.R. 4, as my colleague well knows, recites that a licensed dealer transferring armor-piercing ammunition is not held accountable before that dealer has received notice, actual notice.

Mr. BIAGGI. The contention is that many of these armor-piercing bullets are somehow unidentifiable. I do not agree, but let me re-emphasize that I don't think it is anyone's intention to unfairly penalize a dealer.

Mr. HUGHES. I quite agree. And I think it is an area that we are going to take a close look at because I am sensitive to the concerns. I want to make sure that we are abundantly fair on this issue.

Mario, let me just conclude by thanking you once again. You have been the leader for a number of years on this and many other issues affecting the law enforcement community. Your contribu-

tions are just untold and we thank you once again. You have made another significant contribution to this hearing and it is my hope that we can conclude the hearing process and get on with the business of protecting the law enforcement community.

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

Mr. HUGHES. Thank you.

The subcommittee is going to receive into the record the telex, without objection, the telex from FBI to U.S. Customs Headquarters dealing with the Pablo Acosta drug trafficking organization. Is there objection?

Hearing none, so ordered.

[The telex referred to follows:]

APR 29, 1985 1533 PACIFIC TIME

744
ADMIN MESSAGE 04142

FM OASD/HEADQUARTERS US CUSTOMS SERVICE WASH DC
TO OOOO/ALL STATIONS

FOLLOWING MESSAGE FROM EPIC IS PASSED FOR YOUR ACTION/INFO:

QUOTE
3378 EPIC 04-29-85
FM DEA EL PASO INTELLIGENCE CENTER
TO US CUSTOMS HQS WASHDC

RE: ETAL-#334 04-29-85

SUBJECT: TEFLON COATED BULLETS TO BE UTILIZED BY THE PABLO
ACOSTA DRUG TRAFFICKING ORGANIZATION

INFORMATION FROM DEA INDICATES THAT THE PABLO ACOSTA DRUG
TRAFFICKING ORGANIZATION HAS BEGUN TO ARM ITS MEMBERS WITH
TEFLON COATED AMMUNITION IN 45 CALIBER, AS WELL AS 380
MILLIMETER AND 9 MILLIMETER.

TEFLON COATED BULLETS ARE CAPABLE OF PENETRATING BODY ARMOR
TYPE BULLET-PROOF VESTS UTILIZED BY LAW OFFICERS.

THIS INFORMATION IS BEING PASSED TO ALL CUSTOMS TECHS TERMINALS
FOR ANY ACTION DEEMED APPROPRIATE.

RELATED L/O # - NONE

IF EPIC CAN BE OF FURTHER ASSISTANCE, PLEASE CALL FTS 572-7942,
COM 915-541-7942.

M JACKSON, ACTING DUTY WATCH COMMANDER
EPIC 03378

Mr. HUGHES. The subcommittee stands recessed for 10 minutes.
[Recess.]

Mr. HUGHES. The committee has received the testimony of the Honorable Harold L. Volkmer on H.R. 4. Unfortunately, Congressman Volkmer has a conflict and without objection, the subcommittee will receive his testimony into the record in full.

[The statement of Mr. Volkmer follows:]

TESTIMONY OF
THE HONORABLE HAROLD L. VOLKMER

SUBMITTED TO THE

HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIME

HEARINGS ON H.R. 4

MAY 8, 1985

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE, I WANT TO THANK YOU FOR THE OPPORTUNITY TO PRESENT MY VIEWS REGARDING THE "ARMOR PIERCING" BULLET LEGISLATION WHICH YOU ARE CONSIDERING.

AS YOU ARE AWARE I AM A COSPONSOR OF H.R. 13 INTRODUCED BY OUR COLLEAGUE, MR. BROOKS OF TEXAS. I HAVE SUPPORTED THIS LEGISLATION, RATHER THAN H.R. 4 SPONSORED BY YOU MR. CHAIRMAN AND THE GENTLEMAN FROM NEW YORK, MR. BIAGGI, BECAUSE I AM TROUBLED BY THE RAMIFICATIONS OF THE "SALES" PROVISION WHICH YOU HAVE INCLUDED IN H.R. 4. I WOULD LIKE TO BRIEFLY DISCUSS THE ISSUES WHICH THIS "SALES" PROVISION RAISE.

FIRST OF ALL MR. CHAIRMAN, THE QUESTION OF INTENT IS OF MAJOR CONCERN. UNDER THE PROVISIONS OF H.R. 4, THE INADVERTENT SALE BY A LICENSED DEALER OF EVEN ONE ROUND OF ARMOR PIERCING AMMUNITION WOULD MAKE THIS DEALER SUBJECT TO REVOCATION OF HIS LICENSE TO DO BUSINESS.

BECAUSE THE COMMITTEE'S REPORT WHICH ACCOMPANIED H.R. 6067, LAST CONGRESS NOTED, "--- THE DIFFICULTY IN VISUALLY DISTINGUISHING AN ARMOR PIERCING ROUND FROM A NON-ARMOR PIERCING ROUND---" THE QUESTION OF INTENT BECOMES VERY IMPORTANT. WHILE I AGREE THAT LICENSED DEALERS WILL KNOW WHAT TYPE AMMUNITION THEY PURCHASE FROM THEIR WHOLESALERS AND DISTRIBUTERS, THERE IS STILL THE DISTINCT POSSIBILITY THAT "LOOSE" ROUNDS, ACQUIRED IN TRADE COULD BE OFFERED FOR SALE. IN FACT, THIS IS A RELATIVELY COMMON

PRACTICE. OFTEN YOU CAN WALK INTO A LICENSED DEALERS SHOP AND SEE A BOX OF LOOSE AMMUNITION WITH A SIGN SAYING "YOUR CHOICE, .25¢ A ROUND" OR SOMETHING TO THAT EFFECT.

AS YOUR REPORT NOTES, THESE LOOSE ROUNDS ARE VISUALLY INDISTINGUISHABLE WHEN VIEWED IN TERMS OF ARMOR PIERCING CAPABILITIES. IT DOES NOT SEEM APPROPRIATE TO PLACE A PERSON'S LIVELIHOOD IN JEOPARDY BECAUSE AN ARMOR PIERCING ROUND COULD BE INADVERTENTLY SOLD UNDER THESE CIRCUMSTANCES.

AS YOU KNOW, THE ENTIRE SECTION OF CURRENT LAW DEALING WITH LICENSE REVOCATION WOULD BE AMENDED BY A PROVISION CONTAINED IN H.R. 945, WHICH I INTRODUCED EARLIER THIS YEAR. THE KEY ELEMENT OF THE CHANGE MY LEGISLATION SUGGESTS IN THIS SUBJECT AREA IS THE INCLUSION OF AN INTENT STANDARD WHICH THE SECRETARY OF TREASURY WOULD HAVE TO PROVE BEFORE A LICENSE COULD BE REVOKED.

THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS HAS ENDORSED THIS CHANGE AND I WOULD URGE THE SUBCOMMITTEE TO INCLUDE IT, PARTICULARLY IF THE "SALES" PROVISION IS TO REMAIN IN THE LEGISLATION. HONEST ERRORS COULD OCCUR. IF TWO LOOSE ROUNDS OF AMMUNITION -- ONE ARMOR PIERCING, ONE NON ARMOR PIERCING -- CANNOT BE DISTINGUISHED BY VISUAL INSPECTION, IT IS UNFAIR TO SUBJECT A PERSON TO THE LOSS OF HIS LIVELIHOOD UNLESS CRIMINAL INTENT IS SHOWN.

ALSO OF CONCERN IS AN AMBIGUITY WHICH APPEARS TO BE BUILT INTO THE SALES PROVISION OF H.R. 4. SINCE THIS PROVISION IS NEARLY IDENTICAL TO THAT CONTAINED IN H.R. 6067, IT WOULD FOLLOW

THAT WE CAN TURN TO LAST YEARS COMMITTEE REPORT FOR GUIDANCE.

ON PAGE 8 THE REPORT STATES: "THIS LIMITATION ON SALE OR TRANSFER IN THE COURSE OF BUSINESS WILL NOT APPLY TO TRANSFERS OR SALES OF ARMOR PIERCING AMMUNITION BETWEEN COLLECTORS OR BY LICENSED DEALERS OUTSIDE THE COURSE OF BUSINESS." ON ITS FACE THIS IS A REASONABLE APPROACH, HOWEVER, THERE IS REAL DOUBT AS THE LAW EXISTS TODAY THAT A LICENSED DEALER CAN EVER MAINTAIN A PERSONAL COLLECTION OF FIREARMS OR AMMUNITION, SEPARATE, DISTINCT AND OUTSIDE THE COURSE OF BUSINESS.

I WOULD REFER THE SUBCOMMITTEE TO TESTIMONY GIVEN BY RICHARD BOULIN BEFORE THE SENATE JUDICIARY COMMITTEE IN 1982 DURING CONSIDERATION OF THE SENATE COUNTERPART TO MY LEGISLATION (S. 1030, '97TH CONGRESS). THE SENATE COMMITTEE HEARD THAT MR. BOULIN HAD BEEN TOLD BY FEDERAL AGENTS FROM BATF THAT SALES FROM HIS PERSONAL COLLECTION DID NOT HAVE TO BE RECORDED AND YET ON THE OTHER HAND, MR. BOULIN WAS ARRESTED AND CONVICTED FOR FAILURE TO RECORD SUCH SALES IN HIS BUSINESS RECORDS. THE COMMITTEE ALSO RECEIVED DOCUMENTATION THAT BATF, THE ENFORCING AGENCY, ITSELF VACILLATED ON THE ISSUE OF WHETHER AND HOW SUCH SALES MUST BE RECORDED.

IN ANY EVENT, EXISTING REQUIREMENTS THAT LICENSEES MAINTAIN INVENTORY AND DISPOSITION RECORDS ON THE BUSINESS PREMISES, HAVE LED TO THE CONSTRUCTION THAT ALL SALES BY A LICENSEE, EVEN OF FIREARMS SOLD FROM HIS OWN PERSONAL COLLECTION, KEPT IN HIS HOME,

AND NEVER PART OF A BUSINESS INVENTORY, MUST BE RECORDED IN THE BUSINESS RECORDS. IT WOULD LOGICALLY FOLLOW THAT THIS CONSTRUCTION WOULD APPLY TO SALE OF AMMUNITION FROM A "PRIVATE COLLECTION". UNFORTUNATELY THIS CONSTRUCTION STATES THAT A LICENSEE CAN NEVER HAVE A PRIVATE COLLECTION OUTSIDE OF THE COURSE OF BUSINESS. AT BEST THE SALES PROVISION CONTAINED IN H.R. 4, PROVIDES ONLY AN ALLUSIONARY PROTECTION TO LICENSEES WHO HAVE PRIVATE COLLECTIONS.

WHILE H.R. 945 INCLUDES GUIDANCE FOR COLLECTING OF FIREARMS BY THOSE WHO ARE ALSO LICENSEES, AMMUNITION COLLECTIONS COULD REQUIRE A DIFFERENT TREATMENT. IN ANY EVENT, I WOULD URGE THE COMMITTEE TO INCLUDE LANGUAGE WHICH WOULD ONCE AND FOR ALL CLARIFY AND SPELL OUT THE POSITION OF A LICENSEE AND HIS PERSONAL COLLECTION OF FIREARMS AND AMMUNITION, AND GUARANTEE THE RIGHT FOR THE LICENSEE TO OWN AND TRADE FROM THEIR PRIVATE COLLECTIONS.

MR. CHAIRMAN, I HAVE BEEN SAYING FOR SEVERAL YEARS NOW THAT THE 1968 GUN CONTROL ACT IS IN NEED OF REFORM. BECAUSE THE LEGISLATION YOU ARE HEARING TESTIMONY ON TODAY AMENDS THIS COMPLICATED AND TECHNICAL ACT, I BELIEVE THAT COMMITTEE ACTION ON THIS MATTER PROVIDES THE PERFECT OPPORTUNITY TO AT LEAST ADDRESS SOME OF THE ISSUES I HAVE RAISED OVER THESE PAST FEW YEARS. I SAY THIS BECAUSE H.R. 4 AND THE SALES PROVISION, WHICH IS INCLUDED, RAISE TWO OF THESE ISSUES.

TO DATE, THERE HAVE BEEN NO HEARINGS ON THESE ISSUES, DESPITE AT VARIOUS TIMES OVER 40% OF THE HOUSE SPONSORING MY LEGISLATION. THERE HAS BEEN NO CONSIDERATION OF THESE ISSUES DESPITE THE SENATE COUNTERPART TO THIS LEGISLATION, TWICE BEING REPORTED BY THE SENATE JUDICIARY COMMITTEE. I WOULD NOTE THAT THE SENATE COUNTERPART OF H.R. 945 (S. 49) HAS BEEN HELD AT THE DESK THIS YEAR AND IS NUMBER THREE ON THE SENATE CALENDAR.

UNLESS THESE ISSUES ARE CONSIDERED I FEAR THAT THE COMMITTEE WILL ONLY ADD TO THE COMPLEXITIES AND VAGUENESS OF AN ACT WHICH HAS A PROVEN TRACK RECORD OF ENSLAVING INNOCENT CITIZENS IN ITS TANGLE OF REDTAPE.

THANK YOU FOR THE OPPORTUNITY TO RAISE THESE IMPORTANT ISSUES THIS MORNING, AND I URGE THE COMMITTEE TO CONSIDER THIS IN THEIR DELIBERATIONS.

Mr. HUGHES. Our next witness is Edward T. Stevenson. Mr. Stevenson is currently the Deputy Assistant Secretary for Operations in the Office of Enforcement and Operations, U.S. Department of the Treasury. In this capacity, he participates in the operations and management of the four Treasury law enforcement agencies: the Bureau of Alcohol, Tobacco, and Firearms; the U.S. Customs Service; the Secret Service; and the Federal Law Enforcement Training Center.

Prior to his appointment in January of 1984, he served for some 2½ years as Special Assistant to the Deputy Secretary for Legislative Affairs at Treasury. He is a graduate of the University of Maryland and holds a bachelor of science in business and public administration and the American University, for which he holds an master of arts in communications.

He is certainly no stranger to the work of this subcommittee and we are just delighted to welcome him for the first time as a witness on behalf of the administration. Mr. Stevenson, your prepared statement has been received and will be made a part of the record in full and you may proceed as you see fit.

Welcome.

STATEMENT OF EDWARD T. STEVENSON, DEPUTY ASSISTANT SECRETARY OF THE TREASURY FOR OPERATIONS, U.S. DEPARTMENT OF THE TREASURY, ACCOMPANIED BY EDWARD M. OWEN, JR., CHIEF, FIREARMS TECHNOLOGY BRANCH, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, U.S. DEPARTMENT OF THE TREASURY; AND JACK B. PATTERSON, ASSISTANT CHIEF COUNSEL (FIREARMS AND EXPLOSIVES), BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, U.S. DEPARTMENT OF THE TREASURY

Mr. STEVENSON. Thank you, Mr. Chairman. I am accompanied today by Ed Owen, Chief of the Firearms Technology Branch of the Bureau of Alcohol, Tobacco, and Firearms on my right, and Jack Patterson, ATF Assistant Chief Counsel for Firearms and Explosives.

Mr. Chairman, and members of the subcommittee, we are pleased to appear before you today to discuss again the subject of armor-piercing ammunition and certain legislative proposals to address the threat that this ammunition poses to the safety of law enforcement personnel.

Both H.R. 4, introduced by Mr. Biaggi, and H.R. 13, the administration's bill, as introduced by Mr. Brooks, are similar to legislation formulated by the administration and introduced into the 98th Congress. Other bills similar in intent were introduced in the 98th Congress and one of these, H.R. 6067, was reported favorably by the House Judiciary Committee.

We are pleased to find that there are even fewer differences between H.R. 4 and H.R. 13 than there were among the various armor-piercing ammunition bills introduced during the 98th and prior Congresses. Those of us who have worked on this issue so long are gratified by this progress.

As you know, H.R. 4 and H.R. 13 are the culmination of a long and strenuous effort, by this subcommittee, other members of the

Congress and the administration to find an appropriate and enforceable definition of armor-piercing projectiles. We applaud the efforts of the chairman and the members of this subcommittee in seeking to resolve the differences in the legislative proposals and to formulate strong, effective legislation dealing with this program.

The definitions of the term "armor-piercing ammunition" in H.R. 4 and H.R. 13, which are substantially the same, successfully balance the needs of law-abiding sportsmen and hunters with the important law enforcement goal of providing police officers with assurance that their soft body armor will afford greater protection against gunfire from the criminal element.

To the best of our knowledge, to date, no police officer has been killed due to armor-piercing ammunition penetrating his protective body armor. Even without the aid of legislation, progress has been made in keeping armor-piercing ammunition out of the marketplace. As we previously testified before this subcommittee, we achieved substantial control over this type of ammunition 3 years ago by securing the voluntary compliance of manufacturers and importers.

As you know, Treasury sought and obtained voluntary agreements with manufacturers and importers of ammunition specifically designed as armor-piercing. Under the agreements, manufacturers and importers agree to sell the ammunition only to the military establishment and to Federal, State and local law enforcement agencies or to foreign governments.

To the best of our knowledge, and to their credit, these manufacturers and importers have either agreed to our proposition or have gone out of the business of importing or producing armor-piercing ammunition. Pursuant to these agreements, we believe that the quantities of armor-piercing ammunition commercially available in the country today are minimal.

In March 1985, a survey was conducted at my request by the Bureau of Alcohol, Tobacco, and Firearms and it was found that all three known current distributors of armor-piercing ammunition voluntarily restrict sales to police and military. To the best of our knowledge, a total of 15 to 19 boxes, 10 rounds each, or less than 200 cartridges are distributed per month.

In addition, new legislation enacted by the 98th Congress has provided a strong deterrent to the criminal misuse of armor-piercing ammunition. As part of the Comprehensive Crime Control Act of 1984, a new provision of the Gun Control Act of 1968 provides for a mandatory penalty of at least 5 years in prison for persons who commit Federal crimes of violence while carrying or using a handgun loaded with armor-piercing ammunition. The penalty is applicable when a handgun loaded with armor-piercing ammunition is carried or used during and in relation to a Federal crime of violence, even if the crime in which the loaded handgun is used is one for which enhanced punishment is otherwise provided if committed with a dangerous weapon.

Finally, the statute provides that the defendant is not to be given a suspended sentence, placed on probation or made eligible for parole.

The difficulty facing drafters of legislation to address armor-piercing bullets has been in fashioning a definition that would

achieve a balance between law enforcement and long-established recreational use. The definition of these bills reached after discussion last year with the White House, Justice Department, Treasury Department, and representatives of organizations representing police officers or police management organizations and sporting interests accomplishes two essential goals. It minimizes Government testing necessary to determine whether ammunition would be subject to restrictions under Federal law and defines the term in a way that can be easily understood by industry and the public.

Both H.R. 4 and H.R. 13 accomplish basically the same objectives; namely, prohibiting the manufacture and importation of armor-piercing ammunition with certain narrow exceptions. However, there are differences in the two bills. Beginning with the definition, we would like to note that H.R. 13, the administration's proposal, covers solid projectiles or projectile cores containing tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium.

On the other hand, Mr. Biaggi's bill, H.R. 4, would cover ammunition containing a projectile or projectile core constructed entirely out of one or more of the described materials. This means that the entire cartridge or round of ammunition must be assembled before the restriction on its manufacture or sale would be applicable.

The administration's bill would reach the projectile alone; thus ensuring that the restrictions on manufacture and importation apply to the projectile even before it has been assembled as part of a cartridge. The definition in H.R. 13 is a broader definition of armor-piercing ammunition and would preclude importers and manufacturers' unregulated distribution of armor-piercing projectiles yet to be assembled into complete cartridges. Thus, we believe that the definition in H.R. 13 closes a significant loophole appearing in H.R. 4.

Both bills ban the manufacture and importation of armor-piercing ammunition except for the use of Government entities or for exportation. H.R. 4 adds an additional exception where the ammunition is needed for purposes of testing or experimentation authorized by the Secretary. We understand that this exception was added to allow ballistics researchers, testing services, and soft body armor manufacturers who have a legitimate need for armor-piercing ammunition to obtain it. This is a worthwhile addition to the original legislative proposal.

Our major concern with H.R. 4 is its sale provision, which constitutes the only substantial difference remaining between H.R. 4 and the administration's proposed approach in H.R. 13.

Section 5 of H.R. 4 would provide for revocation of a dealer's Federal firearms license if armor-piercing ammunition is transferred for any purpose except to governments, for testing or for export and the dealer has notice that the ammunition transferred was armor-piercing.

While we have previously opposed such a sale provision, we believe that a viable alternative could be suggested which would satisfy all parties. Our main concern with the sale provision is that dealers could be penalized by facing revocation of their licenses because of inadvertent sales of existing armor-piercing ammunition which may look like conventional ammunition. Many of the com-

mercial armor-piercing ammunition cartridges of current manufacture have manufacturer's head stamps the same as those on conventional cartridges. These cases are identical to those used for nonarmor-piercing bullets. Many of the foreign military surplus armor-piercing bullets, as defined in your proposed legislation, are indistinguishable from conventional nonarmor-piercing ammunition. The only reliable method of identifying armor-piercing ammunition currently available is through expert analysis to determine the metallic content of the bullet.

Therefore, we would propose that any dealer sale prohibition become operative on the willful sale to anyone of armor-piercing ammunition manufactured after the date of enactment. This would add an element of knowledge that is presently lacking in the bill and would also serve to protect dealers from inadvertent sales of armor-piercing ammunition that cannot be readily identified as such.

Merely stating that the dealer have notice from the Secretary that this specific brand of ammunition is armor-piercing is insufficient, in our view, in that there may be some time lag between a new bullet coming on the market and when the Secretary issues a notice to dealers about the projectile.

Instead, we would propose that provision be added to the bill which would mandate marking of the armor-piercing ammunition projectiles and packages of ammunition with distinctive markings or a description unique to armor-piercing ammunition. These provisions will help ensure that dealers will not make inadvertent sales of armor-piercing ammunition.

The bill should also provide that the Secretary promulgate regulations prescribing the manner in which projectiles and their packages for their distribution are marked. The bill might also provide that the Secretary periodically make available lists of currently manufactured armor-piercing ammunition to members of the firearms and ammunition industry.

In conclusion, in view of the few differences between H.R. 4 and H.R. 13, we believe that a compromise may be reached that can be supported by all parties concerned. We would be glad to work with the subcommittee staff on legislative language contained in our suggestion.

Thank you, Mr. Chairman. We are prepared to answer your questions.

[The statement of Mr. Stevenson follows.]

STATEMENT OF THE HONORABLE EDWARD T. STEVENSON
DEPUTY ASSISTANT SECRETARY (OPERATIONS)
DEPARTMENT OF THE TREASURY
BEFORE THE
HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME
MAY 9, 1985

Mr. Chairman and members of the Subcommittee, we are pleased to appear before you today to discuss again the subject of armor-piercing ammunition and certain legislative proposals to address the threat that this ammunition poses to the safety of law enforcement personnel. Both H.R. 4, introduced by Mr. Biaggi, and H.R. 13, the Administration bill as introduced by Mr. Brooks, are similar to legislation formulated by the Administration and introduced into the 98th Congress. Other bills, similar in intent, were introduced in the 98th Congress, and one of these, H.R. 6067, was reported out by the House Judiciary Committee. We are pleased to find that there are even fewer differences between H.R. 4 and H.R. 13, than there were among the various armor-piercing ammunition bills introduced during the 98th and prior Congresses. Those of us who have worked on this issue so long are gratified by this progress.

As you know, H.R. 4 and H.R. 13 are the culmination of a long and strenuous effort by this Subcommittee, other members of Congress and the Administration, to find an

appropriate and enforceable definition of armor-piercing projectiles. We applaud the efforts of the Chairman and the members of the Subcommittee in seeking to resolve the differences in the legislative proposals and to formulate strong, effective legislation dealing with this problem. The definitions of the term armor-piercing ammunition in H.R. 4 and H.R. 13, which are substantially the same, successfully balance the needs of law-abiding sportsmen and hunters with the important law enforcement goal of providing police officers with assurance that their soft-body armor will afford greater protection against gunfire from the criminal element. To the best of our knowledge, to date no police officer has been killed due to armor-piercing ammunition penetrating his protective body armor.

Even without the aid of legislation, progress has been made in keeping armor-piercing ammunition out of the marketplace. As we previously testified before the Subcommittee, we achieved substantial control over this type of ammunition 3 years ago by securing the voluntary compliance of manufacturers and importers. As you know, Treasury sought and obtained voluntary agreements with manufacturers and importers of ammunition specifically

designed as armor-piercing. Under the agreements, manufacturers and importers agreed to sell the ammunition only to the military establishment and to Federal, State and local law enforcement agencies, or to foreign governments. To the best of our knowledge, these manufacturers and importers have either agreed to our proposition or have gone out of the business of importing or producing armor-piercing ammunition. Pursuant to these agreements, we believe that the quantities of armor-piercing ammunition commercially available in the country today are minimal. In March of 1985, a survey was conducted by the Bureau of Alcohol, Tobacco and Firearms, and it was found that all three current distributors of armor-piercing ammunition voluntarily restrict sales to police and military. A total of 15 to 19 boxes (10 rounds each or less than 200 cartridges) are distributed per month.

In addition, new legislation enacted by the 98th Congress has provided a strong deterrent to the criminal misuse of armor-piercing ammunition. As part of the Comprehensive Crime Control Act of 1984, a new provision of the Gun Control Act of 1968 provides for a mandatory penalty of at least 5 years imprisonment for persons who

commit Federal crimes of violence while carrying or using a handgun loaded with armor-piercing ammunition. The penalty is applicable when a handgun loaded with armor-piercing ammunition is carried or used during, and in relation to, a Federal crime of violence, even if the crime in which the loaded handgun is used is one for which enhanced punishment is otherwise provided if committed with a dangerous weapon. Finally, the statute provides that the defendant is not to be given a suspended sentence, placed on probation or made eligible for parole.

