NO COMMENTS ALLOWED REGARDING AMMO BAN

By Theodore Conway Allen

With regard to the ATF, ban of Russian-made 7N6 5.45x39 bullets, ATF spokeswoman, Danette Seward declared,

"WE DIDN'T PUT IT OUT TO COMMENT"

On 5 March 2014, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) "received a request from the U.S. Customs and Border Protection Agency (CBP) to conduct a test, examination, and classification of Russian-made **7N6 5.45x39** bullets for purposes of determining whether it is considered 'armor piercing ammunition' as defined by the Gun Control Act (GCA), as amended."

The ATF conducted the testing, examination, and classification of the Russian ammunition. Consequent to that process, the Washington, DC, Public Affairs Division of the ATF released on 7 April 2014, a "Special Advisory" report concerning the Russian ammunition. The salient portion of that Special Advisory follows.

When ATF tested the 7N6 samples provided by CBP, they were found to contain a steel core. ATF's analysis also concluded that the ammunition could be used in a commercially available handgun, the Fabryka Bronie Radom, Model Onyks 89S, 5.45x39 caliber semi-automatic pistol, which was approved for importation into the United States in November 2011. Accordingly, the ammunition is "armor piercing" under the section 921 (a) (17) (B) (i) and is therefore not importable.

Subsequent to the report, media sources noted, several Second Amendment rights groups protested the ATF action to ban the Russian ammunition. Despite those protests, the ruling prevailed, ending sales and importation of the ammunition into the United States. The ban was another of a thousand cuts that are bleeding Americans to death.

Flush from the agency's victory, roughly ten months later it was disclosed by media outlets that the ATF was now considering another ammunition ban, this time focusing on the American manufactured, 5.56/XM855, .223, "green tip" ammunition. This time, the proposal met with a groundswell of outraged protest. Without going into all the details of the ATFs latest assault on American Second Amendment rights, the outcome of the agency's efforts was the decision to retract the proposal. Americans who take their Second Amendment rights very seriously, had united and pushed back another example of federal hubris and over-reach. It was a great day to be an American, especially a Second Amendment defender American.

However, as the dust began to settle from the most recent round of political martial arts, two tactics the ATF used in that fight were exposed. The first tactic in the ATFs strategy for banning both the

Russian-made and American manufactured types of ammunition was to, ***not publish the proposed "Framework" in the Federal Register as required by the Administrative Procedure Act*** (*APA*).

Todd C. Frankel of ***The Washington Post*** corroborates this author's claim the ATF deliberately omitted, ***publishing a statement of rulemaking authority in the Federal Register for all proposed and final rules*.** Writing in the 10 March 2015 online edition of ***The Washington Post*** regarding ATF retraction of the proposal to reclassify 5.56/XM855, .223, "green tip" ammunition as armor piercing, and the reaction to the proposal, Frankel quoted ATF Public Affairs Division, spokeswoman, Danette Seward. "The reaction?" Seward remarked, "All you have to do is go to our Facebook page to see the reaction." Then, Frankel ended his article entitled, "How angry gun owners shouted down a ban on armor-piercing bullets," with the following information and quote. "Last year, the ATF successfully banned Russian-made 7N6 bullets on the grounds they were armor-piercing. Some gun-rights groups objected, but that ruling stood. In the final sentence of the article, regarding that ATF 7N6 bullet coup, Danette Seward made this astounding declaration. "We didn't put it out to comment," Seward noted. Read that statement again: "We didn't put it out to comment." With her remark, the ATFs own spokeswoman, revealed the ATFs contempt for the Constitution and its flagrant violation of ***APA*** regulations! Seward's remark opens an entirely new chapter in ATF over-reach. Her remark also provides the means to rescind the null and void "armor piercing ammunition" classification of the Russian-made **7N6 5.45x39** bullets.

While the ATFs first blunder was its blatant disregard of an ***APA*** directive that binds the agency, incredibly, the ATF violated a second and third provision of the administrative procedures legally constricting it. In the second instance, the ATF exceeded "its statutory authority" by ignoring ***APA*** regulations. In the third instance, the ATF again exceeded its statutory authority by not following the requirement for "an open public process" as part of the "test, examination, and classification of 7n6 5.45x39 ammunition" procedure.

