

EXECUTIVE ②

F66-11-1/KROGH, EGIL

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FILE NO. 245

No. of entry	No. of pages	Date of entry	Material entered
1	3	3/21/69	Memo from Eggers of Treasury to EK (3/18) re Mr. Marler's complaint of enforcement of Gun Control Act of 1968
2	20	5/12/69	Memo from Eggers of Treasury giving regulations concerning ammunition and firearms.
3	2	6/17/69	Krogh memo to Timmons re DC City Council fire arms regulations/Rep. John Dingell
4	9	7/31/69	Krogh memo to Alexander re Gun Control/Registration
5	3	10/2/69	Hulin memo to Kleindienst transmitting letter re firearms violation charges in North Carolina

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firearms

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OCTOBER 2, 1969

FOR THE DEPUTY ATTORNEY GENERAL

RE: FIRE ARMS ACT VIOLATION
CHARGES IN NORTH CAROLINA

John Ehrlichman asked that the attached be forwarded to you for a report on the Justice Department position.

He believes that your general policy of withholding such information should be waived in this case.

Tod R. Hullin
Administrative Assistant to
John D. Ehrlichman

Attachment

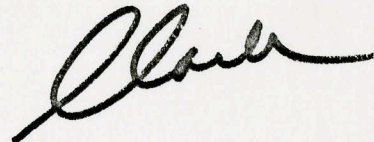
MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 30, 1969

TO: JOHN EHRLICHMAN
FROM: CLARK MOLLENHOFF



I am concerned that there may be some confrontation between the Justice Department and the Permanent Investigating Subcommittee chaired by Senator Ribicoff over access to a list of numbers of weapons seized in connection with the Fire Arms Act violation charges in North Carolina.

It would be unfortunate if the departments application of a general policy against disclosure of any information in pending criminal investigations would result in a public impression that the Administration was seeking to hide these records.

As I understand it, the Nixon Administration has nothing to hide with regard to either the noncommissioned officers investigation or the activities of Major General Carl Turner. The scandals took place in an earlier period of time. Secretary Laird is engaging in complete cooperation with the committee and the Justice Department took appropriate timely steps to obtain Turner's resignation as Chief Marshal at the first moment the evidence indicated questionable past conduct.

Senator Ribicoff and his staff are seeking the gun serial numbers for the purpose of verification of information that he already possesses, indicating that General Turner, as Provost Marshal, had acquired guns for army purposes and had sold them for personal profit. The general policy of declining to make information from files available is a good one, but there are reasonable exceptions that have been made in the past.

I have done all I can to explain this matter in perspective at various levels in the Justice Department. If there are problems that arise,

it will not be because they have not been told of all the possible pitfalls. It is my own impression that a trial attorney, Carl Belcher, a holdover, made his decision under general policy and that he was able to sell it to superiors.

The Administration has been most fortunate in avoiding any responsibility in connection with the Wooldridge and Turner matters. It is not difficult to see circumstances arise where some of our most avid critics might take the Justice Department's refusal to disclose information and turn it against us.

THE WHITE HOUSE
WASHINGTON

Date 4-16

For Krogh
From Tod Hullin *TH*

Since the reorganization of last November, it is no longer necessary for us to maintain the number of files that we have on hand.

As such, we are forwarding the attached for whatever disposition you may wish -- your own files, Central Files, File 13, etc.

#245

July 28, 1969

MEMORANDUM FOR LAMAR ALEXANDER

FROM BUD KROGH

SUBJECT GUN CONTROL/REGISTRATION

Attached is a copy of Don Santarelli's testimony before the Dodd committee on Thursday.

Both Treasury and Justice testified in opposition to any new gun control legislation at this point. The reason: not enough time to assess the effect of the 1968 Act. Also, both testified to the difficulty in maintaining records of all ammunition sales. Legislation is being drafted for our consideration which would eliminate the record-keeping obligation. Dealers and sportsmen and hunters nationwide have complained unceasingly since the requirements went into effect.

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P 1-9



ASSOCIATE DEPUTY ATTORNEY GENERAL
WASHINGTON
July 25, 1969

Mr. Egil Krogh
Deputy Counsel to the
President
The White House
Washington, D. C.

Dear Bud:

Attached is a final copy of my testimony as it was given before the Senate Judiciary Subcommittee on Juvenile Delinquency, Thursday, July 24. The hearing went very well. Dodd was extremely cordial and took our suggestions for a scrutiny of the operation of the existing act very well. I think that the Department of Justice made a very good showing.

Sincerely,

Donald E. Santarelli

P.S. Note my ~~shorted~~
shortened section on ammo.