The difficulty facing drafters of legislation to address armor-piercing bullets has been in fashioning a definition that would achieve a balance between law enforcement and long-established, recreational use. The definition in these bills, reached after discussion last year with the White House, Justice Department, Treasury Department, and representatives of organizations representing police officers, or police management organizations, and sporting interests, accomplishes two essential goals. It minimizes Government testing necessary to determine whether ammunition would be subject to restriction under Federal law, and defines the term in a way that can be easily understood by industry and the public.

Both H.R. 4 and H.R. 13 accomplish basically the same objectives, namely, prohibiting the manufacture and importation of armor-piercing ammunition, with certain narrow exceptions. However, there are differences in the two bills. Beginning with the definition, we would like to note that H.R. 13, the Administration proposal, covers the solid projectiles or projectile cores containing tungsten alloys, steel, iron, brass, bronze, beryllium copper or depleted uranium.

On the other hand, Mr. Biaggi's bill, H.R. 4, would cover "ammunition containing a projectile or projectile core" constructed entirely of one or more of the described materials. This means that the entire cartridge or round of ammunition must be assembled before the restrictions on its manufacture or sale would be applicable. The Administration's bill would reach the projectile alone, thus ensuring that the restrictions on manufacture and importation apply to the projectile even before it has been assembled as part of a cartridge. The definition in H.R. 13 is a broader definition of armor-piercing ammunition and would preclude importers' and manufacturers' unregulated distribution of armor-piercing projectiles yet to be assembled into complete cartridges. Thus, we

believe that the definition in H.R. 13 closes a significant loophole appearing in H.R. 4.

Both bills ban the manufacture and importation of armor-piercing ammunition except for the use of governmental entities or for exportation. H.R. 4 adds an additional exception where the ammunition is needed for purposes of testing or experimentation authorized by the Secretary. We understand that this exception was added to allow ballistics researchers, testing services, and soft-body armor manufacturers who have a legitimate need for armor-piercing ammunition to obtain it. This is a worthwhile addition to the original legislative proposal.

Our major concern with H.R. 4 is its sale provision, which constitutes the only substantial difference remaining between H.R. 4 and the Administration's approach in H.R. 13. Section 5 of H.R. 4 would provide for revocation of a dealer's Federal firearms license if armor-piercing ammunition is transferred for any purpose, subject to certain narrow exceptions, and the dealer has notice that the ammunition transferred was armor-piercing. While we have previously opposed such a sale provision, we believe that a viable alternative could be suggested which would satisfy all parties. Our main concern with a sale

provision is that dealers could be penalized by facing revocation of their licenses because of inadvertent sales of this ammunition. Many of the commercial armor-piercing ammunition cartridges of current manufacture have manufacturer's head stamps the same as those on conventional cartridge cases. These cases are identical to those used for non-armor-piercing bullets. Many of the foreign military surplus armor-piercing bullets, as defined in the proposed legislation, are indistinguishable from conventional non-armor-piercing ammunition. The only reliable method of identifying armor-piercing ammunition currently available is through expert analysis to determine the metallic content of the bullet.

Therefore, we would propose that any sale prohibition become operative upon the willful sale of armor-piercing ammunition manufactured after the date of enactment. This would add an element of knowledge that is presently lacking in the bill and would also serve to protect dealers from inadvertent sales of armor-piercing ammunition that cannot be readily identified as such. Merely stating that the dealer have notice from the Secretary that the ammunition is armor-piercing is insufficient, in our view, in that there may be some lag time between a new bullet

coming on the market and when the Secretary issues a notice to dealers about the projectile. Instead, we propose that a provision be added to the bill which would mandate marking of the armor-piercing ammunition projectiles and packages of ammunition with distinctive markings unique to armor-piercing ammunition. These provisions will help ensure that dealers will not make inadvertent sales of armor-piercing ammunition. The bill should also provide that the Secretary promulgate regulations prescribing the manner in which projectiles and the packages for their distribution are marked. The bill might also provide that the Secretary periodically make available lists of currently manufactured armor-piercing ammunition to members of the firearms and ammunition industry.

In conclusion, in view of the few differences between H.R. 4 and H.R. 13, we believe that a compromise may be reached that can be supported by all parties concerned. We would be glad to work with the Subcommittee staff on legislative language containing our suggestions.

Mr. Chairman and members of the subcommittee, this concludes my prepared statement. I would be most pleased to answer any questions you may have.

PROPOSED STATUTORY LANGUAGE

"923(k) Licensed importers and manufacturers shall mark all armor-piercing projectiles and packages for their distribution in such manner as the Secretary by regulation shall prescribe. The Secretary shall furnish to each dealer licensed under this chapter information as to what projectiles are considered as armor-piercing ammunition as defined in section 921(a) (17) (B)."

H.R. 4 as revised:

SEC. 3. (new (A) (8) added):

"(8) for any manufacturer or importer to sell or deliver armor-piercing ammunition, except that this paragraph shall not apply to -

"(A) the sale or delivery by a manufacturer or importer of such 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;

"(B) the sale or delivery by a manufacturer or importer of such ammunition for the purpose of exportation;

"(C) any sale or delivery by a manufacturer or importer of such ammunition for the purposes of testing or experimentation authorized by the Secretary."

SEC 5. The first sentence of section 923(c) of title 18, United States Code, is amended by striking out "under this section" and all that follows through the end of the sentence and inserting in lieu thereof the following:

"under this section, if the holder of such license -

(1) being a licensed dealer, willfully transfers armor-piercing ammunition manufactured or imported after the effective date of this section."

[(2) would remain the same].

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

I think that you probably have, in one section of your testimony, I think, focused in on just exactly what the major difference is and that is on the question of sale. I think the other problems can be remedied rather easily.

I think the biggest hang-up, as I see it, is whether or not sale should be proscribed, and if so, under what circumstances. I wonder if I can just walk you through some basics on which I am operating and maybe you can assist me in seeing where I am in error on any of the premises upon which I have based my conclusions thus far. That is one of the purposes of the hearings in any event.

One of the premises upon which I operate is that dealers, licensed dealers, have a duty to know what they are selling. Is that an unfair assumption on my part?

Mr. STEVENSON. I am not sure, Mr. Chairman, I understand what you mean by "duty." I think a lot of the ammunition that is sold may not be readily identified by the dealers. There are 240,000 licensed firearms dealers. Not all sell ammunition, but perhaps a lot of them do. It involves clerks and others who may be accepting shipments of ammunition and just routinely placing it on the shelves for purchase.

You also have a lot of "military surplus" ammunition that may or may not be readily identified and sold perhaps loosely at so much per round.

Mr. HUGHES. Generally speaking, we hold any merchant accountable for what they sell. Anyone in the business of selling merchandise or services is presumed to know what the merchandise is that they are trafficking in. That is a basic principle upon which we operate and I would find it hard to believe that ammunition, which has some additional risk involved—

Mr. STEVENSON. I think their concern would be for liability. Would they be sued because of defective ammunition or something like that. Apparently that has not been a problem from their perspective. Defective ammunition—I don't think they really know the nature of the ammunition beyond—

Mr. HUGHES. I would think that they would be held strictly accountable. I mean, if you sell something and it, in fact, is not marketable or merchantable, generally speaking, you know, you are held accountable for any damage it causes. You are presumed to know the nature of what you are selling; whether or not it can be used for the purposes for which it is sold.

But certainly you would agree that this is probably one of the most highly regulated industries in Government. We talk about firearms and ammunition; it is fairly severely regulated.

Mr. STEVENSON. There are regulations dealing with the manufacture of the ammunition, cartridge designations and things of that nature, but for the cartridge itself, often the markings are not too clear or readily understandable by the purchaser or the seller.

Mr. HUGHES. Let's work on the assumption that a dealer doesn't know what is in, for instance, an ammunition bin that might have a lot of ammunition. I understand that is not an unusual practice. I would assume that at one time or another that ammunition was

acquired by that dealer and a record kept of the source of that ammunition.

Mr. STEVENSON. Yes.

Mr. HUGHES. In fact, you require it by regulation, the regulation I cited to Mr. Biaggi. I would assume, also, that it is not very difficult for the ATF to determine what is a solid projectile containing the alloys that are mentioned in the legislation. That is something you can identify.

Mr. STEVENSON. Yes. If you have—

Mr. HUGHES. You could identify that, I would assume, by manufacturer, by type, by caliber. Am I incorrect?

Mr. STEVENSON. Well, I am not sure exactly to what extent. They would have to take the cartridge apart to analyze the bullet. They may not be able to tell too much about the powder. There may be some head stamps which they can identify or there may not. There is some question about some of the obscure ammunition that is produced in the world and has been imported into the United States.

It is not as clearly defined for some ammunition as it might be for others. For example, a box of Remington ammunition may have a number stamped on it. That could be readily traced and identified. Others may not.

Mr. HUGHES. We can work on the assumption that ammunition already in boxes should not present a problem, should it?

Mr. STEVENSON. I am advised that some ammunition bought in bulk was repacked by the distributor with different kinds of boxes. It may or may not have marks that are appropriate or identifiable.

Mr. HUGHES. Is that identifiable by ATF?

Mr. STEVENSON. I will ask Ed Owen to address that question.

Mr. OWEN. Mr. Chairman, part of the problem—I think we have talked about the Czechoslovakian cartridge for several years. There are basically two different varieties of it; one which has a hard core and another which has a lead core. Externally, the cartridges are basically identical.

When the ammunition was initially imported, a great deal of it was removed from its original military packaging, placed in commercial packaging in this country, so you run the risk or have the problem of having both the hard core projectile and a lead projectile packed in the same box.

Mr. HUGHES. If a dealer has some doubt as to whether or not ammunition is caught up in the ban, would there be—would it be difficult for the dealer to have it analyzed by ATF or by a laboratory to determine the substance contained in the projectile?

Mr. STEVENSON. He could certainly have it analyzed, but he might have to have every round analyzed. Every round destroyed for analysis in order to determine which cores were lead or which were steel.

Mr. HUGHES. That is working under the assumption that it falls in this category you are talking about. How much of that type of ammunition is out there? Do you know?

Mr. STEVENSON. We are talking about 13 million rounds of the Czech ammunition imported, some of which we are now calling armor-piercing and some we are not, but no one knows how much is out there, how much is left.

Mr. HUGHES. My difficulty with your position is that it is going to be difficult for us to ban it and, at the same time, give notice to the dealer that that ammunition is caught up in the ban.

In essence your alternative is to not ban the sale of that ammunition. I mean, that is your alternative.

Mr. STEVENSON. Yes, we are working with a prospective ban on ammunition that can be readily identified because of—

Mr. HUGHES. A prospective ban, I would say, Mr. Stevenson, is rather nominal because if, in fact, you ban the manufacture and you have already banned the importation of that type of ammunition, then I think we have to work on the assumption that since we already have voluntary restraints, there isn't going to be very much of that type of ammunition which is caught up in the sale.

The problem, once again, is not with the manufacture prospectively because we are satisfied that between the voluntary constraints and what this committee is going to be doing, that we are going to ban manufacture. The problem is with ammunition that has already been manufactured, that is out there on the shelves.

Let me back you up a little further. Although we can't tell how much ammunition we are talking about—and I assume that is the case—we just don't know how much ammunition of this type is on the shelves. Is that a fair assumption?

Mr. STEVENSON. Yes, we assume a very limited amount, but no one knows. That is correct.

Mr. HUGHES. When you say limited amount, you know, it could be 10,000 rounds; it could be 100,000 rounds. It could be 2 million rounds, for all we know. Isn't that correct?

Mr. STEVENSON. That is correct.

Mr. HUGHES. Now, we do agree that this ammunition does have the capacity to pierce body armor. I mean, that is why we call it armor piercing. There is no question about that. It has that capacity.

Mr. STEVENSON. If I could interject, Mr. Chairman, some of this ammunition with the steel core will penetrate soft body armor; some will not, and it does tend to be very erratic due to its age.

Mr. HUGHES. The body armor—the ammunition that will pierce obviously does have the capacity to kill. Is it a fair assumption to suggest that it only takes actually just one round of that ammunition to kill one police officer?

Mr. STEVENSON. Presumably.

Mr. HUGHES. What do you mean "presumably"? Is there any question about that?

Mr. STEVENSON. No, sir. If the vest is penetrated and the bullet penetrates a vital organ, obviously death will ensue.

Mr. HUGHES. So the next question is: If that is the case, and the ammunition really has little sporting value, shouldn't we be making every effort to try to prevent the transfer of that ammunition? I mean, if we save one life, one life, will that not be worth the effort? In view of the fact that it has so little—I mean, the ammunition has so little value aside from piercing armor, has no sporting value, nobody quarrels with that—if we can save one life, isn't that worth the effort? I mean, that is the central issue because I think once we answer that, then we can deal with how we are going to arrive at a just result.

Would you agree that that is the central issue?

Mr. STEVENSON. The central issue is saving the lives of policemen, yes, sir, I would agree. We struggled with this question for some time, as you know, as we all have. If we can come up with a good viable alternative, we are certainly willing to consider it.

Mr. HUGHES. There is a viable alternative. See, we are worried now about the possibility of some dealer not understanding your notice, not taking the time and the effort to try to determine what he has in inventory, to see whether it falls within proscription, we are concerned about that and what we are going to do is—we have decided that we are going to let that outweigh the factor that if we don't attempt to ban the transfer and get this ammunition out of the hands of felons—the potential for getting in the hands of felons, that we could save some lives.

Isn't that the major issue?

Mr. STEVENSON. Yes, sir.

Mr. HUGHES. Your remedy is to give up on the effort to try to, in fact, prevent that transfer. Your remedy—as I say, “we won't deal with the transfer of that ammunition that is already on the shelves,” and yet that is what presents the greatest risk to the law enforcement community. It is not the manufacturers that are going to be manufacturing this ammunition prospectively or the sale of that ammunition; that is not the major risk. The risk is from the ammunition that already exists in inventory.

Mr. STEVENSON. Very little of this is turning up in crime, Mr. Chairman. There have been no police fatalities with the Czech ammunition; fatalities of police officers wearing the protective clothing.

Mr. HUGHES. We could have had police fatalities at San Diego. Mr. Huberty fired almost 200 rounds of armor-piercing ammunition. Thank God no police officer arrived early—even with body armor because it wouldn't have protected him. How many fatalities do we have to have before we, in fact, admit that there is a problem? I mean, that is the point.

Mr. STEVENSON. Hopefully zero.

Mr. HUGHES. That is precisely what we are trying to get at.

The gentleman from Florida.

Mr. McCOLLUM. Thank you, Mr. Chairman. I appreciate very much your testimony today, Mr. Stevenson. I had read it, as you may have noted, before you testified and I found it to be very interesting and I think very important.

As I have said to other witnesses, I come to this very openmindedly with regard to the details of what legislation we pass and from reading your testimony and listening to Mr. Biaggi, it occurred to me that there might be some grounds for a compromise of sorts. Of course, that assumes that there would be some willingness on the part of the administration to allow us to prohibit the sale in some way or another of those rounds of ammunition that might still be on the shelf if they are somewhere, which Mr. Biaggi obviously sincerely believes that there is and there are.

That occurred to me that using your language, or something similar to it, you have got “willfully transfers” in here. Perhaps knowingly and/or recklessly or something like that, putting that in and making that kind of modification, that kind of change in the

H.R. 4 without limiting it to newly manufactured bullets and allowing the ones that are already out there to be covered by it. We might really do what you are attempting to do and really concerned about doing and that is to protect the truly innocent dealer who doesn't know this.

I know this is probably something that you either have kicked around or else you haven't thought about a lot, but would you consider something like that?

Mr. STEVENSON. We certainly would discuss it and would be glad to talk to you about this. The element "willful" that we are talking about here also includes knowing.

Mr. McCOLLUM. Sure.

Mr. STEVENSON. The question, of course, goes back to the retroactivity of the language that we are talking about, the crux of the difference we have, which brings the same problems back into focus.

We would certainly be glad to talk to you about it.

Mr. McCOLLUM. I would very much like for you to because that—the prior knowledge is the key thing that I see in this particular case.

I have read what you have testified to in formal testimony and listened to what you have said in the answer to Mr. Hughes' question. It seems to me that the point is being made pretty clearly by you that if I am a gun dealer, I may be just as knowledgeable as I possibly can be about bullets and guns and still physically, because of the nature of some manufacturers of some bullets, particularly overseas, not be able to distinguish and know that a particular bullet is armor-piercing unless it is taken to the lab and analyzed.

Is that correct?

Mr. STEVENSON. That is correct.

Mr. McCOLLUM. So, unless the package is marked very clearly, or unless the actual bullet has something on it that tells me that, if it is just in a plain casing that looks like any other plain old casing, I am not going to be able to look at that bullet and tell that it is an armor-piercing bullet, is that correct?

Mr. STEVENSON. That is correct. A case in point is the KTW cartridge which has a Remington case. The cartridge itself is composed of four components: the bullet; the powder; the primer which detonates the powder and the cartridge case, which holds it all together, and KTW, as well as some others, use commercially manufactured cases to assemble their rounds.

The only way you recognize this as a KTW is because it has the apple green Teflon coating. If a manufacturer were to make one with the usual bullet configuration and didn't coat it or paint it, it might look like a regular full metal case bullet, or a military round, for example, or a common commercial round. Then you will begin to have trouble with the average seller knowing exactly what he has, unless it is designated.

We are proposing, by the way, the marking of cartridges, or marking projectiles and boxes. We are considering requiring that a black paint be put on the tip, which is the usual NATO and military designation of armor-piercing, along with some notification on the cartridge box that sale of this ammunition is regulated and punishable by penalties, prohibited by law.

Mr. McCOLLUM. You have also indicated that you think that there should be some regulation or some requirement, maybe even in the statute, of regulation for the marking of armor-piercing projectile boxes and so forth.

Mr. STEVENSON. That is right.

Mr. McCOLLUM. It is not required now, I guess.

Mr. STEVENSON. The language that we are suggesting would require—would permit the Secretary, by regulation, to make those designations as to marking.

Mr. McCOLLUM. The Secretary does not presently make those designations?

Mr. STEVENSON. I believe he does not have the authority, in our opinion.

Mr. McCOLLUM. He doesn't have the authority to do that?

Mr. STEVENSON. Not at this point, no.

Mr. McCOLLUM. So, since he doesn't have the authority, he doesn't do it and it isn't being done. All right. Nobody is doing it. I mean—

Mr. STEVENSON. Well, some—no, not generally. However, it is common to come across black-tipped cartridges which indicate armor-piercing ammunition. Generally they are military rounds, often sold as surplus.

Mr. McCOLLUM. I think it is important, as I understand it, under anybody's legislation here, Biaggi's or the administration's or anybody's, there would be still armor-piercing bullets produced for certain purposes.

Mr. STEVENSON. The military would produce armor-piercing bullets, as they have for many years.

Mr. McCOLLUM. So we would want markings very clearly on those that are being produced as best we can to protect everybody, I would think. So your request for that kind of relief seems very logical to me.

One last area I would like to explore with you is the distinction of the definition that you make between the Biaggi bill and the administration or the Brooks bill. I read that; I listened to that when you said it, and I am still not too sure that I understand it. The conclusion I understand, but I am not too sure how the language fits into this.

As I understand it, what I do understand is that, in your opinion, under the Biaggi bill, could be the possibility that a not-yet-put-together projectile wouldn't be banned.

Mr. STEVENSON. Yes. I think H.R. 4 regulates ammunition or the cartridge itself. Ours goes beyond that and regulates the projectile so that you could not have commerce of projectiles only for yet-to-be-assembled cartridges.

Mr. McCOLLUM. Maybe that is a little ignorance on my part. I didn't come from a law enforcement background. What is the difference between a cartridge and a projectile?

Mr. STEVENSON. The cartridge is the whole thing, the bullet, the powder, the primer and the cartridge case. The bullet or the projectile is one element. That is what leaves the end of the barrel.

Mr. McCOLLUM. Just the tip. Yes, OK, I follow you. I can see the distinction.

Thank you very much, your testimony has been very enlightening.

Mr. STEVENSON. Thank you, sir.

Mr. HUGHES. Mr. Stevenson, what is the purpose of section 178.125 of the Code of Federal Regulations, requiring licensed dealers to keep a record of receipt and disposition of ammunition? What is the rationale for that?

Mr. STEVENSON. Let me ask Jack Patterson to answer that question.

Mr. HUGHES. Mr. Patterson.

Mr. PATTERSON. Section 178.125 implements the provision of the Gun Control Act, section 923(g) of title 18 of the United States Code, which provides that there shall be a record kept by licensed manufacturers, importers and dealers of their acquisition and disposition of firearms and ammunition.

Mr. HUGHES. It seems to me that inherent in the purpose is to require licensed dealers to know the ammunition that they receive. Isn't that inherent in that requirement, recordkeeping, to segregate it, to keep a record of it? I mean, if you don't keep a record of what you have, how can you keep a record of what you dispose of? Isn't that inherent in that?

Mr. PATTERSON. Certainly it is, and the recordkeeping requirements pertain to handgun ammunition and ammunition that is interchangeable between handguns and long guns. It does not pertain to ammunition for long guns or .22 caliber rim fire. Licensed dealers are required to keep a record identifying ammunition by name if the manufacturer, caliber, or gauge, quantity sold, and information identifying the purchaser.

Mr. HUGHES. But bear with me, the rationale for the section is to require a record of receipt and disposition but if that ammunition is commingled, how can they comply with that section of the statute or the regulation?

Mr. STEVENSON. I think, Mr. Chairman, that the various ammunition is recorded as so many rounds of 38 special, so many rounds of 9 millimeter. I think this was part of the 1968 Gun Act and primarily intended to identify the purchasers of ammunition.

Mr. HUGHES. I read the regulation to require that they have got to keep a record of the specific ammunition, manufacturer, the gauge or caliber, the quantity when it comes in and when it leaves the shop.

Mr. STEVENSON. Yes, sir.

Mr. HUGHES. Now, if it is commingled, how can they, in fact, keep a record of what is disposed of? They don't know the ammunition that they are disposing of.

Mr. STEVENSON. I am not sure what you mean by "commingling," Mr. Chairman.

Mr. HUGHES. Well, if it is thrown into a bin with a lot of other ammunition. One of the suggestions is it is repackaged or it is thrown into an ammunition bin and it is sold in odd lots and I must concede, I had never heard that before and it may not even be accurate that that is a practice. It may not be a practice, I am not sure, but it has been suggested to me that that happens and that dealers end up sometimes with lots and they are not sure just exactly who the manufacturer was, the type of ammunition.

Mr. STEVENSON. I am told the existing law doesn't preclude the commingling. I would think the designation on the record may be by so many rounds of this caliber and so many rounds of another, but usually the lots or the bins are pretty much uniform in what they have. It may be uniform from bin to bin, for example, or from lot to lot.

So the purchaser of 50 rounds of 9 millimeter would probably end up with the same kind for all 50 rounds, but when he goes back a week from now, it may be something similar but different.

Mr. HUGHES. How could you determine at any given time whether or not the records are accurate if the dealer can't identify the ammunition that was acquired from a particular manufacturer that he had in inventory?

Mr. STEVENSON. There is some question about the accuracy of the gun-dealer records. Primarily, the reason for this requirement was the identification of the purchaser of the ammunition rather than the exact types or manufacture of the ammunition sold to him.

I would guess that most of the records are accurate, but as to the total accuracy, there might be some question.

Mr. HUGHES. We don't know that because we don't really do very much inspecting these days, do we? You are probably lucky if you inspect a dealer once in 12, 15 years at this point. It is just incomprehensible to me that you wouldn't require, at the very least, that the dealer have knowledge of exactly what he bought or imported, and what he sold and be able to trace that and segregate it in the shop as part of inventory.

I don't know how, you know, in the world you are being provided with any information that would be entirely useful if you didn't at least require that at a minimum. Working on the assumption that that is the case, what would be wrong with ATF identifying a particular type of manufacturer, particular type of gauge, particular type of ammunition, describing it and alerting the dealers to the fact that this ammunition is now banned. Any question about it—if you have ammunition and you are not sure whether or not you fit within this ban, contact one of our regional offices.

Why wouldn't that be a feasible way to deal with that ammunition? Apparently dealers don't know what they have; they don't know what they are selling and they want to be good law-abiding citizens—and I presume they all do—and obviously they don't want their licenses suspended or revoked.

Mr. STEVENSON. I think at this—

Mr. HUGHES. Why couldn't that service be provided?

Mr. STEVENSON. Absent the legislation, it might be difficult for us to do that, or to have the authority to do it.

Mr. HUGHES. You are in the right place. We can pass the legislation to do that.

Mr. STEVENSON. If the legislation were passed, I assume we would have to find some way to do it, and do it the best way possible, but as we indicate, there are problems in this that we see down the road.

Mr. HUGHES. You know, I am not so sure that we can't approach the problem from a number of angles. I mean, the concern is over revocation. Maybe we ought to be looking at other sanctions. Maybe suspension. Maybe for willful violation for revocation. You

know, we have a lot of ways we can go, but I think the central point is that I don't think we should give up just because it might be, somewhat difficult trying to prevent the transfer of this ammunition. If, in fact, we are going to save lives, it is worth the effort, I would think, wouldn't you?

Mr. STEVENSON. If it can be done properly, yes.

Mr. HUGHES. I think the approach that the administration has taken is, "Well, it is difficult to do that so what we are going to do is we are going to prospectively ban the sale." You know, that is not going to reach the ammunition that presents the real risk to police officers. It is that ammunition that is already in inventory.

I think some of the other suggestions you made are very positive. I think the suggestion that we write into the legislation authorizing language to enable you to identify in some way, by color or otherwise, armor-piercing ammunition is a very positive, constructive suggestion and that sounds like something that we can certainly do. But it doesn't get back to the central problem dealing with the sale or transfer of that ammunition that is already there; that is not going to be manufactured prospectively.