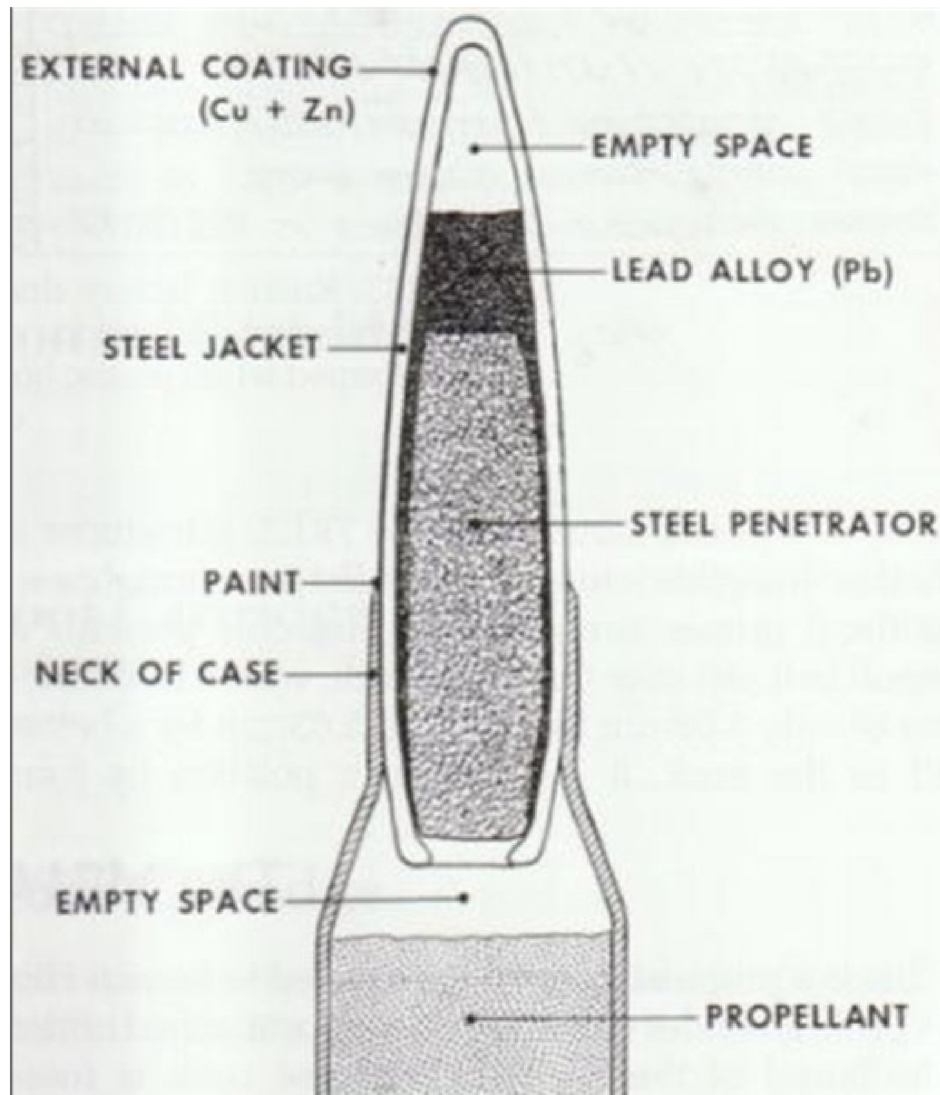
The second tactic in the ATFs strategy to ban the Russian ammunition was that agency's distorted interpretation and its omissive application of the law. To reclassifying the 7N6 bullets as armor piercing, the ATF referenced the same statute used in its effort to determine if XM855 bullets met the definition of an "armor piercing" projectile. The ATF ignored portions of the definition in Section 18 U.S.C. 921(a) (17) (B), in order to rule the 7N6 fell into its myopic and distorted application of the definition. For example, Section 18 U.S.C. 921(a) (17) (B) establishes:

(B) The term "armor piercing ammunition" is defined as:

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper or depleted uranium; or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

DIAGRAM OF 7N6 5.45×39 AMMUNITION



As observed in the precise language and terminology used in Section 18 U.S.C. by the government to describe component parts of armor piercing ammunition, within the context of the issue at hand, there must be uniformity in that precise terminology as used by all interested parties of that context. Therefore, classifying ammunition as armor piercing, as defined in Section 18 U.S.C. in the first instance, requires, "a projectile or projectile core which may be used in a handgun." In addition, to define a projectile as "armor piercing" requires the core of a projectile to be "constructed entirely" of

one or a combination of hardened metal alloys. An examination of a 7N6 projectile reveals it consists of two components. Because the government employed precise language to construct the definition in Section 18 U.S.C., the manufacturer also utilizes precise terminology to describe and define the several components comprising that projectile. The manufacturer describes the projectile as containing one lead core and one steel insert. The first of the two projectiles is a lead core. Behind the lead core is a steel insert. Both the insert and the core are contained within a steel jacket. These components make up the body of the projectile. Arguably, because the projectile at hand contains an insert comprised entirely of steel, one interpretation of sub-section (i) of Section 18 U.S.C. may find that because the Section 18 U.S.C. definition does not stipulate whether that projectile core consists of one or two pieces, then taking the cores separately, the 7N6 projectile meets the standard defining "armor piercing ammunition." This interpretation would obtain because that insert alone is made entirely of steel. However, because the projectile core at hand consists of two different metals, one of lead, the other of steel, this particular core is not "constructed entirely…" of, "steel." Therefore, sustaining the sub-section (i) definition fails and classifying the projectile as armor piercing also fails.