STATEMENT OF DONALD E. SANTARELLI
ASSOCIATE DEPUTY ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
BEFORE THE
SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ON S.100, S.849, S.8977, S.2433
JULY 24, 1969 -- FIREARMS LEGISLATION

Mr. Chairman and Members of the Subcommittee, I appreciate the invitation to appear before this Subcommittee to give you the views of the Department of Justice on four legislative proposals affecting Federal controls over firearms and ammunition. The Department of Justice appears jointly with the Treasury Department because of our joint responsibilities in the enforcement of the Federal firearms laws. The primary responsibility for the actual administration of the Federal firearms statutes is with the Treasury Department. The Department of Justice provides the investigative assistance of the Federal Bureau of Investigation in procuring evidence of crime and the prosecutive arm of the United States Attorney in prosecuting violations of the Federal firearms laws in the Federal courts.

Therefore, I defer to the Treasury Department on S.100, S.1432, and S.2433, bills generally referred to as proposals for "registration and licensing" of firearms. A few comments, however, on those proposals are in order.

Last year the Congress passed legislation which completely revised and expanded the Federal statutes pertaining to the transferring, transporting, and possession of firearms and ammunition.

Title II of the Gun Control Act of 1968 revised the National Firearms Act to deal with the Supreme Court's decision in Haynes v. United States which had greatly limited the effectiveness of that Act. Because the National Firearms Act covers only "gangster" type weapons and destructive devices, it is not pertinent to the present legislative proposals before this Committee. Therefore, I will address my remarks toward the statutory framework created by other aspects of the legislation passed by the Congress last year, and the effect of the legislative proposals before this Committee on that statutory framework and their desirability.

..

Title I of the Gun Control Act of 1968, by curtailing interstate sales of firearms to individuals, both over-the-counter and through the mails, enables the several States to regulate effectively the sale and possession of firearms within their borders. This statutory framework was sufficiently well described and commented on by the representatives from the Treasury Department. But I believe it is necessary to emphasize that each State faces different problems and conditions in the area of firearms control. The problems and conditions peculiar to the populous urban Northeastern States are not those peculiar to the sparsely populated Plains and Mountain States. Thus, the legislatures of these diverse States are likely to adopt different measures in dealing with firearms.

The present statutory framework permits the States to design their own programs of firearms control according to their respective needs and protects them against circumvention through interstate and mail-order sales. The Department of Justice believes this is the proper statutory program to achieve this goal.

Furthermore, since the Gun Control Act of 1968 did not become effective until the end of 1968, we have had only approximately seven months of experience with its enforcement. Nevertheless, the statistics referred to in Mr. Thrower's testimony for the first six months of this year indicate a marked increase in the investigative activity made possible by the new and broader firearms legislation enacted by the Congress last year. However, it is too early for a similar increase to be reflected in our statistics on firearms prosecutions.

We agree with the representatives from the Department of the Treasury that registration and licensing proposals represent a distinct departure from previously held concepts of Federal controls of sporting firearms and would constitute an unwarranted invasion into the province of State and local governments. Keeping in mind the recent repudiation of similar proposals in the 90th Congress, and noting the possible constitutional problems raised specifically in the previous testimony, and contemplating the practical aspects of such an undertaking, and contrasting these factors against the fact that there is no clear indication that such a program would have a significant impact on the criminal misuse of firearms, the Department of Justice joins the Treasury Department

in opposing the enactment of registration and licensing proposals at this time.

Before looking to broader and more controversial statutory schemes for firearms control, it would be wise to look closely at the existing statutes with an eye towards perfecting them and making them more equitable in their application. A few comments on the existing law are in order.

Title I of the Gun Control Act of 1968 prohibits the sale of firearms and ammunition to several categories of interdicted persons, including fugitives from justice, and addicts and users of narcotic and dangerous drugs. Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, while prohibiting the possession of firearms by certain classes of persons, including those dishonorably discharged from military service, convicted felons, aliens unlawfully in the country and others, does not prohibit possession by those interdicted classes in Title I of the Gun Control Act. The danger posed by possession of firearms by persons in Title I, such as fugitives and narcotics addicts, is a very substantial one. Therefore, the Committee may well wish to consider this inconsistency between two different Federal statutes passed in the last Congress and make some attempt at resolving these apparent inconsistencies.