Well, in any event, the gentleman from Florida.

Mr. McCOLLUM. I just wanted to ask one more question or let you think about it a little bit. It has occurred to me, because I am an old civil trial lawyer, that the term "projectile," while meaning something as a word of art in the world of ammunition, means a variety of things in terms of the general use of the English language. For example, when I was practicing trial law, I can recall vividly a case in which a young girl was seated in a car and a large mowing machine was coming along in an open field beside the car and picked up a bolt and threw it through her eye. Throughout the trial, and, in fact, in all of the proceedings, the bolt was referred to as a projectile.

I don't know enough about this to be certain of myself, but perhaps there is some definition in law I am not familiar with, but in the administration's bill, it just says: "The term 'armor-piercing ammunition' means solid projectiles or projectile cores constructed from" and I am wondering if that wouldn't be broader than, perhaps, you want to ban.

Mr. STEVENSON. This is referring to projectile, which, for purpose of the 1968 Gun Control Act and the regulations, constitutes ammunition. Ammunition is defined to include bullets, among other things designed for use in any firearm.

Mr. McCOLLUM. OK, as long as that is really clear. In the 1968 Gun Act, it does cover a projectile.

That is all I wanted to ask. I am not always familiar with every source of where you get these definitions, so I want to be perfectly clear we weren't doing something more broadly if we adopted your definition.

Thank you. I have no further questions, Mr. Chairman.

Mr. HUGHES. I just want to, before you leave, just make a couple observations.

I was a trial practitioner for a number of years before I came to the Congress, in addition to being a prosecutor. I wouldn't want to be a dealer that sold armor-piercing ammunition to a citizen, not knowing what I sold. I would like to be the plaintiff in a case

against such a dealer. I just find it incomprehensible that anybody in the business of selling ammunition doesn't know exactly what they are selling. I take it at face value that there are dealers who don't know what kind of ammunition they are selling, and that they are selling it at their peril. That is the first observation that I make.

The second observation I would like to make is that I don't think that ATF is fulfilling its responsibility to the public under the law when it doesn't make sure that dealers know exactly what they are selling; that they are maintaining the ammunition that they import or that they acquire from wholesalers and others; keep that information intact so that when they dispose of it, they can identify for an ATF agent when they come in to look at the records what ammunition has come in, what has been sold and indicate what is in inventory.

If they can't identify that ammunition, in my judgment they are not fulfilling their duty and ATF is not fulfilling its duty under the statute because, as I read the statute, inherent in the recordkeeping is the requirement that they do, in fact, keep that information. So I just hope that out of this will come some better practices so that we can protect the public and the dealer from charges because of the inability to identify what they are actually selling.

Mr. Stevenson, thank you. I don't want to be entirely negative. I think the steps that the administration have made are very positive ones. I welcome the testimony today because it does demonstrate to me that the administration does recognize that there are other problems besides the banning of manufacture. That is what it suggests to me, so we look forward to working with you to see if we can't fashion legislation that will address some of these other concerns.

Thank you very much.

Mr. STEVENSON. Thank you, Mr. Chairman.

Mr. HUGHES. The next witnesses are a panel representing the major national association of law enforcement personnel. At this time, I would like to welcome Mr. David Green, chief of police, of Sioux Falls, SD, on behalf of the Fraternal Order of Police; Mr. John J. Norton, chief of police, of Parkersburg, WV, first vice president of the International Association of Chiefs of Police; Mr. Edward Murphy, legislative counsel, the International Brotherhood of Police Officers; Mr. David Baker, treasurer of the International Union of Police Associations; Mr. Ira Lechner, legislative counsel, National Association of Police Organizations; Sergeant Michael Muth, who is substituting for Lieutenant Tom Carr, the Maryland State Police, representing the National Troopers Association; and Mr. David Konstantin, Research Associate, Police Executive Research Forum.

Gentlemen, welcome, on behalf of the Subcommittee on Crime. I note that all of you have extensive and distinguished experience in law enforcement and in the service of your profession. I am going to, without objection, insert into the record the distinguished years of service that each of you have had in public life. It is just so extensive that we would take another hour trying to describe your respective backgrounds.

[The information follows:]

Biographical data

DAVID F. GREEN
Sioux Falls, South Dakota

David F. Green is the Chief of Police in Sioux Falls, SD. Born in Sioux Falls November 13, 1935, he received his B.A. degree Summa Cum Laude from Augustana College in Sioux Falls, and has done graduate work in Public Administration at the University of South Dakota.

Chief Green joined the Sioux Falls Police Department in 1958 and worked his way through the ranks until being appointed as Chief of Police in 1982. He is a graduate of a number of law enforcement schools, including the FBI National Academy in Quantico, Virginia (where he was awarded the J. Edgar Hoover Award for Scholastic Excellence), the Bureau of Narcotics School in Washington, D.C. and the Juvenile Officer's Institute at the University of Minnesota. Chief Green served eight years with the U.S. Navy Reserve.

Chief Green has served on a number of local, state and national boards and committees including VOLUNTEER: The National Center for Citizen Involvement in Washington, D.C., and the Fraternal Order of Police, where he was a member of the national board for thirteen years, with four of these as Chairman of the Board of Trustees. He currently serves as a special advisor to the National President of the FOP. Chief Green has been selected for the 20th Edition of Who's Who in the Midwest.

Chief Green is married to the former Renata Kappenman, and is the father of three grown children, Toby, a graduate of the U.S. Military Academy at West Point who is serving with the U.S. Army in Hawaii, Tom, who is serving with the U.S. Army at the Presidio of Monterey, California, and Tony, who is in private business in Las Vegas, Nevada.

JOHN J. NORTON

John J. Norton is the Chief of Police for the Parkersburg, West Virginia, Police Department. He is the former Chief of Police for the Foster City, California, Police Department and formerly served with the San Jose and San Francisco, California Police Departments, and as a special agent, Federal Bureau of Investigation, and most recently as Chief of Police of the California State Police.

Chief Norton received a B.A. at San Jose State, an MPA from the University of Southern California, and holds the Police Executive Certificate.

Chief Norton is the First Vice President of the International Association of Chiefs of Police and Past President of the California Police Chiefs Association, the California Peace Officers Association, the San Mateo County Police Chiefs Association, of the San Francisco Bay Counties Peace Officers Association, of the San Francisco Bay Area Law Enforcement/Security Liaison Group, and of the San Francisco Bay Area Society of Former FBI Agents.

As a Marine officer in Vietnam, he received the Navy Cross for Heroism during the 1968 TET Offensive, together with several bronze stars and purple hearts and has been subsequently promoted to Lieutenant Colonel. A former judo champion, he holds the second degree black belt, and he recently received medals in judo and swimming in the Police Olympics.

BIOGRAPHY EDWARD L. MURPHY - LEGISLATIVE COUNSEL
OF THE NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

Edward L. Murphy is an 1975 graduate from Boston College. In 1979 he graduated from Suffolk University Law School. During the years 1979 to through 1982 he served as staff counsel to the International Brotherhood of Police Officers in Boston, Massachusetts. From 1983 to present he has served as legislative Counsel to the United States Congress for the National Association of Government Employees (AFL-CIO) of which the International Brotherhood of Police Officers is a part.

He is admitted to the Massachusetts and Federal District Court Bar. He is a member of the Labor, and Administrative Sections of the American Bar Association and is a member of the Society of Federal Labor Relations Professionals.



**INTERNATIONAL UNION
OF POLICE ASSOCIATIONS
AFL-CIO**

THE ONLY UNION FOR LAW ENFORCEMENT OFFICERS

National Headquarters • 815 16th Street, N.W., #307 • Washington, D.C. 20006 • (202) 628-2740

Robert B. Kilesmet
President

David E. Baker
Secretary-Treasurer

BIOGRAPHY

**DAVID E. BAKER
SECRETARY-TREASURER**

INTERNATIONAL UNION OF POLICE ASSOCIATIONS

David E. Baker was elected Secretary-Treasurer of the International Union of Police Associations in July, 1982. The I.U.P.A., with 16,000 members in 29 states in every region of the U.S., was chartered by the AFL-CIO as the first solely police union in 1979.

Due to his outstanding record of achievement at the grassroots level of the police union movement, Mr. Baker quickly rose to national prominence in the I.U.P.A. He organized the Memphis Police Local Union in 1973 and was elected its first President. He subsequently bargained the first contract for the Memphis union, and in 1978 led the union in its first strike -- also the first major city police strike in the South.

Shortly after becoming President of the Memphis police local, Mr. Baker was elected in 1973 to the national board of the International Conference of Police Associations, the predecessor organization of the I.U.P.A.

In 1981, Mr. Baker was elected Vice President of I.U.P.A. He currently serves on the Steering Committee of the National Crime Prevention Association and is Secretary-Treasurer of the Institute for Police Research. In addition, he has been a lecturer at Memphis State University.

He currently resides in Springfield, Virginia with his family.

AFFILIATED WITH THE PUBLIC EMPLOYEE DEPARTMENT, AFL-CIO

BIOGRAPHICAL SKETCH

David N. Konstantin is a Research Associate with the Police Executive Research Forum in Washington, D.C. He is currently Project Director of the Forum's Crime Classification System. Mr. Konstantin received his B.A. in Sociology from the University of Connecticut and his M.S. in Justice from the American University.

Mr. HUGHES. We also have your statements which will be made a part of the record in full and we hope that you can summarize for us.

I understand that Tom Doyle cannot testify on behalf of the Federal Law Enforcement Officers Association. He is a 14-year veteran with Secret Service and is on the Vice President's personal detail this afternoon. His statement, likewise, will be made a part of the record in full.

[The statement of Mr. Doyle follows:]



Federal Law Enforcement Officers Association

170 Old Country Road - Suite 310
Mineola, N.Y. 11501
(516) 248-1355

DATE:

CONTACT:

TESTIMONY BY

THOMAS W. DOYLE

FLEOA NATIONAL EXECUTIVE VICE PRESIDENT &

LEGISLATIVE CO-CHAIRMAN

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES'

COMMITTEE ON THE JUDICIARY

ON

H.R. 4

MAY 8, 1985

"A Professional Association for Federal Law Enforcement Officers"

My name is Thomas W. Doyle. I am the National Executive Vice-President of the Federal Law Enforcement Officers Association and its Legislative Co-Chairman. I wish to thank the House Committee on the Judiciary for the opportunity to testify on H.R.4. Such legislation is absolutely vital to those in public safety involved in straight law enforcement and protective duties. Passage of H.R. 4 would benefit not only federal officers, but state, county and local law enforcement as well.

Let me state from the outset that the Federal Law Enforcement Officers Association, representing some 6000 men and women from 26 federal agencies, fully endorses H.R. 4. We believe the bill is an important first step in ridding the country of armor piercing ammunition, ammunition which serves no useful purpose to the lawful sportsman or gun collector. The ban on manufacture and importation of such ammunition is both practical and enforceable. More importantly, the bill provides sanctions for those who knowingly sell armor piercing ammunition illegally.

According to Treasury Department estimates, armor piercing ammunition constitutes less than 1 percent of the some 200,000,000 rounds of ammunition currently available for sale in the United States. But even 1 percent of 200,000,000 means that as many as 2-million "cop killer" bullets are waiting for purchasers in the American marketplace. With law enforcement facing rising violence from criminals and right and left-wing extremists, 2-million rounds is just too many to be out there.

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It is also true that many legitimate gun dealers, today, may be unaware that a round they are offering for sale is defined as an armor piercing round. To counter this the bill appropriately offers all dealers notice of the ammunition covered by the definition of armor piercing ammunition. It also states quite specifically who are legitimate purchasers for the armor rounds dealers currently hold in stock -- eg. military, police, and other government agencies who use such rounds for testing and research.

Our position on this piece of legislation has been developed after much thought and discussion within FLEOA and between FLEOA and our colleague organizations. On January 10, 1985, FLEOA National President Robert E. Van Etten joined the Presidents, Chairmen and Executive Directors of the International Brotherhood of Police Officers, the International Association of Chiefs of Police, the International Union of Police Associations, the National Association of Police Organizations, the National Sheriffs Association, the National Troopers Coalition, the Police Executive Research Forum and the United Federation of Police in urging President Reagan to support the "Law Enforcement Officers Protection Act of 1985. Our support has not lessened since that time.

H.R. 4 has managed to overcome the definitional problems as to

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what constitutes an armor piercing bullet. It is substantially the same ban on manufacture and importation that the Administration and the gun lobby agreed upon last year. It includes safeguards to insure that the ban on sale does not arbitrarily and capriciously injure legitimate dealers. Because of this we in the Federal Law Enforcement Officers Association believe H.R. 4 is a bill whose time for passage has arrived. We urge this Committee to swiftly move it forward to passage.

Thank you.

#

Mr. FUGHES. I want to welcome you on behalf of the committee. Why don't we start with you, Mr. David Green, chief of police of Sioux Falls, SD.

Mr. Green.

STATEMENTS OF DAVID GREEN, CHIEF OF POLICE, SIOUX FALLS, SD, ON BEHALF OF THE FRATERNAL ORDER OF POLICE; JOHN J. NORTON, CHIEF OF POLICE, PARKERSBURG, WV, FIRST VICE PRESIDENT OF THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE; EDWARD MURPHY, LEGISLATIVE COUNSEL, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS; DAVID BAKER, TREASURER, INTERNATIONAL UNION OF POLICE ASSOCIATIONS; IRA LECHNER, LEGISLATIVE ADVISER, NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS; MICHAEL D. MUTH, MARYLAND STATE POLICE, REPRESENTING THE NATIONAL TROOPERS COALITION; AND DAVID KONSTANTIN, RESEARCH ASSOCIATE, POLICE EXECUTIVE RESEARCH FORUM

Mr. GREEN. Thank you, Mr. Chairman.

I testify on behalf of the Fraternal Order of Police, which is a national police organization with over 170,000 members in the United States, but in addition to my police role, I am also an avid outdoorsman, hunter, and shooter. I am a member of the National Rifle Association, a certified firearms instructor with them, and I support that organization. I want to make it clear that I am not an antigun person and have consistently opposed legislation which unduly restricts the rights of responsible firearms owners. I think you would find that position representative of the members of our organization.

Yet we support H.R. 4, which regulates the manufacture and importation and also the sale of armor-piercing ammunition. We see this legislation as increasing the safety of police officers and others without hampering legitimate use of ammunition by sportsmen, target shooters, the police, or the military.

As has been discussed, the police officers and agencies have begun in the past few years equipping themselves with soft protective body armor, which are lightweight garments which can sustain an impact from a significant share of the firearms which police officers commonly encounter. We supply them in our department to any officer who requests them, and there is good reason for it. There have been in the past 15 years 80 to 134 law enforcement officers killed each year in the line of duty. In fact, I just came here from the funeral of a South Dakota highway patrolman who was killed this past week in the line of duty.

These particular devices we are talking about—the protective body armors—help a great deal and have saved many lives, but they are not a panacea because there are weapons of sufficient power that they will penetrate these vests. But more importantly, there is ammunition available which, when fired in firearms which with conventional ammunition would not pose the threat, do pose the threat, and it is this specific ammunition, of course, that we are concerned about with this legislation.

The ammunition we are talking about here is specialized armor-piercing ammunition and it has no other practical use. One would be hard-pressed to explain to any police officer the need any sportsman or target shooter would have for this ammunition.

The major distinction that has been discussed between the two bills being considered here today is that H.R. 4 includes limiting the sale of such ammunition and this purportedly puts America's firearms dealers in jeopardy. However, I note that a letter recently distributed to Members of Congress by the National Rifle Association, in opposition to H.R. 4 states, and I quote: "Some Federal firearms dealers used to stock this ammunition for purchase by police officers upon showing of identification. However, even this is no longer the case."

This suggests to me that the existing stocks are rather limited and if that is the case, then I feel that H.R. 4 has adequate notification provisions to deal with the limited existing stock that is there. I certainly concur with comments made earlier that a dealer should know what he is selling when he is selling ammunition.

In conclusion, let me say that as a shooter and a firearms owner, I perceive no threat to my legitimate ownership and use of firearms or ammunition in this bill and as a police officer, I see a potential reduction of death and injury to men and women engaged in a very dangerous occupation.

I think it needs to be highlighted that this ammunition isn't only a hazard to law enforcement officers, it is a hazard to the President and to Congressmen and to the fellow next door to you.

Finally, as a citizen, I see in this legislation the proper exercise of the legislative function, and that is the promotion of order and safety in our Nation without undue restriction of individual rights. So on behalf of the Fraternal Order of Police, we support this bill and would urge its favorable consideration.

[The statement of Mr. Green follows:]

Testimony of

DAVID F. GREEN
FRATERNAL ORDER OF POLICE

before the

U. S. House of Representatives
JUDICIARY SUBCOMMITTEE ON CRIME

May 8, 1985

My name is David F. Green, and I am the Chief of Police in Sioux Falls, South Dakota. I testify today on behalf of the Fraternal Order of Police, which is a national police organization with over 170,000 members throughout the United States. The Fraternal Order of Police has been actively concerned with this legislation for over ten years.

In addition to my police role, I am an avid outdoorsman, hunter and shooter. I've been a member of the National Rifle Association for twenty-five years, and I'm an NRA Certified Police Firearms Instructor. I support that organization. I also reload ammunition; have competed in both conventional and muzzle-loader target matches, and currently hold a department marksmanship rating of Distinguished Expert. I am not an anti-gun person, and I have consistently opposed legislation which unduly restricts the rights of responsible firearms owners:

Yet I speak in support of HR-4, regulating the manufacture, importation and sale of certain armor-piercing ammunition. The effect of this legislation is to increase the safety of police officers and others, without hampering legitimate use of ammunition by sportsmen, target shooters, the police or the military.

Several years ago police officers and agencies began equipping themselves with soft protective body armor - lightweight garments which have the ability to sustain an impact from a significant share of the firearms police officers commonly face. Our department supplies them to any of our officers who request them. There is good reason for such caution. Over the past fifteen years, eighty to one-hundred thirty-four law enforcement officers have been killed each year in the line of duty. Many officers' lives have been spared because they were wearing such protective garments when attacked. But while the protective devices we speak of help, they are admittedly not a panacea. Some weapons are of sufficient power that their projectiles can penetrate these garments. Moreover, specialized bullets are currently available which can penetrate such soft armor, even when fired from weapons which, with conventional ammunition, would not pose such a threat. It is this specific ammunition which the bill seeks to control.

The Fraternal Order of Police has never supported what is commonly referred to as anti-gun legislation, nor do we advocate in any way the elimination of practical sporting ammunition of any type. The ammunition addressed here involves projectiles which are specialized armor-piercing rounds. They have no other practical use. One would be hard pressed to explain to police officers the use any sportsman or target shooter would have for such ammunition.

Other criticisms have been leveled at this legislation. One objection is that it includes the sale of such ammunition. This purportedly puts America's firearms

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dealers in jeopardy. However, I note that a letter recently distributed to members of Congress by the National Rifle Association in opposition to HR-4 states, "Some federal firearms dealers used to stock this ammunition for purchase by police officers upon showing of identification. However, even this is no longer the case." If it's no longer the case that dealers stock such ammunition, I fail to see the threat this bill might pose to such dealers.

Another criticism is that it is inappropriate to legislate in regard to inanimate objects. For over forty years our nation has had laws controlling machine guns and silencers, as well as other exotic firearms and devices. These are inanimate objects, but I don't believe any responsible legislature would repeal such regulations. Machine guns and silencers have no legitimate or conventional use which would outweigh the dangers they pose. The ammunition HR-4 addresses falls into the same category. Poisons and explosives are inanimate objects as well. It is absurd to argue that they should not be regulated.

Finally, it has been suggested that this legislation is a facade....that baser motives are involved, and that proponents are merely using the police protection issue as a vehicle to promote an ultimate goal of restriction or elimination of private firearms ownership. I have no crystal ball, nor any miraculous powers of insight. I can only read the words contained in this bill and consider their fair import. I read no sinister designs in these words. I find only the sensible regulation of a dangerous and unnecessary projectile.

As a lifelong firearm owner and shooter, I perceive no threat to my legitimate ownership and use of firearms in this bill. As a police officer, I see a potential reduction of death and injury to men and women engaged in a dangerous occupation. (And it should be noted that this type of ammunition isn't just capable of killing law enforcement officers. It can kill presidents and congressmen, and the fellow next door). Finally, as a citizen, I see in this legislation the proper exercise of the legislative function -- the promotion of order and safety in our nation without undue restriction of individual rights.

On behalf of the thousands upon thousands of police officers in the Fraternal Order of Police I support this bill, and recommend its favorable consideration by this committee.

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

Mr. Norton.

Mr. NORTON. Thank you, sir.

On behalf of the International Association of Chiefs of Police, I would like to thank you very much and your subcommittee for inviting us to express our association's view on legislation to ban manufacture, importation, and sale of armor-piercing ammunition. The IACP, as you know, is a voluntary professional organization that was established about 100 years ago, composed of chiefs of police that lead and manage some 480,000 police officers in the United States at the Federal, State, and local level.

Throughout our existence, we have striven to achieve proper, conscientious, and resolute law enforcement in the United States and we have been devoted to the steady advancement of our Nation's welfare and well-being. In that regard, today we address the subcommittee on behalf of the chiefs of police and all the police officers in the United States, whose lives are threatened by the availability of bullets that are capable of penetrating soft body armor.

As an organization we have conceptually supported legislation to ban the manufacture, the importation, and sale of bullets since it was first introduced by Mr. Biaggi several years ago. The Congressman is to be commended for his boundless determination to get this legislation enacted into law. We also applaud your efforts, Mr. Hughes, and your subcommittee because you have brought us so close to making that a reality. It has got to come to fruition.

Many issues have been debated and resolved over the years. The definitional issue was resolved last year. Our association supported a compromise bill that prohibited the manufacture and importation of armor-piercing ammunition. Although we did not believe that legislation was as extensive as required, we did support its passage, but, of course, the time ran out and nothing was enacted.

So bullet-proof, or bullet-resistant vests, as was stated before, have been available for some period of time. However, the early versions were bulky, uncomfortable, officers didn't wear them routinely. But the rapid increase in police injuries and deaths during the period from 1960 to 1970 prompted the National Institute of Law Enforcement and Criminal Justice to sponsor a program to develop lightweight body armor which an officer could wear continuously while on duty.

The program was very successful; thus the problem. So it is recognized that in order to produce a vest an officer will wear—and we want them to wear these vests continuously—it is impossible to completely protect them from all threats. In order to aid police agencies in selecting garments that are appropriate for their particular officers, we, in 1978, completed a comprehensive report entitled, "A Ballistic Evaluation of Police Body Armor." In this study, soft body armor was classified according to five threat levels. At each threat level, the bullets and calibers which the armor was capable of protecting against were identified.

Each department could then decide which vests were needed to provide full-time protection against the threat most likely to be faced by its officers. As a result of this research, approximately 50 percent of all law enforcement officers in this country today currently wear bullet-resistant vests.

The record since soft body armor came into regular use by law enforcement officers has been impressive. Officer fatalities have been sharply reduced since 1975 when the lightweight vests were first introduced in quantity, even though the assault rate has not been reduced at all.

It is estimated that the vests are credited with saving the lives of more than 700 police officers across the country to date and that is a figure that we think is minimal. We think it is a figure that is in excess of 700.

In addition to members of the law enforcement community, the use of bullet-resistant vests, as the chief before me just mentioned, is being used by politicians, other high-level Government officials and this usage has grown in recent years due to the increasing exposure and the vulnerability to acts of violence.

However, the security that bullet-resistant apparel provides is being violated. A real and immediate threat has been posed to the lives and safety of persons relying on such protective equipment.

I won't get into the Huberty business; we have already discussed that. We can imagine, out of the 245 rounds fired by Huberty, 192 of them being armor-piercing, thank God no police officers were shot there, but if they had been, their vests would have been no match for these bullets at all. I think that, of course, has been pretty well kicked to death.

Unofficial tests have shown that certain calibers of the Teflon-coated KTW bullet can penetrate up to 72 layers of Kevlar. The most popular soft body armor worn by police officers is composed of only 18 layers of Kevlar. In a test conducted by the Los Angeles police of a 38-caliber KTW bullet at a measured velocity of 1,051 feet per second, the bullet penetrated the front panel of the department's body armor and continued through 3½ inches of Duxseal, a substance with a density similar to that of human flesh. So in order to protect themselves against a menace, officers would have to wear extremely bulky and heavy protection, and as experience has shown, these vests would not be worn except in extraordinary circumstances and we want them worn.

Furthermore, in an average police department, the threat normally encountered is very expensive to equip all officers with these types of protection.

Currently, Federal law does not restrict the sale of any type of ammunition, despite the fact that manufacturers of ammunition, specifically designed to penetrate bullet-resistant apparel, claim their bullets are for police and military use only. There has not been any attempt to legally prevent their availability to the public. Indeed, packaging labels on boxes of these rounds are merely a ludicrous ploy to gain market acceptability since no enforcement of the regulation is possible.

Furthermore, these bullets are not used in handguns by law enforcement because of their incredible penetrability and the great risk that they will ricochet and strike an innocent bystander, as well as their lack of stopping power. These bullets have been found unacceptable for use by law enforcement agencies. There is no valid purpose or use for this type of ammunition by law enforcement in the United States.

As I have stated previously, significant progress was made during the 98th Congress in resolving definitional problems that have plagued the legislation since its introduction. Instead of attempting to identify the banned bullets by a standard of penetration, the new language more narrowly defines armor-piercing ammunition in terms of its design. This definition avoids the administrative burden of testing every type of ammunition on the market. It also lays to rest the concern that ammunition used for sporting purposes will inadvertently be banned. I believe that the National Rifle Association expressed support for this definition last year.

