Memorandum

April 4, 1974

TO: Michael Whiteman
FROM: Archibald R. Murray

RE: A. 8667-A

Purpose

To amend a number of sections in Article 265 of the Penal Law
to penalize the possession of, manufacture or dealing in "chuka sticks."

Discussion

This bill proposes to outlaw the possession, manufacture or shipment
of "chuka sticks," as that device is defined in bill section 1.

By placing the basic prohibition in Penal Law section 265.05(3),
the possession of chuka sticks is made per se criminal, i.e., no
mens rea is required and the crime, therefore, is one of absolute
liability. Even if the chuka stick is being employed with signifi-
cant frequency as a weapon in the commission of violent crimes,
its inclusion in the per se category is of doubtful wisdom and
questionable legality.

It is our understanding that chuka sticks are also used in karate
and other "martial arts" training. In view of the current interest
and participation in these activities by many members of the public,
it appears unreasonable -- and perhaps even unconstitutional -- to
prohibit those who have a legitimate reason for possessing chuka
sticks from doing so. There are alternative ways in which the
problem can be handled. If it is desired to keep chuka sticks in
the per se prohibited class, an exception could be drafted for those
who possess them for lawful martial arts training. Such a course
is employed for switchblade and gravity knives, which are also
prohibited in this same subdivision (P.L. sec. 265.05[3]). In
their case, section 265.20(5) permits their possession for hunting
or fishing by a person who has a hunting or fishing license.

A second, and more appropriate, alternative would be to treat
chuka sticks under Penal Law section 265.05(9) where, to constitute
the crime, possession must be coupled with "an intent to use the
same unlawfully against another." This would put chuka sticks
in the same category as other objects which are potential weapons
but which also have legitimate uses, such as knives and razors.
It should be noted that the first version of this bill (A. 8667) in fact pursued precisely this latter course.

A technical -- probably typographical -- error appears on page 1, line 4. The word "designated" probably should read "designed."

Recommendation

In view of the foregoing, we cannot recommend approval of this bill in its present form.