Another major problem that has become apparent in the operation of the recently enacted Federal firearms laws relates to the proliferation of cheap, small calibre handguns, known commonly as "Saturday Night Specials." As you will recall, from the past hearings and debate on this subject, it was widely believed that this kind of handgun was coming to this country from foreign sources. Consequently, importation of military surplus handguns was sought to be prohibited by a provision of the proposal which became the Gun Control Act of 1968. During the consideration of that proposal, the House of Representatives added an amendment excluding all military surplus firearms. The Gun Control Act now excludes from importation all military surplus firearms and firearms not particularly suitable or readily adaptable to sporting purposes. In an attempt to control these so-called cheap handguns, all imports have been subject to tight control by the Secretary of the Treasury and all military surplus has been forbidden. Nevertheless, the problem sought to be solved has not only resisted solution, but has proliferated further. By embargoing all military surplus and firearms not generally

suitable for sporting purposes, perhaps unfairly, a new "protected" industry has been created in the United States. The Alcohol, Tobacco and Firearms Division of the Internal Revenue Service estimates that 60,000 of these cheap handguns were manufactured in the United States in 1968. It is estimated that 700,000 of these guns will be manufactured here in 1969. It is further estimated that there will be approximately one million such handguns manufactured domestically in 1970. Thus, it is readily apparent that the problem caused by these Saturday Night Specials has not abated, but, in fact, has exacerbated. The Department of Justice and, as Mr. Thrower has indicated, the Department of the Treasury are actively considering appropriate measures for dealing with these problems. But, in the meantime, it may be wise for the Committee to direct its attention to this problem.

Another aspect of the Gun Control Act of 1968, that has raised substantial problems, is that relating to record keeping. As the representatives from the Treasury Department indicated, there is substantial reaction to the requirements in the 1968 Act for detailed recordation of all transactions involving sporting ammunition. Licensees, especially small dealers who lack clerical personnel, object to the burden imposed on them by the record keeping requirements. Sportsmen and shooters object to the burden and annoyance of providing required information and identification and filling out the forms. It is further argued that such recordation is meaningless to law enforcement since sporting ammunition is fungible and, thus, not easily identified. Furthermore, the hundreds of thousands of daily transactions in sporting ammunition create a volume of records almost impossible to deal with.

Careful consideration should be given to this subject in view of the widespread dissatisfaction with its implementation and the questionable ineffectiveness of its enforcement.

You have also asked for our views on S. 849, a bill to amend the penalty provisions for crimes committed while armed. S. 849 provides mandatory, additional consecutive sentences for persons who carry or use firearms during the commission of felonies in violation of Federal law. Sentences under this section could not be suspended, nor could offenders be given probation. Such sentences are designed to persuade the man who sets forth on a criminal venture to think twice of the consequences of going forth armed. A man who is armed in the commission of a crime is a man prepared to commit murder. We believe that the certainty

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of punishment for such conduct under mandatory sentence provisions will serve to deter, to some degree, such conduct.

The Gun Control Act of 1968 provided minimum mandatory sentences for such conduct. Section 924(c) of the Criminal Code, as enacted by that Act, provides that a person using a firearm to commit a Federal felony or who carries firearms unlawfully during the commission of any such felony shall be sentenced to not less than one year nor more than ten for the first offense, and not less than five nor more than twenty-five years for the second offense. In the case of a second offense, the court shall not suspend the sentence or give him a probationary sentence.

Minimum mandatory sentences in present law of one year for the first offense and five years for the second offense are not so high as to interfere with meaningful correctional programs and yet they are high enough to offer some prospect of deterrence.

These significant new penalties have been law for only some seven months. Our experience with their effectiveness has been extremely limited. Thus, it would seem premature to revise the present penalty structure at this time.

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THE WHITE HOUSE
WASHINGTON

Bush Krug

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 24, 1969

TO: HERB KLEIN

FROM: EDWARD L. MORGAN 

SUBJECT: RENEGOTIATION BOARD --
Disclosure of Renegotiated Profits

I have met with Chairman Hartwig of the Renegotiation Board and have read the briefs in the cases of Grumman Aircraft Engineering Corporation v. The Renegotiation Board, No. 22,635 in the United States Court of Appeals for the District of Columbia Circuit, and Holly Corporation v. The Renegotiation Board, No. 69-198 in the United States District Court for the Central District of California.

The Holly case in the District Court has been continued by stipulation until disposition of the Grumman case in the Circuit Court of Appeals since the issues are essentially the same.

If I am convinced of one thing, it is that the President or his Counsel should not advise the Chairman of the Renegotiation Board to undertake some act, in this case disclosure of certain information, which might violate the criminal laws, (18 USC 1905) and result in the Chairman's prosecution for criminal violation and possible fine and imprisonment.