We are optimistic that during this session of Congress, all other differences will be resolved so that we can finally provide our law enforcement officers with the protection that they deserve. Essentially, what remains at issue is the question of whether the sale of these bullets should be outlawed. We believe that not only must the manufacture and importation of armor-piercing ammunition be controlled, but sales should be limited to Government agencies only, for purpose of export or for purpose of testing and research. That and that alone.

Proposals that do not address the problem of sale deny the law enforcement community a critical element of protection against armor-piercing ammunition. It is argued that there are very few of the offending bullets on the market and that dealers would have difficulty in identifying them.

The number of armor-piercing bullets currently available is irrelevant as far as we are concerned. The availability of just one bullet in the wrong hands would cost a police officer his or her life. If there are so few, then there should be no problem banning the present stock and possibly letting the dealer absorb the insignificant cost if that is such a small number.

With regard to firearms dealers, we do not believe that any problem exists. We are not asking them to analyze every bullet in their shops to determine if they can penetrate soft body armor. Under Mr. Biaggi's proposal, each dealer is to receive written notification from the Bureau of Alcohol, Tobacco, and Firearms telling them exactly which ammunition is marked or designated as banned.

No one wants to prosecute innocent firearms dealers, but we don't want police officers killed either. The record reflects that there have been at least two police officers killed in Broward County, FL, killed by a KTW bullet. No one wants to prosecute innocent firearms dealers. We do want to have prosecuted those few dealers who willfully sell armor-piercing ammunition. It certainly would display willfulness or wanton disregard for the law to sell marked or designated as banned ammunition. We are only asking those dealers to join with us in making these type bullets unavailable.

The International Association of Chiefs of Police can find no legitimate use, either in or out of law enforcement, for this type of ammunition. As long as the manufacture and importation and sale of armor-piercing ammunition remains unregulated, a possibility that a police officer will be killed or seriously wounded remains unacceptably and unnecessarily high. We are very grateful to the manufacturers and dealers who have voluntarily taken themselves

out of the armor-piercing bullet business, but such voluntary actions are not enough.

Huberty, obviously, had no trouble obtaining these bullets, so Federal legislation is essential to ensure that the police do not come up against such a dangerously armed killer again. I ask you and urge you to take immediate action on the legislation before you and not to let this matter remain unsettled through another term of Congress.

I appreciate your consideration in letting us give you our views.
[The statement of Mr. Norton follows:]

STATEMENT

OF

THE

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

HOUSE COMMITTEE ON THE JUDICIARY

REGARDING

ARMOR PIERCING AMMUNITION

MAY 9, 1985

ON BEHALF OF THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, I WOULD LIKE TO THANK CHAIRMAN HUGHES AND THE SUBCOMMITTEE FOR INVITING ME TO EXPRESS THE ASSOCIATION'S VIEWS ON LEGISLATION TO BAN THE MANUFACTURE, IMPORTATION AND SALE OF ARMOR PIERCING AMMUNITION.

THE IACP IS A VOLUNTARY PROFESSIONAL ORGANIZATION ESTABLISHED IN 1893. IT IS COMPRISED OF CHIEFS OF POLICE AND OTHER LAW ENFORCEMENT PERSONNEL FROM ALL SECTIONS OF THE UNITED STATES AND MORE THAN SIXTY NATIONS. COMMAND PERSONNEL WITHIN THE UNITED STATES CONSTITUTE MORE THAN SEVENTY PERCENT OF THE MORE THAN 14,500 MEMBERS. THROUGHOUT ITS EXISTENCE, THE IACP HAS STRIVEN TO ACHIEVE PROPER, CONSCIENTIOUS AND RESOLUTE LAW ENFORCEMENT. IN ALL OF ITS ACTIVITIES, THE IACP HAS BEEN CONSTANTLY DEVOTED TO THE STEADY ADVANCEMENT OF THE NATION'S BEST WELFARE AND WELL-BEING. WE ADDRESS THIS SUBCOMMITTEE TODAY ON BEHALF OF OUR MEMBERS AND THE THOUSANDS OF LAW ENFORCEMENT OFFICERS WHOSE LIVES ARE THREATENED BY THE AVAILABILITY OF BULLETS CAPABLE OF PENETRATING THEIR SOFT-BODY ARMOR.

IACP HAS CONCEPTIONALLY SUPPORTED LEGISLATION TO BAN THE MANUFACTURE, IMPORTATION AND SALE OF THESE BULLETS SINCE IT WAS FIRST INTRODUCED BY MR. BIAGGI SEVERAL YEARS AGO. THE CONGRESSMAN IS TO BE COMMENDED FOR HIS BOUNDLESS DETERMINATION TO GET THIS LEGISLATION ENACTED INTO LAW. WE ALSO APPLAUD THE EFFORTS OF MR. HUGHES AND THIS SUBCOMMITTEE AND ALL WHO HAVE BROUGHT US SO CLOSE TO MAKING THAT A REALITY. MANY ISSUES HAVE BEEN DEBATED AND RESOLVED OVER THE YEARS. THE DEFINITIONAL ISSUE WAS RESOLVED LAST YEAR. THE IACP SUPPORTED A COMPROMISE BILL LAST YEAR THAT PROHIBITED THE MANUFACTURE AND IMPORTATION OF ARMOR-PIERCING AMMUNITION. ALTHOUGH WE DID NOT BELIEVE THAT LEGISLATION WAS AS EXTENSIVE AS REQUIRED, WE SUPPORTED ITS PASSAGE. UNFORTUNATELY, TIME RAN OUT AND NOTHING WAS ENACTED. I URGE THIS SUB-COMMITTEE TO CONTINUE YOUR EFFORTS.

BULLET-RESISTANT VESTS HAVE BEEN AVAILABLE FOR QUITE SOME TIME. HOWEVER, THE EARLY VERSIONS WERE SO BULKY AND UNCOMFORTABLE, OFFICERS DID NOT WEAR THEM ROUTINELY. THE RAPID INCREASE IN POLICE INJURIES AND DEATHS DURING THE PERIOD FROM 1960 TO 1970 PROMPTED THE NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE (NOW THE NATIONAL INSTITUTE OF JUSTICE) TO SPONSOR A PROGRAM TO DEVELOP LIGHTWEIGHT BODY ARMOR WHICH AN OFFICER COULD WEAR CONTINUOUSLY WHILE ON DUTY. THIS PROJECT WAS VERY SUCCESSFUL.

IT IS RECOGNIZED THAT IN ORDER TO PRODUCE A VEST THAT OFFICERS WILL WEAR CONTINUOUSLY, IT IS IMPOSSIBLE TO COMPLETELY PROTECT THEM FROM ALL THREATS. IN ORDER TO AID POLICE AGENCIES IN SELECTING GARMENTS APPROPRIATE FOR THEIR PARTICULAR OFFICERS, IACP, IN 1978, COMPLETED A COMPREHENSIVE REPORT ENTITLED "A BALLISTIC EVALUATION OF POLICE BODY ARMOR." IN THIS STUDY, SOFT-BODY ARMOR WAS CLASSIFIED ACCORDING TO FIVE THREAT LEVELS. AT EACH THREAT LEVEL, THE BULLETS AND CALIBERS WHICH THE ARMOR WAS CAPABLE OF PROTECTING AGAINST WERE IDENTIFIED. EACH DEPARTMENT COULD THEN DECIDE WHICH VESTS WERE NEEDED TO PROVIDE FULL-TIME PROTECTION AGAINST THE THREAT MOST LIKELY TO BE FACED BY ITS OFFICERS.

AS A RESULT OF THIS RESEARCH, APPROXIMATELY FIFTY PERCENT OF ALL LAW ENFORCEMENT OFFICERS IN THIS COUNTRY CURRENTLY WEAR BULLET-RESISTANT VESTS. THE RECORD SINCE SOFT-BODY ARMOR CAME INTO REGULAR USE BY LAW ENFORCEMENT OFFICERS HAS BEEN IMPRESSIVE. OFFICER FATALITIES HAVE BEEN SHARPLY REDUCED SINCE 1975, WHEN THE LIGHTWEIGHT VESTS WERE FIRST INTRODUCED IN QUANTITY, EVEN THOUGH THE ASSAULT RATE HAS NOT BEEN REDUCED. THE VESTS ARE CREDITED WITH SAVING THE LIVES OF MORE THAN FOUR HUNDRED POLICE OFFICERS ACROSS THE COUNTRY. IN ADDITION TO MEMBERS OF THE LAW ENFORCEMENT COMMUNITY, THE USE OF BULLET-RESISTANT APPAREL BY POLITICIANS AND OTHER HIGH-LEVEL GOVERNMENT OFFICIALS HAS GROWN IN RECENT YEARS DUE TO THEIR INCREASING EXPOSURE AND

VULNERABILITY TO ACTS OF VIOLENCE. HOWEVER, THE SECURITY THAT BULLET-RESISTANT APPAREL PROVIDES IS BEING VIOLATED. A REAL AND IMMEDIATE THREAT HAS BEEN POSED TO THE LIVES AND SAFETY OF PERSONS RELYING ON SUCH PROTECTIVE EQUIPMENT.

WE WERE ALL HORRIFIED TO LEARN LAST SUMMER THAT JAMES HUBERTY HAD KILLED 21 PEOPLE AND WOUNDED 11 OTHERS WHEN HE OPENED FIRE IN A CROWDED MCDONALD'S RESTAURANT IN SAN YSIDRO, CALIFORNIA. POLICE OFFICERS RUSHED TO THE SCENE EQUIPPED WITH BULLET RESISTANT VESTS FOR MAXIMUM PROTECTION. DESPITE THAT FACT, THEY WERE ALMOST AS VULNERABLE AS THE RESTAURANT PATRONS AND PASSERSBY. OF THE 245 ROUNDS FIRED BY HUBERTY, 192 WERE ARMOR PIERCING BULLETS. FORTUNATELY, NO POLICE OFFICERS WERE SHOT, BUT IF THEY HAD BEEN, THEIR VESTS WOULD HAVE BEEN NO MATCH FOR THESE BULLETS.

UNOFFICIAL TESTS HAVE SHOWN THAT CERTAIN CALIBERS OF THE TEFLON- COATED KTW BULLET CAN PENETRATE UP TO SEVENTY-TWO LAYERS OF KEVLAR. THE MOST POPULAR SOFT-BODY ARMOR WORN BY POLICE OFFICERS IS COMPOSED OF ONLY EIGHTEEN LAYERS OF KEVLAR. IN A TEST CONDUCTED BY THE LOS ANGELES POLICE DEPARTMENT OF A .38-CALIBER KTW BULLET AT A MEASURED VELOCITY OF 1,051 FEET PER SECOND, THE BULLET PENETRATED THE FRONT PANEL OF THE DEPARTMENT'S BODY ARMOR AND CONTINUED THROUGH THREE AND ONE-HALF INCHES OF "DUXSEAL," A SUBSTANCE WITH A DENSITY SIMILAR TO THAT OF HUMAN FLESH. IN ORDER TO PROTECT THEMSELVES AGAINST SUCH A MENACE, OFFICERS WOULD HAVE TO WEAR EXTREMELY BULKY, HEAVY PROTECTION. AS EXPERIENCE HAS SHOWN, THESE VESTS WOULD NOT BE WORN EXCEPT IN EXTRAORDINARY CIRCUMSTANCES. FURTHERMORE, IN AN AVERAGE POLICE DEPARTMENT SUCH AS THE SAN YSIDRO POLICE DEPARTMENT, THE THREAT NORMALLY ENCOUNTERED WOULD NOT JUSTIFY EQUIPPING ALL OFFICERS WITH THIS COSTLY PROTECTION.

CURRENTLY, FEDERAL LAW DOES NOT RESTRICT THE SALE OF ANY TYPE OF AMMUNITION. DESPITE THE FACT THAT MANUFACTURERS OF AMMUNITION SPECIFICALLY DESIGNED TO PENETRATE BULLET-RESISTANT APPAREL CLAIM THEIR BULLETS ARE FOR POLICE AND

MILITARY USE ONLY, THERE HAS NOT BEEN ANY ATTEMPT TO LEGALLY PREVENT THEIR AVAILABILITY TO THE PUBLIC. INDEED, THESE PACKAGING LABELS ARE MERELY A LUDICROUS PLOY TO GAIN MARKET ACCEPTABILITY, SINCE NO ENFORCEMENT OF THE REGULATION IS POSSIBLE. FURTHERMORE, THESE BULLETS ARE NOT USED IN HANDGUNS BY LAW ENFORCEMENT. BECAUSE OF THEIR INCREDIBLE PENETRABILITY AND THE GREAT RISK THAT THEY MAY RICOCHET AND STRIKE AN INNOCENT BYSTANDER, AS WELL AS THEIR LACK OF STOPPING POWER, THESE BULLETS HAVE BEEN FOUND UNACCEPTABLE FOR USE BY LAW ENFORCEMENT AGENCIES.

AS I STATED PREVIOUSLY, SIGNIFICANT PROGRESS WAS MADE DURING THE 98TH CONGRESS IN RESOLVING DEFINITIONAL PROBLEMS THAT HAVE PLAGUED THE LEGISLATION SINCE ITS INTRODUCTION. INSTEAD OF ATTEMPTING TO IDENTIFY THE BANNED BULLETS BY A STANDARD OF PENETRATION, THE NEW LANGUAGE MORE NARROWLY DEFINES "ARMOR PIERCING AMMUNITION" IN TERMS OF ITS DESIGN. THIS DEFINITION AVOIDS THE ADMINISTRATIVE BURDEN OF TESTING EVERY TYPE OF AMMUNITION ON THE MARKET. IT ALSO LAYS TO REST THE CONCERN THAT AMMUNITION USED FOR SPORTING PURPOSES WILL INADVERTENTLY BE BANNED. EVEN THE NATIONAL RIFLE ASSOCIATION EXPRESSED SUPPORT FOR THIS DEFINITION LAST YEAR.

WE ARE OPTIMISTIC THAT DURING THIS SESSION OF CONGRESS ALL OTHER DIFFERENCES WILL BE RESOLVED SO THAT WE CAN FINALLY PROVIDE OUR LAW ENFORCEMENT OFFICERS WITH THE PROTECTION THEY DESERVE. ESSENTIALLY WHAT REMAINS AT ISSUE IS THE QUESTION OF WHETHER THE SALE OF THESE BULLETS SHOULD BE OUTLAWED. WE BELIEVE THAT NOT ONLY MUST THE MANUFACTURE AND IMPORTATION OF ARMOR-PIERCING AMMUNITION BE CONTROLLED, BUT SALES SHOULD BE LIMITED TO GOVERNMENT AGENCIES ONLY, FOR PURPOSE OF EXPORT, OR FOR PURPOSE OF TESTING AND RESEARCH. PROPOSALS THAT DO NOT ADDRESS THE PROBLEM OF SALE DENY THE LAW ENFORCEMENT COMMUNITY A CRUCIAL ELEMENT OF PROTECTION AGAINST ARMOR-PIERCING AMMUNITION.

IT IS ARGUED THAT THERE ARE VERY FEW OF THE OFFENDING BULLETS ON THE MARKET AND THAT DEALERS WOULD HAVE DIFFICULTY IN IDENTIFYING THEM. THE NUMBER OF ARMOR PIERCING BULLETS CURRENTLY AVAILABLE IS IRRELEVANT. THE AVAILABILITY OF JUST ONE BULLET IN THE WRONG HANDS COULD COST A POLICE OFFICER HIS OR HER LIFE.

WITH REGARD TO FIREARMS DEALERS, WE DO NOT BELIEVE THAT ANY PROBLEM EXISTS. WE ARE NOT ASKING THEM TO ANALYZE EVERY BULLET IN THEIR SHOPS TO DETERMINE IF THEY CAN PENETRATE SOFT BODY ARMOR. UNDER MR. BIAGGI'S PROPOSAL, EACH DEALER IS TO RECEIVE WRITTEN NOTIFICATION FROM THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS TELLING THEM EXACTLY WHICH AMMUNITION IS BANNED. NO ONE WANTS TO PROSECUTE INNOCENT FIREARMS DEALERS. WE ARE ONLY ASKING THEM TO JOIN WITH US IN MAKING THESE BULLETS UNAVAILABLE.

THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE CAN FIND NO LEGITIMATE USE, EITHER IN OR OUT OF LAW ENFORCEMENT, FOR THIS TYPE OF AMMUNITION. AS LONG AS THE MANUFACTURE AND IMPORTATION AND SALE OF ARMOR PIERCING AMMUNITION REMAINS UNREGULATED, THE POSSIBILITY THAT A POLICE OFFICER WILL BE KILLED OR SERIOUSLY WOUNDED REMAINS UNACCEPTABLY AND UNNECESSARILY HIGH. WE ARE VERY GRATEFUL TO THE MANUFACTURERS AND DEALERS WHO HAVE VOLUNTARILY TAKEN THEMSELVES OUT OF THE ARMOR-PIERCING BULLET BUSINESS BUT SUCH VOLUNTARY ACTIONS ARE NOT ENOUGH. JAMES HUBERTY OBVIOUSLY HAD NO TROUBLE PURCHASING THESE BULLETS. FEDERAL LEGISLATION IS ESSENTIAL TO INSURE THAT THE POLICE DO NOT COME UP AGAINST SUCH A DANGEROUSLY ARMED KILLER AGAIN. I URGE YOU TO TAKE IMMEDIATE ACTION ON THE LEGISLATION BEFORE YOU. PLEASE DO NOT LET THIS MATTER REMAIN UNSETTLED THROUGH ANOTHER TERM OF CONGRESS.

THANK YOU FOR GIVING OUR VIEWS YOUR CONSIDERATION. I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Mr. HUGHES. Thank you very much, Chief, for a very fine statement. We are running rather late. I know some of the witnesses are from out of town. Does anybody have any pressing transportation or other problems?

If not, we will take Mr. Murphy's testimony at this time and I would urge the witnesses to summarize where that is possible. We have your statements which, we have read, and they will be made a part of the record.

Mr. Murphy, welcome.

Mr. MURPHY. Good afternoon, Mr. Chairman.

The International Brotherhood of Police Officers is an affiliate of the Service Employees Union International, AFL-CIO. We are pleased for this opportunity to testify in support of H.R. 4, legislation which will limit access of criminals in so-called copkiller bullets.

From 1981 to 1984, Congressman Mario Biaggi introduced and aggressively supported legislation which would limit the availability of the so-called copkiller bullets. During this time period, this legislation was delayed by disputes over the definition of armor-piercing ammunition. The concern with the definition is directed at the effect it would have on legitimate sportsmen. During this time period, the administration vowed its support for preventing criminals access to these bullets and promised to provide a more workable definition.

Last year, the administration advanced a long-promised definition of armor-piercing ammunition. The definition of armor-piercing ammunition advanced by the administration is limited to those projectiles that are constructed entirely from any of eight different specific metals which have the capacity to penetrate body armor. Specifically excluded from this definition would be any ammunition which the Secretary determines is primarily intended for sporting purposes. This would provide the Secretary with a broad-based authority to protect against infringement of the legitimate rights of sportsmen.

The Law Enforcement Officers Protection Act of 1985 incorporates the definition of armor-piercing ammunition developed by the administration. This compromise should resolve the major controversy which has impeded passage of this bill up to now.

The final area of disagreement concerns limitations on the sale of the bullets. Under the terms of H.R. 4, it is unlawful to manufacture, import or sell armor-piercing ammunition. The prohibition on the sale of these bullets is, from our perspective, the key provision. It is our understanding that currently few of these bullets are being manufactured or imported into this country. The danger to police officers comes from those bullets already stored on the shelves of gun dealers, and dealers throughout the country.

These bullets are, in many States, readily available to the general public. In fact, last July, as has been discussed today, the mass murderer James Huberty fired 192 rounds of armor-piercing ammunition when he killed 21 people at the McDonald's in California. In addition to this tragic crime, there is evidence of 16 other cases of criminals using copkiller bullets, including three police shootings.

It makes little sense to outlaw the manufacture and importation of these bullets, but allow for their sale. Legislation which allows for the sale of these bullets is misleading the police community and the American public into believing that a measure of protection is provided by such legislation.

Legislation which does not outlaw the sale of these bullets can only be seen as an attempt to stem the rising tide of public outrage over the continued availability of these bullets.

Mr. Chairman, the law enforcement community is solidly behind H.R. 4. At least 10 of the largest organizations representing the law enforcement community have endorsed H.R. 4 and are committed to passing legislation which prohibits the sale of these bullets.

With the help of the committee and other friends of the police community, we are optimistic of finally passing the Law Enforcement Officers Protection Act in this Congress. Mr. Chairman, we would like to thank Congressman Biaggi and yourself for your continued advocacy on behalf of the law enforcement community. We would like to thank you once again for this opportunity to appear and present our views on this important legislation.

[The statement of Mr. Murphy follows:]



NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION, AFL/CIO

**1313 "L" STREET, N.W., WASHINGTON, D.C. 20005
202/371-6644**

INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

HOUSE JUDICIARY COMMITTEE

IN REGARDS TO

THE LAW ENFORCEMENT OFFICERS PROTECTION

ACT OF 1985

MAY 8, 1985

The International Brotherhood of Police Officers (I.B.P.O.) is an affiliate of the Service Employees International Union (AFL-CIO). The I.B.P.O. is one of the largest unions in the country representing police officers. We represent police officers in federal, state, and local governments nationwide. Our union has long been a leader in efforts to improve the safety and working conditions of police officers nationwide. Over the last several years our union has been a strong supporter of legislation to ban the manufacture, importation and sale of the so called cop killer bullets.

We are pleased to testify in support of HR (4) legislation which will limit the access of criminals to the so called "Cop Killer Bullets". This legislation provides the best protection to police officers from the dangers of these bullets.

It is well documented that the police officer has one of the most dangerous occupations in the nation. During the last ten years more than 1600 police officers have been killed in the line of duty. Each year during this time period an average of more than 150 police officers have been killed in the line of duty. One of the major dangers faced by police officers has been injury and death from gunshots. During 1982 for instance almost 440 police officers were injured as a result of gunshot wounds.

To a large extent the nature of police work demands exposure to risk of injury from criminals which cannot be reasonably controlled. A society concerned about fighting crime must however do all that is reasonable to protect those individuals fighting in the front lines in the war against crime. Since 1970 when soft body armor was first developed increasing numbers of police officers have turned to vests as a means of protecting themselves against gunshots. It is estimated, in fact, that up to 50% of the nation's police community uses body armor. With improvements in the comfort and reliability of the vests, it is expected that the number of officers who receive the physical and psychological security these vests provide will continue to rise.

This trend has been endangered however by the so called "Cop Killer Bullets" which have the capacity to penetrate soft body armor. In late 1981 it came to widespread public attention that certain classes of bullets were being manufactured, imported and sold whose sole purpose was to penetrate body armor. These bullets were doubly threatening to police officers, first because it had the potential to penetrate the armor and defeat the physical and psychological security provided by the vests and secondly the existence of these bullets had the potential to undermine police efforts to gain broader community support for the purchase of these vests.

Our union was heartened by the prompt attention this threat to police security received in Congress. In 1981, through 1984 Congressman Mario Biaggi introduced and aggressively supported legislation which would limit the availability of "Cop Killer Bullets." The so called Law Enforcement Officers Protection Act would limit the availability of this ammunition by preventing the manufacture, importation or sale of bullets which when fired by a handgun with a barrell five inches or less in length is capable of penetrating body armor. This Subcommittee promptly scheduled hearings on this problem and has been instrumental in maintaining public focus on the problem ever since.

During this time period legislation was delayed by disputes over the definition of armor piercing ammunition. The concern with the definition was directed at the effect it would have on legitimate sportsmen. During this time period the Administration vowed it's support for preventing criminals access to these bullets and promised to provide a more workable definition.

Last year the Administration finally advanced the long promised refinement of the definition of armor piercing ammunition. This definition which was contained in HR 5845 was supported by such opponents of the Law Enforcement Protection Act as the National Rifle Association. The definition of armor piecing ammunition advanced by the Administration is limited to those projectiles that are constructed entirely from any of eight different specific metals which have the capacity to penetrate body armor. Specifically excluded from this definition would be any ammunition which the Secretary determines is primarily intended for sporting purposes. This would provide the Secretary with a broad based authority to protect against the infringement of the legitimate rights of sportsmen. This definition thus strikes a neat balance between protecting the rights of legitimate sportsmen, and protecting the lives of policemen.

The Law Enforcement Officers Protection Act of 1985 incorporates the definition of armor piercing ammunition developed by the NRA, and the Administration. This compromise should resolve the major controversy impeding passage of the bill. The final area of disagreement concerns limitations on the sale of the bullets. Under the terms of HR-4 it is unlawful to manufacture or import armor piercing ammunition.

The provision in the bill most important to this union and to the police community in general is the prohibition on the unauthorized sale of these bullets. Section 5 of the legislation would authorize the Secretary to penalize licensed dealers for the unauthorized transfer of armor piercing ammunition where the dealer has been put on notice by the Secretary that such ammunition is armor piercing.

As we have stated this prohibition on the sale of these bullets is, from our perspective, the key provision. It is our understanding that currently none of these bullets are being manufactured or imported into this country. The danger to police officers comes from those bullets already stored on the shelves of dealers throughout the country. These bullets are in many states readily available to the general public. In fact last July the mass murderer James Hubert fired 192 rounds of armor piercing ammunition when he killed 21 people at the San Ysidro (California) McDonalds. In addition to this tragic crime, there is evidence of 16 other cases of criminals using "Cop Killer Bullets" including three police shootings. It makes little sense to outlaw the manufacture and importation of these bullets but allow for their sale. Legislation which allows for the sale of these bullets is misleading the police community and the american public into believing that a measure of protection is provided by such legislation. The

purpose of legislation, which does not outlaw the sale of these bullets, can only be seen as an attempt to stem the rising tide of public outrage over the continued availability of these bullets.