With respect to sub-section (ii) of Section 18 U.S.C., the ATF ran complete roughshod over that portion of the criteria for defining ammunition as armor piercing. As it relates to 7N6 classification, the specifications required to consider a projectile as armor piercing follow.

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

Following a comparison of the 7N6 projectile to the criteria listed in sub-section (ii) that projectile clearly fails to meet the second part of the definition. First of all the design and intent of the projectile's jacket is not for use in a handgun. Moreover, the diameter of a 7N6 projectile measures precisely .22 of an inch. Therefore, by any measurement its .22 diameter fails as being larger than a .22 caliber. Secondly, its jacket weighs less than 25% of the weight of the projectile. In the final analysis, the 7N6 projectile, meets no part of the definition of "armor piercing."

The ATF inaccurately and illegally classified 7N6 ammunition as "armor-piercing" because of the mild steel core in the projectile. They deliberately and dishonestly conflated handguns capable of firing a projectile with ***a full-jacketed projectile larger than .22 caliber, designed and intended for use in a handgun*** with the 7N6, a projectile not matching a single criteria in the definition the agency used. Indeed, because "the Fabryka Bronie Radom, Model Onyks 89S, 5.45x39 caliber semi-automatic pistol, which was approved for importation into the United States in November 2011 became available on the American market, the ATF believed suddenly and miraculously, the 7N6 projectile transformed into a pistol cartridge!

The ATF admitted their perversion of the intent of Section 18 U.S.C. 921(a) (17) – 3 – by citing one of the laws ardent supporters. Early versions of bills focusing on the issue provided a performance standard. First of all the ammunition under review must have the ability to penetrate body armor,

with the caveat that standard only applied to handgun ammunition. Senator Daniel Patrick Moynihan, a liberal, New York Democrat, in 1985, during a hearing on an early version of the bills, very clearly and specifically declared ***it was never the laws intent to ban rifle ammunition.*** ***Senator Moynihan made clear that the intent of the bill was to ban only ammunition that both met the performance standard and was designed to be used in a handgun:***

Framework for Deciding Sporting Purpose Ammunition pursuant to 18 USC 921(a)(17)

[L]et me make clear what this bill does not do. Our legislation would not limit the availability of standard rifle ammunition with armor-piercing capability. We recognize that soft body armor is not intended to stop high-powered rifle cartridges. Time and again Congressman Biaggi and I have stressed that only bullets capable of penetrating body armor and designed to be fired from a handgun would be banned; rifle ammunition would not be covered.

Clearly then, the ATF perverted the letter and the intent of the law as written.

In a court of law, when differentiating between two interpretations of a statute, the law requires the court to find in behalf of that definition which most favors the rights of the party that has the most to lose in that matter. In this context, American defenders of the Second Amendment stand to lose a portion of that right which "shall not be infringed." In contemporary American society, rights of the American people stand or fall on such fine distinctions. We must continuously argue with Solomaic wisdom as we determine, "Who is the rightful mother" in this case.

With all of the ATFs prose regarding ***the primary purpose and intent*** of Congress, the 1968 GCA, and the Law Enforcement Officer Protection Act, and that agency's concern for the safety of law enforcement officers, there remains one final, yet overriding purpose and intent that shall be considered.

The primary purpose of the United States Constitution is neither hunting nor sports. The primary purpose of the Constitution is the "security of a free state."

Therefore, by what authority did Congress write any legislation with any intent towards ammunition? The Congress, for all its bluster about "armor piercing ammunition," and its elevated rhetoric about the safety of police officers, does not find any authority to write or enact any legislation permitting, restricting, limiting, or disallowing ammunition of any type in the Constitution! The Congress, the ATF, and a multitude of federal agencies are seriously confused and mistaken concerning restrictions. It is past time to remind Congress and the ATF, ***The Constitution restricts the government,*** **not gun makers, ammunition makers, or private citizens.** ***The Constitution restricts the federal government!*** The Constitution is clear on the matter of arms and thus, on the matter of ammunition as found in the Second Amendment: ***A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.*** **Americans are not required to bow before unbridled, naked** ATF **contempt and**

hubris! Americans are not required to ask permission to keep, and bear arms! Americans are not required to beg any person, group, or agency not to ban ammunition or firearms! The British awakened to those facts at Concord. Americans afford Congress and the ATF the privilege of protecting our rights! Pay close attention, ATF. Do not allow the following words to be spoken again, "**WE DIDN'T PUT IT OUT TO COMMENT.”**

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