While it may be suggested that in light of the President's general "free flow of information" position it would be laudable and popular for the Renegotiation Board to release the information in question for the first time under our administration, the great possibility that this release would be a violation of the criminal law and result in the imprisonment of the Chairman of the Board suggests that such action would be pure folly.

Two lawsuits are already pending. The Grumman case is on appeal to the Circuit Court on this very issue: whether or not this information should be made public. Grumman, who is making this demand, lost the case in the District Court. The Holly case, on similar facts, is being continued pending the outcome of the Grumman case.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

Since the question raised by the New York Times is now before the Courts, it would be highly inadvisable for the Executive Branch to supersede both the legislative and judicial branches by issuing hasty directions based upon our interpretation of the law. If the withholding of the information is not what the Congress intended, the Congress can clarify the law or the Court can find that this is not the intent of Congress. If, however, the contrary is true and it is so held by the Court after we release the information, the President, the Chairman of the Renegotiation Board, and the Office of the Counsel will share not only the public embarrassment, but perhaps the criminal liability as well.

In response to the New York Times' threat of a lawsuit, I think we should welcome it. This is a very difficult area of the law, and there are two lawsuits pending on the question already, but if the New York Times feels compelled to get into the act, so be it. This is clearly not a case of anyone being legalistically bureaucratic or bureaucratically legalistic, or anything of the kind -- it's a tough legal, not policy, question.

In other words, and quite simply, no one in this administration is opposing the New York Times, or any citizen's, right to know in this case -- we would no doubt champion it. However, if the Congress intended by statute that this material remain confidential and for its assurance provided criminal sanctions for the release of the information, the irresponsible release of such information under the hallowed banner of "the public's right to know" could put us all in jail.

Therefore, I vigorously oppose any attempt to influence the Renegotiation Board to make this information public pending the resolution of the two lawsuits referred to above which directly affect this question.

#245

June 17, 1969

MEMORANDUM FOR WILLIAM TIMMONS

FROM BUD KROGH

SUBJECT D. C. CITY COUNCIL FIRE ARMS REGS/
REPRESENTATIVE JOHN DINGELL

Bill, I asked Dick Blumenthal (who is my main contact man for the District of Columbia) to check into this matter. I have attached his memorandum to this so that you can get the reading of the District's government.

In responding to Congressman Dingell, I think you might indicate that a number of people in the District government had grave reservations about the regulations, but that it apparently had strong popular support.

You might suggest that Congress consider enacting legislation to supercede these regulations. I do not think it would be in order for us to exert pressure on the City Council government to recind them. This is not to say that I am in favor of them, because from what I have heard they are unfairly discriminatory against sportsmen and others, but that it would deal a blow to our efforts to make the District government more autonomous.

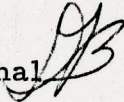
If you need more than this or a more specific "quasi-legal" answer," please let me know. Frankly, Bill, I am reluctant to offer any specific steps that we might take at this time.

THE WHITE HOUSE

WASHINGTON

June 16, 1969

TO: BUD KROGH

FROM: Dick Blumenthal 

You have asked about the authority of the President in the matter of firearms regulations approved sometime ago by the District of Columbia City Council which go into effect this week.

The authority of the Council in police matters derives from Title I, Sections 226-227 of the D. C. Code and the Reorganization Act of 1966. The Mayor could have vetoed the regulations shortly after the Council's action, and seriously considered doing so, but decided against it because of strong popular support for the Council's measures. The former Corporation Counsel, Charles Duncan, told me that he was "violently opposed" to these regulations and that he still has "grave doubts" about them. Presumably these regulations could be eliminated if (a) Congress passed a law specifically superseding the Council's regulations (which might be our suggestion for Congressman Dingell); (b) if the courts found this regulation in conflict with a statute already passed by Congress (I understand that there may be such laws but uncertain as to their content and I have not had the time to check them out, but will do so if you so direct me).

Attachment

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May 7, 1969

Dear Paul:

You did a great job in cleansing the air of the suspicion surrounding Secretary Kennedy last week. While I don't think we will have any additional problems, I wouldn't want to predict anything in this fish-bowl atmosphere.

Thanks very much for sending your memorandum reviewing the gun registration laws. Henry Cashen in our office has primary responsibility for matters pertaining to the Treasury Department, and I have transmitted your materials to him.

Regarding your request for a memorandum on the Freedom of Information Act, Ed Morgan advises me that he has asked Bill Rehnquist to make sure they are circulated among the general counsels. The memorandum was prepared in the Justice Department in 1967, and is pretty well up to date.

My best to you.