Mr. Chairman the law enforcement community is solidly behind HR-4. At least ten of the largest organizations representing the law enforcement community have endorsed HR-4 and are committed to passing legislation which will prohibit the sale of these bullets. With the help of the Committee, and other friends of the police community we are optimistic of finally passing the Law Enforcement Protection Act in this Congress.

Mr. Chairman we'd like to thank Congressman Biaggi and yourself for your continued advocacy on behalf of law enforcement personnel. We'd like to thank you once again for this opportunity to appear, and present our views on this important piece of testimony.

Mr. HUGHES. Mr. Murphy, thank you once again for an excellent statement.

The next witness is Mr. David Baker, on behalf of the International Union of Police Associations.

Welcome, Mr. Baker.

Mr. BAKER. Thank you, Mr. Chairman, for once again providing the opportunity to the International Union of Police Associations, AFL-CIO, to address the subject of protecting our Nation's law enforcement officers.

I am David Baker, the secretary-treasurer of the International Union of Police Associations, AFL-CIO, representing 16,000 police officers in 29 States. I was a police officer with the Memphis, TN police department for 14 years, where I worked as a patrol officer, and investigator in some of the highest crime areas of that city.

I was, by the way, Mr. Chairman, one of the first officers in that city to purchase and utilize soft-body armor and I have worn soft-body armor on a daily basis for approximately 5 years of my police career.

The IUPA supports the passage of H.R. 4, the Law Enforcement Officers Protection Act. This subcommittee has heard many hours of testimony and compiled a voluminous record on the subject of banning armor-piercing ammunition in previous hearings. I will not impose on this committee by restating many of the technical issues involved in consideration of this legislation.

I would like to state for the record some of the general principles the IUPA supports. First, there is no practical legitimate law enforcement use for this ammunition. In the rare instance when a police department is confronted with a need for an armor-piercing capability, standard rifle ammunition will fill this need. The idea of arming police officers with armor-piercing handgun ammunition is preposterous.

Second, there is no legitimate sporting use for this ammunition. Congress has seen fit to restrict the private ownership of machine guns and other military weapons, in part because of an absence of legitimate sporting purposes. These bullets should not be an exception to that logic.

Third, there is a need for this legislation. In spite of the voluntary restraint on the part of some manufacturers and importers, these bullets are still readily available to the criminal element in our country. Only through the adoption of this legislation can we start restricting this supply.

Mr. Chairman, there seems to be a sense that there is really not a problem out in the country. We hear about the San Diego case. Just yesterday, I found out from sources in the ATF that there have been cases as recently as last November in Chicago where large volumes of KTW ammunition were found in the home of a convicted felon. They were executing a search warrant, so the ATF itself knows that this is a legitimate problem that is out there.

Fourth, the ban on sale is essential if this legislation is to have any meaning. The last remaining issue of controversy is whether to ban sale. The ban of sale of these dangerous devices is what puts teeth in this bill. Without the ban on sale, the many years of effort by Members of Congress would be meaningless.

I agree with the statement you made earlier, Mr. Chairman. No one would argue that a ban on the manufacture and import of heroin would make sense without a ban on the sale. If this ammunition deserves the attention it has been getting from this committee and Congress as a whole, which it surely does, a ban on sale is an important, indeed, fundamental element in removing this threat to the safety of law enforcement officers from the streets of our country.

Finally, Mr. Chairman, I would be remiss if I did not once again express the deep sincere appreciation of my members to you and Congressman Mario Biaggi for your efforts in getting this important legislation moving toward becoming the law of the land. Congressman Biaggi deserves particular praise from his colleagues in law enforcement. As a veteran police officer, he knows the challenges faced in this country faced by our men and women in blue. He knows how important this legislation is to making our job safer.

The advent of effective wearable soft body armor has done much to improve the safety of police officers. A ban on armor-piercing ammunition will assure those officers that this Congress is committed to making their job as safe as possible.

Thank you, Mr. Chairman.

[The statement of Mr. Baker follows:]



**INTERNATIONAL UNION
OF POLICE ASSOCIATIONS
AFL-CIO**

THE ONLY UNION FOR LAW ENFORCEMENT OFFICERS

National Headquarters • 815 18th Street, N.W., #307 • Washington, D.C. 20006 • (202) 620-2740

Robert B. Killesmet
President

David E. Baker
Secretary-Treasurer

Testimony of

DAVID E. BAKER

Secretary-Treasurer

INTERNATIONAL UNION OF POLICE ASSOCIATIONS, AFL-CIO

before the

SUBCOMMITTEE ON CRIME

of the

HOUSE JUDICIARY COMMITTEE

on

H.R. 4

LAW ENFORCEMENT OFFICERS PROTECTION ACT

May 9, 1985

AFFILIATED WITH THE PUBLIC EMPLOYEE DEPARTMENT, AFL-CIO



Thank you, Mr. Chairman, for once again providing the opportunity to the International Union of Police Associations, AFL-CIO, to address the subject of protecting our nation's law enforcement officers.

I am David Baker, the Secretary-Treasurer of the International Union of Police Associations, AFL-CIO, representing 16,000 police officers in 29 states. I was a police officer with the Memphis Police Department for fourteen years, where I worked as a patrol officer and investigator in some of the highest crime areas of that city.

The IUPA supports the passage of H.R. 4, the Law Enforcement Officers Protection Act. This subcommittee has heard many hours of testimony and compiled a voluminous record on the subject of banning armor piercing handgun ammunition in previous hearings. I will not impose on this committee by restating many of the technical issues involved in consideration of this legislation. I would like to state for the record some of the general principles the IUPA supports.

First, there is no legitimate law enforcement use for this ammunition. In the rare instance when a police department is confronted with the need for an armor piercing capability, standard rifle ammunition will fill the need. The idea of arming police officers with armor piercing handgun ammunition is preposterous. I have contacted many of the firearms training officers and SWAT officers in our union who confirm the lack of legitimate use in general police work.

Second, there is no legitimate sporting use for this ammunition. Congress has seen fit to restrict the private ownership of machine guns and other military weapons, in part because of an absence of legitimate sporting purposes. These bullets should not be an exception to that logic.

Third, there is a need for this legislation. In spite of the voluntary restraint on the part of some manufacturers and importers, these bullets are still readily available to the criminal element in our country. Only through the adoption of this legislation can we start restricting the supply.

Fourth, a ban on sale is essential if this legislation is to have any meaning. As you know, Mr. Chairman, this bill has gone through many incarnations. For years, a ban on armor piercing ammunition was hung up on finding an acceptable definition. In the closing days of the 98th Congress, a solution to that problem was reached and is incorporated in this bill. Other issues involving government buy-back of existing inventories, banning possession and potentially broadening the definition have been dropped from this proposal in order to speed passage. The last remaining issue of controversy is whether to ban sale. A ban of sale of these dangerous devices is what puts teeth in this bill. Without the ban on sale, the many years of effort by members of Congress would be meaningless.

No one would argue that a ban on the manufacture and import of heroine would make sense without a further ban on sale. If this ammunition deserves the attention it has been getting from this committee and Congress as a whole, which it surely does, a ban on sale is an important, indeed fundamental, element in removing this threat to the safety of law enforcement officers from the streets of our country.

Finally, Mr. Chairman, I would be remiss if I did not once again express the deep, sincere appreciation of my members to you and Congressman Mario Biaggi for your efforts in getting this important legislation moving toward becoming the law of the land. Congressman Biaggi deserves particular praise from his colleagues in law enforcement. As a veteran police officer he knows the challenges faced in this country by our men and women in blue. He knows how important this legislation is to making our jobs safer.

The advent of effective, wearable, soft body armor has done much to improve the safety of police officers. A ban on armor piercing ammunition will assure those officers that this Congress is committed to making their job as safe as possible.

Thank you, Mr. Chairman.

Mr. HUGHES. Thank you for a very fine statement, Mr. Baker.

Our next witness is Ira Lechner, the legislative adviser to the National Association of Police Organizations. Welcome again, Mr. Lechner.

Mr. LECHNER. Thank you, Mr. Chairman. In the interest of time and all of our sanity, I think I will abandon my written statement and just try to get to the issue that you and Mr. McCollum have been dealing with today, and that is, what kind of knowledge does the law-abiding gun dealer operating in good faith required to have under the law?

This morning, I ventured out here into Arlington, VA, and stopped by two gunshops to see whether I could purchase any armor-piercing ammunition. While I am sure that there is armor-piercing ammunition for sale all over this country, in that certainly Mr. Stevenson acknowledges that those 30 million rounds of Czech ammunition have clearly not been expended, in both cases, I spoke to clerks in a store and quickly identified myself and said that—as a customer—that I would like to purchase armor-piercing ammunition. In both cases, they said, “We don’t have any.” They knew they didn’t have any on their shelves.

It seems to me that any licensed gun dealer can easily segregate the ammunition that he knows that he has from the ammunition that he has some question about. What you are trying to do in this legislation is not to catch unwaringly some gun dealer and try to get rid of his license; what you are trying to do is provide a deterrent in the legislation from the sale of armor-piercing ammunition. That is all. If this Congress can’t fashion an effective deterrent under these circumstances—well, I am sure the Congress can. Maybe the deterrent has to appear in a variety of means.

One, if on two occasions that a licensed gun dealer is discovered to have sold armor-piercing ammunition, the Government is not going to accept the defense of unknowing, unwilling, unreckless kind of sale. Two, otherwise, the Government would accept the defense of nonknowledge and nonrecklessness; it would have to be a knowing sale and it would have to be not through any misadventure on the part of the dealer.

The question really comes down, finally, to who bears the risk in the society? Should it be the police officer, many hundreds of thousands of them across this country? Should they bear the risk of a misapplication of an armor-piercing round or should the dealer who is selling it and who is licensed to sell it and who is making a profit from it, shouldn’t he bear the risk of at least segregating in his stock those rounds that he knows from those rounds that he doesn’t know?

I don’t think that is an awfully big burden to ask any licensed dealer to have to obey and I am sure this Congress can fashion those kinds of deterrents that will protect police lives because apparently now, everyone agrees that the sale should be banned. The administration came a long way today; they agreed sales should be banned. I can hardly believe the Members of Congress would support a bill that would say that the sale of a bullet that was manufactured the day after the effective date of the legislation is banned, but a bullet that was manufactured the day before the effective date of the legislation is not banned.

Clearly, everyone should agree now that the sale should be banned and it is simply up to us to fashion a deterrent that works.
[The statement of Mr. Lechner follows:]

TESTIMONY OF IRA M. LECHNER,
LEGISLATIVE COUNSEL REPRESENTING
THE NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS (NAPO)
BEFORE THE SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY
ON H.R. 4

May 9, 1985

TESTIMONY OF IRA M. LECHNER,
LEGISLATIVE COUNSEL REPRESENTING
THE NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS (NAPO)
BEFORE THE SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY
ON H.R. 4

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE
SUBCOMMITTEE:

I am Ira M. Lechner, Legislative Counsel to, and representing, the National Association of Police Organizations (NAPO). It gives me great pleasure to testify before this Subcommittee because the Bill under consideration, H.R. 4, involves the potential saving of lives.

NAPO is an organization made up exclusively of rank and file police officers...60,000 strong all across this country. NAPO represents police officers who put their lives on the line each day that they go to work. That is why H.R. 4 is so strongly endorsed by NAPO.

Mr. Chairman, there is really only one issue which separates this Bill from all other Bills involving "cop-killer" bullets. And that is the issue of prohibiting the "sale" of these bullets. It is really quite simple; H.R. 4 bans the "sale" of "cop-killer" bullets as well as their manufacture and importation. All other legislation which has been introduced, or amendments which will be offered, do not ban the "sale" of the bullets.

The public, the newspaper editorial writers, and the law enforcement community ask: how can you not ban the "sale" of those bullets after you have declared as a matter of public policy that gun manufacturers can not make them or import them? It clearly makes no sense to establish a manufacturing and importation ban but not to ban the "sale" of the bullets. As the President of NAPO, Robert Scully of the Detroit Police Officers' Association, put it recently: "Not to ban the sale of 'cop-killer bullets' would be like banning the manufacture and importation of heroin but not its sale."

The law enforcement community speaks with one voice on this issue: please stop the senseless potential murder of police officers as a result of "cop-killer" bullets. Please vote out H.R. 4 and then take it the rest of the way through Congress.

We are confident that the President will sign such legislation. The American public signed on to ban the manufacture, importation, and sale of "cop-killer" bullets a long time ago. It's time for Congress to act!

Mr. Chairman, I have been Legislative Counsel to NAPO for the past five years. We have considered supporting or opposing many pieces of legislation over those years. I have never seen each and every police officer within NAPO so un-animously in favor of a Bill as they are of H.R. 4. I believe each police officer in America knows that there is no legitimate sporting purpose for these bullets; their only purpose is to kill cops.

Don't let the criminals win one from Congress at the expense of police lives in the name of "sporting" ammunition when it is not "sporting" ammunition.

Thank you on behalf of NAPO and the rest of the law enforcement community.

Mr. HUGHES. Thank you, Mr. Lechner. I think you have done a good job of crystalizing one of the major issues and we appreciate that. We are indebted to you.

Mr. LECHNER. Thank you.

Mr. HUGHES. Our next witness is Sgt. Michael Muth, on behalf of the National Troopers Coalition.

Sgt. Muth, welcome.

Sergeant MUTH. Thank you, sir.

Mr. Chairman, honorable members of this distinguished committee, I will be brief.

I am Michael Muth; I am testifying on behalf of Thomas J. Iskrzycki, the chairman of the National Troopers Coalition.

The National Troopers Coalition is composed of troopers from State police and highway patrol organizations throughout the United States and we are over 38,000 members strong currently. The National Troopers Coalition would like to go on record as fully supporting H.R. 4, the Law Enforcement Officers Protection Act of 1985. This legislation is vital to the interests of the members of the National Troopers Coalition.

Between September 1976 and June 30, 1984, there were 142 State troopers who were killed in the line of duty across this country. Forty-seven of those troopers were shot to death while on duty and of these 47, 19 were killed in traffic stops. Because of the increased assaults on troopers, many agencies have issued protective body armor to the troopers in order to give them maximum protection. Today's trooper is, in most instances, outgunned by his opponent and the protection afforded him by his protective body armor is completely negated by the use of the armor-piercing ammunition by the criminal element.

Many tests have shown that the ability of the protective body armor to stop hostile rounds does not apply to this type of ammunition. Banning the sale and importation of this type of ammunition would provide insurance to the troopers working our highways and responding to criminal calls for service.

We can ill afford the potential loss of life and grief to the families of our dedicated troopers. The National Troopers Coalition does not object to the legitimate use of this ammunition for a controlled sporting event, government use, testing or research. Activities of this type present no danger to our troopers and research may well benefit the law enforcement community overall. We would, therefore, request a favorable report on this Act in order to safeguard our troopers and give them the protection they deserve and need.

Thank you very much.

[The statement of Sergeant Muth follows:]



NATIONAL TROOPERS COALITION

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BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
JUDICIARY SUB-COMMITTEE ON CRIME

HEARING FOR HR-4
THE LAW ENFORCEMENT OFFICERS
PROTECTION ACT OF 1985

SPEAKING IN FAVOR OF HR-4
THE NATIONAL TROOPERS COALITION
JOHNNY L. HUGHES
MARYLAND AFFILIATE PRESIDENT
PARTICIPATING MEMBER, NATIONAL LAW
ENFORCEMENT COUNCIL.

REPRESENTING OVER 30,000 TROOPERS SERVING 200 MILLION AMERICANS

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THE UNITED STATES HOUSE OF REPRESENTATIVES SUB-COMMITTEE ON
CRIME, MAY 8, 1985.

HEARING FOR HR-4, THE LAW ENFORCEMENT OFFICERS PROTECTION ACT
OF 1985.

TESTIFYING: 2nd/LT. JOHNNY L. HUGHES
MARYLAND STATE POLICE
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LIEUTENANT HUGHES IS AN EIGHTEEN YEAR VETERAN OF THE MARYLAND
STATE POLICE. HUGHES IS PRESIDENT OF THE MARYLAND TROOPERS
ASSOCIATION, AFFILIATE MEMBER OF THE NATIONAL TROOPERS COALI-
TION. THE NATIONAL TROOPERS COALITION IS COMPOSED OF STATE
POLICE AND HIGHWAY PATROL ORGANIZATIONS THROUGHOUT THE UNITED
STATES. OUR MEMBERSHIP IS APPROXIMATELY 38,000 TROOPERS OF
ALL RANKS.

TESTIMONY: MR. CHAIRMAN

HONORABLE MEMBERS OF THIS DISTINGUISHED
COMMITTEE,

I am Johnny L. Hughes, testifying on behalf of Thomas J. Iskrzycki, Chairman of the National Troopers Coalition. The National Troopers Coalition is composed of Troopers from State Police and Highway Patrol Organizations throughout the United States. These Troopers are from all ranks and consist of approximately 38,000 Members.

The National Troopers Coalition would like to go on record as fully supporting HR-4, the Law Enforcement Officers Protection Act of 1985. This legislation is vital to the interests of the members of the National Troopers Coalition, an organization representing over 38,000 State Police and Highway Patrol Troopers.

Between September 1976 and June 30, 1984, 142 State Troopers were killed in the line of duty. Forty-seven Troopers were shot to death while on duty, and of these forty percent (19) were killed in traffic stops. Because of these increased assaults on Troopers, many agencies have issued protective body armor to their Troopers in order to give maximum protection to their personnel. Today's Trooper is, in most instances, outgunned by his opponent and the

-3-

protection afforded him by his protective body armor is completely negated by the use of armor-piercing ammunition by the criminal element. Many tests have shown the ability of protective body armor to stop hostile rounds does not apply to armor-piercing ammunition. Banning the sale and importation of this type of ammunition would provide insurance to the Troopers working our highways and responding to criminal calls for service. We can ill afford the potential loss of life and grief to the families of our dedicated Troopers.

The National Troopers Coalition does not object to the legitimate use of ammunition of this type for controlled sporting events, Government use, or testing and research. Activities of this type present no danger to our Troopers and research may well benefit the law enforcement community overall. We would therefore request a favorable report on this act in order to safeguard our Troopers and give them the protection they deserve and need.

Thank you.

Mr. HUGHES. Thank you very much, Sergeant Muth.

Our next witness, and final witness in this panel, is Mr. David Konstantin, research associate, Police Executive Research Forum. Welcome.

Mr. KONSTANTIN. Thank you, Mr. Chairman. I will get right to the point. The Police Executive Research Forum is a membership and research organization whose members are police chiefs and sheriffs from the Nation's largest jurisdictions. Our members overwhelmingly support H.R. 4 and especially emphasize the importance of a ban on sale.

We would also like to thank you, Mr. Chairman, and Mr. Biaggi, for all of your efforts on behalf of the law enforcement community. Thank you.

[The statement of Mr. Konstantin follows:]

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GARY P. HAYES
EXECUTIVE DIRECTOR



POLICE EXECUTIVE
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TESTIMONY OF

DAVID N. KONSTANTIN
Research Associate

ON BEHALF OF THE
POLICE EXECUTIVE RESEARCH FORUM

CONCERNING
LEGISLATION TO REGULATE
THE MANUFACTURE, IMPORTATION, AND SALE
OF ARMOR-PIERCING AMMUNITION

BEFORE THE
SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

May 9, 1985

Mr. Chairman, members of the Subcommittee, thank you for giving the members of the Police Executive Research Forum an opportunity to express their views on this important issue. We are pleased to see legislation that would regulate the manufacture, importation, and sale of armor-piercing ammunition. This last item is very significant, for we feel that any bill that does not include limitations on the sale of these bullets will be self-defeating.

As an organization comprised of police chiefs and sheriffs from the nation's largest jurisdictions, we are intimately concerned with any measures that will protect the lives and well-being of America's police officers, and support this legislation as an important step in that direction. Today's law enforcement officer is already subjected to numerous threats, and cannot afford to have the protection provided by newly developed soft body armor breached by the so-called "cop-killer" bullet. Any legislation that would restrict the availability of this ammunition, as H.R. 4 would, will help to ensure the safety of those who have dedicated their lives to protecting the public against crime. It is imperative that this legislation be passed, as it will serve as a signal to all police officers that their elected representatives in Washington are interested in their welfare and are aware of and concerned about the risks that they face daily. Passage of this bill will be a vote of support for the cop on the street.

Although we have known about the availability and devastating potential of armor-piercing bullets for some time, all efforts to impose controls on them have, until now, been thwarted.

Representative Mario Biaggi, in fact, has been wisely and strongly advocating legislation in this area for the last six years. Not until now have the parties concerned been able to compromise on a bill whose wording and intent are agreeable to the diverse interests that they represent. The fact that Mr. Biaggi, Representative William Hughes, and the Administration have come together on this issue is encouraging to our members, in that it shows that political differences can be set aside when the matter at hand is as important as the saving of police officers' lives.

Our membership fully intends to monitor the effectiveness of this legislation once it is passed, and we suggest that a formal mechanism be instituted at the federal level to ensure that the new law is being enforced and that its intentions are indeed being realized.

In closing, we endorse this valuable legislation to limit the availability of "cop-killer" bullets, and look forward to seeing its speedy passage on the House floor.

Thank you very much, Mr. Chairman.

Mr. HUGHES. Thank you very much. I think that completes the testimony.

I don't really have any specific questions and I have read all your statements. I had your statements last evening, for the most part, and read them, and I think they all focus in on the critical issues.

I just want to assure you that I share your concern. There is no higher priority. It is my hope that this can be the first legislative initiative that we can move through the process because it enjoys a high priority. It is something that we should have done in the last Congress and I regret that we weren't able to pass legislation in the 98th Congress.

The second assurance I want to make to you is that I think sale is important and I am not going to bargain away sale. We met last year on a couple of occasions and I assured you then that we are not going to do anything meaningless. I want to do something that is positive and meaningful and it is my belief, firmly held, that legislation without a prohibition on sale, doesn't get at the root of the risk problem.

I think you, Mr. Lechner, put your finger on my own sentiments. It is a matter of risk assessment. I don't think it is an unreasonable risk to place upon the dealers. We are talking about saving lives.

I don't know of any other business that is not required to know the merchandise they sell. I think it is a flimsy excuse to suggest that in this instance we are going to make an exception because it is difficult for them.

As a matter of public import, I think it is important for dealers, like any other merchant, to know the business that they are about. That is part of the regulatory process; that is one of the reasons why we have such detailed recordkeeping, and particularly when you are talking about ammunition.

I think inherent in the notice requirement is the duty to know what you are selling. It is implicit in the notice. I am prepared to look at how we can provide adequate notice. Under the bill, the notice is a notice by ATF. The sanctions are not triggered until the individual receives a specific notice.

If, in our discussions with ATF and others during this process, we learn that there is some ambiguity and some basic unfairness, then we will look at other options at that point, but I think the bottom line is that I share your concern over the risk that is involved.

I don't think we have to have one or five or a dozen—God forbid—police officers killed before we do something about a situation that we know has that great capacity, particularly when you look and balance it against how much of a burden it has placed upon the dealers. If, in fact, the testimony we have heard is correct, that there is little ammunition, then the task is going to be a lot simpler than we once envisioned and I hope that that is the case.

The gentleman from Florida.

Mr. McCOLLUM. Thank you, Mr. Chairman.

I don't want to pursue individual questions. I think that you gentlemen have been sitting here long enough, as we have, and you

have been through this issue a lot longer than I have. I have been a supporter, as some of you may have heard me say earlier, of the concept in the initial legislation that Congressman Biaggi introduced, but I did not sit on this panel and I did not get involved with the detailed debate and, I gather, rather emotional differences that occurred at the committee, subcommittee level and within the various factions of interest last time, so I come to it relatively fresh and open-minded and I am pleased, from what I am absorbing today, with apparently the progress that has been made to get to legislation. There seems to be a lot less emotional component in this today than there was. There seems to be more agreement than disagreement and we are down to one or two issues, it seems, and that is great progress.

It means we are going to have a bill and I think it means it is going to be one where we can work out whatever differences there are. I particularly appreciate Mr. Lechner's comments with regard to the question of intent and knowledge and so on, and I would say that from listening to you and using some commonsense, I would have to concur that better than 98 percent, probably, of all dealers do know precisely what is on their shelves.

I am always an individual rights type guy, even though I am pretty conservative, and that label doesn't mean we don't care about individual rights, so I am going to be open-minded throughout the rest of the proceedings to see if we can't listen real hard about any kind of a compromise that will allow us to protect those who might be in the 2 percent without harming the general intent of this legislation, which I don't want to do and I am sure no one else does.

Thank you, again, for the opportunity to hear your testimony. I appreciate very much the input that you have and the personal contact you have got with this issue.

Mr. HUGHES. Thank you.

Thank you once again. We appreciate your patience. We have taken a little longer than we intended today and for those who traveled long distances, we really do appreciate your taking the time to be with us today.

Our next and final witness is J. Warren Cassidy, the executive director of the National Rifle Association, Institute for Legislative Action.

Mr. Cassidy, welcome. Again, I apologize to you, Mr. Cassidy. We have really gone way over today. Between the votes and the number of witnesses, why, we have taken longer than we anticipated.

STATEMENT OF J. WARREN CASSIDY, EXECUTIVE DIRECTOR, INSTITUTE FOR LEGISLATIVE ACTION, NATIONAL RIFLE ASSOCIATION

Mr. CASSIDY. Thank you, Mr. Chairman.

In the interest of brevity, you have my statement and I ask simply—

Mr. HUGHES. Yes, and without objection, it will be made a part of the record and we have read your statement.

Mr. CASSIDY [continuing]. Made a part of the record, with one correction. The information we had received originally, on page 2, the second page in the second paragraph of my statement, the expression "per month" should be in there. "We show only a miniscule total of 150 to 190 cartridges have been produced and imported." That should be per month, as you have heard from the Treasury Department.

Mr. HUGHES. Yes. The correction will be so noted.

Mr. CASSIDY. If there are any questions, I will certainly entertain them.

[The statement of Mr. Cassidy follows:]

TESTIMONY OF J. WARREN CASSIDY
EXECUTIVE DIRECTOR

NATIONAL RIFLE ASSOCIATION
INSTITUTE FOR LEGISLATIVE ACTION

SUBMITTED TO THE

HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIME

HEARINGS ON H.R. 4 AND H.R. 13

MAY 9, 1985

MR. CHAIRMAN & MEMBERS OF THE SUBCOMMITTEE ON
CRIME:

I APPRECIATE THE OPPORTUNITY TO TESTIFY ON BEHALF
OF THE MORE THAN 3 MILLION MEMBERS OF THE NATIONAL
RIFLE ASSOCIATION OF AMERICA.

MR. CHAIRMAN, AS YOU ARE AWARE, OVER THE LAST
THREE YEARS THE NATIONAL RIFLE ASSOCIATION HAS
CONSISTENTLY OPPOSED LEGISLATIVE PROPOSALS DESIGNED TO
OUTLAW ARMOR PIERCING AMMUNITION THAT INCLUDED NOT ONLY
ARMOR PIERCING AMMUNITION, BUT POTENTIALLY, NUMEROUS
CONVENTIONAL ROUNDS OF AMMUNITION USED BY NRA MEMBERS
AND OTHER LAW ABIDING CITIZENS FOR HUNTING AND TARGET
SHOOTING AS WELL.

SINCE WE LAST TESTIFIED ON THIS ISSUE, IN JUNE OF
1984, THERE HAVE BEEN SEVERAL SIGNIFICANT
DEVELOPMENTS. FIRST AND MOST IMPORTANTLY IS THE
PASSAGE OF PL 98-473. SECTION 1006(A) OF THE BILL
PROVIDES FOR MANDATORY PENALTIES FOR MISUSE OF ARMOR

PIERCING AMMUNITION DURING THE COMMISSION OF A CRIME OF VIOLENCE. THE NATIONAL RIFLE ASSOCIATION HAS SUPPORTED THIS CONCEPT SINCE ITS INCEPTION, AND WE CONTINUE TO BELIEVE THAT THE ONLY EFFECTIVE METHOD FOR CONTROLLING CRIME IS BY CONTROLLING THE CRIMINAL. WE ARE PLEASED THAT THIS LEGISLATION HAS BECOME LAW, AND ENCOURAGE THE VIGOROUS ENFORCEMENT OF ITS PROVISIONS.

SECOND, A RECENT SURVEY BY THE DEPARTMENT OF THE TREASURY OF MANUFACTURERS AND IMPORTERS OF ARMOR PIERCING AMMUNITION INDICATES THAT THE VOLUNTARY AGREEMENTS SECURED BY THE DEPARTMENT OF THE TREASURY ARE EFFECTIVE AND IN FORCE. FURTHER, THE SURVEY RESULTS SHOW ONLY A MINISCULE TOTAL OF 150 TO 190 CARTRIDGES HAVE BEEN PRODUCED AND IMPORTED BY ALL MANUFACTURERS.

GIVEN THE NEW MANDATORY SENTENCING LAW RECENTLY ENACTED AND THE COMPLIANCE OBTAINED BY THE DEPARTMENT OF THE TREASURY FROM ARMOR PIERCING BULLET MANUFACTURERS AND IMPORTERS, THE NATIONAL RIFLE ASSOCIATION QUESTIONS THE NEED FOR FURTHER LEGISLATION ON THIS ISSUE.

HOWEVER, THE NRA IS ACUTELY AWARE OF THE CONCERNS OF OUR NATION'S LAW ENFORCEMENT COMMUNITY REGARDING ARMOR-PIERCING AMMUNITION. NRA POLICE INSTRUCTORS HAVE TRAINED THOUSANDS OF LAW ENFORCEMENT PERSONNEL IN THE

SHOOTING SKILLS AND HAVE CONSISTENTLY MAINTAINED A CLOSE WORKING RELATIONSHIP WITH INDIVIDUAL OFFICERS THROUGHOUT AMERICA. POLICE GROUPS SEEK TO HAVE THE VOLUNTARY COMPLIANCE AGREEMENTS SECURED BY THE DEPARTMENT OF TREASURY WRITTEN INTO LAW. IN THIS REGARD, H.R. 13, LIKE H.R. 5845 IN THE 98TH CONGRESS, ADEQUATELY ADDRESSES THE CONCERNS OF LAW ENFORCEMENT REGARDING THE MANUFACTURE AND IMPORTATION OF ARMOR PIERCING AMMUNITION, WITHOUT UNNECESSARILY INFRINGING ON THE RIGHTS OF LAW ABIDING GUN OWNERS AND DEALERS. THE SPECIFIC PROVISIONS CONTAINED IN H.R. 13, LIKE H.R. 5845 LAST YEAR, HAVE IN THE PAST CONGRESS BEEN ENDORSED BY EVERY MAJOR POLICE FRATERNAL ORGANIZATION, OVER 160 UNITED STATES CONGRESSMEN, OVER 90 UNITED STATES SENATORS AND CONGRESSMAN BIAGGI.

THE NATIONAL RIFLE ASSOCIATION SUPPORTS H.R. 13, BECAUSE IT WOULD IMPACT ONLY ON UNAVAILABLE ARMOR PIERCING AMMUNITION; ALL CONVENTIONAL AMMUNITION USED FOR HUNTING, SPORTING, AND PERSONAL PROTECTION PURPOSES BY AMERICAN GUNOWNERS REMAINS UNTOUCHED.

MR. CHAIRMAN, THE NATIONAL RIFLE ASSOCIATION OPPOSES H.R. 4 BECAUSE OF THE SALES PROVISION. GIVEN THE LOOK-ALIKE NATURE OF SOME AMMUNITION, TO MAKE FIREARMS DEALERS THE GUARANTOR OF THE METALLURGICAL CONTENT OF THE AMMUNITION THEY SELL, BOTH NEW AND USED,

IS UNFAIR TO THE DEALER AND WOULD RESULT IN AN ENFORCEMENT NIGHTMARE. IF IN FACT THERE IS A PROBLEM WITH ARMOR PIERCING AMMUNITION THE LIMITATIONS ON MANUFACTURE AND IMPORTATION CONTAINED IN H.R. 13 WILL FORMALIZE THE VOLUNTARY AGREEMENTS ALREADY IN EFFECT AND FURTHER UNENFORCEABLE RESTRICTIONS ON FIREARMS DEALERS ARE NOT NEEDED.

MR. CHAIRMAN, I WOULD BE REMISS IF I DID NOT PROFFER FOR YOUR CONSIDERATION THE FOLLOWING INFORMATION. A RECENT SURVEY BY THE DUPONT CORPORATION MAKERS OF THE KEVLAR FABRIC FOR BULLET RESISTANT VESTS, INDICATES THAT ONLY ONE-HALF OF THE NATIONS 570,000 SWORN OFFICERS OWN BULLET-RESISTANT VESTS. FURTHER, ONLY ABOUT 15% OF THE OFFICERS WHO DO HAVE VESTS WEAR THEM REGULARLY. WE WOULD RESPECTFULLY SUGGEST THAT IF THE PROTECTION OF LAW ENFORCEMENT OFFICERS IS THE SUBJECT MATTER OF THIS HEARING, THE SURVEY CONDUCTED BY DUPONT SUGGESTS SOME VERY CLEAR PRIORITIES THAT COULD BE THE SUBJECT OF LEGISLATION. THE NUMBER OF OFFICERS SAVED FROM CRIMINAL ASSAULTS COULD BE SUBSTANTIALLY INCREASED IF EVERY OFFICER WERE ISSUED A VEST AND REQUIRED TO WEAR IT; WITHOUT THE ACCOMPANYING PUBLICITY ATTENDANT TO A MEDIA BLITZ OR TO HEARINGS SUCH AS THIS.

MR. CHAIRMAN, THANK YOU FOR THIS OPPORTUNITY TO TESTIFY.

Mr. HUGHES. Mr. Cassidy, I note that you support H.R. 13 because it would impact only on unavailable armor-piercing ammunition. That is on page 3, second paragraph of your statement.

I assume you are referring to ammunition that is already covered by agreements with the Treasury Department?

Mr. CASSIDY. That is correct, Mr. Chairman.

Mr. HUGHES. What you are saying in essence is that you support the bill because it really doesn't do much new, in essence.

Mr. CASSIDY. Would you repeat that, sir.

Mr. HUGHES. In essence, it doesn't really do very much additional to what the previous bill envisioned.

Mr. CASSIDY. It is the opinion of the National Rifle Association that this legislation basically will not do what most of the proponents wish it to do, and that is, reduce mortality among police officers, reduce fatalities, reduce injuries per se.

The National Rifle Association became involved last year because we have a sincere interest in law enforcement. We have been natural allies for many years and we credit the law enforcement community with our many successes on referendums in various States. They feel they have a concern. If they have a concern, we are interested in their concerns.

According to the Treasury Department and the Justice Department, the voluntary agreements reached between and among the manufacturers and the Federal law enforcement agencies has worked. The ammunition is not being used. There have been no police officers killed with armor-piercing ammunition penetrating the vest. The two Broward County officials were head shots and a 22-lead short bullet would have, unfortunately, killed both officers.

You are correct in saying that what we state here, that if the intent and the wish of the law enforcement is to place into law the voluntary agreement of nonavailable ammunition that is currently there, then we encourage the support of Congressman Brooks' legislation.

Mr. HUGHES. Mr. Cassidy, how many police officers do we have to see killed before it is a problem?

Mr. CASSIDY. I would hope none, Mr. Chairman. The fact is that none have been and—

Mr. HUGHES. Does that mean that there is no risk, then?

Mr. CASSIDY. Oh, no, of course, there is risk. As long as a man or woman is going to be a police officer, there is always going to be risk.

Mr. HUGHES. Would you agree that if we can take reasonable steps to save one life, that that in itself is a reasonable endeavor?

Mr. CASSIDY. I think there has to—I heard you say that earlier, Mr. Chairman, and respectfully, I am sure you mean that in the best manner.

Mr. HUGHES. I hope so.

Mr. CASSIDY. I know you did, but back a few years ago when I was the mayor of a city in Massachusetts, I used to debate this issue of gun control with Senator Kennedy and others and that comment was made. If one life could be saved: first it was, wouldn't you ban short-barrel handguns; wouldn't you agree to ban hollow-point bullets and so forth, and I said to the Senator, I could save more lives by closing Lynn Beach every summer, as the mayor of

Ocean City could save more lives in Maryland, but is the purpose just to save lives?

Mr. HUGHES. You see, the difference between that argument and the argument that we are engaged in today is that most folks agree that this ammunition has no sporting value. The argument that you were engaged in was a balancing of the right of legitimate ownership of weapons to protecting lives.

There is a fundamental difference between the two. If there was a valid argument that this ammunition had some value, even the law enforcement community agrees that it has no law enforcement value, because the ammunition is very dangerous. It ricochets and for that reason, they don't even use it in law enforcement missions. So there is a fundamental difference.

Getting back to the issue of saving lives, your argument is that nobody, no police officers have been killed. Thank God. We know enough about incidents, however, to know that but for the grace of God, police officers haven't been injured or killed.

In the Huberty case, for instance, if police officers had arrived at the scene early and Huberty had shot at them—even if they were wearing body armor, that wouldn't have protected them and they would have been injured presumably or killed.

I don't know that we have to wait until that occurs before we anticipate a problem, particularly where life is involved. It is a balancing; it is a matter of risk assessment.

I think Mr. Lechner put it pretty well. I think he was very articulate on this point. It is a matter of risk assessment. What is the risk to the dealer if we take reasonable steps to try to proscribe the transfer of this ammunition, as opposed to the risk to the police officer if we do nothing?

Mr. CASSIDY. Mr. Chairman, respectfully, I am not here as a defender or an apologist of the dealer, per se. I don't understand the analogy with the Huberty situation in San Ysidro. All of those citizens in there—none of them, rather, would have been used with—had armored vests regardless of what the situation was. Those people would have been killed by armor-piercing, by lead, by copper, any type of ammunition—

Mr. HUGHES. No, no, you missed the point; you missed the point entirely.

My point was, if a police officer had arrived on the scene early on while Huberty was killing people, feeling he was protected because he had body armor and had moved into that establishment, that fast-food restaurant, and Huberty had taken a shot at him with one of those rounds of Czechoslovakian ammunition that Huberty had, the chances are that police officer would either be injured or probably killed because Huberty was extremely accurate, was a very good marksman.

Mr. CASSIDY. I wouldn't debate a—I would not want to see any officer killed, but we are talking a little bit of abstract thinking. Huberty also had a shotgun. Any shooting at the police officers in the head with a shotgun would have eliminated them quickly anyway.

I would like to point out, Mr. Chairman, I am not defending a piece of ammunition or a bullet or a projectile. The Congressman

mentioned that he is one concerned with the civil rights of individuals, as well as dealers or police officers and so forth.

What concerns the National Rifle Association about this approach is that the inanimate object is being given a sense of morality, a purpose, an emotional ability to do something wrong. It is already totally illegal to shoot a police officer or anyone else with whatever ammunition is available. It is a crime to commit murder, to assault—

Mr. HUGHES. That is after the fact, though. That doesn't save a life.

Mr. CASSIDY. Yes, sir, but—

Mr. HUGHES. That is after the fact.

Mr. CASSIDY. But the people who are going to misuse armor-piercing ammunition are going to pay no attention to any legislation this Congress passes.

Mr. HUGHES. You know, I don't want to sound as if I am lecturing when I say this, but you stake out a position here which I just find absolutely unreasonable. Much of your organization is comprised of law enforcement officials. What we are talking about is an effort to save lives. It is not a balancing against sporting issues or values because that is not even involved. The ammunition, everybody concedes at this point, including the NRA, as I understand your testimony, has no sporting value.

It has been testified here that there are dealers in the country that don't know that they have it, but are selling it. I can't imagine that that is in the public interest. I can't imagine that being in the dealer's interest to do that, for all the reasons I tried to articulate earlier.

I don't know what a dealer loses. First of all, at this posture, one of the things he loses is perhaps some ammunition, and in the last Congress, Mr. Biaggi and I fashioned a provision that would allow treasury to buy the ammunition. There were so many critics of that—I mean one would have thought we proposed a raid on the Treasury, and there was so much paranoia developing over that that we dropped that. I mean, that wasn't central to it. We added that because we thought we were being fair to dealers.

We are right back at the central issue and that is in balancing the risks. Is it unfair basically to try to take, what I think is a reasonable step, to say to a dealer, after a certain date, the following ammunition is proscribed; you can't sell it? To say, in essence, if there is some question as to whether or not any of your ammunition fits within that ban, contact the ATF at a certain number by a certain date.

I don't know how you find that unreasonable.

Mr. CASSIDY. Mr. Chairman, you have heard one officer, one of the representatives, testify that he went into two gun stores in Arlington and asked for armor-piercing ammunition and they could not provide it because they did not sell it. I think the Treasury Department, in all candor, will tell you that there is very little of that ammunition available. The NRA isn't taking a stand because of the number of rounds of armor-piercing ammunition that may or may not be out there. Frankly, we think there are very few out there. Most of it has been burned up by people using it in target practice and competitions over the years that it was allowed to be in. We

think there is very little. It is a matter of principle; it is being purported as something that will save law enforcement personnel.

The NRA believes that—and has followed for years in—

Mr. HUGHES. Well, that is the principle and what is wrong with that principle?

Mr. CASSIDY. Nothing is wrong with the principle, but the installation of capital punishment, the building of more jails, cutting down on recidivism. Any professional police officer knows this is the problem with crime in the country, the plea-bargaining. We talked about some attorneys here earlier. The parole, the probation, the fact that the man who murdered Robert Kennedy has been up a couple of times already for parole hearings. It is inconceivable.

We totally agree that anything the NRA can do to protect and help the law enforcement community in this country, we will do. We just think that this won't do it.

Mr. HUGHES. I think I finally see where you are coming down. The principle that I am concerned about is protecting police officers' lives and balancing it against the potential risk to a dealer not knowing he had ammunition he shouldn't have sold. That is the risk on that side.

What is the principle you are defending?

Mr. CASSIDY. The principle that I am defending?

Mr. HUGHES. Yes.

Mr. CASSIDY. That the inanimate—

Mr. HUGHES. What is the principle you are defending by being against this sale?

Mr. CASSIDY. The inanimate object is not a criminal and it doesn't have a criminal mind or an angelic mind. We are aiming legislation at something that will not cause. It may be a tool used by a criminal, but that is the best it can be. That is the principle we disagree on, I think.

Mr. HUGHES. Then I would take it you probably support the legalization of drugs?

Mr. CASSIDY. The legalization of drugs?

Mr. HUGHES. Yes.

Mr. CASSIDY. Of course not.

Mr. HUGHES. The same principle would apply. You know, you could apply it to the distribution of bazookas. Is it your feeling that we should be distributing bazookas if people want bazookas? We ban certain things because there is no legitimate public use for certain things. One of my great complaints is that we have never made silencers illegal, for instance. Now, realize that some collectors like silencers, but others like silencers, too, members of—

Mr. CASSIDY. They are illegal.

Mr. HUGHES [continuing]. Organized crime like silencers, but it is an inanimate object, isn't it?

Mr. CASSIDY. They are illegal, though.

Mr. HUGHES. No, they are not illegal. I beg to differ with you.

Mr. CASSIDY. The use of them is illegal.

Mr. HUGHES. Well, you get caught with a silencer on a weapon, it is illegal, but you can get permission to buy a silencer. It is not illegal. I have legislation—I have had legislation in the past that would make it illegal, but we have to make some policy decisions

from time to time as to what is in the interest of society. It is a balancing of rights and privileges and responsibilities.

What I am saying to you is there is a principle at stake here, trying to save police officers—I happen to disagree with you. I don't think that we have to see any police officers killed—

Mr. CASSIDY. I didn't say we did, either.

Mr. HUGHES [continuing]. Before we have a problem. Yes, but we keep hearing the same testimony over and over again, that we haven't seen any police officers killed. To which I say, well, but there is a risk there. Do we have to see a police officer killed before we identify a problem? Can't we be proactive, as opposed to reactive? That is a principle that I have identified and my difficulty with NRA's position is I don't understand the principle you are defending.

We are forever identifying inanimate objects and saying, "Thou shalt not do a certain thing." We do it with heroin. We do it with any number of things. We do it with child pornography. You name it, credit card fraud, computer card fraud. We make certain things using inanimate objects criminal. It is a balancing that we end up doing.

Mr. CASSIDY. I think it is a philosophical argument, Mr. Chairman, that any of your drug legislation has done any good whatsoever. We are quite active in Florida and in south Florida. We have an active membership down there. They are under heavy fire because of the drug situation, as far as law-abiding gun owners are concerned.

I think you can look at legislation after legislation after legislation and it doesn't address the real problem. There are approximately 570,000 uniformed police officers in the United States. Now, the DuPont Corporation recently did a study of the 575,000, one-halfowned bullet-proof vests and approximately 15 percent of the officers who have them wear them. If you ban all of the armor-piercing ammunition available today, only 15 percent of the uniformed officers in this country would have vests on against the conventional ammunition.

Mr. HUGHES. You are making a good argument for doing a better job of encouraging police officers to wear bullet-proof vests, but you almost make it mutually exclusive. We should be doing both. We should be encouraging police officers to use bullet-proof vests. We should be trying to pursue research so we can make the vests more effective, lighter. The one advantage the criminal has, the felon has, he knows when he is going to need a bullet-proof vest. Unfortunately, the police officer, particularly in the wintertime in certain areas—they have got heavy clothing on and it is a drag to wear the bullet-proof vest, even though it is for their own protection. They are unfortunately in the position where they don't know when they need one.

In the Huberty instance, it wouldn't have done any good. In some other instance, it wouldn't do any good if they are using ammunition that can pierce that armor. The telex, the communication to Customs from EPIC, suggests that the information is well known in criminal circles.

Mario Biaggi, I think, is absolutely correct when he suggests that the felons know before law enforcement what is occurring, what is

available, how to deal with problems. I spent 10 years in law enforcement. That was my experience, that the criminals are way ahead of us often.

So, I suggest to you that to use the argument that police don't use bullet-proof vests, and that is unfortunate, as a reason for not supporting reasonable steps to try to prevent felons from killing them when they do use bullet-proof vests, I think is without merit.

Mr. CASSIDY. Mr. Chairman—

Mr. HUGHES. Insofar as providing tools for drug traffickers, if I heard you correctly, you suggest that we pass legislation to provide tools, but that doesn't do any good.

Mr. CASSIDY. I think because so much is made in the media blitz—

Mr. HUGHES. What is your answer? In the last Congress, we passed a major crime bill—and I am proud of the crime bill. I was one of the prime sponsors and my colleague, Mr. McCollum, worked very closely with us on it and the ranking Republican, Hal Sawyer, who is retired from the Congress, was the prime author of many of the initiatives, including the child pornography bill.

We have literally hundreds of prosecutions today, new prosecutions under the authority just granted, hundreds of bail hearings where we are bringing people in that are a danger to the community. We are identifying them and we are putting them in the slammer when they are a danger to the community.

How can you suggest that that is not going to help in some way in dealing with the crime problem?

Mr. CASSIDY. We supported that—

Mr. HUGHES [continuing]. Going to solve the problem. We are never going to work ourselves out of a job.

Mr. CASSIDY. We supported that legislation, Mr. Chairman, totally, but we supported it because you were aiming it at the criminal element. This legislation is not aimed at the criminal element. We supported that legislation and there is a 5-year mandatory, as you well know, for the commission of a felony with an armor-piercing. That hasn't even been let—to be tried for a year or two to see if it works.

Mr. HUGHES. Well, I have gone way over my time.

The gentleman from Florida has some questions, and I apologize for taking so much time.

Mr. McCOLLUM. No, the chairman is asking pertinent questions. I just appreciate very much his yielding to me for a couple of minutes.

I want to make something clear that I am reading into your testimony and I think I am reading it right. The National Rifle Association does support legislation that would ban the manufacture of armor-piercing bullets; is that not correct?

Mr. CASSIDY. The National Rifle Association, if I may clarify it, supports the Brooks-Dingell bill, as did 150 or 190 of your fellows last year—it is the same bill—in the event that the Members of Congress feel that the law enforcement community requires legislation of this sort to satisfy their concern.

Yes, on the manufacture and the importation, if that is going to be required of this Congress, the National Rifle Association has supported it. That is correct. Not because we philosophically agree

with it, and not because we think it will do any good, but if the law enforcement community thinks it will do any good; if our mutual friends in the Congress think it will do some good for them to agree, then we support it.

Now, those are a lot of caveats, Congressman.

Mr. McCOLLUM. I understand the caveats. I gather the feeling and the emotion that has been in this as I said to other witnesses, you have heard me say, I didn't participate so I haven't gone through that ringer and others have, but I wanted to clarify that.

And one of the reasons I want to clarify it is because the tenor of the questioning and all might lead one not to realize that you had reached that point and I think that is a major point in the whole process.

I have been involved in some of the concerns expressed earlier that you picked up on in one of your answers to Mr. Hughes' question about some of these matters with the administration-raised question about the sale issue. Assume for the moment that some provision is put into the law, whether you like it or not, dealing with sale.

Mr. CASSIDY. Dealing with what?

Mr. McCOLLUM. Dealing with sale of these armor-piercing bullets, if that were to be the case, would it not be better to have some modifier in there such as knowing, willful or reckless in terms of the intent of the dealer if that goes through? You have not addressed that. That hasn't been an issue here for you to address because you have said the NRA opposes any legislation on the item of sale. But I am asking you an "if" question because, quite frankly, you have come to us saying, "We really don't feel so hot about this legislation altogether at all, but we have come around to supporting H.R. 13 in its present form," so you have obviously thought of a lot of contingencies, knowing, as I do, there is going to be legislation.

I sense that coming out of this committee, that there is going to be some form of a ban on sale involved in this. Maybe I am wrong, but assuming there is going to be—I am still openminded. I am not saying my position, but I am sensing that there will be. Would you feel it important to have a modification such as something like reckless or knowing or whatever placed in the statute?

Mr. CASSIDY. I think, although NRA prides itself on being idealistic, I think we are also realistic. As it stands now, there are two bills offering different things in the House of Representatives.

Mr. McCOLLUM. Right.

Mr. CASSIDY. Mr. Brooks' bill and Mr. Biaggi's. There is no brother bill of Mr. Biaggi in the United States Senate. The only bill on the floor is the Thurmond bill, which is brother to the Brooks' bill. Obviously, passage in this body of one type and the passage in the other of another would require a conference committee and what happens in conference committees where unquestionably people who are not friends of the NRA might be in the House Conference Committee and people who are will be in the Senate Conference Committee, so we understand that there is going to be some discussion and debate. Certainly, although we have not had a chance to study the Treasury Department's amendment that they passed out.

Any bill that requires some intent, particularly willful, and a prospective penalty versus a bill that requires no intent, like Mr. Biaggi's, and is retroactive in essence, we would, of course, be looking toward a willful and prospective, rather than no intent and retroactive.

Mr. McCOLLUM. Thank you very much. I appreciate your answering my questions.

Thank you.

Mr. CASSIDY. Thank you, sir.

Mr. HUGHES. I thank the gentleman.

I just have a couple more questions. I sense, with your explanation with H.R. 13, that you do support it, but you are not crazy about it. Am I correct in that?

Mr. CASSIDY. That is a fair assumption, yes, sir.

Mr. HUGHES. And I assume you support H.R. 13 because essentially all it does is reaffirm what has already been done voluntarily.

Mr. CASSIDY. That is correct.