Sincerely,

Egil Krogh, Jr.
Staff Assistant to the Counsel

Mr. Paul W. Eggers
General Counsel
Treasury Department
Washington,, D. C.

May 7, 1969

MEMORANDUM FOR HENRY CASHEN

FROM BUD KROGH

SUBJECT GUN REGISTRATION LAWS

A couple of months ago, we received a letter from an irate California legislator decrying the regulations of the Treasury Department requiring strict recording of ammunition transactions. The legislator felt that the Treasury regulations exceeded the intent of the Gun Control Act of 1968, 18 U. S. C. Chapter 44.

I sent the letter to Paul Eggers of the Treasury Department for response, which Eggers sent. Eggers has sent to me the attached memorandum on the reason for requiring ammunition records and also suggestions for new legislation.

As the man responsible for the Treasury Department in the Counsel's office, I am sending this to you for your information and whatever action in the future might be necessary. When and if the proposed legislation goes through Wilf Rommel's office, you should be the one to clear it and make any suggestions which might be necessary.

I am sending a note to Paul Eggers indicating that you are the one who will be receiving all additional inputs on Treasury Department matters.

Thanks very much, Henry.



THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

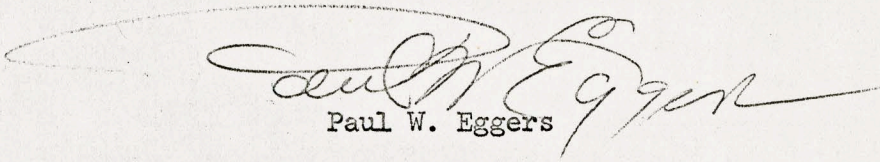
APR 29 1969

MEMORANDUM TO MR. EGIL KROGH, JR.
STAFF ASSISTANT TO THE COUNSEL

We enclose our memorandum in connection with our review of the gun registration laws, particularly in the area of ammunition.

We are now preparing a legislative package within Treasury on gun legislation and will submit it to the Bureau of the Budget for clearance.

We will be glad to discuss any of the points raised in this memorandum prior to submission of the proposed legislation.



Paul W. Eggers

Enclosure

AMMUNITION RECORDS UNDER CHAPTER 44 OF
TITLE 18, UNITED STATES CODE, AND PART
178 OF TITLE 26, CODE OF FEDERAL REGULATIONS.

The Department has been subjected to criticism because of the ammunition records required of firearm licensees under Part 178, "Commerce in Firearms and Ammunition", Title 26, Code of Federal Regulations. These regulations were issued pursuant to Title I of the Gun Control Act of 1968, codified as 18 U.S.C. Chapter 44.

Many taxpayers, Senators and Congressmen have alleged that records of ammunition transactions required under the regulations ⁹effect the federal registration of firearms in their hands which are capable of using the ammunition purchased. Others have alleged that the ammunition recordkeeping requirements of Part 178 are unduly burdensome to consumers, as well as licensees, and exceed the statutory authority for such records in Chapter 44.

REGISTRATION

In answer to the allegation that ammunition records are, for all intents and purposes, gun registration it should be noted that the records are retained by licensees. The records reflecting ammunition transactions do not become the property of the Federal Government but remain the property of licensees.

Moreover, these records are not collected by the Government at any location or locations nor is there any intention to accumulate them at any central location. Neither the records of firearms and ammunition transactions required under Chapter 44 nor the firearms records required of licensees for the past 30 years have resulted in the registration of firearms. In fact, it would be much more efficient to determine owners of firearms through such means as obtaining a list of those who have been issued hunting licenses, the membership of hunting, shooting and other sporting clubs, and those who have joined such organizations as the National Rifle Association. Thus, we must reject the registration allegation as being without merit in law or fact.

EXISTING STATUTORY REQUIREMENTS

An examination of pertinent statutes establishes the validity of regulations covering ammunition records. Hence, a sound legal answer to the criticism is available. However, if there is to be a solution to this problem, it must be by amendment of the statute. In this regard, we offer a recommendation for proposed legislation which the White House may want to consider. Furthermore, a brief description of some administrative problems encountered in the ammunition area indicates the advisability of considering legislative action.

The basic statute requiring records of transactions in firearms and ammunition is 18 U.S.C. 923(g). In pertinent part, it provides:

"Each licensed importer, licensed manufacturer, licensed dealer, and licensed collector shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, of firearms and ammunition at such place, for such period, and in such form as the Secretary may by regulations prescribe. * * * Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received firearms or ammunition together with a description of such firearms or ammunition."

(Underscoring added.)