Mr. HUGHES. So it basically does nothing. It does nothing. All it does is legislatively reaffirm what has already been accomplished by ATF and—

Mr. CASSIDY. Well, if ATF's actions have continued the record of no police officers being killed by the ammunition, cutting it down to 150 to 190 rounds per month, I would say that is a great—

Mr. HUGHES. No, no. I am saying that has already been accomplished, though, by voluntary agreements. That has already been accomplished. So actually, H.R. 13 just reaffirms what has already been accomplished and that is why you support it.

Mr. CASSIDY. That is correct.

Mr. HUGHES. And that is why you don't support the sale—it is an initiative that would reach the inventory that the police feel are out there.

I just have one further observation to make and I want to do it respectfully because I have always had a great deal of regard over the years, as a sportsman, for the NRA, but I am offended somewhat, by a statement that is made in your testimony—the suggestion that by having hearings in some way, we create or we assist in the proliferation of the problem.

I have some difficulty with that because I hear it quite a bit. I heard it with credit card and computer crime. We couldn't get witnesses to come in and testify about computer crime because they feared for any number of reasons that they would give youngsters a little more information than they should have and somebody else would experiment with it. I heard it with credit card fraud. We had witnesses who didn't want to testify on credit card fraud for any number of reasons, not the least of which is it wouldn't look good if some of the major companies came in and admitted that they had extensive credit card fraud.

We can't legislate unless we develop a hearing record. We can't deal with public policy concerns unless we are able to do it through a hearing process. That is how we function.

I am proud of the fact that this committee has attempted to be rather discreet about that type of testimony. We have tried to steer clear of testimony that would, in fact, invite testimony in sensitive

areas. We are not averse to taking it in executive session if, in fact, there are matters that should be brought to the attention of the committee that might impact the public in a negative fashion. You know, I just think it represents, really, an insensitivity to the need to deal with some of the public issues that impact us.

I don't know how we could deal with this problem, armor-piercing ammunition, unless we did it through a public hearing process. That is the American system and I trust you agree, that it is a fairly good system.

Mr. CASSIDY. I was referring more, Mr. Chairman, to the initial media blitz that was created back when the television networks, against the advice of most of these same police organizations that testified here today, just before my testimony. Those same groups asked the National Rifle Association not to come out and make a big thing about it. They asked the networks not to do it because they said the result will be head-shot police officers. That is exactly what has happened—

Mr. HUGHES. Mr. Cassidy, let me read your statement because that is not what you said.

Last paragraph:

The number of officers saved from criminal assaults could be substantially increased if every officer were issued a vest and required to wear it. Without the accompanying publicity attendant to a media blitz or to a hearing, such as this.

Mr. CASSIDY. Well, I did put "media blitz" first, respectfully, and that is basically what my objection to it is.

Mr. Chairman, I might say this, we have suffered through—and two wrongs don't make a right—we have been called lovers of cop-killer bullets. We have won three suits against major newspapers because allegedly "the NRA has been out attempting to wipe out the law enforcement community of the United States." I apologize if those comments offended you—

Mr. HUGHES. Mr. Cassidy, you have never heard me say anything like that.

Mr. CASSIDY. No, I did not, but I said we have been on the receiving end and perhaps we get sensitive or overly sensitive.

Mr. HUGHES. Well, you have never heard me say anything like that, and I am offended when it is suggested to me, publicly or otherwise, that I am part of the problem, not part of the solution.

Thank you very much.

Mr. CASSIDY. Thank you.

Mr. HUGHES. That concludes our testimony. The hearing stands adjourned.

[Whereupon, at 5:50 p.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

ADDITIONAL MATERIAL

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

November 27, 1984

TO : Honorable Mario Biaggi
Attn: Craig Floyd

FROM : American Law Division

SUBJECT : Summaries of Reported Judicial Decisions Making Reference to
Armor-Piercing Ammunition.

This will respond to your request and our subsequent telephone conversation regarding the above matter. Specifically, you ask for a brief description of the significance of armor-piercing ammunition in the written opinions of the cases you have cited. In addition to summaries of those decisions provided by your office, we have included a few additional ones found in our research. In all of these cases only the merest reference to armor-piercing ammunition is made by the court.

State Cases

1. People v. Goodman, 396 N.E. 2d 274 (Ill. App. Ct.), 77 Ill. App. 3d 569 (1979). The defendant appealed her conviction on charges of involuntary manslaughter. The appellate court here held that the evidence failed to prove beyond a reasonable doubt that she had not acted in self-defense. Her conviction was reversed. The victim was her husband, a police sergeant, who was shot with his own weapon. The only reference in the case to armor-piercing ammunition is in a dissenting opinion which states that "decedent was hit 3 times with armor-piercing bullets (not the type normally carried in the service weapon used by him on police duty)." (at 279).

2. People v. French, 75 Ill. App. 2d 453 (1966). This was an appeal from an armed robbery conviction. In discussing a prior armored car robbery that the defendant may have been involved in, the court made reference to the fact that defendant had been given six armor-piercing bullets before that incident. The conviction was affirmed.
3. Louisiana v. Cauching, No. KA-0548, slip. op., La. Ct. App. 4th Cir. (August 11, 1983). The defendant was found guilty of being a convicted felon in possession of a firearm in violation of a Louisiana statute. On appeal his conviction was affirmed. He was apprehended on suspicion of attempted murder whereupon his firearm was seized. It was found to contain teflon-coated ammunition. Testimony by an expert witness had been received to the effect that "this ammunition could penetrate a bullet-proof vest, and that it was the most dangerous ammunition on the market today."
4. People v. White, 220 N.W. 2d 789 (Mich. Ct. App.) 54 Mich. App. 342 (1974). The defendant was convicted of assault with intent to murder. He appealed on the grounds that a search following his arrest made without a warrant was not a reasonable one. The Court of Appeals here held that the search was reasonable in that the apprehending officers had been fired upon before defendant surrendered. Speedy trial arguments were also rejected. Armor-piercing bullets were seized at the time of arrest.
5. State v. Hansen, 312 N.W. 2d 96 (Minn. 1981). The defendant appealed convictions relating to charges of aggravated criminal damage to property. He had been accused of firing armor-piercing ammunition through the vehicle of private security guards at a powerline construction site. After finding that certain statements admitted into evidence were not properly admissible and that the defendant's Sixth Amendment right of confrontation was violated, the Supreme Court of Minnesota reversed the conviction.
6. Williams v. State, 369 So. 2d 910 (Ala. Crim. App. 1979). The defendant was convicted of robbery and assault with intent to murder. On his arrest police officers found an assortment of weapons loaded with armor-piercing ammunition. The Alabama Court of Criminal Appeals affirmed the conviction.

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7. Tafero v. State, 403 So. 2d 355 (Fla. 1981). After conviction of robbery, kidnaping, and murder, the defendant was sentenced to death. Two police officers were shot in the incident leading to apprehension, the court stating that armor-piercing ammunition was employed by the defendant. The Florida Supreme Court affirmed the convictions and sentence.
8. State v. Francoeur, 387 So. 2d 1063 (Fla. 1980). The State of Florida appealed the lower court granting of a motion to suppress controlled substances taken from a vehicle. At the time of defendant's apprehension he was in possession of a .45 calibre automatic pistol loaded with armor-piercing bullets. The appellate court here held the exigent circumstances permitted the search and therefore reversed and remanded.
9. Pressley v. State, 261 So. 2d 522 (Fla. Dist. Ct. App. 1972). The defendant appealed a first degree murder conviction. The District Court of Appeals affirmed, finding no reversible error in failure to sever the trial of two defendants. The indictment was for murder in the course of armed robbery of a grocery store. The decedent "was shot five times with a .38 calibre Taurus Brazil pistol and died as a result of the wounds inflicted by the four armor-piercing conical bullets coursing through his chest . . ."

Federal Cases

10. United States v. Melvin, 596 F.2d 492 (1st Cir.), cert. denied, 444 U.S. 837 (1979). The defendant was convicted of possession of unregistered firearms in violation of 26 U.S.C. 5861 (d) and he appealed. He challenged the validity of the warrant authorizing the search of his home which led to seizure of the weapons. A cache of ammunition, including armor-piercing bullets, was described in a dissenting opinion as having been taken by the police. The conviction was affirmed.
11. United States v. Cahalane, 560 F. 2d 601 (3d Cir. 1977), cert. denied, 434 U.S. 1045 (1978). The defendants in this case appealed their conviction for conspiracy and aiding and abetting the illegal exportation of arms and ammunition to Northern Ireland without a license. Some of the ammunition involved was of the armor-piercing variety. The Court of Appeals affirmed the conspiracy counts of the indictment. See also, lower court decision, 422 F. Supp. 147 (E.D. Pa. 1976).

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12. United States v. Hillick, No. 75-1036, slip op., 4th Cir. (Aug. 25, 1975). Appellants appealed their sentences on convictions of multiple violations of the Federal Gun Control Act of 1968 (Pub. L. 90-618, 82 Stat 1213, as amended). They had been found guilty of conspiring to transport weapons, explosives, and armor-piercing ammunition to the Irish Republican Army. The sentences were upheld.
13. United States v. Burton, 341 F. Supp. 302 (W.D. Mo. 1972). See also, United States v. Burton, 351 F. Supp. 1372 (W. D. Mo. 1972), aff'd, 475 F.2d 469 (8th Cir. 1973). The defendant was charged with delivering a firearm and ammunition to a common carrier for transportation and shipment in interstate commerce without giving proper notice. Some of the rounds in a fully loaded revolver were armor-piercing. A challenge of the search leading to the prosecution was rejected.

It would appear from a reading of these decisions that armor-piercing ammunition was in no instance a primary focus of judicial inquiry. The cases may nevertheless be of significance to the extent that they shed light on the frequency with which incidents involving such bullets have come before the courts. It is, of course, impossible to know how many cases have involved such ammunition but have not resulted in specific reference to armor-piercing capability in a written opinion.

We hope this information will be of some assistance. If we can be of further help, please let us know.


Kent M. Ronhovde
Legislative Attorney



Congressional Research Service
The Library of Congress

Washington, D.C. 20540

January 10, 1985

TO : House Committee on the Judiciary,
Subcommittee on Crime
Attention: Eric Sterling

FROM : American Law Division

SUBJECT : Revocation of Federal Firearm Dealers' Licenses for the Sale of
Armor-Piercing Ammunition Under Proposed Legislation

This will respond to your request for information regarding the above matter. Specifically, you ask for background information on legal issues involved in legislation to ban the sale of armor-piercing ammunition by federally licensed gun dealers. You have expressed concern that in certain instances license revocation may be harsh when identification of armor-piercing rounds may be difficult for the well-intentioned individual dealer. While contemplated lists of proscribed rounds would be furnished by the Secretary of the Treasury, a significant burden might be placed upon dealers considered to be on notice that to sell any such rounds is an offense.^{1/} If, as has been suggested, a scienter requirement is included in the offense, the hardship of revocation would only fall upon those with some degree of foreknowledge of the wrongfulness of the sale.

^{1/} Not only would dealers conceivably be faced with long lists of prohibited types and makes of ammunition, but they would also face the problem that many such rounds may not be distinguishable from other ammunition by physical inspection.

ABSOLUTE LIABILITY

Statutory impositions of strict liability for failure to comply with reasonable efforts to preserve the general welfare have been upheld in the face of due process challenge. Not only have such regulatory schemes withstood challenge in the civil context, but in the criminal context as well, where statutes will be more strictly construed. United States v. Balint, 258 U.S. 250 (1922). See also, Lambert v. California, 355 U.S. 225 (1957); United States v. Dotterweich, 320 U.S. 277 (1943). The Supreme Court said long ago in City of Chicago v. Sturges, 222 U.S. 313 (1911), a case involving exercise of state police powers:

It is a general principle of our law that there is no individual liability for an act which ordinary human care and foresight could not guard against. It is also a general principle of the same law that a loss from any cause purely accidental must rest where it chances to fall. But behind and above these general principles which the law recognizes as ordinarily prevailing, there lies the legislative power, which, in the absence of organic restraint, may, for the general welfare of society, impose obligations and responsibilities otherwise nonexistent.

Primarily, governments exist for the maintenance of social order. Hence it is that the obligation of the government to protect life, liberty and property against the conduct of the indifferent, the careless and the evil-minded may be regarded as lying at the very foundation of the social compact. A recognition of this supreme obligation is found in those exertions of the legislative power which have as an end the preservation of social order and the protection of the welfare of the public and the individual. If such legislation be reasonably adapted to the end

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in view, affords a hearing before judgment, and is not forbidden by some other affirmative provision of constitutional law, it is not to be regarded as denying due process of law under the provisions of the Fourteenth Amendment (at 322).

In United States v. Balint, supra, the Court upheld imposition of strict criminal liability under a statute making it unlawful to sell narcotics without a written order. The defendant claimed that the indictment was insufficient because it failed to allege that he had known that the drugs sold were narcotics. Chief Justice Taft said in that case:

While the general rule at common law was that the scienter was a necessary element in the indictment and proof of every crime, and this was followed in regard to statutory crimes even where the statutory definitions did not in terms include it . . . there has been a modification of this view in respect to prosecutions under statutes the purpose of which would be obstructed by such a requirement. It is a question of legislative intent to be construed by the court. It has been objected that punishment of a person for an act in violation of law when ignorant of the facts making it so, is an absence of due process of law. But that objection is considered and overruled in Shevlin-Carpenter Co. v. Minnesota, 218 U.S. 57, 69, 70, in which it was held that in the prohibition or punishment of particular acts, the State may in the maintenance of a public policy provide "that he who shall do them shall do them at his peril and will not be heard to plead in defense good faith or ignorance." Many instances of this are to be found in regulatory measures in the

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exercise of what is called the police power where the emphasis of the statute is evidently upon achievement of some social betterment rather than the punishment of the crimes as in cases of mala in se (at 252)
(Emphasis supplied)

In Balint the Court stressed that "where one deals with others and his mere negligence may be dangerous to them, as in selling diseased food or poison, the policy of the law may, in order to stimulate proper care, require the punishment of the negligent person though he be ignorant of the noxious character of what he sells" (at 253). In language of arguable application to armor-piercing ammunition as well as narcotics, the Court concluded:

[The statute's] manifest purpose is to require every person dealing in drugs to ascertain at his peril whether that which he sells comes within the inhibition of the statute, and if he sells the inhibited drug in ignorance of its character, to penalize him. Congress weighed the possible injustice of subjecting an innocent seller to a penalty against the evil of exposing innocent purchasers to danger from the drug, and concluded that the latter was the result preferably to be avoided. Doubtless considerations as to the opportunity of the seller to find out the fact and the difficulty of proof of knowledge contributed to this conclusion." (at 254) 2/

In United States v. Park, 421 U.S. 658 (1975), the Court upheld conviction of the president of a large national food chain for violations of the Federal

2/ For a discussion of arguments for and against strict liability in criminal laws, see 12 Stanford Law Review 731 (1960).

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Food, Drug, and Cosmetic Act involving exposure of interstate shipments of food to rodent contamination at a company warehouse. While the company pleaded guilty, the president argued that provision of sanitary storage was a matter that he had delegated to "dependable subordinates." At issue on appeal to the Supreme Court was whether proof of "wrongful action" on the part of the President was an element of the offense required by due process. The Court's holding that such proof was not necessary may also suggest a rationale for the conclusion that failure of a firearms dealer to track types of ammunition could be made grounds for permissible license revocation in spite of an absence of knowledgeable wrongdoing. The Court said in Park: "Congress has seen fit to enforce the accountability of responsible corporate agents dealing with products which may affect the health of consumers by penal sanctions cast in rigorous terms, and the obligation of the courts is to give them effect so long as they do not violate the constitution." (at 673) Descriptions of the nature of the Federal Food, Drug, and Cosmetic Act included in Park also suggest parallels which could be drawn to federal firearms laws:

. . . the Act imposes not only a positive duty to seek out and remedy violations when they occur, but also, and primarily, a duty to implement measures that will insure that violations will not occur. The requirements of foresight and vigilance imposed on responsible corporate agents are beyond question demanding, and perhaps onerous, but they are no more stringent than the public has a right to expect of those who voluntarily assume positions of authority in business enterprises whose services and products affect the health and well-being of the public that supports them. (at 672)
(Emphasis supplied)

In United States v. Freed, 401 U.S. 601 (1971), the Supreme Court upheld the validity of provisions of the National Firearms Act (48 stat. 1236, as amended) prohibiting the receipt or possession of an unregistered firearm without requiring any specific intent on the part of the defendant. The Court held that the absence of such a requirement in an essentially regulatory statute in the area of public safety does not violate due process requirements. In Freed the appellees had been indicted under the act for possessing unregistered hand grenades. The Court said: "This is a regulatory measure in the interest of the public safety, which may well be premised on the theory that one would hardly be surprised to learn that possession of hand grenades is not an innocent act. They are highly dangerous offensive weapons, no less dangerous than the narcotics involved in United States v. Balint" (at 609)^{3/}

The Gun Control Act of 1968

The Gun Control Act of 1968 (P.L. 90-618, 82 stat. 1213, as amended) now provides for revocation of licenses to manufacture, import, or deal in firearms as a business. Section 923(e) of Title 18 of the United States Code reads:

The Secretary may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter. The Secretary's action under this

^{3/} For a discussion of Freed and the view that strict criminal liability is unjust, see 24 Wayne Law Review 1571 (1978).

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subsection may be reviewed only as provided in subsection (f) of this section.

Revocations under 18 U.S.C. 923 must be accompanied by (1) written notice from the Secretary of the Treasury stating specifically the grounds for revocation (to be tendered prior to the effective date of the revocation); (2) opportunity for a hearing to review the revocation; (3) opportunity for a stay of the effective date of the revocation; and (4) judicial review of revocation in United States District Court. The Secretary has issued regulations detailing revocation procedures. See 27 CFR §178.71 et seq.

While the license revocation provision of current law does not require that violations of the Act be "willfull" in order to trigger revocation, one court has so interpreted the intent of Congress. In Rich v. United States, 383 F. Supp. 797 (1974), the court found that it could only interpret the revocation provisions of the Gun Control Act in light of the license issuance provisions included in the law:

The licensing provisions of §923 impose a duty upon the Secretary to issue a license unless the applicant is disqualified by the carefully defined exceptions of §923(d)(1). Sections 923(d)(1)(C) and (D) provide that licenses may be denied only for "willfull" violations of the provisions of the Act or regulations or willfull failure to disclose material information. The lack of an equivalent willfull intent in the revocation section 923(e) creates an anomalous situation. Apparently the Secretary may revoke for error, inadvertence, or simple ignorance of regulation. Such revocation then becomes an exercise in futility if thereafter the Secretary by the plain language

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of §923(d) must reissue the license absent a showing of willfull violation. It cannot be that Congress intended this formalistic paradox. Accordingly, we hold that the Secretary must show a willfull violation of statutes or rules and regulations promulgated thereunder in order to prevail herein.

See also, Shyda v. Director, B.A.T.F., 448 F. Supp. 409 (M.D. Pa. 1977).

The Federal Firearms Owners Protection Act

Legislation reported out by the Senate Judiciary Committee in the 98th Congress would have amended §923(e) to make it clear that revocation could only follow "willfull" violations. The Federal Firearms Owners Protection Act (S. 914, H.R. 2420) as reported would have made this change "to ensure that licenses are not revoked for inadvertent errors or technical mistakes." S. Rept. No. 98-583, 98th Cong., 2d Sess. 14 (1984).

That legislation would also have amended current law to allow a licensee to sell a firearm with a barrel length of greater than three inches to a resident of any other state, if the sale, delivery and receipt of that firearm fully comply with the legal conditions of sale in both states. The proposal stipulated that "any licensed manufacturer, importer or dealer shall be presumed, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States." The Senate Report includes the following discussion of the burden this places upon the licensee:

Since licensees are presumed to have knowledge of existing state law and published local ordinances under the Committee amendment, Section 109(1) of the bill requires the Secretary of the Treasury, upon the effective date of the Act, the [sic] publish and provide to all licensees

a compilation of the state laws and published ordinances of which licensees are presumed to have knowledge. Any amendments thereto are required to be published in the Federal Register, revised annually, and furnished to each licensee.

In view of the stiff penalties to which a licensee is potentially subject under the bill, the Committee anticipates that the Secretary will make every effort to ensure the accuracy and completeness of the information required to be provided. Furthermore, where a dealer feels uncertain about the requirements of the law of the state of the purchaser's residence, he may, of course, decline to make a sale to such person. Alternatively, he could require of the purchaser that the transaction be conducted through a licensee in the purchaser's own state. (at 10-11)

Scienter

To the extent that the informational burden to be placed on the licensee under an armor-piercing bullet ban is severe, and to the extent that standards for making determinations as to bullet capabilities may be somewhat vague, the inclusion of a scienter requirement would avoid revocation of the license of well-intentioned dealers. Due process challenges for vagueness or uncertainty in statutory proscriptions may be overcome by requirements that those penalized have acted in bad faith. See, e.g., Corin v. United States, 312 U.S. 19, 27-28 (1941). The courts will generally look to the intent of the legislature in determining how to interpret scienter language, even when the term used is "knowing", "willfull", "reckless", or other common language.

The lack of uniformity with which such terms have been applied in the past is perhaps best summarized by the Senate Report to accompany the Criminal Code Reform Act of 1981 (S. 1630, 97th Congress) which sought to make order of this "chaos":

Present Federal criminal law is composed of a bewildering array of terms used to describe the mental element of an offense. The National Commission's [on Reform of Federal Criminal Laws] consultant on this subject identified 78 different terms used in present law. These range from the traditional "knowingly," "willfully," and "maliciously," to the redundant "willfull, deliberate, malicious, and premeditated," and "knowingly and willfully," to the conclusive "unlawfully," "improperly," and "feloniously," to the self-contradictory "willfully neglects." No Federal statute attempts a comprehensive and precise definition of the terms used to describe the requisite state of mind. Nor are the terms defined in the statutes in which they are used. Instead the task of giving substance to the "mental element" used in a particular statute, or to be inferred from a particular statute, has been left to the courts.

Not surprisingly, the proliferation of these terms has left the criminal justice system with confusing and even conflicting laws. Justice Jackson characterized the mental element concepts in Federal law as being "elusive" because of "the variety, disparity and confusion" of judicial definitions. For example, the term

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"willfull" has been construed by the courts in a variety of ways, often inconsistent and contradictory. The courts have defined a "willfull" act as an act done voluntarily as distinguished from accidentally, an act done with specific intent to violate the law, an act done with bad purpose, an act done without justifiable excuse, an act done stubbornly, an act done without grounds for believing it is lawful, and an act done with careless disregard whether or not one has the right so to act.

The term "knowingly," which is often used in conjunction with "willfully," has been defined in terms of awareness; in terms of a defendant's inference from the circumstances or belief that something is probably true; in terms of a defendant's awareness of a "high probability" that a circumstance exists; in terms of intentional or purposeful or "studied ignorance" as to the existence of a fact; and in terms of "gross indifference to" or "willfull neglect of" a duty in respect to ascertainment of particular facts.

Similarly, the concept of "malicious," which in some contexts has been defined to mean little more than intentionally or knowingly engaging in prohibited conduct without legal justification, in other contexts has meant doing a harm malevolently, for the sake of the harm as an end in itself. "Wanton" has appeared to serve as an equivalent of "reckless" or "with gross negligence."

As Professor Weinreb, consultant to the National Commission, summarized the state of Federal law with respect to the "mental element":

Unsurprisingly, the courts have been unable to find substantive correlates for all these varied descriptions of mental states, and in fact, the opinions display far fewer mental states than the statutory language. Not only does the statutory language not reflect accurately or consistently what are the mental elements of the various crimes; there is no discernible pattern or consistent

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rationale which explains why one crime is defined or understood to require one mental state and another crime another mental state or indeed no mental state at all.

(S. Rept. No. 97-307, 97th Congress, 1st Session 64-65 (1981)).

Rules of strict construction in criminal matters may not be applied in a civil license revocation proceeding, allowing greater flexibility in legislative interpretation. However, one treatise suggests that "[o]n the theory that legislation concerned with the revocation or suspension of licenses to engage in a profession or vocation is penal in nature, a rule of strict construction is sometimes applied with respect to such provisions."

51 Am. Jur. 2d Licenses and Permits §58 (1970). Thus whether the procedure of revocation is to be considered civil or criminal, clarity in defining the scienter requirement will add to the predictability and consistency of future court rulings should revocation be contested.

Other License Revocation Statutes

Under federal drug laws, those dispensing narcotic drugs to individuals for maintenance treatment or detoxification must obtain specific annual registration from the Attorney General for that purpose. As provided in 21 U.S.C.

823(g) the Attorney General shall register an applicant:

- (1) if the applicant is a practitioner who is determined by the Secretary [of Health and Human Services] to be qualified (under standards established by the Secretary) to engage in the treatment with respect to which registration is sought;
- (2) if the Attorney General determines that the applicant will comply with standards established by the Attorney General respecting (A) security of

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stocks of narcotic drugs for such treatment, and (B) the maintenance of records (in accordance with section 827 of this title) on such drugs; and
(3) if the Secretary determines that the applicant will comply with standards established by the Secretary (after consultation with the Attorney General) respecting the quantities of narcotic drugs which may be provided for unsupervised use by individuals in such treatment.

The regulations governing such treatment of narcotic addicts are lengthy and detailed. (See 21 C.F.R. Part 291 and Part 1301.) Denial, revocation, and suspension of such registration is authorized at 21 U.S.C. 824 which states, inter alia: "A registration pursuant to section 823(g) of this title to dispense a narcotic drug for maintenance treatment or detoxification treatment may be suspended or revoked by the Attorney General upon a finding that the registrant has failed to comply with any standard referred to in section 823(g) of this title." While extensive due process procedures are provided by section 824 (e.g., notice and hearing) no scienter language is included in the statute. As described in the House Report to accompany the Narcotic Addict Treatment Act of 1974 (Pub. L. 93-281): "The proposal requires separate registration with D.E.A. for narcotic treatment programs. Registration will be predicated on the demonstrated ability to comply with medical standards established by F.D.A. and security standards established by D.E.A. The bill also provides authority to withdraw registration for failure to comply with these standards" H. Rept. No. 93-884, 93rd Cong., 2d Sess. 4 (1974).