The importance attributed by the Congress to the record-keeping requirements is clearly illustrated by those provisions

of the "Unlawful acts" section which relate to required records. The first of these provisions is section 922(a)(6) which makes it unlawful:

"for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter."

In commenting on this subsection, the House Committee on the Judiciary in its Report No. 1577, 90th Congress, 2nd Session, on H.R. 17735, stated on page 13:

"The requirement that one (who) obtains a firearm or ammunition from a Federal licensee must properly identify himself is inherent in this prohibition. This is strengthened by the recordkeeping provisions

of sections 922(b)(5) and 923(d) (the latter requirement now appears in section 923(g)). This provision is the same as existing law except that it also covers ammunition." (Parenthetical phrases added for clarity.) Next, section 922(b)(5) proscribes the sale or delivery by a licensee of:

"any firearm or ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity."

As to inadequate records, section 922(m) provides:

"It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder."

Under section 924(a), a penalty for each recordkeeping violation is prescribed as follows:

"Whoever violates any provision of this chapter or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter * * * shall be fined not more than \$5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine."

Section 926 grants the Secretary broad authority to issue regulations "to carry out the provisions of this chapter". Statutory requirements relating to ammunition records which must be implemented by regulations include "records of importation, production, shipment, receipt, sale, or other disposition". This broad requirement is made more explicit in other sections - the purchaser must be identified, generally, by name, age and place of residence, and the ammunition must be identified. Finally, the legislative history of the Act expresses the view that those who purchase ammunition should be required to identify themselves. Indeed, the plain meaning of the language in section 923(g) expresses this latter requirement.

BACKGROUND OF REGULATORY REQUIREMENTS

At the time the regulations in Part 178 were drafted, those responsible were aware of the congressional purpose of Chapter 44. Included in that purpose was the statement that the chapter was not intended to "provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title (18 U.S.C. Chapter 44)" (Sec. 101, P.L. 90-618, 82 Stat. 1213). When the regulations were in notice form, it was proposed to require about the same record information for ammunition as was required for firearms. Several objections to this proposal were received. Those objections cited the stated congressional purpose of Chapter 44 and urged that strict record requirements for ammunition were not in accord with the purpose. Upon consideration of the problem, it was decided to make these record requirements much less stringent than originally proposed.

Balancing the statutory requirements relating to ammunition records against this congressional intent, section 178.125 was perfected. Under the provisions of this section, records of ammunition receipts may consist of invoices maintained in an

orderly manner. Records of ammunition dispositions require the date of the transaction, identification of the ammunition by manufacturer, caliber, gauge, etc., and quantity transferred to the purchaser who must be identified in the records by name, address, and date of birth along with the method he uses to identify himself, e.g., driver's license, if he is not known to the licensee - the identification requirements here are somewhat less than those used by most merchants to identify an unknown purchaser paying for merchandise by check.

Under the statutory requirements stated above, the ammunition record requirements of the regulations do not exceed the authority of the statutes under which promulgated nor do they effect registration of firearms. Moreover, it is clear that the Congress intended the records be such that the ammunition be identified to the extent possible and associated with the person making the purchase who would also be identified. If the regulations covering ammunition records are amended so that they are made less stringent, neither the congressional intent of the Act nor the plain meaning of the applicable statutes will be implemented.

Thus, the source of the criticism cannot properly be eliminated through amendments to the regulations. This could

only be done through legislation. In considering the advisability of proposing legislation in this area, some problems encountered by the Department in administering ammunition controls are relevant.

USEFULNESS OF AMMUNITION RECORDS

Experience under the Federal Firearms Act (enacted in 1938 and repealed in 1968) and Title I of the Gun Control Act of 1968 has shown that it is almost impossible to control effectively interstate and foreign commerce in conventional firearms ammunition used for sporting, recreational and other lawful purposes. Strict controls can be effectively exercised over the interstate movement of ammunition for destructive devices (large caliber weapons, bombs, mortars, etc.) and, because of the inherent danger of such ammunition, it should be exercised.

Ammunition is not serially numbered and it would not be practical to require each round or box of ammunition to be serially numbered. Thus, after such a commodity leaves the premises of a licensee it is practically impossible to identify it so that it would be traced to a consumer or to establish that a given consumer purchased specific ammunition from a particular licensee.

The number of transactions in ammunition that occur in this country each day further complicates the problem. It is apparent that a licensee who handles both firearms and ammunition will have many times the volume of sales in ammunition than in firearms. In addition, a great number of merchants handle only ammunition. The tremendous number of record entries made in any given period hampers the meaningful or practical retrieval of any information pertaining to a specific transaction.

The Internal Revenue Service, which administers the provisions of Chapter 44, has estimated that at least 25,000 persons in the country have applied for licenses to deal only in ammunition. These applicants did not need or hold licenses under the repealed Federal Firearms Act. Processing such applications is time consuming and in at least one region, the sheer volume of ammunition dealer applications has hindered the effective administration of the firearms controls of the law.

As a law enforcement tool, the Department knows of no instance where any of the provisions relating to ammunition has been helpful in controlling the interstate flow of firearms or in law enforcement (whether pistol and revolver ammunition which has been controlled since 1938 under the repealed Federal Firearms Act or the Chapter 44 controls over all ammunition). Meanwhile available investigative manpower is finding the statutory controls over firearms exceedingly productive, and many meaningful cases

In short, the manpower effort and other expenses necessary to enforce the controls over all ammunition are not justified by the results that may reasonably be expected through enforcement of these controls. These controls simply are not effective as a law enforcement tool. They do, however, generate criticism of the Department from sportsmen and others.

CONCLUSION

Accordingly, the Department recommends legislation which would adopt the definition of ammunition as it appeared in Title IV of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. 921(a)(16)) prior to its amendment by the Gun Control Act of 1968. Such definition read as follows:

"The term 'ammunition' means ammunition for a destructive device; it shall not include shotgun shells or any other ammunition designed for use in a firearm other than a destructive device."

It should be noted that the amendment of the definition of ammunition will necessitate amending other provisions of the Act. A memorandum is attached setting out the necessary amendments and the reason each is necessary.

In considering this recommendation for legislation, you should note that a number of bills have been introduced in this Congress which would amend the ammunition controls in Chapter 44.

These bills follow two general approaches - striking the controls on only sporting type ammunition (.22 caliber, rifle and shotgun) or striking the controls on all ammunition except for destructive devices. The first approach is followed in S. 845, S. 1432, H.R. 6470, H.R. 6563, H.R. 6647, H.R. 6952, H.R. 6978, H.R. 7024, H.R. 7196, H.R. 7309, H.R. 7498, H.R. 7970, H.R. 8147, H.R. 8171, H.R. 8256, H.R. 8321, H.R. 8593, H.R. 8627, H.R. 9043, H.R. 9056, H.R. 9226, H.R. 9322, H.R. 9340, and H.R. 9363. Elimination of all ammunition controls are proposed in H.R. 913, H.R. 3346, H.R. 4156, H.R. 4782, H.R. 6032, H.R. 6619, H.R. 7910, H.R. 8628, H.R. 9463, and H.R. 9624.

You should also note that a proposal to remove all ammunition including pistol and revolver ammunition, from the controls of Chapter 44 may meet with some congressional opposition. It could be argued that pistol and revolver ammunition should be controlled in that the weapons using this ammunition are the type most frequently used in crimes. However, as noted above, past controls over pistol and revolver ammunition have not proven effective in deterring the criminal use of firearms. Moreover, the rationale for removing controls over sporting type ammunition is equally applicable to pistol and revolver ammunition.

Please advise the Department of your conclusion on this recommendation.

Treasury Department Proposed Amendments

SEC. 1. Section 921(a)(16) of title 18 of the United States Code is amended by striking from subparagraph (B) "rimfire or conventional centerfire fixed ammunition" and inserting in lieu thereof "a rimfire or conventional centerfire fixed shell or cartridge".

SEC. 2. Section 921(a)(17) of title 18 of the United States Code is amended to read as follows:

"(17) The term 'ammunition' means ammunition for a destructive device; it shall not include shotgun shells or any other ammunition designed for use in a firearm other than a destructive device."

SEC. 3. Section 922(a) of title 18 of the United States Code is amended (a) by inserting in paragraph (3) "or ammunition" after "firearm" where it first appears in the paragraph;

(b) by inserting in paragraph (4) "ammunition," after "destructive device,"; and

(c) by inserting in paragraph (5) "or ammunition" after "firearm" where it first appears in the paragraph.

SEC. 4. Section 922(b) of title 18 of the United States Code is amended (a) by striking paragraph (1) and inserting in lieu thereof the following:

"(1) any firearm to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and if the firearm is other than a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age, or any ammunition to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.";

(b) by inserting in paragraph (3) "or ammunition" after "firearm" where it first appears in the paragraph; and

(c) by inserting in paragraph (4) "ammunition," after "destructive device,".

SEC. 5. Section 923(a) of title 18 of the United States Code is amended as follows:

(a) Paragraph (1) is amended by striking from subparagraph (A) "for destructive devices" and adding "or" after the ";"; by striking from subparagraph (B)

"; or" and inserting in lieu thereof "."; and by striking subparagraph (C).