As drug laws represent an effort to protect the public welfare from a harmful substance, so do arms export/import laws seek to provide protection for

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national interests. Under 22 U.S.C. 2778 no defense articles designated by the President may be exported or imported without a license. In this instance the license itself provides for revocation at the discretion of the Secretary of State. It is statutorily required by 22 U.S.C. 2791 that "[e]ach export license issued under section 2778 . . . shall provide that such license may be revoked, suspended, or amended by the Secretary of State, without prior notice, whenever the Secretary deems such action to be advisable."

The federal securities laws provide for registration and regulation of brokers and dealers by the Securities and Exchange Commission. The Securities Exchange Act of 1934, (48 stat. 74, 15 U.S.C. 77a et seq., as amended), provides, among other bases for revocation of such registration, a finding (after notice and opportunity for hearing) that a broker or dealer "has willfully violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board . . ." (§15(b) of the Act) (Emphasis supplied). In Gearhart & Otis, Inc. v. Securities and Exchange Commission, 348 F.2d 798 (D.C. Cir. 1965), the petitioners sought review of a Commission order revoking their broker-dealer registration. At issue in the case was whether the petitioners had to be found to have willfully intended to violate the law. The court held that specific intent to violate the law was not an essential element of the willfulness required to violate section 15(b) of the Act: "The proof necessary for a violation of section 15(b) by using a false and misleading offering circular in the sale of common stock is a showing that petitioners sold common stock knowingly using a false and misleading offering circular." (at 803) Gearhart cited

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Tager v. Securities & Exchange Commission, 344 F.2d 5 (2d Cir. 1965) in which the Second Circuit had said: "It has been uniformly held that "willfully" in this context means intentionally committing the act which constitutes the violation. There is no requirement that the actor also be aware that he is violating one of the Rules or Acts." (at 8)

Clearly, there is no uniformity among federal licensing statutes as to standards for revocation. Some laws appear to suggest reliance upon the notion that "the ultimate authority from which a license to carry on a particular activity derives has inherent power to withdraw the license." 51 Am. Jur. 2d Licenses and Permits §58 (1970). Other statutory schemes rely on failure of the licensee to meet requirements built into the licensing agreement as the basis for revocation. These violations have to be intentional in some instances, and in other laws the violation itself amounts to sufficient cause for revocation regardless of intent. Some laws require "flagrant" or "repeated" violations in order that license revocation be instituted.^{4/} In one statute "knowing or careless" improper conduct is made grounds for revocation.^{5/}

^{4/} For example, live poultry dealers and handlers must be licensed by the Secretary of Agriculture under 7 U.S.C. 218a. The statute stipulates at 7 U.S.C. 218d as follows:

Whenever the Secretary determines, after opportunity for a hearing, that any licensee has violated or is violating any of the provisions of this subchapter, he may publish the facts and circumstances of such violation and by order suspend the license of such offender for a period not to exceed ninety days and if the violation is flagrant or repeated he may by order revoke the license of the offender.

^{5/} Licensing of cotton classifiers by the Secretary of Agriculture under 7 U.S.C. 53.

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Another federal licensee may lose that license if he "has committed an act^{6/} of incompetence, misconduct, or negligence."

Conclusion

Where the authority to issue a license is clear, where revocation grounds are stipulated by statute, and where due process procedures are provided, legislative discretion in the creation of licensing schemes would appear to be exceedingly broad. By accepting and acting under a license, the licensee may be said to consent to all valid conditions imposed thereby, including provisions for its revocation. See 51 Am. Jur. 2d Licenses & Permits §58 (1970). In some cases the burden assumed by the licensee in order to remain in compliance with license requirements may be great. But especially where police powers are invoked by the legislature to protect the public welfare from a reasonably perceived danger, the complexity of the licensee's burden would not appear to be an obstacle to revocation for delinquency.

Thus the fact that a federal firearm licensee could suffer revocation of his license for negligently selling armor-piercing ammunition would not appear to jeopardize the validity of such a provision. Assertions of legislative concern over the inherent dangers in the proliferation of such ammunition coupled with requirements that the Secretary of the Treasury provide necessary data on prohibited rounds would in all likelihood suffice to overcome judicial challenges regarding the reasonableness of the penalty for error.

The Gun Control Act of 1968 already provides for federal firearm license revocation for violation of its provisions and regulations issued by the

^{6/} See Merchant Mariners documents provision, 46 U.S.C. 7703.

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Secretary of the Treasury pursuant thereto. While judicial pronouncements have interpreted the legislative intent as requiring "willful" violations in such cases, it has not been held that such scienter is constitutionally mandated.

To be sure, inclusion of a clearly defined intent element in violations of ammunition sales provisions would seem reasonable where the burden on the licensee is truly onerous and where well-intentioned error is inevitable. But where Congress perceives the danger to be significant, the courts will be slow to question the validity of a regulatory scheme adopted to protect the public from perceived danger.



Kent M. Ronkove
Legislative Attorney
American Law Division
January 10, 1985

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515

Ninety-ninth Congress

February 12, 1985

John M. Walker, Jr.
Assistant Secretary for Enforcement and Operations
Department of the Treasury
Washington, D.C. 20220

Dear Mr. Walker:

Two similar bills to control armor piercing ammunition, H.R. 4 and H.R. 13, have been introduced in this session of the House of Representatives.

The definitions in those bills (different in phrasing but identical in effect) are taken from H.R. 5845 (98th Congress). You supported that bill as the Administration's bill in your testimony before the Subcommittee on Crime on June 27, 1984. The definition, you testified, was developed with the participation of the Department of Justice and the Bureau of Alcohol, Tobacco and Firearms. Using that definition, you said the bill would prohibit importation and manufacture of all of the ammunition that is specifically designed to be armor piercing.

Please advise me what specific ammunition the Department believes would be covered by this definition. I would like to know specifically what ammunition would be subject to the prohibition on manufacture and importation. I would also like to know specifically what ammunition, which meets the construction half of the definition with respect to solid projectiles or projectile cores, would be excluded from the definition because it has a "legitimate use for sporting purposes".

Thank you very much for your kind assistance.

Sincerely yours,

William J. Hughes
Chairman
Subcommittee on Crime

WJH:ees

61-780 230



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

MAR 18 1985

Dear Mr. Chairman:

This refers to your letter of February 12, 1985, in which you ask about specific cartridges which would be covered by the definition of armor-piercing ammunition as contained in H.R. 4 and H.R. 13. You also asked which ammunition, although covered by the definition, would be excluded because it has a legitimate use for sporting purposes.

The definitions contained in H.R. 4 and H.R. 13 would restrict the manufacture and importation of all conventional military type armor-piercing ammunition which contains a projectile core constructed from any of the materials listed in the definition. Additionally, certain recently developed military cartridges, such as the NATO 5.56x45mm cartridge, which utilize a hard metallic penetrator, would also be covered. The definition would also prohibit the manufacture or importation of ammunition, such as KTW, Arcane, THV, Czechoslovakian and German 9mm ammunition which has a steel or iron projectile core and other similar type ammunition.

With respect to your question concerning ammunition, which meets the construction portion half of the definition, with respect to solid projectile or projectile cores, but would be excluded from the definition because it has a legitimate use for sporting purposes; ammunition of this type would consist of various high powered sporting cartridges which are intended for use against dangerous game.

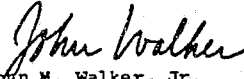
Many of these cartridges use projectiles which contain a hard insert to aid the bullet's penetration of the animal's skin and then cause the projectile to expand. Projectiles of this type are most often found in British and other European large-caliber sporting cartridges. It should be pointed out that soft body armor was never intended to provide protection against cartridges of this power, and even if ammunition of this type

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were loaded with projectiles constructed entirely from lead, soft body armor would not provide protection against them.

We trust that the foregoing has been responsive to your inquiry. If we can be of further assistance, please contact us.

Sincerely,



John M. Walker, Jr.
Assistant Secretary
(Enforcement and Operations)

The Honorable
William J. Hughes
Chairman, Subcommittee on Crime
Committee on the Judiciary
House of Representatives
Washington, DC 20515

Enclosure

WILLIAM J. HUGHES
2ND DISTRICT NEW JERSEY

COMMITTEES
COMMITTEE ON CRIME
AND TERRORISM
SUBCOMMITTEE ON CRIME

COMMITTEE ON INVESTIGATION
SUBCOMMITTEE ON CRIME

SELECT COMMITTEE ON AGING

SELECT COMMITTEE ON
NARCOTICS, ALCOHOL AND CONTROL

Congress of the United States
House of Representatives
Washington, D.C. 20515

WASHINGTON OFFICE
315 Cannon House Office Building
Washington, D.C. 20515
(202) 225-4372

DISTRICT OFFICE
3209 New Place
Hightstown, New Jersey 08520
(609) 445-3557

151 North Broadway
P.O. Box 348
Princeton, New Jersey 08502
(609) 978-3373

February 18, 1985

John M. Walker, Jr.
Assistant Secretary for Enforcement and Operations
Department of the Treasury
Washington, D.C. 20220

Dear Mr. Walker:

The Department has testified that it has obtained voluntary agreements from several manufacturers of armor piercing ammunition to restrict sale only to police agencies.

Last fall I requested copies of these agreements, which were negotiated by former Deputy Assistant Secretary Robert E. Powis, from Deputy Assistant Secretary Edward T. Stevenson. Mr. Stevenson ordered a canvass of Mr. Powis' files on this subject and transmitted to my staff copies of correspondence and a memorandum written by Mr. Powis.

Despite requests in Mr. Powis' letters to three of the manufacturers for written confirmation of their agreement to restrict sales of this ammunition, such letters were not among the documents from his file transmitted to my staff. A June 1982 letter from Mr. Powis to a fourth manufacturer, American Ballistics Company, indicated that the matter was still being considered by them. No agreement appears to ever have been made with that firm. What is the status of that firm's sales of armor piercing ammunition?

Did any of the manufacturers ever confirm in writing their agreement to restrict the sale of armor piercing ammunition? What is the current status of the voluntary agreements by the various manufacturers of armor piercing ammunition? What is being done to monitor the sales of armor piercing ammunition?

Thank you for your attention to this matter.

Sincerely yours,

William J. Hughes
Chairman
Subcommittee on Crime

WJH:ees



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

MAR 28 1985

Dear Mr. Chairman:

This letter provides an update on the status of the 1982 agreements that were obtained by this office from the manufacturers and importers of ammunition generally classified as armor-piercing.

Under the terms of these agreements, manufacturers and importers of armor-piercing ammunition are required to limit domestic sales to law enforcement and military purchasers. Of the seven firms manufacturing or importing this type of ammunition in recent years, only three continue to do so, and four have discontinued production and sale altogether.

In April, 1984, special agents from the Bureau of Alcohol, Tobacco and Firearms interviewed executive officers of the firms manufacturing and importing armor-piercing ammunition and conducted a review of the distribution records of these firms. There was no evidence that sales to anyone other than authorized buyers were taking place. In March, 1985, ATF conducted a second examination, with the same results. In all cases, the producers were found to be in compliance with the voluntary agreement and exhibited an attitude of cooperation. ATF also obtained from the firms information on the volume of production. ~~Within~~ production from the three remaining producers is 15 to 19 boxes, or 150 to 190 cartridges. The manufacturer of KTW ammunition reported that his sales were negligible and that he had little stock left.

The following lists the manufacturers and importers and summarizes the status of their commercial activity with respect to armor-piercing ammunition:

Voluntary Agreements on Sales

- | | |
|---|--|
| 1. North American Ordnance Company 2271 Stax Court P.O. Box 4288 Pontiac, Michigan 48057 | KTW Police and Military Sales Only |
| 2. Euclid Sales Company 1145 Euclid Avenue, NE Atlanta, Georgia 30307 | Black Steel Police and Military Sales Only |
| 3. American Ballistics P.O. Box 1410 Marietta, Georgia 30061 | A.P. Ammunition Police and Military Sales Only |

- 2 -

Discontinued Manufacture or Import

- | | |
|--|---|
| 1. Winchester Group Olin Corporation East Alton, Illinois 62024 | Hiway Master Discontinued 1982 |
| 2. Dynamit Nobel of America 105 Stonehurst Court Northvale, New Jersey 07647 | GECO Metal Piercing import Discontinued 1982 |
| 3. Interarms 10 Prince Street Alexandria, Virginia 22213 | 9 Luger Czok. import Discontinued 1980 |
| 4. Van Riper Ammunition Company Governor Bent House 18 Bent Street, Box 2484 Taos, New Mexico 87571 | "Pointed Nose" Police bullets Discontinued 1984 |

We have enclosed a summary of the 1985 ATF review and correspondence from dealers as evidence of their compliance with the agreement. I trust this information is helpful, and I would be pleased to respond to any additional questions you may have.

Sincerely,

/s/ John M. Walker, Jr.

John M. Walker, Jr.
Assistant Secretary
(Enforcement and Operations)

The Honorable
William J. Hughes
Chairman
Subcommittee on Crime
House of Representatives
Washington, D.C. 20515

Enclosures

Briefing Paper
Firearms Division
Law Enforcement
March 15, 1985

Purpose: Report survey results on armor-piercing ammunition

On March 12, 1985, a survey of four armor-piercing ammunition manufacturers/dealers was conducted. The following relates to the current market, production, and availability of armor-piercing ammunition:

1. The North American Ordinance Company
2271 Star Court, Auburn Hills, Michigan

Owner John Kline advised that his philosophy on the disposition of armor-piercing bullets had not changed since his discussion with Mr. Powis. He delivers only to bona fide law enforcement. However, his business in the armor-piercing ammunition area is almost negligible and he has little KTW stock left.

2. The Euclid Sales Company
1145 Euclid Avenue, N.W., Atlanta, Georgia

Steve Feinberg of Euclid Sales said his company was selling armor-piercing ammunition only to police departments, at a rate of five to seven boxes a month.

3. American Ballistics
P.O. Box 1410 Marietta, Georgia

Jim Mullinax of American Ballistics advised that they sold only to law enforcement and the military, at a rate of ten to twelve boxes a month.

4. Van Riper Ammunition Company
P.O. Box 1, Carson, New Mexico

Mr. Van Riper was in California at the time of the visitation, but his wife, who is familiar with his business, advised that Van Riper no longer manufactured or distributed armor-piercing ammunition. She said that Mr. Van Riper had discontinued production quite some time ago.

-2-

Synopsis: Of the four distributors, all current distributors of armor-piercing ammunition voluntarily restrict sales to police and military. A total of fifteen to nineteen boxes (10 rounds each) are distributed per month.

FILE

Briefing Paper
Headquarters
March 1, 1984

Purpose: Survey of armor piercing ammunition manufacturers

Persuant to a request, the Firearms Enforcement Branch contacted field offices and requested that a special agent personally contact the below listed six manufacturers to determine if they were producing armor-piercing ammunition, and if so, to whom they were selling such ammunition.

Their individual responses are listed below:

1. North American Ordnance Company (KTW ammunition)
2271 Star Court
P.O. Box 4288
Pontiac, Michigan 48057
(313) 852-8735
Mr. John Klein

North American sells its armor-piercing ammunition only to law enforcement. It does not sell to dealers.

.....

2. Remington Arms Company
939 Barnum Avenue
P.O. Box 1939
Bridgeport, Connecticut 06601

Remington has never produced armor-piercing ammunition.

.....

3. Winchester
Shamrock Street
East Alton, Illinois

Winchester discontinued production of its armor-piercing ammunition in February 1982.

.....

4. National Cartridge
Distributed by Euclid Sales
1145 Euclid Avenue
Atlanta, Georgia 30307

Armor piercing ammunition survey

National sold armor-piercing ammunition to the U.S. Navy and to Federal firearms licensees. The licensees were instructed to sell to law enforcement only. They manufactured 10,000 rounds and have 20 cases in stock.

.....

5. Randy Moore
Kestrel International Corp.
P.O. Box 809
Mesquite, Texas 75149

Kestrel has stopped production and never sold any armor-piercing ammunition.

.....

6. Dynamite Nobel of America Inc.
105 Stonehurst Court
Northvale, New Jersey 07647
(210) 767-1660

Dynamite Nobel does not manufacture armor-piercing ammunition, nor do they handle it.

.....

It should also be note that Mr. Klein of North American Ordnance Company, has stated he may testify at congressional hearings relative to armor-piercing ammunition legislation.



NORTH AMERICAN ORDNANCE CORPORATION

January 22, 1982

ATTENTION: ALL POLICE & LAW ENFORCEMENT PERSONNEL

SUBJECT: SALE OF KTW AMMUNITION

Gentlemen:

This correspondence is forwarded to you to reemphasize our concern and commitment to distribute KTW ammunition to law enforcement agencies and law enforcement personnel only. We have instructed our dealers to deliver KTW Metal Piercing Ammunition only to the following agencies or persons:

Local Police Agencies & Local Police Personnel
 State Police Agencies & State Police Personnel
 Federal Police Agencies & Federal Police Personnel
 Military Agencies & Military Personnel

Each dealer must upon placing an order with us for KTW Metal Piercing Ammunition fully execute the enclosed "Statement of Understanding & Compliance". We have experienced media personnel and newspaper personnel trying to purchase KTW under a number of erroneous circumstances. We are, therefore, asking that any law enforcement personnel requesting information on KTW ammunition please send us a photocopy of his credentials.

State, County & Municipal Government agencies can place orders directly with North American Ordnance Corporation. If the order is received on a formal purchase order or agency letterhead, the requirement to ship through a local dealer is exempted.

KTW ammunition will no longer be available in the MTM, 12-round ammo wallets; our standard packaging will be 50-round boxes. Our minimum purchase requirements per agency order is at least two (2) 50-round boxes for delivery to police organizations. It is permissible to order two (2) different calibers; each 50-round box must contain only one caliber.

North American Ordnance Corporation reserves the right to refuse any order. Further, North American Ordnance Corporation reserves the right to sell KTW to parties it deems acceptable.

If you have any questions, please feel free to contact me.

Sincerely,

NORTH AMERICAN ORDNANCE CORPORATION

John M. Klein
 John M. Klein
 President

JMK/rsf

Enc.

2271 STAR COURT, P.O. BOX 4288 • PONTIAC, MICHIGAN 48057 • (313) 852-8735 • TELEX 0235603

**NORTH AMERICAN ORDNANCE CORPORATION**

"STATEMENT OF UNDERSTANDING AND COMPLIANCE"

_____, 1982

I _____ certify that I am an officer of _____
(NAME) (PURCHASING COMPANY)
_____; FFL#- _____
(CITY) (STATE) (ZIP CODE)

I acknowledge that our company has ordered KTW Metal Piercing ammunition under our purchase order number _____ of ____/____/82. I understand and agree to dispense KTW ammunition consistent with the policy of "POLICE USE ONLY." I agree to screen and verify the credentials of all potential customers and to sell KTW ammunition only to sworn police officers, military policemen, security agents, or bonafided police product dealers. I agree to retain a photocopy of all KTW purchasers' identification credentials or to record the badge number and the department or agency which employs the purchaser.

I agree that North American Ordnance Corporation personnel have the right, with seven (7) days notice, to inspect _____ ammunition distribution records with
(PURCHASING COMPANY)
respect to the sale of KTW ammunition.

Finally, I agree not to sell KTW ammunition to parties who do not fit the above description or comply with the criteria set forth in this statement.

(SIGNATURE)



NORTH AMERICAN ORDNANCE CORPORATION

Thank you for your recent order for KTW ammunition. Since KTW is a "POLICE USE ONLY" product, it is necessary that certain formalities and criteria be met before we ship your order of KTW ammunition.

The enclosed "Statement of Understanding & Compliance" is forwarded to insure your understanding of our distribution policy and to further alert you to your responsibility in screening the recipients of KTW ammunition.

Your cooperation in continuing to distribute KTW for "POLICE USE ONLY" is greatly appreciated. Please fill out the enclosed "Statement of Understanding & Compliance" form and return it to us. Your order will then be shipped.

Thank you.

NORTH AMERICAN ORDNANCE CORPORATION



NORTH AMERICAN ORDNANCE CORPORATION

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Thank you.

NORTH AMERICAN ORDNANCE CORPORATION



NORTH AMERICAN ORDNANCE CORPORATION

January 21, 1982

ATTENTION: ALL KTW DEALERS
 SUBJECT: DISTRIBUTION OF KTW AMMUNITION

Gentlemen:

This correspondence is forwarded to you to reemphasize North American Ordnance Corporation's policy for the sale of KTW Metal Piercing Ammunition. Dealers are directed to deliver KTW Metal Piercing Ammunition only to the following agencies and/or persons:

Local Police Agencies & Local Police Personnel
 State Police Agencies & State Police Personnel
 Federal Police Agencies & Federal Police Personnel
 Military Agencies & Military Personnel

North American Ordnance Corporation requires that each order for KTW will be written on official company stationery of the purchasing company and payment affected by the purchasing organization. No personal checks will be accepted. In addition, each order will be accompanied by a fully-executed copy of the enclosed "Statement of Understanding & Compliance"; there will be no exceptions. We urge you to check the credentials of all potential KTW purchasers and be especially alert for newspaper and TV personnel who may try to impersonate police officers.


KTW will no longer be available in MTM, 12-round ammo wallets; our standard packaging will be 50-round boxes. Our minimum purchase requirements per order is at least four (4) 50-round boxes. It is permissible to order four (4) different calibers; each 50-round box containing only one caliber.

North American Ordnance Corporation reserves the right to refuse any order. Further, North American Ordnance Corporation reserves the right to sell KTW to parties it deems acceptable.

If you have any questions, please feel free to contact me.

Sincerely,

NORTH AMERICAN ORDNANCE CORPORATION


 John M. Klein
 President

JMK/rsf
 Enclosure

2271 STAR COURT, P.O. BOX 4288 • PONTIAC, MICHIGAN 48057 • (313) 852-8735 • TELEX 0235603

EUCLID SALES Co.

Importers, Exporters, Wholesale Distributors of Firearms & Accessories
1145 Euclid Avenue N.E., Atlanta, Georgia 30307
Call Toll Free - 1-800-554-7758
404-525-2801

March 1, 1984

Robert E. Powis
Deputy Assistant Secretary (Enforcement)
Department of the Treasury
Washington, D.C., 20220

Dear Mr. Powis:

This letter is to reaffirm our desire to fully co-operate with your request for voluntary restrictions of the sales of Black Steel Ammunition.

We were expecting a reply to our letter of October 18, 1983, in which we attempted to set up a dialogue with you, in order to provide a satisfactory solution which will be equitable to all concerned. However, we will voluntarily, upon your approval, cease all sales of the Black Steel Ammunition, except under the following circumstances: To Police Departments; Authorized Law Enforcement Agencies at the State & Local Level; Armed Forces of the United States; Approved Exports; Police Officers who provide certification, signed by their Chief, or Superior Officers, that the ammunition is required in the performance of their official duties as sworn officers of the Department.

An example of the Certification, which by the way, is a modification of the Strum Ruger & Co. form used for purchases of similar Law Enforcement Products, is enclosed for your inspection and approval.

We are still waiting for your reply to our inquiry regarding our proposed line of Tracer Ammunition as to the voluntary agreements or non-published restrictions. We would appreciate a response in this matter in order to facilitate our operation.

Sincerely yours,

Stephen Feinberg
Stephen Feinberg, Sec. Treas.
EUCLID SALES COMPANY

CC: Noel A. Haera
BATF
Chief Firearms Branch
1200 Pennsylvania Ave.
Federal Building
Washington, D.C., 20226

Earl P. Taylor
BATF
44 Broad St. NW
Suite 300
Atlanta, GA., 30303

Euclid Sales Co Law Enforcement Sales



STURM, RUGER & Company, Inc.

~~SALEM, CONNECTICUT 06484 U.S.A.~~

**OFFICER REQUEST TO PURCHASE MINI 14/20GB,
FOLDING STOCKS AND 30-ROUND MAGAZINES**

USUAL ARMOR OR METAL PICKING AMMUNITION

TO: ~~RUGER~~ ^{*Euclid*} LAW ENFORCEMENT DISTRIBUTOR

NAME: _____

ADDRESS: _____

We are a legally constituted Law Enforcement agency, a State, County or City municipality in the U.S.A.:

AGENCY: _____

ADDRESS: _____

Our Agency requests that Officer _____
(Name of Officer)

Badge Number _____, be able to purchase _____
(Badge Number) ~~Ruger~~ Product(s)

_____ which is required in the performance of his duties as a sworn officer of this Department.

PLEASE PRINT NAME

CHIEF, SHERIFF OR WARDEN: _____

SIGNATURE OF CHIEF,
SHERIFF OR WARDEN _____

DATE: _____

American Ballistics Company, Inc.

DESIGNERS AND MANUFACTURERS OF SPECIAL PURPOSE AMMUNITION



Mar. 8, 1985

P. O. BOX 1410
 MARIETTA, GEORGIA 30061
 (404) 434-8078
 CABLE: AMBACC ATLANTA
 TELEEX: 84-2461

E.T. Stevenson
 U.S. Department of the Treasury
 15th & Pennsylvania Ave.
 Room 4308
 Washington, D.C. 20220

Dear Mr. Stevenson:

This will confirm our telecon the day and past conversations with Mr. Robert Powis relative to the Armor-Piercing ammunition that we manufacture and sell. American Ballistics does affirm that all our sales of Armor-Piercing ammunition are restricted to Local, State, and Federal government enforcement agencies; U.S. Military departments, and Foreign Military Export sales approved by U.S. Department of State/Munitions Control.

We have voluntarily agreed to restrict sales per the Treasury Department request and will continue to maintain that position in the future.

Sincerely,

James Maltenieks
 President
 AMERICAN BALLISTICS CO., INC.

JM/pam