(b) Paragraph (2) is amended by striking from subparagraph (A) "for destructive devices"; and by striking from subparagraph (B) "or ammunition for firearms other than destructive devices".

(c) Paragraph (3) is amended by striking from subparagraph (A) "for destructive devices"; and by striking from subparagraph (B) "or ammunition for firearms other than destructive devices".

SEC. 6. Section 923(j) of title 18 of the United States Code is repealed.

EXPLANATION

Since controls under the proposed definition of ammunition would be limited to destructive device ammunition, the Department recommends that sections 922(a)(3), 922(a)(4), 922(a)(5), 922(b)(3) and 922(b)(4) be amended to include ammunition, and that section 923(j) relating to hand loading, reloading, or custom loading ammunition be repealed since the provisions would no longer be necessary. In general,

under the existing provisions of section 922(a)(3) a non-licensee is prohibited from transporting into or receiving in his State of residence any firearm purchased or otherwise obtained by him outside that State and under section 922(a)(5) an unlicensed person is prohibited from transferring a firearm to another unlicensed person who resides in another State. Similarly, under section 922(b)(3), it is unlawful for a licensee to sell or deliver a firearm to an unlicensed person who resides in another State. The inclusion of ammunition in these sections would implement the strict controls over the interstate movement of destructive device ammunition in section 922(a)(2). It would also prevent the avoidance of State and local laws controlling destructive device ammunition by the simple expediency of crossing a State line to purchase such ammunition.

The existing provisions of section 922(a)(4) prohibit transportation of destructive devices and National Firearms Act weapons (gangster-type) in interstate or foreign commerce by unlicensed persons, except as authorized by the Secretary consistent with public safety and necessity. Likewise, under existing section 922(b)(4) a licensee is prohibited

from disposing of a destructive device or a National Firearms Act weapon to any unlicensed person except as specifically authorized by the Secretary consistent with public safety and necessity. The Department's proposal to amend these sections to include ammunition would strengthen controls over destructive device ammunition.



THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

MAR 18 1969

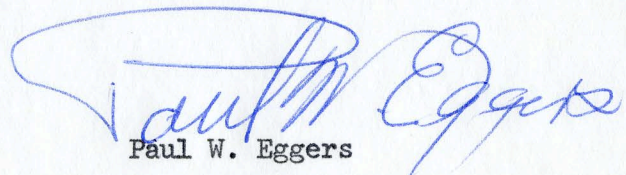
MEMORANDUM TO MR. EGIL KROGH, JR.
STAFF ASSISTANT TO THE COUNSEL

Attached is a copy of a letter which I have written to Mr. Marler concerning his complaint about Treasury Department enforcement of the Gun Control Act of 1968.

This is going to be a difficult issue because the Act requires the securing of certain information from persons who purchase guns, and the public seems to be confusing the securing of such information with gun registration which, of course, is not required by law.

However, Mr. Rossides, who will be the Assistant Secretary of the Treasury with responsibility for law enforcement, and I have been discussing the many problems arising out of the Gun Control Act. On March 19, 1969, we are arranging a meeting with the Internal Revenue Service to discuss certain regulations that have been issued in connection with the Gun Control Act of 1968. The question we wish to resolve is whether these regulations go farther than the intent as set out in the legislation.

We shall advise you what action will be taken as a result of our conference.


Paul W. Eggers

Attachment



THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

MAR 18 1969

Dear Mr. Marler:

The Honorable Bryce N. Harlow has referred to me your letter of February 28, 1969, concerning the Gun Control Act of 1968. I have been nominated by President Nixon to be General Counsel of the Treasury Department, and I hope to actually take office within the next few days.

I should like to assure you that this Administration intends to make a complete review of enforcement by the Treasury Department of the Gun Control Act of 1968, and of the Regulations which the Treasury Department has issued.

We very much appreciate your writing to us about this.

Sincerely yours,

[(Signed) Paul W. Eggers]

Paul W. Eggers

Honorable Fred W. Marler, Jr.
Post Office Box 2297
Redding, California 96001

March 17, 1969

TO GENERAL COUNSEL--TREASURY
FROM OFFICE OF THE COUNSEL
SUBJECT RESPONSE TO MR. MARLER

Would you please check into this matter and determine whether any additional response to Mr. Marler should be made.

It would be appreciated if you could advise me whether any review of the present system of gun registration is under way.

MAR 20 AMS'D

Egil Krogh, Jr.
Staff Assistant to the Counsel